

**EXHIBIT 1 TO THE DECLARATION OF
RICHARD S. MANDEL, ESQ.**

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CERTIFIED COPY

CAPITOL RECORDS, LLC,)
)
Plaintiff,) 12 Civ. 0095 (RJS)
)
vs.)
)
REDIGI INC.,)
)
Defendant.)
-----)

* CONFIDENTIAL - ATTORNEYS' EYES ONLY *

* CONTAINS OUTSIDE COUNSEL ONLY PORTIONS *

DEPOSITION OF JOHN MARK OSSENMACHER

New York, New York

Tuesday, June 19, 2012

Reported by: KRISTIN KOCH, RPR, RMR, CRR, CLR

JOB NO. 50450

1 Ossenmacher - Confidential - Attorneys' Eyes Only
2 about digital for sale.

3 Q. Was there a report that the
4 copyright office had commissioned that actually
5 looked at the question of First Sale Doctrine
6 in the digital context?

7 A. I do recall reading some
8 documentation in that area and I recall reading
9 some things about finding robust forward and
10 delete systems and, you know, recommendations
11 of such which, again, we believe we comply
12 with.

13 Q. Do you recall that the copyright
14 office actually in the early 2000s studied the
15 question of how, if at all, the First Sale
16 Doctrine applied in a digital context?

17 MR. ADELMAN: Objection to form.
18 You can answer.

19 A. I may have read it, but technology
20 changed significantly from 2000 forward, and so
21 the information they had when they did their
22 studies in 2000 certainly wasn't anywhere near
23 what was happening in --

24 Q. Okay, but I am going to ask you, if
25 you can, I appreciate the narrative and I

1 Ossenmacher - Confidential - Attorneys' Eyes Only
2 really do want to get your understanding, but I
3 am also asking you -- separate and apart from I
4 understand there may be reasons why what they
5 concluded you think doesn't apply, there may be
6 a lot of things you have to say about it and we
7 can talk about that, but I just want to first
8 understand very specifically did you actually
9 have occasion to look at that document and read
10 it?

11 A. I don't recall the specific
12 document, but I recall reading so many
13 documents and my thoughts are what I had said
14 there.

15 Q. But I assume you understand that the
16 copyright office has a particular role with
17 respect to the administration of the copyright
18 statute; right?

19 MR. ADELMAN: Objection to the form.
20 You can answer.

21 A. I understand that the copyright
22 office obviously has a lot to do with copyright
23 law.

24 Q. And I would assume that if the
25 copyright office is studying the very question

1 Ossenmacher - Confidential - Attorneys' Eyes Only
2 that you are trying to answer, that would be
3 something that might be of particular interest;
4 correct?

5 A. Definitely, absolutely of interest,
6 and that's part of the reason for the reading
7 of those documents, but, again, when we read
8 what people write and what their thoughts are
9 at the time, those thoughts actually helped
10 guide us to build the system we built.

11 Q. Okay. That's fair. We will get to
12 that.

13 Let me ask you first did you
14 understand that the copyright office's
15 conclusion when it looked at the question was
16 that the statute as it existed did not provide
17 a First Sale defense in a digital context?

18 MR. ADELMAN: Objection to form.

19 A. Absolutely not.

20 Q. That wasn't your reading of it?

21 A. Absolutely not.

22 Q. Did you have any understanding of
23 whether the copyright office evaluated whether
24 making a copy had any impact on whether the
25 First Sale Doctrine would apply?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

Q. When did ReDigi get formed as a
corporate entity?

25

A. In May -- April, May of 2011.

1 Ossenmacher - Confidential - Attorneys' Eyes Only

2 Q. And you described the evolution of
3 your idea with the gift of music. How did that
4 evolve into the ReDigi concept? Can you
5 describe how that transformation took place?

6 A. So I would say in early 2011 we
7 started to do a little bit more work with --
8 once we felt we had a technological solution we
9 wanted to look at how would we bring gift music
10 to market and what we realized through user
11 groups -- we did some student user groups when
12 we had students. What we learned through those
13 was people thought it was a cool idea, but they
14 probably wouldn't use it that regularly to
15 donate music, and so then the idea came
16 basically from that was, you know, if you guys
17 would allow us to be able to resell our music,
18 then we would be coming to your site regularly
19 and we would probably donate more, because it
20 would be something we would feel more
21 comfortable doing, so the whole concept then of
22 making the business a marketplace where people
23 could buy and sell used digital music and
24 donate used digital music, that's where that
25 really evolved, is that became more of an ideal

1 Ossenmacher - Confidential - Attorneys' Eyes Only
2 for how we could actually launch a successful
3 business rather than have something that nobody
4 would use.

5 Q. You made reference to a
6 technological solution. How did -- describe
7 for me the process of how that came to be
8 formed.

9 A. Again, with Larry, you know, we
10 spent a lot of time trying to figure out that
11 issue we talked about, many issues, but the key
12 issue that we wanted a solution to was how do
13 we exchange title of a good autonomically or
14 simultaneously with the exchange of cash or
15 ownership and so the whole idea of the
16 in-the-cloud transaction was what we solved and
17 that was some of the patent matter that
18 Jonathan went over with Larry yesterday.

19 Q. How did you meet Larry Rudolph?

20 A. I met Larry in an airport and, you
21 know, we started talking about various things.
22 It's just a matter of how small the world is.
23 I had read his book on bluetooth, because in
24 the arena business bluetooth communications was
25 key to some of the app development we were

1 Ossenmacher - Confidential - Attorneys' Eyes Only

2 A. Larry can better answer that than I.

3 Q. To your understanding in terms of
4 how long it took.

5 A. I think it was reasonably complex,
6 yes.

7 Q. Now, once you had settled on the
8 idea that this transaction was going to take
9 place in the cloud, I take it you also had to
10 discuss how is the digital file going to get to
11 the cloud to be transferred; correct?

12 A. Correct.

13 Q. And did you then at that point when
14 you realized that you would need to get
15 something to the cloud to transfer, did you
16 discuss with Mr. Rudolph how to implement that?

17 A. Yes.

18 Q. Tell me everything you can remember
19 about that discussion.

20 A. It was more than one discussion. We
21 had numerous discussions on all of these
22 topics. I mean, discussion ranged anywhere
23 from how are people getting things to the
24 cloud. At that point in time there were other
25 cloud services that existed. How do people get

1 **REDACTED**
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **REDACTED**
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, KRISTIN KOCH, a Notary Public within and for the State of New York, do hereby certify:

That JOHN MARK OSSENMACHER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2012.

-----*Kristin Koch*-----

KRISTIN KOCH, RPR, RMR, CRR, CLR