

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

**EXHIBIT 22-A**

**Excerpts of transcript pages from the depositions  
of Patrick Sullivan taken on  
September 18, 2008 and October 1, 2008**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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EIGHT MILE STYLE, LLC and )

MARTIN AFFILIATED, LLC, )

Plaintiffs,)

vs. )Case No. 2:07-cv-13164

APPLE COMPUTER, INC. and )Hon. Anna Diggs Taylor

AFTERMATH RECORDS d/b/a )

AFTERMATH ENTERTAINMENT, )

Defendants.)

-----x

September 18, 2008

10:12 a.m.

Deposition of PATRICK SULLIVAN,  
held at the law offices of Jenner & Block, 919  
Third Avenue, New York, New York, pursuant to  
subpoena, before Anita T. Shemin, CSR and  
Notary Public within and for the State of  
New York.

1 Patrick F. Sullivan

2 A A license --

3 MR. BUSCH: Object to form.

4 Go ahead.

5 A Oh, a license is when a record company  
6 seeks to obtain a mechanical reproduction right, a  
7 synchronization right and the various rights that  
8 are afforded to copyright owners to use that in a  
9 digital distribution manufacturer and sell a CD to  
10 use in a film, a TV commercial. It is an  
11 agreement between -- generally between a record  
12 company and a music publisher.

13 Q What are the minimum terms that have to  
14 be in a license?

15 MR. BUSCH: Any license in the  
16 world, or are you talking about  
17 publishing license? Object to form.

18 Q You can answer the question.

19 A Specific to a mechanical license or a --

20 Q I asked you what a license was, so you  
21 gave me an answer, so according to your  
22 understanding of a license.

23 A General terms that are included in a  
24 license would be the territory, the term, which  
25 would be the year, accounting provisions, audit

1 Patrick F. Sullivan

2 provisions, who the licensing party is, the  
3 licensee, the licensors, general reps and  
4 warrants, various terms would be included in a  
5 license.

6 Q First of all, just so for your benefit,  
7 my benefit and most importantly for the court  
8 reporter's benefit, I will try to wait for you to  
9 answer. If you can wait for me to finish my  
10 question so we don't talk over each other, it --  
11 that will make everyone's life much easier. I  
12 know it is not a natural setting.

13 Let me ask you, what terms have to be in  
14 a license for it to be a license?

15 MR. BUSCH: Object to form.

16 A The terms that have to be within a  
17 license will include the parties, so it would be  
18 the licensee and the licensor, generally the rate,  
19 the territory, audit provisions and accounting  
20 provisions. Based on my industry practice, those  
21 are the terms that are put forth in a license.

22 Q Does the license have to grant the right  
23 for it to be a license?

24 MR. BUSCH: Objection to form. Are  
25 you talking a mechanical license, or are

1 Patrick F. Sullivan

2 you talking about any license in the  
3 world right now?

4 Q Do you understand my question?

5 A Could you repeat the question?

6 Q Sure.

7 Does a license, in order to be a  
8 license, have to grant a right to do something?

9 A Yes.

10 Q You said one of the things that has to  
11 be in a license is territory?

12 A In the industry practice that I am in  
13 for licensing DPDs, yes.

14 Q What is your understanding, why do you  
15 say that a license has to specify a territory in  
16 order for it to be a valid license?

17 A In my experience and practice of  
18 licensing DPDs, the territory of a DPD grant is  
19 usually and only in the United States and its  
20 territory possessions.

21 Q Is it your understanding that if a  
22 license doesn't include a territorial restriction,  
23 it is not a valid license?

24 MR. BUSCH: Note my objection.

25 These are calling for legal conclusions.

1 Patrick F. Sullivan

2 He is testifying as an expert on  
3 licensing practices. His experience in  
4 the industry, and things of that nature  
5 and all of these different questions  
6 call for legal conclusions, and I object  
7 to them.

8 A Could you repeat the question?

9 Q To be valid, is it your understanding  
10 that a license has to set forth the territory that  
11 it covers?

12 A No.

13 Q To be valid, does a license have to  
14 specify a term?

15 MR. BUSCH: Note my objection.

16 This calls for a legal conclusion.

17 A No.

18 Q Does a license have to specify audit  
19 rights or audit provisions?

20 MR. BUSCH: Same objection.

21 A Repeat the question.

22 Q To be valid, does a license have to have  
23 audit rights or audit provisions?

24 MR. BUSCH: Same objection.

25 A In the licenses that I come across for

Patrick F. Sullivan

DPDs, yes.

Q What is your understanding as to why they have to have audit provisions to be valid?

A For the licensor to have the ability to be able to audit the books and accounts on the sales that they are granting in the license.

Q Is your testimony that audit provisions have been in licenses that you have seen, or you understand that audit provisions have to be in licenses in order to be valid?

MR. BUSCH: Again, you are arguing with the witness and asking for legal conclusions. He is here to testify about the industry practice and his specialized experience in the industry and not to offer legal conclusions. The law is what the law is.

A Repeat the question.

MR. KLAUS: Could you read the question back, please.

(Requested portion read back)

A In the industry practice of licensing, yes.

Q When you say -- what do you mean by in

1 Patrick F. Sullivan  
2 the industry practice of licensing?

3 A When I go out on behalf of record  
4 companies as an agent, go out and license, its  
5 publishers will require an audit provision.

6 Q Has anyone ever told you that without an  
7 audit provision, you don't have a valid license?

8 A Not to my knowledge.

9 Q What is a mechanical license?

10 A What is a mechanical license?

11 Q Yes.

12 A A mechanical license is a license that a  
13 publishing musical copyright owner will grant for  
14 the reproduction rights to distribute a sound  
15 recording.

16 Q Is a DPD license a mechanical license?

17 A In my industry practice, no. Two  
18 separate.

19 Q Is it that a DPD license is a form of a  
20 mechanical license?

21 MR. BUSCH: Object to form. He has  
22 answered the question. Objection, asked  
23 and answered.

24 A No, because --

25 Q Okay. I think you said in your Expert



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DISTRICT

EIGHT MILE STYLE, LLC and )  
MARTIN AFFILIATED, LLC, )  
Plaintiffs, ) Case No.  
vs. ) 2:07-CV-13164  
APPLE COMPUTER, INC. and ) Volume 2  
AFTERMATH RECORDS d/b/a ) (Pages 271-542)  
AFTERMATH ENTERTAINMENT, )  
Defendants. )  
-----)

CONTAINS ATTORNEYS' EYES ONLY INFORMATION

VIDEOTAPED DEPOSITION OF:

PATRICK SULLIVAN

WEDNESDAY, OCTOBER 1, 2008

11:09 A.M.

REPORTED BY:

SUSAN NELSON

C.S.R. No. 3202

11:49:29 1 THE WITNESS: Oh, on Exhibit 2 where would I  
11:49:31 2 find that? I'd have to --

3 BY MR. KLAUS:

4 Q. How would I find that --

11:49:32 5 A. I'd have to reference the mechanical  
11:49:34 6 licenses that were presented to me, so.

11:49:35 7 Q. Right. But you've made a statement in  
11:49:37 8 paragraph 3 --

11:49:38 9 A. Yup.

11:49:38 10 Q. -- about, you say --

11:49:43 11 MR. BUSCH: Well, hold on one second. I'm  
11:49:45 12 sorry. In paragraph 3, the section that you're  
11:49:49 13 reading does not say that the chart identifies. So  
11:49:54 14 you're asking him for -- you're assuming facts that  
11:49:57 15 are not in evidence.

11:49:58 16 What he said in his declaration is that if  
11:50:01 17 the purported licensee on the proffered licenses any  
11:50:05 18 party, so I think you're -- you're assuming facts not  
11:50:07 19 in evidence in the attempt to try to build a phony  
11:50:10 20 record. And I object to it.

11:50:11 21 MR. KLAUS: I'm not trying to build a phony  
11:50:13 22 record, but Mr. Busch makes a helpful suggestion  
11:50:16 23 here, which is -- let me ask you the foundational  
11:50:18 24 question.

11:50:18 25 Q. Your opinion about certain of the licenses

11:50:22 1 being invalid because they're not licenses to one of  
11:50:28 2 the defendants, is that -- is your conclusion  
11:50:35 3 first -- strike that.

11:50:37 4 Is it one of your conclusions in this case,  
11:50:40 5 is it one of your opinions, that at least some of the  
11:50:44 6 licenses that the defendants have submitted are not  
11:50:47 7 valid licenses for the Eminem compositions because  
11:50:51 8 they are not licenses to one of the defendants in the  
11:50:53 9 case?

10 A. Yes.

11:50:55 11 Q. Okay. And is it possible from your chart in  
11:51:03 12 Exhibit 242 to determine which of the compositions  
11:51:08 13 you rendered that opinion as to?

11:51:10 14 A. I would have to use the mechanical licenses  
11:51:13 15 to reference that against the charts.

11:51:15 16 Q. So someone looking at Exhibit 242 can't  
11:51:22 17 determine from the text of the chart in Exhibit 242  
11:51:27 18 which of the licenses you contend are invalid because  
11:51:30 19 they're not licenses to one of the defendants?

11:51:32 20 MR. BUSCH: Object to form. The chart  
11:51:34 21 speaks for itself.

11:51:34 22 THE WITNESS: You'd have to go by the  
11:51:35 23 document name and reference against the full  
11:51:38 24 mechanical license.

25 BY MR. KLAUS:

12:05:18 1 record company, the album release. I don't believe  
12:05:22 2 it states that here in this document. So there would  
12:05:26 3 be more information I would have to require to come  
12:05:29 4 to that. And, generally speaking, that the licensee  
12:05:31 5 would be noted. It would also have the record  
12:05:33 6 company, the album. I know it says UPC I associate  
12:05:36 7 but that would not be enough information for me to  
12:05:39 8 know who that release was coming from, so.

12:05:41 9 Q. By the way, this is a license for DPDs,  
12:05:43 10 isn't it?

12:05:45 11 A. I'm not an attorney, but it appears so.

12:05:47 12 Q. Okay. And it's called a mechanical license?

12:05:49 13 A. Just industry-speak. Everyone --

12:05:51 14 MR. BUSCH: Just answer the question,  
12:05:52 15 please.

12:05:52 16 THE WITNESS: So --

12:05:53 17 MR. BUSCH: He's asking --

12:05:53 18 MR. KLAUS: Don't -- don't interrupt the  
12:05:54 19 witness.

12:05:54 20 MR. BUSCH: He's asking you whether the  
12:05:56 21 document is entitled "Mechanical License." That's  
12:05:58 22 the question.

12:05:59 23 THE WITNESS: Yes, it's entitled "Mechanical  
12:06:00 24 License."

12:06:01 25 BY MR. KLAUS:

12:06:01 1 Q. And it's a mechanical license that grants  
12:06:03 2 DPDs rights?

12:06:03 3 A. It's not relevant. It's not --

12:06:04 4 Q. I thought you said at your last deposition,  
12:06:07 5 sir, that mechanical licenses didn't grant DPD  
12:06:10 6 rights.

12:06:10 7 A. I do. I'm -- mechanical license it's just a  
12:06:12 8 term for the document. But the actual rights, the  
12:06:16 9 reproduction and distribution rights, that ephemeral  
12:06:18 10 copy are what are being granted here. So they may  
12:06:20 11 call it mechanical licenses just like you call  
12:06:24 12 Vaseline, Vaseline. It's petroleum jelly. The  
12:06:24 13 industry uses that term loosely for mechanical  
12:06:27 14 license.

12:06:28 15 So from my -- you -- just because you call  
12:06:31 16 it mechanical license, it doesn't have the  
12:06:33 17 definitions, it doesn't have the language, it doesn't  
12:06:35 18 give you the grant of rights which includes  
12:06:38 19 reproduction, it even grants you the server  
12:06:40 20 reproduction rights. So you can call it what you  
12:06:42 21 want, it's actually what the language of the  
12:06:43 22 agreement and the grant of rights state in that, so.

12:06:46 23 Q. Okay. So something can be -- something can  
12:06:48 24 be called a mechanical license and grant DPD rights?

12:06:51 25 A. I will say from my experience, I've seen

12:17:36 1 Q. Okay?

12:17:36 2 A. Okay.

12:17:37 3 Q. So can you make the assumption that there  
12:17:39 4 was a sublicense?

5 A. Yes.

12:17:40 6 Q. Okay. If there was a sublicense, would this  
12:17:46 7 license in exhibit 58629 be an invalid basis for  
12:17:53 8 Defendants' distribution on the ground that the  
12:17:56 9 purported licensee on the proffered license was  
12:17:59 10 someone other than Aftermath or Apple?

12:18:02 11 MR. BUSCH: Just note my objection.

12:18:04 12 Incomplete hypothetical. Improper hypothetical.

12:18:07 13 Numerous facts are missing from this hypothetical.

12:18:10 14 And it's impossible to answer based upon the --

12:18:13 15 THE WITNESS: You're asking me a legal  
12:18:14 16 conclusion. All I know is, according to what we've  
12:18:17 17 identified here, it is no licensee specified, it's  
12:18:18 18 not Aftermath. That's all I can testify to. I  
12:18:21 19 can't -- I'm not an attorney, so I can't answer that  
12:18:23 20 question.

12:18:23 21 BY MR. KLAUS:

12:18:23 22 Q. Okay. So --

12:18:24 23 A. And --

12:18:25 24 Q. How would -- how would one -- how would  
12:18:27 25 one -- just out of curiosity, Mr. Sullivan, how would

12:18:31 1 someone be able to determine which of the licenses  
12:18:37 2 that are in Exhibit 245 you believe to be invalid on  
12:18:43 3 the ground that the licensee is someone other than  
12:18:49 4 Aftermath or Apple?

12:18:50 5 MR. BUSCH: Objection.

12:18:51 6 BY MR. KLAUS:

12:18:51 7 Q. How would some- -- how would someone be able  
12:18:54 8 to make the determination as to which of these  
12:18:58 9 licenses you hold that opinion for?

12:18:59 10 MR. BUSCH: Just note my objection. This  
12:19:01 11 was specifically asked and answered. At the risk of  
12:19:04 12 being scolded by you, he testified earlier that you  
12:19:07 13 have to look at the license, you have to look at the  
12:19:09 14 licensee --

12:19:09 15 MR. KLAUS: Mr. Busch, I -- Mr. Busch,  
12:19:10 16 please --

12:19:10 17 MR. BUSCH: No.

12:19:10 18 MR. KLAUS: -- do -- no, do not -- do not --

12:19:11 19 MR. BUSCH: The point is you're harassing  
12:19:13 20 this witness. And in the record, he's answered this  
12:19:15 21 specific question.

12:19:15 22 You only have three hours for this  
12:19:17 23 deposition, sir. And I'm going to ask you to stop  
12:19:19 24 asking the same question over and over again because  
12:19:23 25 it's not fair to this witness and it's harassing. So

12:19:25 1 please stop.

12:19:26 2 He answered that question directly. You  
12:19:28 3 asked him about it when you were asking about the  
12:19:30 4 chart, how would he know. He answered how you have  
12:19:33 5 to go through the documents, you have to look who it  
12:19:35 6 is. That question was answered. What are you doing?  
12:19:37 7 Why are you asking the same question --

8 BY MR. KLAUS:

12:19:38 9 Q. I'm asking you --

12:19:38 10 MR. BUSCH: -- again and again?

12:19:39 11 BY MR. KLAUS:

12:19:39 12 Q. I'm asking you, sir, how would someone make  
13 that determination?

12:19:43 14 A. I'd have to go through the schedule and look  
12:19:43 15 at the licenses, as I stated earlier, so.

12:19:45 16 Q. So we'd have to go through one by one to --

17 A. Yes.

12:19:49 18 Q. -- look at them. Right?

12:20:03 19 Okay. Let me just a- -- is it your  
12:20:08 20 understanding, sir, that one who obtains -- one who  
12:20:15 21 obtains the right to reproduce and distribute a  
12:20:19 22 composition generally obtains the right to authorize  
12:20:23 23 others to exercise those rights?

12:20:27 24 MR. BUSCH: Can you -- could you repeat that  
25 question, Madam Court Reporter, please. I missed it.



13:03:22 1 A. No. It says you need to -- until the  
13:03:25 2 license is confirmed as signed in the system, so --  
13:03:27 3 it just says license status issued. So I don't know  
13:03:31 4 if it's referring to signed, but it says licensed as  
13:03:34 5 issued for that 55 percent control.

13:03:36 6 Q. So it's your testimony, sir, that if the --  
13:03:39 7 it says -- although the document says licenses for  
13:03:42 8 digital configuration such as DPDs are effective upon  
13:03:45 9 being confirmed as issued in HFA's system, and even  
13:03:49 10 though it says license status issued, you -- is it  
13:03:54 11 your testimony that the -- that this document does  
13:03:57 12 not reflect whether the HFA license has been issued?

13:04:00 13 MR. BUSCH: Just note my objection.  
13:04:01 14 Document speaks for itself.

13:04:02 15 THE WITNESS: Again, this document will  
13:04:03 16 state license status issued. So, yes, it would have  
13:04:07 17 the Harry Fox represented work and the status would  
13:04:10 18 be issued, but it would not represent the non-Fox,  
19 see.

13:04:13 20 So, yes, according to this document and if  
13:04:15 21 you follow along, license status issued, it's issued.

13:04:17 22 BY MR. KLAUS:

13:04:19 23 Q. Let me come back to the -- your -- your  
13:04:22 24 testimony regarding --

13:04:24 25 MR. BUSCH: If you're going to a new subject

14:29:19 1 Q. Did you take the paragraph at the top of  
14:29:21 2 page 42 into account in forming your conclusion that  
14:29:24 3 you reached that controlled composition clauses are  
14:29:27 4 explicitly not allowed for DPDs and cannot operate as  
14:29:29 5 a DPD license?

14:29:30 6 A. I don't recall. I read a lot of documents.  
14:29:32 7 I took a lot of reading material and -- and formed  
14:29:35 8 that opinion, as well as looking at that legislative  
14:29:38 9 history. I mean I, reading through this and reading  
14:29:41 10 through all my other documents, reformed that opinion  
14:29:44 11 so -- and based on industry practice, too.

14:29:45 12 Q. Which other documents besides the  
14:29:46 13 legislative history?

14:29:46 14 A. Everything that was produced.

14:29:47 15 Q. Which --

14:29:48 16 A. Would -- I'd say just reading through when  
14:29:51 17 we looked at Section 115 and looking at the  
14:29:54 18 interpretation and definition of -- of what the DPD,  
14:29:58 19 digital phonorecord delivery, term means from that  
14:30:01 20 definition, so there's a lot of different things, so.

14:30:05 21 Q. Looking back at Exhibit 240, next  
14:30:16 22 sentence --

14:30:17 23 A. Sorry. Hold on.

14:30:18 24 Q. You can just put that down.

14:30:20 25 Third sentence in this paragraph states:

14:30:22 1 "An author or coauthor of a  
14:30:24 2 musical composition may not license  
14:30:26 3 the composition."  
14:30:27 4 A. I'm sorry. Where -- where -- what --  
14:30:28 5 MR. BUSCH: Sorry. What paragraph are you  
14:30:29 6 on?  
14:30:30 7 THE WITNESS: Yeah. Just go a little  
14:30:31 8 slower. Sorry.  
14:30:32 9 BY MR. KLAUS:  
14:30:32 10 Q. The very next sent- -- I -- I will go  
14:30:34 11 slower, Mr. Sullivan, but that's not going --  
14:30:35 12 A. I didn't even know where you were. I --  
14:30:36 13 Q. -- to get us out of here faster.  
14:30:36 14 A. No, I'm sorry.  
14:30:37 15 MR. BUSCH: I missed it, too.  
14:30:39 16 BY MR. KLAUS:  
14:30:39 17 Q. Page 3, paragraph 4 --  
14:30:41 18 MR. BUSCH: Okay.  
14:30:41 19 THE WITNESS: Okay. Got it.  
14:30:42 20 BY MR. KLAUS:  
14:30:42 21 Q. -- third sentence:  
14:30:43 22 "Further" --  
23 A. Okay. Got it.  
24 Q. -- "an author or coauthor of  
14:30:45 25 a musical composition may not

14:30:48 1 license the composition where the  
14:30:49 2 author or coauthor has transferred  
14:30:50 3 his copyright interest to a music  
4 publisher."  
14:30:53 5 Do you see that?  
14:30:54 6 A. Yes, sir.  
14:30:54 7 Q. What -- what does that sentence mean?  
14:30:57 8 A. Very clearly, to me, if an author or  
14:31:00 9 coauthor transferred that ownership right to a  
14:31:01 10 publisher, as an example, Eight Mile Style, they  
14:31:03 11 can't license that work without that publisher's  
14:31:06 12 permission.  
14:31:06 13 Q. Does it matter whether the transfer is  
14:31:09 14 exclusive or nonexclusive?  
14:31:10 15 A. That trans- -- tran- --  
14:31:11 16 MR. BUSCH: Object to form.  
14:31:12 17 Hold on.  
14:31:12 18 Object to form. Calls for a legal  
14:31:13 19 conclusion.  
14:31:13 20 THE WITNESS: Transfer of ownership is  
14:31:16 21 that -- and that's what we're stating, this -- this  
14:31:18 22 musical composition has been transferred, the  
14:31:19 23 copyright interest, meaning the ownership of that,  
14:31:22 24 it's exclusive. Once I've transferred that ownership  
14:31:24 25 right to someone else, they now own it. It's no

14:31:27 1 longer a personal right. It's -- it's a very  
14:31:29 2 clear-cut --

14:31:30 3 BY MR. KLAUS:

14:31:30 4 Q. How do you know that?

14:31:32 5 A. Just from industry experience and knowing  
14:31:34 6 that people I have to go to license, that own  
14:31:37 7 publishing, that you have to go get licenses. And  
14:31:39 8 I've worked with significant publishers that own  
14:31:44 9 works.

14:31:44 10 Q. Do you see that the next sentence states:

14:31:45 11 "Based upon the documents  
14:31:46 12 provided by Defendants, this  
14:31:48 13 appears to have happened in  
14:31:49 14 virtually all instances"?

15 A. Yes.

14:31:52 16 Q. Which documents are you referring to there?

14:31:54 17 A. I would say all of the licenses that were  
14:31:58 18 presented to us.

14:31:59 19 Q. Are you referring to everything that is in  
14:32:03 20 Deposition Exhibit 245, the binder in front of you?

14:32:06 21 A. Well, I believe all of the licenses are  
14:32:09 22 here, yes, in this binder. So, in my opinion, the  
14:32:13 23 transfer of ownership and the copyright interest was  
14:32:16 24 transferred to Eight Mile Style, from my  
14:32:17 25 understanding, and that they did not have -- they

14:32:19 1 would need to obtain that right directly from Eight  
14:32:22 2 Mile Style, so.

14:32:23 3 Q. Is it just -- is your statement that "based  
14:32:28 4 upon the documents provided by Defendants, this  
14:32:30 5 appears to have happened in virtually all instances,"  
14:32:33 6 is that referring only to transfers of ownership to  
14:32:37 7 Eight Mile Style?

14:32:37 8 A. It would appear that the other ownership  
14:32:40 9 shares were also transferred to noncontrolling  
14:32:43 10 authors, which -- for example, Almo Music and Bat  
14:32:48 11 Future Music became a new publisher, and that  
14:32:50 12 ownership was right -- and I believe according to  
14:32:53 13 Mark Levinson, when I spoke to him, he -- Joel Martin  
14:32:55 14 said those rights were -- were -- those ownership  
14:32:57 15 rights were transferred to new publishers. And when  
14:32:58 16 I look at them, they all say "Universal Music  
14:33:03 17 Publishing," or -- so I assumed those authors  
14:33:04 18 transferred those rights.

14:33:05 19 Q. But you don't know whether they transferred  
14:33:06 20 those rights?

14:33:06 21 A. I couldn't know unless I see those  
14:33:08 22 contracts.

14:33:08 23 Q. What other documents are you referring to  
14:33:09 24 where it says "based upon the documents provided by  
14:33:12 25 Defendants this happened in virtually all instances"?

14:35:43 1 you don't know one way or the other, do you, whether  
14:35:45 2 or not there actually has been a transfer of  
14:35:46 3 ownership?

14:35:47 4 MR. BUSCH: Just note my objection, and this  
14:35:48 5 is a continuing objection that I'm going to have to  
14:35:50 6 all of these documents. Every single one of these  
14:35:53 7 documents were produced to us after the close of  
14:35:54 8 discovery. We've had no opportunity to take  
14:35:57 9 discovery on any of these documents, so we filed a  
14:36:00 10 motion to exclude.

14:36:01 11 So Mr. Sullivan's report is only based upon  
14:36:07 12 the documents we've provid- -- or that were provided  
14:36:09 13 to us after discovery because there were no  
14:36:12 14 depositions or other discovery taken on these  
14:36:15 15 documents. So I'm allowing questioning about this  
14:36:18 16 but preserving our motion to exclude.

14:36:21 17 THE WITNESS: Again, I'm going to add a  
14:36:23 18 conversation with Mark Levinson regarding the other  
14:36:25 19 authors of these mechanical licenses. He informed me  
14:36:29 20 that Joel Martin said they had transferred those  
14:36:31 21 ownerships. I don't know. I don't have those  
14:36:33 22 agreements. But only from a licensing viewpoint,  
14:36:35 23 this clearly states there's a different publisher  
14:36:37 24 other than the author and in this example it looks  
14:36:40 25 like Almo Music Corp. would be the controlling and

14:52:13 1 answered.

14:52:15 2 BY MR. KLAUS:

14:52:16 3 Q. What's reflected in Exhibit 3, sir?

14:52:17 4 A. Exhibit --

14:52:17 5 MR. BUSCH: It's been asked and answered.

14:52:18 6 THE WITNESS: Exhibit 3 is just a summary of  
14:52:19 7 contracts. And it breaks down what these contracts  
14:52:21 8 are, tied to the exhibit on the schedules, and also  
14:52:25 9 for the fact that they were not granted the right by  
14:52:30 10 Eight Mile Style through a controlled composition  
14:52:32 11 clause or any licenses to reproduce and distribute  
14:52:36 12 works that they represent.

14:52:37 13 BY MR. KLAUS:

14:52:37 14 Q. Please show me what in Exhibit 251,  
14:52:40 15 Exhibit 3 to your declaration, is tied to any of the  
14:52:45 16 mechanical licenses that are in Exhibit Number 245.

14:52:51 17 MR. BUSCH: I just want to note for the  
14:52:52 18 record that Exhibit 3 speaks for itself.

14:53:01 19 THE WITNESS: Well, I believe if you look at  
14:53:02 20 some of the agreements and then look at some -- yeah,  
14:53:06 21 I'd have to through each one of these and find where  
14:53:08 22 we reference Exhibit 5A, recording agreement, so.  
14:53:15 23 I'd have to go through these.

14:53:19 24 BY MR. KLAUS:

14:53:19 25 Q. What would it -- what would going through



14:53:21 1 the stack that's Exhibit 245 tell you?

14:53:25 2 A. A, there's licenses that were -- mechanical  
14:53:27 3 licenses that were granted by the publisher  
14:53:31 4 representing 50 Cent to different record companies  
14:53:34 5 unaffiliated -- unaffiliated with Aftermath.

14:53:36 6 Q. How do you know they're unaffiliated with  
14:53:41 7 Aftermath?

14:53:42 8 A. Based on the fact that Aftermath is the  
14:53:45 9 licensee in this case, and, other than that, they  
14:53:48 10 weren't mentioned as Aftermath, so.

14:53:50 11 Q. Is Shady Records affiliated with Aftermath?

14:53:52 12 A. I don't know.

14:53:52 13 Q. Is UMG Recordings affiliated with Aftermath?

14:53:56 14 A. I don't know.

14:53:56 15 Q. Is Interscope Geffen A&M affiliated with  
14:54:00 16 Aftermath?

14:54:02 17 A. I don't know.

14:54:02 18 Q. Is Interscope Records affiliated with  
14:54:04 19 Aftermath?

14:54:06 20 A. I don't know if they're -- when you say  
14:54:08 21 "affiliated," in what degree do you mean affiliated?

14:54:11 22 Q. You're just -- you're the one who used the  
14:54:12 23 word "affiliated." I'm just wondering.

14:54:14 24 Do you know whether they're affiliated with  
14:54:16 25 Aftermath or with UMG?

14:54:18 1 A. Contractually, I don't know, so.

14:54:19 2 Q. G-Unit Records, do you know if they have any  
14:54:22 3 affiliated relationship with Aftermath?

14:54:25 4 A. I would say from -- from a industry  
14:54:28 5 perspective, they have -- they -- they have artists  
14:54:32 6 that are signed to them that -- in this instance,  
14:54:35 7 50 Cent may be signed to them, Lloyd Banks, and  
14:54:38 8 reading those agreements that were the artist  
14:54:41 9 contracts, they signed -- they'll sign those  
14:54:43 10 agreements with Andre Young and -- and Aftermath  
14:54:46 11 Entertainment, so.

14:54:48 12 Q. Do you know one way or another whether  
14:54:50 13 they're affiliated with Aftermath, G-Unit Records?

14:54:55 14 A. I don't have their -- in the -- I'd have to  
14:54:57 15 see the contract so I don't -- so I don't -- I don't  
14:54:59 16 know the relationship of their contract, so.

14:55:02 17 Q. Did you ask anybody what -- did you make any  
14:55:04 18 attempt to determine whether they were affiliated?

14:55:08 19 A. No.

14:55:08 20 Q. With respect to a license granted to  
14:55:16 21 Interscope Records, do you know whether Interscope  
14:55:21 22 Records would be able to sublicense that right to  
14:55:23 23 Aftermath Records?

14:55:24 24 MR. BUSCH: Objection. In- -- incomplete  
14:55:26 25 hypothetical. Object to form. Lack of foundation.

14:55:28 1 And assumes facts not in evidence. And my same  
14:55:33 2 objections as I've expressed them before about  
14:55:35 3 these -- these documents.

14:55:36 4 THE WITNESS: I wouldn't know. I'm not an  
14:55:37 5 attorney, so.

14:55:37 6 BY MR. KLAUS:

14:55:37 7 Q. You have no -- you don't know one way or  
14:55:39 8 another whether it would be a sublicense?

14:55:42 9 A. I wouldn't know. I'm not an attorney.

14:55:43 10 Q. Do you know -- you make the statement at the  
14:55:49 11 bottom of page 3 carrying over to page 4, you say:

14:55:52 12 "Even if these controlled  
14:55:56 13 composition clauses could be  
14:55:56 14 considered licenses for DPDs, which  
14:55:59 15 they cannot, these third-party  
14:56:02 16 controlled composition clauses  
14:56:02 17 cannot constitute a license to  
14:56:04 18 either of the defendants, to the  
14:56:06 19 extent the agreement is with a  
14:56:08 20 party other than either defendant,  
14:56:11 21 since, as mentioned in paragraph 3,  
14:56:13 22 such nonexclusive licenses are not  
14:56:16 23 transferable or assignable by the  
14:56:18 24 licensee."

14:56:18 25 Do you see that?

14:56:19 1 MR. BUSCH: Don't get that -- I mean, you're  
14:56:20 2 not going to go over this same thing again that we  
14:56:22 3 went over for an hour --

4 THE WITNESS: Yeah.

5 MR. BUSCH: -- at the beginning of this  
14:56:23 6 deposition, are you?

14:56:23 7 BY MR. KLAUS:

14:56:24 8 Q. I'm going to ask you what you mean by that  
14:56:25 9 statement there, sir.

14:56:25 10 MR. BUSCH: Objection. It's all been asked  
11 and answered.

14:56:28 12 MR. KLAUS: We haven't dealt with this  
14:56:29 13 sentence before, sir.

14:56:30 14 MR. BUSCH: Yeah, but we dealt with that  
14:56:31 15 same thought that is referenced in that sentence  
14:56:33 16 where it says "as explained in paragraph 3" for about  
14:56:35 17 an hour this morning. And, again, we're at 7 hours  
14:56:38 18 now and I'm going to ask you to move along, please.

14:56:41 19 THE WITNESS: Okay.

14:56:41 20 Very clearly, that -- the agreements that  
14:56:45 21 are here (indicating) --

14:56:46 22 BY MR. KLAUS:

14:56:47 23 Q. Here, and you're pointing --

14:56:48 24 A. Meaning Exhibit 3 --

14:56:48 25 MR. BUSCH: Just note my objection, asked

14:56:50 1 and answered.

14:56:50 2 THE WITNESS: -- Exhibit 3 are not Aftermath  
14:56:52 3 and you can't transfer any of the rights, and they're  
14:56:56 4 not assignable to third -- they're third-party  
14:56:59 5 licenses, from Eight Mile Style to any of these  
14:57:03 6 nonaffiliated parties.

14:57:05 7 So basically, to clarify, there was never an  
14:57:08 8 exclusive license grant or transferable right given  
14:57:11 9 to any of these defendants and they're un- -- no, not  
14:57:14 10 the defendants, the unaffiliated labels, to then  
14:57:18 11 reproduce and distribute those works from Eight Mile  
14:57:21 12 Style, and that's what that statement is saying.

14:57:23 13 BY MR. KLAUS:

14:57:23 14 Q. Do you know one way or the other whether  
14:57:25 15 there was this transfer of a license? Between --

14:57:27 16 MR. BUSCH: Object to form.

14:57:28 17 BY MR. KLAUS:

14:57:28 18 Q. Do you know whether there was a transfer of  
14:57:30 19 a license between the parties to the agreements that  
14:57:32 20 are listed on Exhibit 251 and Aftermath?

14:57:35 21 MR. BUSCH: Same objection, and the -- my  
14:57:37 22 continuing objection about the nonproduction of  
14:57:39 23 documents till the end of dis- -- till after  
14:57:41 24 discovery closed.

14:57:42 25 THE WITNESS: Can you repeat the question

14:57:43 1 one more time.

14:57:43 2 BY MR. KLAUS:

14:57:43 3 Q. Sure.

14:57:44 4 Do you know whether there was any transfer  
14:57:46 5 of a license between any of the parties to the  
14:57:50 6 agreements that you've summarized on Exhibit 251 and  
14:57:53 7 Aftermath Records?

14:57:53 8 A. So when you say "transfer," was there a  
14:57:55 9 transfer as a -- from label to label? A transfer  
14:57:58 10 from -- to musical composition?

14:58:01 11 Q. I'm asking was there a tran- -- do you know  
14:58:04 12 whether there was a transfer from label to label?

14:58:06 13 MR. BUSCH: Object to form.

14:58:07 14 BY MR. KLAUS:

14:58:07 15 Q. That's what you've said can't be done, is  
14:58:09 16 a -- is a transfer from label to label. Right?

14:58:11 17 A. When looking at the documents in the case,  
14:58:13 18 Aftermath being a defendant, and these recording  
14:58:16 19 agreements are between labels that are other than  
14:58:18 20 Aftermath, so we make the opinion that they are not  
14:58:21 21 the defendant. So they're not -- they don't have the  
14:58:23 22 right to transfer any of the musical compositions of  
14:58:25 23 Eight Mile Style.

14:58:26 24 Q. Would they have the right to sublicense any  
14:58:28 25 compositions?

14:58:29 1 A. I don't have an opinion about it --

14:58:30 2 MR. BUSCH: This has all been asked and

3 answered.

14:58:31 4 THE WITNESS: Yeah. I'm not an attorney,

14:58:32 5 so.

14:58:32 6 BY MR. KLAUS:

14:58:32 7 Q. And you don't know whether there was a

14:58:33 8 transfer of a sublicense, do you?

14:58:34 9 MR. BUSCH: You haven't produced any

14:58:36 10 documents.

11 THE WITNESS: Yeah.

14:58:36 12 MR. BUSCH: You haven't given us any

14:58:37 13 discovery. You -- it's --

14:58:37 14 THE WITNESS: I --

14:58:38 15 BY MR. KLAUS:

14:58:38 16 Q. You don't know whether they transfer a

14:58:39 17 sublicense, do you?

14:58:39 18 MR. BUSCH: -- inappropriate.

14:58:40 19 BY MR. KLAUS:

14:58:40 20 Q. You don't know, do you?

14:58:41 21 A. Only look- --

14:58:41 22 MR. BUSCH: Objection.

14:58:42 23 THE WITNESS: Only looking at these

14:58:44 24 documents, it appears that it's not Aftermath and

14:58:45 25 it's some other re- -- record label, that could be

14:58:47 1 who knows what, that is now pr- -- relying on  
14:58:53 2 controlled composition clauses with some other  
14:58:55 3 authors to license, reproduce, and distribute works  
14:58:58 4 of Eight Mile Style, which they don't have the  
14:59:00 5 rights, and that's why that statement is there.

14:59:02 6 BY MR. KLAUS:

14:59:02 7 Q. How do you know whether there was a transfer  
14:59:04 8 and assignment?

14:59:04 9 MR. BUSCH: You're arguing with him.  
10 Please, Kelly, let's go. You're arguing with him.  
14:59:08 11 Now, he's answered the question. He said --

14:59:08 12 THE WITNESS: I -- I don't know.

13 MR. BUSCH: -- he doesn't know.

14:59:09 14 THE WITNESS: I don't know.

14:59:10 15 BY MR. KLAUS:

14:59:10 16 Q. Okay.

14:59:11 17 A. I'm sorry.

14:59:11 18 Q. Thank you.

14:59:48 19 I'd like to ask you, sir, if you would turn  
14:59:50 20 to paragraph 7 of your declaration, Exhibit 240.

14:59:55 21 A. Excuse me. I'm there.

14:59:57 22 Q. Are you at Exhibit 7?

15:00:03 23 A. I'm there.

15:00:03 24 Q. I'm sorry, paragraph 7 --

15:00:06 25 A. Paragraph 7, yeah.



15:00:05 1 Q. -- of Exhibit 240.

15:00:07 2 A. Yes, sir.

15:00:08 3 Q. You state in the first sentence:

15:00:10 4 "With respect to the proffered

15:00:12 5 licenses in Section 1 and Section

15:00:15 6 2, each such document, even if

15:00:17 7 effective as a license, which they

15:00:19 8 are not, are specifically limited

15:00:21 9 to the territory of the

15:00:22 10 United States and, in one instance,

15:00:24 11 to the United States territories

15:00:25 12 and possessions."

15:00:26 13 Do you see that?

15:00:26 14 A. Yes, sir.

15:00:27 15 Q. What effect on any opinion you're offering

15:00:30 16 in this lawsuit does the ter- -- does any territorial

15:00:37 17 restriction have on your opinion, sir?

15:00:39 18 A. Very clearly, the right by -- I mean, sorry,

15:00:43 19 not the right, the territory that it would be granted

15:00:45 20 would have been for the United States. And according

15:00:48 21 to what was presented in the case, iTunes was

15:00:51 22 distributing outside of the United States, so they

15:00:52 23 did not have a license.

15:00:54 24 Q. Do you know one way or the other whether

15:00:56 25 this lawsuit concerns foreign distribution?

15:01:00 1 A. I know -- no, but I know it concerns  
15:01:02 2 licensing.

15:01:03 3 Q. Do you know whether there is an issue in  
15:01:06 4 this case concerning or an attempt to seek damages  
15:01:09 5 for foreign distribution?

15:01:10 6 A. I don't know.

15:01:12 7 Q. Okay. You make a statement at the bottom  
15:01:13 8 where you say:

15:01:14 9 "The vast majority of the  
15:01:16 10 mechanical and DPD licensing  
15:01:17 11 outside of the U.S. is handled  
15:01:18 12 directly through rights societies  
15:01:20 13 who act on behalf of all publishers  
15:01:22 14 within one territory."

15:01:24 15 Do you see that?

15:01:24 16 A. Correct.

15:01:24 17 Q. You understand that to be the case for --  
15:01:26 18 for composition rights outside of the U.S. Correct?

15:01:28 19 A. Correct. Correct.

15:01:30 20 Q. Do you know whether composition rights for  
15:01:35 21 the compositions at issue in this lawsuit have been  
15:01:38 22 obtained through collecting rights societies outside  
15:01:41 23 of the U.S.?

15:01:43 24 A. I don't know.

15:01:43 25 Q. Did you ask anyone whether that was the

15:01:45 1 case?

15:01:45 2 A. Well, the business practice of licensing  
15:01:48 3 obviously is clear that you need a rights society to  
15:01:51 4 license those works to online music services, so this  
15:01:54 5 is very clear-cut, 'cause I understand the business  
15:01:57 6 practice of licensing outside of the United States,  
15:01:59 7 so.

15:01:59 8 Q. Which is?

15:02:00 9 A. That rights societies --

15:02:02 10 MR. BUSCH: Asked and answered.

15:02:02 11 THE WITNESS: Rights societies license  
15:02:04 12 directly to online music services such as iTunes.

15:02:06 13 BY MR. KLAUS:

15:02:06 14 Q. Do you know whether that happened in this  
15:02:08 15 case with respect to the Eminem compositions?

15:02:08 16 A. I don't know.

15:02:10 17 Q. Did you ask anyone?

15:02:11 18 A. No, 'cause it's very clear that those rights  
15:02:14 19 would be licensed directly from the -- the iTunes,  
15:02:18 20 for example, in the territory of the U.K. or GEMA in  
15:02:20 21 Germany with the rights societies, so.

15:02:21 22 MR. BUSCH: The question was just did you  
15:02:22 23 ask anybody.

15:02:23 24 THE WITNESS: Did -- oh, did -- oh, no.

15:02:24 25 BY MR. KLAUS:

15:02:24 1 Q. Okay. Do you --

15:02:26 2 A. I'm sorry.

15:02:26 3 Q. You stated that the licenses are limited to  
15:02:32 4 the -- to the U.S. Is that -- does the fact that  
15:02:36 5 there's a territorial --

6 MR. BUSCH: Counsel --

7 BY MR. KLAUS:

15:02:38 8 Q. -- limitation to the U.S. --

15:02:38 9 MR. BUSCH: -- when you're at a convenient  
15:02:40 10 breaking point, I'd like to use the post lunch  
15:02:43 11 restroom break, please, but finish your line of  
15:02:44 12 question.

15:02:44 13 BY MR. KLAUS:

15:02:46 14 Q. When -- does the fact that there are  
15:02:48 15 territorial limitations in any of these licenses  
15:02:52 16 affect any opinion that you have regarding the  
15:02:55 17 validity or not of any of the licenses that are in  
15:02:59 18 Exhibit 245, the binder?

15:03:01 19 A. I'm not an attorney, so all I know is that  
15:03:05 20 the -- you need a license for the United States  
15:03:07 21 distribution and -- reproduction and distribution  
15:03:11 22 through Eight Mile Style and you need a license --  
15:03:13 23 iTunes, for example, has an online music service who  
15:03:15 24 needs to obtain a license, from general industry  
15:03:17 25 practice, through the rights societies as outlined

15:03:19 1 here below, so.

15:03:19 2 Q. Do you have any opinion regarding foreign  
15:03:22 3 distribution of any of the compositions at issue in  
15:03:24 4 this case?

15:03:25 5 A. Do I have an opinion in what sense?

15:03:27 6 Q. Any opinion that you're offering for a  
15:03:28 7 purpose of this lawsuit.

15:03:30 8 A. Apple iTunes did -- would have had -- would  
15:03:33 9 have had to get the licenses directly from MCPS and  
15:03:37 10 I'm assuming they didn't.

15:03:38 11 Q. You're what?

15:03:38 12 A. They didn't.

15:03:39 13 Q. How -- why are you assuming they didn't?

15:03:40 14 A. 'Cause it wasn't presented to us.

15:03:41 15 MR. BUSCH: Well, don't assume.

15:03:42 16 THE WITNESS: I --

15:03:43 17 BY MR. KLAUS:

15:03:43 18 Q. Did you ask anyone any- -- did you ask  
15:03:45 19 anyone anything to try to confirm this?

15:03:46 20 A. Oh, no, no, no.

15:03:47 21 MR. KLAUS: Okay. Why don't we stop and  
15:03:49 22 take a minute.

15:03:49 23 MR. BUSCH: Thank you.

15:03:49 24 MR. KLAUS: Take a break.

15:03:51 25 THE VIDEOGRAPHER: Off the record. The time