

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YOKO ONO LENNON, SEAN ONO LENNON,  
JULIAN LENNON, and EMI BLACKWOOD  
MUSIC, INC.,

08 CV 3813 (SHS)(FM)

Plaintiffs,

-against-

PREMISE MEDIA CORPORATION, L.P., C&S  
PRODUCTION L.P. *d/b/a* RAMPANT FILMS,  
PREMISE MEDIA DISTRIBUTION L.P. AND  
ROCKY MONTAIN PICTURES, INC.,

Defendants.

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**DECLARATION OF WALTER "CHIP" CRONKITE III**

I, Walter Cronkite III, declare and state:

**INTRODUCTION AND SUMMARY**

1. I am a film producer, editor, and the sole proprietor of Cronkite Productions, Incorporated, located in New York City. (A copy of my curriculum vitae is attached to this Declaration as Exhibit A.) I have been asked to assess the costs and time involved in editing the use of a portion of John Lennon's "Imagine" ("Imagine") in the film *Expelled* (the "Movie"), (the "Imagine Segment").

2. I have reviewed and assessed the Movie, from the perspective of a film editor and producer, and the Imagine Segment, to determine: (i) its context in

relationship to the Movie as a whole; (ii) the feasibility of its removal; and (iii) the costs and time of the necessary re-editing and re-printing.

### **MY ANALYSIS OF THE CONTEXT OF THE IMAGINE SEGMENT IN THE MOVIE**

3. Approximately 64 minutes 27 seconds into the Movie, the interviewee 'Dr.

Myers says:

"Greater science literacy, which is going to lead to the erosion of religion, and then we'll get this nice positive feedback mechanism going, where, as religion slowly fades away, we get more and more science to replace it, and that will displace more and more religion, which will allow more and more science in, and we'll eventually get to that point where religion has taken that appropriate place as - as a side dish rather than the main course."

4. At approximately 64 minutes 50 seconds into the Movie, the narrator, Ben Stein, states: "Dr. Myers would like you to think that he's being original, but he's merely lifting a page out of John Lennon's songbook." At approximately 64 minutes 56 seconds, the Imagine Segment begins with audio of John Lennon performing the song "Imagine". The Imagine Segment, and the audio, end at approximately 65 minutes 12 seconds.

5. The picture for the Imagine Segment consists of four scenes, apparently stock footage: children playing in a circle, a young girl dancing with an umbrella, a Soviet national parade, and Joseph Stalin, waving. At approximately 64 minutes 59 seconds and approximately 65 minutes 5 seconds, John Lennon's lyrics "Nothing to kill or die for, and no religion too" are superimposed over the footage, in sync with the audio of John Lennon singing the lyrics.

6. At approximately 65 minutes 11 seconds, the footage of Joseph Stalin cuts to a segment with 'Professor Berlinski', who states:

"In part, I think Matthew Arnold put his hands on it when he spoke about the withdrawal of faith. There is a connection between a society that has at least a minimal commitment to certain kinds of transcendental values and what human beings permit themselves to do one to the other."

**MY ANALYSIS OF THE FEASIBILITY OF THE  
REMOVAL OF THE IMAGINE SEGMENT**

7. I was asked by the attorneys for the Plaintiffs to review this section of the Movie in order to explore the feasibility and costs involved with removing the Imagine Segment.

8. On Wednesday, May 14, 2008, I worked with David Heidelberger, who is an Editor at Lopes Picture Company, located at 29 East 19<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, New York 10003. Working with Final Cut Pro editing software, we were able to re-edit the Movie to remove the Imagine Segment. A 54 second edit is attached hereto as Exhibit B<sup>1</sup> (the "Edit").

9. It is my opinion that the Edit does not adversely affect the visual continuity of the Movie. Although the Movie often uses stock footage and source music for entertaining transitions between interviews, it also sometimes cuts directly from one interview to the next with no stock footage or source music to supplement the transitions. In fact, during the course of the film there are at least forty (40) transitions directly from interview to interview. Thirty-seven of these are direct cuts from interview to interview representing concurring arguments. Nine are direct cuts

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<sup>1</sup> I was instructed by Ms. Weber that no copies of the edit could be retained and I delivered the only hard copy of the edit to her. The relevant information on the hard drive of the computer which was used to edit the segment was deleted.

from interview to interview designed to contrast opposing arguments, as in the Imagine Segment. They occur at approximately 30 minutes 24 seconds, 31 minutes 8 seconds, 42 minutes 38 seconds, 47 minutes 23 seconds, 47 minutes 35 seconds, 48 minutes 0 seconds, 48 minutes 18 seconds, 82 minutes 2 seconds, and 82 minutes 8 seconds.

10. The Edit created as Exhibit B, a direct cut from one interview to another, without stock footage or source music, conforms to one of the many editing styles used throughout the Movie and is therefore seamless.

11. To a first-time viewer of the Movie, the Imagine Segment does not appear to have been removed, because the resulting visual continuity matches that of the rest of the Movie.

12. The narrative continuity is also unaffected, because ‘Dr. Myers’ statement “...where religion has taken that appropriate place ...” is immediately followed by, and so constructed to respond to, Prof. Berlinski’s statement about “...the withdrawal of faith...”.

### **THE COSTS AND TIME INVOLVED IN THE RE-EDITING PROCESS**

13. It took approximately 5 minutes to transfer the portion of the Movie containing the Imagine Segment from DVD to a computer with Final Cut Pro editing software. It then took approximately 10 minutes to re-edit the Movie to remove the approximately 22 seconds containing the Imagine Segment. It then took approximately 5 minutes to record the new edit onto a DVD. The total editing time was approximately 20 minutes.

14. Because the editing facility requires paying for a 2-hour minimum, the total cost for rental of the facility and the fees charged by myself and my editor was \$600.00.

15. Because the Movie is “locked” for duplication, the costs for re-editing the portion of the Movie that includes the Imagine Segment will also include other costs, such as: shipping the edited master and the M&E (Music and Effects) audio tracks to the editing facility; transferring the entire Movie into the editing computer before the re-edit process and then transferring it out entirely afterwards, for an additional 3 hours of editing time, approximately; re-mixing approximately 1 minute of audio, for an additional 1 hour of editing time or 2 hours of audio studio time; striking approximately 1 minute of new inter-negative; re-editing the master negative.

16. Re-editing the Tail Credits to remove or rewrite the Imagine credit would involve approximately 30 minutes of editing and as much as 2 hours of re-rendering the graphics (re-rendering can usually be done simultaneously with other editing), and a new inter-negative to cut in.

17. Total cost and time estimate: \$2,250 and 2 days. (One day of supervised editing - \$1,200. Three minutes of new inter-negative - \$900. Negative cutting - \$150.)

**THE COSTS AND TIME INVOLVED IN THE  
RE-PRINTING PROCESS**

18. I have worked over the years with Technicolor Film Laboratory in New York, now located at 110 Leroy Street, New York, NY 10014. The cost to print 35MM is approximately .14¢ a foot, or approximately \$280 for a 2000' reel. Since two reels of the Movie would require re-printing - the reels containing the Imagine Segment and the Tail Credits - the total cost of re-printing would be approximately \$560 per 35MM copy of the Movie, or \$56,000 for 100 35MM prints. Without extra rush charges, this could be done in approximately 4 business days.

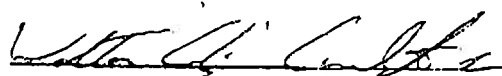
19. DVD copies can be duplicated for approximately \$2 each, overnight.

**CONCLUSION**

20. The maximum time involved in the edit and duplication process is no more than approximately 6 business days.

21. The total costs involved in re-editing are approximately \$2,250. The total costs for re-printing 100 copies for theatrical release are approximately \$56,000.

Further Declarant sayeth not and I declare under the penalty of perjury that the foregoing is true and correct. Executed on May 16, 2008, in New York, New York.



WALTER "CHIP" CRONKITE III