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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL, CHIEF JUDGE

	)	NO. MDL-00-1369 MHP
IN RE: NAPSTER COPYRIGHT	)	C 99-5183 MHP
LITIGATION	)	WEDNESDAY, JULY 11, 2001
	)	
		SAN FRANCISCO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR A & M RECORDS: MITCHELL, SILBERBERG & KNUPP
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LOS ANGELES, CALIFORNIA 90064-1683

BY: RUSSELL J. FRACKMAN, ESQUIRE
GEORGE M. BORKOWSKI, ESQUIRE

FOR MUSIC PUBLISHER PLAINTIFFS: COBLENTZ, PATCH, DUFFY & BASS
22 KEARNY STREET, 7TH FL.
SAN FRANCISCO, CALIFORNIA 94108

BY: JEFFREY G. KNOWLES, ESQUIRE

(APPEARANCES CONTINUED ON NEXT PAGE.)

REPORTED BY: KATHERINE WYATT,
OFFICIAL COURT REPORTER, USDC

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BY: STEVEN M. COHEN, ESQUIRE
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600 CHESAPEAKE DRIVE
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24

25

ALSO PRESENT:

A.J. NICHOLS, PH.D.
PROBITAS CORPORATION
27 PRESTON ROAD
WOODSIDE, CALIFORNIA 94062

AND DAN FARMER, EXPERT CONSULTANT

AND RICHARD AULT AND RICHARD CAREY, FROM NAPSTER

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JULY 11, 2001 11:30 O'CLOCK A.M.

P R O C E E D I N G S

THE COURT: HE'S ONLY SITTING UP HERE TO TAKE NOTES. I'M NOT GOING TO PUT HIM UNDER OATH AND SO FORTH.

BUT I DIDN'T KNOW THAT IT WAS -- I DIDN'T REALLY THINK IT WAS GOING TO BE PARTICULARLY USEFUL AT THIS JUNCTURE TO MEET IN THERE AND HAVE ONE OF THESE BACK AND FORTH AND SO ON AND SO FORTH.

I THINK AS HE HAD INDICATED AND I INDICATED TO YOU EARLIER, HE HAS MET ON NUMEROUS OCCASIONS WITH PEOPLE FROM NAPSTER AND GOT A SENSE OF WHERE THINGS ARE GOING AND WHAT SOME OF THE PROBLEMS ARE AND SO FORTH, AND HAS INCLUDED THAT, YOU KNOW, IN HIS REPORT.

THERE WAS INFORMATION OR INQUIRIES HE HAD OF PLAINTIFFS THAT HE WANTED TO GET SOME SENSE OF WHERE, WHAT PROBLEMS THEY SAW OR WHAT WAS NOT ADDRESSED THAT THEY THOUGHT NEEDED TO BE ADDRESSED, ET CETERA.

AND IN DISCUSSING IT WITH HIM, IT SEEMS TO ME THAT THERE'S SOME OF THAT BACK AND -- I DON'T KNOW WHAT THAT'S ALL ABOUT.

MR. COHEN: IT'S LIGHTENING, YOUR HONOR, LIGHTENING STRIKING.

THE COURT: NO, I DON'T THINK IT'S LIGHTENING STRIKING.

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MR. COHEN: MAYBE IT'S JUST A LOOSE BULB.

THE COURT: IT'S A MESSAGE FROM GRAY DAVIS MAYBE, OR SOMEBODY.

BUT THERE A LOT OF THEM, THOUGH, THAT'S WHAT STRANGE.

LAW CLERK: THERE'S A LIGHTING PROBLEM IN THE HALLWAY.

THE COURT: OH, IS THAT IT? OH, THIS IS BROUGHT TO YOU BY GSA. OKAY.

BUT THAT IT WOULD BE USEFUL FOR HIM, AND I HAVE AUTHORIZED HIM TO GO BACK AND FORTH BETWEEN YOU, YOU KNOW, SO THAT HE DOESN'T HAVE LAWYERS ON BOTH SIDES ARGUING IN BOTH OF HIS EARS AT THE SAME TIME, TO GET A SENSE OF WHERE YOU PERCEIVE -- THE PLAINTIFFS PERCEIVE PROBLEMS THAT HAVE NOT BEEN ADDRESSED OR ADEQUATELY ADDRESSED OR WHATEVER, AND THEN TO TAKE THOSE UP WITH DEFENDANTS AND TO GET SOME SENSE OF HOW THINGS ARE GOING WITH DEFENDANTS AND VICE VERSA.

AND I KNOW THAT IF WE SAT IN THAT ROOM THAT'S WHAT I WOULD HEAR IS THAT BACK AND FORTH. AND, ACTUALLY, IT'S THE WORK THAT HAS TO BE DONE TO ACCOMPLISH THE PURPOSES OF ALL OF THIS THAT IS WHAT IS IMPORTANT. AND THAT'S THE TECHNICAL WORK AND NOT MY HEARING A LOT OF ARGUMENT.

HOWEVER, I MEAN, THINS DO HAVE TO MOVE. SO I SAID SOMETHING ABOUT THE PURPOSE OF TODAY AND BEING MAKE OR BREAK. AND TO SOME EXTENT I THINK THAT IS STILL APPROPRIATE. AS I

UNDERSTAND IT NOW, THE NAPSTER SYSTEM IS DOWN INSOFAR AS THE CAPACITY FOR DOWNLOADING, SO FORTH.

AND I THINK WE'RE AT A POINT WHERE IT HAS TO STAY THAT WAY UNTIL YOU SATISFY DR. NICHOLS AND ME THAT WHEN THE SYSTEM GOES BACK UP IT WILL BE ABLE TO BLOCK OUT OR SCREEN OUT COPYRIGHTED WORKS THAT HAVE BEEN NOTICED.

IN OTHER WORDS, NOTICED WORKS, I'LL REFER TO THEM. AND DO IT WITH SUFFICIENT DEGREE OF RELIABILITY AND SUFFICIENT PERCENTAGE. ESSENTIALLY, IT SHOULDN'T BE AN ATTEMPT TO ACHIEVE; IT SHOULD ACHIEVE ALL. ADMITTEDLY, THERE MAY BE SOME GLITCHES HERE OR THERE. WE WILL HAVE TO TAKE A LOOK AT THOSE.

AND I UNDERSTAND ALSO THAT DATA FROM THE ALBUMS OR FROM ALBUMS IS GOING TO BE PUT ON THERE, AS WELL. AND UNTIL THAT IS DONE AND UNTIL THE SYSTEM IS AT A POINT WHERE IT HAS BEEN TESTED AND IT CAN KEEP OUT COPYRIGHTED -- OR EXCUSE ME -- NOTICED WORKS, THEN IT DOESN'T GO BACK UP.

IN OTHER WORDS, YOU'RE GOING TO HAVE TO GET AUTHORIZATION FROM THE COURT IN ORDER FOR IT TO PERFORM, TO GO BACK UP ESSENTIALLY AND PERFORM THOSE FUNCTIONS OF DOWNLOADING MUSIC AND COPYING MUSIC; IS THAT CLEAR?

MR. COHEN: YOUR HONOR, IF WE MIGHT BE HEARD ON THAT.

THE COURT: YES.

MR. COHEN: I'M STEVE COHEN FOR NAPSTER.

THE COURT: YES.

MR. COHEN: AND I GUESS I HAVE A COUPLE OF REMARKS ADDRESSED DIRECTLY TO WHAT THE COURT IS SAYING. AND I'M SOMEWHAT SURPRISED BY WHAT THE COURT IS SAYING.

THE COURT: WHY? I THINK THAT IT WAS PERFECTLY CLEAR FROM THE LAST TIME YOU WERE HERE THAT I WAS GOING TO SHUT IT DOWN IF, IN FACT, YOU HAD NOT DONE WHAT YOU WERE SUPPOSED TO DO. YOU'VE NOW TURNED IT OFF BECAUSE, YOU KNOW, IT IS DOWN. AND IT SHALL NOT GO BACK UP UNTIL WE'VE ACCOMPLISHED WHAT NEEDS TO BE ACCOMPLISHED.

MR. COHEN: WELL, YOUR HONOR, I MEAN PART OF THE QUESTION, I THINK, IS: WHAT IS THE GOAL LINE? AND JUST SO THAT THE HISTORY OF THE PAST --

THE COURT: THAT IT SCREENS OUT OR BLOCKS NOTICED WORKS.

MR. COHEN: YOUR HONOR, ON THE 27TH THE SYSTEM WAS LAUNCHED, WHICH WAS MY UNDERSTANDING ONE OF THE COURT'S PRIMARY GOALS, IF NOT THE PRIMARY GOAL, WAS THAT WE GET THE SYSTEM UP. AND ALSO THAT WE NOT ENGAGE IN ANY INFRINGEMENT IN VIOLATION OF THE COURT'S ORDER. THAT NO NOTICED WORKS BEYOND THE SYSTEM UNDER THE CIRCUMSTANCES IN WHICH WE HAD KNOWLEDGE, AND THAT THE SCREENING OPERATE EFFECTIVELY.

AND AS A RESULT WE AGREED TO IMPLEMENT THE AUDIO FINGERPRINTING TECHNOLOGY. WE DEVELOPED IT IN A CRASH PROGRAM THAT I THINK IS UNPRECEDENTED. AND WE SUCCEEDED.

NOW, OUT OF AN ABUNDANCE OF CAUTION WHEN WE BEGAN TO

GET INITIAL DATA THAT SUGGESTED THAT THERE MIGHT BE A PROBLEM, AND A PROBLEM OF SCOPE IN NATURE WE WERE NOT SURE OF, WE DECIDED TO DO WHAT WE THOUGHT WAS THE RESPONSIBLE THING.

AND, YOUR HONOR, I'M RELATIVELY NEW TO THIS CASE, BUT THE ONE THING I PICKED UP FROM READING THE TRANSCRIPTS AND I'VE PICKED UP FROM THE LAST CONFERENCE WAS THAT THIS COURT EXPECTS THIS DEFENDANT TO BEHAVE RESPONSIBLY.

AND SO THE DECISION WAS MADE TO DO WHAT WE PERCEIVED TO BE THE RESPONSIBLE THING WHICH WAS TO VOLUNTARILY SHUT OFF TRANSFERS UNTIL WE WERE CERTAIN TO A DEGREE THAT THE ENGINEERS WERE COMFORTABLE WITH THAT WHEN WE TURNED BACK ON THAT THOSE PROBLEMS WOULD HAVE BEEN TAKEN CARE OF.

AND, IN FACT, WE MADE TREMENDOUS STRIDES. WE SOLVED THE MAIN PROBLEM. ON JULY 5TH THERE WAS SOME ADDITIONAL TINKERING AND ANOTHER PROBLEM, A PROBLEM OF HUMAN ERROR OCCURRED, WHICH WE SOLVED THREE HOURS LATER. THERE WAS A THREE-HOUR WINDOW WHERE WE HAD, AS WE DISCUSS IN OUR REPORT TO THE COURT, THE BLOCKING WAS OFF.

AND OTHER THAN THAT, ESPECIALLY IN THE LAST FOUR DAYS OR SO, SINCE JULY 6, ALL OF OUR TESTING INDICATES THAT WE ARE -- WE ARE APPROACHING A SYSTEM THAT HAS A ZERO RATE OF ERROR.

AND, YOUR HONOR, IN ALL CANDOR ACCORDING TO WHAT THE ENGINEERS TELL ME YOU'LL NEVER GET TO A ZERO BECAUSE THAT WOULD ASSUME HUMAN PERFECTION, AND HUMANS AREN'T PERFECT.

BUT THE IMPORTANT THING IS, YOUR HONOR, THAT THE ARCHITECTURE OF THIS SYSTEM IS WORKING. IT IS DOING WHAT IS DESIGNED TO DO. AND I THINK EVEN -- OR ESPECIALLY DR. NICHOLS' REPORT SUGGESTS THAT THE PROBLEMS THAT REMAIN ARE NOT WITH THE ARCHITECTURE OF THE SYSTEM. AND ADMITTEDLY IT HAS NOT BEEN FULLY UP AND RUNNING, AND THAT NEEDS TO OCCUR TO GIVE IT THE FULL TEST.

IT'S LIKE RELEASING A NEW DRUG WHEN THE FDA SAYS YOU'VE DONE ENOUGH SAMPLING.

SO WE NEED, FIRST OF ALL, TO BE UP TO DO THAT ADDITIONAL TESTING. BUT WHAT WE'VE DONE THUS FAR DEMONSTRATES THAT THE SYSTEM IS WORKING AS IT IS DESIGNED TO WORK.

ADMITTEDLY, THERE IS THAT AREA OF PROBLEM THAT DR. NICHOLS DISCUSSED HAVING TO DO REALLY WITH THE QUALITY OF THE PLAINTIFFS' NOTICES AND THE NATURE OF THE METADATA. AND THAT IS SOMETHING THAT EXISTS THAT WE'RE WORKING ON.

BUT, YOUR HONOR, THAT IS A VERY, VERY, VERY SMALL PORTION. OR ALTHOUGH WE'RE FOCUSSED ON IT -- AND I THINK IT'S RIGHT TO FOCUS ON IT -- THAT IS, YOU KNOW, ACCORDING TO THE STATISTICS OF THE LAST FEW DAYS, CAUSING LESS THAN ONE PERCENT ERROR RATE.

AND YOU KNOW, IN ALL CANDOR, YOUR HONOR, WE DON'T KNOW WHAT IS GOOD ENOUGH. I MEAN, WHEN I'VE BEEN ASKED THAT -- AND I DON'T KNOW, YOU KNOW, IT STRIKES ME THAT, YOU KNOW, IF WE'RE TALKING ABOUT THE RANGE OF 99.4 PERCENT PURE, IF IT'S

GOOD ENOUGH FOR IVORY SOAP, I WOULD SUGGEST THAT THAT'S THE KIND OF -- OF LEVEL OF ERROR-FREE SYSTEM THAT THE COURT WOULD BE LOOKING FOR.

NOW, YOU KNOW, IF I CAN POINT OUT ONE OR TWO OTHER THINGS TO YOUR HONOR, WE VOLUNTARILY WENT DOWN. AND IT STRIKES ME THAT WHAT THE COURT IS DOING IS, FIRST OF ALL, MODIFYING THE ORDER THAT'S IN PLACE, BECAUSE WE THINK WE ARE IN COMPLIANCE AND WILL REMAIN IN COMPLIANCE IF WE GO UP.

AND WITH ALL DUE RESPECT, I THINK THERE'S A QUESTION ABOUT THE AUTHORITY OF THIS COURT TO MODIFY THE ORDER IN THAT WAY.

BUT EVEN PUTTING THAT ASIDE, IT STRIKES ME AGAIN WITH ALL DUE RESPECT THAT GIVEN WHERE WE ARE, GIVEN WHAT WE'VE ACCOMPLISHED THAT WE HAVE THE RIGHT AND WE SHOULD HAVE THE ABILITY TO DECIDE WHETHER OR NOT TO TURN THIS SYSTEM BACK ON.

NOW, IF WE'RE WRONG, YOUR HONOR, WE'VE ALREADY DEMONSTRATED THAT UNDER THOSE CIRCUMSTANCES WE WILL ACT RESPONSIBLY. IF WE'RE WRONG, CERTAINLY THE PLAINTIFFS ARE IN A POSITION, AS THEY HAVE DONE BEFORE AND I AM SURE WILL CONTINUE TO DO, TO POINT OUT WHEN THERE ARE PROBLEMS.

AND IF WE'RE WRONG, OBVIOUSLY WE ARE WRONG AT OUR OWN PERIL AND WE TAKE THE RISK OF HAVING TO COME BACK HERE BEFORE YOUR HONOR AND EXPLAIN OURSELVES WITH ALL THE RISKS INHERENT IN BEING WRONG.

BUT GIVEN WHERE WE ARE, AS I SAID, I'M SOMEWHAT

SURPRISED AND TAKEN ABACK OF THE POSITION OF THE COURT. YOUR HONOR, THE DATA IS INCLUDED IN OUR BRIEFS. I CAN HAND UP A COPY OF WHAT WE HAVE FOUND FOR THE PAST SEVERAL DAYS WHICH SHOWS US APPROACHING A ZERO ERROR RATE, BUT CERTAINLY BELOW THE ONE PERCENT RATE.

AND I WOULD LIKE TO POINT ONE OTHER THING OUT, WHICH IS --

THE COURT: WELL, MY UNDERSTANDING IS YOU'RE STILL DOING SOME OTHER THINGS THAT YOU BELIEVE YOU NEED TO DO IN ORDER TO ACCOMPLISH THE PURPOSE OF THE ORDER, RIGHT?

MR. COHEN: YOUR HONOR, IN ALL CANDOR, I ENVISION AS A LAWYER THAT THAT PROCESS WILL GO ON FOREVER. I IMAGINE THAT WHAT NAPSTER WILL NOW DO -- IT'S DOING IT ON A SORT OF INFORMAL BASIS, BUT WILL BEGIN DOING IN A VERY FORMAL WAY IS PUT IN PLACE A FORMAL COMPLIANCE SYSTEM, WHICH IT ALREADY HAS.

WE'VE ALREADY SPOKEN TO KBMG ABOUT BECOMING AN INDEPENDENT OUTSIDE AUDITOR TO TEST OUR DATA FOR US. AND THAT IS SOMETHING THAT IS GOING TO CONTINUE ON AND ON AND ON INTO THE FUTURE AS LONG AS THE SYSTEM WORKS, YOUR HONOR, BECAUSE THERE WILL BE INSTANCES, OF COURSE, WHERE THERE ARE ERRORS.

AND OUR DESIRE IS TO CATCH THOSE ERRORS AND CORRECT THEM. BUT THUS FAR, AT LEAST OVER THE PAST SEVERAL DAYS, THE DATA SUGGESTS THAT WE ARE GOOD ENOUGH TO MAKE A DECISION AND A POSITIVE DECISION TO BE UP AND OPERATING.

EVEN THE PLAINTIFFS' MATERIALS THAT WERE PROVIDED TO

1 US YESTERDAY, SOME OF WHICH THEY HAVE KNOWN ABOUT FOR SEVERAL
2 DAYS, MORE THAN A WEEK, BUT EVEN THAT MATERIAL CONFIRMS THAT WE
3 ARE AS GOOD AS WE THINK WE ARE.
4 YOU KNOW, WHAT IS INTERESTING ABOUT MOST OF THE
5 PLAINTIFFS' INFORMATION -- AND I'M MORE THAN WILLING TO GO
6 THROUGH THE TWO AFFIDAVITS SECTION BY SECTION BY SECTION WITH
7 THE COURT.
8 I SUSPECT IN PICKING UP ON THE FACT THAT THE COURT
9 MAY NOT WANT ME TO DO THAT. BUT I STAND READY TO DO IT. THAT
10 INFORMATION, MOST OF IT, CAUGHT ERRORS THAT OCCURRED IN A
11 WINDOW WHERE OUR BLOCKING WAS TURNED OFF ON JULY 5TH.
12 SIGNIFICANT FOR TWO REASONS, YOUR HONOR. FIRST OF
13 ALL, SIGNIFICANT BECAUSE THERE WERE NO TRANSFERS. THAT'S WHY
14 WE TURNED OFF. WE WANTED TO MAKE SURE THAT WE COULD CATCH
15 THESE PROBLEMS.
16 AND SO, YOU KNOW, I DON'T MEAN TO BE GLIB, BUT IT
17 REALLY IS A NO HARM NO FOUL SITUATION.
18 IT'S SECONDLY IMPORTANT BECAUSE THE PLAINTIFFS
19 CLEARLY -- AND THEY MAKE IT CLEAR IN THEIR AFFIDAVITS -- ARE
20 BANGING AWAY AT THIS SYSTEM. AND THE SCHAEFFER AFFIDAVIT
21 POINTS OUT THAT THERE WERE A TEAM OF FOUR PEOPLE. AND I
22 SUSPECT -- AND I'M SURE THE PLAINTIFFS AREN'T GOING TO TELL
23 ME -- THAT THERE ARE A WHOLE LOT MORE THAN FOUR PEOPLE OUT
24 THERE BANGING AWAY AT THIS SYSTEM.
25 YET IN THE PERIOD OF TIME THAT THEY HAVE HAD TO TEST

1 THIS SYSTEM FROM THE OUTSIDE, TO FIND HOLES AND LOOPS AND
2 PROBLEMS, THOSE PROBLEMS ALL FALL INTO ONE OF TWO CATEGORIES
3 FOR THE MOST PART. AND I'M PAINTING WITH A BIT OF A BROAD
4 BRUSH. THEY ARE PROBLEMS THAT AROSE OR WORKS THAT WERE FOUND
5 ON JULY 5TH DURING THAT THREE-HOUR WINDOW.
6 AND IF YOU LOOK AT THE SCHAEFFER AFFIDAVIT WHICH
7 TALKS ABOUT 106 NOTICED WORKS BEING FOUND, ALL OF THEM, ALL OF
8 THEM EXCEPT ONE, YOUR HONOR, WERE FOUND DURING THAT WINDOW ON
9 JULY 5TH. SO THOSE --
10 THE COURT: WELL, THAT WINDOW IS WHEN IT WAS UP AND
11 RUNNING, RIGHT?
12 MR. COHEN: NO, YOUR HONOR. THAT IS WHEN WE HAD
13 SHUT OFF TRANSFERS. TRANSFERS HAD BEEN SHUT OFF.
14 SECOND OF ALL, TO THE EXTENT THEY HAVE FOUND
15 PROBLEMS AT ALL -- AND IN THIS INSTANCE I'M REALLY REFERRING TO
16 THE PIERRE-LOUIS DECLARATION.
17 IN THE PIERRE-LOUIS DECLARATION THERE'S TALK ABOUT A
18 VARIETY OF THINGS, MOST OF WHICH FALLS WITHIN THAT JULY 5TH
19 WINDOW. BUT A LARGE -- THE REMAINDER REFERS TO 174 NOTICED
20 WORKS THAT WERE PURPORTEDLY FOUND ON THE SYSTEM.
21 AND, AGAIN, YOUR HONOR, WE WERE UP LATE LAST NIGHT.
22 I WOULD HAVE LOVED TO BE HAVE BEEN ABLE TO COME INTO COURT AND
23 EXPLAIN TO YOU THIS MORNING WHAT ALL OF THEM WERE, BUT THERE
24 ARE ONLY SO MANY HOURS IN THE EVENING AND I CAN'T DO THAT.
25 AND IF THE COURT WANTS A FURTHER SUBMISSION ON THAT

WE WOULD BE DELIGHTED TO PROVIDE IT.

BUT THAT NUMBER, 174 WORKS FOUND ARE OUT OF APPROXIMATELY 950,000 NOTICED WORKS.

NOW, I DON'T KNOW IF THEY HAVE SOME KIND OF AUTOMATED ROBOT OR BOT, WHICH THE ENGINEERS TELL ME TO CALL IT, SEARCHING THE SYSTEM SO THAT OUT OF THAT 950,000 THAT'S ALL THEY WERE ABLE TO FIND. I DON'T KNOW HOW THEY GOT THAT NUMBER. BUT ALL THEY HAVE BEEN ABLE TO FIND THAT THEY DISCLOSED TO US WAS THAT 174. AND MANY OF THEM, I SUSPECT -- AND AGAIN IN CONTEXT A MINUSCULE NUMBER, IT IS .O2 PERCENT OF THE NOTICED WORKS.

THE COURT: WELL, I THINK THAT IS EXACTLY WHY I WANT DR. NICHOLS TO MEET WITH DEFENDANTS AND WITH PLAINTIFFS AND ALONG THE LINES THAT I SUGGESTED TO FIND OUT THE ANSWERS TO SOME OF THOSE QUESTIONS, AND THEN TO DETERMINE WHAT CAN BE -- YOU KNOW, HOW SEVERE IT IS AND WHAT CAN BE DONE ABOUT IT.

MR. COHEN: YOUR HONOR --

THE COURT: NOW, ALSO, AS I UNDERSTAND IT, THERE IS DATA FROM -- ALBUM DATA THAT'S GOING TO BE ADDED TO THE MEGADATA, I GUESS OR METADATA, RATHER, THAT YOU HAVE; IS THAT CORRECT?

MR. COHEN: THAT'S CORRECT, YOUR HONOR.

THE COURT: WHEN IS THAT GOING TO BE ACCOMPLISHED?

MR. COHEN: YOUR HONOR, WE DON'T KNOW. AND I'M NOT ABOUT TO MAKE A PROMISE BECAUSE I HAVE NOT SPOKEN TO AND I

DON'T THINK MR. CAREY, WHO IS HERE TODAY WHO IS THE CHIEF ENGINEER, IS PREPARED TO OPINE.

BUT, YOUR HONOR, THE DIFFICULTY FOR US IS IS THAT WE HAVE SORT OF CHANGED THE WORLD OVER THE COURSE OF THIS CASE. AND WE HAVE GOTTEN CLOSER AND CLOSER AND CLOSER TO BEING PERFECT WITHOUT EVER KNOWING WHAT WAS GOOD ENOUGH, OTHER THAN KNOWING THAT WHAT WE HAD WASN'T.

AND, YOUR HONOR, WE HAVE A BUSINESS TO OPERATE. AND THE 9TH CIRCUIT SAID WE HAVE THE RIGHT TO OPERATE THE BUSINESS.

THE COURT: WITHOUT INFRINGING.

MR. COHEN: WITHOUT INFRINGING. WITHOUT, YOUR HONOR, KNOWINGLY INFRINGING AND POLICING THE SYSTEM TO THE FULLEST EXTENT OF THE ARCHITECTURE.

NOW, WE HAVE A NEW ARCHITECTURE. WE BELIEVE WE ARE POLICING IT TO THE FULLEST EXTENT. AND THE STATISTICS THAT WE PROVIDED TO THE COURT I THINK BEAR THAT OUT. WE WOULD BE DELIGHTED TO WORK WITH THE PLAINTIFFS AND DR. NICHOLS AND MAKE THIS SYSTEM EVEN BETTER.

BUT, YOUR HONOR, WE THINK WE HAVE A RIGHT TO OPERATE THE SYSTEM. AND RIGHT NOW BEING DOWN, WHICH WAS DONE VOLUNTARILY WITH THE EXPECTATION THAT WE WOULD BE TURNING ON. WE WAITED TO APPEAR BEFORE YOUR HONOR TO DO THAT FOR A VARIETY OF REASONS WHICH I'M HAPPY TO EXPLAIN.

BUT WE HAD AN EXPECTATION THAT WE WOULD BE ABLE TO TURN ON. THIS IS A CRUSHING BLOW TO THIS BUSINESS. AND WHAT

YOUR HONOR IS SUGGESTING IS A DRAMATIC SHIFT IN THE STATUS QUO ON A RECORD THAT I REALLY DON'T THINK, WITH ALL DUE RESPECT, SUPPORTS THAT, YOUR HONOR.

THE COURT: DR. NICHOLS, WHAT DO YOU SENSE, YOU KNOW, ARE STILL THE PROBLEMS OR THE GLITCHES THAT NEED TO BE REMEDIED IN ORDER TO BE FULLY COMPLIANT?

DR. NICHOLS: AS IT STANDS RIGHT NOW THE SYSTEM APPEARS TO BE CAPABLE OF UNIQUELY IDENTIFYING WORKS THROUGH THE FINGERPRINT MECHANISM. THE PROBLEM IS THAT IT CANNOT ALWAYS CATEGORIZE, CLASSIFY WORK AS A FINGERPRINT AS TO WHETHER OR NOT IT'S BLOCKED OR NOT BLOCKED.

AND A LOT OF THAT IS BECAUSE YOU DON'T GET AN EXACT MATCH BETWEEN THE INFORMATION SUPPLIED IN THE NOTICE FROM THE RECORDING INDUSTRY AND THE INFORMATION THAT NAPSTER HAS COLLECTED ABOUT THAT FINGERPRINT.

WE HAD A DISCUSSION ABOUT THIS ISSUE LAST WEEK IN WHICH THE BUSINESS OF USING THE ALBUM TITLES, WHICH WOULD RESOLVE MANY OF THESE AMBIGUITIES, WAS DISCUSSED. AND I THINK THAT THAT IS INFORMATION THAT IS THERE IN THE METADATA THAT THEY GET FROM LOUDEYE.

AND AS I UNDERSTAND, IT ALSO COMES FROM IN THE NOTICE AND WOULD ALLOW A HIGHER DEGREE OF ACCURACY IN THE CLASSIFICATION OF FINGERPRINTS AS BEING NOTICED OR NOT NOTICED. SEEMS TO ME IT IS REASONABLE TO EXPECT NAPSTER TO USE THAT INFORMATION WHILE WE'RE ALSO DOING WHATEVER ELSE WE CAN TO TRY

TO SEE HOW WE CAN GET THE METADATA FROM TWO SIDES TO AGREE IN ANY OTHER WAYS.

THE COURT: DO YOU HAVE A SENSE NOW BASED UPON THE LAST TIME YOU TOOK A LOOK AT, YOU KNOW, WHAT THEY WERE DOING AND HOW IT WAS OPERATING WHAT PERCENTAGE OF THE WORKS, THE NOTICED WORKS STILL MANAGE TO OR CAN GET THROUGH?

DR. NICHOLS: THE ANSWER TO IS THAT NO, THERE'S 950,000 WORKS THAT HAVE BEEN NOTICED, OR THEREABOUTS, PLUS I'M NOT EXACTLY WHAT I WOULD CALL AN EXPERT ON MODERN MUSIC. I DON'T LISTEN TO MUCH OF IT. SO THE NAMES DON'T MEAN ANYTHING TO ME. I HAVEN'T HEARD MOST OF THESE NAMES.

SOME STATISTICS THAT HAVE BEEN GATHERED IS THAT NAPSTER HAS DONE THEIR OWN INTERNAL POLICING OF LOOKING FOR WORKS THAT HAVE BEEN EITHER OFFERED AS BEING SHARED -- OR I'M SORRY NOT OFFERED -- HAVE BEEN REQUESTED TO BE TRANSFERRED OR THAT THEY FOUND IN THE DATABASE THAT ARE NOT NOTICED.

THEY HAVE TRIED TO LOOK AT THOSE -- THEY THINK THAT ARE NOT BLOCKED. I'M SORRY. THEY LOOK AT THOSE TO TRY TO DETERMINE WHETHER OR NOT THERE'S SOME CORRELATION BETWEEN THE POSSIBLE NAMES THAT ARE THERE FOR THE FILES AND THE NAMES THAT ARE IN THE NOTICE LIST.

SO THEY ARE LOOKING FOR A HUMAN TO MAKE A JUDGMENT AS TO THIS MIGHT BE A NOTICED WORK EVEN THOUGH WE'RE NOT BLOCKING IT NOW.

THEY STARTED SHORTLY AFTER THE SYSTEM WAS BROUGHT

1 ONLINE. THE NEW SYSTEM WAS BROUGHT ON LINE ON THE 27TH AT
2 DOING THIS, AND FOUND THAT IN THE BEGINNING SOME OF THE TESTS
3 THEY DID LIKE OF THE -- THEY LOOKED ON THE SYSTEM FOR THE 212
4 WORKS IN THE ORIGINAL LAWSUIT, I GUESS, THE TOP FORTY BILLBOARD
5 SONGS, OF WHICH I UNDERSTAND 35 ARE CURRENTLY NOTICED. THE TOP
6 100 BILLBOARDS, OF WHICH I THINK EIGHTY SOMETHING ARE NOTICED,
7 AND SO FORTH.
8 THEY HAVE LOOKED AT THOSE. THERE WERE SOME OF THOSE
9 WORKINGS APPEARING IN THE BEGINNING. THEY HAVE NOW GONE TO
10 ZERO BY THEIR TESTIMONY.
11 PART OF THE DIFFICULTY WITH ALL OF THIS, FROM EITHER
12 NAPSTER'S COMPLIANCE STANDPOINT OR THE RECORDING INDUSTRIES'
13 SURVEILLANCE, I GUESS -- BEST WORD I CAN COME UP WITH --
14 STANDPOINT IS THAT YOU DON'T NECESSARILY SEE ALL THE WORKS THAT
15 ARE OUT THERE AT ANY POINT IN TIME.
16 IT DEPENDS ON WHICH USERS HAPPEN TO BE LOGGED ON TO
17 THE SYSTEM AT THE TIME YOU'RE TRYING TO SEARCH, BECAUSE THE
18 WORKS ARE NOT ON THE NAPSTER SYSTEM; THE WORKS ARE ON THE
19 USER'S SYSTEM.
20 THEY COME UP AND ARE LOGGED -- I MEAN, ARE LOOKED AT
21 BY NAPSTER AND DECIDED WHETHER TO MAKE THEM AVAILABLE OR NOT,
22 BUT THEY DON'T RESIDE THERE. AND THOSE WORKS THAT ARE
23 AVAILABLE IS VERY FLUID, DEPENDING UPON WHICH USERS ARE
24 AVAILABLE.
25 ONE OTHER THING NAPSTER IS IN THE PROCESS OF DOING

AND HAS NOT DONE YET, I DON'T BELIEVE, IS TO START COLLECTING A MASSIVE LIST OF ALL THE WORKS THAT ARE BROUGHT IN FOR SHARING. SO IF THEY GOT THIS LIST ALL THE TIME, THEN THEY CAN SORT OF HAVE A UNIVERSE OF ALL THE WORKS THAT HAVE EVER BEEN ATTEMPTED TO BE SHARED. THAT WOULD BE VERY USEFUL IN COMPLIANCE EFFORTS SO THAT YOU DIDN'T HAVE TO RELY ON JUST WHAT'S BEING SHARED AT THE MOMENT YOU'RE TRYING TO DO SOME TESTING.

THE COURT: WHEN YOU SAY WHEN THEY HAVE A LIST, YOU'RE TALKING ABOUT ESSENTIALLY OF FINGERPRINTS OF ALL THESE?

DR. NICHOLS: WELL, I THINK THEY ARE GOING TO COLLECT NOT ONLY FINGERPRINTS BUT THE FILE NAMES AND ANY OTHER INFORMATION YOU'VE GOT. MY UNDERSTANDING IS THEY ARE GOING TO START BUILDING A DATABASE OF ALL THE WORKS THAT ARE OFFERED FOR SHARING SO THAT NO MATTER WHO HAS OFFERED IT, THEY WILL HAVE A LIST OF WHICH WORKS THEY HAVE SEEN SO THEY KNOW WHAT METADATA IS ASSOCIATED WITH THEM.

THEN, THEY CAN LOOK AT THOSE AND LOOK AT WHAT THE NOTICES ARE AND GET A BETTER UNDERSTANDING OF WHAT MIGHT AND MIGHT NOT BE THERE.

THE COURT: DO THEY GIVE YOU SOME TIMETABLES FOR THESE VARIOUS COMPONENTS TO BE -- WHAT THEY CONTEMPLATE THEM TO BE IN PLACE?

DR. NICHOLS: WELL, IN THEIR DEFENSE THEY HAVE DECIDED THAT THEY DON'T WANT TO GIVE ANY TIMETABLES IF THEY DON'T HAVE TO, GIVEN THEIR PAST HISTORY. SO THEY HAVE BEEN

VERY CAREFUL ABOUT IT. BUT THE ANSWER IS: NO, THEY HAVE NOT GIVEN A TIMETABLE YET.

MR. COHEN: YOUR HONOR, IF I COULD.

THE COURT: HOLD ON. WHY DON'T YOU HAVE A SEAT AND THAT WAY YOU WON'T BE SO ANXIOUS.

MR. FRACKMAN OR WHOMEVER IS GOING TO SPEAK ON BEHALF OF PLAINTIFF: AT WHAT POINT IS THE EFFORT GOING TO BE GOOD ENOUGH?

MR. FRACKMAN: WELL, YOUR HONOR ASKED ME THAT QUESTION LAST TIME. AND I CAN ANSWER IT TWO WAYS. THE FIRST WAY, AS I ANSWERED IT LAST TIME, IS IT'S NOT NOW. WE'RE NOT THERE. WE'RE NOT CLOSE TO BEING THERE.

THE COURT: WELL, I WANT A MORE, YOU KNOW, A MORE DEFINITENESS TO THAT. I ALSO WANT TO SEE IF IT CHANGES, YOU KNOW.

MR. FRACKMAN: NO. THE LAW DOES NOT TOLERATE ANY INFRINGEMENT. IT CERTAINLY DOES NOT TOLERATE ANY INFRINGEMENT OF A VIRAL NATURE. IF THERE IS ONE RECORDING OUT THERE AND IT HAPPENS TO BE DR. NICHOLS' ONLY RELEASED RECORD, AND IT'S OUT THERE, THAT HAS A TREMENDOUS IMPACT ON DR. NICHOLS.

AND IT IS VIRALLY DISTRIBUTED TO MILLIONS OF PEOPLE. THERE ARE WAYS FOR NAPSTER TO PRECLUDE THAT. WE TALKED ABOUT THEM LAST TIME.

ONE WAY THAT THEY SIMPLY WON'T DO IS TO FILTER IN. THAT WILL SOLVE MOST OF WHAT THEY CLAIM TO BE THEIR PROBLEMS.

THE COURT: OKAY. I'M NOT TALKING NOW ABOUT METHODS.

MR. FRACKMAN: OKAY.

THE COURT: OR WE WILL BE HERE FOREVER.

MR. FRACKMAN: OKAY.

THE COURT: AND THAT'S WHAT I WANT TO WORK ON WHAT --

MR. FRACKMAN: MY ANSWER IS, YOUR HONOR, THAT --

THE COURT: BECAUSE THERE WILL ALWAYS BE GLITCHES, RIGHT?

MR. FRACKMAN: THE COPYRIGHT -- THE COPYRIGHT -- I THINK THERE ARE TWO LEVELS TO THAT. THE COPYRIGHT LAW PROVIDES THAT EVEN AN INNOCENT INFRINGER IS AN INFRINGER. AND THE REASON IT DOES THAT IS BECAUSE OF THE TREMENDOUS HARM TO A CREATOR WHEN THEY INFRINGE.

SO IT IS AN INFRINGEMENT. NOW, WHETHER OR NOT IT IS CONTEMPT OF COURT I WOULD CONCEDE IS A DIFFERENT ISSUE. AND THAT MIGHT DEPEND ON YOUR HONOR'S ANALYSIS OF THE EFFORTS THAT HAVE BEEN MADE TO BLOCK THAT PARTICULAR INFRINGEMENT.

BUT IN TERMS OF TOLERABILITY TO OUR CLIENTS, ANY INFRINGEMENT ON A NAPSTER SYSTEM IS AN INFRINGEMENT, AND WE ARE NOT PREPARED TO TOLERATE ANY INFRINGEMENT. AND WE'RE PREPARED TO SEEK RECOMPENSE FOR THEM.

AND, AGAIN, IF THEY CAN COME TO COURT AND CONVINCE YOUR HONOR THAT IT IS NOT A CONTEMPT OF COURT, THAT'S A

DIFFERENT ISSUE. I THINK I ANSWERED THIS TIME.

THE COURT: WELL, YOUR POSITION IS TOTAL ZERO TOLERANCE.

MR. FRACKMAN: IN TERMS OF LIABILITY AND DAMAGES, CORRECT. AND, AGAIN --

THE COURT: IN TERMS OF COMPLIANCE WITH INJUNCTIVE ORDER AS OPPOSED TO WHAT MIGHT END UP BEING COMPENSABLE BECAUSE OF A GLITCH OR WHATEVER.

MR. FRACKMAN: WELL, I THINK, YOUR HONOR, WE HAVE TO HANDLE THAT ON A CASE -- IN TERMS OF THE INJUNCTIVE ORDER, I THINK IT HAS TO BE HANDLED ON A CASE-BY-CASE BASIS BECAUSE IT WOULD DEPEND -- AS IN ANY INJUNCTIVE ORDER THE STANDARD, THE LEVEL THAT WE WOULD HAVE TO PROVE CERTAINLY FOR CONTEMPT OF COURT IS A STRICTER STANDARD THAN TO PROVE FOR LIABILITY AND DAMAGES.

AND IN A VACUUM IT IS DIFFICULT FOR ME TO MAKE THAT ARGUMENT. I WOULD ARGUE, IF YOUR HONOR WISHES ME, THAT THEY ARE IN CONTEMPT RIGHT NOW, AND I THINK THAT STANDARD HAS BEEN MET.

THE COURT: WELL, RIGHT NOW THEY ARE DOWN.

MR. FRACKMAN: WELL -- WELL, LET ME MODIFY THAT. WERE THEY UP AND WHAT HAS BEEN MADE AVAILABLE FOR INDEXING WERE THAT AVAILABLE TO BE DOWNLOADED THEY WOULD BE IN CONTEMPT.

BUT YOU'RE CORRECT. THEY ARE DOWN NOW. AND THE REASON THEY ARE DOWN NOW IS BECAUSE THEY KNOW THAT IS THE CASE.

THE COURT: MR. FRACKMAN, WHAT ARE YOUR CLIENTS DOING? THERE ARE OTHER SYSTEMS OUT THERE.

MR. FRACKMAN: THAT'S CORRECT, YOUR HONOR. THAT'S PART OF THE PROBLEM.

THE COURT: WHAT ARE YOU DOING ABOUT THEM?

MR. FRACKMAN: WELL, ONE IS WE'RE --

THE COURT: AND HAVE ANY OF THEM COME UP WITH MEANS BY WHICH THEY CAN BE IN COMPLIANCE?

MR. FRACKMAN: WE HAVE -- AND I'LL LET, PERHAPS, MR. OPPENHEIM TALK BECAUSE HE HAS A BROADER VIEW OF THAT. BUT I AM PERSONALLY INVOLVED WITH MR. BOIES IN ANOTHER PIECE OF LITIGATION IN THE NORTHERN DISTRICT OF CALIFORNIA ON THE AIMSTER SYSTEM. AND A SYSTEM THAT CALLS THEMSELVES "NAPSTER SQUARED."

AND AS YOU MIGHT EXPECT THEY ARE LOOKING CLOSELY TO WHAT HAPPENS IN THIS CASE. AND THEY ARE NOT COMPLYING.

THE COURT: IS HE REPRESENTING THE COMPETITOR?

MR. FRACKMAN: YES, HE IS.

THE COURT: INTERESTING.

MR. FRACKMAN: I ASSUME IT'S A COMPETITOR. I DON'T KNOW THAT I WANT TO CALL THEM "COMPETITORS," BUT LET ME SAY THAT HIS ARGUMENTS ARE FAMILIAR TO ME IN THAT CASE.

THERE ARE A NUMBER OF SYSTEMS OUT THERE THAT ARE NONCOMPLIANT. AND THEY -- IF THEY DON'T COMPLY, THEY WILL BE SUED, I GUESS IS THE SIMPLE WAY TO SAY IT.

THE COURT: HAVE THEY BEEN NOTIFIED?

MR. FRACKMAN: OH, YES, YOUR HONOR. THERE'S BEEN NOTICES THAT HAVE GONE OUT. INDEED, ONE OF THE BATTLES IN THE AIMSTER CASE IS THEY RAN IN AND FILED A DECLARATORY RELIEF ACTION BEFORE WE COULD SUE THEM AFTER WE NOTIFIED THEM. BUT THAT'S -- I'LL LITIGATE THAT CASE IN FRONT OF A DIFFERENT JUDGE.

SO THERE ARE. I MEAN, WE'RE NOT DEALING JUST WITH THIS PARTICULAR SITUATION. WE'RE DEALING WITH LOTS OF DIFFERENT SITUATIONS, LOTS OF DIFFERENT SYSTEMS OUT THERE THAT WE HAVE TO -- MAY POTENTIALLY HAVE TO GIVE NOTICES TO. CERTAINLY HAVE TO LITIGATE WITH, IF NECESSARY. THERE ARE WAYS TO COMPLY.

THERE ARE SOME SYSTEMS AFTER NOTIFICATION THAT HAVE VOLUNTARILY COME DOWN. THERE ARE SYSTEMS THAT ARE CLAIMING THAT THEY ARE ATTEMPTING TO FILTER, AND WE ARE WATCHING THEM CLOSELY.

AND THERE ARE A WHOLE VARIETY OF ISSUES OUT THERE, BUT NONE OF THOSE CASES IS -- NONE OF THOSE ISSUES IS AS FAR ALONG AS THIS ONE IS, OF COURSE.

THE COURT: NOW, HAVE YOU WORKED -- HAVE PLAINTIFFS WORKED OUT OR NEGOTIATED SOME KIND OF LICENSING OR OTHER AGREEMENTS WITH SOME OF THESE COMPANIES?

MR. FRACKMAN: NOT WITH COMPANIES THAT ARE INFRINGING, CERTAINLY. AND PERHAPS MR. OPPENHEIM COULD GIVE

1 YOU A LITTLE BETTER VIEW, OVERALL PERSPECTIVE ON THE INDUSTRY
2 SIDE, IF YOUR HONOR WISHES.
3 THE COURT: WELL, I'M JUST TRYING TO FIGURE OUT WHAT
4 ROOM THERE IS FOR ANYTHING.
5 BUT WHAT ABOUT MP3?
6 MR. FRACKMAN: WELL, MP3.COM, OF COURSE, IS A
7 DIFFERENT SITUATION IN TERMS OF THE CONDUCT THAT WAS HELD TO BE
8 UNLAWFUL. AND MP3.COM HAS NOW BEEN -- FROM WHAT I UNDERSTAND
9 FROM THE NEWSPAPERS BEEN ACQUIRED BY ONE OF OUR CLIENTS,
10 UNIVERSAL. BUT THE NATURE OF THEIR INFRINGEMENT, OF COURSE,
11 WAS SIGNIFICANTLY DIFFERENT THAN THE TYPE OF ISSUES THAT WE'RE
12 DEALING WITH HERE.
13 THE COURT: NOW, ALSO, THERE WAS SOME ISSUE THAT WAS
14 RAISED WITH RESPECT TO -- WHO IS HERE OFF ON THE LEIBER
15 PLAINTIFF?
16 MR. FRACKMAN: MR. KNOWLES.
17 THE COURT: IS THAT YOU?
18 MR. KNOWLES: YES, JEFF KNOWLES.
19 THE COURT: THAT MR. NICHOLS HAD RAISED WITH ME
20 ABOUT DEFENDANTS HAVING THE TITLE OF THE WORK AND THE COMPOSER,
21 BUT THAT THAT DIDN'T HELP VERY MUCH BECAUSE, YOU KNOW, IT
22 DOESN'T SHOW UP. THERE'S NO METADATA ON THE COMPOSER OR
23 WHATEVER. THERE'S NO INFORMATION ON THE COMPOSER. IT'S REALLY
24 THE PEOPLE THAT PERFORM THAT PARTICULAR WORK.
25 BUT THEN AS I UNDERSTAND IT -- IN FACT, YOU MAY HAVE

TURNED OVER THAT INFORMATION THE, PERFORMER INFORMATION, AS WELL; IS THAT CORRECT?

MR. KNOWLES: YES, YOUR HONOR. THAT'S CORRECT.

THE COURT: THE ARTIST INFORMATION.

MR. KNOWLES: THE ORDER, YOUR ORDER REQUIRES OUR NOTICE TO INCLUDE THREE THINGS: TITLE, ARTIST AND AT LEAST ONE FILE NAME. ALL OF OUR NOTICES COMPLY WITH THAT.

THERE IS AN ISSUE WITH RESPECT TO COMPOSITIONS AS OPPOSED TO SOUND RECORDINGS WHERE THE COMPOSITION MAY BE OF A TITLE THAT'S GENERIC, AND THEREFORE, THERE MIGHT BE MORE THAN ONE COMPOSITION BY THE SAME NAME, SOME OF WHICH THE PARTIES --

THE COURT: WERE PERFORMED BY THE SAME PEOPLE, TOO?

MR. KNOWLES: THEY MIGHT BE PERFORMED BY DIFFERENT PEOPLE, AND IN ALL LIKELIHOOD THEY ARE, WHICH IS THE WAY THAT NAPSTER HAS SUGGESTED DISTINGUISHING AMONG COMPOSITIONS THAT MIGHT HAVE THE SAME NAME IS TO IDENTIFY AN ARTIST WHO HAS PERFORMED A PARTICULAR COMPOSITION, AND IN ALL LIKELIHOOD THAT WILL MAKE IT A UNIQUE COMPOSITION IF YOU CAN CORRELATE AN ARTIST'S NAME TO A COMPOSITION.

WE HAVE COMPLIED WITH THAT REQUEST THAT WE SUPPLY ARTIST INFORMATION FOR THE COMPOSITIONS WE HAVE NOTICED BY PROVIDING NAPSTER, AMONG OTHER THINGS, WITH THE DATABASE THAT THE HARRY FOX AGENCY MAINTAINS IN ORDER TO TRACK ITS LICENSING EFFORTS.

THAT DATABASE IS VERY LARGE AND COMPREHENSIVE. IT

IS ABOUT TWO-AND-A-HALF MILLION LINES OF DATA. IT REPRESENTS ABOUT 90,000 UNIQUE COMPOSITIONS FOR WHICH ALL BUT LESS THAN FIVE PERCENT HAVE ARTISTS CORRELATED TO THEM.

SO WE HAVE PROVIDED NAPSTER WITH THE VERY INFORMATION THAT IT REQUESTED TO DISTINGUISH AMONG COMPOSITIONS.

THE COURT: IS THAT PART OF IT NOW SORTED OUT?

MR. PULGRAM: YOUR HONOR, NOT AT ALL.

THE COURT REPORTER: YOUR NAME, PLEASE? YOUR NAME?

MR. PULGRAM: LAWRENCE PULGRAM FOR NAPSTER.

ON THIS PARTICULAR ISSUE, HARRY FOX DATABASE IS A DATABASE OF COMPOSITIONS THAT HAS VARIOUS INFORMATION ABOUT THEM. BUT THE NOTICES THAT NAPSTER HAS RECEIVED, AS REFLECTED IN THE DECLARATION OF MR. CAREY, WE HAVE RECEIVED 80,000 WORKS IDENTIFIED IN THOSE NOTICES. FOR 70,000 OF THOSE WORKS THERE'S BEEN NO PERFORMING ARTIST IDENTIFIED. THAT'S IN MR. CAREY'S DECLARATION SUBMITTED.

WE ARE NOT RECEIVING THE ARTIST'S NAME. AND THAT MEANS THAT WE DON'T KNOW WHETHER TO BLOCK ALL 312 VERSIONS OF AVA MARIA OR ALL 400 VERSIONS OF A SONG UNDER "I LOVE YOU."

THE COURT: I DIDN'T THINK THE LEIBER OR WHOEVER WROTE AVA MARIA.

MR. PULGRAM: BUT THEY HAVE CLAIMED AN ARRANGEMENT OF AVA MARIA TO BE PROTECTED AND GIVEN US A NOTICE ON THAT.

AND THE EFFECT OF NOT IDENTIFYING THE PERFORMING

ARTIST IS THAT WE CANNOT TELL FROM THE METADATA THAT WE HAVE.

THE COURT: WELL, HAVE YOU MET AND CONFERRED ON THIS AND TRIED TO GET THAT STRAIGHTEN OUT?

MR. KNOWLES: YOUR HONOR, WE HAVE EMPHASIZED TO NAPSTER ON A NUMBER OF OCCASIONS THAT THE HARRY FOX DATABASE THAT WE SUPPLIED DOES PROVIDE THE ARTIST INFORMATION THAT IS CORRELATED TO THE COMPOSITIONS.

THE COURT: BUT IT SOUNDS AS IF THE NOTICED WORKS YOU PROVIDED IS A SMALLER NUMBER THAN THAT WHOLE DATABASE.

MR. KNOWLES: IT'S ALMOST THE SAME NUMBER. THE NOTICES THAT WE PROVIDED WERE DRAWN FROM THAT DATABASE. SO THAT IS REALLY WHERE THE NOTICES CAME FROM.

THE COURT: SO WHAT YOU'RE EXPECTING THEM TO DO IS TAKE THE NOTICE INFORMATION AND THE DATABASE AND CORRELATE THEM?

MR. KNOWLES: THAT'S RIGHT. THAT'S WHAT WE DID OVERNIGHT. IT'S REALLY NOT DIFFICULT.

MR. PULGRAM: WELL, WE WILL TAKE THAT.

THE COURT: WELL, IF IT'S NOT DIFFICULT, GIVE IT TO THEM.

MR. KNOWLES: THEY HAVE THAT INFORMATION.

THE COURT: WELL, BUT YOU DO THE CORRELATION. SOUNDS TO ME AS IF WHAT THEY HAVE IS YOUR NOTICED WORKS, 80,000 OR WHATEVER IT IS, AND THEN THEY HAVE GOT A DATABASE WITH, YOU KNOW, A FEW MILLION OR SOMETHING.

MR. KNOWLES: PERHAPS I NEED TO STEP BACK, YOUR HONOR. I THINK WE HAVE FULLY COMPLIED PLUS WITH THE ORDER. THE ORDER REQUIRES OUR NOTICE --

THE COURT: THAT'S NOT WHAT I WANT TO KNOW. THAT I WILL DECIDE. THEY SHOULD BE GETTING THE NOTICED WORK WITH THE TITLE OF THE COMPOSITION. IF YOU'RE GIVING THEM THE COMPOSER, THAT'S FINE AS LONG AS -- OR NOT AS LONG AS YOU SAY:

"THAT THIS IS WHAT, YOU KNOW, THE AGENCY HOLDS

THE COPYRIGHT TO," OR ET CETERA. BUT THE NAME OF THE COMPOSITION AND THE ARTIST OR ARTISTS PERFORMING IT, AND NOT JUST SORT OF:

"HERE. CROSS-REFERENCE IT WITH THE DATABASE."

MR. KNOWLES: YOUR HONOR, THIS IS WHY THERE'S A CONCERN FOR US. WE BELIEVE THAT PROVIDING THEM WITH THE COMPOSER, THE TITLE -- AND I'LL LEAVE ASIDE THE FILE NAME FOR NOW -- IS NOT ONLY SUFFICIENT UNDER THE ORDER, BUT ALL THAT WE SHOULD BE REQUIRED TO PROVIDE WITH THE UNDERSTANDING THAT ALTHOUGH WE HAVE ISSUES WITH REGARD TO THE BURDEN OF HAVING TO DISTINGUISH AMONG COMPOSITIONS WE ARE PREPARED TO ASSIST NAPSTER FULLY WITH THAT PROCESS AND HAVE DONE SO.

WHAT I'M CONCERNED ABOUT -- AND I'M HAPPY TO MEET AND CONFER WITH NAPSTER ABOUT CORRELATING TITLES TO ARTISTS' NAMES. I JUST WANT TO BE SURE THAT WE DON'T HAVE A CIRCUMSTANCE, WHICH WAS SOMETHING WE RAISED ORIGINALLY WITH THE COURT, WHERE WE ARE REQUIRED TO IDENTIFY AN ARTIST'S NAME AS

PART OF OUR NOTICE.

THE ISSUE IS DISTINGUISHING AMONG COMPOSITIONS BY THE SAME NAME, BUT THERE MAY BE MORE THAN ONE WAY TO DO THAT.

FOR EXAMPLE, IF THE COMPOSITION IS OBVIOUSLY A VERY UNIQUE TITLE THAT IT'S EXTREMELY UNLIKELY THAT THERE WILL BE ANOTHER TITLE OF A DIFFERENT COMPOSITION BY THAT TITLE.

SO WE ARE HAPPY TO USE THE ARTIST AS A PROXY ON AN AD HOC BASIS FOR SPECIFYING A COMPOSITION BY A MEANS OTHER THAN THE TITLE NAME.

AND, YOU KNOW, AGAIN, I'M NOT RULING OUT THE POSSIBILITY OF WORKING WITH NAPSTER AND HELPING THEM CORRELATE THESE NAMES. BUT I'D LIKE TO BE CLEAR THAT WE DON'T HAVE THE OBLIGATION AS A FLAT MATTER TO IDENTIFY ARTISTS, BECAUSE FOR US THE ARTIST DOESN'T MAKE ANY DIFFERENCE. IT'S THE COMPOSITION. IT'S THE MUSICAL COMPOSITION.

THE COURT: BUT IF IT'S GOING TO MAKE A DIFFERENCE FOR IDENTIFICATION PURPOSES, IT BETTER MAKE A DIFFERENCE TO YOU. IF IT MAKES A DIFFERENCE TO ME, IT BETTER MAKE A DIFFERENCE TO YOU.

MR. KNOWLES: AND THAT'S WHY WE PROVIDED THEM THAT INFORMATION. AND I'M HAPPY TO TALK TO THEM FURTHER ABOUT HOW TO READILY CORRELATE THOSE THINGS.

THE COURT: WELL, WHAT I WANT YOU TO DO IS TO PROVIDE IN THE NOTICE LIST THE NAME OF THE COMPOSITION. AND UNLESS IT IS -- AND THEN, YOU TAKE A CHANCE. IF IT'S A UNIQUE

NAME AND YOU DON'T PROVIDE THE ARTIST AND IT TURNS OUT IT'S NOT SO UNIQUE AFTER ALL, THEN, YOU KNOW, YOU CAN HAVE A PROBLEM.

BUT THEN I EXPECT NAPSTER TO NOTIFY YOU. BUT IT WOULD BE JUST MUCH EASIER TO CORRELATE THOSE RIGHT AWAY RATHER THAN WITH THE PERFORMER OR PERFORMERS.

MR. KNOWLES: I DON'T THINK THERE IS TOO BIG OF A PROBLEM WITH CORRELATING THE TITLES WITH THE ARTIST INFORMATION WE'VE PROVIDED.

THE COURT: WELL, THEN, DO IT.

MR. KNOWLES: WE WOULD LIKE TO MAKE CLEAR THAT WE THINK THERE MAY BE OTHER WAYS OF SPECIFYING A COMPOSITION AS A UNIQUE COMPOSITION OTHER THAN ARTIST TITLE PAIRS. BUT WE WILL USE THAT AS ONE METHOD.

THE COURT: WELL, YOU USE THAT UNTIL YOU COME UP WITH SOME OTHER WAY THAT MAY BE MORE EFFICIENT, OKAY?

MR. KNOWLES: VERY GOOD, YOUR HONOR.

THE COURT: NOW, I'M NOT GOING TO SPEND ALL THIS TIME GOING BACK AND FORTH, BACK AND FORTH. THERE HAS TO BE -- YOU KNOW, IT STRIKES ME THE ARGUMENT YOU RAISE IS JOHNNY, WHO KEEPS HITTING HIS BROTHER BOBBY EVERY DAY OF THE YEAR, AND THEN HE LETS UP ON SUNDAY AND SATURDAY. AND, GEE, IS THIS GOOD ENOUGH?

AND THEN, FINALLY HE ONLY DOES IT ONE DAY A WEEK. IS THIS GOOD ENOUGH? AND THEN, ONE DAY A YEAR. IS THIS GOOD

ENOUGH?

IT'S NOT GOOD ENOUGH UNTIL EVERY EFFORT HAS BEEN MADE TO, IN FACT, GET ZERO TOLERANCE.

NOW, THAT HAS TO BE THE OBJECTIVE. IF THERE'S A LITTLE -- IT GETS A LITTLE MESSY AROUND THE EDGES, IF THERE ARE SOME GLITCHES AND SO FORTH, I CAN UNDERSTAND THAT. BUT THIS SYSTEM IS NOT TO GO BACK UP IN SUCH A MANNER AS TO PERMIT COPYING AND DOWNLOADING OTHER THAN TO TEST THAT FOR THE PURPOSES OF DETERMINING THE ERROR RATE UNTIL YOU'VE SATISFIED DR. NICHOLS. AND THEN, HE CAN NOTIFY ME. OR IF YOU THINK YOU'VE GOTTEN TO THAT POINT YOU CAN HAVE IT PUT ON THE CALENDAR, AND WE WILL TAKE IT UP.

BUT IF IT'S CLEAR THAT THERE'S SOME OTHER THINGS THAT YOU'RE STILL WORKING ON THAT CAN BE DONE, AND WE WILL GET IT UP AND RUNNING.

THERE SHOULD BE NO COPYRIGHT INFRINGEMENT, PERIOD.

MR. COHEN: YOUR HONOR, IF I CAN RESPOND. FIRST OF ALL, WE HAVE DONE THAT. ARE THERE MORE THINGS THAT WE CAN DO? THERE ARE ALWAYS MORE THINGS THAT CAN BE DONE, AND WE ALWAYS WILL BE DOING MORE THINGS.

HOWEVER, WE HAVE PRODUCED A SYSTEM THAT OUR TESTING NOW SHOWS DOES WHAT THE COURT HAS INSTRUCTED US TO DO. THE STANDARD WAS SET FORTH BY THE 9TH CIRCUIT AND WAS ADOPTED BY THIS COURT.

THE COURT: I WANT IT TO BE CERTIFIED TO ME THAT, IN

FACT, IT DOES WHAT I'VE JUST SAID HAS TO BE DONE.

MR. COHEN: YOUR HONOR --

THE COURT: AND DR. NICHOLS CAN CERTIFY IT AS THE INDEPENDENT TO TELL ME THAT, IN FACT, THAT IS DONE BECAUSE OTHERWISE WE'RE GOING TO BE GOING BACK AND FORTH AND BACK AND FORTH, AND I'M NOT GOING TO DO THAT.

MR. COHEN: YOUR HONOR, WITH ALL DUE RESPECT, WE STILL DON'T KNOW FROM THE COURT WHAT THE STANDARD IS OTHER THAN SATISFYING DR. NICHOLS. AND I WOULD SUGGEST TO THE COURT THAT WE ARE NOW IN A WORLD IN WHICH WE ARE ESSENTIALLY OPERATING IN A RECEIVERSHIP.

YOU KNOW, THE ANALOGY YOUR HONOR GAVE OF HITTING THE KID OR THE BROTHER HITTING THE OTHER BROTHER, IT STRIKES ME THIS IS MORE LIKE A COMPLAINT OF A KID WHO DRIVES HIS CAR TOO FAST.

AND THE COURT SAYS:

"WELL, DESIGN A CAR THAT DOESN'T GO OVER 60 MILES AN HOUR."

AND WE HAVE THE KEYS RIGHT NOW AND WE BELIEVE WE HAVE DESIGNED THAT CAR. AND THE COURT --

THE COURT: WELL, BUT YOU'RE NOT JUST -- YOU'RE NOT JUST THE MANUFACTURER OF IT; YOU'RE ALSO THE DRIVER.

MR. COHEN: YOU'RE RIGHT, YOUR HONOR. AND WE THINK THAT THAT CAR WILL NOT GO OVER 60 MILES AN HOUR EXCEPT IN CIRCUMSTANCES THAT FALL OUTSIDE OUR CONTROL, WHICH THE 9TH

CIRCUIT SAID THERE ARE SOME CIRCUMSTANCES THAT IT IS RECOGNIZED THAT FOR THE TYPE OF LIABILITY AT ISSUE HERE THAT IS AN ACCEPTABLE ERROR.

AND WHAT YOUR HONOR IS ESSENTIALLY SAYING IS WE'VE COME IN TO SAY:

"LOOK, WE TEMPORARILY ARE TURNING OFF THE CAR. IT WAS RUNNING BEFORE. WE FIXED THE FEW PROBLEMS THAT WE THINK REALLY WERE SIGNIFICANT TO THE WAY IT OPERATES."

AND NOW YOU'VE SAID:

"WELL, GIVE ME THE KEYS, BECAUSE YOU'RE NOT TURNING IT ON UNTIL I TELL YOU YOU CAN."

FIRST OF ALL, YOUR HONOR, I WOULD SUGGEST THAT THAT IS A DRAMATIC DEPARTURE, A DRAMATIC DEPARTURE FROM THE COURT'S OWN ORDER.

THE COURT: IT'S NOT A DRAMATIC DEPARTURE FROM WHAT I TOLD YOU, YOU KNOW, AT THE LAST SESSION. AND THAT'S THE RULING, COUNSEL.

DR. NICHOLS KNOWS WHAT IS EXPECTED. I EXPECT YOU TO GET DOWN TO ZERO, ESSENTIALLY DOWN TO ZERO, AS CLOSE THERETO AS POSSIBLE.

MR. O'CONNOR: WELL, YOUR HONOR --

THE COURT: AS HUMANLY POSSIBLE. HE HAS ALREADY INDICATED SOME THINGS THAT CAN BE DONE, AND APPARENTLY THAT YOU RECOGNIZE CAN BE DONE TO GET CLOSER. AND THAT IS WHAT IS GOING

TO HAVE TO BE ACCOMPLISHED. AND WORK WITH HIM, AND HE WILL TELL ME WHEN HE THINKS YOU'VE GOT TO THAT POINT.

AND ALSO, IF YOU THINK YOU'VE GOT TO THE POINT WHERE YOU CAN, IN FACT, BLOCK OUT ALL NOTICED WORKS --

MR. COHEN: YOUR HONOR, WE'RE --

THE COURT: -- OR --

MR. COHEN: -- WE ARE DOING THAT.

THE COURT: THEN YOU CAN COME IN AND SHOW ME THAT, AND HE CAN ATTEST TO THAT, THEN FINE.

MR. COHEN: YOUR HONOR, WE'RE DOING THAT IN 99.4 OF THE CASES NOW, ACCORDING TO OUR MOST RECENT STATISTICS.

THE COURT: WELL, I WANT HIM TO VERIFY THOSE STATISTICS YOU JUST --

MR. COHEN: WELL, YOUR HONOR --

THE COURT: YOU HAVE TO KEEP IN MIND THAT I'M TALKING TO THE WRONGDOER HERE. YOU HAVE TO SATISFY ME NOW. IT'S YOUR OBLIGATION, THAT YOU ARE NO LONGER A WRONGDOER.

MR. COHEN: BUT, YOUR HONOR, OUR PROBLEM IS THAT WE FEEL THE COURT IS NOT GIVING US A STANDARD OTHER THAN TELLING US TO TALK TO DR. NICHOLS. WE THINK WE --

THE COURT: OKAY. THE STANDARD IS GET IT DOWN TO ZERO. DO YOU UNDERSTAND THAT?

MR. COHEN: WELL, YOUR HONOR, I DON'T THINK UNDER WHAT THE 9TH CIRCUIT HAS SAID THE STANDARD CAN BE GIVEN.

THE COURT: WELL, THEN, YOU CAN TAKE IT UP WITH THE

9TH CIRCUIT.

MR. COHEN: YOUR HONOR, ONCE AGAIN, I WOULD SIMPLY REQUEST --

THE COURT: I'M FINISHED, COUNSEL. I AM FINISHED. I THINK I'VE MADE IT CLEAR. ONE OF THE THINGS COUNSEL HAS TO LEARN IS WHEN IT IS TIME TO STOP. GO BACK AND GET WHAT NEEDS TO BE DONE DONE.

DR. NICHOLS WILL MEET WITH YOU. HE WILL MEET WITH WITH PLAINTIFFS. ALSO, ONE OF THE OTHER THINGS WE HAVE TO DO IS WE HAVE TO SET SOME DATES FOR TRIAL.

MR. COHEN: YOUR HONOR, BEFORE WE CAN MOVE ON IF I CAN JUST ASK FOR THREE REQUESTS. THE FIRST IS I WOULD ASK THAT THE COURT STAY ITS ORDER SO THAT WE CAN DETERMINE HOW WE ARE GOING TO PROCEED AND POTENTIALLY --

THE COURT: DENIED.

MR. COHEN: SECOND OF ALL, I WOULD REQUEST AN OPPORTUNITY TO BE ABLE TO SAY SOMETHING, BECAUSE THIS IS MY UNDERSTANDING IS THIS CONFERENCE IS UNDER SEAL. AND RIGHT NOW THERE IS ABSOLUTE SILENCE AND UTTER CONFUSION ABOUT WHAT IS GOING ON WITH THIS COMPANY. AND WE WOULD LIKE TO BE ABLE TO PUT OUT SOME KIND OF STATEMENT EXPLAINING THAT AS A CONSEQUENCE OF THE COURT'S ORDER WE'RE NOT UP AND RUNNING, AS OPPOSED TO THE CONSEQUENCE OF OUR TECHNOLOGY.

THE COURT: THAT'S FINE.

MR. COHEN: THIRD, WITH RESPECT TO DR. NICHOLS,

BEFORE WE MOVE ON TO SCHEDULING IN THE CASE AS A WHOLE, WE WOULD AT LEAST LIKE BEFORE WE WALK OUT OF HERE TO GET A SCHEDULE, A VERY, VERY TIGHT SCHEDULE AS TO WHEN WE CAN MEET WITH DR. NICHOLS, AND WHAT DR. NICHOLS' STANDARD IS.

THE COURT: HE'S RIGHT HERE, AND YOU CAN SPEAK WITH HIM. I TOLD YOU WHAT THE STANDARD IS, TO GET IT DOWN TO ZERO. BUT HE HAS ALSO -- SOME OF YOU, HE'S TALKED WITH YOU. HE HAS ENOUGH IDEA OF WHAT SOME OF THE THINGS ARE THAT CAN STILL BE DONE TO ACHIEVE THAT.

AND HE WILL MEET WITH YOU, AND THEN HE'LL MEET WITH PLAINTIFFS. AND I AUTHORIZED HIM TO DO THAT SEPARATELY AS APPROPRIATE, JUST SO HE DOESN'T HAVE TO DEAL WITH THIS BACK AND FORTH AND BACK AND FORTH. BUT TRY TO HASH OUT THE PROBLEMS.

AND YOU CAN WORK OUT A SCHEDULE WITH HIM. AND THEN, I AM ALSO GOING TO REFER YOU ALL BACK TO JUDGE LYNCH BECAUSE I THINK IT'S TIME TO TALK SETTLEMENT AGAIN.

AND THAT MEANS THAT YOU TRY TO SETTLE IT. YOU, TOO.

THE COURT: DON'T -- DON'T -- I'M LOOKING AT YOU, MR. FRACKMAN, AND ALL OF THE PEOPLE THERE AT YOUR TABLE.

MR. FRACKMAN: COUPLE OF COLLATERAL POINTS, IF I MAY, YOUR HONOR.

THE COURT: YES.

MR. FRACKMAN: IS TODAY'S TRANSCRIPT UNDER SEAL? I'M NOT SURE THERE'S ANY REASON WHY IT SHOULD BE ESPECIALLY IF

NAPSTER IS GOING TO MAKE A STATEMENT, OBVIOUSLY. AND WE HAVEN'T TALKED ABOUT ANYTHING THAT'S CONFIDENTIAL.

THE COURT: I DON'T THINK THERE'S ANY REASON WHY THIS TRANSCRIPT SHOULD BE UNDER SEAL, ACTUALLY.

MR. FRACKMAN: I WOULD AGREE.

THE COURT: I MEAN, THIS HAS BEEN VERY, VERY GENERAL.

MR. COHEN: MAY I JUST HAVE ONE MOMENT, YOUR HONOR?

THE COURT: YES.

MR. FRACKMAN: SECOND, YOUR HONOR, IF THERE IS GOING TO BE ANY OF THIS TESTING -- AND I SUPPOSE WE CAN WORK THIS OUT WITH DR. NICHOLS -- BUT ANY TESTING BY NAPSTER, WE WOULD CERTAINLY SUGGEST THAT IT WOULD BE APPROPRIATE IF WE GET -- AND I'M SUGGESTING TWO BUSINESS DAYS' NOTICE BEFORE THEY ARE GOING TO TEST SO THAT WE CAN BE INVOLVED TO THE EXTENT WE CAN BE INVOLVED IN WATCHING WHAT IS GOING ON.

MR. COHEN: JUST TO CLARIFY, YOUR HONOR. I JUST WANT TO MAKE SURE THAT I UNDERSTAND WHAT MR. FRACKMAN IS ASKING. WHEN HE'S TALKING ABOUT TESTING, HE MEANS -- AM I CORRECT TO ASSUME THAT YOU MEAN A SITUATION WHERE WE ALLOW TRANSFERS TO GO THROUGH IN ORDER TO TEST THE SYSTEM, AS OPPOSED TO JUST GENERIC TESTING AT NAPSTER?

THE COURT: YES. YES.

MR. FRACKMAN: YES.

THE COURT: AND THAT WOULD BE TO HAVE ONLY A

TECHNICAL PERSON PRESENT.

MR. FRACKMAN: YES, JUST --

THE COURT: OR UNDER CIRCUMSTANCES THAT ARE AGREED TO BY DR. NICHOLS.

MR. COHEN: YOUR HONOR, JUST SO THAT I'M ABSOLUTELY CLEAR AND CAN ADVISE MY CLIENT, I UNDERSTAND WHAT THE COURT IS SAYING IS THAT THERE ARE CIRCUMSTANCES IN WHICH WE CAN TURN ON FOR TESTING WITH KNOWLEDGE OF DR. NICHOLS.

THE COURT: NOTIFY DR. NICHOLS IN ADVANCE AND NOTIFY -- TWO DAYS NOTICE AND NOTIFY MR. FRACKMAN OR THEIR DESIGNATED REPRESENTATIVE -- AND JUST ONE, SO HE DOESN'T HAVE TO NOTIFY A WHOLE LOT OF PEOPLE.

MR. FRACKMAN: THAT'S FINE, YOUR HONOR.

THE COURT: AND THEN, DR. NICHOLS SHOULD BE PRESENT, IF HE DEEMS THAT APPROPRIATE. AND PLAINTIFFS MAY HAVE A -- YOU KNOW, A TECHNICAL EXPERT PRESENT. I GUESS THAT'S YOU, RIGHT?

MR. FARMER: YES, YOUR HONOR. I CAN ONLY ASSUME SO.

THE COURT REPORTER: CAN I HAVE THE NAME OF THE PERSON WHO IS SPEAKING?

MR. FRACKMAN: I'M SORRY. MR. FRACKMAN. OH, THAT WAS MR. FARMER.

WE'RE PREPARED TO TALK ABOUT SCHEDULING, TOO, YOUR HONOR.

BEFORE WE GET TO THAT, ONE OTHER POINT, AND I RAISED IT THE LAST TIME. WE WOULD LIKE TO MAKE AN APPLICATION TO THE

COURT FOR MONETARY RECOMPENSE FOR THE EXPENDITURE OF ATTORNEYS' TIME AND DR. NICHOLS' TIME THUS FAR. AND WE THINK THAT IT'S APPROPRIATE PERHAPS AT THIS TIME TO DO SO, AND WOULD ASK THE COURT'S GUIDANCE ON THAT.

THE COURT: WELL, WHAT ARE YOU INTENDING TO DO, FILE A MOTION IN THAT RESPECT?

MR. FRACKMAN: YES, YOUR HONOR.

THE COURT: WELL, JUST FILE A MOTION, I GUESS, OKAY?

MR. FRACKMAN: VERY GOOD.

THE COURT: I CAN'T TELL YOU ANYTHING MORE THAN THAT OTHER THAN STAY WITHIN THE GUIDELINES, NOT TOO MANY DECLARATIONS, KEEP IT AS BRIEF AS POSSIBLE.

MR. FRACKMAN: YES.

THE COURT: AND WORK OUT A SCHEDULE WITH OPPOSING COUNSEL FOR BRIEFING AND PUTTING IT ON MY CALENDAR.

MR. FRACKMAN: VERY GOOD.

THE COURT: WHAT ABOUT TRIAL?

MR. FRACKMAN: YES, THAT'S WHERE I WAS GOING TO, YOUR HONOR. WE HAVE A SUGGESTION TO THE COURT. WE'VE TALKED ABOUT THIS. WE WOULD INTEND TO FILE A MOTION FOR SUMMARY JUDGMENT ON THE LIABILITY ISSUES.

AND OUR PROPOSAL THAT WE'D BE ABLE TO MEET IF IT'S SATISFACTORY TO THE COURT --

THE COURT: RIGHT. WE'RE STILL OPERATING UNDER INJUNCTIONS. THERE'S NEVER BEEN A MOTION FOR SUMMARY JUDGMENT.

MR. FRACKMAN: THERE HAS NOT, YOUR HONOR. WE'RE PREPARED TO FILE THE MOTION BY AUGUST 3RD, WHICH I THINK IS IN THREE WEEKS, PERHAPS, FROM NOW.

AND OUR SUGGESTION WOULD BE OPPOSITION ON SEPTEMBER 4TH, REPLY SEPTEMBER 21ST, AND A HEARING IF THE COURT'S AVAILABLE AROUND OCTOBER 10TH.

MR. COHEN: YOUR HONOR, I JUST POINT OUT THERE IS AN APPEAL PENDING, AND I'M NOT SURE WHAT THE PENDENCY OF THE APPEAL IS, WHETHER IT'S APPROPRIATE TO GO FORWARD WITH ANY OF THIS.

MR. FRACKMAN: OF COURSE IT IS.

MR. OPPENHEIM: IT'S ONLY ON THE INJUNCTION, NOT ON LIABILITY.

THE COURT: THE APPEAL IS ON THE INJUNCTIVE RELIEF, RIGHT? I THINK THAT'S CORRECT. I MEAN, YOU CAN ADDRESS THAT IN YOUR OPPOSITION.

MR. PULGRAM: YOUR HONOR?

THE COURT: YES.

MR. PULGRAM: WITH RESPECT TO THESE MATTERS, GENERALLY, THESE CASES LEIBER, RIAA ARE COORDINATED IN THE MDL WITH A NUMBER OF OTHER CASES. WE DO NOT HAVE THOSE PARTIES HERE. IT SEEMS TO US THAT THERE SHOULD BE A PLAN FOR THE MDL. AND THAT IN ADVANCE OF THAT, IF SUMMARY JUDGMENT IS AN APPROACH THAT THEY WANT TO TAKE -- AND THESE ARE THE FIRST WORDS THAT WE'VE HEARD ABOUT IT -- THAT WE SHOULD SIT DOWN WITH THE

PLAINTIFFS. WE SHOULD TRY TO COME UP WITH A RECOMMENDED COURSE FOR DISPOSING OF THE ENTIRE MDL, AND THOSE ISSUES WHICH ARE COMMON OR NOT COMMON IN THE VARIOUS CASES.

THE COURT: WELL, FIRST OF ALL, LET'S GET SOMETHING CLEAR WITH RESPECT TO THE MDL. WHO'S NOT HERE? MR. KING IS NOT HERE?

MR. FRACKMAN: MISTER -- I GUESS IT'S MR. KING. MR. CATES --

THE COURT: HIS CASE WAS FILED HERE.

MR. FRACKMAN: MR. CATES --

THE COURT: WHICH CASES ARE HERE BY VIRTUE OF MDL, BUT WERE FILED IN ANOTHER DISTRICT?

MR. FRACKMAN: MR. CATES WAS FILED IN THE CENTRAL DISTRICT OF CALIFORNIA.

THE COURT: WELL, I JUST DID SOME ORDERS WITH RESPECT TO MR. CATES' CASE.

MR. PULGRAM: OKAY. AND TWO OTHER CASES THAT WERE NOT FILED.

MR. FRACKMAN: DR. DRE AND METALLICA WERE FILED IN THE CENTRAL DISTRICT OF CALIFORNIA.

THERE ARE SOME RECENT CASES. I'M NOT SURE WHERE THEY HAVE BEEN FILED. PERHAPS MR. PULGRAM KNOWS.

THE COURT: WE HAVE THESE COME DRIBBLING IN, BUT A LOT OF THEM END UP HAVING BEEN FILED HERE.

MR. PULGRAM: ONLY TWO CASES OTHER THAN MR. CATES,

THE PRO SE CASE, WERE FILED OUTSIDE OF THIS JURISDICTION. THOSE WERE MR. KING'S CASES. AND, YOUR HONOR, THOSE HAVE BEEN RESOLVED.

WE ARE NOT GOING TO BE GOING TO TRIAL WITH MR. KING AND HIS TWO SOUTHERN CALIFORNIA CASES. SO EVERY CASE FILED AGAINST NAPSTER IS PENDING IN THIS COURT AND WILL NEED TO BE TRIED AND DISPOSED OF HERE.

SO THAT THERE ARE NOW 12 CASES THAT ARE PENDING, AND OUR VIEW IS SUMMARY JUDGMENT, IF IT'S THE APPROPRIATE WAY TO DISPOSE OF THINGS, WE CAN IDENTIFY WHAT THOSE ISSUES ARE. WE NEED TO CLOSE DISCOVERY ON WHATEVER THOSE ISSUES ARE.

WE NEED TO MAKE SURE THAT THIS IS DONE IN A WAY THAT IS THE MOST EFFECTIVE OF DISPOSING OF ALL THE COURTS (SIC) THAT YOU HAVE ON YOUR DOCKET AT THIS POINT.

THE COURT: HAVE YOU CONFERRED WITH THE PLAINTIFFS IN THE OTHER CASES?

MR. FRACKMAN: ON THIS PARTICULAR ISSUE, YOUR HONOR?

THE COURT: YES.

MR. FRACKMAN: NO, WE HAVEN'T, ALTHOUGH WE HAVE BEEN CONFERRING GENERALLY. IN ALL DUE RESPECT, YOUR HONOR, THOSE OTHER CASES INVOLVE A RECORDING OR A COMPOSITION HERE OR THERE. THEY ARE COORDINATED AT THIS POINT FOR DISCOVERY PURPOSES, PRETRIAL PURPOSES, BUT NOT FOR TRIAL.

THE COURT: WELL, THEY SHOULD BE COORDINATED FOR MOTION PURPOSES. MAYBE THEY WOULD END UP BEING COORDINATED FOR

TRIAL PURPOSES. AND THE REASON I ASKED ABOUT THE MDL COMPONENT OF THIS, THIS WHOLE LEXICON ISSUE, WHICH STILL IS WITH US, BECAUSE CONGRESS IS NEVER -- ALTHOUGH THEY HAVE LEGISLATION, THEY HAVE HAD BILLS IN AT VARIOUS TIMES TO DEAL WITH THE LEXICON ISSUE, THEY NEVER -- THEY NEVER HAVE.

AND SO -- BUT IT SEEMS TO ME THAT THAT'S PROBABLY ACADEMIC. I CAN SEND MR. CATES BACK TO SOUTHERN CALIFORNIA.

MR. FRACKMAN: YES.

MR. PULGRAM: AND THERE ARE TENS OF THOUSANDS OF RECORDINGS OR COMPOSITIONS INVOLVED IN THESE OTHER CASES. THERE ARE SOME BIG COMPANIES AND THERE ARE SOME BIG INTERNET SITES, FOR EXAMPLE.

MR. FRACKMAN: BUT, YOUR HONOR, THERE'S NO REASON WHY SUMMARY JUDGMENT CANNOT BE HANDLED ON A CASE-BY-CASE BASIS. WE'D CERTAINLY BE HAPPY TO COORDINATE. BUT WE'RE --

THE COURT: WELL, HOLD ON. HOLD ON. NAPSTER IS A DEFENDANT, RIGHT, IN ALL OF THOSE CASES, RIGHT?

MR. FRACKMAN: YES.

THE COURT: ARE THERE ISSUES, POTENTIAL ISSUES OF COLLATERAL ESTOPPEL OR ISSUE PRECLUSION AND SO FORTH? NOT AGAINST YOU, MAYBE, BECAUSE -- BUT AGAINST NAPSTER.

MR. FRACKMAN: IF THEY LOSE OR IF THEY WIN? IF THEY LOSE, I SUPPOSE --

THE COURT: IF THEY LOSE, YES.

MR. FRACKMAN: WELL, WHEN THERE'S A FINAL JUDGMENT

ENTERED I SUPPOSE THERE WOULD BE, BUT THAT'S THE WAY IT IS NORMALLY.

THESE ISSUES ON LIABILITY DO NOT PARTICULARLY VARY. AND IF THERE WAS NO CONSOLIDATION OR COORDINATION DUTY THERE WOULD EITHER BE COLLATERAL ESTOPPEL OR THERE WOULDN'T. THIS IS --

THE COURT: WELL, I TELL YOU WHAT. YOU WORK OUT WITH ALL THE OTHER PLAINTIFFS IN THESE CASES THAT ARE HERE, BECAUSE THEY WERE FILED IN THIS DISTRICT.

MR. FRACKMAN: RIGHT.

THE COURT: WHICH LEAVES OUT THE METALLICA, DR. DRE CASES, I GUESS, AND MR. CATES' CASE. AND TALK WITH THE COUNSEL IN THOSE CASES AND WORK OUT A SCHEDULE.

MR. FRACKMAN: OKAY. IF THE PARTIES IN THE OTHER CASES AGREE, WOULD THE SCHEDULE THAT I OUTLINED TO THE COURT BE ACCEPTABLE?

THE COURT: THAT'S FINE. AND WHAT I WOULD ASK THAT WE DO, YOU KNOW, GIVEN THE FACT THIS HAS BEEN GOING ON FOR AWHILE, IS THAT DEFENDANTS FILE THEIR OPPOSITION AND NOT COME RUNNING IN HERE:

"DISCOVERY, DISCOVERY, DISCOVERY," YOU KNOW, AND FILE A 56 (F) AFFIDAVIT. BUT FILE IT IN THE CONTEXT OF HAVING FILED AN OPPOSITION, UNDERSTANDING THAT YOU MAY BE PERMITTED TO FILE A SUPPLEMENTAL. AND TELL ME:

"OKAY. HERE IS WHAT WE STILL NEED DISCOVERY ON

AND WHY," AND IT WILL MAKE MORE SENSE TO ME IN THE CONTEXT OF YOUR OPPOSITION IF YOU FILE THAT. AND IF I CONCLUDE THAT THERE IS SOME FURTHER DISCOVERY THAT YOU NEED BEFORE YOU CAN ADEQUATELY RESPOND TO THE MOTION, THEN I'LL GIVE YOU TIME TO DO DISCOVERY AND THEN SUPPLEMENT YOUR OPPOSITION AND EXTEND THE SCHEDULE.

MR. FRACKMAN: OKAY.

THE COURT: OKAY?

MR. PULGRAM: YOUR HONOR, WE WOULD BE PREPARED TO DO THAT. IT WOULD SEEM TO US THAT BRIEFING UP ALL OF THE SUMMARY JUDGMENT ARGUMENTS BEFORE HAVING THAT DISCOVERY TAKEN AND BEFORE INVOLVING WHAT HAVE BEEN LONG-STANDING AND DIFFICULT DISCOVERY ISSUES WOULD BE A BIT OF RUNNING UP AHEAD OF OURSELVES HERE.

WE BELIEVE THAT WE SHOULD RESOLVE THE DISCOVERY ISSUES THAT HAVE BEEN OUTSTANDING NOW FOR SEVERAL MONTHS IN THIS CASE IN ORDER FOR US TO GET THE INFORMATION THAT WE NEED TO OPPOSE.

THE COURT: WELL, I NEED TO SEE WHAT THE MOTIONS ARE, THE GIST OF THEM AND SO FORTH.

BELIEVE ME, FROM MY EXPERIENCE THAT WORKS MUCH BETTER. I KNOW. SO THAT'S WHAT WE'RE GOING TO DO. BUT YOU'VE GOT TO GET EVERYBODY ELSE ON BOARD WITH THE SCHEDULE THAT EVERYBODY CAN LIVE WITH.

MR. FRACKMAN: WE WILL DO THAT.

THE COURT: BECAUSE I DON'T WANT TO DO THESE, YOU KNOW, AD SERATIM AND THEN SOMEBODY ELSE COMES IN AND MAKES A DIFFERENT ARGUMENT. AND IT DOES PRESENT PROBLEMS OF, YOU KNOW, COLLATERAL ESTOPPEL.

MR. PULGRAM: SO WE WILL BE PREPARED --

THE COURT: SO --

MR. PULGRAM: -- HERE TO MEET AND CONFER WITH MR. FRACKMAN AND THE OTHER PLAINTIFFS REGARDING THESE CASES.

THE COURT: YES. AND THERE ARE A NUMBER OF THEM NOW. THERE'S SOME OUTFIT THAT JUST FILED SOMETHING, PLATINUM OR SOMEBODY.

MR. FRACKMAN: YES, I SAW THAT.

THE COURT: I DON'T KNOW HOW MANY, YOU KNOW.

MR. FRACKMAN: I DON'T ANTICIPATE THAT THERE WILL BE A PROBLEM COORDINATING.

THE COURT: YES.

MR. FRACKMAN: AND AS I SAID, WE SUGGEST THAT SCHEDULE AND WE WILL TRY AND COORDINATE THAT WITH THE REMAINING PARTIES.

THE COURT: RIGHT. RIGHT. NOW, ALSO, WHERE DO -- DOES THAT CASE INVOLVING CASANOVA, WHERE IS THAT NOW?

MR. FRACKMAN: WE'VE BEEN --

THE COURT: COUNSEL FOR CASANOVA, OR WHOEVER?

MR. FRACKMAN: DON'T KNOW.

THE COURT: CASANOVA IS NO LONGER IN THE CASE?

MR. FRACKMAN: WE'VE BEEN KEEPING THEM ADVISED OF THESE PROCEEDINGS AS LIAISON COUNSEL.

THE COURT: THEY WERE TO FILE AN AMENDED COMPLAINT OR SOMETHING LIKE THAT?

MR. FRACKMAN: I DON'T REMEMBER THAT, YOUR HONOR.

THE COURT: WASN'T THAT CORRECT? REMEMBER WE SAID WE COULDN'T CERTIFY A CLASS OF SUCH AND SUCH, OF THE WHOLE WORLD.

THE LAW CLERK: RIGHT.

THE COURT: AND SO WERE THEY GIVEN LEAVE TO AMEND THEIR COMPLAINT OR WAS IT TO REDEFINE THE CLASS? THEY WERE GIVEN LEAVE ALONG THOSE LINES, ANYWAY.

MR. FRACKMAN: IF YOUR HONOR WISHES I CAN ATTEMPT TO FIND OUT AND NOTIFY THE COURT.

THE COURT: YES, AND SEE WHERE THEY ARE IN THE PROCESS, AS WELL.

I THINK ALSO THERE WAS A PROBLEM OF ADEQUACY OF REPRESENTATION. SO --

MR. PULGRAM: WE'VE NOT HEARD FROM --

THE COURT: I DIDN'T KNOW WHETHER IT WAS IMPORTANT THEY HAVEN'T SHOWN UP LATELY OR NOT.

MR. FRACKMAN: WELL, YOUR HONOR HAS BEEN LIMITING, I THINK, THE NUMBER OF PARTICIPANTS.

THE COURT: PARTICIPATION.

MR. FRACKMAN: PARTICIPATION.

MR. PULGRAM: WE'VE NOT HEARD AN INTENTION ON THEIR PART TO SEEK AN AMENDED CLASS CERTIFICATION.

MR. FRACKMAN: THEY HAVE BEEN EXPRESSING SOME INTEREST, HOWEVER, IN THE PROCEEDINGS, AND WE'VE BEEN ADVISING THEM. SO WE WILL FIND OUT AND ADVISE COUNSEL AND THE COURT.

THE COURT: OKAY.

MR. FRACKMAN: OR HAVE THEM ADVISE COUNSEL AND THE COURT.

THE COURT: OKAY. MAYBE WHAT YOU COULD DO IS IN CONNECTION WITH THIS SUBMIT JUST A JOINT STATEMENT ON BEHALF OF ALL OF THE PLAINTIFFS WITH RESPECT TO SCHEDULING AND MOTIONS AND WHAT MOTIONS THEY INTEND TO PURSUE.

I CERTAINLY WANT A COORDINATED BRIEFING AND NOT HAVE DUPLICATIVE BRIEFING. I DON'T WANT TO GET PAPERS FROM THREE SETS OF PLAINTIFFS OR FIVE OR SIX SETS OF PLAINTIFFS, YOU KNOW, ESSENTIALLY ALL MAKING THE SAME ARGUMENT. SO THAT SHOULD ALL BE COORDINATED, OKAY?

MR. FRACKMAN: THAT WON'T BE A PROBLEM.

THE COURT: OKAY.

MR. FRACKMAN: MAY I RAISE ONE OTHER HOUSEKEEPING ISSUE, YOUR HONOR, THAT I'M REMINDED OF? IT DOESN'T APPLY TO THIS TRANSCRIPT BECAUSE IT'S NOT SEALED. BUT ON THE OTHER TRANSCRIPTS YOUR HONOR HAS PERMITTED US TO MAKE ONE COPY FOR GENERAL COUNSEL, WHICH WE'VE DONE WITH THE PROVISO THAT IT'S NOT TO BE DISTRIBUTED OR DISCUSSED OR RELEASED.

WE HAVE BEEN KEEPING DR. NICHOLS' REPORTS CONFIDENTIAL FROM EVERYBODY EXCEPT THE MULTIDISTRICT PLAINTIFFS.

WE WOULD ALSO ASK THE COURT FOR PERMISSION TO PROVIDE THOSE TO OUR CLIENTS AGAIN SIMPLY JUST TO GENERAL COUNSEL FOR EACH OF THE FIVE COMPANIES.

THE COURT: THAT'S FINE.

MR. FRACKMAN: THANK YOU.

THE COURT: OKAY?

MR. PULGRAM: ONE HOUSEKEEPING POINT WITH RESPECT TO HE TRANSCRIPT.

THE COURT: I DON'T DO HOUSEKEEPING, MR. PULGRAM. I TOOK THIS JOB SO I WOULDN'T HAVE TO DO HOUSEKEEPING.

MR. PULGRAM: ACTUALLY, IT HAS TO DO WITH YOUR TRUSTY COURT REPORTER. WE WOULD LIKE TO GET THIS TRANSCRIPT AS SOON AS POSSIBLE, YOUR HONOR.

THE COURT: YOU WORK IT OUT WITH HER.

MR. PULGRAM: WE WILL CERTAINLY.

THE COURT: OKAY? SHE KNOWS HER SCHEDULING AND BACKLOG.

NOW, WITH RESPECT TO ANOTHER DATE, WHY DON'T WE DO THIS?

IF, IN FACT, YOU'RE GOING TO NOTICE MOTIONS WHY DON'T WE JUST USE THESE DATES UNLESS YOU NEED TO BRING IT ON THE CALENDAR EARLIER, IN WHICH CASE YOU CAN DO THAT.

OR MR. NICHOLS CAN NOTIFY ME OR YOU CAN NOTIFY, YOU KNOW:

"WE'RE CLEAN AS A WHISTLE NOW AND EVERYTHING IS GOING GREAT, AND YOU'RE GOING TO REALLY APPROVE OF US NOW," OKAY?

ANY REASON WHY YOU SHOULDN'T GO BACK AND TALK TO JUDGE LYNCH BEFORE YOU GEN UP ALL THIS SUMMARY JUDGMENT PAPER?

MR. COHEN: YOUR HONOR, ABSOLUTELY NO REASON AT ALL WHY WE SHOULDN'T.

THE COURT: WELL, LET ME TALK WITH HIM.

AND WHEN I SAY "TALK WITH HIM" I'M JUST GOING TO CALL HIM UP AND ASK HIM, YOU KNOW, I'VE INSTRUCTED YOU PEOPLE -- OR HE CAN CALL YOU. I GUESS HE PROBABLY HAS YOUR NUMBERS.

OR YOU CALL HIM SOMETIME WITHIN THE NEXT WEEK AND TRY TO WORK OUT A DATE, OKAY?

AND ALSO DR. NICHOLS DID ASK ME THIS: I DON'T THINK IT'S APPROPRIATE THAT HE SIT IN ON THE SETTLEMENT CONFERENCES. BUT I DO THINK IT IS APPROPRIATE IF JUDGE LYNCH WOULD LIKE TO BE ABLE TO CONTACT HIM FOR TECHNICAL ADVICE THAT HE BE ABLE TO DO THAT.

MR. FRACKMAN: YES.

THE COURT: AND I ASSUME NOBODY WOULD HAVE ANY OBJECTION TO THAT, RIGHT?

MR. FRACKMAN: WE HAVE NO PROBLEM.

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1 MR. COHEN: THAT'S FINE.
2 THE COURT: OKAY.
3 MR. COHEN: ONE LAST CLARIFICATION, YOUR HONOR, AND
4 THEN I'LL STOP ASKING FOR CLARIFICATIONS, AT LEAST FOR TODAY.
5 JUST SO I UNDERSTAND THE PROCEDURE WE'RE GOING TO
6 WORK WITH DR. NICHOLS.
7 WE ARE GOING TO TEST THE SYSTEM. AND I JUST WANTED
8 TO MAKE SURE I UNDERSTAND THE MECHANISM FOR GETTING BACK BEFORE
9 YOUR HONOR WHEN WE BELIEVE THE SYSTEM IS IN ACCORDANCE WITH THE
10 COURT'S WISHES.
11 THE COURT: EITHER TALK TO DR. NICHOLS AND HE CAN
12 NOTIFY ME:
13 "I THINK IT'S TIME TO PUT IT ON THE CALIFORNIA"
14 AND SO ON AND SO FORTH.
15 OR, YOU KNOW, IF HE SAYS:
16 "YOU KNOW, YOU'RE CRAZY. YOU STILL GOT A LOT
17 MORE TO DO," AND YOU DISAGREE, THEN SEND ME A LETTER
18 WITH COPY TO COUNSEL.
19 MR. COHEN: YOUR HONOR, WE'RE OBVIOUSLY INTERESTED
20 IN EXPEDITING THIS PROCESS I ALLUDED TO.
21 THE COURT: I UNDERSTAND.
22 MR. COHEN: WE HAVE A COMPANY THAT IS ESSENTIALLY
23 NOW NOT OPERATING, AND IT IS SUFFERING.
24 AND WE JUST WANT TO MAKE SURE THAT WE ARE ABLE TO BE
25 HEARD AS EXPEDITIOUSLY AS POSSIBLE.

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THE COURT: WELL, THEN, I'M NOT TELLING YOU NOT TO.

LET ME KNOW AND PUT IT ON THE CALENDAR. OKAY?

SO YOU JUST SEND A LETTER TO MY COURTROOM DEPUTY AND COPY TO COUNSEL, OKAY?

THANK YOU.

MR. FRACKMAN: THANK YOU, YOUR HONOR.

(THEREUPON, THIS HEARING WAS CONCLUDED.)

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CERTIFICATE OF REPORTER

I, KATHERINE POPE WYATT, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 11TH DAY OF JULY, 2001.

_____