

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Virgin Records America, Inc.,)
a California corporation;) File No. CV-06-1497
Capitol Records, Inc., a) (MJD/RLE)
Delaware corporation; Sony BMG)
Music Entertainment, a) Duluth, Minnesota
Delaware general partnership;) October 2, 2007
Arista Records, LLC, a) 9:05 a.m.
Delaware limited liability)
company; Interscope Records, a)
California general)
partnership; Warner Bros.)
Records, Inc., a Delaware)
corporation; and UMG)
Recordings, Inc., a Delaware)
corporation,)
)
Plaintiffs,)
)
vs.)
)
Jammie Thomas,)
)
Defendant.)
)

BEFORE THE HONORABLE MICHAEL J. DAVIS and a Jury
UNITED STATES DISTRICT COURT JUDGE

(TRIAL - VOLUME I)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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APPEARANCES

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Court Reporter: LORI A. SIMPSON, RMR-CRR
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

1 counsel to confirm that these are your recordings?

2 A. Yes.

3 Q. What did you do?

4 A. I've seen the files and they match perfectly the artist
5 and song title associated with the copyrighted work owned by
6 my company.

7 Q. Ma'am, you identified, as I counted them, eight Sony BMG
8 and Arista sound recordings that are at issue in this case,
9 correct?

10 A. Correct.

11 Q. Do you know whether Sony BMG Music and Arista have
12 registered copyrights in any or all of those sound
13 recordings?

14 A. We have registered copyrights in all of them.

15 Q. Would you look at Exhibit 3, please.

16 A. Yes. Okay.

17 Q. And I'd ask you to flip through Exhibit 3 and see if
18 you -- tell us if you see any documents that relate to your
19 testimony that Sony BMG and Arista registered these
20 copyrights.

21 A. Okay. The first one that comes up in the book is
22 Journey and it's SR number 30-088. We register copyrights
23 by album, not by track. So this is for the album *Escape*.
24 That's the first one.

25 The next one --

1 MR. TODER: Counsel, could you refer to Bates
2 numbers?

3 MR. GABRIEL: Yes. Thank you.

4 THE WITNESS: It's Bates 0016.

5 The next one is Destiny's Child for the album
6 *The Writing's On the Wall*. This is SR 268-936 and that is
7 Bates 28 and 29.

8 The next one is *Surfacing* by Sarah McLachlan.
9 That's SR 243-027, Bates 26 and 27.

10 The next one is Gloria Estefan, *Cuts Both Ways*,
11 SR 0 -- I'm sorry -- 107-742. That's Bates 583 and 584.

12 The next one is Journey for the album *Frontiers*,
13 SR 43-228, Bates number 571 and 572.

14 And we have Sarah McLachlan's *Fumbling Towards*
15 *Ecstasy*, SR 200-152, Bates 591 and 592.

16 The next one is Gloria Estefan, *Into the Light*,
17 SR 208-812, Bates 593 and 594.

18 Next is Gloria Estefan, *Let It Loose*, SR 83-468,
19 Bates 577 and 578.

20 I think that's it. That appears to be all of
21 them.

22 BY MR. GABRIEL:

23 Q. Did Sony BMG and Arista register all of these
24 copyrights?

25 A. Yes.

1 MR. GABRIEL: I move Exhibit -- those portions,
2 Your Honor, the eight identified in Exhibit 3.

3 MR. TODER: No objection.

4 THE COURT: Be admitted.

5 BY MR. GABRIEL:

6 Q. Now, Ms. Pariser, as you flipped through and looked at
7 all of those, did you not notice that some -- strike that.

8 Let me ask first: The copyright registration
9 forms have the name of the entity registering the
10 copyrights; isn't that correct?

11 A. That's correct.

12 Q. Did you notice that some of the names of the registrants
13 did not match exactly the name Sony BMG Music or Arista?

14 A. Yes.

15 Q. For example, you saw some that said, "CBS Records,
16 Inc."?

17 A. Yes.

18 Q. And at least one called CBS, Inc.?

19 A. Yes.

20 Q. Do Sony BMG Music and/or Arista own the copyrights in
21 all of those?

22 A. Yes, every one.

23 Q. Can you explain that.

24 A. Yes. The names on the SR's -- we call them SR's. That
25 stands for sound recording. The names on the SR's for

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Arista Records, LLC, a) Duluth, Minnesota
Delaware limited liability) October 3, 2007
company; Interscope Records, a) 9:00 a.m.
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BEFORE THE HONORABLE MICHAEL J. DAVIS and a Jury
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(TRIAL - VOLUME II)

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Court Reporter:	LORI A. SIMPSON, RMR-CRR 1005 U.S. Courthouse 300 South Fourth Street Minneapolis, Minnesota 55415

1 Q. And the registration has been filed with the Copyright
2 Office, correct?

3 A. Yeah, the application has been filed and we are waiting
4 for the registration to come back.

5 Q. And you haven't received the registration come back?

6 A. That's correct. There is a backlog at the U.S.
7 Copyright Office.

8 Q. Is it your understanding, ma'am, that having filed the
9 registration, UMG could pursue that recording in this case?

10 THE COURT: Counsel, why don't you ask nonleading
11 questions. This is your witness.

12 MR. GABRIEL: I'll do that.

13 BY MR. GABRIEL:

14 Q. Why have you chosen not to pursue that copyright
15 recording in this case, Godsmack's -- I'm sorry --
16 Godsmack's "Moon Baby" in this case?

17 A. Although UMG does own that recording, for simplicity's
18 sake, because the certificate hasn't been issued yet, we
19 opted to withdraw that from the case.

20 Q. Ma'am, you've identified a number of UMG and Interscope
21 recordings that are at issue, right?

22 A. Yes, I have.

23 Q. Do you know whether UMG and Interscope Records have
24 registered the copyrights in those recordings?

25 A. Yes, they have.

1 Q. Could I ask you to look at Exhibit 3, please.

2 A. I have it in front of me.

3 Q. And, ma'am, I would like to ask you if you would flip
4 through Exhibit 3 and tell us when you come to a UMG or
5 Interscope copyright registration form; and when you get
6 there, identify it by the SR number and the Bates number for
7 counsel.

8 A. The first one is SR number 206-724, Bates number
9 Thomas, J (MN)0022 and 23.

10 Q. Which song is that for?

11 A. It relates to all the tracks on the No Doubt album
12 *Tragic Kingdom*. So it relates specifically to the recording
13 "Different People."

14 Q. Please continue.

15 A. The next one is SR 85-358, Bates number 0579 to 80.
16 This is for the album *Appetite For Destruction* by Guns N'
17 Roses and the recordings thereon. So it relates
18 specifically to the Guns N' Roses recording "Welcome to the
19 Jungle."

20 The next one is SR 111-365, Bates number 0587
21 through 88, which relates to the Vanessa Williams album *The*
22 *Comfort Zone* and the recordings thereon. So it applies to
23 recording "Let's Wait Awhile" [sic].

24 Q. I'm sorry. Ma'am, what SR number was that?

25 A. I apologize. It's SR 141-365.

1 Q. And which recording is that?

2 A. Vanessa Williams, "Save the Best For Last." It applies
3 to the album *The Comfort Zone*.

4 Q. Thank you. And then if you can go back to Guns N'
5 Roses. I may have misheard you. Which particular Guns N'
6 Roses' track are you talking about that relates to this
7 case?

8 A. That is -- the track that's at issue in this case is
9 "Welcome to the Jungle," which was on the album *Appetite For*
10 *Destruction*.

11 Q. And what SR number is that?

12 A. 85-358.

13 Q. Thank you. Please continue.

14 A. The next one is SR 69-529, Bates number 0575 through 76.

15 Q. I'm sorry. Again, which SR number?

16 A. SR 69-529.

17 Q. And what recording does that relate to?

18 A. It relates to the Janet Jackson recording "Let's Wait
19 Awhile."

20 The next one is SR 153-061, Bates number 0589
21 through 90, and this relates to the recording "Cryin'" by
22 Aerosmith.

23 The next one is SR 90-420, Bates number 0581
24 through 82, and this relates to Def Leppard's "Pour Some
25 Sugar on Me."

1 The next one is SR 256-807, Bates number 0601 to
2 0602, which relates to Reba McIntyre's "One Honest Heart."

3 The next one is SR 58-024, Bates number 0573
4 through 74. This relates to "Somebody" by Bryan Adams.

5 The next one is SR 279-727, Bates number 0603
6 through 0604. This relates to the track "Bathwater" by
7 No Doubt.

8 The next one is SR 305-872, Bates number 0607
9 through 0608, and this relates to "Hella Good" by the artist
10 No Doubt.

11 The next one is SR 209-823, Bates number 0595
12 through 0596, and this relates to "Run, Baby, Run" by Sheryl
13 Crow.

14 And then SR 134-647, Bates number 0585 through
15 0586, and that relates to the track "November Rain" by
16 Guns N' Roses.

17 Q. Have you now found all of them, ma'am?

18 A. That's the end of the exhibit, yes.

19 Q. Ma'am, each of these has a date on it?

20 A. Yes, they do.

21 Q. Were each of these documents prepared on or about the
22 dates that they bear?

23 A. Yes.

24 Q. Were they prepared in the ordinary course of UMG's
25 business?

1 A. Yes, they were.

2 Q. Were they maintained in the ordinary course of UMG's
3 business?

4 A. Yes, they are.

5 MR. GABRIEL: Your Honor, I'll move those
6 exhibits -- or those documents within Exhibit 3.

7 MR. TODER: May I voir dire the witness on those,
8 Your Honor?

9 THE COURT: You may.

10 **VOIR DIRE EXAMINATION**

11 BY MR. TODER:

12 Q. You were just asked, Ms. Cho, about how these documents
13 were prepared and who prepared them.

14 A. I did not, no.

15 Q. Do you know who prepared these documents?

16 A. There's a signatory on each of these documents. They
17 were prepared by the copyright departments of the various
18 record labels.

19 Q. They weren't necessarily prepared by your company,
20 correct?

21 A. I guess I'm not sure what you mean by my company. They
22 were -- all the companies listed on these are either
23 Interscope Records or predecessors of the UMG Recordings
24 group.

25 Q. So the David Geffen Company is related to Interscope or

1 UMG?

2 A. Yes, it is.

3 Q. How is it related?

4 A. The David Geffen Company, which later changed its name
5 to Geffen Records, Inc., was merged into UMG Recordings,
6 Inc., in 1999.

7 Q. What about Polygram?

8 A. Polygram Records, Inc., is a former name of UMG
9 Recordings, Inc. It's the same company.

10 Q. A&M Records?

11 A. A&M Records, Inc., was merged into UMG Recordings, Inc.,
12 also in 1999.

13 Q. And we just mentioned Geffen. I guess there's two,
14 there's a David Geffen Company and there's Geffen Records,
15 Inc.

16 A. The David Geffen Company is a former name of Geffen
17 Records, Inc. After it changed its name, it was merged into
18 UMG Recordings, Inc.

19 Q. Mercury Records?

20 A. Mercury Records was a label name of Polygram Records,
21 Inc., which subsequently changed its name to UMG Recordings,
22 Inc.

23 Q. MCA Records Nashville?

24 A. MCA Records Nashville is a division. I believe on this
25 SR it's listed as a division of MCA Records, Inc. It is

1 still a division, but MCA Records, Inc., was merged into UMG
2 Recordings, Inc., again in 1999.

3 Q. And these certificates of copyrights that we have just
4 been talking about, these were certificates of copyrights
5 that you produced to defendant when we asked for requests
6 for production of documents?

7 A. I wasn't involved in producing documents.

8 Q. Did you sign a verification?

9 A. For the production of documents?

10 Q. Yes, for interrogatories.

11 A. I did.

12 Q. And didn't the interrogatories refer to certain
13 documents that were going to be produced?

14 A. I believe it did. I don't recall what specific
15 documents those were.

16 Q. Well, we'll get to that on cross.

17 MR. TODER: In the meantime, no objection, Your
18 Honor.

19 THE COURT: Be admitted.

20 MR. GABRIEL: Thank you, Your Honor.

21 THE COURT: Let's stop here and take a 15-minute
22 break, take a 15-minute break. All rise for the jury.

23 (Recess taken at 3:10 p.m.)

24 * * * * *

25 (3:25 p.m.)

1 A. Yes, I did.

2 Q. And what did you find?

3 A. We did not spoof these songs.

4 Q. Ma'am, of the three Warner Bros. Records that you just
5 identified, do you know whether Warner Bros. Records has
6 registered the copyrights in any or all three of those?

7 A. All three, yes.

8 Q. And that's part of your job, correct?

9 A. Yes, it is.

10 Q. Can I ask you to look at Exhibit 3, please. Ma'am, when
11 you get there, I will ask you to flip through that exhibit
12 and when you get to one that -- a recording that's one of
13 yours, would you let us know, tell us the SR number and
14 there's something called a Bates number at the bottom.

15 A. Okay. First one is SR 185-457. It is for the recording
16 "Basket Case" by Green Day and it's Thomas J, (MN)0020.

17 Q. All right.

18 A. The next one is SR 246-538. It's for "Iris" by the
19 Goo Goo Dolls and it's Thomas J, (MN)0599.

20 The last one is SR 288-402. That's for "One Step
21 Closer" by Linkin Park, Thomas J, (MN)0605.

22 Q. Thank you, ma'am. Did you notice that there are dates
23 on all these SR's?

24 A. Yes.

25 Q. Were these prepared on or about the date that they bear?

1 A. Yes.

2 Q. And are these documents prepared in the ordinary course
3 of Warner Bros. Records' business?

4 A. Yes, they are.

5 Q. Are they kept in the ordinary course of Warner Bros.
6 Records' business?

7 A. Yes, they are.

8 MR. GABRIEL: Move those three SR's, Your Honor.

9 MR. TODER: No objection.

10 THE COURT: Be admitted.

11 BY MR. GABRIEL:

12 Q. Ms. Brown, prior to the issues that bring us here, did
13 Warner Bros. sell legitimate versions of these three
14 recordings?

15 A. Yes, we did.

16 Q. Are you familiar with something called a copyright
17 notice?

18 A. Yes.

19 Q. What do you understand that to be?

20 A. A little "C" circle.

21 Q. And were those notices placed on these recordings?

22 A. Yes.

23 MR. GABRIEL: Your Honor, may I approach?

24 THE COURT: You may.

25 BY MR. GABRIEL:

1 defendant had distributed a recording by Janet Jackson by
2 the title of -- I think it's called "Come Back to Me." It's
3 a title similar to "Back," but it wasn't exactly "Back."

4 And that recording is actually owned by Universal,
5 one of the co-plaintiffs in this case. It's not the
6 version -- I'm sorry. It's not the recording "Back" by
7 Janet Jackson that Virgin owns and therefore Virgin has
8 dropped its claim with respect to the recording "Back."

9 Q. Do you understand how "Back" got on this list?

10 A. You know, I don't specifically. Again, they have
11 similar titles and I think it was -- I assume it was just an
12 error in transcription. When creating this Exhibit A, "Come
13 Back to Me" was written down as "Back." Instead of
14 Universal, Virgin was listed as the owner. I think that's
15 how it happened.

16 Q. And once that clerical error came to your attention,
17 Virgin Records decided not to pursue that recording?

18 A. That's correct.

19 Q. Sir, you identified the one Capitol recording, Capitol
20 Records recording at issue in the case, the Richard Marx
21 song, correct?

22 A. Yes.

23 Q. Do you know whether Capitol has registered a copyright
24 in that recording?

25 A. I do, yes.

1 Q. Could I ask you to look at Exhibit 3.

2 A. Sure. Okay.

3 Q. And if I could ask you to look through that and see if
4 you can find the SR for that recording.

5 A. Yes, I have it here. I think it's the second SR in this
6 packet. It's SR number 210-246.

7 Q. The Bates number too, please?

8 A. I'm sorry. The Bates number is Thomas, J 0024 and 0025.

9 Q. Did Capitol Records prepare -- there's a date on there,
10 correct?

11 A. Correct.

12 Q. And did Capitol Records prepare this document on or
13 about the date it bears?

14 A. Yes. As far as I know, yes.

15 Q. And was it created in the ordinary course of Capitol's
16 business?

17 A. Yes.

18 Q. Was it kept in the order course of Capitol's business?

19 A. Yes, it was.

20 MR. GABRIEL: Move Exhibit 5, Your Honor.

21 MR. TODER: No objection.

22 THE COURT: Be admitted.

23 BY MR. GABRIEL:

24 Q. Mr. Bavitz, did Capitol Records ever give the defendant,
25 Jammie Thomas, a license or authorization to copy any of its

1 accompanies the CD.

2 Q. Thank you, sir.

3 MR. GABRIEL: Your Honor, just as housekeeping, I
4 cannot remember if I offered the Capitol certificate of
5 registration that was in Exhibit 3. If I haven't, I'll move
6 that. I think I did.

7 MR. TODER: I'm sorry?

8 MR. GABRIEL: The Capitol SR in Exhibit 3, I can't
9 remember if I moved it in. I think I did.

10 MR. TODER: If you did not -- well, we don't
11 object anyway.

12 THE COURT: Be admitted.

13 MR. GABRIEL: I think I neglected, Your Honor,
14 when I showed the last witness, Ms. Brown, the CD's, the
15 actual CD's that Warner owns, I think I neglected to move
16 those into evidence. I would move those.

17 MR. TODER: No objection.

18 THE COURT: Be admitted.

19 MR. GABRIEL: If I can just have a moment, Your
20 Honor?

21 THE COURT: (Indicating.)

22 (Pause.)

23 MR. GABRIEL: No further questions, Your Honor.

24 MR. TODER: Thank you, Your Honor.

25