

Eight Mile Style, LLC et al. v. Apple Computer Inc., et al.
Case No. 2:07-CV-13164

EXHIBIT 2

**Excerpt of transcript pages from the
Deposition of Peter Paterno taken on November 20, 2008**

DEPOSITION OF PETER PATERNO

UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC,)
ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) CASE NO. 2:07-CV-13164
)
 APPLE COMPUTER, INC.,)
)
 DEFENDANT.)
 _____)

DEPOSITION OF PETER PATERNO, TAKEN
ON BEHALF OF THE PLAINTIFFS, AT
10250 CONSTELLATION BOULEVARD, 19TH
FLOOR, LOS ANGELES, CALIFORNIA,
COMMENCING AT 2:16 P.M., THURSDAY,
NOVEMBER 20, 2008, BEFORE SAMANTHA
AVENAIM, CSR NUMBER 10627.

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14:18:56 1 MR. BUSCH: YOU'RE NOT SUGGESTING
14:18:57 2 THAT MY EXAMINATION, HOWEVER, IS LIMITED TO WHAT
14:18:59 3 YOU ARE GOING TO IDENTIFY.

14:19:01 4 MR. POMERANTZ: IT IS ENTIRELY
14:19:03 5 LIMITED TO THAT, BECAUSE YOU'RE ONLY ENTITLED TO
14:19:05 6 QUESTION HIM ON THINGS IN WHICH HE IS GOING TO
14:19:07 7 OFFER TESTIMONY AS AN EXPERT.

14:19:10 8 MR. BUSCH: I CAN QUESTION HIM ON
14:19:12 9 THINGS RELATED TO BIAS AND DIFFERENT THINGS THAT
14:19:13 10 WOULD COLOR HIS TESTIMONY. SO I DON'T NECESSARILY
14:19:13 11 AGREE WITH THAT.

14:19:15 12 MR. POMERANTZ: WE WILL DO IT ON A
14:19:18 13 QUESTION-BY-QUESTION BASIS. BUT LET ME PUT ON THE
14:19:20 14 RECORD WHAT HE IS GOING TO BE REBUTTING. AND
14:19:20 15 AGAIN, THIS WOULD SUBSUME ALSO THE TESTIMONY WE
14:19:23 16 ARE CURRENTLY OFFERING AS WELL.

14:19:25 17 WITH RESPECT TO THE EXPERT REPORT
14:19:28 18 OF MR. ABRAMS, HOWARD ABRAMS.

14:19:30 19 MR. BUSCH: LET ME GET IT IN FRONT
14:19:48 20 OF ME, PLEASE. OKAY. HOWARD ABRAMS.

14:19:49 21 MR. POMERANTZ: ON PAGE 3 OF THE
14:19:49 22 REPORT --

14:19:50 23 MR. BUSCH: YES.

14:19:52 24 MR. POMERANTZ: -- AT THE TOP OF
25 THE PAGE THERE IS A SENTENCE THAT BEGINS

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14:19:54 1 "INITIALLY."

14:19:55 2 MR. BUSCH: YES.

14:19:57 3 MR. POMERANTZ: AND THEN IT'S

14:19:59 4 FOLLOWED BY A CLAUSE A AND A CLAUSE B.

14:19:59 5 MR. BUSCH: YES.

14:20:01 6 MR. POMERANTZ: HE IS BEING

14:20:06 7 DESIGNATED TO OFFER TESTIMONY TO REBUT THAT

14:20:07 8 PARTICULAR OPINION BY MR. ABRAMS.

14:20:08 9 MR. BUSCH: YES.

14:20:14 10 MR. POMERANTZ: THAT'S IT IN THE

14:20:15 11 ABRAMS REPORT.

14:20:16 12 MR. BUSCH: THAT IS IT IN THE

14:20:17 13 ABRAMS REPORT?

14:20:19 14 MR. POMERANTZ: THAT IS IT.

14:20:19 15 MR. BUSCH: OKAY.

14:20:21 16 MR. POMERANTZ: AND THEN WITH

14:20:22 17 RESPECT TO --

14:20:23 18 MR. BUSCH: SULLIVAN?

14:20:27 19 MR. POMERANTZ: -- MR. SULLIVAN,

14:20:42 20 PAGE 12.

14:20:43 21 MR. BUSCH: OKAY.

14:20:45 22 MR. POMERANTZ: AT THE END OF THE

14:20:47 23 FIRST PARAGRAPH UNDER THE HEADING "CONTROL

14:20:47 24 COMPOSITION CLAUSES" --

25 MR. BUSCH: YES.

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14:20:50 1 MR. POMERANTZ: -- THERE IS A
14:20:51 2 SENTENCE THAT BEGINS WITH "MOREOVER."
14:20:51 3 MR. BUSCH: YES.
14:20:52 4 MR. POMERANTZ: HE WILL BE
14:20:54 5 REBUTTING THE OPINION IN THAT SENTENCE.
14:21:02 6 MR. BUSCH: OKAY. YES.
14:21:03 7 MR. POMERANTZ: AND THEN ON THE
14:21:07 8 NEXT PAGE, PAGE 13, UNDER THE HEADING, "THIRD
14:21:09 9 PARTY LICENSES AND THE CONTROLLED COMPOSITION
14:21:09 10 CLAUSE" --
14:21:10 11 MR. BUSCH: RIGHT.
14:21:12 12 MR. POMERANTZ: -- HE IS GOING TO
14:21:16 13 BE REBUTTING THE SECOND -- THE OPINION IN THE
14:21:17 14 SECOND SENTENCE.
14:21:17 15 MR. BUSCH: "HOWEVER" ?
14:21:18 16 MR. POMERANTZ: BEGINNING WITH THE
14:21:21 17 WORD "HOWEVER."
14:21:25 18 AND THAT IS THE EXTENT OF HIS -- OF
14:21:27 19 THE OPINIONS HE'LL BE OFFERING AND REBUTTING OR
14:21:29 20 CAPTURED BY THOSE THREE SENTENCES.
14:21:31 21 WE DO NOT INTEND TO OFFER HIM AS AN
14:21:35 22 EXPERT ON COPYRIGHT LAW OR ANY OF THE OTHER
14:21:41 23 MATTERS THAT ARE SET FORTH IN THESE EXPERT
14:21:42 24 REPORTS.
25 HIS EXPERT TESTIMONY, TO THE EXTENT

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14:28:22 1 Q. WAS THAT THE FIRST TIME YOU LOOKED
14:28:23 2 AT THEM?

14:28:24 3 A. YES.

14:28:27 4 Q. OKAY. SO TODAY IS NOVEMBER 20TH,
14:28:30 5 SO IT WOULD BE FAIR TO SAY THAT THE FIRST TIME YOU
14:28:34 6 LOOKED AT THE EXPERT REPORTS OR ANY MATERIAL
14:28:37 7 REGARDING THIS CASE, THIS TIME OF YOUR DEPOSITION,
14:28:39 8 WOULD HAVE BEEN IN THE LAST WEEK?

14:28:40 9 A. YES. I THINK THAT'S RIGHT.

14:28:45 10 Q. OKAY. AND WHILE YOU HAD A SHORT
14:28:48 11 CONVERSATION WITH MR. POMERANTZ WHEN HE ASKED YOU
14:28:53 12 TO BE AN EXPERT, BETWEEN THAT TIME AND TODAY, THE
14:28:56 13 FIRST CONVERSATION THAT YOU CAN RECALL WHERE YOU
14:28:58 14 AND SOMEONE FROM HIS FIRM OR MR. POMERANTZ
14:29:01 15 DISCUSSED WHAT THEY WANTED YOU TO TESTIFY ABOUT
14:29:02 16 WAS THIS MORNING?

14:29:04 17 A. YES. I MEAN, YES. THAT'S RIGHT.

14:29:10 18 Q. AND TODAY IS NOVEMBER 20TH.

14:29:11 19 A. OKAY.

14:29:15 20 Q. OKAY. NOW, TELL ME ABOUT THE
14:29:20 21 CONVERSATION TODAY ON NOVEMBER 20TH WHERE
14:29:22 22 MR. POMERANTZ TOLD YOU WHAT THEY WANTED YOU TO
14:29:22 23 TESTIFY ABOUT.

14:29:23 24 MR. POMERANTZ: I WOULD ASK YOU TO
25 LIMIT IT ONLY TO THE THREE SUBJECT MATTERS THAT I

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14:29:28 1 IDENTIFIED EARLIER SINCE THAT'S WHAT WE'RE
14:29:29 2 DESIGNATING YOU ON.
14:29:31 3 TO THE EXTENT WE HAD CONVERSATIONS
14:29:33 4 ABOUT ANYTHING OTHER THAN THOSE THREE SUBJECT
14:29:34 5 MATTERS, I WOULD INSTRUCT YOU NOT TO ANSWER.
14:29:36 6 MR. BUSCH: ON WHAT GROUNDS?
14:29:36 7 MR. POMERANTZ: IT'S PRIVILEGED.
14:29:37 8 MR. BUSCH: IN WHAT WAY?
14:29:38 9 MR. POMERANTZ: BECAUSE WE
14:29:41 10 REPRESENT HIM AS A WITNESS IN THIS CASE, AND WE'RE
14:29:44 11 ONLY DESIGNATING HIM AS AN EXPERT ON THOSE THREE
14:29:44 12 SUBJECT MATTERS.
14:29:45 13 MR. BUSCH: I DISAGREE. I THINK
14:29:45 14 THAT AS AN EXPERT I'M ENTITLED TO KNOW --
14:29:47 15 REGARDLESS OF WHAT YOUR DESIGNATION WAS, I'M
14:29:49 16 ENTITLED TO KNOW EVERYTHING THAT WAS DISCUSSED.
14:29:51 17 SO I'D ASK YOU TO WITHDRAW THAT
14:29:54 18 OBJECTION AND ALLOW ME TO QUESTION HIM ABOUT
14:29:55 19 ANYTHING THAT YOU AND HE DISCUSSED TODAY.
14:29:56 20 MR. POMERANTZ: NO, I'M NOT GOING
14:29:58 21 TO DO SO. I THINK MY INSTRUCTION IS PROPER UNDER
14:29:59 22 THE RULES.
14:30:02 23 AND I WOULD AGAIN INSTRUCT YOU TO
14:30:05 24 LIMIT YOUR ANSWER TO THE DISCUSSIONS YOU RECALL
25 RELATING TO THE THREE SUBJECT MATTERS I

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14:30:07 1 IDENTIFIED.

14:30:09 2 MR. BUSCH: I OBJECT, AND I'LL MOVE
14:30:13 3 TO STRIKE MR. PATERNO'S EXPERT TESTIMONY AS A
14:30:13 4 RESULT.

14:30:14 5 BY MR. BUSCH:

14:30:14 6 Q. GO AHEAD.

14:30:15 7 A. CAN I LEAVE?

14:30:18 8 Q. IF YOU DON'T WANT TO BE AN EXPERT,
14:30:18 9 YOU CAN.

14:30:23 10 A. WE GENERALLY TALKED ABOUT MY
14:30:27 11 OPINING ON THINGS THAT I KNOW ABOUT, WHICH IS
14:30:30 12 CUSTOM AND PRACTICE IN THE MUSIC INDUSTRY AS IT
14:30:42 13 RELATES TO CONTROLLED COMPOSITION CLAUSES AND
14:30:45 14 WHATEVER THOSE OTHER TWO THINGS THAT HE SAID THAT
14:30:47 15 I'M GOING TO TALK ABOUT ARE.

14:30:49 16 Q. OKAY. WHAT ARE THOSE OTHER TWO --
14:30:50 17 OH, WHAT ARE THOSE OTHER TWO THINGS?

14:30:53 18 A. I COULD LOOK AND I COULD REMEMBER.
14:30:54 19 I DON'T REALLY REMEMBER.

14:30:57 20 Q. CAN YOU TELL ME WHAT YOUR -- OTHER
14:31:00 21 THAN YOUR KNOWLEDGE AS AN ATTORNEY ABOUT CUSTOM
14:31:03 22 AND PRACTICE IN THE INDUSTRY AS IT RELATES TO
14:31:05 23 CONTROLLED COMPOSITION CLAUSES, IS THERE ANYTHING
14:31:07 24 THAT YOU CAN RECALL RIGHT NOW THAT YOU'RE AN
25 EXPERT ON THAT WAS COVERED IN MR. ABRAMS' OR

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14:31:13 1 MR. SULLIVAN'S EXPERT REPORTS?

14:31:16 2 A. ARE THERE OTHER THINGS IN THOSE
14:31:17 3 REPORTS THAT I KNOW ABOUT?

14:31:19 4 Q. THAT YOU ARE AN EXPERT ON, THAT YOU
14:31:20 5 CONSIDER YOURSELF AN EXPERT.

14:31:23 6 A. I'M REALLY NOT FAMILIAR WITH WHAT
14:31:26 7 IT TAKES TO BE AN EXPERT. I'VE PRACTICED MUSIC
14:31:29 8 AND COPYRIGHT LAW FOR A LONG TIME, AND I KNOW A
14:31:30 9 LOT ABOUT THOSE SUBJECTS.

14:31:32 10 SO I CONSIDER MYSELF TO BE AN
14:31:35 11 EXPERT IN THOSE AREAS, AND A LOT OF THAT IS
14:31:36 12 COVERED IN THOSE TWO REPORTS.

14:31:37 13 Q. DO YOU KNOW WHY YOU'RE ONLY BEING
14:31:40 14 DESIGNATED ON THREE SENTENCES IN THE TWO REPORTS
14:31:43 15 RATHER THAN THE REMAINDER OF THE REPORTS?

14:31:44 16 A. WELL, I DON'T REALLY KNOW. BUT,
14:31:48 17 YOU KNOW, I DON'T PRETEND TO BE AN EXPERT -- I
14:31:51 18 DON'T PRETEND TO BE A LEGAL SCHOLAR IN THE
14:31:51 19 COPYRIGHT ACT.

14:31:54 20 I CERTAINLY KNOW A LOT ABOUT IT,
14:31:56 21 BUT I WOULDN'T -- YOU KNOW, I WOULDN'T PUT MYSELF
14:32:00 22 UP WITH PROFESSOR NIMMER AS AN EXPERT IN THE
14:32:03 23 COPYRIGHT ACT. SO PROBABLY IF I WERE DESIGNATING
14:32:04 24 AN EXPERT IN THE COPYRIGHT ACT, I WOULD DESIGNATE
25 PROFESSOR NIMMER AND NOT ME.

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14:32:09 1 Q. WHAT ABOUT IN LICENSING FOR
14:32:14 2 PERMANENT DOWNLOADS, ARE YOU AN EXPERT IN
14:32:15 3 LICENSING, CUSTOM AND PRACTICE IN THE INDUSTRY AS
14:32:15 4 IT RELATES TO LICENSING FOR PERMANENT DOWNLOADS?
14:32:16 5 MR. POMERANTZ: WHAT DO YOU MEAN BY
14:32:17 6 LICENSING? LICENSING BETWEEN A RECORD COMPANY AND
14:32:20 7 A THIRD PARTY DIGITAL DISTRIBUTOR?
14:32:21 8 MR. BUSCH: NO. WELL, THAT'S ONE
14:32:24 9 AREA OF LICENSING. WHAT I'M TALKING ABOUT IS --
14:32:24 10 FOR EXAMPLE --
14:32:24 11 BY MR. BUSCH:
14:32:25 12 Q. LET ME BACK UP FOR ONE SECOND.
14:32:29 13 EVEN THOUGH I WENT OVER THIS IN YOUR FACT
14:32:33 14 DEPOSITION, I JUST WANT TO GET FOR THE RECORD SOME
14:32:34 15 BACKGROUND ON YOU.
14:32:36 16 I KNOW YOU'RE AN ATTORNEY AND
14:32:38 17 YOU'RE A PARTNER IN A LAW FIRM. HOW LONG HAVE YOU
14:32:41 18 BEEN A PARTNER IN YOUR LAW FIRM?
14:32:43 19 A. IN MY CURRENT LAW FIRM?
14:32:43 20 Q. YES.
14:32:46 21 A. 12 OR 13 YEARS.
14:32:48 22 Q. OKAY. AND WHAT YEAR DID YOU
14:32:49 23 GRADUATE LAW SCHOOL?
14:32:50 24 A. 1976.
25 Q. OKAY. AND JUST TAKE ME THROUGH,

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14:32:57 1 JUST GENERALLY SPEAKING, YOU KNOW, NOT IN ANY
14:32:59 2 GREAT DEPTH, BUT JUST THE JOBS THAT YOU'VE HELD IN
14:33:02 3 THE MUSIC INDUSTRY OR PRACTICING ENTERTAINMENT LAW
14:33:04 4 FROM '76 TO THE PRESENT.

14:33:07 5 A. I GRADUATED FROM LAW SCHOOL IN '76.
14:33:10 6 I TOOK THE BAR. I OPENED MY OWN LAW FIRM. I DID
14:33:15 7 THAT FOR A YEAR AND A HALF. I THEN WENT TO WORK
14:33:19 8 WITH MANATT, PHELPS AT THE TIME OF MANATT, PHELPS,
14:33:20 9 ROTHENBERG & TUNNEY WHERE I STARTED CONCENTRATING
14:33:22 10 IN MUSIC LAW.

14:33:25 11 I WAS THERE FOR 12 YEARS. I LEFT
14:33:30 12 TO GO START HOLLYWOOD RECORDS FOR THE WALT DISNEY
14:33:35 13 COMPANY. I DID THAT FOR FOUR YEARS. I LEFT
14:33:38 14 BECAUSE THEY DIDN'T WANT ME THERE ANYMORE, AND I
14:33:40 15 SPENT THE YEAR TRYING TO GET A REAL JOB. IT
14:33:43 16 DIDN'T WORK. SO I WENT BACK TO BEING A LAWYER
14:33:43 17 AGAIN.

14:33:44 18 Q. AND WHAT YEAR WAS THAT?

14:33:47 19 A. '95, '96. SOMETHING LIKE THAT.

14:33:49 20 Q. AND YOU'VE BEEN IN THE PRIVATE
14:33:51 21 PRACTICE OF LAW FROM 1995 ONWARD?

14:33:51 22 A. YES.

14:33:56 23 Q. OKAY. SO IN YOUR CAPACITY AS A
14:33:59 24 PARTNER IN A LAW FIRM IN THE PRIVATE -- REPHRASE
25 THAT.

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14:46:05 1 TWO SENTENCES IDENTIFIED FOR YOU, THAT MAY BE FAIR
14:46:06 2 GAME. I'M NOT AWARE OF SUCH SENTENCES.

14:46:08 3 MR. BUSCH: IT'S EITHER "YES" OR
14:46:08 4 "NO."

14:46:09 5 MR. POMERANTZ: I GUESS THAT'S WHY
14:46:11 6 I'M CLARIFYING IT. I DON'T THINK THERE IS ANY IN
14:46:13 7 HERE THAT WOULD RELATE. BUT IF YOU HAVE
14:46:16 8 PARTICULAR ONES, I WOULD TAKE IT AT A LINE BY
14:46:16 9 LINE.

14:46:17 10 MR. BUSCH: I MEAN, I COULD GO
14:46:21 11 THROUGH EACH AND EVERY SENTENCE.

14:46:23 12 YOU'VE READ THIS REPORT, HAVEN'T
14:46:23 13 YOU, MR. POMERANTZ?

14:46:24 14 MR. POMERANTZ: I'M NOT HERE TO
14:46:26 15 ANSWER QUESTIONS. BUT YES, I'VE READ THIS REPORT.

14:46:26 16 MR. BUSCH: OKAY. AND SO HAVING
14:46:27 17 READ THE REPORT, ARE THERE ANY SENTENCES IN HERE
14:46:30 18 THAT YOU WOULD NOT INSTRUCT HIM NOT TO ANSWER?

14:46:31 19 MR. POMERANTZ: I'M NOT SURE.

14:46:32 20 BY MR. BUSCH:

14:46:35 21 Q. MR. PATERNO, TURN YOUR ATTENTION TO
14:46:37 22 THE SENTENCE THAT SAYS:

14:46:39 23 "MOREOVER, EVEN IF THE
14:46:41 24 MECHANICAL ROYALTIES PARAGRAPH
25 CONTAIN A DIRECT MECHANICAL

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1 LICENSE FOR PHYSICAL PRODUCTS,
2 WHICH IT DOES NOT, IT IN NO WAY --
3 IT IN NO WAY CAN IT BE INTERPRETED
4 TO APPLY TO D.P.D.'S."

5 DO YOU SEE THAT?

14:47:02 6

A. YES.

14:47:02 7

Q. WHAT IS YOUR EXPERT OPINION WITH

14:47:03 8

RESPECT TO THAT SENTENCE?

14:47:04 9

MR. POMERANTZ: COULD I ASK A

14:47:05 10

FAVOR? BECAUSE THAT IS SPECIFICALLY REFERRING TO

14:47:08 11

A PARAGRAPH, WHICH I THINK WE ALL KNOW TO BE A

14:47:10 12

PARAGRAPH FROM THE AGREEMENTS AT ISSUE IN THIS

14:47:12 13

CASE, WOULD YOU MIND PUTTING THE PARAGRAPH IN

14:47:13 14

FRONT OF HIM?

14:47:27 15

MR. BUSCH: NO PROBLEM.

14:47:27 16

MR. POMERANTZ: THANK YOU.

14:47:27 17

BY MR. BUSCH:

14:47:28 18

Q. LET ME SHOW YOU WHAT HAS BEEN

14:47:32 19

PREVIOUSLY MARKED AS EXHIBIT 5, AND WE MIGHT AS

14:47:32 20

WELL SHOW YOU THIS AGREEMENT AS WELL.

14:47:41 21

(DOCUMENT REVIEWED BY DEPONENT.)

14:47:41 22

BY MR. BUSCH:

14:47:44 23

Q. DO YOU RECOGNIZE EXHIBIT 5 AND

14:47:44 24

NUMBER 10?

25

A. YES.

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14:47:46 1 Q. WHAT ARE EXHIBITS 5 AND 10?

14:47:51 2 A. I THINK FIVE IS THE ORIGINAL DEAL
14:47:58 3 MEMO UNDER WHICH EMINEM SERVICES WERE PROVIDED BY
14:48:04 4 F.B.T. TO AFTERMATH ENTERTAINMENT AS A RECORDING
14:48:04 5 ARTIST.

14:48:10 6 AND EXHIBIT 10 IS -- YEAH, IT'S
14:48:13 7 SOME KIND OF MODIFICATION OF THAT. I CAN'T
14:48:13 8 REMEMBER EXACTLY.

14:48:15 9 Q. OKAY. LET'S LOOK -- LET'S PAY
14:48:17 10 ATTENTION TO EXHIBIT 5, IF WE COULD, PLEASE.

14:48:18 11 A. YES.

14:48:20 12 Q. AND TURN TO THE SECTION ENTITLED
14:48:25 13 "MECHANICAL ROYALTIES." AND I BELIEVE IT IS
14:48:28 14 PARAGRAPH 6 ON PAGE 8.

14:48:29 15 MR. POMERANTZ: I THINK IT'S
14:48:30 16 PAGE 7.

14:48:33 17 MR. BUSCH: I HAVE -- 2003, EXCUSE
14:48:52 18 ME.

14:48:53 19 BY MR. BUSCH:

14:48:54 20 Q. ALL RIGHT. NOW THAT YOU HAVE IT IN
14:48:57 21 FRONT OF YOU, AND YOU HAVE THE SENTENCE THAT YOU
14:48:59 22 HAVE BEEN DESIGNATED AS AN EXPERT ON, DO YOU HAVE
14:49:01 23 AN OPINION WITH RESPECT TO THE SENTENCE THAT
14:49:03 24 SAYS -- THAT BEGINS WITH "MOREOVER" THAT I JUST
25 READ INTO THE RECORD?

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14:49:05 1 A. IT SAYS:
14:49:07 2 "MOREOVER, EVEN IF THE
14:49:08 3 MECHANICAL ROYALTIES PARAGRAPH
14:49:10 4 CONTAINED A DIRECT MECHANICAL
14:49:12 5 LICENSE FOR PHYSICAL PRODUCTS,
14:49:15 6 WHICH IT DOES NOT, IN NO WAY
14:49:16 7 CAN IT BE INTERPRETED TO APPLY
14:49:19 8 TO D.P.D.'S."

14:49:21 9 I DON'T KNOW WHY IT DOESN'T. IT'S
14:49:23 10 NOT A DIRECT MECHANICAL LICENSE, SO I DON'T AGREE
14:49:25 11 WITH THAT.

14:49:27 12 AND I DON'T UNDERSTAND WHY THIS
14:49:32 13 PERSON DOESN'T THINK IT APPLIES TO D.P.D.'S, SO I
14:49:33 14 DON'T AGREE WITH THAT EITHER.

14:49:34 15 Q. OKAY. AND WHY DO YOU DISAGREE THAT
14:49:36 16 IT DOES NOT APPLY TO D.P.D.'S?

14:49:38 17 A. IT DOESN'T SAY IT DOESN'T APPLY TO
14:49:40 18 D.P.D.'S. IT SAYS:

14:49:42 19 "ALL CONTROLLED COMPOSITIONS
14:49:44 20 WILL BE LICENSED TO AFTERMATH."

14:49:44 21 Q. WELL, WHAT IT SAYS IS:

14:49:45 22 "ALL CONTROLLED COMPOSITIONS
14:49:48 23 WILL BE LICENSED TO AFTERMATH AND ITS
14:49:50 24 DISTRIBUTOR'S LICENSEES, AND AFTERMATH
25 AND ITS DISTRIBUTOR'S LICENSEES,

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14:49:56 1 CANADIAN LICENSEES FOR THE U.S. AND
14:49:57 2 CANADA RESPECTIVELY AT A RATE EQUAL
14:49:59 3 TO 75 PERCENT OF THE CONTROLLED RATE."
14:50:00 4 DO YOU SEE THAT?
14:50:00 5 A. YES.
14:50:04 6 Q. DO YOU KNOW WHETHER REDUCED RATES
14:50:07 7 LIKE THAT PROVIDED FOR IN THE MECHANICAL ROYALTY
14:50:11 8 SECTION ARE ALLOWED BY LAW TO APPLY TO D.P.D.'S?
14:50:11 9 MR. POMERANTZ: OBJECTION TO THE
14:50:14 10 EXTENT IT REQUIRES A LEGAL CONCLUSION.
14:50:15 11 HE'S NOT HERE AS A LEGAL EXPERT.
14:50:15 12 BY MR. BUSCH:
14:50:19 13 Q. GO AHEAD. DO YOU KNOW WHETHER --
14:50:23 14 DO YOU KNOW WHETHER BY LAW YOU CAN HAVE A REDUCED
14:50:25 15 RATE ON A D.P.D.?
14:50:26 16 MR. POMERANTZ: SAME -- SAME
14:50:27 17 OBJECTION.
14:50:28 18 THE DEPONENT: I THINK YOU CAN.
14:50:28 19 BY MR. BUSCH:
14:50:30 20 Q. AND WHERE -- AND WHAT IS YOUR BASIS
14:50:31 21 FOR SAYING THAT?
14:50:36 22 A. BECAUSE I THINK YOU CAN. I
14:50:37 23 DON'T -- I'M NOT -- I HAVEN'T READ THE COPYRIGHT
14:50:41 24 ACT ON THIS PARTICULAR ISSUE, BUT I DON'T SEE WHY
25 YOU CAN'T.

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14:50:42 1 Q. OKAY. WELL, IF YOU COULDN'T, WOULD
14:50:44 2 THAT AFFECT YOUR OPINION ABOUT WHETHER THIS
14:50:46 3 APPLIED TO D.P.D.'S OR NOT?

14:50:46 4 A. NO.

14:50:47 5 Q. WHY NOT?

14:50:53 6 A. IT STILL APPLIES TO D.P.D.'S. IT
14:50:55 7 MAY -- IT MAY PROVIDE A RATE THAT'S NOT -- THAT'S
14:50:58 8 NOT ENFORCEABLE, BUT IT STILL APPLIES TO D.P.D.'S.
14:51:00 9 I DON'T SEE WHY THAT WOULD CHANGE ANYTHING.

14:51:01 10 Q. HAVE YOU EVER -- HAVE YOU EVER READ
14:51:07 11 THE HISTORY OF THE COPYRIGHT ACT WITH RESPECT TO
14:51:10 12 D.P.D.'S TO DETERMINE WHAT THE LEGISLATIVE INTENT
14:51:14 13 WAS AS IT RELATED TO MECHANICAL ROYALTIES SECTIONS
14:51:18 14 LIKE THIS AND ITS APPLICATION OR NONAPPLICATION TO
14:51:22 15 DIGITAL DOWNLOADS?

14:51:23 16 MR. POMERANTZ: AND JUST SO WE'RE
14:51:29 17 CLEAR, WE ARE DESIGNATING HIM AS AN EXPERT ON HOW
14:51:31 18 PARTICIPANTS IN THE MUSIC INDUSTRY UNDERSTAND
14:51:34 19 WORDS IN A CONTROLLED COMPOSITION CLAUSE, AT LEAST
14:51:35 20 THE WORDS THAT ARE AT ISSUE HERE.

14:51:38 21 WE ARE NOT DESIGNATING HIM AS AN
14:51:40 22 EXPERT ON THE COPYRIGHT LAWS.

14:51:41 23 BY MR. BUSCH:

14:51:45 24 Q. DO YOU KNOW WHETHER RECORD LABELS,
25 DESPITE HAVING LANGUAGE LIKE THIS IN A MECHANICAL

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14:51:53 1 ROYALTIES CLAUSE, STILL SEEK SEPARATE DIGITAL
14:51:57 2 DOWNLOAD LICENSES FROM PUBLISHERS?
14:51:58 3 MR. POMERANTZ: OBJECTION TO THE
14:52:01 4 EXTENT OF LACK OF FOUNDATION, ALSO AN INCOMPLETE
14:52:03 5 HYPOTHETICAL AND COMPOUND.
14:52:08 6 BY MR. BUSCH:
14:52:08 7 Q. GO AHEAD.
14:52:09 8 A. DO I KNOW PERSONALLY?
14:52:10 9 Q. YES.
14:52:10 10 A. NO.
14:52:13 11 Q. LET'S ASSUME FOR A SECOND THAT EVEN
14:52:15 12 IN LIGHT OF A CONTROLLED COMPOSITION CLAUSE OR A
14:52:19 13 MECHANICAL ROYALTIES CLAUSE LIKE THIS, A RECORD
14:52:23 14 LABEL STILL, AS A MATTER OF CUSTOM AND PRACTICE,
14:52:28 15 SEEK SPECIFIC PERMANENT DOWNLOAD OR DIGITAL
14:52:32 16 DOWNLOAD LICENSES FROM PUBLISHERS, DO YOU HAVE AN
14:52:34 17 EXPLANATION WHERE THEY WOULD DO THAT IN LIGHT OF
14:52:34 18 THIS LANGUAGE?
14:52:35 19 MR. POMERANTZ: OBJECTION. IT'S AN
14:52:37 20 INCOMPLETE HYPOTHETICAL. IT ASSUMES FACTS NOT IN
14:52:39 21 EVIDENCE. LACK OF FOUNDATION AND BEYOND THE SCOPE
14:52:41 22 OF HIS EXPERT DESIGNATION.
14:52:42 23 MR. BUSCH: SO YOU'RE NOT GOING TO
14:52:43 24 ALLOW HIM TO TESTIFY?
25 MR. POMERANTZ: NO. HE CAN ANSWER

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14:52:44 1 THE QUESTION.

14:52:48 2 THE DEPONENT: WELL, I MEAN, I KNOW
14:52:51 3 THAT RECORD LABELS GET SEPARATE MECHANICAL
14:52:54 4 LICENSES EVEN THOUGH THEY DON'T HAVE TO UNDER THE
14:52:55 5 CONTROLLED COMPOSITION CLAUSE.

14:52:57 6 AND SO I SURMISE THE REASONS WOULD
14:53:00 7 BE PRETTY SIMILAR, THAT THEY WOULD WANT TO HAVE A
14:53:03 8 SEPARATE FILE FOR EACH SONG. IT'S A LOT EASIER TO
14:53:05 9 ADMINISTER FOR THE LABELS. BUT I DON'T WORK THE
14:53:06 10 LABELS, SO I DON'T REALLY KNOW WHY THEY DO IT.

14:53:07 11 BY MR. BUSCH:

14:53:08 12 Q. IS IT POSSIBLE THAT THEY DO IT
14:53:11 13 BECAUSE -- SEEK OUT SPECIFIC PERMANENT DOWNLOAD
14:53:14 14 LICENSES BECAUSE IT'S UNCLEAR WHETHER A CLAUSE
14:53:17 15 LIKE THIS WOULD APPLY TO PERMANENT DOWNLOADS? IS
14:53:18 16 IT POSSIBLE THAT'S ONE REASON?

14:53:20 17 MR. POMERANTZ: OBJECTION; CALLS
14:53:22 18 FOR SPECULATION. IT'S AN INCOMPLETE HYPOTHETICAL.
14:53:23 19 LACK OF FOUNDATION.

14:53:24 20 THE DEPONENT: DO YOU WANT ME TO
14:53:25 21 COMPLETELY SPECULATE?

14:53:26 22 BY MR. BUSCH:

14:53:27 23 Q. YEAH.

14:53:28 24 MR. POMERANTZ: DON'T SPECULATE.
25 IF IT WOULD CALL FOR SPECULATION --

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14:53:31 1 MR. BUSCH: HE'S AN EXPERT.

14:53:33 2 MR. POMERANTZ: HE'S SAYING HE'S

14:53:34 3 SPECULATING AND HE CAN'T ANSWER.

14:53:36 4 THE DEPONENT: YOU'RE ASKING ME IF

14:53:37 5 IT'S POSSIBLE. IT'S POSSIBLE.

14:53:38 6 BY MR. BUSCH:

14:53:44 7 Q. OKAY. WHAT ARE CAPS IN A

14:53:46 8 MECHANICAL ROYALTY CLAUSE?

14:53:48 9 A. THEY'RE A LIMITATION ON THE AMOUNT
14:53:54 10 OF ROYALTIES THAT THE LABEL WILL PAY FOR THE RIGHT

14:54:01 11 TO MECHANICALLY REPRODUCE A COMPOSITION, THE

14:54:05 12 STATUTE PROVIDES FOR A RATE AT A CERTAIN LEVEL,

14:54:10 13 BUT THE RECORD COMPANY WILL TRY TO LIMIT THE TOTAL

14:54:14 14 AMOUNT OF MECHANICAL ROYALTIES THEY HAVE TO PAVE.

14:54:17 15 SO IF THERE IS 20 SONGS AND IT'S 9

14:54:20 16 CENTS A SONG, A LABEL ECONOMICALLY COULDN'T PAY

14:54:21 17 THAT KIND OF MONEY AND STAY IN BUSINESS, WHICH

14:54:25 18 WOULD BE A DOLLAR 80, SO THEY LIMIT THE AMOUNT OF

14:54:28 19 SONGS ON WHICH THEY WILL PAY MECHANICAL ROYALTIES.

14:54:30 20 Q. DO YOU KNOW WHETHER CAPS ARE

14:54:33 21 APPLICABLE TO PERMANENT DOWNLOAD?

14:54:34 22 MR. POMERANTZ: OBJECTION TO THE

14:54:34 23 EXTENT IT CALLS FOR LEGAL CONCLUSION.

14:54:35 24 THE DEPONENT: I KNOW THAT THE

25 LANGUAGE OF THE AGREEMENTS, MOST OF THE AGREEMENTS

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14:54:37 1 THAT I READ APPLIES CAPS TO DIGITAL DOWNLOADS.

14:54:40 2 BY MR. BUSCH:

14:54:41 3 Q. DO YOU KNOW WHETHER THERE IS ANY
14:54:44 4 RESTRICTION IN THE COPYRIGHT ACT FOR APPLICATION
14:54:47 5 OF CAPS FOR PERMANENT DOWNLOADS?

14:54:48 6 MR. POMERANTZ: OBJECTION. AGAIN,
14:54:52 7 HE'S NOT AN EXPERT ON COPYRIGHT LAW AND WE'RE NOT
14:54:52 8 DESIGNATING HIM AS THAT, AND IT'S BEYOND THE SCOPE
14:54:54 9 OF HIS TESTIMONY. ALSO A LACK OF FOUNDATION AND
14:54:58 10 IT CALLS FOR A LEGAL CONCLUSION.

14:55:01 11 THE DEPONENT: OKAY. I HAVE READ
14:55:03 12 THINGS THAT SAY THAT. I HAVEN'T READ THE
14:55:04 13 COPYRIGHT ACT.

14:55:04 14 BY MR. BUSCH:

14:55:06 15 Q. YOU'VE READ THINGS THAT HAVE SAID
14:55:06 16 WHAT?

14:55:07 17 A. I READ YOUR EXPERT OPINION, YOUR
14:55:09 18 EXPERT'S OPINION, AND HE SAYS THAT THE COPYRIGHT
14:55:12 19 ACT PROVIDES THAT. I'M NOT SURE I AGREE WITH
14:55:16 20 THAT. BUT I HAVEN'T READ THE COPYRIGHT ACT.

14:55:18 21 Q. LET'S JUST SAY, FOR EXAMPLE, THAT
14:55:21 22 THIS MECHANICAL ROYALTY SECTION DOES HAVE A
14:55:24 23 RESTRICTION ON CAPS; RIGHT? IT SAYS "CAP
14:55:25 24 RESTRICTION"?

25 A. IT HAS A CAP.

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14:55:28 1 Q. IT HAS A CAP.

14:55:28 2 A. YES.

14:55:31 3 Q. ASSUMING THAT CAPS ARE NOT

14:55:35 4 ALLOWABLE UNDER THE COPYRIGHT ACT FOR DIGITAL

14:55:38 5 DOWNLOADS, WOULD THAT IMPACT YOUR OPINION ABOUT

14:55:41 6 WHETHER THIS PROVISION IS APPLICABLE TO PERMANENT

14:55:42 7 DOWNLOADS OR NOT?

14:55:42 8 A. NO.

14:55:43 9 Q. WHY NOT?

14:55:47 10 A. I THINK JUST -- I DON'T KNOW WHY IT

14:55:52 11 WOULD. I MEAN, I THINK ANY PRACTITIONER.

14:55:53 12 I'M TELLING YOU IF THERE IS SOME --

14:55:57 13 YOU'RE SAYING IF THERE IS A PROVISION IN THE

14:56:00 14 COPYRIGHT ACT THAT WOULD LIMIT IT, I DON'T KNOW --

14:56:02 15 IT WOULD SEEM TO ME THE PROPER RESPONSE WOULD BE

14:56:05 16 THEN, OKAY, THE LICENSE IS AT THE FULL RATE RATHER

14:56:09 17 THAN AT A REDUCED RATE. THAT'S NOT SURPRISING.

14:56:24 18 Q. OKAY. WERE PERMANENT DOWNLOADS IN

14:56:28 19 GENERAL DISTRIBUTION AT THE TIME OF THIS

14:56:31 20 AGREEMENT, MARCH 9TH, 1998?

14:56:31 21 A. NO.

14:56:32 22 MR. POMERANTZ: OBJECTION; VAGUE.

14:56:32 23 GO AHEAD.

14:56:34 24 THE DEONENT: NO, THEY WEREN'T.

25 ///

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14:56:35 1 BY MR. BUSCH:

14:56:39 2 Q. WERE PERMANENT DOWNLOADS
14:56:42 3 CONTEMPLATED TO BE IN THE MECHANICAL ROYALTIES
14:56:43 4 SECTION IN 1998?

14:56:46 5 A. IN THE MECHANICAL ROYALTIES SECTION
14:56:47 6 OF THE CONTRACT? YES.

14:56:49 7 Q. ON WHAT BASIS DO YOU SAY THAT?

14:56:51 8 A. BECAUSE I KNOW THAT PEOPLE COULD
14:56:54 9 SEE THINGS LIKE THAT COMING, AND EVERY CONTRACT
14:56:59 10 STARTING IN THE LATE 80'S, EARLY 90'S WOULD TRY TO
14:57:02 11 ENCOMPASS THINGS LIKE DIGITAL DOWNLOADS, SATELLITE
14:57:05 12 TRANSMISSIONS, TRANSMISSIONS OVER CABLE.

14:57:08 13 THE IDEA WAS TO PROVIDE THE CAP ON
14:57:11 14 ANY KIND OF DISTRIBUTION OF A RECORDING.

14:57:13 15 Q. CAN YOU SHOW ME WHERE IN THE
14:57:15 16 MECHANICAL ROYALTY SECTION IT SAYS THAT?

14:57:23 17 A. WELL, IT SAYS THAT ALL CONTROLLED
14:57:26 18 COMPOSITIONS WILL BE LICENSED AT A RATE EQUAL TO
14:57:29 19 75 PERCENT. SO I DON'T -- IS THERE SOMETHING
14:57:30 20 UNCLEAR ABOUT THAT?

14:57:33 21 Q. SO WAS THE ANSWER THAT IT NOWHERE
14:57:36 22 SAYS THAT, BUT YOU'RE READING THAT INTO IT BY THE
14:57:37 23 LANGUAGE YOU JUST READ?

14:57:37 24 MR. POMERANTZ: OBJECTION;
25 MISSTATES HIS TESTIMONY AND IS ARGUMENTATIVE.

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14:57:40 1 BY MR. BUSCH:

14:57:41 2 Q. IS THERE ANY DEFINITION UNDER
14:57:46 3 MECHANICAL ROYALTIES, ANY MENTION OR REFERENCE TO
14:57:49 4 A DEFINED TERM UNDER MECHANICAL ROYALTIES THAT
14:57:52 5 WOULD SHOW THAT IT WAS MEANT TO BE APPLICABLE TO
14:57:54 6 PERMANENT DOWNLOADS?

14:57:54 7 MR. POMERANTZ: OBJECTION TO THE
14:57:56 8 EXTENT IT'S ALREADY BEEN ASKED AND ANSWERED.

14:57:59 9 THE DEPONENT: TWO ANSWERS. FIRST
14:58:01 10 OF ALL, IT DOESN'T SAY IT'S NOT. AND SECOND OF
14:58:04 11 ALL, EVERY PRACTITIONER IN THE MUSIC INDUSTRY
14:58:05 12 KNOWS THAT IT IS.

14:58:05 13 BY MR. BUSCH:

14:58:06 14 Q. YOU SAY "EVERY." HAVE YOU SPOKEN
14:58:08 15 TO EVERY PRACTITIONER IN THE MUSIC INDUSTRY ABOUT
14:58:09 16 IT?

14:58:10 17 A. NO, I HAVEN'T.

14:58:12 18 Q. HAVE YOU SPOKEN TO ANY PRACTITIONER
14:58:15 19 IN THE MUSIC BUSINESS ABOUT WHETHER THIS SPECIFIC
14:58:18 20 PROVISION, AS IT'S WORDED HERE, APPLIES TO
14:58:19 21 PERMANENT DOWNLOADS?

14:58:19 22 A. NO.

14:58:26 23 Q. DO YOU KNOW WHETHER UNIVERSAL
14:58:29 24 INTERSCOPE SOUGHT SPECIFIC PERMANENT DOWNLOAD
25 LICENSES FROM THE PUBLISHER OF THE COMPOSITIONS

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14:58:36 1 INVOLVED IN THIS -- IN THE SONGS INVOLVED IN THIS
14:58:36 2 AGREEMENT?

14:58:37 3 MR. POMERANTZ: OBJECTION; LACK OF
14:58:39 4 FOUNDATION.

14:58:42 5 THE DEPONENT: I DON'T KNOW. AS A
14:58:46 6 PERCIPIENT WITNESS, I READ IN SOME OF THE STUFF I
14:58:51 7 READ, IT REFERS TO THE FACT THAT UNIVERSAL DID. I
14:58:53 8 HAVE NO WAY OF KNOWING WHETHER THAT'S TRUE OR NOT.
14:58:54 9 BY MR. BUSCH:

14:58:56 10 Q. DO YOU KNOW WHETHER UNIVERSAL
14:58:59 11 ENTERED INTO A DIGITAL DOWNLOAD LICENSE WHERE IT
14:59:03 12 AGREED TO A SPECIFIC TERM OF TWO YEARS AND OTHER
14:59:08 13 LIMITATIONS ON ITS -- IN CONNECTION WITH LICENSING
14:59:10 14 ONE OF THE COMPOSITIONS FOR PERMANENT DOWNLOAD?

14:59:11 15 MR. POMERANTZ: OBJECTION TO THE
14:59:14 16 EXTENT IT MISSTATES EVIDENCE.

14:59:14 17 BY MR. BUSCH:

14:59:15 18 Q. GO AHEAD.

14:59:17 19 A. THE ANSWER IS NO.

14:59:20 20 Q. OKAY. IF UNIVERSAL AGREED TO A
14:59:24 21 PERMANENT DOWNLOAD LICENSE WITH THE PUBLISHER OF A
14:59:25 22 SONG THAT WOULD BE COVERED BY THIS AGREEMENT AND
14:59:27 23 AGREED TO A TWO-YEAR TERM, FOR EXAMPLE, DO YOU
14:59:29 24 HAVE ANY EXPLANATION OF WHY THEY WOULD DO SO IF
25 THIS WAS IN FACT A SELF-EFFECTUATING CONTROLLED

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14:59:37 1 COMPOSITION CLAUSE APPLICABLE TO D.P.D.'S?

14:59:38 2 MR. POMERANTZ: OBJECTION; LACK OF
14:59:41 3 FOUNDATION, ARGUMENTATIVE, INCOMPLETE.

14:59:41 4 BY MR. BUSCH:

14:59:42 5 Q. GO AHEAD.

14:59:45 6 A. IT COULD BE ANY NUMBER OF REASONS.
14:59:47 7 I DON'T -- PEOPLE MAKE DEALS ALL THE TIME. THEY
14:59:49 8 MIGHT HAVE WANTED -- MIGHT HAVE WANTED EMINEM TO
14:59:51 9 DELIVER A RECORD HE WOULDN'T OTHERWISE DELIVER.

14:59:53 10 I HAVE NO IDEA. THERE IS NO WAY I
14:59:54 11 WOULD KNOW.

15:00:01 12 Q. OKAY. YOU SAY YOU DISAGREE THAT
15:00:03 13 THIS IS NOT -- I THINK ONE OF THE STATEMENTS YOU
15:00:06 14 MADE WHEN I READ THE SENTENCE AND ASKED YOU ABOUT
15:00:09 15 YOUR OPINIONS IN RESPONSE TO IT WAS THAT YOU
15:00:16 16 DISAGREED THAT THIS WAS NOT A SELF-EFFECTUATING
15:00:17 17 CONTROLLED COMPOSITION CLAUSE; CORRECT?

15:00:18 18 MR. POMERANTZ: CAN YOU RESTATE
15:00:19 19 THAT QUESTION? I DIDN'T FOLLOW IT.

15:00:19 20 BY MR. BUSCH:

15:00:21 21 Q. OKAY. DO YOU BELIEVE THIS TO BE A
15:00:23 22 SELF-EFFECTUATING LICENSE?

15:00:24 23 MR. POMERANTZ: OBJECTION TO THE
15:00:26 24 TERM "SELF-EFFECTUATING." IT'S VAGUE AND
25 AMBIGUOUS.

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15:00:27 1 THE DEPONENT: YEAH, I AGREE WITH
15:00:29 2 THAT. I AGREE THAT IT'S VAGUE AND AMBIGUOUS.
15:00:31 3 BUT I KNOW WHAT YOU'RE GETTING AT,
15:00:33 4 AND WHAT YOU'RE GETTING AT IS YOU'RE ASKING
15:00:37 5 WHETHER OR NOT THIS OPERATES AS A MECHANICAL
15:00:38 6 LICENSE.

15:00:38 7 BY MR. BUSCH:

15:00:39 8 Q. FAIR ENOUGH.

15:00:39 9 A. I BELIEVE IT DOES.

15:00:41 10 Q. CAN YOU TELL ME WHY YOU BELIEVE IT
15:00:41 11 DOES?

15:00:45 12 A. I BELIEVE IT DOES BECAUSE I'VE BEEN
15:00:48 13 PRACTICING IN THIS AREA FOR A LONG TIME WITH A LOT
15:00:53 14 OF DIFFERENT ATTORNEYS, AND CONTROLLED COMPOSITION
15:00:57 15 CLAUSES ARE ALL THAT WAY.

15:01:03 16 THEY'RE ALL -- THE INTENT OF THIS
15:01:06 17 THING IS TO PROVIDE A LICENSE AT WHATEVER RATE
15:01:09 18 THAT'S SET FORTH IN THE CONTROLLED COMPOSITION,
15:01:14 19 AND THE CUSTOM AND PRACTICE OF PEOPLE THAT WORK IN
15:01:16 20 THIS INDUSTRY KNOW THAT THAT'S WHAT THIS IS
15:01:17 21 SUPPOSED TO BE.

15:01:18 22 Q. WHO HAVE YOU SPOKEN TO ABOUT THAT?

15:01:19 23 A. NOBODY.

15:01:26 24 Q. HAVE YOU EVER SPOKEN TO ANYBODY
25 ABOUT THE USE OF THE PHRASE "ALL CONTROLLED

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15:01:34 1 COMPOSITIONS WILL BE LICENSED" AS OPPOSED TO "IS
15:01:37 2 HEREBY LICENSED" AND THE IMPACT THAT HAS ON
15:01:41 3 WHETHER IT'S A -- WHETHER IT, IN AND OF ITSELF, IS
15:01:42 4 A MECHANICAL LICENSE?

15:01:46 5 A. HAVE I SPOKEN TO ANY -- WHEN YOU
15:01:47 6 SAY "ANYBODY," WHAT DO YOU MEAN?

15:01:49 7 Q. WHAT I'M ASKING IS: HAVE YOU EVER
15:01:51 8 HAD ANY DISCUSSION WITH PEOPLE IN THE MUSIC
15:01:54 9 BUSINESS OR MUSIC INDUSTRY ABOUT WHAT EFFECT, IF
15:01:59 10 ANY, THERE IS WHEN A MECHANICAL ROYALTY SAYS THAT
15:02:02 11 ALL CONTROLLED COMPOSITIONS WILL BE LICENSED AS
15:02:04 12 OPPOSED TO IS HEREBY LICENSED?

15:02:06 13 A. I WAS GOING TO SAY NO, BUT NOW I
15:02:11 14 RECALL THAT AFTER MY LAST -- AND I KNOW YOU'RE
15:02:14 15 GOING TO ASK ME WHO THEY ARE, AND I HAVE NO IDEA.
15:02:15 16 SO I'LL SAVE YOU THE TROUBLE ASKING.

15:02:17 17 BUT I WAS HAVING CONVERSATIONS WITH
15:02:20 18 SEVERAL MUSIC ATTORNEYS ABOUT HOW ABSURD THE
15:02:21 19 POSITION WAS THAT THERE WAS ANY DIFFERENCE BETWEEN
15:02:24 20 THE TWO -- THE TWO LANGUAGE POINTS. NO IDEA WHO
15:02:24 21 IT WAS.

15:02:45 22 Q. OKAY. WHERE IT SAYS THAT ALL
15:02:47 23 CONTROLLED COMPOSITIONS WILL BE LICENSED TO
15:02:49 24 AFTERMATH AND ITS DISTRIBUTOR'S LICENSEES.

25 DO YOU SEE THAT?

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15:02:50 1 A. YES.

15:02:53 2 Q. ARE DISTRIBUTOR'S LICENSEES
15:02:53 3 AFFILIATED OR UNAFFILIATED DISTRIBUTORS OR
15:02:57 4 LICENSEES?

15:02:57 5 MR. POMERANTZ: I'M GOING TO
15:02:59 6 INSTRUCT HIM NOT TO ANSWER.

15:02:59 7 YOU HAVE A SEPARATE PROVISION, A
15:03:00 8 SEPARATE PORTION OF YOUR REPORT THAT ADDRESSES
15:03:04 9 THAT ISSUE, AND WE HAVE CHOSEN NOT TO DESIGNATE
15:03:07 10 MR. PATERNO AS AN EXPERT TO REBUT THAT POINT, SO I
15:03:08 11 WILL INSTRUCT HIM NOT TO ANSWER.

15:03:10 12 AND BY THE WAY, YOU DID ASK HIM
15:03:13 13 THAT QUESTION AS A FACT WITNESS, SO YOU ALREADY
15:03:15 14 HAVE THAT IN THE DEPOSITION.

15:03:17 15 MR. BUSCH: I REMEMBER ASKING A
15:03:20 16 COUPLE PEOPLE, BUT I WASN'T SURE IF I ASKED
15:03:20 17 MR. PATERNO.

15:03:27 18 MR. POMERANTZ: YOU DID.

15:03:28 19 THE VIDEOGRAPHER: OFF THE RECORD

15:10:28 20 AT 3:03 P.M.

15:10:30 21 (WHEREUPON, A RECESS WAS HELD
15:10:30 22 FROM 3:03 P.M. TO 3:10 P.M.)

15:10:31 23 THE VIDEOGRAPHER: BACK ON THE
15:10:32 24 RECORD AT 3:10 P.M.

25 ///

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15:10:33 1 BY MR. BUSCH:

15:10:36 2 Q. MR. PATERNO, I DIDN'T ASK YOU THIS,
15:10:38 3 BUT ARE YOU BEING COMPENSATED BY YOUR TIME AS AN
15:10:39 4 EXPERT WITNESS?

15:10:39 5 A. YES.

15:10:40 6 Q. AT WHAT RATE?

15:10:42 7 A. 600 DOLLARS AN HOUR.

15:10:44 8 Q. WHAT HAVE YOU CHARGED THE
15:10:46 9 DEFENDANTS SO FAR?

15:10:48 10 A. WHAT HAVE I CHARGED?

15:10:49 11 Q. YEAH. HAVE YOU CHARGED ANYTHING
15:10:51 12 FOR YOUR STUDY OR FOR ANYTHING THAT YOU'VE DONE UP
15:10:51 13 UNTIL TODAY?

15:10:54 14 A. I WROTE IT ON MY TIME SHEET. I
15:10:56 15 DON'T REALLY KNOW. I WOULD SEND A BILL.

15:10:59 16 Q. DO YOU RECALL HOW MANY HOURS YOU'VE
15:11:00 17 SPENT UP UNTIL NOW?

15:11:02 18 A. PROBABLY FIVE OR SIX. SOMETHING
15:11:06 19 LIKE THAT. I DON'T KNOW.

15:11:08 20 MR. BUSCH: WE FORGOT TO -- DON'T
15:11:13 21 WALK OUT OF HERE BEFORE I MARK THOSE LETTERS AS AN
15:11:16 22 EXHIBIT. I FORGOT TO DO IT AT THE BREAK.

15:11:17 23 MR. POMERANTZ: SHE WASN'T THERE.

15:11:20 24 MR. BUSCH: TRUE. I COULD HAVE HAD
25 THEM READY TO GO, THOUGH.

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15:11:23 1 BY MR. BUSCH:

15:11:25 2 Q. WOULD IT BE FAIR TO SAY THAT THE
15:11:27 3 PURPOSE OF A -- OF A MECHANICAL ROYALTY CLAUSE
15:11:30 4 LIKE THE ONE WE'RE TALKING ABOUT IS REALLY TO GET
15:11:33 5 THE REDUCED RATE FOR THE RECORD LABEL?

15:11:34 6 MR. POMERANTZ: AS THE ONLY PURPOSE
15:11:35 7 OR A PURPOSE?

15:11:37 8 MR. BUSCH: PRIMARY PURPOSE.

15:11:38 9 THE DEPONENT: NO, I DON'T THINK
15:11:42 10 SO. THERE WERE MECHANICAL ROYALTY CLAUSES BEFORE
15:11:47 11 PEOPLE SOUGHT REDUCED RATES. REDUCED RATES ARE
15:11:50 12 NOT -- THEY'VE ONLY -- WHEN I STARTED PRACTICING
15:11:54 13 LAW, THERE WEREN'T REDUCED RATES. THERE WERE
15:11:55 14 CAPS, BUT THERE WEREN'T REDUCED RATES.

15:11:55 15 BY MR. BUSCH:

15:11:59 16 Q. IS A CAP THE PRIMARY REASON FOR
15:12:01 17 HAVING A MECHANICAL ROYALTIES CLAUSE?

15:12:02 18 A. I DON'T THINK SO. I THINK THE
15:12:05 19 LABELS WANT TO KNOW THAT THEY CAN LICENSE THE
15:12:06 20 COMPOSITIONS, AND THAT'S THE PRIMARY REASON FOR
15:12:06 21 HAVING IT.

15:12:08 22 Q. HOW MANY CONTROLLED COMPOSITION
15:12:09 23 CLAUSES HAVE YOU YOURSELF DRAFTED?

15:12:13 24 A. WELL, I DON'T KNOW WHAT YOU MEAN BY
25 "DRAFTED." THEY'RE GENERALLY IN A FORM, AND I --

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15:12:19 1 YOU KNOW, THE FORM COMES OFF THE SHELF.

15:12:21 2 HAVE I ACTUALLY WRITTEN? THEY'RE

15:12:23 3 ALL PRETTY SIMILAR. I'VE PROBABLY PERSONALLY

15:12:25 4 WRITTEN, YOU KNOW, FOUR OR FIVE OR SOMETHING LIKE

15:12:27 5 THAT OVER THE YEARS.

15:12:30 6 Q. OKAY. YOU HAVE AN UNDERSTANDING OF

15:12:33 7 WHAT A PUBLISHER IS IN THE MUSIC INDUSTRY;

15:12:34 8 CORRECT?

15:12:34 9 A. YES.

15:12:36 10 Q. AND HAVE YOU EVER REPRESENTED A

15:12:36 11 PUBLISHER?

15:12:37 12 A. YES.

15:12:38 13 Q. IN WHAT CONTEXT?

15:12:42 14 A. WELL, A LOT OF MY CLIENTS

15:12:46 15 SELF-PUBLISH, SO WE REPRESENT THEIR PUBLISHING

15:12:49 16 INTERESTS AND THEIR CATALOGUES. I REPRESENTED

15:12:53 17 PUBLISHERS IN SALES, ACQUISITIONS, ACQUIRING

15:12:57 18 TALENT, WRITERS, AND PRETTY MUCH EVERYTHING THE

15:12:58 19 PUBLISHERS DO.

15:13:00 20 Q. IN YOUR EXPERIENCE, DO ARTISTS

15:13:03 21 FREQUENTLY ASSIGN THEIR PUBLISHING RIGHTS TO A

15:13:05 22 SEPARATE ENTITY, A PUBLISHER?

15:13:07 23 A. A SEPARATE THIRD-PARTY ENTITY?

15:13:08 24 Q. YES.

25 A. IN MY EXPERIENCE, NO, BECAUSE MY

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15:13:14 1 CLIENTS GENERALLY DON'T DO IT. IN GENERAL, I
15:13:16 2 DON'T KNOW WHAT THE PERCENTAGE IS. I'M GUESSING
15:13:17 3 IT'S PROBABLY ABOUT MORE THAN HALF THE TIME THEY
15:13:17 4 DO.

15:13:21 5 Q. OKAY. DO ARTISTS HAVE -- GENERALLY
15:13:26 6 WHEN THEY ENTER INTO CO-PUBLISHING AGREEMENTS WITH
15:13:28 7 RECORD LABELS OR WITH THIRD PARTIES, DO THEY MAKE
15:13:32 8 SUCH ASSIGNMENTS ON AN AD HOC BASIS OR DO THEY
15:13:32 9 HAVE A STANDING AGREEMENT WITH THE PUBLISHERS THAT
15:13:32 10 ALL THEIR PUBLISHING RIGHTS ARE AUTOMATICALLY
15:13:32 11 ASSIGNED TO THE PUBLISHER?

15:13:32 12 MR. POMERANTZ: I'M SORRY. I
15:13:32 13 DIDN'T FOLLOW THE QUESTION. CAN YOU EITHER
15:13:38 14 RESTATE IT OR READ IT BACK?

15:13:38 15 MR. BUSCH: I'LL RESTATE IT.
15:13:39 16 BY MR. BUSCH:

15:13:42 17 Q. WHERE AN ARTIST/SONGWRITER ASSIGNS
15:13:45 18 RIGHTS TO A PUBLISHER, LIKE A UNIVERSAL MUSIC
15:13:48 19 PUBLISHING, FOR EXAMPLE, IS IT GENERALLY DONE ON
15:13:51 20 AN AD HOC BASIS PER SONG OR IS THERE GENERALLY AN
15:13:53 21 AGREEMENT WHERE ALL SONGS WRITTEN DURING A TERM
15:13:55 22 ARE ASSIGNED TO A PUBLISHER?

15:13:56 23 MR. POMERANTZ: OBJECTION; LACK OF
15:13:57 24 FOUNDATION, INCOMPLETE HYPOTHETICAL.

25 THE DEPONENT: GENERALLY, IT'S THE

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15:14:01 1 LATTER. GENERALLY.

15:14:01 2 BY MR. BUSCH:

15:14:04 3 Q. IF AN ARTIST HAS ASSIGNED HIS
15:14:04 4 RIGHTS IN A COMPOSITION TO A PUBLISHER, CAN THE
15:14:04 5 ARTIST, WITHOUT THE EXPRESSED PERMISSION OF THE
15:14:10 6 PUBLISHER, GRANT A MECHANICAL LICENSE FOR THE
15:14:11 7 COMPOSITION TO A THIRD PARTY?

15:14:12 8 MR. POMERANTZ: I'M GOING TO OBJECT
15:14:16 9 AND INSTRUCT THE WITNESS NOT TO ANSWER. THIS IS
15:14:18 10 IN A PORTION OF THE REPORT THAT WE HAVE CHOSEN NOT
15:14:23 11 TO DESIGNATE HIM TO REBUT AS AN EXPERT WITNESS, SO
15:14:23 12 I'M GOING TO INSTRUCT HIM NOT TO ANSWER.

15:14:25 13 MR. BUSCH: AND I'LL OBJECT AND
15:14:27 14 MOVE TO STRIKE HIS EXPERT TESTIMONY.

15:14:32 15 BY MR. BUSCH:

15:14:34 16 Q. IF AN ARTIST HAS AN AGREEMENT THAT
15:14:37 17 HIS INTEREST IN COMPOSITIONS HE AUTHORS IS
15:14:39 18 AUTOMATICALLY GRANTED TO A PUBLISHER, CAN THE
15:14:42 19 ARTIST, AFTER ENTERING INTO THAT AGREEMENT, ENTER
15:14:44 20 INTO A SUBSEQUENT AGREEMENT CONTAINING A
15:14:46 21 CONTROLLED COMPOSITION CLAUSE THAT GRANTS
15:14:49 22 MECHANICAL LICENSES TO THOSE COMPOSITIONS?

15:14:50 23 MR. POMERANTZ: SAME INSTRUCTION.

15:14:51 24 MR. BUSCH: AND SAME OBJECTION.

25 ///

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15:14:52 1 BY MR. BUSCH:

15:14:55 2 Q. YOU SAID, MR. PATERNO, YOU HAVE NOT
15:14:58 3 READ THE DIGITAL PERFORMANCE RIGHT AND SOUND
15:14:59 4 RECORDING ACT OF 1995?

15:15:05 5 A. I DON'T KNOW THAT THAT'S TRUE. I
15:15:06 6 PROBABLY HAVE READ IT.

15:15:09 7 Q. YOU HAVEN'T READ THE LEGISLATIVE
15:15:09 8 HISTORY?

15:15:10 9 A. I HAVEN'T READ THAT.

15:15:11 10 Q. HAVE YOU READ IT -- HAVE YOU READ
15:15:14 11 IT IN THE CONTEXT OF THE ISSUES INVOLVED IN THIS
15:15:14 12 CASE?

15:15:43 13 A. NO.

15:15:43 14 MR. BUSCH: OKAY. I'M GOING TO
15:15:49 15 SHOW HIM THAT LEGISLATURE HISTORY. WILL YOU ALLOW
15:15:51 16 ME TO ASK HIM QUESTION ABOUT THAT? YOU KNOW WHICH
15:15:51 17 ONE I'M GOING TO ASK HIM ABOUT, I WOULD ASSUME,
15:15:53 18 SINCE IT'S THE ONE THAT HAS COME UP IN THE
15:15:53 19 DEPOSITION.

15:15:55 20 MR. POMERANTZ: I'M NOT -- I MEAN,
15:15:58 21 I'M NOT -- I THINK PROBABLY NOT. BUT IF YOU WANT
15:16:01 22 TO TRY IT, I'LL LOOK AT IT AND SEE IF IT RELATES
15:16:02 23 TO HIS THREE OPINIONS.

15:16:02 24 BY MR. BUSCH:

25 Q. TAKE A LOOK AT WHAT I MARKED AS

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15:16:08 1 EXHIBIT 249, WHICH IS THE LEGISLATIVE HISTORY OF
15:16:08 2 THE ACT.

15:16:12 3 (DOCUMENT REVIEWED BY DEPONENT.)

15:16:16 4 THE DEPONENT: WOW.

15:16:17 5 MR. BUSCH: I DON'T WANT HIM TO SIT
15:16:17 6 HERE AND READ THE WHOLE THING.

15:16:18 7 BY MR. BUSCH:

15:16:31 8 Q. TURN, IF YOU WOULD, TO PAGE 41.

15:16:35 9 TOP MIDDLE 41, NOT 41 OF.

15:16:36 10 A. UH-HUH.

15:16:45 11 Q. AND I WANT TO DIRECT YOUR ATTENTION
15:16:51 12 TO THE LANGUAGE AT THE VERY BOTTOM WHERE IT SAYS,
15:16:53 13 BEGINS WITH, "SUBJECT TO THE EXCEPTIONS."

15:16:55 14 "SUBJECT TO THE EXCEPTIONS SET FORTH
15:16:58 15 IN SUBPARAGRAPH (E)(II) --

15:16:59 16 A. WHERE ARE YOU AT?

15:17:01 17 Q. LAST SENTENCE OF PAGE 41.

15:17:01 18 A. OKAY.

15:17:03 19 Q. "SUBJECT TO THE EXCEPTION
15:17:05 20 SET FORTH IN PARAGRAPH (E)(II,))
15:17:07 21 THE SECOND SENTENCE OF SUBPARAGRAPH
15:17:09 22 (E)(I) IS INTENDED TO MAKE THESE
15:17:12 23 CONTROLLED COMPOSITION CLAUSES
15:17:15 24 INAPPLICABLE TO DIGITAL FORMER
25 RECORD DELIVERIES."

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15:17:17 1 DO YOU SEE THAT?

15:17:17 2 A. YES.

15:17:19 3 Q. DID YOU EVER STUDY THAT OR LOOKED
15:17:21 4 AT THAT IN CONNECTION WITH THIS LAWSUIT TO SEE
15:17:25 5 WHETHER THIS LANGUAGE WOULD MAKE CONTROLLED
15:17:27 6 COMPOSITION CLAUSES INAPPLICABLE TO D.P.D.'S BY
15:17:30 7 VIRTUE OF THE -- OF THE ACT?

15:17:30 8 A. NO.

15:17:44 9 Q. AND HAVE YOU EVER READ THE
15:17:46 10 PARAGRAPH THAT FOLLOWS ON PAGE 42?

15:17:46 11 A. NO.

15:17:49 12 Q. OKAY. DO YOU KNOW WHAT IMPACT THIS
15:17:53 13 HAS ON WHETHER DIGITAL DOWNLOADS ARE -- ARE
15:17:55 14 APPLICABLE TO CONTROLLED COMPOSITION CLAUSES?

15:17:56 15 MR. POMERANTZ: INSTRUCTION NOT TO
15:17:59 16 ANSWER. GOES BEYOND WHAT WE'RE DESIGNATING HIM
15:18:21 17 ABOUT.

15:18:22 18 MR. BUSCH: I HAVE A SECTION HERE
15:18:28 19 IN MY EXAMINATION THAT DEALS WITH THE QUESTIONS
15:18:36 20 REGARDING THE REQUIREMENT TO GET LICENSES WHEN A
15:18:39 21 MASTER RECORDING IS LICENSED TO A THIRD PARTY
15:18:43 22 COMPILATION AND HOW THAT IMPACTS -- WOULDN'T THE
15:18:47 23 SAME ANALYSIS APPLY WITH RESPECT TO DIGITAL
15:18:48 24 DOWNLOAD PROVIDERS.

25 AND I ASSUME THAT YOU'RE NOT GOING

DEPOSITION OF PETER PATERNO

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15:18:51 1 TO LET ME ASK THOSE QUESTIONS?

15:18:52 2 MR. POMERANTZ: CORRECT. WE'RE NOT
15:18:55 3 DESIGNATING HIM AS AN EXPERT WITNESS ON THAT
15:18:55 4 SUBJECT MATTER.

15:18:56 5 MR. BUSCH: SO ANY QUESTIONS THAT I
15:18:58 6 WOULD HAVE THAT RELATED TO AFFILIATED OR
15:19:01 7 UNAFFILIATED LICENSEES AND ANY COMPARISON BETWEEN
15:19:07 8 AN ITUNES TO A, FOR EXAMPLE, THIRD-PARTY LICENSEE
15:19:11 9 OF A MASTER RECORDING FOR PURPOSES OF RELEASING
15:19:14 10 COMPILATION ALBUMS, HE'S NOT BEING DESIGNATED AND
15:19:15 11 YOU WOULD INSTRUCT HIM NOT TO ANSWER?

15:19:17 12 MR. POMERANTZ: CORRECT.

15:19:22 13 MR. BUSCH: OKAY.

15:19:22 14 BY MR. BUSCH:

15:19:24 15 Q. HAVE YOU EVER REPRESENTED A MUSIC
15:19:27 16 PUBLISHER IN THE NEGOTIATION OF A LICENSE WITH A
15:19:30 17 COMPANY RELEASING A COMPILATION ALBUM?

15:19:36 18 A. WELL, I REPRESENT THE PUBLISHING
15:19:42 19 COMPANY AFFILIATES OF A NUMBER OF ARTISTS,
15:19:47 20 "OFFSPRING," "METALLICA," THEY OWN THEIR OWN
15:19:51 21 PUBLISHING. SO OUR FIRM DEFINITELY HAS DONE THAT.
15:19:53 22 AND I PROBABLY HAVE, TOO, BUT NOT RECENTLY.

15:19:55 23 Q. OKAY. AND DO YOU KNOW WHETHER
15:19:58 24 THOSE ARTISTS WERE SUBJECT TO A CONTROLLED
25 COMPOSITION CLAUSE WITH ANOTHER RECORD LABEL BUT

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15:20:04 1 NONETHELESS WERE CONTACTED BY THE THIRD PARTY
15:20:07 2 RELEASING A COMPILATION ALBUM TO GET A MECHANICAL
15:20:08 3 LICENSE FROM YOU OR FROM YOUR ARTIST?
15:20:10 4 A. THAT HAPPENS SOMETIMES.
15:20:21 5 Q. DO YOU HAVE AN OPINION ON WHETHER
15:20:24 6 THE -- ON WHETHER THE CONTROLLED COMPOSITION
15:20:28 7 CLAUSE APPLIES TO SUCH RELEASES BY UNAFFILIATED
15:20:31 8 THIRD PARTIES LIKE A LICENSEE WHO IS RELEASING A
15:20:34 9 COMPILATION ALBUM WHERE THEY'VE LICENSED THE
15:20:35 10 MASTER FROM THE RECORD LABEL?
15:20:38 11 A. THIS CONTROLLED COMPOSITION CLAUSE
15:20:39 12 OR IN GENERAL?
15:20:41 13 Q. IN GENERAL.
15:20:48 14 A. IN GENERAL, MOST CONTROLLED
15:20:50 15 COMPOSITION CLAUSES PURPORT TO ACQUIRE THOSE
15:20:54 16 RIGHTS. THEY -- MOST OF THEM ATTEMPT TO ACQUIRE
15:20:57 17 THE RIGHTS TO BE ABLE TO SUBLICENSE TO THIRD
15:20:58 18 PARTIES.
15:20:59 19 Q. DOES THIS ONE?
15:21:01 20 A. I THINK SO, YES.
15:21:04 21 Q. SO YOUR TESTIMONY IS THAT -- SO HE
15:21:06 22 IS GOING TO TESTIFY ABOUT THE AFFILIATED LICENSEE?
15:21:07 23 MR. POMERANTZ: NO, I DON'T. I WAS
15:21:10 24 WONDERING WHERE YOU WERE GOING, BUT THAT IS NOT A
25 SUBJECT WE WOULD INTEND TO HAVE HIM OFFER EXPERT

DEPOSITION OF PETER PATERNO

15:21:14 1 TESTIMONY IN. AND SO, NO.

15:21:16 2 I REALIZE YOU DON'T LIKE HIS
15:21:20 3 OPINION, BUT THAT'S NOT A SUBJECT THAT WE ARE
15:21:23 4 INTENDING TO OFFER EXPERT TESTIMONY FROM
15:21:23 5 MR. PATERNO.

15:21:24 6 MR. BUSCH: BECAUSE YOU HAD
15:21:25 7 INSTRUCTED HIM NOT TO --

15:21:26 8 MR. POMERANTZ: I WAS TRYING TO
15:21:28 9 LISTEN TO YOUR QUESTIONS AND SEE IF IT WAS GOING
15:21:29 10 TO ONE OF THE THREE SUBJECT MATTERS THAT WE HAD
15:21:32 11 DESIGNATED HIM ON, AND I DON'T SEE THAT.

15:21:35 12 SO NO, I DON'T THINK WE WOULD
15:21:38 13 INTEND TO OFFER HIM AS AN EXPERT ON THOSE
15:21:47 14 SUBJECTS.

15:21:47 15 BY MR. BUSCH:

15:21:48 16 Q. OKAY. WELL, NOW THAT YOU'VE
15:21:50 17 ANSWERED THE QUESTION, DO YOU KNOW WHY THE THIRD
15:21:52 18 PARTY RECORD LABELS, THIRD-PARTY LICENSEES WHO
15:21:55 19 WERE RELEASING COMPILATION ALBUMS WOULD HAVE
15:21:59 20 CONTACTED YOU OR YOUR ARTIST FOR A MECHANICAL
15:22:03 21 LICENSE IF THE COMPOSITION WAS COVERED BY THE
15:22:06 22 CONTROLLED COMPOSITION CLAUSE FOR WHICH THEY
15:22:06 23 RECEIVED THE LICENSE?

15:22:07 24 MR. POMERANTZ: I'M GOING TO
25 INSTRUCT HIM NOT TO ANSWER.

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15:22:14 1 BY MR. BUSCH:

15:22:17 2 Q. ALL RIGHT. LET'S GO TO THE OTHER
15:22:21 3 SENTENCE IN -- OR TWO SENTENCES IN THE SULLIVAN
15:22:23 4 REPORT THAT YOU HAVE BEEN DESIGNATED AS AN EXPERT
15:22:25 5 ON.

15:22:28 6 AND I'LL READ IT FOR THE RECORD.
15:22:30 7 IT'S PAGE 13 OF THE SULLIVAN REPORT.

15:22:39 8 A. OKAY. I SPLIT IT UP SOMEWHERE.
15:22:40 9 HERE. OKAY. GOT IT.

15:22:42 10 Q. THE SENTENCE BEGINS:

15:22:43 11 "HOWEVER, AS NOTED ABOVE,
15:22:46 12 THE POSITION TAKEN BY DEFENDANTS FOR
15:22:48 13 PURPOSES OF THIS LITIGATION IS AT
15:22:50 14 ODDS WITH WILDLY ACCEPTED INDUSTRY
15:22:54 15 PRACTICE BETWEEN PUBLISHERS INCLUDING
15:22:55 16 H.F.A. AND INDEPENDENT PUBLISHERS AND
15:22:57 17 RECORD LABELS INCLUDING DEFENDANTS
15:22:59 18 AFTERMATH AND U.M.G. TO SEPARATELY
15:23:02 19 LICENSE FROM PUBLISHERS REPRESENTING
15:23:02 20 SOLELY THEIR RESPECTED PERCENTAGE
15:23:04 21 SHARES OF THE COPYRIGHT AND THE
15:23:06 22 COMPOSITION, AND IN EACH INSTANCE
15:23:09 23 PURSUANT TO SEPARATE LICENSES FOR
15:23:12 24 MECHANICAL, PHYSICAL AND D.P.D.
25 DIGITAL REPRODUCTION AND

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15:23:14 1 DISTRIBUTION."

15:23:15 2 DO YOU SEE THAT?

15:23:15 3 A. YES.

15:23:17 4 Q. WHAT IS YOUR OPINION IN RESPONSE TO

15:23:17 5 THAT SENTENCE?

15:23:20 6 A. LET ME READ IT AGAIN, BECAUSE I GOT

15:23:20 7 LOST BECAUSE I WAS LOOKING AT THE WRONG ONE.

15:23:22 8 Q. THAT'S FINE. READ IT TO YOURSELF.

15:23:24 9 AND WHEN YOU'RE READY, ANSWER.

15:23:45 10 (DOCUMENT REVIEWED BY DEPONENT.)

15:23:46 11 THE DEPONENT: OKAY. SO, YEAH,

15:23:46 12 WHAT'S THE QUESTION?

15:23:47 13 BY MR. BUSCH:

15:23:49 14 Q. THE QUESTION IS: TELL ME WHAT YOUR

15:23:50 15 OPINION IS IN RESPONSE TO THAT SENTENCE WHICH YOU

15:24:03 16 HAVE BEEN DESIGNATED AS AN EXPERT.

15:24:15 17 A. WELL, MY RESPONSE IS THAT RECORD

15:24:25 18 LABELS -- LET ME READ THIS AGAIN, SIR.

15:24:27 19 SO WHAT THE THING IS SAYING, WHAT

15:24:30 20 THE SENTENCE IS SAYING IS THAT -- THAT IT'S

15:24:34 21 CUSTOMARY THAT -- THAT LICENSORS SEEK OUT SEPARATE

15:24:39 22 LICENSES FOR EACH INDIVIDUAL SHARE OF THE

15:24:42 23 COPYRIGHT FROM THE COPYRIGHT HOLDER OF THAT SHARE

15:24:47 24 OF THE COMPOSITION. THAT'S CUSTOMARY, YES.

25 HOWEVER, THEY DON'T HAVE TO. IT'S

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15:24:49 1 JUST WHAT THEY DO.

15:24:50 2 BY MR. BUSCH:

15:24:51 3 Q. DO YOU KNOW WHETHER IT'S REQUIRED
15:24:53 4 OR NOT?

15:24:57 5 A. IT'S -- WELL, IT DEPENDS ON THE
15:25:00 6 CONTROLLED COMPOSITION CLAUSE. MOST CONTROLLED
15:25:05 7 COMPOSITION CLAUSES SAY TO THE PERSON, YOU KNOW,
15:25:07 8 AGREEING TO THE CLAUSE, IT SAYS THAT ANY
15:25:10 9 COMPOSITION WRITTEN IN WHOLE OR IN PART BY YOU OR
15:25:13 10 ANYBODY OWNED OR CONTROLLED, OR WHATEVER, BY YOU
15:25:16 11 IS HEREBY LICENSED OR WILL BE LICENSED OR LICENSED
15:25:18 12 TO US FOR THE FOLLOWING RATES.

15:25:23 13 SO THE ARTIST, WHO IS GENERALLY THE
15:25:25 14 SIGNATORY OF THAT AGREEMENT, IS REQUIRED TO
15:25:28 15 DELIVER NOT ONLY HIS SHARE BUT THE SHARES OF OTHER
15:25:28 16 WRITERS TOO.

15:25:31 17 Q. THAT THEY CONTROL OR ARE AFFILIATED
15:25:31 18 WITH?

15:25:32 19 A. NO, NO. IT SAYS IN WHOLE OR IN
15:25:36 20 PART. MOST CONTROLLED COMPOSITIONS SAY IN WHOLE
15:25:40 21 OR IN PART. SO ANY COMPOSITION, WRITTEN IN WHOLE
15:25:42 22 OR IN PART, IS A CONTROLLED COMPOSITION, AND THE
15:25:44 23 ARTIST IS REQUIRED TO DELIVER THE RIGHTS TO THAT
15:25:45 24 COMPOSITION.

25 Q. LET'S BACK UP SO I UNDERSTAND WHAT

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15:25:48 1 YOU SAID, AND I WANT TO UNDERSTAND THIS.

15:25:51 2 WELL, FIRST YOU SAID IT IS TRUE

15:25:54 3 THAT A CUSTOM AND PRACTICE IS THAT A PUBLISHER

15:25:56 4 ONLY LICENSES THEIR SHARE; CORRECT?

15:25:58 5 MR. POMERANTZ: NO, THAT'S NOT WHAT

15:25:59 6 HE SAID.

15:26:00 7 MR. BUSCH: LET HIM ANSWER THE

15:26:00 8 QUESTION.

15:26:02 9 MR. POMERANTZ: BUT YOU MISSTATED

15:26:02 10 HIS TESTIMONY.

15:26:04 11 MR. BUSCH: I DON'T BELIEVE I DID.

15:26:05 12 THE DEPONENT: IT'S FAIRLY

15:26:06 13 CUSTOMARY THAT -- THAT THE LABEL WILL SEEK OUT

15:26:09 14 LICENSES FROM EACH INDIVIDUAL PUBLISHER FOR A

15:26:11 15 NUMBER OF REASONS, ONE OF WHICH MAKES IT EASIER

15:26:13 16 FOR THEM TO KNOW WHO TO ACCOUNT TO.

15:26:13 17 BY MR. BUSCH:

15:26:15 18 Q. SO IT IS FAIR TO SAY THAT, FOR

15:26:17 19 EXAMPLE, HARRY FOX WILL JUST LICENSE THE SHARE OF

15:26:21 20 THOSE WRITERS OR PUBLISHERS THAT ARE CONTROLLED BY

15:26:22 21 HARRY FOX?

15:26:23 22 MR. POMERANTZ: OBJECTION TO THE

15:26:24 23 EXTENT IT MISSTATES HIS TESTIMONY.

15:26:25 24 BY MR. BUSCH:

25 Q. IS THAT RIGHT?

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15:26:27 1 A. NO, IT'S NOT RIGHT. HARRY FOX WILL
15:26:30 2 LICENSE WHAT THEY'RE ASKED TO LICENSE, AND
15:26:32 3 GENERALLY THEY'RE JUST ASKED TO LICENSE THEIR
15:26:32 4 SHARE.

15:26:34 5 Q. OKAY. NOW, YOU SAID THAT --

15:26:36 6 A. THEY MAY OR MAY NOT LICENSE THE
15:26:39 7 OTHER PERSON'S SHARE, BUT NEVER -- NOT NEVER, BUT
15:26:41 8 CUSTOMARILY THEY'RE NOT ASKED TO LICENSE THE OTHER
15:26:41 9 PERSON'S SHARE.

15:26:44 10 Q. NOW -- AND THEN THERE WAS A SECOND
15:26:48 11 PART WHERE YOU SAID REQUIRED, NOT REQUIRED. AND
15:26:51 12 YOU SAID THAT THE LICENSING OF THE TOTAL SHARE IS
15:26:52 13 NOT REQUIRED.

15:26:53 14 DO YOU KNOW WHETHER IF, FOR
15:26:57 15 EXAMPLE, YOU HAD THREE PUBLISHERS, TWO OF WHICH
15:27:03 16 WERE -- TWO OF WHICH WERE -- LICENSED THEIR SHARE,
15:27:10 17 BUT THE THIRD PUBLISHER WAS CONTACTED REFUSED TO
15:27:13 18 LICENSE THE SHARE AND OBJECTED TO THE USE, DOES
15:27:15 19 THE LABEL, UNDER THOSE CIRCUMSTANCES, HAVE THE
15:27:16 20 RIGHT TO EXPLOIT THE COMPOSITION?

15:27:17 21 MR. POMERANTZ: OBJECTION TO THE
15:27:20 22 EXTENT IT'S ASKING FOR A LEGAL CONCLUSION.

15:27:22 23 YOU CAN ANSWER TO THE EXTENT THAT
15:27:23 24 YOU KNOW.

25 THE DEPONENT: YEAH. I CAN'T

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15:27:31 1 REMEMBER WHAT THE ANSWER IS. I THINK THE ANSWER
15:27:31 2 IS GOING TO BE ABSOLUTELY. BUT I CAN'T REMEMBER
15:27:32 3 WHAT THE ANSWER IS ANYMORE.
15:27:32 4 BY MR. BUSCH:

15:27:34 5 Q. MY QUESTION IS: IF YOU HAVE THREE
15:27:38 6 PUBLISHERS, AND THE RECORD LABEL GETS A MECHANICAL
15:27:41 7 LICENSE FROM TWO OF THE PUBLISHERS, THE THIRD
15:27:44 8 PUBLISHER OBJECTS TO GIVING A LICENSE AND IN FACT
15:27:47 9 OBJECTS TO THE USE AND SAYS, "I DO NOT WANT YOU
15:27:49 10 USING MY COMPOSITION FOR THIS PURPOSE."

15:27:49 11 A. RIGHT.

15:27:50 12 Q. DO YOU KNOW WHETHER THE RECORD
15:27:53 13 LABEL HAS THE RIGHT TO EXPLOIT THAT COMPOSITION
15:27:55 14 FOR THAT PURPOSE THAT THE PUBLISHER OBJECTS TO?

15:27:56 15 MR. POMERANTZ: OBJECTION TO THE
15:27:58 16 EXTENT IT CALLS FOR A LEGAL CONCLUSION. IT'S ALSO
15:27:59 17 AN INCOMPLETE HYPOTHETICAL.

15:28:02 18 THE DEPONENT: UNDER A TYPICAL
15:28:03 19 CONTROLLED COMPOSITION CLAUSE, THE ANSWER IS THAT
15:28:06 20 THE RECORD LABEL CAN RELY ON THE GRANT FROM THE
15:28:11 21 WRITER. IF IT'S AN OUTSIDE SONG, A LABEL CAN RELY
15:28:14 22 ON A NONEXCLUSIVE LICENSE PROVIDED BY ANY OF THE
15:28:14 23 COPYRIGHT HOLDERS.

15:28:16 24 BY MR. BUSCH:

25 Q. EVEN IF THERE IS AN OBJECTION BY

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15:28:19 1 ONE OF THE PUBLISHERS?

15:28:20 2 A. YES.

15:28:21 3 Q. AND WHAT IS YOUR BASIS FOR SAYING
15:28:21 4 THAT?

15:28:22 5 A. THE AREA THAT I'M NOT DESIGNATED TO
15:28:24 6 BE AN EXPERT ON.

15:28:26 7 Q. DO YOU KNOW WHETHER NIMMER TAKES
15:28:27 8 THAT SAME POSITION?

15:28:29 9 A. I'M PRETTY CONFIDENT THAT HE DOES.
15:28:29 10 AGAIN --

15:28:31 11 Q. WOULD IT SURPRISE YOU IF HE DIDN'T?

15:28:32 12 A. WELL, IT DEPENDS. IT DEPENDS ON
15:28:33 13 THE TERRITORY. FOR THE UNITED STATES, I WOULD BE
15:28:34 14 SHOCKED IF HE DIDN'T.

15:28:38 15 Q. OKAY. DO YOU KNOW WHETHER THAT --
15:28:41 16 DO YOU KNOW WHETHER THAT POINT OF LAW -- THAT
15:28:44 17 POINT HAS EVER BEEN LITIGATED?

15:28:46 18 MR. POMERANTZ: YOU KNOW, HE'S NOT
15:28:48 19 HERE AS A LEGAL EXPERT. HE'S HERE TO OFFER
15:28:54 20 OPINIONS ON VARIOUS CUSTOMARY USAGES IN THE MUSIC
15:28:56 21 INDUSTRY WITH RESPECT TO CONTROLLED COMPOSITION
15:28:56 22 CLAUSES.

15:28:56 23 BY MR. BUSCH:

15:28:58 24 Q. SO IS IT FAIR TO SAY THAT WITH
25 RESPECT TO THE SENTENCE THAT YOU'VE BEEN

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15:29:03 1 DESIGNATED AS AN EXPERT ON, MR. PATERNO, THAT YOU
15:29:09 2 DON'T DISAGREE WITH THE STATEMENT THAT IS MADE
15:29:10 3 WITHIN THAT SENTENCE?

15:29:10 4 MR. POMERANTZ: OBJECTION;
15:29:12 5 MISSTATES HIS TESTIMONY.

15:29:12 6 THE DEONENT: I DON'T DISAGREE
15:29:15 7 WITH SOME OF THE STATEMENTS. I MEAN, PARTS OF IT
15:29:16 8 I DO DISAGREE WITH.

15:29:16 9 BY MR. BUSCH:

15:29:17 10 Q. OKAY. I WOULD LIKE TO KNOW IN THIS
15:29:20 11 SENTENCE WHAT PART OF IT -- WHAT PART OF IT DO YOU
15:29:20 12 AGREE WITH?

15:29:26 13 A. WELL, THE POSITION TAKEN ABOVE
15:29:43 14 TAKEN BY -- WELL, I GUESS THE POSITION TAKEN BY
15:29:47 15 DEFENDANTS FOR PURPOSES OF THIS LITIGATION IS AT
15:29:50 16 ODDS WITH WIDELY ACCEPTED INDUSTRY PRACTICE
15:29:52 17 BETWEEN PUBLISHERS AND RECORD LABELS.

15:29:55 18 IT'S NOT AT ODDS WITH IT. IT'S
15:29:59 19 JUST NOT -- IT'S JUST NOT CUSTOMARY. I MEAN, IT'S
15:30:01 20 NOT CUSTOMARY -- AS I TESTIFIED BEFORE, IT'S NOT
15:30:02 21 CUSTOMARILY DONE THAT WAY.

15:30:03 22 Q. IN WHAT WAY?

15:30:07 23 A. THAT -- THAT ONE PUBLISHER WILL
15:30:10 24 GRANT A LICENSE ON BEHALF OF OTHER COPUBLISHERS.
25 BUT THAT'S JUST BECAUSE MOST PEOPLE COOPERATE, AND

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15:30:17 1 SO IT NEVER COMES TO THIS.

15:30:28 2 Q. OKAY.

15:30:30 3 A. AND AGAIN, I DON'T WANT TO GET TOO
15:30:33 4 FAR AFIELD, BUT I CERTAINLY HAVE TAKEN THE
15:30:35 5 POSITION THAT THIS PERSON CLAIMS IS AT ODDS WITH
15:30:39 6 INDUSTRY PRACTICE ON, YOU KNOW, NOT EVERY DAY, BUT
15:30:40 7 IT COMES UP.

15:30:42 8 AND WE HAVE, ON BEHALF OF OTHER
15:30:46 9 HOLDERS OF COPYRIGHTS, LICENSED THEIR INTERESTS IN
15:30:49 10 THE COPYRIGHT WHEN THEY WEREN'T BEING COOPERATIVE.

15:30:51 11 Q. WHO?

15:30:54 12 A. I DON'T -- YOU KNOW, AGAIN, I DON'T
15:30:56 13 REMEMBER. IT CAME UP LAST WEEK, AND I CAN'T FOR
15:30:58 14 THE LIFE OF ME TELL YOU WHO IT WAS.

15:31:15 15 Q. IS IT FAIR TO SAY THAT LICENSES ARE
15:31:19 16 NARROWLY CONSTRUED TO CONFORM TO THE LANGUAGE IN
15:31:19 17 THE LICENSE?

15:31:20 18 MR. POMERANTZ: WHAT ARE YOU
15:31:22 19 TALKING ABOUT? WHAT KIND OF LICENSE? WHAT
15:31:24 20 CONTEXT? HOW DOES IT RELATE TO HIS OPINIONS?
15:31:25 21 BY MR. BUSCH:

15:31:26 22 Q. WOULD IT BE FAIR TO SAY THAT A
15:31:29 23 LICENSE TO USE A COMPOSITION FOR A CERTAIN PURPOSE
15:31:33 24 IS NARROWLY CONSTRUED TO ONLY GRANT A LICENSE FOR
25 THAT PURPOSE IDENTIFIED WITHIN THE LICENSE?

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15:31:36 1 MR. POMERANTZ: I'M GOING TO
15:31:39 2 INSTRUCT HIM NOT TO ANSWER UNLESS YOU CAN EXPLAIN
15:31:42 3 TO ME HOW THAT RELATES TO ONE OF THE THREE
15:31:51 4 OPINIONS THAT WE ARE INTENDING TO OFFER HIM ON.
15:31:58 5 BY MR. BUSCH:

15:32:02 6 Q. LET'S GET MR. ABRAMS' REPORT IN
15:32:15 7 FRONT OF YOU. AND AM I RIGHT, THERE IS ONLY ONE?

15:32:17 8 MR. POMERANTZ: YEAH. IT'S THE
15:32:19 9 SENTENCE THAT BEGINS ON THE TOP OF PAGE 3 THAT
15:32:21 10 STARTS WITH THE WORD "INITIALLY." I THINK IT'S
15:32:27 11 ACTUALLY TWO SENTENCES, BUT IT'S CLAUSES A AND B.

15:32:29 12 I DON'T KNOW IF YOU'VE GIVEN US
15:32:29 13 THIS REPORT YET.

15:32:33 14 MR. BUSCH: I DID. DID I GIVE YOU
15:32:34 15 ABRAMS?

15:32:35 16 THE DEPONENT: I DON'T THINK I HAVE
15:32:35 17 IT.

15:32:37 18 MR. BUSCH: LET ME GIVE IT TO YOU,
15:32:55 19 THEN.

15:32:57 20 MR. POMERANTZ: I'LL GIVE HIM MY
15:32:58 21 COPY.

15:33:01 22 MR. BUSCH: AND SAME POINT HERE,
15:33:02 23 WHICH IS THAT YOU'RE ONLY GOING TO LET HIM ANSWER
15:33:04 24 QUESTIONS THAT RELATE TO THIS -- WITH RESPECT TO
25 THIS PARTICULAR?

DEPOSITION OF PETER PATERNO

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15:33:06 1 MR. POMERANTZ: CORRECT. THAT'S
15:33:08 2 THE SUBJECT MATTER THAT HE'S GOING TO BE
15:33:11 3 TESTIFYING ABOUT AS AN EXPERT AND REBUTTING.

15:33:12 4 MR. BUSCH: OKAY. AND I HAVE THE
15:33:14 5 SAME RESERVATION OF RIGHTS.

15:33:14 6 BY MR. BUSCH:

15:33:17 7 Q. MR. PATERNO, MR. POMERANTZ HAS SAID
15:33:18 8 THAT YOU'RE ONLY GOING TO BE TESTIFYING ABOUT
15:33:22 9 THIS -- THESE TWO CLAUSES WITHIN OR THESE TWO
15:33:25 10 SENTENCES WITHIN MR. ABRAMS' REPORT.

15:33:27 11 MR. POMERANTZ: LET ME JUST -- I'M
15:33:29 12 SORRY TO INTERRUPT. WE'RE ON PAGE 3.

15:33:30 13 THE DEPONENT: I WAS WAITING FOR
15:33:31 14 HIM TO TELL ME.

15:33:32 15 MR. POMERANTZ: WE'RE ON PAGE 3 AT
15:33:34 16 THE TOP BEGINNING WITH THE SENTENCE, WITH THE WORD
15:33:37 17 "INITIALLY" IN THE FIRST LINE.

15:33:38 18 CAN YOU JUST GIVE HIM ONE MOMENT TO
15:33:38 19 READ THE SENTENCE.

15:33:39 20 BY MR. BUSCH:

15:33:40 21 Q. "INITIALLY, THEREFORE, THERE
15:33:41 22 ARE TWO THINGS TO NOTE. THIS IS NOT
15:33:44 23 A SELF-EFFECTUATING CONTROLLED
15:33:45 24 COMPOSITION CLAUSE AS THAT TERM IS
25 KNOWN AND UNDERSTOOD WITHIN THE MUSIC

DEPOSITION OF PETER PATERNO

15:33:50 1 INDUSTRY AND UNDER COPYRIGHT.
15:33:52 2 SELF-EFFECTUATING CONTROLLED
15:33:53 3 COMPOSITION CLAUSES WILL SAY THE
15:33:55 4 CONTROLLED COMPOSITIONS ARE HEREBY
15:33:55 5 LICENSED.

15:33:57 6 "AND B, AS A RESULT, THIS
15:33:59 7 LANGUAGE CLEARLY CONTEMPLATES THE
15:34:01 8 SIGNING OF A SEPARATE LICENSE THAT
15:34:03 9 WOULD PRESUMABLY CONTAIN THE TERMS
15:34:05 10 GENERALLY FOUND WITHIN THE
15:34:06 11 MECHANICAL LICENSES."

15:34:11 12 OKAY. AS TO POINT A, WOULD YOU
15:34:14 13 HAVE ANYTHING TO ADD BEYOND WHAT YOU TESTIFIED TO
15:34:18 14 ON THE SAME SUBJECT MATTER AS IT RELATED TO
15:34:20 15 MR. SULLIVAN'S REPORT AS TO WHY MR. ABRAMS IS
15:34:21 16 WRONG IN YOUR VIEW?

15:34:26 17 A. I CAN'T REMEMBER WHAT I TESTIFIED,
15:34:38 18 BUT I COULD JUST RESPOND BY SAYING THAT -- THERE
15:34:43 19 IS NO MAGIC WORDS THAT -- TO EFFECTUATE THE
15:34:44 20 COPYRIGHT.

15:34:47 21 THERE -- IT'S SO UNLIKELY THAT
15:34:50 22 THE -- IF THIS CONTRACT THAT WE'RE SPEAKING ABOUT
15:34:55 23 HAD SAID THE MECHANICAL -- THE CONTROLLED
15:34:57 24 COMPOSITIONS ARE HEREBY LICENSED, NO ATTORNEY ON
25 THE OTHER SIDE WOULD SAY, "NO. CHANGE IT TO

DEPOSITION OF PETER PATERNO

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15:35:02 1 'WILL.' I NEED TO RESERVE THE RIGHT TO BE ABLE TO
15:35:04 2 ISSUE A SEPARATE LICENSE."

15:35:07 3 IT'S PATENTLY RIDICULOUS. THERE IS
15:35:07 4 NOBODY PRACTICING LAW IN THE MUSIC THAT THINKS
15:35:12 5 THAT THE CONTROLLED COMPOSITION, WHETHER WELL
15:35:15 6 DRAFTED, POORLY DRAFTED, MEANS ANYTHING OTHER THAN
15:35:18 7 WHAT IT MEANS EVERY TIME THAT WE DO THIS, WHICH IS
15:35:23 8 THAT -- THAT THE COMPOSITION WILL BE LICENSED AT
15:35:25 9 THE RATES AND ON THE TERMS SET FORTH IN THE
15:35:26 10 RECORDING AGREEMENT.

15:35:28 11 Q. AREN'T THERE OTHER TERMS THAT
15:35:31 12 AREN'T GENERALLY FOUND WITHIN LICENSES THAT ARE
15:35:33 13 NOT INCLUDED WITHIN THE MECHANICAL ROYALTY SECTION
15:35:37 14 OF -- IN THE 1998 OR 2003 AGREEMENT?

15:35:40 15 A. THESE AGREEMENTS ARE SHORT FORM.
15:35:45 16 SO YES, GENERALLY, YES, THERE ARE THINGS MISSING.
15:35:45 17 NONE OF WHICH ANYBODY THINKS IS IMPORTANT.

15:35:48 18 Q. AUDIT RIGHTS? ACCOUNTING RIGHTS?

15:35:49 19 A. YES, THOSE.

15:35:51 20 Q. THOSE ARE NOT IMPORTANT?

15:35:52 21 A. THEY'RE NOT.

15:35:53 22 Q. WHAT OTHER THINGS THAT ARE FOUND
15:35:56 23 WITHIN LICENSES ARE NOT FOUND WITHIN THE SHORT
15:35:58 24 FORM AGREEMENTS THAT YOU HAVE IN FRONT OF YOU?

25 A. I DON'T KNOW.

DEPOSITION OF PETER PATERNO

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15:36:02 1 Q. I MEAN, YOU SAID THERE ARE TERMS,
15:36:05 2 CONDITIONS THAT ARE NOT FOUND WITHIN THIS --
15:36:09 3 WITHIN THE SHORT-FORM AGREEMENT THAT ARE GENERALLY
15:36:10 4 FOUND IN LICENSES.

15:36:12 5 I IDENTIFIED TWO, AUDIT RIGHTS AND
15:36:14 6 ACCOUNTING RIGHTS. ARE THERE ANY OTHER RIGHTS
15:36:15 7 THAT YOU CAN THINK OF?

15:36:18 8 A. TIME OF PAYMENT, FREQUENCY OF
15:36:24 9 PAYMENT, OFF THE TOP OF MY HEAD. I MEAN, I COULD
15:36:28 10 LOOK AT A LICENSE AND TELL YOU WHAT'S NOT IN HERE
15:36:29 11 THAT'S IN A LICENSE. THEY'RE ALL PRETTY MUCH
15:36:30 12 IMMATERIAL.

15:36:31 13 Q. ANYTHING -- DO YOU KNOW WHETHER
15:36:34 14 IT'S IMMATERIAL TO EVERYONE HAVING AUDIT RIGHTS OR
15:36:36 15 ACCOUNTING RIGHTS OR WHEN THEY'RE BEING PAID AND
15:36:37 16 HOW THEY'RE BEING PAID?

15:36:40 17 A. IT'S IMMATERIAL TO RATIONAL PEOPLE.
15:36:43 18 THEY'RE ALL PAID WITHIN 90 DAYS. THERE IS TYPICAL
15:36:45 19 ACCOUNTING RIGHTS. IT'S NOT -- THESE ARE NOT BIG
15:36:46 20 ISSUES.

15:36:55 21 Q. DO YOU KNOW WHETHER THERE ARE
15:36:57 22 SPECIFIC TERMS FOUND IN DIGITAL DOWNLOAD LICENSES
15:37:02 23 THAT ARE NOT FOUND WITHIN THE MECHANICAL ROYALTY
15:37:02 24 SECTION?

25 A. SEPARATE DIGITAL DOWNLOAD LICENSES?

DEPOSITION OF PETER PATERNO

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15:37:08 1 Q. YES, SIR.

15:37:09 2 A. I DON'T KNOW. I HAVE NEVER LOOKED

15:37:11 3 AT A SEPARATE DIGITAL DOWNLOAD LICENSE.

15:37:26 4 Q. OKAY. DO YOU KNOW PERSONALLY THE

15:37:28 5 NAME OF LEO FERANTE?

15:37:28 6 A. NO.

15:37:30 7 Q. OKAY. DO YOU KNOW -- DO YOU KNOW

15:37:34 8 WHETHER WHAT MR. -- WHETHER WHAT IS REPRESENTED

15:37:38 9 HERE AS BEING THE TESTIMONY OF LEO FERANTE IS

15:37:38 10 CORRECT?

15:37:40 11 A. HOW WOULD I KNOW THAT?

15:37:44 12 Q. IN OTHER WORDS, YOU DON'T KNOW

15:37:48 13 WHETHER UNIVERSAL HAS A -- HAS A PRACTICE OF

15:37:51 14 SENDING SEPARATE LICENSE AND LICENSE REQUEST

15:37:59 15 LETTERS INSTEAD OF ADVICE LETTERS WHEN CONTROLLED

15:38:01 16 COMPOSITION LANGUAGE IS AMBIGUOUS?

15:38:04 17 A. THAT'S NOT WHAT YOU ASKED. YOU

15:38:06 18 ASKED ME IF THIS WAS THE TESTIMONY OF LEO

15:38:07 19 FERRANTE.

15:38:08 20 Q. NO, NO. WHAT I ASKED YOU WAS

15:38:09 21 DOESN'T MATTER.

15:38:10 22 WHAT I MEANT TO ASK YOU, BUT I

15:38:12 23 DIDN'T ASK IT CLEARLY ENOUGH WAS: DO YOU KNOW

15:38:15 24 WHETHER IT WAS REPRESENTED TO BE THE TESTIMONY OF

25 MR. FERANTE?

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15:38:16 1 A. IS THERE A PRACTICE?

15:38:17 2 Q. IS THERE A PRACTICE.

15:38:19 3 MR. POMERANTZ: OBJECTION; LACK OF
15:38:19 4 FOUNDATION.

15:38:20 5 THE DEPONENT: I BELIEVE THAT TO BE
15:38:21 6 THEIR PRACTICE.

15:38:21 7 BY MR. BUSCH:

15:38:22 8 Q. OKAY. AND HOW DO YOU KNOW THAT?

15:38:24 9 A. I DON'T KNOW FOR CERTAIN.

15:38:26 10 Q. WHAT IS YOUR BELIEF BASED UPON?

15:38:29 11 A. I'VE BEEN DOING THIS A LONG TIME,
15:38:32 12 AND IT'S MY UNDERSTANDING THAT'S HOW IT WORKS. I
15:38:36 13 HAVEN'T ISSUED, RECEIVED, REVIEWED OR LOOKED AT A
15:38:38 14 MECHANICAL LICENSE IN A REALLY LONG TIME.

15:38:41 15 Q. OKAY. AND YOU WORK WITH UNIVERSAL;
15:38:43 16 IS THAT CORRECT?

15:38:44 17 MR. POMERANTZ: WHAT DO YOU MEAN
15:38:44 18 "WORK WITH"?

15:38:45 19 BY MR. BUSCH:

15:38:48 20 Q. YOU HAVE CAUSE TO WORK WITH
15:38:51 21 UNIVERSAL LAWYERS AND ATTORNEYS IN THE UNIVERSAL
15:38:52 22 MUSIC DEPARTMENT?

15:38:55 23 A. GENERALLY, YES, ON THE OPPOSITE
15:38:57 24 SIDE OF THEM, YES. WE NEGOTIATE WITH THEM.

25 Q. YOU'RE ALSO ON THEIR SIDE IN

DEPOSITION OF PETER PATERNO

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15:39:01 1 CONNECTION WITH AFTERMATH; IS THAT RIGHT?

15:39:04 2 A. THAT'S THE ONLY TIME WHEN WE'RE --
15:39:09 3 WHEN WE'RE INDEMNITY COUNSEL OR SOMEHOW -- IT'S
15:39:11 4 REALLY THE ONLY TIME IS ON BEHALF OF AFTERMATH
15:39:12 5 BECAUSE WE'RE PARTNERS.

15:39:14 6 Q. AND YOU SAY THAT YOU ARE GENERALLY
15:39:18 7 NEGOTIATING WITH OR REPRESENTING ARTISTS IN
15:39:20 8 CONNECTION WITH THEIR RELATIONSHIP WITH UNIVERSAL?

15:39:23 9 A. YES, THAT'S MY PRIMARY INTERACTION
15:39:24 10 WITH UNIVERSAL.

15:39:27 11 Q. OKAY.

15:39:29 12 A. AND IN TERMS OF LICENSING
15:39:33 13 COMPOSITIONS, THAT'S -- WE DO THAT ALSO. I DON'T
15:39:35 14 DO IT. PARALEGALS IN THE FIRM DO IT.

15:40:03 15 Q. OKAY. THAT WAS THE ONLY THING YOU
15:40:13 16 WERE UP TO.

15:40:13 17 MR. BUSCH: ALL RIGHT. LET ME SEE.
15:40:19 18 I MAY BE FINISHED.

15:40:20 19 THE VIDEOGRAPHER: OFF THE RECORD
15:43:19 20 AT 3:40 P.M.

15:43:24 21 (WHEREUPON, A RECESS WAS HELD
15:43:25 22 FROM 3:40 P.M. TO 3:43 P.M.)

15:43:32 23 THE VIDEOGRAPHER: ALL RIGHT. BACK
15:43:34 24 ON THE RECORD AT 3:43 P.M.

25 ///

DEPOSITION OF PETER PATERNO

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15:43:35 1 BY MR. BUSCH:

15:43:37 2 Q. MR. POMERANTZ --

15:43:38 3 MR. POMERANTZ: NO. START OVER

15:43:39 4 AGAIN.

15:43:39 5 BY MR. BUSCH:

15:43:40 6 Q. I'M SORRY. MR. PATERNO?

15:43:40 7 A. OKAY.

15:43:42 8 Q. YOU.

15:43:43 9 A. THANK YOU.

15:43:46 10 Q. MR. PATERNO, HAVE YOU REVIEWED OR

15:43:52 11 DO YOU INTEND TO SUPPLEMENT YOUR TESTIMONY WITH

15:43:58 12 ANY MATERIALS, TREATISES, EDUCATIONAL MATERIAL,

15:44:01 13 ANYTHING BEYOND JUST WHAT YOUR EXPERIENCE HAS BEEN

15:44:03 14 AS A PRACTICING LAWYER IN THE MUSIC INDUSTRY?

15:44:07 15 A. I HADN'T PLANNED ON IT, NO.

15:44:09 16 Q. OKAY. AND I TAKE IT, YOU HAVE NOT

15:44:12 17 REVIEWED ANY SUCH MATERIAL IN PREPARATION FOR YOUR

15:44:12 18 TESTIMONY TODAY?

15:44:12 19 A. NO.

15:44:17 20 Q. AND YOU HAD NOT REVIEWED ANY SUCH

15:44:20 21 MATERIAL IN CONNECTION WITH YOUR ENGAGEMENT AS AN

15:44:21 22 EXPERT WITNESS IN THIS CASE?

15:44:22 23 A. NO.

15:44:30 24 Q. OKAY. DO YOU INTEND TO OFFER ANY

25 OPINIONS OR TESTIMONY ON THE SENTENCES THAT WE'VE

DEPOSITION OF PETER PATERNO

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15:44:35 1 GONE OVER TODAY BEYOND WHAT YOU TESTIFIED TO?

15:44:38 2 A. WELL, I DON'T KNOW. IT DEPENDS ON
15:44:39 3 WHAT PEOPLE ASK ME.

15:44:41 4 Q. WELL, IS THERE ANYTHING BEYOND WHAT
15:44:43 5 YOU'VE BEEN ASKED TODAY WITH RESPECT TO THESE
15:44:46 6 SPECIFIC PARAGRAPHS THAT WE'VE GONE OVER THAT YOU
15:44:48 7 WOULD OFFER BEYOND WHAT YOU'VE SAID?

15:44:49 8 A. WELL, I RESPONDED TO YOUR QUESTIONS
15:44:51 9 THAT IF THERE IS DIFFERENT QUESTIONS AT TRIAL OR
15:44:53 10 SOME OTHER TIME, I'LL RESPOND TO THOSE.

15:44:55 11 Q. WELL, GET THE DOCUMENTS IN FRONT OF
15:44:58 12 YOU, PLEASE. GET ALL THREE SENTENCES IN FRONT OF
15:45:01 13 YOU, AND I WOULD LIKE TO KNOW WITH RESPECT TO EACH
15:45:03 14 PARTICULAR ONE WHETHER YOUR EXPLANATION OR
15:45:05 15 TESTIMONY REGARDING THOSE SENTENCES ARE -- IF YOU
15:45:08 16 HAVE ANYTHING ELSE TO OFFER WHETHER YOU AGREE OR
15:45:10 17 DISAGREE BEYOND WHAT YOU'VE SAID HERE TODAY?

15:45:11 18 A. I DON'T KNOW WHAT THE QUESTIONS ARE
15:45:12 19 GOING TO BE.

15:45:15 20 Q. WELL, GET THEM IN FRONT YOU.

15:45:17 21 A. I'M NOT GOING TO FORMULATE YOUR
15:45:17 22 QUESTIONS FOR YOU.

15:45:18 23 Q. I'VE JUST FORMULATED THE QUESTION.
15:45:20 24 MY QUESTION IS: DO YOU HAVE ANY OTHER BASES FOR
25 AGREEING OR DISAGREEING WITH ANY OF THOSE

DEPOSITION OF PETER PATERNO

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15:45:25 1 SENTENCES BEYOND WHAT YOU'VE TESTIFIED TO HERE
15:45:25 2 TODAY?

15:45:28 3 A. I DON'T KNOW.

15:45:35 4 Q. OKAY. WELL, LET'S GET MR. ABRAMS'
15:45:37 5 REPORT IN FRONT OF YOU, PLEASE.

15:45:38 6 A. SURE. DO YOU HAVE A SPECIFIC
15:45:39 7 QUESTION?

15:45:44 8 Q. PAGE 3. THE PARAGRAPH THAT
15:45:46 9 MR. POMERANTZ SAID THAT YOU WILL BE TESTIFYING
15:45:53 10 ABOUT ON PAGE 3 THAT BEGINS WITH "INITIALLY" THAT
15:45:53 11 HAS TO DO WITH MECHANICAL LICENSES.

15:45:54 12 A. YES.

15:45:58 13 Q. AS TO A OR B, WHICH IS THAT CLAUSE
15:46:00 14 IS NOT SELF-EFFECTUATING BECAUSE OF THE DIFFERENCE
15:46:05 15 IN THE LANGUAGE AND THAT IT CLEARLY CONTEMPLATES
15:46:07 16 THE SIGNING OF A SEPARATE LICENSE, DO YOU HAVE ANY
15:46:10 17 OTHER BASIS TO DISAGREE WITH THAT, OTHER THAN TO
15:46:12 18 SAY THAT -- I THINK YOU SAID NO RATIONAL PERSON
15:46:16 19 WOULD SUGGEST THAT THE DIFFERENCE BETWEEN THE "IS
15:46:19 20 HEREBY" VERSUS "WILL BE" IS A BASIS TO CONCLUDE
15:46:22 21 ONE WAY OR THE OTHER?

15:46:23 22 MR. POMERANTZ: OBJECTION;
15:46:25 23 MISSTATES HIS TESTIMONY, AND OBJECTION TO THE FORM
15:46:27 24 OF THE QUESTION.

25 THE DEPONENT: WELL, YOU DIDN'T ASK

DEPOSITION OF PETER PATERNO

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15:46:32 1 ME ANYTHING ABOUT B. YOU JUST ASKED ME TO READ A.
15:46:34 2 DO YOU WANT ME TO READ B AND DO YOU
15:46:35 3 HAVE A QUESTION ABOUT B?
15:46:35 4 BY MR. BUSCH:

15:46:35 5 Q. I SURE DO.
15:46:36 6 IT SAYS:
15:46:36 7 "AS A RESULT, THIS LANGUAGE
15:46:38 8 CLEARLY CONTEMPLATES THE SIGNING OF
15:46:39 9 A SEPARATE LICENSE THAT PRESUMABLY
15:46:41 10 CONTAINS THE TERMS GENERALLY FOUND
15:46:43 11 WITHIN MECHANICAL LICENSES."

15:46:44 12 WHAT IS YOUR BASIS FOR EITHER
15:46:46 13 AGREEING OR DISAGREEING WITH THAT?

15:46:47 14 A. I DON'T THINK IT CLEARLY
15:46:49 15 CONTEMPLATES ANYTHING OF THE SORT.

15:46:51 16 Q. YOU DON'T THINK THE LANGUAGE WILL
15:46:53 17 BE -- CONTEMPLATES THE SIGNING OF A FUTURE
15:46:53 18 LICENSE?

15:46:55 19 A. NOT IN THE CONTEXT OF -- NOT IN THE
15:46:58 20 CONTEXT OF WHERE I PRACTICE AND THE OTHER
15:46:59 21 PRACTITIONERS IN MY AREA.

15:47:01 22 Q. AND YOU'VE TESTIFIED THAT YOU'VE
15:47:04 23 NEVER DISCUSSED THE ISSUE OF THE "WILL BE" VERSUS
15:47:06 24 "HEREBY" WITH ANYONE, OTHER THAN YOU SAID YOU
25 SPOKE TO SOMEONE THE OTHER DAY WHO YOU CAN'T

DEPOSITION OF PETER PATERNO

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15:47:11 1 REMEMBER WHO IT WAS WHO SAID IT WAS RIDICULOUS?

15:47:14 2 A. I SPOKE TO SOMEBODY AROUND THE TIME
15:47:18 3 OF MY LAST DEPOSITION, AND WE WERE DISCUSSING IT.
15:47:23 4 AND WE AGREED THAT THE POSITION IS, AGAIN, ABSURD
15:47:26 5 GIVEN WHAT WE DO IN OUR DAILY BUSINESS LIVES.

15:47:28 6 Q. AND YOU DON'T REMEMBER WHO THAT IS?

15:47:28 7 A. NO.

15:47:30 8 Q. AND THAT WAS THE ONLY TIME YOU
15:47:33 9 RECALL DISCUSSING THE DIFFERENCE BETWEEN "WILL BE"
15:47:36 10 VERSUS "IS HEREBY" AND ANY EFFECT THAT MIGHT HAVE?

15:47:37 11 A. WELL, I TOLD YOU I DISCUSSED IT
15:47:38 12 WITH THESE PEOPLE.

15:47:39 13 Q. MR. POMERANTZ?

15:47:39 14 A. YES.

15:47:41 15 Q. OKAY. OTHER THAN MR. POMERANTZ IN
15:47:43 16 CONNECTION WITH THIS CASE, YOU DON'T RECALL EVER
15:47:45 17 DISCUSSING IT JUST IN A NORMAL COURSE OF YOUR
15:47:46 18 PRACTICE?

15:47:48 19 A. YEAH. I TOLD YOU, AT THE TIME
15:47:49 20 AROUND THE LAST DEPOSITION.

15:47:51 21 Q. WITH THAT -- OTHER THAN THAT.

15:47:53 22 A. IT MIGHT HAVE BEEN TWO TIMES AROUND
15:47:55 23 THE LAST DEPOSITION WITH OTHER LAWYERS. BUT, NO.
15:47:58 24 OTHER THAN THAT, I DON'T SPEND A LOT OF TIME
25 DIFFERENTIATING BETWEEN "WILL," "IS" AND "HEREBY."

DEPOSITION OF PETER PATERNO

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15:48:05 1 Q. SO AS TO A AND B, DO YOU HAVE ANY
15:48:07 2 OTHER BASES FOR DISAGREEING WITH THOSE SENTENCES
15:48:09 3 OTHER THAN WHAT WE'VE TALKED ABOUT?

15:48:23 4 A. NO. I THINK I TESTIFIED THAT THIS
15:48:28 5 IS NOT -- THAT THIS PART OF THE REPORT DOES NOT
15:48:31 6 REFLECT THE CUSTOM AND PRACTICE IN THE MUSIC
15:48:33 7 INDUSTRY WHICH IS THE BASIS ON WHICH I OBJECT TO
15:48:33 8 WHAT HE SAYS.

15:48:35 9 Q. HOW MANY OTHER CONTROLLED
15:48:37 10 COMPOSITION CLAUSES OR MECHANICAL ROYALTIES
15:48:41 11 PROVISIONS HAVE YOU SEEN THAT HAS THE "WILL"
15:48:43 12 LICENSE VERSUS "IS HEREBY" OTHER THAN THIS
15:48:44 13 AGREEMENT?

15:48:44 14 MR. POMERANTZ: OBJECTION TO THE
15:48:47 15 FORM OF THE QUESTION. MISSTATES THE DOCUMENT.

15:48:48 16 MR. BUSCH: GO AHEAD.

15:48:49 17 THE DEPONENT: I STILL HAVE NO
15:48:49 18 IDEA.

15:48:50 19 BY MR. BUSCH:

15:48:51 20 Q. HAVE YOU EVER SEEN ONE THAT SAID,
15:48:54 21 "WILL BE LICENSED" VERSUS "IS HEREBY" OTHER THAN
15:48:54 22 THIS AGREEMENT?

15:48:57 23 A. I'M SURE I HAVE, BUT I COULDN'T
15:49:00 24 TELL YOU WHERE OR WHEN OR HOW.

25 Q. OKAY. ALL RIGHT. DO YOU HAVE ANY

DEPOSITION OF PETER PATERNO

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15:49:09 1 OTHER OPINIONS CONCERNING A AND B OTHER THAN WHAT
15:49:11 2 YOU TESTIFIED TO?

15:49:12 3 MR. POMERANTZ: OBJECTION; ASKED
15:49:13 4 AND ANSWERED.

15:49:14 5 BY MR. BUSCH:

15:49:14 6 Q. "NO"?

15:49:15 7 A. NO.

15:49:17 8 Q. ALL RIGHT. AS TO THE SULLIVAN
15:49:32 9 REPORT, LET'S GET THAT ONE IN FRONT OF YOU NOW.

15:49:37 10 AS TO THE FIRST SENTENCE THAT YOU
15:49:40 11 WERE BEING DESIGNATED ON, WHICH IS ON PAGE 12, DO
15:49:43 12 YOU HAVE ANY OTHER OPINIONS ABOUT THAT OTHER THAN
15:49:46 13 WHAT YOU'VE TESTIFIED TO OR ANY BASES FOR YOUR
15:49:47 14 OPINIONS OTHER THAN WHAT YOU TESTIFIED TO?

15:49:48 15 A. WHICH SENTENCE?

15:49:49 16 Q. "MOREOVER, EVEN IF THE
15:49:51 17 MECHANICAL ROYALTIES PARAGRAPH
15:49:53 18 CONTAIN A DIRECT MECHANICAL
15:49:54 19 LICENSE FOR PHYSICAL PRODUCTS,
15:49:56 20 WHICH IT DOES NOT, IT IN NO WAY
15:49:57 21 CAN BE INTERPRETED TO APPLY TO
15:49:58 22 D.P.D.'S."

15:49:59 23 DO YOU HAVE ANYTHING ELSE TO OFFER
15:50:01 24 BEYOND WHAT I ASKED YOU ABOUT INITIALLY?

25 A. I THINK GENERALLY I DESCRIBED MY

DEPOSITION OF PETER PATERNO

1 STATE OF CALIFORNIA)
)SS
2 COUNTY OF LOS ANGELES)

3

4

5

6

DEPONENT'S DECLARATION

7

8

9

10

I CERTIFY UNDER PENALTY OF PERJURY THAT THE

11

FOREGOING IS TRUE AND CORRECT.

12

13

14

15

16

EXECUTED AT _____ ON _____.

17

18

19

20

(SIGNATURE OF DEPONENT)

21

22

23

24

25

DEPOSITION OF PETER PATERNO

1 STATE OF CALIFORNIA)
)SS
2 COUNTY OF LOS ANGELES)

3

4 I, SAMANTHA MARGARET AVENAIM, CERTIFIED
5 SHORTHAND REPORTER, CERTIFICATE NUMBER 10627, FOR
6 THE STATE OF CALIFORNIA, HEREBY CERTIFY:

7 THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE
8 ME AT THE TIME AND PLACE THEREIN SET FORTH, AT
9 WHICH TIME THE DEPONENT WAS PLACED UNDER OATH BY
10 ME;

11 THE TESTIMONY OF THE DEPONENT AND ALL
12 OBJECTIONS MADE AT THE TIME OF THE EXAMINATION
13 WERE RECORDED STENOGRAPHICALLY BY ME AND WERE
14 THEREAFTER TRANSCRIBED;

15 THE FOREGOING TRANSCRIPT IS A TRUE AND
16 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

17 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL
18 FOR NOR RELATED TO ANY PARTY TO SAID ACTION, NOR
19 IN ANY WAY INTERESTED IN THE OUTCOME THEREOF.

20 IN WITNESS WHEREOF, I HAVE HEREUNTO
21 SUBSCRIBED MY NAME THIS 24TH DAY OF NOVEMBER,
22 2008.

23

24

25
