

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

MALIBU MEDIA, LLC,	)	12-cv-2078
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN DOES 1, 13 and BRIAN	)	
WHITE,	)	Philadelphia, PA
	)	June 10, 2013
Defendants.	)	9:28 a.m.

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE MICHAEL M. BAYLSON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Colloquy

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1 (The following was heard in open court at 9:28 a.m.)

2 THE COURT: Please be seated.

3 Okay. We're here for the beginning of a trial in  
4 Malibu Media versus several John Does, Civil Action 2012-2078.

5 MR. LIPSCOMB: Your -- Your Honor, Mr. Smith is not  
6 here yet.

7 THE COURT: I see.

8 MR. LIPSCOMB: He represents John Doe --

9 THE COURT: Yes.

10 MR. LIPSCOMB: or Brian White.

11 THE COURT: All right. Well, we'll wait a few  
12 minutes, but I -- I have some questions for you, Mr. Lipscomb,  
13 that I don't --

14 MR. LIPSCOMB: May I approach?

15 THE COURT: -- think he's -- yes -- that he's  
16 essential for.

17 When this case started, there were three cases that  
18 were assigned to me, as you may recall, and they -- they were  
19 Civil Actions No. 2078, 2084 and 288 -- 2012 and those three  
20 dash numbers.

21 And at some point, as everybody may recall, I  
22 consolidated them all into the current case of 2078, so all  
23 the proceedings since the consolidation have been carried  
24 forth in 2078.

25 Now, there were -- in those three cases there were a

1 total of 52 defendants, and when I established the bellwether  
2 trial, which is starting today, I issued an order staying the  
3 proceeding against all the other defendants.

4 Now, actually, there were -- of the 52 defendants  
5 there were six who came forward and filed motions to quash  
6 your subpoena to the internet service providers, and then one  
7 of those withdrew the opposition.

8 MR. LIPSCOMB: John Doe 6.

9 THE COURT: And then there were five left, and then  
10 today we have three left.

11 But -- so my first question is what is the status as  
12 to the remaining, say, 52 minus six, so the remaining 46 --

13 MR. LIPSCOMB: Voluntarily dismissed --

14 THE COURT: -- who were initially sued?

15 MR. LIPSCOMB: -- without prejudice.

16 THE COURT: What?

17 MR. LIPSCOMB: Voluntarily dismissed without  
18 prejudice.

19 THE COURT: You did that.

20 MR. LIPSCOMB: We did that because by the time we --  
21 we would get their name, it would be deleted by the ISPs, so  
22 they were dead. They were dead to us. We couldn't --

23 THE COURT: They were what?

24 MR. LIPSCOMB: The -- the ISPs delete the  
25 correlating data after -- between six months and at the most,

1 18 months, and --

2 THE COURT: Okay.

3 MR. LIPSCOMB: -- we -- we voluntarily dismissed  
4 them because we wouldn't be able to now subpoena them and get  
5 their names, and -- and so it -- those weren't --

6 THE COURT: Okay.

7 MR. LIPSCOMB: -- those weren't going to be viable  
8 cases anymore.

9 THE COURT: So the ISPs, if, for example Comcast and  
10 Verizon, they would have deleted the correlating data?

11 MR. LIPSCOMB: Comcast has a six-month data  
12 retention period. Verizon has an 18-month data retention  
13 period.

14 THE COURT: Comcast is six months?

15 MR. LIPSCOMB: Comcast is six months.

16 THE COURT: And Verizon is 18?

17 MR. LIPSCOMB: Eighteen months. So Verizon --  
18 Verizon would have -- would have kept it, but Comcast would  
19 have --

20 THE COURT: All right.

21 MR. LIPSCOMB: -- would have come and gone.

22 THE COURT: Do they -- do those companies establish  
23 that on their own or is there some regulation, FCC or  
24 otherwise?

25 MR. LIPSCOMB: They establish it on their own, and



1 in fact the FBI has been begging for a national standard  
2 because some ISPs don't keep it but for a week. And some  
3 only, you know -- and -- and it impedes their ability to do  
4 criminal investigations.

5 THE COURT: Does the FCC have any jurisdiction over  
6 this or not? Federal Communications Commission?

7 MR. LIPSCOMB: No.

8 THE COURT: 'Cause they -- they regulate Comcast and  
9 Verizon.

10 MR. LIPSCOMB: They do, under the Cable Act, sure.

11 THE COURT: Right. But this would not be cable. If  
12 you know.

13 MR. LIPSCOMB: I don't know.

14 THE COURT: All right. Okay. Now, of the -- did  
15 you -- did you enter into settlements with any of those 46?

16 MR. LIPSCOMB: I don't know.

17 THE COURT: You -- you wouldn't have any way of  
18 knowing, or you just don't recall.

19 MR. LIPSCOMB: The answer to your question is before  
20 the -- right at the beginning of the suits, when you file this  
21 type of suit, and when -- I don't know if we were ever  
22 given -- oh, yes.

23 Oh, the way that this case went was we were given  
24 the ability to subpoena the defendants, and then --

25 THE COURT: The first thing is you subpoenaed --

1 MR. LIPSCOMB: Yeah, okay.

2 THE COURT: -- the -- I gave you leave to --

3 MR. LIPSCOMB: I submitted the ISPs.

4 In response to that subpoena what typically happens  
5 is, say, 10 to 15 percent of the Does call us and say, "Hey, I  
6 want to resolve this right away because there's no use in  
7 fighting."

8 And so there's -- there's some high probability that  
9 we settled with some of those people.

10 THE COURT: Okay.

11 MR. LIPSCOMB: I -- I don't know off the top of my  
12 head, but it's likely.

13 THE COURT: All right. Now, of the six who had  
14 filed the motions to quash the subpoena to the ISPs, one  
15 withdrew it, and there were five left, and they were in  
16 addition to the three John Does here. They were -- one of  
17 them, John Doe 6, you may recall --

18 MR. LIPSCOMB: He withdrew. Didn't he withdraw  
19 his --

20 THE COURT: Well, that's my question. He's -- he  
21 was the only one when, he filed the motion to quash, submitted  
22 a declaration, taken subject to penalties of perjury, that he  
23 did not download.

24 MR. LIPSCOMB: Oh, okay. That was that one. And  
25 then --

1 THE COURT: Do you know what happened to him?

2 MR. LIPSCOMB: Subsequently he -- subsequently he  
3 filed a declaration in this case saying that someone in his  
4 house did, and -- and I entered into a confidential settlement  
5 agreement with him, but he admitted liability came from his  
6 house.

7 THE COURT: All right.

8 MR. LIPSCOMB: He had -- it was -- it was a family  
9 member, is what's in specifically that affidavit.

10 THE COURT: Okay. Okay. All right. And so -- so  
11 today we have the case limited to the three John Does --

12 MR. LIPSCOMB: Yeah.

13 THE COURT: -- that would be --

14 MR. LIPSCOMB: Out of the five, Your Honor, what  
15 it's going to be is one confidential settlement, which I can't  
16 talk --

17 THE COURT: That was with John Doe 6.

18 MR. LIPSCOMB: No. There was one confidential  
19 settlement that I can't talk about, okay, but it -- it just --  
20 I can't talk about it.

21 But the other four all are going to have admitted it  
22 or admitted somebody did it in their house.

23 THE COURT: All right. And that would -- okay.  
24 Okay. All right.

25 Okay. Here's Mr. Smith.

Colloquy

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1 MR. SMITH: Sorry about that, Your Honor. I ran  
2 into some real bad traffic.

3 THE COURT: Yes, traffic has been bad.

4 MR. SMITH: Yeah.

5 THE COURT: I understand. Okay. So everyone is  
6 here right now. We have the counsel for the three defendants  
7 as to whom the cases are still open. That is John Doe 1, John  
8 Doe 14 and John Doe 16, is that -- is that correct numbers?

9 MR. LIPSCOMB: One, three -- 1, 13 and --

10 THE COURT: One, 13 and 16. Yes, sorry.

11 MR. LIPSCOMB: And 16 is now going to be on the  
12 record as Brian White.

13 THE COURT: Yes. All right. So -- all right.  
14 Number one is represented by Mr. Rushie or --

15 UNIDENTIFIED ATTORNEY: Ronald Smith.

16 UNIDENTIFIED ATTORNEY: Number one is Leonard  
17 French.

18 THE COURT: Mr. French.

19 UNIDENTIFIED ATTORNEY: Right.

20 THE COURT: Okay. All right. Number 13 is Mr.  
21 Rushie?

22 MR. RUSHIE: Yes, Jordan Rushie, Your Honor.

23 THE COURT: And number six who was identified as  
24 Brian White is represented by Mr. Smith.

25 MR. SMITH: That's correct, Your Honor.

1 THE COURT: Yes, and -- and Mister -- I -- I've  
2 agreed that John Does 1 and 13 can continue as a -- in an  
3 anonymous status without objection? Correct.

4 UNIDENTIFIED ATTORNEY: Correct.

5 THE COURT: Okay. All right. Now -- and John Doe  
6 16 has been identified.

7 All right. Now we're ready to proceed.

8 MR. LIPSCOMB: Okay. With that, let me go into a  
9 short opening statement.

10 THE COURT: Very good.

11 MR. LIPSCOMB: Your Honor, if you Google "bellwether  
12 trial" definition, there's a quote on uslegal.com which  
13 states:

14 "By definition, 'bellwether' is an indicator of  
15 future trends. Courts utilize a bellwether approach when  
16 a large number of plaintiffs are proceeding on the same  
17 theory or claim and there is no other feasible way for  
18 the Courts to handle the enormous case load. This  
19 approach has been used in many cases, including asbestos  
20 litigation. A group of plaintiffs are chosen to  
21 represent all of the plaintiffs. The issues for trial  
22 should concern common claims or theories among all the  
23 plaintiffs. These representative cases go for trial, and  
24 the results act as a bellwether for the other plaintiffs'  
25 trials. The verdict from this grouping is extrapolated

1 to the remaining plaintiffs' cases. The actual results  
2 may be utilized for valuing groups of claims in  
3 settlements. The plaintiffs can also choose to continue  
4 with their own individual trial."

5 Now, here, a large number of plaintiffs are not  
6 suing one defendant. Instead, Malibu Media is suing lots of  
7 defendants, but the concept remains exactly the same.

8 Now, when you first entered the -- the bellwether  
9 trial order, Your Honor, honestly, Mr. Fiore and I had no idea  
10 what a bellwether trial was, and I thought to myself, "Oh,  
11 boy, here we go, another Judge is just picking on my client."

12 But I took it as a challenge, and pretty shortly  
13 after you entered the order I researched the words "bellwether  
14 trial," and then I got it. A light went off. It hit me.

15 You were giving us the opportunity to prove Malibu  
16 Media's case. You were giving us the opportunity to send a  
17 signal to the world that Malibu Media's cases are provable,  
18 and you intended for this trial to reduce your workload, and  
19 you intended for this trial to reduce my workload going  
20 forward.

21 And so I thought to myself, "This guy's brilliant.  
22 This is a brilliant" --

23 THE COURT: I'm not --

24 MR. LIPSCOMB: "This is a brilliant move."

25 THE COURT: I'm not -- I'm not looking for any

1 compliments. That's really -- that's not why we're here.

2 MR. LIPSCOMB: This is exactly --

3 THE COURT: But why don't you just say what you're  
4 going to prove.

5 MR. LIPSCOMB: I will.

6 THE COURT: Okay.

7 MR. LIPSCOMB: This is exactly what was -- and this  
8 will be short, will be a few minutes.

9 This was exactly what was needed.

10 Your Honor, now, you put this case on a super rocket  
11 docket.

12 THE COURT: That's like telling a jury, you know,  
13 "You're the greatest, brightest people in the world." That  
14 would never be allowed in a jury trial, so don't -- don't do  
15 it here. Thank you.

16 MR. LIPSCOMB: I'll -- I'll dilly no more.

17 But, anyway, regarding the rocket docket, that -- a  
18 typical copyright case takes between one and two years. We  
19 did this one in seven months. And a bellwether trial, I agree  
20 it made sense because there's litigation pending both in  
21 Pennsylvania and around the country.

22 And so we hustled. We all worked from start to  
23 finish very -- and during -- from the time you entered this  
24 order, quite literally, very nearly every working day I  
25 thought about this case.

1           You didn't see, Your Honor, all the stuff that was  
2 going on behind the scenes, but trust me when I tell you all  
3 the parties and their lawyers in this case worked very hard  
4 from start to finish. They --

5           THE COURT: Well, that -- that I appreciate. I  
6 agree with that, and --

7           MR. LIPSCOMB: They -- they all did what they  
8 thought was right, and all of the defendants except one fought  
9 very hard right from the beginning. Many fought tooth and  
10 nail right to the end, and it hasn't been easy for anyone.

11           But as the evidence will show here today, while  
12 plaintiff the burden of proof, plaintiff had a huge advantage,  
13 the truth. And as Edward Counsel said, "Truth is both arms  
14 and armor."

15           As for arms Malibu Media's allegations are true. As  
16 far as armor, Malibu Media fears no attack because it comes to  
17 court with clean hands, knowing its actions are legal and its  
18 fight against online piracy is righteous.

19           Your Honor, there's an old Indian proverb that goes,  
20 "Tell me a fact, and I will learn. Tell me a truth, and I  
21 will believe. Tell me a story, and it will live in my heart  
22 forever."

23           Your Honor, today a group of witnesses are going to  
24 tell you facts. They are going to swear to, and they will  
25 tell you the truth. And Chris and I have done our absolute



1 best to arrange these facts into a story. And after today I'm  
2 hopeful that Malibu Media's story and the story of BitTorrent  
3 copyright infringement in general will live on in your heart.

4 And I'm confident you will agree with me at the end  
5 of the day that BitTorrent copyright infringement is a major  
6 problem, and that Malibu Media, far from being a villain for  
7 filing these suits, should be respected for shining a light on  
8 what the evidence will show is one of the most significant  
9 plagues of tortious conduct existing in the U.S. today.

10 With the facts, truth and story in mind, here is an  
11 outline of what you will hear. Collette Field will be called  
12 first. She will -- she will tell you about how she started  
13 Malibu Media, what her business means to her, what BitTorrent  
14 piracy does to her business. Collette will also testify  
15 Malibu Media is the registrant of the copyrighted works at  
16 issue in this case.

17 Next I will call Michael Patzer. Michael created --  
18 THE COURT: Last name spelled.

19 MR. LIPSCOMB: Patzer, P-A-T-Z-E-R.

20 Mr. Patzer created, designed, wrote much of the  
21 source code for, implemented and monitors the IP detection  
22 software used by IPP. He also maintains and monitors the  
23 servers that use it. In short, he is the alpha and the omega  
24 of fact witnesses regarding how IPP Limited's system works.

25 After Mr. Patzer my co-counsel, Mr. Fiore, will call

1 Fiezer. Mr. Fiezer will explain in significant detail how he  
2 verifies that the copies of Malibu Media's being distributed  
3 through BitTorrent are identical to Malibu Media's original  
4 movies.

5 He will also explain to you how he checked to see if  
6 the exhibits filed at the beginning of this case and -- and  
7 that are -- list the infringements, how -- how he checks to  
8 see if those are accurate.

9 Ultimately he will testify that the BitTorrent  
10 copies of Malibu Media's at issue in this case are copies of  
11 the original movies produced by Malibu Media in this case.

12 After Mr. Fiezer, Mr. Fiore is going to introduce  
13 into evidence the ISP correlations. This will be done through  
14 stipulations and a short excerpt from a deposition of Comcast  
15 corporate representative.

16 During that testimony you'll hear that Comcast  
17 representative said it was, quote, absolutely certain that it  
18 made the correlation correctly. And that's the type of  
19 testimony we expect from Siever.

20 After that I will call Patrick Paige. Mr. Paige  
21 will testify about the test he performed of IPP Limited's ISP  
22 detection software, and he will conclude that it works.

23 He will also testify about his experience as a  
24 police officer using similar IP address detection methods when  
25 he was investigating child pornography cases. Finally, he

1 will testify his -- about his examination of Mr. White's  
2 computers.

3 After that we will read some evidence into the  
4 record from John Doe 1, deposition transcript and his  
5 interrogatories, and from Mr. White's interrogatories,  
6 responses, and deposition transcripts -- and hearing  
7 transcripts. This --

8 THE COURT: When you say Mister -- Mr. White, you  
9 mean --

10 MR. LIPSCOMB: Yes.

11 THE COURT: -- John Doe 16.

12 MR. LIPSCOMB: Yes.

13 THE COURT: Formerly known as John Doe 16.

14 MR. LIPSCOMB: Yes, Your Honor. This evidence will  
15 prove certain material facts that we think will help you make  
16 a decision in this.

17 We will conclude our case in chief by calling John  
18 Doe 13 to the stand. John Doe 13, I expect, will admit  
19 liability and describe the processes he used to infringe  
20 Malibu Media's copyrights.

21 Your Honor, that concludes my opening statement, but  
22 before I begin, I have a couple of more little things --

23 THE COURT: Yes.

24 MR. LIPSCOMB: -- kind of housekeeping.

25 One, if at any time during the testimony today

1 either you or Mr. Cinquanto have questions, please feel free  
2 to interrupt me and ask whatever questions you have of the  
3 witnesses.

4 THE COURT: Right. Well, I was going to mention  
5 that Mr. Cinquanto, who I appointed as the Court-appointed  
6 expert in this case, is here and present.

7 Now, I -- I -- if nobody else calls him, I intend to  
8 call him to the stand at some point, as well, but I'm just  
9 wondering whether you all think he needs to be here for the  
10 entire day or whether we might be able to call him as to what  
11 he did here and then leave or whether -- but for the record, I  
12 mean you've agreed to pay his fee on an hourly rate, so I mean  
13 if -- if he's available and you want him to stay, I have no  
14 objection to it.

15 MR. LIPSCOMB: I would like him to stay at least  
16 through Mr. Paige's testimony, and if you're going to call  
17 him, I think the questions should be after Mr. Paige's  
18 testimony --

19 THE COURT: All right.

20 MR. LIPSCOMB: -- and I'll -- I'll call him.

21 THE COURT: Well, maybe could we move up Mr.  
22 Paige -- I don't know. Mr. Cinquanto --

23 MR. LIPSCOMB: No, that --

24 THE COURT: -- do you have other commitments today?  
25 What is your --

1 MR. CINQUANTO: Hi, Your Honor.

2 THE COURT: -- 'cause he's involved in other trials  
3 in the courthouse.

4 MR. CINQUANTO: I am here at the Court's disposal  
5 today, and counsel's --

6 THE COURT: Let's see if we can him on this morning.  
7 All right. If necessary, we'll call him out of order.

8 MR. LIPSCOMB: But it doesn't make sense to do that  
9 because I want him to testify about IPP's processes --

10 THE COURT: Right.

11 MR. LIPSCOMB: -- and Mr. Paige's processes, and --  
12 and they go first right after Ms. Field, and Ms. Field should  
13 go first just --

14 THE COURT: Okay.

15 MR. LIPSCOMB: -- just logically.

16 THE COURT: Yes, I -- I have no problem with that.  
17 Okay.

18 MR. LIPSCOMB: Okay.

19 THE COURT: All right.

20 MR. LIPSCOMB: The next thing that I want to talk to  
21 you about before we start trial, Your Honor, is Mr. Patzer and  
22 Mr. Fiezer are German. I would character Mr. Patzer's English  
23 as very good. I would character Mr. Fieser's English as fair  
24 to good.

25 We intend to conduct the entire trial in English;

1     however, if you or Mr. Cinquanto have technical questions for  
2     Mr. Fieser, he may need the assistance of a translator.  
3     Toward that end we have Thomas Conrad in the -- in the  
4     courtroom today. He's a German translator, Court-appointed --  
5     not Court-appointed, Court-certified, and if you have  
6     technical questions for Mr. Fieser, we might need his  
7     assistance.

8             THE COURT:    Okay.    Thank you.

9             MR. LIPSCOMB:   Also, just for the record, both Mr.  
10    Fiezer and Mr. Patzer, when they say the word "log," L-O-G, it  
11    sounds like L-O-C-K.

12            THE COURT:    Okay.

13            MR. LIPSCOMB:   And so very time you hear the word  
14    "lock," they're saying L-O-G, log.

15            THE COURT:    Okay.    Thank you.

16            MR. LIPSCOMB:   And then also their Zs do not sound  
17    anything like English Zs. They sound like zeta or some -- I  
18    don't know. It doesn't sound like English.

19            One -- one last thing, if this had been a jury  
20    trial, I would not have given the same opening, obviously.  
21    I -- I planned on giving a much longer opening and using  
22    demonstratives.

23            I didn't have those demonstratives actually blown  
24    up, but I brought them today, and I'd like -- I've given them  
25    to counsel, or two of the counsel, not -- yet.

1 I'd like to give them to you. We may refer to them  
2 sometime during --

3 THE COURT: Sure. Thank you. Do you have an extra  
4 set for my law clerk?

5 MR. LIPSCOMB: I have a set for every attorney.

6 THE COURT: Do you have an extra set for my law  
7 clerk who's sitting in front of me?

8 MR. LIPSCOMB: I don't. I only brought five.

9 THE COURT: Okay.

10 MR. LIPSCOMB: But if you -- if we --

11 THE COURT: All right. I'll share them.

12 MR. LIPSCOMB: -- get a copy.

13 THE COURT: Okay.

14 MR. LIPSCOMB: One minute.

15 THE COURT: Sure. Thank you.

16 MR. LIPSCOMB: With that, Your Honor, I'm done with  
17 the opening and the housekeeping, and with your permission  
18 I'll call my first witness.

19 THE COURT: Yes. Okay.

20 (Pause)

21 THE COURT: All right. Ms. Field, do you want to  
22 come up and take the witness stand, please.

23 COLLETTE PELLISIER-FIELD, PLAINTIFF'S WITNESS, SWORN

24 THE CLERK: Please be seated. State your full name  
25 and spell your last for the record.

Field - Direct (Lip)

24

1           THE WITNESS: It's Collette Pellisier-Field, F-I-E-  
2 L-D, F like Frank, I, internet, E, Edward, L, Lisa, D,  
3 democracy.

4                                 DIRECT EXAMINATION

5 BY MR. LIPSCOMB:

6 Q     Ms. Field, where did you grow up?

7 A     In New Jersey, close to Pennsylvania, actually.

8 Q     Where did you go to college?

9 A     I went to Rutgers College.

10 Q    What did you do to make a living after college?

11 A    I sold software and managed computer programmers.

12 Q    What did you do next?

13 A    Then I managed accounting and the network system for a  
14 medical imaging company, MRIs and things like that.

15 Q    And after that?

16 A    After that I sold real estate.

17 Q    Where were you selling real estate?

18 A    In California.

19 Q    Are you married, Ms. Field?

20 A    Yes.

21 Q    What's your husband's name?

22 A    Brigham Field.

23 Q    How did you meet Brigham?

24 A    Doing yoga.

25 Q    When did you meet Brigham?



1 A Almost seven years ago.

2 Q When did you and Brigham get married?

3 A We were married December 2011.

4 Q What was Brigham doing to make a living when you met him?

5 A He was a photographer.

6 Q Were his photographs ever published?

7 A Yes.

8 Q Where?

9 A Various magazines and on his own website.

10 Q Are you still a real estate agent?

11 A I'm still licensed, but I don't sell real estate.

12 Q When did you decide to stop selling real estate?

13 A As the real estate market was -- started going down, I  
14 thought seriously about starting a new business.

15 I -- I love selling real estate when I could sell a home  
16 to someone, and they would make money. When I'd sell a home  
17 to someone and they'd lose money, I really didn't enjoy it  
18 anymore. So I -- and then I thought maybe I could work with  
19 my husband or we could start some kind of business that I  
20 wouldn't have to be selling real estate.

21 Q What types of businesses did you consider?

22 A We considered a furniture business and a business that  
23 would take his -- my husband's photos and maybe make them more  
24 explicit and offer subscriptions.

25 Q Did the furniture business work out?

1 A No.

2 Q Why not?

3 A Well, no one was buying houses so no one was buying  
4 furniture to put in houses.

5 Q So did you decide to focus on the photography business?

6 A Yes.

7 Q Did you have any thoughts about how you might take it to  
8 the next level?

9 A I -- I did. My husband I both love erotic art, and when  
10 you look online -- when we looked on line to see what was  
11 available, it was really -- there was nothing beautiful and  
12 artistic and erotic that couples, women and men could enjoy.

13 So I thought we could take his beautiful photography,  
14 which were artistic nude, and make them more explicit and sell  
15 subscriptions, and maybe there'd be people, especially  
16 couples, that would share our opinion and appreciate what we  
17 had to offer, which I was -- I think different than what  
18 anyone else was doing.

19 Q Did Brigham have a website at that time?

20 A He did.

21 Q What was the name of that website?

22 A It was called beautyisdivine.com.

23 Q Was that website only displaying photos?

24 A Just photos.

25 Q When did you decide to make movies?

1 A When Canon came out with the 5D Mark II. It's a DSLR  
2 camera, and it allows you to make HD video with just a photo  
3 camera, so it's not very expensive. You can make high quality  
4 video, and we taught ourselves how to use it.

5 Q Do you remember about what year that was?

6 A That was around 2008 or the beginning of 2009.

7 Q Had you ever worked in the adult entertainment business  
8 before?

9 A No, never.

10 Q Is the business of running an adult entertainment website  
11 competitive?

12 A It's extremely competitive.

13 Q Are there as many companies today as there used to be?

14 A I don't think so.

15 Q Why not?

16 A Because so many people can get entertainment for free.  
17 So many of the companies went out of business.

18 Q How did they get that -- the entertainment for free?

19 A They -- mostly from the Torrent sites.

20 Q We'll -- we'll talk about more piracy later. Let's keep  
21 focused right now on the creation of your business. Okay?

22 A Okay.

23 Q Did you believe you could succeed in the extremely  
24 competitive adult entertainment business?

25 A Yes.

1 Q Why?

2 A Well, because I feel like we have an idea that no one  
3 else had, and I feel I'm a real hard worker, and we were  
4 just -- I wanted to put everything into it.

5 And my husband's extremely talented. So we worked  
6 together. We built it with a lot of love and a lot of hard  
7 work, and I just knew we could make something that no one else  
8 was making, and I thought there was a place for that.

9 Q At the beginning what were some of the major things you  
10 had to do to take the idea of a business and turn it into a  
11 reality?

12 A Keep selling houses.

13 Q Why -- why did you have to keep selling houses?

14 A To make money so I could make the content for the  
15 website.

16 Q What else did you have to do for the business?

17 A Well, we had to register the domain name, buy the domain  
18 name, set up the servers, do the programming, program the back  
19 end, the front end, get the code written, design the websites,  
20 find models, learn how to shoot -- I even do the make-up and  
21 the lights, everything, myself. We were a two-man show.

22 It was pretty crazy. We took a -- we would take a  
23 redeye, get off. I didn't even want to waste the \$300 for our  
24 location apartment, and we would get right up and start  
25 shooting and do as much as we could. It was crazy, hard work.

1 Really, really a lot.

2 Q And "we" is you and Mr. Field, Brigham, correct?

3 A Yes, my husband.

4 Q What type of legal entity was -- were you operating under  
5 at first?

6 A We were a partnership, just the two of us.

7 Q An unincorporated partnership, correct?

8 A Correct.

9 Q Between you and Brigham inside the beginning, at the  
10 beginning, who was doing what?

11 A At first I did most of the finances, the budgeting, the  
12 planning, organizing, producing the sheets, and he did the  
13 creative.

14 He actually went behind the lens. He took the photos,  
15 and he did the video, moved the lights, picked -- figured out  
16 which lights we need, helped with the design of the website,  
17 then I did most of the business end. We were both doing as  
18 much as we could.

19 Q Was the business profitable right from the beginning?

20 A No.

21 Q How long did it take for you to make the business  
22 profitable?

23 A I would -- a little over two years.

24 Q During that time were you taking any money out of the  
25 business?

1 A No, nothing. I was selling houses to fund the business.  
2 That was hard.

3 Q About what year did the business actually become  
4 profitable?

5 A I would say late 2009, mid-2009 to 2010.

6 Q What did you think to yourself when the business finally  
7 did turn the corner?

8 A I could finally stop selling real estate, but also I was  
9 really excited, I mean because we worked so hard, and we've  
10 been -- and it's a big gamble, putting all your money in, all  
11 my life savings.

12 I had some savings, a little bit of savings from a house  
13 I sold before the market went down, and I put all that into  
14 the business, too.

15 So beside putting all my savings and all my work, and we  
16 were excited and relieved, but also still cautious because  
17 it's very competitive, and you have to keep growing.

18 So I mean happy at first. You'd be happy when your  
19 business turns profitable.

20 Q Talking about business, how does your business sell its  
21 product?

22 A We have the subscription-based website.

23 Q What is the domain name of that website?

24 A It's xart.com.

25 Q When you first started your business, about how many

1 hours a day would you say you were working?

2 A How many hours are in a day? I mean a lot. Eighteen  
3 hours.

4 Q How much do you work now?

5 A I still work all the time. I -- I work all the time.  
6 You can probably ask any of our members, and they'll tell you  
7 I'm online all the time fixing things, commenting, doing -- I  
8 still probably work 18 hours if I'm not taking a break.

9 Q What does your business mean to you?

10 A It means everything. I love it so much. I -- it's -- I  
11 know some people don't understand 'cause it's adult, but it's  
12 really -- the models, workers, everyone. It's like a family.

13 We're -- even though we are, quote, adult business, and  
14 beside my husband my family I just love my business. I love  
15 everything we produce. I want it all to be beautiful. I want  
16 people to enjoy it. I want them to know that it's, you know,  
17 it just means so much to me.

18 I just -- I really love it, and I'm just so passionate  
19 about it, and it's everything, except for my husband and my  
20 family.

21 Q How much is a subscription to xart.com?

22 A It was 19.95, and we just raised the price to 24.95 a  
23 month, but if you pay for a year in advance, it's 99.95 for a  
24 year.

25 Q How many subscribers did you have in year one?

1 A Less than 500, 500 or so.

2 Q How many subscribers did you have in year two?

3 A Maybe a couple thousand.

4 Q Approximately how many subscribers do you have now?

5 A We have roughly 50,000 -- five -- 50,000.

6 Q Over --

7 THE COURT: Wait. I just want to say for the  
8 record, nothing to do with your testimony.

9 We're proceeding -- we discussed this on -- last  
10 week, but we're proceeding non-jury by agreement. All the  
11 defendants waived -- and the complainant has waived the jury,  
12 and all the defendants have waived the jury, correct?

13 MR. LIPSCOMB: That's correct, Your Honor.

14 THE COURT: Go ahead. Sorry to interrupt, but I --

15 THE WITNESS: No.

16 BY MR. LIPSCOMB:

17 Q Over the years how has your business -- I'm sorry. Oop,  
18 strike that.

19 Over the years has your business changed in other ways?

20 A Yes.

21 Q Can you tell me about that?

22 A Well, when we first started, we spent maybe 150 to  
23 \$200,000 a year producing content. We didn't update the site  
24 as often. We had maybe one video per week.

25 Now this -- we spend over \$2 million a year producing



1 content. We update the site every day. We have huge expenses  
2 for bandwidth, which is, you know, for serving the videos and  
3 the downloads and running the site.

4 We've added dozens of servers. We have employees,  
5 programmers, graphic designers and just -- we have a huge team  
6 now. It's turned into a real business, and -- and it's -- the  
7 expenses have grown as the members have grown.

8 So for some reason, I mean you might think that wouldn't  
9 happen, but it does.

10 Q Has your subscription base increased in recent years?

11 A In recent years, no.

12 Q Do you know if more or fewer people are watching your  
13 movies, say, in 2013 as compared to 2012?

14 A More.

15 Q Then why isn't your subscription base increased?

16 A Because there's over 300,000 people per month downloading  
17 the movies for free, and so that's --

18 Q And that 300,000, that's -- where is that geographically?

19 A That would either be -- from the countries we scan  
20 there's about 80,000 per month in the U.S. I mean we don't  
21 scan the entire world, but the other 15 countries we scan is  
22 the remainder.

23 THE COURT: Well, wait. I thought you said your  
24 customer base had gone from 500 when you started to 50,000  
25 people now.

Field - Direct (Lip)

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1 THE WITNESS: In the last few years it's remained  
2 the same, about 50,000.

3 THE COURT: Oh, it's remained -- it's 50,000 --

4 THE WITNESS: Yeah, it's actually slightly less this  
5 year.

6 THE COURT: Well, how -- the 50,000 is your paid  
7 subscription --

8 THE WITNESS: Correct.

9 THE COURT: But you estimate that six times that, or  
10 300,000, download for free?

11 THE WITNESS: Correct.

12 THE COURT: Go ahead.

13 MR. LIPSCOMB: Just a proffer for the record, Your  
14 Honor. Later IPP will testify that that's not an estimate.  
15 It's a -- it's a fact.

16 THE COURT: Okay.

17 THE WITNESS: And, also, I've actually -- recently  
18 our subscription base has -- has started decreasing even more.  
19 It's been decreasing this year, first year ever.

20 BY MR. LIPSCOMB:

21 Q Would it help your business if people didn't steal your  
22 movies?

23 A Of course, because the people that steal the movies are  
24 obviously fans, so they like movies, and some of them would  
25 probably join instead of steal them.

1 Q Can you compete with free copies of your own movies?

2 A We can't compete with free copies of our own movies  
3 because we have cost to make them.

4 Q How -- tell me how people download your movies for free.

5 A They download them via BitTorrent.

6 Q What is BitTorrent?

7 A It's a software protocol that enables peer-to-peer file  
8 sharing, which basically means one person -- those pieces of  
9 the file exchange between the people and once someone has all  
10 the pieces, then the BitTorrent software puts the file  
11 together.

12 So kind of imagine the fly going into -- the guy in "The  
13 Fly" going into the thing, and he breaks up into whole bunch  
14 of pieces, and then he gets put back together. BitTorrent  
15 works a little bit like that.

16 Q Have you ever seen your movies being made available for  
17 distribution via BitTorrent?

18 A Yes, all the time.

19 MR. LIPSCOMB: Your Honor, I'd now like to -- well,  
20 we've pre-marked Plaintiff's Exhibit 1. I've got copies for  
21 counsel.

22 And may I approach, Your Honor?

23 THE COURT: Yes.

24 MR. LIPSCOMB: I've also got a copy.

25 THE COURT: Well, the -- you should pre-mark your

Field - Direct (Lip)

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1 exhibits or -- this is what?

2 MR. FIORE: They're all pre-marked.

3 MR. LIPSCOMB: They have a little sticker on them if  
4 you --

5 THE COURT: Oh, all right. Well, I'm going to put  
6 it on the body --

7 MR. LIPSCOMB: Okay.

8 THE COURT: -- so we can see it. All right.

9 BY MR. LIPSCOMB:

10 Q Ms. Field, have you seen Plaintiff's 1 before?

11 A Yes.

12 Q Can you tell me what that shows?

13 A This is a list of X-Art films available on -- on Extra  
14 Torrent, which is a Torrent site.

15 Q Okay.

16 MR. LIPSCOMB: Your Honor, I'd like to now introduce  
17 Plaintiff's 1, to -- to move it into evidence.

18 THE COURT: Yes, it's admitted.

19 All right. If counsel for -- any of the counsel for  
20 the defendants object, please say "objection." If we don't  
21 hear any objection, you can assume it's admitted.

22 MR. LIPSCOMB: Thank you, Your Honor,.

23 THE COURT: And then you can move all your exhibits  
24 when you're done.

25 THE WITNESS: So these are all movies -- our movies

Field - Direct (Lip)

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1 that are available for free on this site.

2 BY MR. LIPSCOMB:

3 Q On Extra Torrent.

4 A On Extra Torrent, yes.

5 MR. LIPSCOMB: Your Honor, I'd now like to -- we've  
6 pre-marked Plaintiff's 2. May I approach?

7 THE COURT: Yes.

8 BY MR. LIPSCOMB:

9 Q Ms. Field, have you seen Plaintiff's 2 before?

10 A Yes.

11 Q Can you tell me what it is?

12 A This is the search results if you type in X -- the word  
13 "X-Art" and the word "Torrent" into a Google search engine,  
14 this is what would come up.

15 Q What does the -- the first page show?

16 A The first page shows a list of X-Art movies that are  
17 available on different Torrent sites for a download for free.

18 Q Have you ever tried to get websites to stop making your  
19 movies available to be downloaded for free?

20 A Yes, all the time.

21 Q How do you do that?

22 A We send DMCA notices.

23 Q What's a DMCA notice?

24 A DMCA notice is the Digital Millennium Copyright Act, and  
25 it allows a valid copyright holder to send a notice that

1 notifies the infringer to stop using the copyright illegally,  
2 to cease using the copyright illegally.

3 Q Do these notices work?

4 A Yes, with some sites. No, with Torrent.

5 Q Can you turn to the second page of P-2, please?

6 What is that -- what does that page show?

7 A This shows a page of links that were taken down with  
8 Google's response to our DMCA notices.

9 We also send DMCA notices to Google to have them remove  
10 the links to the Torrent sites. So as you see the Torrent  
11 sites listed on the first page, the second page has a list --  
12 these would have been links to Torrent sites, but Google  
13 removed them, based on our request.

14 So the links are not there, but the Torrent sites still  
15 exist with our files. So Google complies with the DMCA  
16 notices, but there's just too many. They can't keep up.

17 Q Tell me how many DMCA notices do you send a month?

18 A Thousands every month.

19 Q Thousands.

20 A Thousands.

21 Q What is a -- a Torrent site, a Torrent website?

22 A A Torrent website is a site that catalogs Torrent files  
23 available for download, mostly illegal downloads.

24 Q Do you send Torrent websites DMCA notices?

25 A We try to sometimes. They mostly ignore them.

Field - Direct (Lip)

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1 Q Have you ever heard of Pirate Bay?

2 A Yes.

3 Q What is Pirate Bay?

4 A It's one of the most popular Torrent sites.

5 MR. LIPSCOMB: Your Honor, I've pre-marked  
6 Plaintiff's 3.

7 (Pause)

8 MR. LIPSCOMB: Oh, and for the record, Your Honor,  
9 I'd like to move P-2 into evidence.

10 THE COURT: Admitted.

11 BY MR. LIPSCOMB:

12 Q Ms. Field, have you ever seen P-3 before?

13 A Yes.

14 Q What -- what is that?

15 A This is -- first of all, it's the reason we haven't  
16 sent -- we don't send DMCA notices to Pirate Bay, and, second,  
17 it is Pirate Bay's response to the -- it's the DMCA notice  
18 that Dream Works sent to Pirate Bay, and Pirate Bay's response  
19 to that notice.

20 Q And can you find that response on Pirate Bay's website  
21 under the legal notices section on the front page?

22 A Yes, you can.

23 Q Can you read just Pirate Bay's response to Dream Works'  
24 DMCA notice --

25 A Yes.

1 Q -- that's below the --

2 A Yes, but I'm -- I'm not going to complete reading the  
3 entire response, but I will read the beginning.

4 This is Pirate Bay's response to Dream Works' notice, the  
5 Dream Works DMCA notice to them. So Pirate Bay says:

6 "As you may or may not be aware, Sweden is not a  
7 state in the United States of America. Sweden is a  
8 country in northern Europe. Unless you figured it out by  
9 now, U.S. law does not apply here. For your information  
10 no Swedish law is being violated. Please be assured that  
11 any further contact with us, regardless of medium, will  
12 result in, A, a suit being filed for harassment, B, a  
13 formal complaint lodged with the Bar of your legal  
14 counsel for sending frivolous legal threats. It is the  
15 opinion of our lawyers that you are," dot, dot, dot,  
16 "morons, and that you should" -- I'm not going to read  
17 that part -- "And please also note that your email and  
18 letter will be published in full at the piratebay.org."

19 And then it says, swear word, polite as usual, "Anakata."

20 MR. LIPSCOMB: And, Your Honor, I'd like to  
21 introduce P-3 into evidence.

22 THE COURT: All right. Admitted.

23 BY MR. LIPSCOMB:

24 Q Why don't you sue Torrent websites like Pirate Bay?

25 A Well, most of Torrent websites are located outside



1 jurisdictions that respect copyrights, and there are so many  
2 of them, even if we were to sue one and have one success,  
3 another one would pop up.

4 So the cost is -- we couldn't afford it. It wouldn't be  
5 possible. We couldn't run our business and sue Torrent  
6 websites. Even with one victory, there'd be more and more and  
7 more. It's -- and they're all located outside jurisdictions  
8 that respect copyrights. It's not possible.

9 Q Why don't you sue BitTorrent, Incorporated?

10 A BitTorrent is -- just makes the software, and the  
11 software can also be used for legitimate purposes.

12 Q Does BitTorrent make software or just the computer code?

13 A BitTorrent just makes the computer code that they license  
14 for the software.

15 Q And what is a BitTorrent client?

16 A A BitTorrent client is software that enables the  
17 BitTorrent protocols to work.

18 Q And -- and are there more -- is there more than one type  
19 of BitTorrent client?

20 A There are scores of different BitTorrent clients.

21 Q Why don't you sue the software companies, the BitTorrent  
22 clients?

23 A Well, first of all, most of them are also located  
24 overseas, and they're also just making a software that's  
25 disassociated from the infringers. It could also be used for

1 legitimate purposes.

2 Q Have you -- have any of your paying subscribers ever  
3 mentioned BitTorrent to you?

4 A Yes, often.

5 Q How -- tell -- tell me about the things that they say.

6 A Well, a lot of times our subscribers are really loyal,  
7 and they're paying, and they want to pay, and they want to  
8 support us. But they're mad because they don't want other  
9 people getting it for free.

10 So they're saying, "It's located here. It's located  
11 there. Can't you get it down?"

12 But some of them also say, "Why should I pay when I can  
13 get it for free," and others say, "I can download faster from  
14 the free sites than I can on your site."

15 Q How often do you get these types of communications from  
16 your subscribers?

17 A Daily, weekly.

18 Q How does it make you feel to get these types of  
19 communications from your subscribers?

20 A Extremely frustrated because I don't know what to do  
21 about it. It's -- I -- I'm scared that our business model,  
22 which I love, and all of our models and all of our team, which  
23 I love, that -- won't exist because these -- the Torrents are  
24 so powerful, I don't know what to do.

25 Like how can you fight them? How can you take them down?

Field - Direct (Lip)

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1 It's -- it's really scary. It's really scary, and it's really  
2 frustrating.

3 And I don't -- and I want our members to feel that they  
4 have something to pay for, that -- and -- and I want to be  
5 able to keep creating what we're creating. So it's scary and  
6 frustrating.

7 Q About the download speed, which if I heard you right, you  
8 said some of your subscribers --

9 A Uh-huh.

10 Q -- complain that they can get faster --

11 A Yes.

12 Q -- from BitTorrent than they can from your own website.  
13 What did you do about that?

14 A Well, I always wanted to provide the best service for our  
15 members, so what I did is we -- we implanted a content  
16 delivery network which now puts our software -- our content  
17 all over the world, on different servers all over the world,  
18 and it's extremely expensive.

19 So to compete with the speed, beside all of our customers  
20 and servers, we now have our content on a content delivery  
21 network located all over the world.

22 Q How much is that costing you on a monthly basis?

23 A Just to start, it's \$20,000 a month, and it's rising, and  
24 it rises rapidly. That's -- so --

25 THE COURT: Well, how does this differ fro what you

Field - Direct (Lip)

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1 were doing before, the content delivery network? Does this  
2 prevent the BitTorrent software from working?

3 THE WITNESS: No. What it does is it -- the  
4 content -- right now our servers are located in Arizona and  
5 California.

6 So if you're trying to download our movies from  
7 Australia, it's going to be slow. But if you try to download  
8 our movie on a BitTorrent and you live in Australia, it will  
9 be quick.

10 THE COURT: Right.

11 THE WITNESS: So now I have to have the movies on  
12 servers in Australia, on servers in Germany, on servers in  
13 Germany, on servers everywhere. So it works almost like a  
14 BitTorrent where that they can access, but I have to pay for  
15 that bandwidth, and it's really expensive.

16 THE COURT: Okay.

17 BY MR. LIPSCOMB:

18 Q Have you ever had any security issues associated with  
19 BitTorrent?

20 A Yes. Actually, just this year our servers were hacked  
21 twice, and the videos, before they were released on our site,  
22 were actually uploaded onto BitTorrent's, and we lost a lot of  
23 sales that -- those days, and we had --

24 Q About how much in -- can you put a number on the lost  
25 sales?

1 A It was thousands of dollars a day, maybe more. I don't  
2 know exactly, but it was -- it was bad.

3 Q How -- did you have to do anything with your security  
4 system in response to this threat from --

5 A Well, it's all quite --

6 Q -- BitTorrent hackers?

7 A It's all quite technical, but we had to really make  
8 advancements in our security system. We had to hire another  
9 team of programmers. We had to get more servers. We had to  
10 separate where all the content -- content was stored on the  
11 servers, change all the SIM links, and then we have a new team  
12 now monitoring the security of the servers.

13 Q How much is that costing you on a monthly basis?

14 A Just the new team is costing us \$15,000 a month, but  
15 that's not even counting the extra servers, and -- and it  
16 keeps growing.

17 Q Now, I think earlier this morning you testified about  
18 80,000 unique people are stealing your movies every month in  
19 the U.S.?

20 A That's correct.

21 Q What would happen to your business if those people  
22 weren't stealing your movies through BitTorrent?

23 A Well, I would think our business would -- would grow, I  
24 mean maybe almost double if -- I -- I'm not sure that all of  
25 them would subscribe to the site because some people just want

1 things for free, but if no movies were available on  
2 BitTorrent, you would have a -- a great chance of quite a  
3 bunch of them joining our site.

4 Q What would 80,000 new subscribers mean to you in terms of  
5 revenue?

6 A Almost more than double.

7 Q Multiple, multiple, multiple millions of dollars?

8 A Yes.

9 Q Do you believe BitTorrent's infringement is costing your  
10 company multiple millions of dollars a year?

11 A Yes, most definitely.

12 Q Really no doubt about that.

13 A No doubt about it.

14 Q What's the biggest competitive threat to your business?

15 A BitTorrent.

16 Q Can you -- can you compete in a fair marketplace?

17 A Yes.

18 Q Can you compete against free?

19 A No.

20 Q Has piracy affected your business in other ways?

21 A Yes. I mean if there weren't piracy, obviously we would  
22 be able to grow our business more. I'd be able to provide for  
23 our members. We'd be able to do more of the upgrades and  
24 updates and produce more content and move faster with making  
25 all the great things that we want to do.

Field - Direct (Lip)

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1           It's -- you know, I just -- I want to again thank our --  
2           our members who still pay for our site, and I want to do  
3           everything I can for them and make really great things, and  
4           it's not fair that people are taking things for free and  
5           people are stealing, and people don't understand that, and  
6           it's -- it really -- it really hurts our business. It really  
7           hurts all artists and anyone who needs a copyright to protect  
8           their business.

9           Q     Do you think that BitTorrent piracy is fair to your  
10           paying subscribers?

11          A     No, it's not fair to them at all because why should --  
12           they're paying and other people aren't paying, and it's -- and  
13           we could do more for our paying subscribers if it weren't for  
14           BitTorrent or piracy.

15                 MR. LIPSCOMB: Your Honor, I'm now going to -- we've  
16           pre-marked Composite Exhibit 4, Plaintiff's 4.

17                 THE COURT: Okay.

18                 (Pause)

19                 MR. LIPSCOMB: For the record, Composite Exhibit 4  
20           should be 34 pages.

21           BY MR. LIPSCOMB:

22           Q     Ms. Field, have you ever seen Composite Exhibit 4,  
23           Plaintiff's 4 before?

24           A     Yeah, yes, I have.

25           Q     What are these?

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1 A They are a certificate of copyright registrations.

2 Q And are these the registrations that cover the works,  
3 editions on this case?

4 A Should I look at -- through all of them just to make  
5 sure?

6 Q Well, if you've looked at them before --.

7 THE COURT: You represent this is what she looked at  
8 before?

9 MR. LIPSCOMB: This is the same exact thing she  
10 looked at.

11 THE COURT: All right.

12 THE WITNESS: Yeah. Okay. Yes.

13 THE COURT: All right.

14 THE WITNESS: They are.

15 BY MR. LIPSCOMB:

16 Q Is Malibu Media the registrant of all of the -- listed as  
17 the registrant on all those registrations?

18 A Yes.

19 Q Malibu Media is the owner of the copyrights, correct?

20 A Correct. We made all the movies ourselves, so --

21 MR. LIPSCOMB: Your Honor, I'd like to move  
22 Plaintiff's Exhibit 4 into evidence.

23 THE COURT: It's admitted.

24 MR. LIPSCOMB: Your Honor, I have no further  
25 questions for Ms. Field.



1 THE COURT: Okay. Cross examine, anyone?

2 MR. SMITH: No questions, Your Honor.

3 MR. FRENCH: No, Your Honor.

4 MR. RUSHIE: No, Your Honor.

5 THE COURT: All right. Thank you very much.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: I have one question.

8 THE WITNESS: Oh.

9 THE COURT: Want to come back --

10 THE WITNESS: Sure.

11 THE COURT: -- on the stand for just a moment.

12 BY THE COURT:

13 Q Do you -- does your company publish any still photos, or  
14 are they all videos?

15 A We publish still photos, too.

16 Q You do.

17 A Yes.

18 Q All right. Where -- do you copyright the still photos?

19 A We don't copyright the still photos.

20 Q You do not.

21 A We do write a copyright mark on the photo.

22 Q You copyright them on -- on the mark on the photo?

23 A Mark on the photo.

24 Q Where do you put it? On the front or the back?

25 A On the front.

1 Q Okay. And how about the videos? Where do you put -- do  
2 you put a copyright notice on the videos?

3 A We put a copy -- we put our titles on the videos with the  
4 copyright.

5 Q With the copyright notice.

6 A Well, it has our trademark, our trademark title.

7 Q Is what?

8 A Xart.com --

9 Q Xart.

10 A -- is our trademark.

11 Q Okay. Do you use a little C with a circle or --

12 A We have a little C next to xart.com.

13 Q All right. But you don't use the word "copyright" on  
14 the -- on the film itself.

15 A No, but we -- we definitely can if we should.

16 MR. LIPSCOMB: No.

17 BY THE COURT:

18 Q Well, I'm not -- no, no, I'm just asking.

19 MR. LIPSCOMB: Everyone knows her works, except two  
20 in this case, were -- have a copyright notice on them, and  
21 they were all registered prior to the dates of infringement.

22 Copyright notice is compliant with the Copyright  
23 Act.

24 THE COURT: Okay.

25 MR. LIPSCOMB: And the website also has a paragraph

1 on the half copyright notice and its terms of use. So it  
2 has -- everything on here is copyrighted.

3 BY THE COURT:

4 Q All right. Do you know what I mean by a 2257 notice?

5 A Yes, we have --

6 Q Where do you put that?

7 A We are compliant, and we put that on their website. It  
8 says a 2257, and you can click it, and it gives the address  
9 where the records are kept.

10 Q All right. You put that on the title page -- where the  
11 cover -- title page of the video?

12 A The title -- no, it's on the website. I can -- I can  
13 show you on my phone.

14 Q No, I don't -- you don't have to show me, just --

15 A Okay.

16 Q Okay.

17 A Yeah.

18 Q You don't put it on each video?

19 A It's not -- they're not videos like DVDs. They're  
20 short. They're like 10 minutes.

21 Q Oh.

22 A They're vignettes.

23 Q Okay.

24 A And they're just offered on line, so it's not like a big  
25 DVD with a --

1 Q Well, how -- what is the running length of your movies?  
2 What -- what's the range:

3 A It's anywhere from 10 minutes to 20 minutes.

4 Q Okay. They're no -- not longer than that.

5 A No, they're not longer than that, and some are even are  
6 even just like six or seven minutes.

7 They're really high production value. They're really  
8 beautiful, and --

9 Q Okay.

10 A So it's -- and we do keep very -- we keep compliant U.S.  
11 2257 records and --

12 Q Okay. All right.

13 MR. LIPSCOMB: Just a proffer for the record, Your  
14 Honor. I

15 have seen them personally, and they have the -- a  
16 newspaper here and the photo ID here, and that's one form of  
17 the way that they keep them, and they also keep them -- the  
18 way that their site works everything has to kind of cross  
19 reference to them. It's a complex system, but I have seen  
20 these physically. They have --

21 THE WITNESS: We actually have the model hold the  
22 model release form. We have their -- hold two IDs, and 2257  
23 actually only requests a copy of the ID, which I think they  
24 should request more. They should request the girl holding the  
25 IDs.

1           So I keep all of that on the database, and then I  
2       also keep the compliant database for the U.S. 2257.

3           THE COURT: All right. Thank you.

4           MR. LIPSCOMB: And I know you're involved in that  
5       case --

6           THE COURT: Yes.

7           MR. LIPSCOMB: -- right now which --

8           THE COURT: That's another case.

9           MR. LIPSCOMB: -- fairly amazing that two adult  
10       cases --

11          THE COURT: It's completely coincidental.  
12       Completely coincidental.

13          MR. LIPSCOMB: You're the adult -- adult judge this  
14       week.

15          THE WITNESS: But you -- our movies, I'm sure  
16       then -- you'd probably like them.

17          THE COURT: Okay. All right. Thank you.

18          THE WITNESS: Okay. Thank you.

19          THE COURT: Call your next witness.

20          MR. LIPSCOMB: Your Honor, I'd now like to call  
21       Michael Patzer.

22          MICHAEL PATZER, PLAINTIFF'S WITNESS, SWORN

23          THE CLERK: Would you be seated, state your full  
24       name and spell your last name for the record.

25          THE WITNESS: Michael Patzer, P-A-T-Z-E-R.

1 DIRECT EXAMINATION

2 BY MR. LIPSCOMB:

3 Q Mr. Patzer, where did you go to high school?

4 A (Inaudible), Germany.

5 Q When did you graduate?

6 A In 1999.

7 Q Have you worked in the IT business since 1999?

8 A Yes, I do.

9 Q So you've worked for 14 years in the IT business.

10 A That's correct.

11 Q Do you currently work IPP, Limited?

12 A Yes, I designed, created and implemented and now I'm  
13 monitoring the software and service they currently use to  
14 trace possible copyright infringements.

15 Q You don't actually work for IPP, Limited. You said you  
16 work for a firm that provides these services to IPP, Limited,  
17 correct?

18 A That's correct.

19 Q Is Malibu Media a client of IPP, Limited?

20 A Yes, it is.

21 Q And Malibu Media relied on IPP, Limited software to  
22 detect the infringers in this case, correct?

23 A Correct.

24 Q How long did it take to develop the software used by IPP,  
25 Limited?

1 A Over one year.

2 Q How does the software work?

3 A It -- it's -- normally starts by customers giving us the  
4 names of the copyright works, and -- yeah, that's --

5 THE COURT: Customers give you the name of a  
6 copyrighted work?

7 THE WITNESS: Of their copyrighted works, yeah.

8 BY MR. LIPSCOMB:

9 Q What happens after a customer gives you the name of their  
10 copyrighted work?

11 A We search the internet from the well known Torrent web  
12 pages for possible matches. It's basically a lexical search  
13 based on the name the -- they gave us.

14 Q What happens if IPP's servers find a possible match?

15 A We download the data files which are correlated to the  
16 Torrent files.

17 THE COURT: You correlate what, the beta file?

18 THE WITNESS: The data.

19 THE COURT: Data file.

20 THE WITNESS: Yeah, sorry, the data file, correlate  
21 to the Torrent file and start the logging process at the  
22 same -- at the same time.

23 BY MR. LIPSCOMB:

24 Q The data that's correlated to the Torrent file, in this  
25 case, that would be a movie, right?

1 A Correct.

2 Q And you said you start the logging process at the same  
3 time.

4 A Yes.

5 Q Does IPP distribute pieces of data back into the  
6 BitTorrent swarm?

7 A No, that's not possible.

8 Q Why is that not possible?

9 A Because we completely writ -- wrote the whole software by  
10 scratch ourself. There's no such feature implemented what's  
11 makes it possible to upload or distribute any data.

12 Q But doesn't BitTorrent work on a tit-for-tat basis?

13 A That's correct.

14 Q What is a tit-for-tat basis?

15 A It means that you have to upload data to be able to  
16 download data.

17 Q But didn't you just tell me you're not uploading data?

18 A That's correct.

19 Q So how are you getting around the tit-for-tat?

20 A Because if you are new in the BitTorrent swarm and you  
21 don't have any data, so the protocol, the BitTorrent protocol  
22 has to support that if somebody new is joining the swarm, that  
23 you still get some kind of data to be able to join.

24 THE COURT: Use the word "swarm?"

25 MS. FIELD: The swarm.



1 THE COURT: Did you use the word "swarm?"

2 THE WITNESS: Swarm, yeah.

3 MS. FIELD: A swarm is computer --

4 BY MR. LIPSCOMB:

5 Q What is a BitTorrent swarm?

6 A BitTorrent swarm is actually a huge amount of people  
7 sharing the same content.

8 THE COURT: When you say "huge amount" -- well, go  
9 ahead. You can ask the question.

10 THE WITNESS: But I can still --

11 BY MR. LIPSCOMB:

12 Q A BitTorrent swarm is all of the peers who are sharing  
13 the same Torrent file, correct?

14 A That's correct.

15 Q And then one of Malibu Media's movies, when people are  
16 sharing it, there's usually five, 10,000 people at a time,  
17 correct?

18 A That's correct.

19 Q Going back to the tit-for-tat questions, is IPP  
20 constantly joining swarms as new peers?

21 A That's correct.

22 Q And that's how you get around the tit-for-tat.

23 A Right.

24 Q You said after a possible match is found through  
25 electrical search, you immediately start downloading the

1 computer file, and you start login communications, correct?

2 A Correct.

3 Q What do you mean by "start logging communications?"

4 A We start connecting to possible infringers and store that  
5 information in our database service.

6 Q Do you also save the -- the communications?

7 A Yes.

8 Q Where do you save them?

9 A We just -- we write them to WORM tape drives after they  
10 have written to the hard disk before.

11 Q That's WORM, W-O-R-M, tape drive, correct?

12 A What does "WORM" stand for?

13 Q It stands for write once, read many. This -- actually,  
14 we use -- because it's impossible to modify data after it's  
15 get written to the tape drive, it's impossible to delete any  
16 data. The only way is to destroy the tape drive.

17 MR. LIPSCOMB: Your Honor, we pre-marked as P-5 a  
18 WORM tape drive, and this is, for the record, a three terabyte  
19 LTO-5 Ultrium WORM, and I'd just like to -- I only have one  
20 copy of this because it is a tape drive --

21 THE COURT: Right.

22 MR. LIPSCOMB: -- so I'd just like to show it to the  
23 witness and then --

24 THE COURT: Sure. Well, can I just ask a question?

25 MR. LIPSCOMB: Of course.

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1 THE COURT: When you say that you find five -- five  
2 to 10,000 people in a swarm, is that -- is that your  
3 testimony?

4 THE WITNESS: Yeah, it's -- it depends on the --

5 THE COURT: Now, are they in one location, or they  
6 could be all over the world or --

7 THE WITNESS: It's worldwide.

8 THE COURT: What?

9 THE WITNESS: The -- the number's a worldwide  
10 number.

11 THE COURT: All right. Now, let's -- let's say  
12 there's a movie -- I just want to understand this.

13 Let's say there's a movie, and I'll -- I'll pick a  
14 plain vanilla topic like "Miss Jones," okay?

15 THE WITNESS: Yeah.

16 THE COURT: All right. Now, if -- are you saying  
17 that if "Miss Jones" is being viewed on BitTorrent -- let's  
18 say in this -- the way Ms. Field said, that movie may just be  
19 10 minutes long, right?

20 THE WITNESS: Yeah.

21 THE COURT: But this could be played all day long on  
22 BitTorrent because people in different countries would be  
23 watching it at different times, is that right?

24 THE WITNESS: Yeah.

25 THE COURT: So for how long do you monitor how long

Patzer - Direct (Lip)

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1 "Miss Jones" is being played on BitTorrent?

2 Do you understand my question? Do you just monitor  
3 it like once a day, or do you monitor it 24 --

4 THE WITNESS: We have --

5 THE COURT: -- hours a day?

6 THE WITNESS: Twenty-four hours a day.

7 THE COURT: Twenty-four hours. For how long? For  
8 how many days?

9 THE WITNESS: Forever.

10 THE COURT: Forever?

11 THE WITNESS: Yeah.

12 THE COURT: Your equipment can do that?

13 THE WITNESS: Yeah.

14 THE COURT: Well, you -- your start date is when --  
15 does Malibu media contact you and ask you to survey one of  
16 their movies --

17 MR. LIPSCOMB: Through coun- --

18 THE COURT: -- that is, to determine whether one of  
19 their movies is being shown on BitTorrent?

20 MS. FIELD: Can I answer that?

21 THE COURT: Being downloaded on BitTorrent?

22 MR. LIPSCOMB: It goes through counsel, through me  
23 to them.

24 THE COURT: All right. Well --

25 THE WITNESS: I'm just technic guy, so --

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1 THE COURT: Well, Mr. Lipscomb then call you?

2 MS. FIELD: I have something --

3 THE WITNESS: Not me in person.

4 THE COURT: What?

5 THE WITNESS: Because I -- I'm just the technic guy,  
6 so --

7 THE COURT: You don't know how it's set up.

8 THE WITNESS: Yeah.

9 MR. LIPSCOMB: Mr. Fiezer will testify about how --

10 THE COURT: Okay. Fine. All right. Well, then  
11 we'll wait. All right. Go ahead.

12 MR. LIPSCOMB: From your questions I -- I think that  
13 you -- you have some misunderstandings about the way  
14 BitTorrent works. Can -- can I try and clear it up?

15 THE COURT: Yes, sure. Please.

16 BY MR. LIPSCOMB:

17 Q Let's just -- in fact, we're going to talk -- we'll just  
18 start with this.

19 BitTorrent -- BitTorrent has what's called a dot Torrent  
20 file, correct?

21 A That's correct.

22 Q The dot Torrent file has what in it?

23 A Basically, contains two main things. The first thing is  
24 the name, the creator of the Torrent file gave to the file to  
25 describe the content it has, and the second thing is that it

1 has a index of every data file which is correlated to that  
2 Torrent file.

3 Q And the data is, in this case, a movie, correct?

4 A Correct.

5 Q And somebody goes and puts up the dot Torrent file onto a  
6 Torrent website, correct?

7 A Correct.

8 Q And then peers click on that dot Torrent file, right?

9 A Right. And the peers -- the initials here --.

10 MR. LIPSCOMB: And, Your Honor, if you look at a  
11 demonstrative -- this -- this is a really good time to -- to  
12 flip to the demonstratives, and it would be on page -- they'll  
13 look like this, BitTorrent file flow.

14 BY MR. LIPSCOMB:

15 Q Mr. Patzner, the initials here --

16 THE COURT: The one says BitTorrent file flow?

17 MR. LIPSCOMB: BitTorrent file flow.

18 THE COURT: Yes. Okay.

19 BY MR. LIPSCOMB:

20 Q Mr. Patzner, the initial seeder has the -- the whole  
21 movie, correct?

22 A That's correct. That's actually the person who created  
23 the Torrent file and uploaded the Torrent file to the pages.

24 Q Okay. And the initial seeder will -- the -- the people  
25 on the top row of the -- the demonstrative are peers, correct?

1 A That's correct.

2 Q And you -- a small swarm, this would be called the swarm,  
3 right? These three peers would be the swarm.

4 A Yeah, that's correct.

5 Q The initial seeder breaks up the Torrent file or the data  
6 file, the movie file, into pieces --

7 A Yeah.

8 Q -- of data, right?

9 A A lot of small pieces, yeah.

10 Q Lot of small pieces. And the initial sender will send  
11 piece number one to infringer number one, right?

12 A Right.

13 Q Piece number two to infringer number two.

14 A Right.

15 Q Piece number three to infringer number three.

16 A Correct.

17 Q Then three will send his piece to one and to two. Two  
18 will send his piece to one and to three and so on.

19 A Yeah, correct.

20 Q That's the way BitTorrent works.

21 THE COURT: Well, does that -- does that happen  
22 automatically, or does --

23 THE WITNESS: Yeah, that's --

24 THE COURT: -- each infringer have to do something?

25 THE WITNESS: That's the BitTorrent protocol, how it

1 works. You just have to install and start the software.

2 THE COURT: So -- but the software itself sends the  
3 image to the three infringers so that they all get --

4 THE WITNESS: Yeah.

5 THE COURT: -- each other's downloads, is that  
6 correct?

7 THE WITNESS: That's correct.

8 THE COURT: They don't have to know each other.

9 THE WITNESS: No.

10 MR. LIPSCOMB: Not personally.

11 THE COURT: All right. Go ahead.

12 BY MR. LIPSCOMB:

13 Q But their computers have to connect to each other and  
14 transmit data back and forth and -- between each other and  
15 among each other.

16 THE COURT: Is that correct?

17 THE WITNESS: Yeah, that's correct.

18 BY MR. LIPSCOMB:

19 Q BitTorrent's popular because it's a disaggregated system  
20 for file sharing, correct?

21 A That's correct.

22 Q And one person can distribute a movie file to a bunch of  
23 different people without having to send the whole file to each  
24 person, right?

25 A That's right.



1 Q And that reduces the bandwidth load on the person who  
2 wants to distribute it by using that disaggregated system,  
3 right?

4 A That's correct. A big swarm can have up to one million  
5 in one swarm.

6 Q And the reason BitTorrent's popular is because one person  
7 can distribute it to thousands of people because all those  
8 thousands of people work together.

9 A That's correct.

10 THE COURT: Well -- well, they -- they work -- those  
11 thousands of people are connected by the software because  
12 they've logged on to the software, is that correct?

13 THE WITNESS: That's correct.

14 THE COURT: They're not independently working -- I  
15 think the word "working together" is a misnomer because  
16 they -- all they've done is to log onto BitTorrent, is that  
17 correct, and downloaded the same movie.

18 THE WITNESS: That's correct, but if you download,  
19 you all have to upload, so everybody who's downloading that  
20 movie is uploading at the same time.

21 THE COURT: But that's because the software does  
22 that automatically.

23 THE WITNESS: Yeah, but it's not possible to use  
24 BitTorrent without uploading.

25 THE COURT: Okay. All right.

1 MR. LIPSCOMB: So the very, very beginning, if you  
2 have no data.

3 THE COURT: Right.

4 THE WITNESS: Yeah.

5 MR. LIPSCOMB: And --

6 THE COURT: But -- but let me ask --

7 MR. LIPSCOMB:

8 Q But they are working together in the sense that they are  
9 all sending each other pieces of --

10 THE COURT: Right.

11 BY MR. LIPSCOMB:

12 Q -- the file, correct?

13 THE COURT: Now, some -- one -- let me -- one person  
14 who is using BitTorrent may get the beginning of the movie,  
15 another person may get the middle of the movie, and another  
16 person may get the end of the movie, is that correct?

17 THE WITNESS: That's correct.

18 THE COURT: How does the -- does the BitTorrent  
19 software put the movie together in order?

20 THE WITNESS: By checksums. The BitTorrent software  
21 knows what's the beginning, what's the middle and what's the  
22 end of it.

23 THE COURT: It does?

24 THE WITNESS: So it just glues it together when he  
25 gets all the puzzle pieces. Like a normal puzzle, there's

1     only one way to put it together.

2                 THE COURT: But the software knows that  
3     automatically.

4                 THE WITNESS: Yeah.

5                 THE COURT: The members of the swarm don't put it  
6     together themselves.

7                 THE WITNESS: That's correct.

8                 THE COURT: Go ahead.

9     BY MR. LIPSCOMB:

10    Q     Their computers put it together via the use of their  
11    BitTorrent client, correct?

12    A     Correct.

13    Q     And the BitTorrent client is the software program on  
14    their individual computers.

15    A     That's correct.

16    Q     Let's go back to that WORM tape drive. Okay?

17    A     Okay.

18    Q     You said that the WORM tape drive stands for read once --  
19    write once, read many.

20    A     Correct.

21    Q     And that IPP was putting the logging communications both  
22    on its server and then onto that WORM tape drive, correct?

23    A     That's correct.

24    Q     Have you ever seen the WORM tape drive in front of you  
25    before?

1 A Yes, I did.

2 Q What's on it?

3 A It has a huge amount of BitTorrent communications stored  
4 on it.

5 Q Are any of the communications relevant to this case?

6 A That's correct.

7 MR. LIPSCOMB: Your Honor, I'd now like to move P-5  
8 into evidence.

9 THE COURT: Admitted.

10 BY MR. LIPSCOMB:

11 Q What type of computer file is the transaction that's  
12 recorded on P-5?

13 A It's a PCAP file.

14 THE COURT: What did you -- what is it?

15 THE WITNESS: P-C-A-P.

16 THE COURT: PCAP. All right.

17 BY MR. LIPSCOMB:

18 Q What does "PCAP" stand for?

19 A It stands for packet capture.

20 Q What type of packet are you capturing?

21 A Data packets.

22 Q What program does IPP use to create PCAPs?

23 A Tcpdump.

24 Q What does tcpdump do?

25 A It's monitoring the whole network traffic of server so

1 all incoming and outgoing communications are written to a  
2 file.

3 Q So let -- the way I conceptualize is -- if this is fair.

4 Is this like a video camera, kind of staring at your  
5 server, recording all of the ingoing and outgoing  
6 transactions? Is that right?

7 A That's right, yeah.

8 Q That's -- that's what tcpdumps and -- dump does, right?

9 A Right, yeah.

10 Q And the -- the recording, that's called a PCAP.

11 A Right.

12 Q And the PCAPs are on that WORM tape drive.

13 A Yeah, lot of them.

14 Q For some of the infringement hits in this case.

15 A Correct.

16 Q And if you needed to, could you produce the same WORM  
17 tape drives for all the infringement hits in this case?

18 A Correct.

19 Q What else is on that WORM tape drive?

20 A Actual, the movie which we are downloaded through the  
21 BitTorrent network which is correlated to the Torrent files.

22 Q That's the BitTorrent copy of the movie, right?

23 A That's correct.

24 Q Not the original, the copy.

25 A The copy.

1 Q What else is on that WORM tape drive?

2 A German government-issued time stamp.

3 Q That time stamp's issued by the government of Germany?

4 A By the government of Germany, correct.

5 Q How soon after a PCAP file is placed on that WORM tape  
6 drive do you put the government-issued time stamp on it?

7 A Within 24 hours.

8 Q What does this time stamp prove?

9 A It proves that the data was actually written to that at  
10 that time.

11 Q What happens to your WORM tape drives after they're  
12 filled up?

13 A We throw them in a data security safe.

14 Q About how many tapes do you currently have?

15 A About 300.

16 Q How many servers does IPP use?

17 A About 150 servers and two tape robots.

18 Q Does IPP have any security certifications?

19 A Yes, we fulfill the security certification of credit card  
20 processing companies.

21 Q And that's so that you can be sure that nobody's hacking  
22 into your system, right?

23 A That's correct.

24 Q Is it important that IPP servers have the correct time?

25 A Yes, it's very important.

1 Q Why?

2 A Because the ISPs are using that data to correlate it to  
3 the -- to correlate to possible infringements of their  
4 subscribers.

5 Q How are IPP's servers' clocks set?

6 A They are set by two dedicated GPS hardware service and  
7 atomic clock.

8 Q And what happens if your servers' time is different from  
9 either the GPS time or the atomic time?

10 A If the time differs more than 100<sup>th</sup> of a second, we just  
11 skip the lot.

12 Q Is there a specific length of time that your system is  
13 set to maintain a connection with a possible infringer during  
14 a transaction?

15 A Yes, there's a minimum delay of two seconds before actual  
16 transfer data and two seconds before -- after it.

17 Q And since your time is never inaccurate by more than 100<sup>th</sup>  
18 of a second on a log that you don't skip and you maintain  
19 connections for than four seconds, are you confident that the  
20 information you give to the ISPs can be used to accurately  
21 correlate that the alleged -- correlate the IP address to the  
22 subscriber?

23 A Very confident.

24 Q Okay. Let's talk for a moment about hash values. Okay?

25 A Okay.

1 Q What is a hash value?

2 A A hash value is actual fingerprint of a piece of data.

3 Q Does every unique piece of data have a different hash  
4 value?

5 A That's correct.

6 Q And now let's go back and talk -- we did this a little  
7 bit just before, but let's go back and talk about BitTorrent  
8 in general for a moment. Okay?

9 A Okay.

10 Q The Torrent file contains what information?

11 A The name the initial creator or initial seeder of the  
12 Torrent file gauged to the Torrent file to describe the  
13 content and index of all data pieces which are correlated to  
14 the Torrent file.

15 Q So a movie file might have, just using sample, 100  
16 different pieces of data, right?

17 A That's correct.

18 Q And does the dot Torrent file, the whole dot Torrent  
19 file, have a hash value?

20 A That's correct.

21 Q We'll call that hash value the master hash value?

22 A Yeah, that's correct.

23 Q And does each little piece in the dot Torrent file have  
24 its own hash value?

25 A That's correct.



1 Q Now, let's talk for a moment about a BitTorrent  
2 transaction. Okay?

3 A Okay.

4 MR. LIPSCOMB: Your Honor, I've pre-marked P-6.

5 May I approach?

6 THE COURT: Yes.

7 BY MR. LIPSCOMB:

8 Q Mr. Patzer, have you ever seen the document that's been  
9 pre-marked as Plaintiff's 6?

10 A Yes.

11 Q What is it?

12 A It's a technical report which is produced by IPP  
13 software.

14 Q And you personally maintain the servers which run that  
15 software, correct?

16 THE COURT: Early in the case you filed a  
17 declaration or an affidavit by someone from IPP was it this --

18 MR. LIPSCOMB: He comes next.

19 THE COURT: That's the next witness. Okay.

20 MR. LIPSCOMB: He -- he's the expert on how it  
21 works. He runs it -- or he actually uses it.

22 THE COURT: Okay. Thank you.

23 MR. LIPSCOMB: Okay.

24 BY MR. LIPSCOMB:

25 Q And just going back to P-6, you personally maintain the

1 servers that run the software that created P-6, right?

2 A That's correct.

3 Q And the servers were in good working order at the time  
4 that P-6 was created?

5 A Yes.

6 Q And the -- you monitor the software, as well, right?

7 A Yes, correct.

8 Q The software was functioning correctly?

9 A Correct.

10 Q And this -- P-6 is the type of report that's kept in the  
11 ordinary course of business for IPP?

12 A That's correct.

13 MR. LIPSCOMB: Your Honor, I'd like to move P-6 into  
14 evidence.

15 THE COURT: Admitted.

16 BY MR. LIPSCOMB:

17 Q What's the -- P-6, what's the report called?

18 A It's a technical report.

19 Q What does the technical report show?

20 A It shows the extraction of one of the communications of a  
21 PCAP file.

22 Q Is this a report of one of the transactions that occurred  
23 in this case?

24 A That's correct.

25 Q And if you needed to, could you produce this same exact

1 type of report for every one of the infringements that  
2 occurred in this case?

3 A Yes.

4 Q Can you turn to -- I think it's page two.  
5 Which movie is this talking about?

6 A That's actual in this case a -- or a strip -- it's "Strip  
7 Poker."

8 Q Let's look at the -- page six, if you will -- if you  
9 will, please.

10 A Yes.

11 Q What's the first entry on page six show?

12 A Just the beginning of a TCP\IP connection.

13 Q And what is a TCP, backslash, IP connection?

14 A It's the commonest protocol in the internet.

15 Q What does line two of page six show?

16 A Shows a BitTorrent handshake.

17 Q What's in a BitTorrent handshake?

18 A Beside other things, it contains the master hash of a  
19 BitTorrent file so that both parties know about which content  
20 they talking about.

21 Q Can we go to page seven of the report now, please?

22 A Yes.

23 Q Is the highlighted section on page seven, is that the  
24 same BitTorrent handshake that's on page six, line two?

25 A That's correct.

1 Q What's the -- what's shown next to the star that -- that  
2 we wrote in blue ink at the bottom?

3 A It shows us the master hash value of that Torrent file.

4 Q And that correlates the -- the Torrent to -- I'm sorry.  
5 Strike that.

6 The hash value at the bottom of page seven, that's for a  
7 movie in this case, right?

8 A That's correct.

9 MR. LIPSCOMB: Your Honor, I'd now like to show the  
10 witness P-7. This is a -- for the record, it's a 500 gigabyte  
11 hard drive, and I only have one copy of it.

12 We're just going to -- after he talks about it,  
13 we'll introduce it.

14 THE COURT: All right.

15 BY MR. LIPSCOMB:

16 Q Go ahead and pull that out of -- Mr. Patzer, have you  
17 ever seen that 500 gigabyte hard drive before?

18 A Yes, I wrote data on it.

19 Q You're the only person who's written data onto it?

20 A That's correct.

21 MR. LIPSCOMB: Your Honor, I'd like to move P-7 into  
22 evidence.

23 THE COURT: Admitted.

24 BY MR. LIPSCOMB:

25 Q What's on the 500 gigabyte hard drive that's P-7

1 A It contains the Torrent files for the X-art movies, and  
2 it contains the -- the copies of their movies which we got  
3 through the Torrent network and also contains a protocol that  
4 proves that the Torrent files matches perfectly to the movie  
5 files on the -- on the drive.

6 Q Just to clarify. The WORM drive only has a couple of  
7 transactions on it. That 500 gigabyte hard drive has every  
8 Torrent file at issue in this case?

9 A That's correct.

10 Q And every movie that was transmitted through BitTorrent  
11 in this case.

12 A That's correct.

13 Q So those are the copies of the movies.

14 A Yes.

15 Q Let's change topics and now talk briefly about the  
16 quantum of infringements that Malibu Media suffers each month.  
17 Okay?

18 A Okay.

19 Q IPP monitors that, right?

20 A That's correct.

21 Q In the U.S. and in 15 other countries around the world.

22 A For Malibu Media, correct.

23 Q More countries for some other people.

24 A Correct.

25 Q Based on your personal observations and your software,

1     what -- what it's recording, how many people in the U.S.  
2     infringed Malibu Media's movies last month?

3     A     About --

4             THE COURT:   Last month?

5             MR. LIPSCOMB:   Last month.

6             THE COURT:   Well, short -- the month of May?

7             MR. LIPSCOMB:   We're in June?

8             THE DEFENDANT:   May 2013.

9             MR. LIPSCOMB:   May 2013.

10            THE WITNESS:   About 80,000.

11     BY MR. LIPSCOMB:

12     Q     How many people --

13             THE COURT:   That's just in the U.S.?

14             THE WITNESS:   Just in the U.S.

15     BY MR. LIPSCOMB:

16     Q     How many people infringed Malibu Media's movies in all  
17     the countries that you monitor for Malibu Media in May of  
18     2013?

19     A     About 300,000.

20             THE COURT:   Those in the other 15 countries.

21             THE WITNESS:   Yeah.

22     BY MR. LIPSCOMB:

23     Q     That 300,000 includes the U.S.

24     A     Yeah.

25             THE COURT:   Does that include the U.S.?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 BY MR. LIPSCOMB:

4 Q How many Torrent files are you -- you tracking worldwide  
5 right now?

6 A About 10 million.

7 Q That's obviously not just for Malibu Media, right?  
8 That's --

9 A That's correct.

10 Q Each one --

11 THE COURT: Do you have -- do you have other clients  
12 similar to Malibu Media that are --

13 THE WITNESS: Yeah.

14 THE COURT: How many others?

15 THE WITNESS: Don't know, about -- about 100.

16 THE COURT: Do -- can commercial movies be loaded  
17 onto BitTorrent, like "Gone with the Wind" or --

18 MR. LIPSCOMB: We're going to get there, Your Honor.

19 THE COURT: Oh, okay. Excuse me. All right. Go  
20 ahead.

21 MR. LIPSCOMB: We're definitely going to get there.

22 BY MR. LIPSCOMB:

23 Q How many -- you're tracking 10 million Torrent files in  
24 total right now, correct?

25 A Yes, and the 10 -- the Torrent files are not only for

1 actual customers, actual number of Torrent files that exist  
2 out there.

3 Q What type of content can you find on BitTorrent?

4 A You can find software, cinema movies, adult movies,  
5 musics. You can find games, whole compilations of, for  
6 example, the Beatles, so just everything.

7 You can also find e-books. It's just everything there.

8 Q Just about every major motion picture that comes out is  
9 on BitTorrent, isn't it?

10 A That's correct.

11 Q And all popular software is on BitTorrent.

12 A Correct.

13 Q Most popular music is on BitTorrent.

14 A Right.

15 Q Textbooks for college are on BitTorrent.

16 A Correct.

17 Q Computer games.

18 A Right.

19 Q Ten million different file -- that's a big library,  
20 right?

21 A Right.

22 Q How many people are using BitTorrent on an average day?

23 A About 100 million worldwide.

24 Q Have you ever heard of the movie, "Batman, the Dark  
25 Knight Rises?"



1 A Yes.

2 Q How many people used BitTorrent to download "Batman, the  
3 Dark Knight Rises" the day before it was released in theaters?

4 A About six -- over six million.

5 Q Six million people.

6 THE COURT: How were they able to get it before it  
7 was released?

8 THE WITNESS: Somebody stole it somewhere and put it  
9 to BitTorrent. Because it's -- only one person has to put --  
10 put it to BitTorrent, and everybody else can steal it.

11 BY MR. LIPSCOMB:

12 Q Just the same way they did to Malibu Media with --

13 A Yeah.

14 Q -- Malibu Media's two movies.

15 THE COURT: Just -- who -- is BitTorrent owned by  
16 some --

17 THE WITNESS: No.

18 MR. LIPSCOMB: Yes, there is a BitTorrent, Inc.

19 THE WITNESS: Oh, so --

20 MR. LIPSCOMB: BitTorrent, Inc. owns the protocol.  
21 It's based out in either Washington or California. It  
22 licenses its code to BitTorrent clients. BitTorrent clients  
23 is a -- are the software programs that enable BitTorrent to  
24 work.

25 And BitTorrent, Inc. is about \$100 million a year in

1 sales business.

2 Oh, I think I moved -- he just told me I didn't move  
3 P-6 into evidence, Your Honor. I'd like to move P-6 in --

4 THE COURT: I think you did. But it's admitted,  
5 anyway.

6 MR. LIPSCOMB: Okay.

7 THE COURT: And now he has P-7.

8 MR. LIPSCOMB: I -- oh, that's the one that -- so P-  
9 7, I'd like to move P-7 into evidence.

10 THE COURT: Already admitted.

11 BY MR. LIPSCOMB:

12 Q The six million people that downloaded "Batman, the Dark  
13 Knight Rises," they could have put that -- that copy on a DVD,  
14 right?

15 A Right.

16 Q And that would enable them to avoid having to go to a  
17 store and actually buy a DVD.

18 A Right.

19 Q Does BitTorrent cost a lot of copyright owners a lot of  
20 money?

21 A Pretty sure. I'm really, really sure.

22 Q Are you certain?

23 A I'm certain.

24 Q There's really no doubt about it, right?

25 A Right.

1 THE COURT: Can anybody -- can a producer encrypt --  
2 you know what I mean by "encrypt," the movies so it can't be  
3 downloaded on BitTorrent? That is, can they put like a -- a  
4 high security file?

5 We sometimes use the word "encrypted." You know  
6 what I mean by "encrypted?"

7 THE WITNESS: Yeah.

8 THE COURT: Can a movie be encrypted so it can only  
9 be downloaded by someone who has the encryption code?

10 THE WITNESS: That's possible.

11 THE COURT: But then you couldn't download it on  
12 BitTorrent.

13 THE WITNESS: Yeah, but it depends where they steal  
14 it. If they steal it in the cinema with a small camera, they  
15 can put it to BitTorrent, and everybody can steal it there.

16 THE COURT: All right.

17 THE WITNESS: Because if it's encrypted, nobody can  
18 see it. Somebody has to decrypt -- decrypt it, and up in the  
19 time it's decrypted it could be stolen.

20 THE COURT: Well, do any movie producers, like the  
21 big producers, like Sony, do they encrypt any of their movies?

22 THE WITNESS: I think so --

23 THE COURT: If you know.

24 THE WITNESS: I -- I've hear about it that they're  
25 now encrypted before they give it out to the cinemas, and then

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1 on the date they play it they -- they gave them the keys to  
2 put it to the cinemas.

3 THE COURT: So that can be done.

4 THE WITNESS: It can be done.

5 BY MR. LIPSCOMB:

6 Q That's -- but as soon -- and I want you to understand the  
7 point here.

8 As soon as somebody takes the key and unencrypts [sic] it,  
9 regardless of whether it was encrypted before, as soon as they  
10 unencrypt [sic] it and it's then viewable by that person, that  
11 person can then put it up on BitTorrent, right?

12 A That's correct.

13 Q And so all the --

14 THE COURT: But that person has to get it on a  
15 computer, correct, like a DVD? Has to get it --

16 THE WITNESS: No --

17 THE COURT: -- on -- has to get it in digital media.

18 THE WITNESS: It's even possible to sit in the  
19 cinema with a small hidden camera and taking a copy of it.

20 THE COURT: Okay.

21 MR. LIPSCOMB: And --

22 THE WITNESS: What's actually been made.

23 BY MR. LIPSCOMB:

24 Q For purposes of Malibu Media, 'cause I want the Judge to  
25 understand this point, if somebody -- if Malibu Media was

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1 encrypting its movies and somebody downloaded it and then had  
2 it viewable on their computer, the encryption wouldn't at all  
3 stop them from then putting it up onto BitTorrent after it was  
4 viewable.

5 A That's correct.

6 Q So the encryption only really helps you be able to stop  
7 the pre-leak, the pre-release leak, right?

8 A That's correct.

9 Q The -- the --

10 A After it's released, it can be shared wherever you want.

11 MR. LIPSCOMB: Your Honor, I have no further  
12 questions for Patzer.

13 THE COURT: All right. Thank you.

14 Any questions for -- by counsel?

15 (No audible response)

16 THE COURT: All right. Thank you very much.

17 MR. LIPSCOMB: Your Honor, if I could, a five-minute  
18 recess?

19 THE COURT: Yes, sure.

20 MR. LIPSCOMB: 'Cause I need to use the restroom.

21 THE COURT: All right. We'll take a recess.

22 MS. FIELD: That's what we had to to -- three weeks.  
23 We had to -- encrypted everything.

24 MR. LIPSCOMB: Your Honor, just a proffer for the  
25 record? That's what Malibu Media did.

1 MS. FIELD: We did that.

2 MR. LIPSCOMB: They encrypted their --

3 THE COURT: They -- they what?

4 MR. LIPSCOMB: They encrypted their media --

5 MS: Yeah, we did that.

6 THE COURT: Okay. All right. Well, if Ms. Field  
7 wants to come back and testify about it, she'll -- she can do  
8 that.

9 MR. LIPSCOMB: Okay. I'll -- then I'll call her  
10 real quickly afterwards if that's --

11 THE COURT: It's up to you. Sure.

12 (Recess taken, 10:59 a.m. to 11:12 a.m.)

13 THE COURT: Okay.

14 MR. LIPSCOMB: Your Honor --

15 THE COURT: Everyone ready?

16 MR. LIPSCOMB: With permission I'd like to recall --

17 THE COURT: Ms. Field?

18 MR. LIPSCOMB: -- Ms. Field for just --

19 THE COURT: Sure.

20 MR. LIPSCOMB: -- a minute or two.

21 THE COURT: Okay. Please state your name.

22 THE WITNESS: COLLETTE FIELD.

23 THE COURT: All right. You're still under oath.

24 THE WITNESS: Yes.

25 THE COURT: Have a -- sit down. Thank you.

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1           Go ahead.

2                           FURTHER DIRECT EXAMINATION

3       BY MR. LIPSCOMB:

4       Q     Ms. Field, does Malibu Media encrypt, use that encryption  
5       software on its movies now?

6       A     I don't know the exact technology that we use but when  
7       our movies were getting stolen before they were released, as  
8       you referred to with the Batman movie, we did take those  
9       measures to prevent -- to encrypt our work, any access to our  
10      work so it wouldn't be stolen.

11           THE COURT:   Has that helped prevent downloading at  
12      all or not?

13           THE WITNESS:   It's -- it's only helped prevent us --  
14      us -- it's only helped prevent them getting the movies before  
15      they're released.

16           THE COURT:   Okay.

17           THE WITNESS:   'Cause once the user -- the user needs  
18      to watch the movie.  So once the user watches the movie, it's  
19      not encrypted on his computer anymore.

20           THE COURT:   Have you tried to contact BitTorrent at  
21      all and -- to see if they had any reaction to what was  
22      happening?

23           THE WITNESS:   You know, we have, and -- I have not  
24      personally.  I was just thinking about that when you brought  
25      it up.  I said, "Maybe -- maybe we could see BitTorrent," and

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1 that I was actually asking my attorney about that he -- we --

2 MR. LIPSCOMB: No, don't say exactly.

3 THE COURT: Well, you can't --

4 THE WITNESS: Yeah.

5 THE COURT: -- disclose what you -- your attorney --

6 THE WITNESS: But -- but, anyway, but I -- but when  
7 you think about it, it would be really difficult because they  
8 just have a code that they license to all different kind of  
9 people, and how could we prove what they're licensing it for.

10 THE COURT: Right.

11 THE WITNESS: We'd probably lose, and we spend  
12 millions of dollars.

13 THE COURT: But you haven't contacted them.

14 THE WITNESS: I have not personally contacted them.

15 THE COURT: Okay. All right.

16 THE WITNESS: I don't know if my attorney's  
17 contacted them on my behalf.

18 THE COURT: Okay. All right. Thank you.

19 MR. LIPSCOMB: I've talked to the owner and the  
20 guy --

21 THE COURT: You can't testify. Okay.

22 All right. Thank you.

23 THE WITNESS: Well, he told me he talked to Verner  
24 (phonetic), but I didn't talk to him.

25 MR. LIPSCOMB: You can't say that, either. Okay.



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1 THE COURT: Well -- all right.

2 THE WITNESS: But maybe I will call him.

3 THE COURT: I -- I don't want to ask anything about  
4 communications between you and your attorney.

5 THE WITNESS: Okay.

6 THE COURT: That's privileged.

7 THE WITNESS: But I think I will contact him now,  
8 actually.

9 THE COURT: All right. Thank you.

10 Anything else you want to ask?

11 MR. LIPSCOMB: One more question.

12 BY MR. LIPSCOMB:

13 Q That -- that encryption technology that you just talked  
14 about, that's only part of what you're spending the \$15,000 a  
15 month on enhanced security.

16 A Oh, that is small part.

17 Q Yeah. And the rest of it is even --

18 A Correct.

19 Q Try to do more.

20 A Right, exactly.

21 THE COURT: Wait. Let me ask another question.

22 You're aware of other companies that brought  
23 copyright infringement cases, such as this one, is that  
24 correct?

25 THE WITNESS: Yes.

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1 THE COURT: All right. Have you ever discussed with  
2 any of them working together on this problem or not?

3 THE WITNESS: We don't really work with any other  
4 companies in our business or --

5 THE COURT: Okay.

6 THE WITNESS: -- communicate with them.

7 THE COURT: All right. Okay. Thank you.

8 MR. LIPSCOMB: Off the record, I -- I don't talk to  
9 any of the --

10 THE COURT: No, I don't want --

11 MR. LIPSCOMB: -- other defense attorneys, either.

12 THE COURT: No, no. No, I don't want anything off  
13 the record. What?

14 MR. LIPSCOMB: I don't talk to any of the other  
15 plaintiff attorneys, either, just talk -- just so that you  
16 know.

17 THE COURT: I didn't hear it.

18 MR. LIPSCOMB: I don't talk to the other plaintiffs'  
19 attorneys, either, like Prenda or Copyright Enforcement Group  
20 or those -- I don't talk --

21 THE WITNESS: Well, we don't always have the exact  
22 same ideals as the other companies, and our -- we're kind of  
23 on our own. We don't even go to the conventions. We're  
24 just -- we're just -- we want to -- we want just to prevent  
25 this, too.

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1 THE COURT: Okay.

2 THE WITNESS: We -- I don't want to cause financial  
3 damage, hardship, to anyone. I want --

4 THE COURT: Well, let me ask you another question.

5 Have you ever considered selling the right to  
6 enforce your copyrights to a third party --

7 THE WITNESS: Never.

8 THE COURT: -- so -- so-called copyright troll?

9 THE WITNESS: Never.

10 THE COURT: You've never. Okay.

11 THE WITNESS: Never.

12 THE COURT: All right. Thank you. All right.

13 MR. LIPSCOMB: Now, Mr. Fiore has one or two --

14 THE COURT: All right. Thank you.

15 MR. LIPSCOMB: -- two questions.

16 THE COURT: All right. Next witness.

17 MR. FIORE: Good morning, Your Honor. I'd like to  
18 call Tobias Fieser.

19 TOBIAS FIESER, PLAINTIFF'S WITNESS, SWORN

20 THE CLERK: Please be seated and state your full  
21 name and spell your last for the record.

22 THE WITNESS: Tobias Fieser, F-I-E-S-E-R.

23 DIRECT EXAMINATION

24 BY MR. FIORE:

25 Q Good morning, Mr. Fieser. How are you?

1 A Good. Fine.

2 Q Mr. Fieser, where did you go to high school?

3 A Bruchsal, Germany.

4 Q Can you spell that for us?

5 A B-R-U-C-H-S-A-L.

6 Q Okay. Where did you attend after high school?

7 A I study business informatics (phonetic) at the  
8 (inaudible) till 2010.

9 Q And where did you work after college?

10 A I worked for two different IT departments and joined IPP  
11 in 2011.

12 Q What are your primary responsibilities at IPP?

13 A I've got three primary functions. The first is to -- to  
14 verify the downloaded movies from the BitTorrent network. The  
15 second is to send the infringement data to the law firms after  
16 they were requested, and the third is to check the  
17 declarations I get back from the law firms and the  
18 infringement data that's attached by the declarations.

19 Q Okay. So as I understand it, your first -- your first  
20 duty is you've got to verify that the original work of your  
21 client is the same as the BitTorrent that has been downloaded.

22 A Correct.

23 Q Okay. The second part is then you have to send that data  
24 to your client or the client's attorney.

25 A Correct, yes.

1 Q And then the third step is you then have to verify that  
2 the information that -- that they have sent you in the  
3 declaration is true and accurate, based upon your records.

4 A Correct, yes.

5 Q Okay. Let's talk about each one of these functions.

6 Did you look at the movie files that were transmitted  
7 through BitTorrent which are at issue in this suit?

8 A Yes.

9 Q Okay.

10 MR. FIORE: Your Honor, for the record, P-7 has  
11 already been admitted into evidence. I'd like to approach the  
12 witness with this.

13 THE COURT: Yes.

14 BY MR. FIORE:

15 Q Mr. Fieser, do you recognize this -- this piece of  
16 evidence?

17 A Yes.

18 Q Can you tell me what it is?

19 A Important for me, it's the downloaded movies are on it.

20 Q Okay. So it's a 500 gigabyte hard drive --

21 A Yes.

22 Q -- and on it is the BitTorrent copy of all the movies at  
23 issue here.

24 A Yes.

25 Q Okay. Have you looked at those?

1 A Yes.

2 Q Okay. What -- what's contained on there?

3 A Copies of the original movies --

4 Q How -- what --

5 A -- from Malibu Media.

6 Q What type -- what type are the files?

7 A They are in lot of different types. Most -- most used  
8 are dot mre, dot re, dot mp4.

9 Q For our purposes is it okay if I refer to them as movie  
10 files?

11 A Yes, of course.

12 MR. FIORE: Your Honor, P-7 has already been moved  
13 into evidence. Now we have a document which has been marked  
14 as P-8. May I approach?

15 THE COURT: Yes.

16 BY MR. FIORE:

17 Q Mr. Fieser, do you under -- do you recognize the exhibit  
18 that I have in front of you marked P-8?

19 A Yes.

20 Q Can you tell me what that is?

21 A On the USB drive are the original movie files from Malibu  
22 Media.

23 Q Okay. So on P-8 is the original of each one of Malibu  
24 Media's at issue in this case.

25 A Yes.

1 Q On seven is the BitTorrent copy of each one of those.

2 A Yes.

3 MR. FIORE: Your Honor, I move for admittance of P-8  
4 into evidence.

5 THE COURT: All right. It's admitted.

6 BY MR. FIORE:

7 Q Mr. Fieser, do you recognize this document which is  
8 marked P-9?

9 A Yes.

10 Q What is this document?

11 A On the document you can see the correlation between  
12 the -- the hash values and the downloaded movie, Torrent  
13 files, to the movie which -- which are original from Malibu  
14 Media. You can correlate it.

15 Q Okay. So column one has the original movie from Malibu  
16 Media, each movie under each Doe with the infringement,  
17 correct?

18 A Correct.

19 Q Column two is the BitTorrent copy of each one of the  
20 ones -- each one of the movies for each one of the Does.

21 A Correct.

22 Q Who created this document?

23 A I.

24 Q Okay. Did you watch all the movies in column one of this  
25 exhibit?

1 A Yes.

2 Q Did you watch all the movies in column two?

3 A Yes.

4 Q If I were to ask you to plug in P-7, would all the  
5 original movies be -- would all the BitTorrent movies be  
6 there?

7 A Yes.

8 Q And if I asked you to plug in P-8, all the copies -- I'm  
9 sorry, all the originals are on P-8, all the copies are on P-  
10 7.

11 A Yes.

12 Q Okay.

13 MR. FIORE: Your Honor, I move to admit P-9 into  
14 evidence.

15 THE COURT: Okay.

16 MR. LIPSCOMB: What's P-9?

17 THE COURT: What is P-9?

18 MR. FIORE: P-9 is the document that Mr. Fieser has.

19 THE COURT: All right. That's the summary.

20 MR. FIORE: Correct.

21 THE COURT: Okay.

22 BY MR. FIORE:

23 Q Mr. Fieser, did you verify that the movies associated  
24 with the movie files were copy of Malibu Media's works prior  
25 to filing the lawsuit?



1 A Yes.

2 Q How did you do that?

3 A I looked original movie on the -- I split my computer  
4 screen into two parts. On the right side I have the original  
5 movie from Malibu Media, and on the left side I have got the  
6 copy as downloaded movie file from the BitTorrent network, and  
7 then I checked if they are the same.

8 Q Did anyone else at IPP, Limited, verify that the movies  
9 were copies of Malibu Media's works prior to filing the  
10 lawsuits?

11 A Yes, Dan Macek also verified the movies.

12 Q Okay. That's Daniel Macek, M-A-C-E-K?

13 A Yes.

14 Q Okay. Why --

15 A C for -- C?

16 Q C, yes.

17 A Okay. Sorry.

18 Q Why did two of you do it?

19 A Because it's necessary.

20 Q Necessary from whom?

21 A The system, yes --

22 Q Okay.

23 A From the system of IPP.

24 Q Okay. So IPP requires at least two of you watch the  
25 movies.

1 A Yes.

2 Q Okay. And for Malibu Media's works are you and Daniel  
3 the only employees of IPP that verify that the originals and  
4 the BitTorrents are copies?

5 A Yes.

6 Q In your -- one of your previous answers we talked about  
7 your job responsibilities, and you said your second job  
8 responsibility was to send the infringed work to your client  
9 or to the client's law firm, correct?

10 A Correct.

11 Q How does that happen? Tell me how that works.

12 A The law firms contact me and say would be -- that I send  
13 to them the data, the infringement data, and then I export it  
14 from our database and send it to the law firms.

15 Q Okay. After you send it to the law firms, what happens  
16 with regard to you next?

17 A The law firm send back me the declarations, and the  
18 data -- infringement data divided per Doe, and then I checked  
19 the data if they are correct, and if they are correct, I sign  
20 the declarations.

21 Q So you get the declaration which is used to file the  
22 motion for leave to serve third party subpoena.

23 You get the infringed data back from the law firm, and  
24 you check all that against your company's saved data with  
25 regard to each infringement.

1 A Yes.

2 Q Okay. At that point if it's okay, you sign the  
3 declaration?

4 A Yes, sir. If not -- if --

5 Q Do you understand in this case that these cases were  
6 severed, correct?

7 A Correct.

8 Q And you understand that Malibu Media filed amended  
9 complaints which alleged that defendants committed all the  
10 infringement works which the copies -- which are on IPP's  
11 database, correct?

12 A Correct.

13 MR. FIORE: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. FIORE:

16 Q This document was previously marked as P-10.

17 Do you recognize that document?

18 A Yes.

19 Q And what is this document?

20 A This are the infringement data I get back from the law  
21 firms. You can see on it the hash value, the title, the owner  
22 and the date.

23 Q Did you verify that this information correlated to the  
24 information that you had, and that it was accurate?

25 A Yes.

1 Q And tell me, how do you do that?

2 A I got one document from the law firm, copied the data in  
3 it into Excel sheet, then pulled the Excel sheet into a tool  
4 from IPP.

5 This tool checks each one. If they are truly the same as  
6 in our database and if the -- if it's really the same, I got a  
7 green light on my screen, and then -- and then it's correct.

8 Q Okay. So I understand, you get the infringed data and  
9 the information back from a law firm. You -- you put it into  
10 an Excel spreadsheet.

11 You then put the Excel spreadsheet into IPP's software  
12 which verifies that everything is an exact copy of each other.  
13 If that's correct, you get a red light -- excuse me, correct,  
14 you get a green light. If it's inaccurate, you get a red  
15 light.

16 A Yes.

17 Q Okay. And you did that with each piece of document in  
18 P -- piece of document -- each piece of the exhibits that's in  
19 front of you right now.

20 A Yes.

21 Q And what light did you get on each piece of those  
22 documents?

23 A Green.

24 Q Okay. From the --.

25 MR. FIORE: Your Honor, we move for Exhibit 10 to be

1 admitted into evidence.

2 THE COURT: Yes, admitted.

3 BY MR. FIORE:

4 Q Mr. Fieser, how many works, the copyright of which are  
5 owned by Malibu Media, does Exhibit 10 state that John Doe 1  
6 infringed?

7 A Four.

8 Q Okay. How many different unique works does the  
9 copyrights which are owned by Malibu Media does Exhibit 10  
10 state that John Doe 13 infringed?

11 A Thirty-seven.

12 Q Did Malibu Media have a registration for all 37 of those  
13 works?

14 A No, only for 35.

15 Q Only 35. So then how many registered works of Malibu  
16 Media did John Doe 13 infringe upon?

17 A Thirty-five.

18 Q Okay.

19 THE COURT: How many?

20 THE WITNESS: Thirty-five.

21 THE COURT: Thirty-five.

22 BY MR. FIORE:

23 Q And how many different works, the copyright of which are  
24 owned by Malibu Media, does Exhibit 10 state that Brian White  
25 infringed upon?

1 A Five.

2 MR. FIORE: I have no further --

3 THE COURT: How many?

4 THE WITNESS: Five.

5 MR. FIORE: -- questions, Your Honor.

6 THE COURT: Five?

7 THE WITNESS: Five, yes.

8 MR. FIORE: I have no further questions, Your Honor.

9 THE COURT: All right. Cross examine, any --

10 Counsel?

11 UNIDENTIFIED ATTORNEY: No, Your Honor.

12 UNIDENTIFIED ATTORNEY: No, Your Honor.

13 THE COURT: Okay. All right. Thank you. You may  
14 step down.

15 THE WITNESS: Thank you.

16 MR. FIORE: Your Honor, at this point I would like  
17 to read a few stipulations into the record.

18 THE COURT: Okay.

19 MR. FIORE: They will be marked at and admitted into  
20 evidence, as well.

21 Your Honor, marked as P-11 is the stipulation  
22 between the parties with regard to John Doe 16. Stipulation  
23 reads:

24 "This stipulation is made on this 23<sup>rd</sup> day of April  
25 2013 by and between Malibu Media, LLC and defendant John

1 Doe 16.

2 "Now, thereafter, the parties through their  
3 respective counsel stipulate:

4 Verizon identified John Doe 16's wife as a  
5 subscriber of IP address number 96.245.250.242 on  
6 February 14<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> of 2012 and March 17, 2012.  
7 The subject IP address was assigned to another person on  
8 March 29, 2012. The technology used by Verizon to  
9 correlate the IP address to John Doe 16's wife on the  
10 above-referenced dates is reliable.

11 "Number two, this stipulation shall be admissible at  
12 trial. It is so stipulated."

13 And it is executed by Ronald Smith and by M. Keith  
14 Lipscomb.

15 We move for Plaintiff's 11 to be admitted into  
16 evidence.

17 THE COURT: All right. That'll be admitted. Well,  
18 you have an exhibit number?

19 MR. FIORE: P-11.

20 THE COURT: P-11. All right. Thank you.

21 MR. FIORE: Your Honor, P-12 is another stipulation  
22 with regard to John Doe 13. This stipulation states:

23 "I, Doe 13, through my counsel, hereby stipulate  
24 that I was assigned IP address 76.99.88.237, and that  
25 Comcast correctly correlated the IP address to me.

1           "Further, I stipulate to the entry of this  
2           stipulation into evidence at trial. I also stipulate to  
3           the entry into evidence of the subpoena response provided  
4           by Comcast identifying me as the owner of the above IP  
5           address at the time of the infringement.

6           "Further, I stipulate that plaintiff is the owner of  
7           the copyrights, and that plaintiff may introduce into  
8           evidence a website printout of the United States  
9           Copyright Office of the applicable applications, and that  
10          these website printouts have the same evidentiary  
11          presumption as the certified copies issued by the  
12          register of copyrights."

13               Executed May 9, 2013 by counsel for John Doe 13 and  
14          move for the admittance of P-12 into evidence.

15               THE COURT: All right. Admitted.

16               (Pause)

17               MR. FIORE: Next, Your Honor, having marked as  
18          Plaintiff's 13 is a stipulation with regard to John Doe 1.  
19          The stipulation reads:

20               "This stipulation is made on this 4<sup>th</sup> day of June  
21          2013 by and between Plaintiff, Malibu Media, LLC, and  
22          defendant John Doe 1.

23               "Now, therefore, the parties, through their  
24          respective counsel, stipulate: One, Comcast identified  
25          John Doe 1 as a subscriber of IP address number



1 174.60.32.79 on December 16, 2011 and December 22, 2011.  
2 The technology used by Verizon to correlate the IP  
3 address to John Doe 1 in the above-referenced dates is  
4 reliable.

5 "This stipulation shall be admissible at trial."

6 It is executed by M. Keith Lipscomb and Leonard  
7 French.

8 This document was -- is document 177 on the docket,  
9 Your Honor.

10 Document 178 is a notice of scrivener's error  
11 because in the body of that it starts talking about a Comcast  
12 correlation and, by mistake, it lists the word "Verizon." The  
13 scrivener's error corrects the "Verizon" to "Comcast."

14 THE COURT: Right.

15 MR. FIORE: Collectively, this is P-13, Your Honor.  
16 We move to admit P-13.

17 THE COURT: Admitted.

18 MR. FIORE: Those are the stipulations, Your Honor.  
19 Right now, with the consent of all counsel, I would like to  
20 read in an excerpt from the deposition of Colin Padgett, who  
21 is a representative of Comcast, whose deposition was  
22 previously taken in this matter.

23 THE COURT: Okay.

24 MR. LIPSCOMB: You need me to play the witness,  
25 right?

1 MR. FIORE: Sure.

2 MR. LIPSCOMB: And I'll play the witness.

3 THE COURT: Okay.

4 MR. FIORE: And for reference purposes, Your Honor,  
5 this starts on page 23 of the deposition, but we will only be  
6 admitting, by agreement of the counsel and Comcast, an excerpt  
7 which is --

8 THE COURT: Right.

9 MR. FIORE: -- we have prepared.

10 THE COURT: I understand.

11 (Deposition of Colin Padgett being read)

12 "Q That makes it reliable. Does Comcast from time to time  
13 receive -- receive subpoenas from criminal law enforcement  
14 agencies?

15 "A Yes.

16 "Q Seeking the same type of IP to human correlation that  
17 Malibu Media did in this case?

18 "A Seeking to associate an IP address with a customer  
19 address and name, yes.

20 "Q And while I understand Comcast may not know exactly the  
21 criminal charges in those cases, the charge may involve  
22 terrorism or may involve terrorism or murder or child  
23 pornography or theft or other very serious criminal charges,  
24 correct?

25 "A That is correct.

1 "Q Does Comcast take this responsibility to directly  
2 correlate an IP address to one of its subscribers seriously?

3 "A Yes, we do.

4 "Q And if Comcast isn't for certain that an IP address was  
5 assigned to a particular subscriber, it would report back to  
6 the -- the person issuing the subpoena that it was unable to  
7 successfully correlate the IP address to a person, correct?

8 "A That's correct, yes.

9 "Q And I call that type of response a discovery failure. If  
10 I use those words, will you understand?

11 "A For purpose -- for the purpose of this discussion, yes, I  
12 will.

13 "Q And Comcast reports discovery failures in response to  
14 subpoenas with some regularity, correct?

15 "A Yes. It happens, yes.

16 "Q So if an identity was disclosed in response to a subpoena  
17 seeking this type of correlation, Comcast was absolutely  
18 certain that it was the correct subscriber, correct?

19 "A That is correct."

20 MR. FIORE: Your Honor, I move for the admittance of  
21 P-13 into evidence.

22 MR. LIPSCOMB: P-14.

23 MR. FIORE: P-14, sorry.

24 THE COURT: Yes, they're all admitted.

25 (Pause)

1 MR. LIPSCOMB: Your Honor, we're going to next call  
2 Patrick Paige, but I doubt that we're going to finish him  
3 before 12:00.

4 THE COURT: Well, I usually don't recess till 12:30.

5 MR. LIPSCOMB: Oh, we'll finish him before 12:30.

6 THE COURT: All right.

7 MR. LIPSCOMB: Okay. Mr. Paige, will you please  
8 take the stand.

9 THE COURT: And that's not a magic time. We will  
10 recess when you're -- when you're done with a witness and it's  
11 convenient. Okay.

12 But how much longer testimony do you have  
13 altogether?

14 MR. FIORE: He's the last -- besides him, only John  
15 Doe 13 is live, and then some reading of depositions.

16 MR. LIPSCOMB: Maybe an hour and a half, Your Honor,  
17 after Mr. Paige.

18 THE COURT: Okay. All right. Go ahead. Let's  
19 finish this witness. We'll see where we are.

20 PATRICK PAIGE, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: State your full name and spell your last  
22 name.

23 THE WITNESS: Patrick, last name is Paige,  
24 P-A-I-G-E.

25 Good morning, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. LIPSCOMB:

3 Q Mr. Paige, thank you for coming today.

4 Did you use to work in law enforcement?

5 A Yes. I started in law enforcement in 1986 till 2011.

6 Q And from --

7 THE COURT: Well, I recall -- I heard his background  
8 and qualifications when he testified by video screen in the  
9 prior proceeding.

10 MR. LIPSCOMB: Can we incorporate --

11 THE COURT: Yeah, we can incorporate --

12 MR. LIPSCOMB: -- that testimony?

13 THE COURT: If you want to -- if you want to  
14 highlight a few things, you may.

15 MR. LIPSCOMB: If we incorporate that full voir dire  
16 last time into this, this is the exact same thing.

17 THE COURT: Thank you. All right. Let's do that.

18 MR. LIPSCOMB: Okay.

19 THE COURT: What I -- what I'd like to just be very  
20 clear, though, on the record is what his involvement was in  
21 this case before Mr. Steinman, your previously designated  
22 expert, died and then how he took over. Could you do -- could  
23 you just go over that briefly.

24 MR. LIPSCOMB: Kleiman, and sure.

25 BY MR. LIPSCOMB:

Paige - Direct (Lip)

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1 Q Mr. Paige, did Malibu Media hire both you and Mr. Kleiman  
2 to work on this --

3 THE COURT: Kleiman. I'm sorry.

4 BY MR. LIPSCOMB:

5 Q -- Kleiman to work on --

6 A Yes, Mr. Kleiman. Yes.

7 Q And both of you were going to do all of the functions  
8 that we asked you to do, correct?

9 A That's correct.

10 Q But between you, you were dividing some of them, that's  
11 right.

12 A That's correct.

13 MR. LIPSCOMB: Just for the record, Your Honor, the  
14 voir dire ended last time at the May 23, 2013 hearing by  
15 talking about why Mr. Paige's reputation was important to him.  
16 So I'll -- we'll incorporate up to there into this record.

17 THE COURT: Okay.

18 BY MR. LIPSCOMB:

19 Q Let's -- Mr. Paige, let's talk about your experience with  
20 investigating child pornography cases a little. Okay?

21 A Okay. Did you supervise police officers who were --  
22 whose responsibility it was to establish a successful TCP/IP  
23 connection with people who were sending pornographic images of  
24 children?

25 A Yes.

1 Q And did you record the offenders' IP address -- IP  
2 addresses, as well as the dates and times of the illegal  
3 transmission of child pornography?

4 A Yes, I did.

5 Q What happened next?

6 A Once we received that information we would request the  
7 State Attorney's Office issue a subpoena for the subscriber  
8 information of the person that was using the internet  
9 transaction there.

10 Q The internet to -- to send child pornography, correct?

11 A Whatever offense it was that we were investigating at the  
12 time, yes.

13 Q Was the subscriber notified by the ISP that his or her  
14 identity was being subpoenaed?

15 A No, it was not.

16 Q Why not?

17 A Because most likely they would destroy the data.

18 Q Have you ever received the subscriber's -- I'm sorry,  
19 strike that.

20 After you received the subscriber's identity, what would  
21 you do?

22 A We would later compile a search warrant to be executed at  
23 the residence that was identified in the -- in the subpoena.

24 Q And the purpose of that search warrant was so that you  
25 could seize all the computer devices in that dwelling?

1 A That's correct.

2 Q Approximately how many search warrants were ou directly  
3 involved in either by way of managing the process or by way of  
4 physically going to the -- the house?

5 A Approximately 200.

6 Q In all the times that you executed a search warrant and  
7 seized computers was there ever an instance where you did not  
8 find the child pornography or the other thing you were looking  
9 for at the dwelling identified in the search warrant?

10 A I can only think of one instance where we did not find  
11 what we were looking for.

12 Q Only once? Out of approximately 200 times you didn't  
13 find it at the house.

14 A That's correct.

15 Q In that one instance was the wireless internet router  
16 password protected or -- or not?

17 A It was not protected. It was open.

18 Q So in over 200 instances where you used a search warrant  
19 to do this you never came across an instance of wi-fi hacking.

20 A No, I did not.

21 Q And that one instance where you -- the person was using  
22 an unsecured wi-fi router, where was that person?

23 A It was a neighbor behind the residence.

24 Q In your opinion does a child pornographer have a greater  
25 or lesser incentive to hack into somebody's wi-fi than a



1 BitTorrent user?

2 A Well, much greater.

3 Q Why?

4 A Because most likely they're going to go to jail for life  
5 or, you know, with recent mandates, federal mandates, minimum,  
6 at least 10 years in federal prison.

7 Q Let's change the subjects a little bit, talk about the  
8 test that you performed of IPP's IP address detection  
9 processes. Okay?

10 A Okay.

11 Q Can you describe step one of the test for me?

12 A The first thing I did was I tried to simulate a real live  
13 situation of -- of a -- somebody downloading a BitTorrent or  
14 a -- or a type of movie from the Torrent websites.

15 THE COURT: Keep your voice up, please.

16 THE WITNESS: So what I did was I created four -- I  
17 took four public domain movies that were available at the  
18 National Archives and downloaded them.

19 BY MR. LIPSCOMB:

20 Q What did you do after you downloaded the four public  
21 domain movies from the National Archive.

22 And just for the record, public domain means not  
23 copyrighted protected, right?

24 A That's correct.

25 Q And what'd you do after you downloaded the four public

1 domain movies from the National Archive?

2 A I encoded verbiage onto the movies.

3 Q Why?

4 A So that I could identify the -- whether a person  
5 downloading those particular movies were downloading the  
6 movies that I personally encoded and created.

7 Q What did you do after you encoded the public domain  
8 movies?

9 A I rented four virtual servers with -- all equipped with  
10 unique IP addresses.

11 Q And were those virtual servers connected to the internet?

12 A Yes.

13 Q What did you do after you rented the four virtual servers  
14 which were connected to the internet?

15 A I configured the servers.

16 Q How?

17 A They're all running -- configured with Windows Server  
18 2008 edition.

19 Q Did you install any programs on the servers?

20 A Yes. I installed -- I installed various BitTorrent  
21 client.

22 Q And for the record, again, a BitTorrent client is the  
23 software that enables the protocol to work?

24 A That's correct.

25 Q Did you use different BitTorrent clients for each server?

1 A Yes.

2 Q Four of the popular kinds?

3 A What did you do after you installed the BitTorrent  
4 clients onto each of the four servers?

5 A I installed monitoring software called Wireshark.

6 Q What is Wireshark?

7 A Wireshark monitors the network traffic in and out of the  
8 network on the computer system.

9 Q Does it create PCAPs?

10 A Yes, it does.

11 Q Does Wireshark do the same thing that tcpdump, which you  
12 heard IPP said that it uses?

13 A Yes, it does.

14 Q So both programs create PCAPs.

15 A That's correct.

16 Q And, again, just as a reminder, it's fair to say that  
17 Wireshark and tcpdump are like video cameras recording the  
18 network transactions of a computer's, both the in and out,  
19 right?

20 A Yes.

21 Q What did you do after you installed Wireshark onto each  
22 of the servers?

23 A I uploaded the movies that I created for my local machine  
24 to the virtual servers.

25 Q First the -- the public domain movies are on your laptop,

1 and then you put them onto the virtual servers.

2 Q What'd you do after that?

3 A I -- using the various Torrent clients that I had  
4 installed on the servers I created my Torrent files.

5 Q And after you created the dot Torrent files, what did you  
6 do?

7 A Those were uploaded to various Torrent websites.

8 Q Different Torrent websites?

9 A That's correct.

10 Q Kind of popular ones?

11 A Yes, the most popular ones.

12 Q What'd you do after you uploaded the dot Torrent files  
13 onto the Torrent websites?

14 A I supplied the names of the files to IPP, Limited.

15 Q What happened after that?

16 A Within 24 hours I was notified that they had captured the  
17 movies. They supplied me with screen captures of all four  
18 movies that I had -- that had all the same encoding that I  
19 originally encoded on the movies.

20 Q Because they had the same codes, you know it was actually  
21 the one that you put up there, right?

22 A That's correct.

23 Q Did IPP send you any other data?

24 A They identified my -- all the IP addresses of all the  
25 servers, as well as supply me with PCAP files.

1 Q Did you review IPP's PCAPs?

2 A Yes.

3 Q Did you review the PCAP files created by each of your  
4 test servers?

5 A Yes, I reviewed them.

6 Q Did IPP's PCAPs match your PCAPs?

7 A Yes.

8 Q What can you conclude from this test?

9 A That they were able to identify the IP address of all  
10 four of my test servers, and had they issued subpoenas for  
11 those IP addresses, they would have gained my identity.

12 Q Let's change the subject to Joe Doe 16's computers.  
13 Okay?

14 A Okay.

15 Q May 9<sup>th</sup> did you receive a hard drive from my office?

16 A Yes.

17 Q And this was the hard drive with John Doe 16's computers  
18 and the storage devices on it?

19 A Yes.

20 MR. LIPSCOMB: Your Honor, we've pre-marked as  
21 Plaintiff's 15 a three terabyte Seagate hard drive.

22 May I approach?

23 THE COURT: Yes.

24 BY MR. LIPSCOMB:

25 Q Mr. Paige, have you seen that three terabyte Seagate hard

1 drive before?

2 A Yes, I have.

3 Q Is that the one you received from me?

4 A Yes.

5 MR. LIPSCOMB: Your Honor, I'd like to move P-15  
6 into evidence.

7 THE COURT: Admitted.

8 BY MR. LIPSCOMB:

9 Q Mr. Paige, how many computers are on P-15?

10 A Total of three.

11 Q What types of computers are they?

12 A There was a Mac laptop, a desktop and a laptop computer.

13 Q All right. You sat at the prior hearings and in a  
14 deposition correct?

15 A Yes.

16 Q Was the -- was the desktop Mr. White's desktop?

17 A Yes.

18 Q And the laptop was Mr. White's laptop?

19 A Yes.

20 Q And the Mac was Ms. White's Mac, correct?

21 A Yes.

22 Q Let's talk about -- let's talk first about Mr. White's  
23 desktop. Okay?

24 A Okay.

25 Q How many hard drives are on the desktop?

1 A There were two installed in the machine.

2 Q Can you describe the hard drives in the desktop?

3 A Yeah. One was a 240 gigabyte SSD drive, solid state  
4 drive, and the other was a one terabyte -- believe it was a  
5 Western Digital hard drive.

6 Q Please identify the operating systems on Mr. White's  
7 desktop.

8 A There was Windows on a partition, as well as Linux on  
9 another partition.

10 Q The 240-gigabyte solid state drive, that's the one that  
11 has two operating systems, right?

12 A Yes.

13 Q How is it possible to have two operating systems on one  
14 hard drive?

15 A The drive was partitioned out in two separate volumes.

16 Q And those operating systems, one was Windows?

17 A One was Windows 7.

18 Q And the other was Linux.

19 Q As Linux.

20 Q When was Windows installed onto the solid state drive?

21 A On 11/11/2012.

22 MR. LIPSCOMB: Your Honor, we've pre-marked a  
23 document as P-16.

24 May I approach?

25 THE COURT: Yes.

1 BY MR. LIPSCOMB:

2 Q Mr. Paige, have you seen this document before?

3 A Yes.

4 Q What is it?

5 A This is screen capture that I created of the -- that  
6 shows the desktop, 240 gig solid state drive.

7 THE COURT: What's the exhibit number?

8 MR. LIPSCOMB: Sixteen, Your Honor, P-16.

9 THE COURT: Sixteen?

10 MR. LIPSCOMB: Yes.

11 THE COURT: Thank you.

12 MR. LIPSCOMB: Your Honor, I respectfully request  
13 that P-16 be admitted into evidence.

14 THE COURT: All right. Admitted.

15 BY MR. LIPSCOMB:

16 Q What does P-16 show, Mr. Paige?

17 A It shows the core Widows system files were all in files  
18 that were created on 11/11/2012.

19 Q And that's on the Windows partition of the solid state  
20 drive, correct?

21 A That's correct.

22 THE COURT: That's the 240 gigabyte.

23 THE WITNESS: The 240 gig SSE drive, solid state  
24 drive.

25 BY MR. LIPSCOMB:



Paige - Direct (Lip)

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1 Q Does it also show the -- when the files were last  
2 accessed?

3 A Yes, it does.

4 Q When were the files on the solid state drive, the Windows  
5 partition of it, last accessed?

6 A 11/11/2012.

7 Q No, that -- that's when they're first accessed.

8 When were they last accessed? Does --

9 A Which --

10 Q Does that document show that?

11 A This document does not show when the last ones were  
12 accessed.

13 Q Oh, they don't?

14 MR. LIPSCOMB: Your Honor, we've pre-marked a  
15 document P-17.

16 May I approach?

17 THE COURT: Yes.

18 BY MR. LIPSCOMB:

19 Q Mr. Paige, have you seen P-17 before?

20 A Yes. This is a screen capture that I created also of the  
21 same 240 gig solid state drive.

22 Q And the Windows partition of that drive?

23 A Yes.

24 MR. LIPSCOMB: Your Honor, I'd like to move P-17 in.

25 THE COURT: Admitted.

1 BY MR. LIPSCOMB:

2 Q What does P-17 show?

3 A This shows where I flat formatted the -- all the files on  
4 the -- on the desktop -- excuse me, on the 240 gig solid state  
5 drive and sorted the column by last access date.

6 Q What was the last access date on the Windows partition of  
7 the solid state drive?

8 A 12/16/2012.

9 Q How many days are between 11/11/12 and 12/16/12?

10 A Thirty-five.

11 Q Can a computer operate without an operating system?

12 A No.

13 Q So this -- the Windows partition of the solid state  
14 drive, 240 gigabyte solid state drive, only had an operating  
15 system on it -- this operating system on it for 35 days?

16 A That's correct.

17 Q Did you find any other operating system on the Windows  
18 partition of the 240 gigabyte solid state drive?

19 A No.

20 Q Do you remember Mr. White testifying that Windows was on  
21 the solid state drive prior to 11/11/12?

22 A Yes.

23 Q Is there any evidence that Windows was on the solid state  
24 drive prior to 11/11/12?

25 A No.

1 Q What can you conclude from Mr. White's testimony and the  
2 lack of evidence that Windows was on the solid state drive  
3 prior to 11/11/12?

4 A That the drive was either new or conditioned to be like  
5 new.

6 MR. LIPSCOMB: Your Honor, we've pre-marked a  
7 document as 18, P-18.

8 BY MR. LIPSCOMB:

9 Q Mr. Paige, have you seen this document before?

10 A Yes.

11 Q What is it?

12 A This is a screen capture I created.

13 Q What does it show?

14 A This shows the registry key, the install date registry  
15 key on the 240 gigabyte solid state drive.

16 MR. LIPSCOMB: Your Honor, I'd now like to move P-18  
17 into evidence.

18 THE COURT: All right. Admitted.

19 BY MR. LIPSCOMB:

20 Q Mr. Paige, after you install Windows, do you need to  
21 activate it by using the license key?

22 A Yes.

23 Q How does that work?

24 A Essentially, once the installation is complete, if the  
25 computer is connected to the internet, it will -- it will

1 synch with Microsoft and determine whether the license key is  
2 valid and activate the key.

3 Q In forming your opinion about when Windows was installed  
4 on the solid state drive, did you talk to Microsoft?

5 A Yes, I did.

6 Q What did they tell you?

7 A When I called them, I spoke to an individual by the  
8 name -- who had identified himself as only s Angelo -- they  
9 weren't allowed to give out any other information.

10 They told me that the key was first activated on 12/6 of  
11 2009, and the last activation date of the software was on  
12 11/11/2012.

13 MR. LIPSCOMB: Your Honor, I -- I'd like to make a  
14 proffer that we propounded a request for documents on 11/8/12.  
15 I think they'll stipulate.

16 We propounded a -- a request for documents on  
17 11/8/12. The first request was -- it said, "We are seeking  
18 full and complete copies of each of the hard drives in the  
19 dwelling."

20 And so that was just three days before 11/11/12.  
21 Defendant, will you stipulate?

22 MR. SMITH: Sure.

23 THE COURT: All right. It's agreed. Mr. Smith  
24 agrees. Okay.

25 So from what you saw, the -- assuming that Mr. White

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1 got this request for documents on November 8<sup>th</sup>, which has been  
2 stipulated to by his lawyer, what happened on 11 -- on  
3 November 11, 2012 as far as you can tell?

4 THE WITNESS: This operating system was installed on  
5 the computer.

6 THE COURT: Well, you said -- you said that Micro --  
7 Microsoft records show that the last activation of the old  
8 operating system was also on the same date, on November 11,  
9 2012, is that right?

10 THE WITNESS: Yeah, it corresponds with the same  
11 date that I --

12 THE COURT: Well, what's the significance of same  
13 date as for the last activation of the operating system  
14 installed in 2009, and it's the first date for the  
15 installation of the new operating system?

16 THE WITNESS: The operating system had been  
17 installed as early as 2009.

18 THE COURT: What happened to it on November 11<sup>th</sup>?

19 THE WITNESS: The operating system was installed on  
20 the computer again.

21 MR. LIPSCOMB: Your Honor, can I clear up?

22 THE COURT: Yes.

23 MR. LIPSCOMB: Okay.

24 BY MR. LIPSCOMB:

25 Q Windows has a product key, right?

1 A Yes.

2 Q And you can use that product key to install Windows more  
3 than once on the same computer, correct?

4 A On the same computer, correct.

5 Q And what happened here was Mr. White installed it in --  
6 the first time on a computer on 12/6/2009?

7 A That's correct.

8 Q That's what Microsoft told you.

9 A Yes.

10 Q And then at some point he took Windows off his computer,  
11 and then he put it back on on 11/11/12, correct?

12 A Yes.

13 Q And you know that not only from all the evidence on the  
14 computer, but because Microsoft told you.

15 A That's correct.

16 THE COURT: Well, what happened to the -- is it the  
17 same operating system that had been on it?

18 THE WITNESS: It's the same license key.

19 THE COURT: Same license -- all right. Well, what  
20 happens to the operating system when you take it off?

21 THE WITNESS: Well, the drive is -- is either you're  
22 putting in a new hard drive, or you -- you've deleted or wiped  
23 clean the previous operating system.

24 BY MR. LIPSCOMB:

25 Q Let me try one more time.

1 Can you put a operating system onto a CD that's on your  
2 computer? Can you copy it and put it onto a CD?

3 A (No audible response)

4 Q You understand? Can you put Windows -- take it off your  
5 desktop and put it onto a CD and then reinstall it later?

6 A No.

7 Q Okay.

8 A You'd need an install disk.

9 Q So he -- so what would have happened is he would have  
10 saved his install disk and then used it twice?

11 A Yeah, you -- when you buy Microsoft's product, Windows,  
12 they'll give you a DVD that contains the -- the software to  
13 install the operating system on a computer.

14 THE COURT: Well, how -- how does somebody take off  
15 the operating system, 'cause you --

16 THE WITNESS: Delete it.

17 THE COURT: Just the delete button?

18 THE WITNESS: You wipe it, delete it --

19 THE COURT: Well, how do you do that?

20 THE WITNESS: -- put a new hard drive in.

21 THE COURT: How do you do that?

22 THE WITNESS: There's various tools that are out  
23 there that are free that wipe it. There's machines that will  
24 wipe it.

25 They're simply taking the disk and overriding the

1 existing data with a new operating system, also. There are  
2 several ways that it can be done.

3 THE COURT: Can you tell at all what data was on  
4 there beforehand?

5 THE WITNESS: No.

6 THE COURT: Is that possible that some other firm or  
7 expertise exists to enable you to do that?

8 THE WITNESS: If you were to take Windows and  
9 install it over an existing operating system, you would find  
10 remnants of that previously installed operating system, most  
11 likely, in an allocated space of the computer.

12 THE COURT: Okay. All right. Go ahead.

13 BY MR. LIPSCOMB:

14 Q You didn't find any of those remnants, did you?

15 A None.

16 Q Just -- I think I was confused 'cause for some reason we  
17 don't have quite enough copies, so I'm always doing this  
18 blind.

19 But number 18 showed what? Was that the -- the clock  
20 picture of the BIOS clock that showed 11/11/12 on the solid  
21 state drive? Eighteen.

22 A Is it -- are you referring to this one right here?

23 Q Yes.

24 A Okay. This refers to -- when you install the operating  
25 system on a computer, there's a registry key and a key -- a



1 registry key is -- is essentially files about files. It  
2 records the actual date and time Windows was installed on the  
3 operating system.

4 Q And the time is --

5 A On the computer. Excuse me.

6 Q The time is -- is powered by the master computer clock,  
7 the BIOS clock, right?

8 A Yes, it -- it retrieves this information from the BIOS  
9 clock of the computer, which is a clock that's on the computer  
10 itself.

11 Q And 18 shows that Windows was installed on 11/11/12,  
12 according to the master clock in the computer.

13 A That's correct.

14 Q Okay.

15 MR. LIPSCOMB: Your Honor, we've pre-marked an  
16 exhibit as 19.

17 THE COURT: Yes.

18 BY MR. LIPSCOMB:

19 Q Mr. Paige, what is P-19?

20 A This is the Windows license key for the operating system  
21 that was installed, the Windows operating system that was  
22 installed on the 240 gigabyte solid state drive.

23 Q So this -- this is the long code that says license key,  
24 that's -- that's the code that Microsoft uses to activate the  
25 Windows, right?

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1 A Yes. And this is the same code that when I called and  
2 spoke to Angelo, that I provided him, who provided me with the  
3 information of the installation date.

4 MR. LIPSCOMB: Your Honor, I'd like to move 19 into  
5 evidence.

6 THE COURT: Admitted.

7 MR. LIPSCOMB: Okay. Your Honor, we pre-marked P-  
8 20.

9 May I approach?

10 THE COURT: Yes.

11 BY MR. LIPSCOMB:

12 Q Mr. Paige, have you seen P-20 before?

13 A Yes. It's a screen capture we created.

14 MR. LIPSCOMB: Your Honor, I'd like to move P-20 in.

15 THE COURT: Admitted.

16 BY MR. LIPSCOMB:

17 Q What -- what does the screen capture show?

18 A This shows that on the 240 gigabyte solid state drive it  
19 shows the Panther folder. The -- all the files in there have  
20 been deleted.

21 Q What does the Panther folder contain?

22 A The Panther folder is -- is when Windows installs onto  
23 the system, it creates the Panther folder, which holds key  
24 files about the installation of Windows during the process of  
25 installing Windows on a machine.

1 Q It's a summary of the setup actions during installation,  
2 correct?

3 A That's correct.

4 Q And it would have showed the time that it was installed?

5 A Yes.

6 Q The Panther folder doesn't delete itself, does it?

7 A No, it doesn't.

8 Q So Mr. White had to intentionally delete the Panther  
9 folder to get it to be deleted, right?

10 A That's correct.

11 Q Is there any good reason to delete it?

12 A It's my opinion it's a deliberate attempt to cover up the  
13 fact that Windows was recently installed on the machine.

14 THE COURT: You mean cover up a program that had  
15 been installed.

16 THE WITNESS: The -- to delete --

17 THE COURT: The file.

18 THE WITNESS: Yeah, exactly. Deleting a Panther  
19 folder that's --

20 THE COURT: How do you spell that, P-A-N-T-H-E-R?

21 THE WITNESS: Yes.

22 THE COURT: Is that a proprietary name? The Panther  
23 folder.

24 THE WITNESS: Yeah, that's associated with the  
25 Windows installation, only on a Windows machine. Windows 7.

1 BY MR. LIPSCOMB:

2 Q Is it the name that Windows gives to that folder?

3 A Yes.

4 Q And if you were to Google "What is a Panther folder," you  
5 could find the Microsoft description of what's --

6 A Yeah.

7 Q -- in it?

8 A Yes.

9 Q Let's keep talking about the solid state drive for a  
10 minute. Okay?

11 A Okay.

12 Q You said Linux was installed on it, correct?

13 A Yes.

14 Q Did EnCase find the Linux part of the solid state drive?

15 A Linux -- excuse me. EnCase could read that there was a  
16 Linux partition but could not read the file system that was  
17 installed in the Linux partition.

18 Q Why not?

19 A Because a file system called BTRFS was in use, and it  
20 a -- sort of an experimental file system that's not widely  
21 used.

22 EnCase was unable to read that, as was most -- I -- I  
23 hadn't found one commercially available forensics software  
24 that was able to read that file system.

25 Q Were you -- were you ultimately able to read it?

1 A Yes.

2 Q How did you do that?

3 A Using Linux Excel to analyze that file system I was able  
4 to view the folder and files that were in that file system.

5 MR. LIPSCOMB: Your Honor, we've pre-marked P-21.

6 May I approach?

7 BY MR. LIPSCOMB:

8 Q Mr. Paige, have you see P-21 before?

9 A Yes. This is the screen capture that I created.

10 MR. LIPSCOMB: Your Honor, I'd like to move in P-21.

11 THE COURT: Admitted.

12 BY MR. LIPSCOMB:

13 Q What does the screen capture show, Mr. Paige?

14 A Within the Linux partition there is a -- a log folder  
15 that contains the logging of the Linux operating system that  
16 was on that partition.

17 Q On what date did logging start for the Linux partition?

18 A 11/23/2012.

19 Q When did the logging stop?

20 A On 12/16/2012.

21 Q What conclusions can you make from this?

22 A That the operating system most likely was put in use on  
23 11/23/2012.

24 Q And for how long did he use it?

25 A Less -- less than a month.

1 Q 11/23/2012 is after 11/08/2012, correct?

2 A That's c correct.

3 Q Mr. Paige, let's change the subject slightly now and talk  
4 about -- we're still going to talk about his desktop, but now  
5 we're going to move from the solid state drive of the desktop  
6 over to the one terabyte drive. Okay?

7 A Okay.

8 Q You heard Mr. White testify on May 30, 2013 that Windows  
9 was installed on the one terabyte drive at some point prior to  
10 11/11/12, correct?

11 A Yes.

12 Q Did you find any evidence of Windows being installed  
13 prior to 11/11/2012 on the one terabyte drive?

14 A No.

15 Q What does that mean?

16 A That it's been deleted.

17 Q It was deleted -- Windows was deleted from the one  
18 terabyte drive.

19 A Yes.

20 Q Did you find any evidence of the deletion of Windows from  
21 the one terabyte drive?

22 A No.

23 Q What does that mean?

24 A That the drive was either new or conditioned to be new.

25 Q Okay. Let's change the subject now to an entirely

1 different computer. Okay?

2 A Okay.

3 Q Now we're going to talk about Mr. White's desktop. Okay?

4 That's the desktop, you remember, that he -- he named  
5 "Squeaky?"

6 A That would be the laptop.

7 Q Oh, I'm sorry. I'm -- I'm using the wrong word.

8 THE COURT: Yeah, we had already talked about the  
9 desktop.

10 MR. LIPSCOMB: Oh, you're right.

11 THE COURT: The desktop had two drives.

12 MR. LIPSCOMB: Yeah, you're right, and I --

13 THE COURT: The gigabyte and the terabyte.

14 THE WITNESS: Yes.

15 MR. LIPSCOMB: I was just using -- using the wrong  
16 words.

17 BY MR. LIPSCOMB:

18 Q Let's talk about a new -- new computer. Let's talk about  
19 his laptop.

20 A Okay.

21 Q Okay. You remember that this -- he named his laptop  
22 "Squeaky," right?

23 A Yes.

24 Q So we're going to -- for the record, when we talk about  
25 his -- his laptop, we're going to use the word "Squeaky."

1 A Okay.

2 Q You'll understand?

3 MR. LIPSCOMB: And we pre-marked P-22.

4 May I approach?

5 THE COURT: Yes. But we're up to 20 -- yeah, I have  
6 21. So the next is 22.

7 MR. FIORE: Correct.

8 MR. LIPSCOMB: Yeah, 22.

9 BY MR. LIPSCOMB:

10 Q Mr. Paige, have you seen P-22 before?

11 A Yes.

12 Q What does it show?

13 A This a screen capture that shows the laptop referred to  
14 as "Squeaky," the core files associated with that system.

15 Q The core operating files?

16 A Yes.

17 Q And it uses a Linux operating system, correct?

18 A Yes.

19 Q Does Squeaky have any other operating systems on it?

20 A No.

21 Q What does Exhibit 22 tell you about when Linux was  
22 installed onto Squeaky?

23 A It was installed on 11/11/2012.

24 Q It's a whole different computer than his desktop, right?

25 A That's correct.



1 Q So he installed operating systems on his desktop on  
2 11/11/12, and he also installed it on his -- on -- onto  
3 Squeaky, his laptop.

4 A That's correct.

5 Q Do you happen to know what day of the week 11/11/12 was?

6 A It was Saturday.

7 Q Does Squeaky have much on it?

8 A No.

9 Q Is there any evidence that Squeaky had an operating  
10 system prior to 11/11/12?

11 A No.

12 Q So if Squeaky was in use, as Mr. White testified, back in  
13 February of '12, it must have had an operating system at that  
14 time, right?

15 A If it was in use, yes.

16 Q And you can't find any evidence of that old operating  
17 system?

18 A No.

19 Q What does that tell you?

20 A That it's been deleted.

21 Q Could Squeaky have been cleaned?

22 A Yes.

23 Q And Squeaky is squeaky-clean, isn't it.

24 A Yes.

25 MR. LIPSCOMB: Your Honor, I have no more -- no

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1 further questions of Mr. Paige.

2 THE COURT: Okay. All right.

3 Any cross-examination?

4 MR. LIPSCOMB: Oh, oh, wait. I have one more  
5 question.

6 THE COURT: Yes.

7 MR. LIPSCOMB: This is important.

8 BY MR. LIPSCOMB:

9 Q Prior to the time that information was deleted from the  
10 desktop could Malibu Media's movies and a BitTorrent  
11 copyright -- a BitTorrent client been on the desktop?

12 A Yes.

13 Q Prior --

14 THE COURT: Well, it could -- it could have been.

15 MR. LIPSCOMB: He's answering --

16 THE WITNESS: It could have been, sure.

17 MR. LIPSCOMB: -- could have been.

18 BY MR. LIPSCOMB:

19 Q Prior to the time that files and data were deleted from  
20 the laptop could Malibu Media's movies have been on the  
21 laptop, and could have a BitTorrent client have been on the  
22 laptop?

23 A Yes.

24 Q And there's really no way for you to recover that,  
25 correct?

1 A No.

2 Q Because it was wiped clean.

3 THE COURT: Correct. You mean correct. It is  
4 correct when he's saying, "It's correct. You could not have  
5 recovered that."

6 THE WITNESS: That's correct.

7 THE COURT: All right.

8 BY MR. LIPSCOMB:

9 Q Because it was wiped clean.

10 A Correct.

11 MR. LIPSCOMB: I have no --

12 THE COURT: Now, I want to -- I want to bring up  
13 another topic.

14 Your initial report and your deposition and your  
15 testimony was taken up with another issue, and that was the  
16 readability of the hard drive for Mr. White's desktop --

17 THE WITNESS: Yes.

18 THE COURT: -- is that correct?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And as a result of that, I think  
21 as you're aware, I had appointed Mr. Cinquanto as a Court-  
22 appointed expert to look into that, is that correct?

23 THE WITNESS: Yes.

24 THE COURT: Have you read his report?

25 THE WITNESS: Yes.

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1 THE COURT: All right. Now, in his report he -- he  
2 said that the reason you could not read the -- the terabyte,  
3 which we have labeled as John Doe 16's attorney, is that  
4 correct?

5 That was the label we'd given to the hard drive?

6 THE WITNESS: The -- the original one?

7 THE COURT: Yes, original one.

8 THE WITNESS: Yeah, I think that was Exhibit -- was  
9 it Exhibit A?

10 MR. LIPSCOMB: No, that was John Doe 16.

11 THE COURT: That was John Doe --

12 THE WITNESS: Oh, it was just John Doe 16, yes.

13 THE COURT: All right. The reason you couldn't read  
14 that is because you had removed it from its enclosure.

15 THE WITNESS: That's correct.

16 THE COURT: Is that -- now -- now that you have  
17 considered all of this and read his report, do you agree with  
18 that? You read what Mr. Cinquanto said?

19 THE WITNESS: Yes, I -- I have read it, and that is  
20 possible. I have not --

21 THE COURT: You have --

22 THE WITNESS: I have not tested that theory. It's,  
23 you know --

24 THE COURT: Right.

25 THE WITNESS: Generally, whenever you do forensics,

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1 we always remove it from whatever -- especially if it's a off-  
2 the-shelf type of USB external box.

3 Generally, the -- the item is removed from the  
4 system so that you can ensure that there is no writes to the  
5 drive during the forensic process.

6 THE COURT: All right. But you -- you did remove it  
7 from its enclosure --

8 THE WITNESS: That's correct.

9 THE COURT: -- is that correct?

10 THE WITNESS: Yes.

11 THE COURT: And you didn't try and read it with the  
12 enclosure intact, did you?

13 THE WITNESS: No, I had -- after I'd heard about  
14 that, I'd already sent the drive back to -- I believe it  
15 was -- I don't know who I sent it back to. I believe it was  
16 to the --

17 MR. LIPSCOMB: Mr. Smith.

18 THE WITNESS: -- Mr. Smith, so I hadn't had a chance  
19 to see whether that was the issue.

20 THE COURT: Okay. All right. Thank you.

21 Do you want to ask any other questions about that?

22 MR. LIPSCOMB: On this topic.

23 BY MR. LIPSCOMB:

24 Q Is it standard operating procedure for computer forensic  
25 professionals -- professionals to only work off a copy of the

1 original data that they're using?

2 A Yes.

3 Q And that's what you did here, right?

4 A Yes.

5 Q All right. So you really -- you were following the  
6 standard procedures.

7 A That's correct.

8 MR. LIPSCOMB: That's -- I have no further  
9 questions.

10 THE COURT: All right. Okay. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: All right. I'll tell you what I'd like  
13 to before -- I'd like to call Mr. Cinquanto briefly just to  
14 have his testimony of record, and then we can see whether he  
15 needs to come back after lunch.

16 Mr. Cinquanto, you mind taking the witness stand.

17 MR. LIPSCOMB: Are you going to question him first?

18 THE COURT: Yes, I'll question him.

19 MR. LIPSCOMB: Okay.

20 THE COURT: And then you can ask him any questions  
21 in cross exam.

22 LOUIS CINQUANTO, COURT'S WITNESS, SWORN

23 THE CLERK: Please be seated and state your full  
24 your full name and spell your last name.

25 THE WITNESS: Sure. It's --

## 1 EXAMINATION

2 BY THE COURT:

3 Q All right. Under -- you submit -- you're the Court-  
4 appointed expert in this case, is that correct?

5 A Yes, Your Honor.

6 Q Okay. And you submitted to counsel and me a copy of your  
7 résumé, is that correct?

8 A Yes, sir.

9 Q All right. And we'll have -- I'll mark that as Court  
10 Exhibit No. 1.11 But would you just briefly state for the record and  
12 people in the courtroom here what your experience has been in  
13 computers, particularly in terms of legal proceedings?14 A Sure. In -- in 2005 after leaving the Air Force after  
15 about 10 years I started a company called Cornerstone Legal  
16 Consultants. We perform everything from computer forensic  
17 collection and preservation through discovery processing and  
18 trial presentation.19 In 2008 I began my certification for -- to become a  
20 certified computer forensic examiner and so had participated  
21 as an observer and as a -- more or less as a second seat for  
22 computer forensic examinations prior to that, and then I got  
23 my certification and began to -- to do them on my own and had  
24 subsequently been admitted as an expert and testified in  
25 multiple cases.

1 Q Okay. So you -- and you've done a lot of litigation  
2 support for attorneys in -- in this courthouse, civil and  
3 criminal cases, is that correct?

4 A That's correct.

5 Q All right. And you also testified as an expert, is that  
6 right?

7 A Yes, sir.

8 Q Okay. And I had asked you -- and you've appeared --  
9 you've assisted in cases that have been held before me, is  
10 that right?

11 A Yes, Your Honor.

12 Q All right. Now, and I asked you to serve as a Court-  
13 appointed expert in this case, is that correct?

14 A Yes, sir.

15 Q And then you met with me and my law clerk, and we gave  
16 you a few documents and just told you what we wanted to -- to  
17 inquire about, is that correct?

18 A Yes, sir.

19 Q All right.

20 THE COURT: And I'm going to -- if anybody -- I'm  
21 going to lead the witness slightly, if anybody objects.

22 BY THE COURT:

23 Q But I told you that I did not want you to -- I want you  
24 to limit your examination to computer issues and not to take  
25 any position on the ultimate issues in this case or who -- who



1 was telling the truth or not telling the truth --

2 A That's correct.

3 Q -- is that correct? All right.

4 Now, you submitted a report that is four pages, and I'm  
5 going to mark that as Cinquanto Exhibit No. 2. Is this  
6 correct, dated June 5, 2013?

7 A Yes, sir.

8 Q All right. Now, you divided your report into two parts.  
9 The first part had to do with the readability of the hard  
10 drive from the desktop computer of John Doe 16, now referred  
11 to as Mr. White, is that correct?

12 A Yes, sir.

13 Q All right. And you came to the conclusion that the  
14 reason why the plaintiff's expert, Mr. Paige, could not read  
15 it is because he had removed it from the enclosure, is that  
16 correct?

17 A Yes, sir.

18 Q And then when you tried to read it in the enclosure, you  
19 were able to read it very well, is that correct?

20 A That's correct.

21 Q All right. But when you did read it, it -- and you  
22 made -- in your report includes a list of the files you found  
23 on there, is that correct?

24 A Yes, sir. The image files.

25 Q You didn't -- you didn't go any further and find -- see

1 what was in those files, did you?

2 A No, not at that point, no.

3 Q Okay. Now, the second part of your report had to deal  
4 with the operating system on Mr. White's desktop computer, is  
5 that correct?

6 A Correct.

7 Q Okay. And I believe the last several paragraphs of your  
8 report contain your examination of that, the results of your  
9 examination, is that correct?

10 A Yes.

11 Q All right. And just to read this in part, you said that  
12 the Windows operating system appears to have been installed on  
13 11/11/12, that is, November 11, 2012, on a 240 GB SSD.

14 I'm assuming that means 240 gigabytes solid state drive.

15 A That's correct.

16 Q Right? Okay. "However, since the installation time of  
17 the operating system generates the installation date/time  
18 using the installer's input, the time is as accurate as the  
19 user types it. This determines the accuracy of the time  
20 stamp."

21 Is that correct?

22 A Now, are you aware that John Doe 16, Mr. White, had  
23 testified that he did not recall specifically installing it on  
24 November 11, but that he entered -- just was punching ones  
25 and zeros, and it turned out that, according to his testimony,

1 the date of November 11, 2012 was the date that appears on the  
2 installation. Is that correct?

3 A That's correct.

4 Q All right. And then you also found that there was no  
5 evidence to lead you to conclude with certainty that there was  
6 a prior functioning operating system on either of the 240  
7 gigabyte solid state drive or the one terabyte desktop drive,  
8 is that correct?

9 A Correct.

10 Q All right. And then your report was made available to  
11 all counsel in the case, is that correct?

12 A That's correct.

13 Q All right.

14 THE COURT: Do you have any questions?

15 CROSS-EXAMINATION

16 BY MR. LIPSCOMB:

17 Q In your opinion, after listening to all the testimony  
18 today, was the Windows put onto the solid state drive on  
19 11/11/12?

20 A Based on what I've heard today and based on what I've  
21 seen, it would be more likely than not that it was installed  
22 on that -- on that day without any other --

23 Q Is not --

24 A -- information to examine.

25 Q It's not possible to type 1212 and change the date, is

1 it?

2 If you look at the Windows clock on the Windows  
3 registration, the date is a calendar over here, and the time  
4 function is hour, minute and second. That's where you could  
5 actually type -- to type in the numbers.

6 Otherwise, you use the mouse on the calendar feature to  
7 change the date, isn't that right?

8 A My understanding and my recollection of a Windows install  
9 is it'll pull the time and date from the motherboard, and then  
10 you're given the opportunity to change the time zone, for  
11 instance.

12 Q Sure.

13 A And then you have the ability to correct that if it's off  
14 or --

15 Q The time zone if it's -- but that's -- that's the hours.  
16 And you also can change the date, but the date's a calendar,  
17 isn't --

18 A That's correct.

19 Q It's a calendar. It's not -- if you type 1212, you would  
20 change the hours, not the -- the date, right?

21 A I'd have to look at an installation, but I believe that's  
22 the -- I believe that's the case.

23 THE COURT: So you can only change the hours You  
24 can't change the date?

25 MR. LIPSCOMB: You -- you can --

1 THE WITNESS: No, you can change the date.

2 BY MR. LIPSCOMB:

3 Q You can change it, but with a mouse --

4 THE COURT: Okay.

5 BY MR. LIPSCOMB:

6 Q -- a mouse that changes the date up here, the -- little  
7 thing where you type is -- is only for hours.

8 THE COURT: Okay.

9 BY MR. LIPSCOMB:

10 Q Let's -- let's go back another couple questions --

11 A Uh-huh.

12 Q -- on -- on how you can prove that it's 11/11/12.

13 The last use date was 12/16/12, according to the  
14 computer's records, correct?

15 A Correct.

16 Q That's only 35 days after 11/11/12, right?

17 A Correct.

18 Q And if he was -- if he testified that the computer was in  
19 use in February of '12, that's 300 days before 12/16/12,  
20 right?

21 A You'd expect to see time/date stamps that would proceed,  
22 yeah.

23 Q Let me --

24 A So --

25 Q I don't know if you're getting the question.

1 A clock that's accurate --

2 A Uh-huh.

3 Q -- if you set that clock forward a year, so, say, today  
4 is January 1, 2000. Okay. Today's January 1, 2000 in my  
5 hypo. And you set the clock's date instead as January 1,  
6 2001, okay, and then one year passes, what's the clock going  
7 to say?

8 A It's plus one -- plus one year.

9 Q January 1, 2002, 'cause it's still going to accurately  
10 record the distance between two points in time, right?

11 A That's correct, assuming no other manipulations of the  
12 clock at that point.

13 Q And here, his computer only showed 35 days of use.

14 A Yes.

15 Q Not 300 days of use like he said it should.

16 A From --

17 Q February to December --

18 A Yeah, from last --

19 Q -- from 2012.

20 A Correct, so --

21 Q So 300 days.

22 A So if you take -- if you take the installation time of  
23 the -- of the operating system as, let's just say in the -- in  
24 this case it's 11/11/2012, and you have a certain number of  
25 days that -- that pass, you would see -- you typically would

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1 see that many days somewhere referenced in the files to be  
2 able to substantiate that time line.

3 Q There was no -- there weren't 300 days of use on his  
4 computer.

5 A Not from my -- not from my examination, no.

6 MR. LIPSCOMB: Your Honor, I have no more questions.

7 THE COURT: All right. Thank you.

8 Defense counsel have any questions?

9 MR. SMITH: No. No, Your Honor.

10 THE COURT: All right. Thank you. All right.

11 I want to express my appreciation to Mr. Cinquanto  
12 accepting this assignment and basically stopping whatever else  
13 he was doing and working --

14 MR. LIPSCOMB: As do --

15 THE COURT: -- on this case.

16 MR. LIPSCOMB: As do -- as does plaintiff.

17 Sincerely, we -- we endorse this wholeheartedly, so thank you.

18 THE COURT: All right. Now, anybody see any need  
19 for Mr. Cinquanto to come back after lunch? Do --

20 UNIDENTIFIED ATTORNEY: No.

21 THE COURT: All right. Okay.

22 THE WITNESS: Thank you, sir.

23 THE COURT: You're excused and thanks from the  
24 Court. Thank you.

25 Okay --

1 MR. LIPSCOMB: Oh, wait. Wait. I have one more  
2 question. Can you -- can I just ask you one more question?

3 THE COURT: Yes, sure.

4 BY MR. LIPSCOMB:

5 Q There was -- you agree with Mr. Paige that it's standard  
6 operating procedure to work on a copy, not the original?

7 A Interesting -- standard, yes. Do you deviate? Yes.

8 Q Okay.

9 A So you do.

10 Q You do deviate, but was it reasonable for him to believe  
11 that it wasn't readable because he was working on a copy?

12 A At -- at that -- I don't think, right out of the gate,  
13 that was a bad -- that was an incorrect process. That was the  
14 absolute right process, and it was something that I would have  
15 done.

16 Being the armchair quarterback now --

17 Q Okay.

18 A -- and looking back and reading, it was logical for --  
19 for me to test why that case -- why that situation or scenario  
20 would have been encountered, so --

21 Q But we didn't have the benefit of the testimony from  
22 Mister -- Mr. White that it was perfectly readable once he  
23 tried.

24 So we -- we didn't know that that was going to be the  
25 case, and -- and without that knowledge it was certainly



1 reasonable to just believe that it was formatted incorrectly,  
2 right?

3 A It would be -- it would be reasonable. Would I have at  
4 that point? I probably would have called the other expert on  
5 the other side or somebody. There was none in this case --

6 Q There was none in this case.

7 A -- and try to resolve it, and then, you know, possibly --  
8 I possibly would have write-blocked it at that point and used  
9 it from the enclosure, once I testified the USB first to make  
10 sure they were not able to write.

11 That was something I -- that would have been an option.  
12 And also taking the image that was created and then restoring  
13 it or blowing it back to another drive and then putting that  
14 enclosure would have, you know, alleviated all of the concern  
15 about writing over the original evidence.

16 But it's, you know, again, it's -- hindsight's 20/20.

17 Q Sure. I really have no further questions.

18 MR. LIPSCOMB: Thank you, Your Honor.

19 And, again, thanks for your services.

20 THE COURT: All right. Anybody else -- any other  
21 counsel have questions --

22 MR. SMITH: No, Your Honor.

23 THE COURT: -- of Mr. Cinquante? All right.

24 Okay. Thank you very much.

25 THE WITNESS: Sure. Your Honor --

1 THE COURT: All right. We'll adjourn till 1:45.

2 THE WITNESS: Your Honor, I also have -- excuse me.

3 I'm sorry, sir.

4 THE COURT: Yes.

5 THE WITNESS: I also have the exhibits that I

6 brought back --

7 THE COURT: Yes.

8 THE WITNESS: -- the original exhibits.

9 THE COURT: Yes. I think they should be returned.

10 Do you have any agreement about that, where the  
11 exhibits go? I think John Doe's computers were to be returned  
12 to Mr. Smith -- John Doe, Mr. White, John Doe 16.

13 MR. LIPSCOMB: Yeah -- yes.

14 THE COURT: They are to be returned to Mr. Smith,  
15 his counsel. Okay.

16 MR. LIPSCOMB: Correct.

17 THE COURT: Now, what about the hard drive? Same  
18 thing?

19 MR. LIPSCOMB: No, the hard drives are admitted into  
20 evidence, and they should stay with you.

21 THE COURT: Well, I -- the Court does not keep  
22 exhibits. Okay.

23 MR. LIPSCOMB: Well, then, we'll -- we'll take them  
24 back.

25 MR. FIORE: Do we want to keep them or --

1 THE COURT: Any objection to that? The plaintiff  
2 keeps them?

3 MR. SMITH: I -- the only thing I would say, Your  
4 Honor, is make it easier for everybody, is whose ever exhibit  
5 it is should --

6 MR. LIPSCOMB: You have copies of all the stuff that  
7 we gave you?

8 MR. SMITH: Yeah. Oh, no, I'm just trying to --

9 MR. LIPSCOMB: Exactly what --

10 MR. SMITH: -- whoever it belongs to --

11 THE COURT: All right. Well, look. I'll tell you  
12 what. Why don't you discuss that over the lunch hour.

13 MR. FIORE: We'll take -- we'll take them all.

14 THE COURT: Mr. Cinquanto, you leave them here  
15 and -- I mean they're no longer in your custody. There's no  
16 need for you to have them.

17 MR. CINQUANTO: Okay. Thank you, sir.

18 THE COURT: And you can work that out.

19 All right. So we'll resume at 1:45.

20 Now -- so then we're going to have John Doe 13 is  
21 going to testify?

22 MR. FIORE: We're going to have John Doe 1 read into  
23 testimony, John Doe 16 read into testimony, and John Doe 13  
24 testifying --

25 MR. LIPSCOMB: And then we're not --

1 THE COURT: All right. Then --

2 MR. FIORE: And that's it.

3 MR. LIPSCOMB: And then closing.

4 THE COURT: All right. Now, the issue is damages,  
5 at least as to John Doe 16, Mr. White, correct?

6 MR. LIPSCOMB: To -- to -- yes, damages for John Doe  
7 16 and then also, Your Honor, I had -- I had assigned it to an  
8 attorney, and we were working so hard on these facts, but I  
9 don't have them today for you.

10 Could I get a couple of days to give you proposed  
11 facts? I'm telling you --

12 THE COURT: Yes, proposed facts?

13 MR. LIPSCOMB: Proposed facts.

14 THE COURT: Yes. I mean do you want me to enter --  
15 is that agreed I'm going to enter proposed factual finding?

16 MR. LIPSCOMB: Well, no, for -- for your opinion and  
17 your -- if you want to put them in the final judgment, fine,  
18 but I'm assuming you're going to render an opinion.

19 THE COURT: Yes, sure. I'm not going to issue  
20 anything today, but let -- let me get back to the topic of  
21 damages just -- oh, okay.

22 MR. LIPSCOMB: I'm going to propose damages on --  
23 argue in closing argument damages, and I also brought my jury  
24 instructions on statutory damages with all the case law that  
25 says what factor you --

1 THE COURT: All right. Could you --

2 MR. LIPSCOMB: -- should use.

3 THE COURT: Could you give that to me now?

4 MR. LIPSCOMB: I can give that to you now.

5 THE COURT: All right. Now, wait. But here's --  
6 here's what I want to recap from last week.

7 As to John Doe 1 and John Doe 13, there's been --  
8 they've admitted liability, and there is an agreement, a  
9 confidential agreement, as to the amount of damages that they  
10 will pay. Is that correct?

11 MR. LIPSCOMB: Correct.

12 THE COURT: And they're going to pay that so there's  
13 no need for me to formally determine the -- the amount of  
14 damages or to enter a judgment, is that correct?

15 MR. LIPSCOMB: They're going to pay it, yes. They  
16 haven't yet, but they will.

17 MR. FIORE: But we have --

18 THE COURT: What?

19 MR. FIORE: We had discussed that you were going to  
20 give sort of an advisory idea of where in the range of damages  
21 you were going to find for them to give us an idea with regard  
22 to John Doe -- a John Doe who admitted from the outset and the  
23 John Doe who fought it to show what the different range of the  
24 damages would be --

25 MR. LIPSCOMB: And -- and --

1 MR. FIORE: -- in their situations.

2 THE COURT: All right. Well --

3 MR. LIPSCOMB: -- you'll see one committed perjury,  
4 so that -- that --

5 THE COURT: Well, wait, wait.

6 MR. LIPSCOMB: -- aggravates --

7 THE COURT: I'm not saying that John Doe 16, Mr.  
8 White has.

9 MR. LIPSCOMB: No, no. No, John Doe 1 committed  
10 perjury, too.

11 THE COURT: All right. Okay. Well, but you're not  
12 asking me to -- to fix a specific amount of damages as to John  
13 Doe 1 or John Doe 13.

14 MR. LIPSCOMB: No.

15 THE COURT: Correct?

16 MR. LIPSCOMB: But consistent with the purpose of --

17 THE COURT: What?

18 MR. LIPSCOMB: No, but consistent with the purpose  
19 of about whether we'd like some kind of like statement of  
20 range.

21 THE COURT: Okay. All right. Well, I'll take that  
22 under advisement how I'm going to deal with that.

23 Now, as to John Doe 16, there you do want me to set  
24 a -- to establish -- to announce a verdict.

25 MR. LIPSCOMB: And enter a final judgment on

1 liability --

2 THE COURT: A verdict and a judgment.

3 MR. LIPSCOMB: -- and damages.

4 THE COURT: Yes. All right. And that's -- and  
5 that's not opposed, Mr. Smith, right?

6 MR. SMITH: No, it's not opposed, Your Honor. The  
7 only tweak to that would be, 'cause I will be speaking on  
8 behalf of my client, admitting liability, Your Honor. I think  
9 that was said because of other reasons we discussed.

10 THE COURT: All right. So you --

11 MR. SMITH: -- last week.

12 THE COURT: So you want to give a -- the closing  
13 address on the amount of damages, Mr. Smith.

14 MR. SMITH: No, not so much on --

15 THE COURT: You don't?

16 MR. SMITH: -- damages, Your Honor, but on the  
17 admission as to --

18 MR. LIPSCOMB: Liability.

19 MR. SMITH: -- liability.

20 THE COURT: All right. Well, Mr. Lipscomb's going  
21 to -- he's -- he's going to make a closing argument on the  
22 amount of damages against John Doe 16, correct?

23 MR. LIPSCOMB: And 1 and 13 --

24 THE COURT: And all three.

25 MR. LIPSCOMB: Yeah.

1 THE COURT: Well --

2 MR. FIORE: I'm not going to say anything in that  
3 respect to his --

4 THE COURT: Well, Mr. Rushie, are you going to make  
5 any argument on behalf of your client?

6 MR. RUSHIE: Probably not, Your Honor.

7 THE COURT: Mr. French, are you?

8 MR. FRENCH: No, Your Honor.

9 THE COURT: Well --

10 MR. FRENCH: There was an --

11 THE COURT: You what?

12 MR. FRENCH: I already said that I'm not not making  
13 any argument in regards to --

14 THE COURT: All right. Is that 'cause you don't  
15 want to, or that's your agreement with plaintiff?

16 MR. FRENCH: I think it was our agreement.

17 MR. LIPSCOMB: I just said you couldn't -- no,  
18 that's --

19 THE COURT: What?

20 MR. LIPSCOMB: There's not an agreement on that  
21 point --

22 MR. SMITH:: No, I'm not --

23 MR. LIPSCOMB: -- on that specific point.

24 MR. SMITH:: I'm not making any argument --

25 MR. LIPSCOMB: On that specific point there's no



1 agreement.

2 THE COURT: Do you want your client to testify at  
3 all on the amount of damages?

4 MR. SMITH: No, we're not going to testify. We're  
5 just going to make, through me, Your Honor, an admission as to  
6 liability. All right?

7 THE COURT: Okay.

8 MR. LIPSCOMB: Yes.

9 MR. SMITH: That's it.

10 THE COURT: Okay, All right. Well, I don't know if  
11 I'm going to announce the verdict today or not. I'll think  
12 about that. But I'd like to look at your points for charge.

13 MR. LIPSCOMB: Okay. This is points for charge, and  
14 there's case law cited behind it --

15 THE COURT: Good.

16 MR. LIPSCOMB: -- and there's factors courts and/or  
17 juries should use in ascertaining the quantum of statutory  
18 damages.

19 THE COURT: Well, I'm not going to read all this in  
20 an hour.

21 MR. LIPSCOMB: That's five copies because I needed  
22 that --

23 THE COURT: Oh.

24 MR. LIPSCOMB: -- that many --

25 THE COURT: Okay.

1 MR. LIPSCOMB: -- to hand out for the charging  
2 conference.

3 THE COURT: Oh, oh. Well, I only need two. Okay.  
4 Wait a minute.

5 MR. RUSHIE: Just so we're crystal clear for the  
6 record, no final judgment is being entered against Doe 13?

7 THE COURT: That's right.

8 MR. LIPSCOMB: Yes, there is on liability.

9 MR. RUSHIE: On liability, I'm sorry.

10 UNIDENTIFIED ATTORNEY: On liability.

11 MR. RUSHIE: On liability, yes, not on damages.

12 THE COURT: Well, you ought to prepare a form --

13 MR. LIPSCOMB: I will.

14 THE COURT: -- a form of verdict and judgment and  
15 show it to defense counsel, and you're not going to have that  
16 today.

17 MR. LIPSCOMB: I haven't -- I have one for a jury  
18 trial. I do --

19 THE COURT: Well, I'll look at if you have it.

20 MR. LIPSCOMB: I don't have one for a -- for a bench  
21 trial. So, okay, I'll have it emailed to me.

22 THE COURT: Well, here -- here's the thing. Let --  
23 as to John Doe 1 and 13, and we talked about this a little bit  
24 on Friday, it's my belief that since you have agreed on the  
25 settlement of the amount of damages, that the admission of

1 liability appears on the record, and that the settlement  
2 would -- is just being announced, and you don't need any  
3 further documentation of it. I mean the complaint will be  
4 dismissed or the case will be marked settled. We can do it  
5 under our local Rule 41 --

6 MR. LIPSCOMB: The case hasn't been dismissed, and  
7 it's not technically settled.

8 THE COURT: Well, then we would -- in this situation  
9 we'd usually mark it as settled, and we have a local rule that  
10 does that, Rule 41.1(b). I'm sure --

11 MR. LIPSCOMB: There are still executory obligations  
12 to it being settled.

13 THE COURT: Statutory obligation what?

14 MR. LIPSCOMB: There are still executory obligations  
15 prior to it being settled. There's a condition --

16 THE COURT: Like what?

17 MR. LIPSCOMB: There's a condition subsequent.

18 THE COURT: Like what?

19 MR. LIPSCOMB: That they -- that this happened, this  
20 trial happened, and that --

21 THE COURT: I can't --

22 MR. LIPSCOMB: That this trial happened, and that  
23 they do --

24 THE COURT: Well, but the trial --

25 MR. LIPSCOMB: -- what they're supposed to do.

1 THE COURT: -- will not happen. We're going to do  
2 this after --

3 MR. LIPSCOMB: Now.

4 THE COURT: -- the trial.

5 MR. LIPSCOMB: Yes.

6 THE COURT: But I don't understand what  
7 documentation under the Rules of Civil Procedure would be  
8 required when a party has agreed on the amount of -- they've  
9 admitted liability. You have a confidential agreement on the  
10 amount of damages, and the trial is over.

11 MR. LIPSCOMB: For them, yes.

12 THE COURT: Right.

13 MR. LIPSCOMB: And --

14 THE COURT: Now -- I'm only talking about 1 in 13.

15 MR. LIPSCOMB: For them it's over, and at the end of  
16 this --

17 THE COURT: So I don't think that means any form of  
18 judgment or --

19 MR. LIPSCOMB: It needs a final judgment on  
20 liability.

21 THE COURT: Well, that doesn't need to be --

22 MR. LIPSCOMB: It -- that's very important.

23 THE COURT: -- in writing unless you've agreed to  
24 that.

25 MR. LIPSCOMB: We have, and I think it should be a

1 CMECF filing.

2 THE COURT: Well, then you ought to -- then you  
3 ought to prepare something that you --

4 MR. LIPSCOMB: I will.

5 THE COURT: -- you agree with. What?

6 MR. LIPSCOMB: I will, and you agreed on -- on  
7 Thursday, last Thursday, to bifurcate the issue of damages --

8 THE COURT: Yes.

9 MR. LIPSCOMB: -- and liability.

10 THE COURT: Yes, I did.

11 MR. LIPSCOMB: And so we could keep them -- keep  
12 their names anonymous and --

13 THE COURT: Well --

14 MR. LIPSCOMB: -- and so we will want a final  
15 judgment on liability.

16 THE COURT: You should -- then you should prepare a  
17 form, what you want on the record about the finding of  
18 liability.

19 MR. LIPSCOMB: It would be my pleasure.

20 THE COURT: Okay.

21 MR. RUSHIE: I guess just to analogize, Your Honor,  
22 this would be as though we had a bifurcated trial on  
23 liability, damages --

24 MR. LIPSCOMB: He can --

25 THE COURT: Yes. All right. I agreed to a -- and

1 this is a bifurcated trial.

2 MR. RUSHIE: Yes.

3 THE COURT: Okay. That's right.

4 Now, it sounds to me -- well, we're not -- we're not  
5 done the liability because you want John Doe 1 and John Doe  
6 13's testimony on the issue of liability, right?

7 MR. LIPSCOMB: Absolutely.

8 THE COURT: All right. Okay. So when we're done  
9 that, then I'll call an end to the trial on liability, and  
10 we'll then proceed as to damages to the John Doe 1 and 13 and  
11 16, but as to 1 and 13, the amount has been agreed upon,  
12 confidential amount's been agreed upon. As to John 16 I'm  
13 going to make a finding.

14 MR. LIPSCOMB: Thank you.

15 THE COURT: Okay.

16 MR. LIPSCOMB: Are you going to make the finding  
17 today, or are you going to hold off for a --

18 THE COURT: I don't know that.

19 MR. LIPSCOMB: Okay.

20 THE COURT: I'll let you know. Well, when it's all  
21 over, I'll let you know. Okay.

22 MR. LIPSCOMB: Works perfect.

23 THE COURT: Okay. Thank you.

24 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

25 MR. LIPSCOMB: Thank you.

1 THE COURT: All right. 1:45.

2 (Luncheon recess taken, 12:36 p.m. to 1:47 p.m.)

3 AFTERNOON SESSION

4 THE COURT: Okay. We're ready to resume?

5 MR. FIORE: We're ready, Your Honor.

6 THE COURT: All right. What is the outcome of the  
7 exhibits? Did you talk about that?

8 MR. FIORE: Your Honor, I returned the original  
9 computer to Mr. White and haven't got a chance to talk to Mr.  
10 Smith, but we'll resolve it.

11 THE COURT: Okay.

12 MR. FIORE: It's not going to be an issue.

13 THE COURT: All right. Okay. All right. Call your  
14 next witness.

15 MR. FIORE: Your Honor, at this point we're going to  
16 read into the record the testimony of John Doe 1.

17 Your Honor all objections that were made during  
18 discovery, whether answers to interrogatories and in the  
19 depositions have been waived so any -- any of those that will  
20 appear in the record we're going to -- just going to keep  
21 reading and skip past them. Okay?

22 THE COURT: Okay.

23 MR. FIORE: John Doe 1, also, Your Honor, is  
24 unavailable for trial. He's not within 100 miles. He has  
25 consented, that document was filed of record in this case, to

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1 the trial proceeding without him, and his counsel is here  
2 today to consent to trial without his presence.

3 THE COURT: Okay. Mr. French, is that correct?

4 MR. FRENCH: It is correct, Your Honor.

5 THE COURT: Thank you.

6 MR. FIORE: We will be reading this testimony, and I  
7 will ask the questions, and Mr. Lipscomb's going to read the  
8 responses, Your Honor.

9 THE COURT: Okay. Thank you. Go ahead.

10 MR. FIORE: Also, Your Honor, for demonstrative  
11 purposes there's 10 points that we wish to demonstrate to this  
12 Court with regard to John Doe 1. I'm going to hand Your Honor  
13 for demonstrative purposes only --

14 THE COURT: All right. Well, you -- I got a copy of  
15 this already, but this is fine. Thank you.

16 MR. FIORE: Point one, Your Honor, is that John Doe  
17 1 initially denied committing the infringement and even denied  
18 it under oath during a deposition.

19 Mr. Lipscomb, can I direct your attention to the  
20 deposition of John Doe 1 taken March 12, 2013, starting on  
21 line 11.

22 (Deposition of John Doe 1 being read)

23 "Q From when to when were you using BitTorrent?"

24 MR. LIPSCOMB: Are you referring to page 44, line  
25 11?



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1 MR. FIORE: Yes.

2 "A I stopped using it in -- it was between 2000 -- I think  
3 it was 2010.

4 "Q And you had used it consistently from 2006 to 2010?

5 "A Not consistently, intermittently."

6 MR. FIORE: Can I now direct you attention to John  
7 Doe 1's answers to interrogatories which were done and  
8 propounded upon plaintiff on 12/21/2012.

9 MR. LIPSCOMB: Sure.

10 MR. FIORE: Question 18.

11 MR. LIPSCOMB: Hold on one second. Just for the  
12 record, the infringement in this case occurred in 2012  
13 after --

14 MR. FIORE: I'll get to that.

15 MR. LIPSCOMB: -- after 2010.

16 MR. FIORE: I'll get to that.

17 MR. LIPSCOMB: After 2010. Okay. Sorry.

18 MR. FIORE: I'll get to that.

19 MR. LIPSCOMB: All right. Go ahead.

20 (Interrogatories of John Doe 1 being read)

21 MR. FIORE: Question 18: "Identify each BitTorrent  
22 file that you have downloaded and each BitTorrent website that  
23 you have visited."

24 MR. LIPSCOMB: "I used to use BitTorrent to download  
25 music and mainstream movies. In 2010 I had a dream in which I

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1 got in trouble for it. I decided that wasn't really the way I  
2 wanted to obtain my media so in 2010 I deleted all of the  
3 music and movies that I obtained via BitTorrent, and I've been  
4 purchasing my music and music through iTunes or watching  
5 Netflix or listening to Pandora or watching YouTube or using  
6 my web browser. I don't recall what files specifically I  
7 downloaded."

8 MR. FIORE: Your Honor, let the Court take notice  
9 that the alleged infringements in this case occurred in  
10 February and March of 2012, which is after 2010 when John Doe  
11 1 said he stopped using BitTorrent software.

12 THE COURT: Okay.

13 MR. FIORE: Fact number two, John Doe 1, his  
14 internet service was password protected.

15 Mr. Lipscomb, I'm going to direct you to page 25,  
16 John Doe 1's deposition starting on line eight.

17 (Deposition of John Doe 1 being read)

18 "Q At all times your internet was password protected?

19 "A Yes."

20 MR. FIORE: Now to page 51 of the same deposition,  
21 line 17:

22 "Q Did you ever change your password at any time during the  
23 applicable time period?

24 "A No."

25 MR. FIORE: Page 63 of that deposition, line five:

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1 "Q But the network is password protected, right?

2 "A Yes."

3 MR. FIORE: Now direct your attention to question  
4 five of Doe 1's answers to interrogatories:

5 (Interrogatories of John Doe 1 being read)

6 MR. FIORE: "Identify each wireless router or modem  
7 used in your home during the preceding two years and for each  
8 such device state the during which it was password protected.  
9 If you've changed the password for a wireless router or modem  
10 during the last two years, state when you changed the password  
11 and explain why you changed the password."

12 MR. LIPSCOMB: "I've had the same brand of wireless  
13 router for the past year. It is a Netgear. It was replaced  
14 in April of 2012 and again in September. The reason for the  
15 replacement was that the wireless signal dropped out  
16 completely, making the router useless. Before the Netgear  
17 router I had another, but I -- I don't remember what kind.  
18 The wireless router had always had a password on the wireless  
19 connection, and I have not changed it in the past two years."

20 MR. FIORE: Fact three, John Doe 1 built is his own  
21 computer and is knowledgeable about computers.

22 Mr. Lipscomb, if I could have you look at page 12 of  
23 John Doe 1's deposition, starting on line 17:

24 (Deposition of John Doe 1 being read)

25 "Q How did you learn -- how did you learn how to build a

1 computer?

2 "A I was taught by my friends.

3 "Q When?

4 "A I would say I started building computers 2002, roughly.

5 "Q When you were a sophomore in high school you started  
6 building computers?

7 "A I didn't build them from the ground up by myself. I had  
8 friends that did parts for me. I would assemble it, and then  
9 eventually I got into being able to order my own parts and  
10 building them over the years."

11 MR. FIORE: On line 22 of page 13:

12 "Q How many computers have you built?

13 "A I'm on my third computer I built or had built for me."

14 MR. FIORE: Mr. Lipscomb, direct your attention to  
15 the answers to interrogatories number three.

16 (Interrogatories of John Doe 1 being read)

17 MR. FIORE: "Explain in detail your exposure to  
18 computer devices in school, college, work or at home,  
19 including within your answer any courses or classes you have  
20 taken to learn how to -- how to use computer devices and/or  
21 the software that enables computer devices to work. List all  
22 the programs that you know how to use and state when you  
23 learned how to use each such program."

24 MR. LIPSCOMB: "Since I was a teenager, I used  
25 computers in my personal life and as a hobby. I took a three-

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1 year program in computer programming at Berks Career and  
2 Technology Center. After that I realized that I did not want  
3 to pursue a career in computer programming. In the course I  
4 learned to program in C++, Java Script, Visual Basic and  
5 AS\400. I've learned to navigate my computer system, use  
6 Office programs and use the internet on my own over the course  
7 of my lifetime."

8 MR. FIORE: Material fact number four, John Doe 1 is  
9 a computer gamer.

10 Mr. Lipscomb, please direct your attention to page  
11 14 of the deposition of John Doe 1, starting on line two.

12 (Deposition of John Doe 1 being read)

13 "Q Do you play games?

14 "A Yes.

15 "Q What kind of games?

16 "A All kinds."

17 MR. FIORE: Now direct your attention to line eight.

18 "Q Are you -- are your computers built for games?

19 "A Yes.

20 "Q Is it fair to say they are gaming computers?

21 "A They are capable of gaming."

22 MR. FIORE: Fact number five, John Doe 1 knew about  
23 BitTorrent prior to the infringement.

24 Mr. Lipscomb, I'm going to direct your attention to  
25 page 35 of the deposition, line five.

1 "Q And you used BitTorrent.

2 "A Yes."

3 MR. FIORE: Line 16.

4 "Q Who taught you how to use BitTorrent?

5 "A I don't remember. I don't think anyone. I think that I  
6 learned it off the internet.

7 "Q When?

8 "A No idea.

9 "Q In high school?

10 "A I may have started in high school. I don't know  
11 precisely when I did it.

12 "Q Before 2008?

13 "A Yes."

14 MR. FIORE: In his answers to interrogatory,  
15 question 15, I'll direct your attention, Mr. Lipscomb.

16 (Interrogatories of John Doe 1 being read)

17 MR. FIORE: "When, how and where did you first learn  
18 about BitTorrent? Who was with you when you first learned  
19 about BitTorrent?"

20 MR. LIPSCOMB: "I learned about BitTorrent in 2007.  
21 I don't remember where or how I learned to use it. I used  
22 BitTorrent until 2010 when I stopped using it."

23 MR. FIORE: Fact number six, John Doe 1 admitted to  
24 using Pirate Bay prior to the infringement.

25 Mr. Lipscomb, you may look at the answers to

1 interrogatories, number 21:

2 "Identify each website, blog or message board which  
3 you have visited or to which you have subscribed, hosted or  
4 hosting, which refers to, relates to or discusses internet  
5 piracy, BitTorrent, file sharing or which provides information  
6 to people regarding suits which allege that people have  
7 committed online copyright infringement."

8 MR. LIPSCOMB: "During the time I was using  
9 BitTorrent from 2007 through 2010 I used the Pirate Bay or  
10 Google."

11 MR. FIORE: Fact number seven, John Doe 1 admitted  
12 to using BitTorrent prior to the infringement.

13 Mr. Lipscomb, if you'll look at question 15 to the  
14 answers to interrogatories.

15 (Interrogatories of John Doe 1 being read)

16 MR. FIORE: "Who, when and where did you first learn  
17 to use BitTorrent? Who was with you when you first learned  
18 about BitTorrent?"

19 MR. LIPSCOMB: "I learned about BitTorrent in 2007.  
20 I don't remember where or how I learned to use it. I used  
21 it -- I used BitTorrent till 2010 when I stopped using it."

22 MR. FIORE: Question 17: "Identify each BitTorrent  
23 client, in other words, software programs that are labeled the  
24 BitTorrent protocol to work, which is or has been installed on  
25 one of the computer devices in your home."

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1 MR. LIPSCOMB: "I used the FTorrent client at the  
2 time specified in interrogatory 15."

3 And for the record, this is a special character U,  
4 it's not the English U, it's a U with a -- a slash on the left  
5 of the U.

6 MR. FIORE: Question 18: "Identify each BitTorrent  
7 file that you downloaded and each BitTorrent website that you  
8 have visited."

9 MR. LIPSCOMB: "I used to use BitTorrent to download  
10 music and mainstream movies. In 2010 I had a dream in which I  
11 got trouble for it. I decided that wasn't the way I wanted to  
12 obtain my media. Since 2010 I deleted all the music and  
13 movies I obtained via BitTorrent and have been purchasing my  
14 music and movies through iTunes or watching Netflix or  
15 listening to Pandora or watching YouTube or using my web  
16 browser. I don't recall what files I downloaded."

17 MR. FIORE: Okay. If I could have you look at  
18 question number 24.

19 "Have you ever knowingly downloaded a song, movie,  
20 game, software program or computer file from a file sharing  
21 service? For purposes of this answer, file sharing service  
22 should be interpreted to mean any peer-to-peer, streaming, one  
23 click, storage locker or other type of service that provides  
24 content for free or from monthly subscription. Examples of  
25 these types of services include, but are not limited to,



1 Napster, LimeWire, BitTorrent, Megaupload, Pirate Bay,  
2 FTorrent, Extra Torrent and Grokster."

3 MR. LIPSCOMB: "I used Napster in late 1990s, and  
4 I've used BitTorrent as described in my previous answers. I  
5 stopped using BitTorrent altogether in 2010, as described  
6 above."

7 MR. FIORE: Fact number eight. John Doe 1 swore  
8 under oath that he had dreamed that he had been caught and  
9 stopped using BitTorrent prior to the infringement. We read  
10 this twice, Your Honor. I don't think we need to belabor that  
11 point.

12 THE COURT: Right.

13 MR. FIORE: Fact nine. John Doe 1 ultimately swore  
14 under oath that he did commit the infringement, just as  
15 plaintiff alleged, and fact number 10, John Doe 1 is out of  
16 the country and waived his right to trial.

17 We'll demonstrate these, Your Honor, by Mister -- by  
18 Mr. Lipscomb reading the declaration of John Doe 1 which has  
19 been executed in this case.

20 THE COURT: Yes. Go ahead.

21 MR. LIPSCOMB: Your Honor, I have an extra copy for  
22 you, and I'm going to not read his name.

23 Declaration of John Doe 1.

24 "I, John Doe 1, do hereby declare I am over the age  
25 of 18 and otherwise competent to make this declaration.

1 The facts stated in this declaration are based upon my  
2 personal knowledge. I am the Comcast subscriber who was  
3 assigned IP address 174.60.32.79 in the above-captioned  
4 matter. I am unable to attend this trial because I'm out  
5 of the country. I authorize the Court to permit this  
6 declaration to be read into evidence at the trial on this  
7 matter.

8 "I built my computer. Thereafter, I installed a  
9 BitTorrent client onto my computer. A BitTorrent client  
10 is a software program that enables the BitTorrent  
11 protocol to operate. Thereafter, in December 2012, I  
12 went to a Torrent website and clicked on a Torrent for  
13 the movies, 'Veronica Wet Orgasm,' 'Girls Night Out,'  
14 'Rich Girl Part Two' and 'Tiffany Sex with a Super  
15 Model.'

16 "I did this with the intention of downloading full  
17 copies of the movies, and I understood that by using  
18 BitTorrent I would be distributing these movies to third  
19 parties. I did download full copies of these movies onto  
20 my computer, and I did distribute pieces of these movies  
21 to unknown third parties who were in the BitTorrent swarm  
22 with me.

23 "Comcast sent me four notices advising me that my  
24 internet was being used to commit infringement.

25 "Prior to December 2012 I was aware that using

1 BitTorrent to illegally download and distribute  
2 copyrighted works constitutes an infringement of the  
3 copyright owner's rights.

4 "I am liable for intentionally infringing Malibu  
5 Media, LLC's copyrighted works, as alleged in the  
6 pleadings filed in this matter. I sincerely apologize to  
7 Malibu Media, LLC and its owners for infringing its  
8 copyrights, and I appreciate that Malibu Media, LLC has  
9 every right to enforce its copyrights against those  
10 people who commit online infringement.

11 "Further, I understand and appreciate Malibu Media,  
12 LLC's allegations are made in good faith. Indeed, if  
13 people were stealing my intellectual property on anywhere  
14 near the same scale that people are stealing Malibu  
15 Media's intellectual property, I would be outraged.

16 "I hereby declare under penalty of perjury, pursuant  
17 to 28 USC, Section 1746, that the facts stated in the  
18 foregoing declaration are true and correct.

19 "Executed, this 10<sup>th</sup> day of April 2013 by John Doe  
20 1."

21 MR. FIORE: Your Honor, those are the 10 facts that  
22 we have with regard to John Doe 1 that we think are relevant  
23 and believe that we've demonstrated those through testimony  
24 under oath in this matter.

25 THE COURT: Okay. All right. Thank you.

1 MR. FIORE: Your Honor, we have no further evidence  
2 with regard to John Doe 1.

3 We're now going to read in evidence with regard to  
4 John Doe 16.

5 THE COURT: Okay.

6 MR. FIORE: And that's Mr. Brian White.

7 Again Your Honor, objections that were made in the  
8 depositions or interrogatory answers or the hearing or the  
9 deposition conducted on May 30<sup>th</sup> have been waived by the  
10 parties, and we will not address those as we're reading.  
11 Okay?

12 THE COURT: Okay.

13 MR. FIORE: Your Honor, there are 14 material facts  
14 which we wish to demonstrate with regard to Mr. White, and --  
15 can do a copy for demonstrative purposes only.

16 Your Honor, fact one is that Mr. White and his wife  
17 are the only people living in their home when the infringement  
18 occurred.

19 Mr. Lipscomb, I turn your attention to the March 11,  
20 2013 deposition of Brian White. If I can direct your  
21 attention to page 14, starting on line 13.

22 (Deposition of Brian White being read)

23 "Q Prior to June 2012 did anyone else live with you?

24 "A No."

25 MR. FIORE: Fact two. Mr. White's internet service

1 was password protected.

2 Same deposition, starting on page 18, line 19.

3 "Q Your wi-fi is password protected, correct?

4 "A Yes, it is.

5 "Q Always been password protected since you lived in the  
6 house?

7 "A Yes.

8 "Q Has the password ever changed?

9 "A Yes.

10 "Q When did it change?

11 "A Sometime during 2012.

12 "Q Can you be more specific?

13 "A Spring of 2012.

14 "Q Why did you change it?

15 "A Because I came across an article somewhere that described  
16 a freely available program that could be run upon a cell phone  
17 that would easily crack the stock password on the router,  
18 thereby making your internet connection available to persons  
19 unknown.

20 "Q You changed the password in 2012.

21 "A Yes.

22 "Q Before or after you received a notice from Verizon about  
23 this case?

24 "A I'm sorry.

25 "Q Did you change the password before or after you received

1 the notice from Verizon about this case?

2 "A Before. No. I don't know. I don't know.

3 "Q Fair to say it wasn't in reaction to the notice, though?  
4 Correct?

5 "A Correct."

6 MR. FIORE: Fact number three. Mr. White built his  
7 own computer and is admittedly knowledgeable about computers.

8 Mr. Lipscomb, direct your attention to page 14 of  
9 the deposition, starting on line three.

10 "Q Are you pretty good at computers?

11 "A I like to think I'm competent."

12 MR. FIORE: Now page 15, line 22.

13 "Q What kind of desktop is it?

14 "A I built it. I could describe it. It doesn't really have  
15 a specific individual name description. I can't give a make  
16 and model for it. It's not like -- I'm sorry -- it's not --  
17 it's not like it's a Dell, XYZ, for instance. Sorry, not  
18 going to work.

19 "Q Is this the first computer you built?

20 "A It's the last one I built in several years."

21 MR. FIORE: Fact number four. Mr. White is a  
22 computer gamer.

23 Take a look at page 20 of Mr. White's deposition.

24 "Q You like games, computer games.

25 "A Some.

1 "Q What do you play?

2 "A I play first person adventure games.

3 "Q Those games -- do those -- those games have names?

4 "A Half-Life, Portal, Doom 3."

5 MR. FIORE: Fact number 5. Mr. White knew about  
6 BitTorrent prior to the infringement.

7 Mr. Lipscomb, please look at page 24 of Mr. White's  
8 deposition, line 24, page 24.

9 "Q You've known about BitTorrent for years.

10 "A Yes."

11 MR. FIORE: Fact number six. Mr. White knew about  
12 Pirate Bay prior to the infringement.

13 Mr. Lipscomb, please look at page 28 of the  
14 deposition, starting on line 12.

15 "Q Do you know what Pirate Bay is?

16 "A I've heard that it's a place where they keep links. I  
17 guess you would call them files being shared.

18 "Q How did you hear about that?

19 "A I don't remember."

20 MR. FIORE: Fact number seven. Mr. White does not  
21 subscribe to cable television.

22 This is the March 11, 2013 deposition of Mr. White's  
23 wife on page 36, line six.

24 (Deposition of Ms. White being read)

25 "Q Do you watch TV more often on your TV or on your

1 computer?:

2 MR. LIPSCOMB: I'm sorry. Mr. Fiore, where are you?

3 MR. FIORE: Page 36, line six.

4 MR. LIPSCOMB: Okay.

5 "A Computer."

6 MR. LIPSCOMB: Line six?

7 MR. FIORE: Yes. I start on line six, you're on  
8 line eight.

9 "A Computer, TVs.

10 "Q More often?

11 "A Rarely plugged in. We only get three or four channels on  
12 the TV. We do not have any kind of dish or anything like  
13 that.

14 "Q And no cable?

15 "A No."

16 MR. FIORE: Fact number eight. Mr. White  
17 predominantly watches television through Hulu on his computer.

18 Direct your attention to page 23 of Mr. White's  
19 deposition, starting on line four.

20 (Deposition of Mr. White being read)

21 "Q How do you watch shows at home?

22 "A Occasionally using television, rarely. Amend that, I  
23 guess. Rarely using the television with rabbit ears antennas.  
24 Usually on Hulu on one of the laptops."

25 MR. FIORE: Fact number nine. Mr. White did not



1 change his wi-fi password after learning his internet was  
2 being used to commit infringement.

3 Please turn to page 19 of Mr. White's deposition,  
4 starting on line 16.

5 "Q You changed the password in 2012?

6 "A Yes.

7 "Q Before or after you received the notices from Verizon  
8 about this case?

9 "A I'm sorry.

10 "Q Did you change the password before or after you received  
11 the notices from Verizon about this case?

12 "A Before. No. I don't know. I don't know.

13 "Q Fair to say it wasn't in reaction to the notices, though,  
14 correct?

15 "A Correct."

16 MR. FIORE: Fact number 10. Mr. White did not  
17 investigate the infringements.

18 Mr. Lipscomb, look at page 32 of Mr. White's  
19 deposition, starting on line eight.

20 "Q What did you think this notice was about?

21 "A It appeared to accuse somebody in the household of an  
22 infringement upon someone's copyright, and Verizon was  
23 informing us that they would probably have to turn over  
24 subscribery [sic] information associated with that IP address.

25 "Q Did you investigate the allegations of infringement at

1 that time?

2 "A There was nothing to investigate."

3 MR. FIORE: Fact number 11. Mr. White's desktop and  
4 his laptop, which he called "Squeaky," have virtually nothing  
5 on those.

6 Your Honor, we ask you to take judicial notice that  
7 this is what Patrick Paige testified to earlier, as well as in  
8 his declaration which was made part of the record --

9 THE COURT: Right.

10 MR. FIORE: May 23, 2013.

11 THE COURT: Okay. Yes, I'll do that.

12 MR. FIORE: Point 12. Mr. White's computer  
13 indicated that substantial amounts of data were permanently  
14 erased from them.

15 MR. FIORE: Again, Your Honor, I ask you to take  
16 judicial notice of Mr. Paige's testimony and previous report.

17 THE COURT: Yes.

18 MR. FIORE: Fact 13. Mr. White denied under oath  
19 when he, directly questioned by this Court and by plaintiff,  
20 had he installed Windows onto his computer on November 11,  
21 2012.

22 Mr. Lipscomb, I'm going to direct you to page 178 of  
23 the 3/23/2013 hearing before this Court, starting on line two.

24 (Testimony of Mr. White being read)

25 "The Court:

1 "Q All right. Do you have any -- he said he had evidence  
2 that there was a date change. Do you have any comment on  
3 that?

4 "A No, I don't.

5 "Q All right.

6 "A I did not make any changes to the hard drive on the 11<sup>th</sup>  
7 of November, for instance. I made no changes to the operating  
8 system."

9 MR. FIORE: Mr. Lipscomb, I'm going to turn your  
10 attention to the March 30, 2013 deposition of Brian White  
11 which was at the conclusion of the May 23, 2013 hearing before  
12 this Court.

13 MR. LIPSCOMB: Wait, it was on May 30<sup>th</sup>.

14 MR. FIORE: Thirtieth, I'm sorry, May 30<sup>th</sup>, yes.

15 Starting on page 39, starting on line nine.

16 (Deposition of Mr. White being read)

17 "Q Page 178, during the May 23<sup>rd</sup> hearing, you testified it  
18 was wildly post-dated. This was done back then. And my  
19 question to you -- and by the way, by way of background we're  
20 referring to the installation date that your computer says  
21 Windows was installed on it. It was 11/11/12. You said it  
22 was wildly post-dated.

23 "Do you maintain that testimony, or do you think the  
24 computer's time records are accurate, that it was actually  
25 installed on 11/11/2013?

1 "A Neither.

2 "Q What's your explanation now?

3 "A I'm sorry. First of all, I don't know why the dates are  
4 what they are, as I've already explained. Second of all, the  
5 operating system was not installed on the 11<sup>th</sup> of November  
6 2012, and as I've already told you, I don't know why the dates  
7 are what they are. I do know that, looking deeper into it,  
8 the dates are not correct."

9 MR. FIORE: Mr. Lipscomb, if you can look at the  
10 same transcript, page 79, starting on line 15.

11 "Q Those are the dates that the files that correlate to the  
12 operating system say that they were created, correct?

13 "A I do not maintain that that is when the operating system  
14 was installed, however. I maintain that those files, those  
15 dates, everything you've shown me so far, it indicates to me  
16 that the numbers are junk."

17 MR. FIORE: Fact 14. Mr. White -- Mr. White's  
18 desktop computer, Microsoft records and the Court-appointed  
19 expert all indicate that Mr. White did install and activate  
20 Windows on November 11, 2012.

21 Your Honor, we ask that you take notice of Mr.  
22 Paige's testimony and Mr. Cinquanto's testimony today and his  
23 report in this matter.

24 THE COURT: Correct, correct.

25 MR. FIORE: We have no further information with

1 regard to John Doe 16, Brian White, except his counsel, I  
2 believe, is going to read a stipulation for him.

3 MR. SMITH: Yes, Your Honor. I've discussed this  
4 several times since last week with my client, and based upon  
5 our sort of conference hearing on the record -- on the record  
6 and off the record, if he had the opportunity, and due to some  
7 restrictions, I'm the one who's giving the statement.

8 But if he had the opportunity, he would both  
9 apologize, of course, to counsel, plaintiff and Ms. Field, as  
10 well as to this Court, Your Honor, and would admit full  
11 liability for the --

12 THE COURT: All right. So you're -- you're  
13 authorized by your client, Mr. White, to admit liability in  
14 this case.

15 MR. SMITH: Yes, I am, Your Honor.

16 THE COURT: All right. Okay.

17 MR. SMITH: Is that -- that sufficient? Okay.

18 MR. FIORE: Okay. Mr. Lipscomb.

19 THE COURT: All right. Thank you.

20 MR. FIORE: As our last witness, Your Honor,  
21 plaintiff calls John Doe 13.

22 THE COURT: All right. Now, I have agreed so far in  
23 this case to allow this individual who's approaching the  
24 witness stand to be known as John Doe 13, and that is to  
25 protect anonymity for the present proceeding.

1           When we had the hearing here on Thursday, it was  
2 part of the settlement agreement between the parties, as I  
3 understand it, that this individual that has been known as  
4 John Doe 13 would continue his anonymous status in the case,  
5 is that correct?

6           MR. SMITH: Yes, Your Honor.

7           THE COURT: All right. But I required him and his  
8 counsel to put his correct name and address on a piece of  
9 paper and give it to me in an envelope which I then sealed,  
10 and I said I would keep that in chambers as a sealed record,  
11 and I would not put it on a -- a public document at this time.

12           But I reserve the right if justice require it  
13 sometime in the future to reveal his name and address, but I  
14 agreed not to do so at this time.

15           Now, is that agreed upon?

16           MR. SMITH: Yes, Your Honor.

17           THE COURT: Mr. Rushie, that's agreed?

18           MR. RUSHIE: Yes, Your Honor.

19           THE COURT: All right. And that's agreed with the  
20 plaintiffs, is that correct?

21           MR. FIORE: Yes, Your Honor.

22           THE COURT: All right. So I'm going to ask that he  
23 be sworn, but he will not be required to give his real name.

24           So you can just identify yourself as John Doe 13 at  
25 this time.

Doe 13 - Direct (Fio)

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1 JOHN DOE 13, PLAINTIFF'S WITNESS, SWORN

2 THE COURT: Now, I just want to point out in one of  
3 my prior opinions in this case I cited some case law that I  
4 think allows a Judge to take testimony from an individual  
5 without identification. I -- and I think in view of the fact  
6 of the admission of liability and the overall settlement of  
7 the case that there's no harm to the public interest in doing  
8 so.

9 Go ahead.

10 DIRECT EXAMINATION

11 BY MR. FIORE:

12 Q Sir, your name is John Doe 13 in the matter docketed at  
13 5-12-cv-02088, correct?

14 A Correct.

15 Q And you agree you were assigned an IP address of  
16 76.99.88.237 by Comcast for all times relevant to this  
17 litigation, correct?

18 A Correct.

19 Q And you agree that Comcast correctly correlated that IP  
20 address to you.

21 A Yes.

22 Q And you owned a computer at all times relevant to this  
23 litigation, correct?

24 A Yes.

25 Q Did you know what BitTorrent software was before the

1 dates of the alleged infringements in this case?

2 A I did.

3 Q And did you know what BitTorrent was at the time the  
4 infringement occurred?

5 A Yes, I did.

6 Q Did you ever download a BitTorrent client onto a  
7 computer?

8 A I did.

9 Q Which ones -- which BitTorrent clients did you download?

10 A Was FTorrent or, more specifically, mu, is the character  
11 that's -- it looks like a U, but that's the name of the  
12 client, yes.

13 Q Beginning in January 2012 and continuing through April  
14 2012 you agreed that you went to a BitTorrent website, clicked  
15 on the Torrents for each of the 35 registered movies that my  
16 client owns the copyrights to, correct?

17 A Yes.

18 Q And you would agree that the hash values, which have been  
19 presented in Exhibit 10 here today, accurately identify the  
20 hash values of my client's original works.

21 A Yes.

22 Q Did you go to those Torrent websites with the express  
23 intention of downloading full copies of the movies?

24 A Yes, I did.

25 Q And you knew that by doing so you would then be



1 distributing those movies, as well as downloading those  
2 movies.

3 A Yes, I did.

4 Q And the fact is you did download each one of the movies.

5 A Correct.

6 Q And then ultimately you distributed those movies to  
7 unknown third parties.

8 A That's correct.

9 Q Okay. And you did this with full knowledge of what you  
10 were doing at the time.

11 A I understood how the technology worked, yes.

12 Q Okay. Prior to January 2012 you -- when you began  
13 downloading the movies, you were aware that using BitTorrent  
14 to illegally download copyright works was an infringement on a  
15 copyright owner's rights, right?

16 A Yes, I did.

17 Q Despite knowing this, you intentionally, wilfully went  
18 there, downloaded them and then uploaded them to other people.

19 A That's correct.

20 Q Since the outset of this litigation you have not denied  
21 liability, have you.

22 A No, I haven't.

23 Q Thank you for that.

24 And here today you're admitting that you intentionally  
25 infringed upon --

1 THE COURT: Well, wait a minute. Didn't he --  
2 didn't he file an answer?

3 MR. FIORE: He did not, Your Honor.

4 THE COURT: Did not file an answer?

5 THE WITNESS: I did not file an answer, no.

6 MR. FIORE: He did not deny it once -- this  
7 litigation.

8 THE COURT: Okay. All right.

9 BY MR. FIORE:

10 Q And here today you are again admitting that you  
11 intentionally infringed upon Malibu Media's copyrighted works.

12 A Correct.

13 Q Is there anything that you would like to say to Malibu  
14 Media as you sit here today?

15 A I'll take the opportunity again to apologize to Ms.  
16 Field, to Malibu Media and wish them the best of luck in their  
17 business in the future.

18 MS. FIELD: Okay. Thank you.

19 MR. FIORE: Thank you, Your Honor. I have no  
20 further questions.

21 THE COURT: All right. Any cross-examination? Mr.  
22 Rushie or --

23 MR. RUSHIE: Nothing, Your Honor.

24 THE COURT: No questions?

25 MR. RUSHIE: Think it's better to remain silent and

1 be thought a fool than to speak and let everybody know the  
2 truth.

3 THE COURT: All right.

4 THE COURT: Okay.

5 MR. FIORE: Thank you, Your Honor.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Okay. Next.

9 MR. LIPSCOMB: It's closing argument.

10 Your Honor, Article 1, Section 8, Clause 8 of the  
11 United States Constitution, known as the Copyright Clause,  
12 empowers the United States Congress to promote the progress of  
13 science and useful arts by securing, for limited times, to  
14 authors and inventors the exclusive right to their respective  
15 writings and discoveries.

16 In 1790, just three years after the Constitution was  
17 ratified, George Washington personally signed the first U.S.  
18 copyright law, and new and better copyright laws have been  
19 periodically passed ever since.

20 Significantly, in 1999, through the Digital Theft  
21 Deterrence and Copyright Damages Improvement Act of 1999,  
22 Congress amended Section 504 of the Copyright Act to increase  
23 the minimum and maximum awards available under the Act. At  
24 that time Congress specifically acknowledged that consumer-  
25 based, non-commercial use of copyrighted materials constituted

1 actionable copyright infringement.

2 Congress found that, "Copyright piracy of  
3 intellectual property flourishes, assisted in large part by  
4 today's world of advanced technologies," and cautioned that  
5 the potential for this problem to worsen is great.

6 Had Congress only known how bad the problem was  
7 really going to get, it may have done far more. Indeed, there  
8 are currently bills before both Houses of Congress considering  
9 an overhaul of the Copyright Act. Now -- because of internet  
10 piracy.

11 Now, today, as we sit here, piracy via the internet  
12 and BitTorrent threatens not only the viability of my client's  
13 business, but the viability of so many businesses around the  
14 country.

15 Over the last 13 years of practicing law, Your  
16 Honor, I have focused primarily on intellectual property law.  
17 I remember vividly during the early 2000s, when Napster became  
18 popular, I remember the fight, the legal fight, to crush it.  
19 I remember the recording industry suing 18,000 people in the  
20 early and mid-2000s for peer-to-peer file sharing.

21 Ultimately, the recording industry lost that battle,  
22 not because it was wrong, but because its members went out of  
23 business and stopped paying dues. It went out of business  
24 because the piracy crushed them, and the music business has  
25 not been the same since, and it is nowhere near as diverse as

1 it was prior to this internet piracy.

2 Since the onset of BitTorrent in the mid-2000s, it  
3 really became popular around 2006, movie studios have began  
4 [sic] to suffer the exact same fate as the movie -- the  
5 recording industry, and that's because BitTorrent is a better  
6 system for distributing a large file, like a movie, than was  
7 the prior system, which was called Gnutella.

8 And this problem of BitTorrent copyright  
9 infringement, it affects all thought producers, movie  
10 producers, software makers, people who write books, but it  
11 affects the adult entertainment industry, Your Honor, perhaps  
12 worst of all, because adult entertainment is uniquely well-  
13 suited for being watched on a computer. They don't really  
14 have brick and mortar places to go for adult entertainment.

15 So it's no surprise then that over the last five  
16 years about half of the adult movie studios in this country  
17 have closed shop. That's true fact.

18 My client will not go quietly into the night, Your  
19 Honor, and today we have a chance to make a difference, and  
20 it's not every day we get the chance, but today is one such  
21 day.

22 It was our 16<sup>th</sup> President, Abraham Lincoln, who said,  
23 "Truth is generally the best vindication against slander."  
24 This case started with a parade of ad hominem attacks against  
25 Malibu Media. These attacks get made in similar cases across

1 the country, and even some federal Judges, sui sponte, issue  
2 orders based upon these ad hominem attacks against my client.

3 They paint Malibu Media with the same brush used to  
4 paint copyright trolls who defraud the court system like John  
5 Steele and Prenda. Malibu Media is not a copyright troll,  
6 Your Honor.

7 You learned the truth today, and I cannot imagine  
8 anyone failing to be moved by Ms. Field's testimony about how  
9 BitTorrent affects her business. The quantum of infringement  
10 that Malibu Media suffers is staggering, and these defendants  
11 here today, they're among the thousands of perpetrators who  
12 wilfully steal from my client on a daily basis.

13 There is no doubt that the overwhelming majority of  
14 people who use BitTorrent know that it's theft. How could  
15 they not? If you go to a BitTorrent website, they have movies  
16 on it that are out in theaters that day. Nobody could believe  
17 that you can get a movie that's out in the theater that day  
18 for free. It's not reasonable.

19 Defendants here admitted they knew that they were  
20 infringing my client's copyrights.

21 Today Malibu Media has been vindicated. I don't  
22 think there can any real question about that.

23 So it's now almost time to enter a judgment and  
24 write an opinion. Plaintiff merely requests that this Court  
25 be fair and just, and that this Court tell the world the

1 truth, and the truth is that Malibu Media's not a copyright  
2 troll and had every right to file this suit. It has every  
3 right to file similar suits across the country. Malibu Media  
4 is the victim. The defendants are the tort-feasors.

5 On behalf of Malibu Media I respectfully request  
6 that this Court write an opinion that makes it clear to the  
7 world that the ad hominem attacks leveled against Malibu Media  
8 are not justified; further, that the protestations of wi-fi  
9 hacking by Doe defendants will be met with -- by Courts with  
10 skeptical ears.

11 In 1916, Your Honor, Henry Lewis Mencken wrote,  
12 "It's hard to believe that a man is telling the truth when you  
13 know you would be tempted to lie if you were in his place."

14 Well, when you're facing an allegation of copyright  
15 infringement like this, we can see, it's tempting to lie. And  
16 in this case -- if this case proves anything, it proves that  
17 many of the Doe defendants will have absolutely no problem  
18 perjuring themselves, and in many instances Doe defendants  
19 will, like Mr. White did here, destroy evidence.

20 Frankly, it's surprising to me that Mr. White did  
21 not just throw away his computers. From the first moment that  
22 I started this type of litigation I fully expected that most  
23 Doe defendants would do that, and so I didn't put much stock  
24 into what a Doe computer said.

25 Instead, I -- I know that these cases are winners,

1 even without computer evidence, because the notion that  
2 somebody is hacking into somebody else's wi-fi to steal porn  
3 is borderline absurd.

4 You heard Mr. Paige testify that wi-fi hacking never  
5 happened in over the 200 instances where he got to pound down  
6 the door. The only difference between our cases and those  
7 cases is we get -- we have to notify them first.

8 The Cable Act requires that the defendants get  
9 notice. As soon as that happens, evidence, you know, goes out  
10 the window.

11 Nevertheless, in virtually every case that we  
12 litigate the absurdly far-fetched defense of wi-fi hacking is  
13 raised. If you were to believe what happens, what's filed in  
14 court papers across the country, you'd think we had an  
15 epidemic of wi-fi hacking and that every person's wireless  
16 router was hacked into so that somebody could steal porn from  
17 them. Brian White even tried to raise that issue.

18 In closing, Your Honor, there really is no doubt --  
19 oh, one other thing.

20 Your Honor, another truth that I'd like to -- to see  
21 in an opinion is that IPP software works. People around the  
22 country, in suits around the country, accuse us of making this  
23 evidence up, wholesale accuses of making it up, and some  
24 Judges, federal Judges around the country have bought into  
25 that and -- and believe that we have no evidence to support



1 our claims.

2 You heard today, and I -- the people who monitor and  
3 supervise this were not making it up. The evidence is sound.  
4 It was designed to be litigation-proof.

5 And in closing, Your Honor, there really is no doubt  
6 that any of the defendants are liable. They admitted it.  
7 Plaintiff prevailed in the bellwether trial. Nevertheless,  
8 someone other -- some other defendants will take their matters  
9 to trial. We will be ready, and this Court needs to send a  
10 signal that if they lie or if they destroy evidence, the law  
11 will hold them to account.

12 Toward that end, I respectfully request that you  
13 find that the range of statutory damages for John Doe 1 should  
14 be, and the range is -- is 750 to 150,000, but -- but what I  
15 request that you do is that you opine that an appropriate  
16 award of statutory damages against John Doe 1 would be  
17 \$30,000.

18 He infringed four works, and that means that the  
19 award would be approximately \$120,000.

20 The "I had a dream" defense, Your Honor, proffered  
21 by John Doe 1 was laughable. He had received four Digital  
22 Millennium Copyright Act notices. He was a serial infringer  
23 over a decade.

24 An award of \$30,000 per infringement when a person  
25 like that gets caught is reasonable, and I think necessary to

1 deter that type of serial infringer from continuing to commit  
2 infringements.

3 And, further, Your Honor, the evidence demonstrates  
4 that he perjured himself during his deposition.

5 Regarding John Doe 13, Your Honor, he never denied  
6 the infringement. You -- you picked up on it today. He  
7 didn't even file an answer. They got an enlargement through  
8 the end of trial.

9 And right from the beginning when I talked to his  
10 client -- or his counsel, he seemed truly repentant, but,  
11 nevertheless, he admitted that the infringement was wilful,  
12 and in cases where the Court find that the -- the infringement  
13 was wilful, like, for example, in default judgments and  
14 they're just finding it, and there are no aggravating  
15 circumstances like perjury, Judges have pretty consistently  
16 awarded \$2,250 per infringed work.

17 They get that number by multiplying the 750, which  
18 is the absolute minimum, by three, because it was wilful.

19 In this case John Doe 13 infringed 35 registered  
20 works, a couple more unregistered, but 35 registered works.  
21 And if you multiply 35 by 2,250, that's 78,750.

22 Now, as for Brian White, he committed perjury, and  
23 he falsified evidence, and he continued to commit perjury  
24 basically right up to the front steps of the courthouse. In  
25 the last month he has cost plaintiff over \$100,000 in

1 attorneys' fees and costs.

2 He only infringed five movies, Your Honor, but from  
3 a moral perspective what he did to plaintiff was truly  
4 outrageous. If I were you, I would find that his testimony  
5 was not credible when he lied to you on May 23, 2013 and when  
6 he testified on May 30, 2013, and I would find that he  
7 intentionally destroyed evidence in an attempt to defraud the  
8 Court and plaintiff.

9 Based on those findings, which are aggravating  
10 circumstances under the decisional authority governing the  
11 range of statutory damages, I would enter final judgment in an  
12 amount of no less than \$75,000 per infringed work, plus  
13 attorneys' fees and costs. That's \$375,000 in statutory  
14 damages, and I'll file a motion for attorneys' fees and costs  
15 in due course because I need to separate it out by Doe  
16 defendant.

17 Your Honor, in closing I'd like to say that my  
18 client, Mr. Fiore, the team of lawyers and paralegals working  
19 behind the scenes you've never talked to, but often to the wee  
20 hours of the night, from all of us we'd like to say thank you  
21 for your service. We sincerely appreciate it.

22 THE COURT: No. No thank yous are necessary.

23 I got two -- two questions. Well, maybe one. I  
24 want to take a recess and determine what to do, and I'm going  
25 to announce a verdict on -- as far as John Doe -- as far as

1 Brian White's concerned.

2 But two things. I said on Thursday -- let me take a  
3 step back.

4 I had noted this was a bellwether case, and our  
5 Chief Judge had entered an order some time ago that I was to  
6 be involved in monitoring these cases and being available to  
7 other colleagues in my -- in this Court to -- as to what was  
8 happening in this bellwether case and to be available for  
9 consultation, although the other cases remain on the dockets.

10 Now, approximately how -- how many other cases does  
11 Malibu have pending on this Court? Do you know offhand if --

12 MR. LIPSCOMB: We just filed 16 in the last month.

13 THE COURT: Sixteen in --

14 MR. LIPSCOMB: In the last month, and there's more  
15 before that. I don't know offhand.

16 THE COURT: You don't --

17 MR. FIORE: Your Honor -- Your Honor, there's at  
18 least 45.

19 THE COURT: Okay. All right. So I said last  
20 Thursday that --

21 MR. LIPSCOMB: One -- one second, Your Honor.

22 THE COURT: Yes.

23 MR. LIPSCOMB: All of our new cases that have been  
24 filed in 2013 have all been filed only against one individual  
25 defendant.

1 THE COURT: All right.

2 MR. LIPSCOMB: They're not joined cases anymore, and  
3 we're filing these cases the people who we consider to be the  
4 worst of the worst. They all have weeks or months of  
5 infringement and at least 10, often 30, 60, 100  
6 infringements --

7 THE COURT: Right.

8 MR. LIPSCOMB: -- and there's cross-reference  
9 infringement that goes on for long periods of time, too.

10 THE COURT: Okay.

11 MR. LIPSCOMB: So it's a different -- different  
12 model --

13 THE COURT: All right.

14 MR. LIPSCOMB: -- of litigation.

15 THE COURT: Okay. Well, so I said last Thursday  
16 when we were here for a pretrial conference, we were going to  
17 select a jury, and that's when I was advised about the  
18 admissions of liability and that they -- you wanted to proceed  
19 non-jury on damages.

20 And I said at that time that I was going to prepare  
21 a -- a report, basically, a written report about the  
22 proceedings in this case and how certain things have been  
23 handled, including the appointment of a Court-appointed  
24 expert, Mr. Cinquanto, and the -- and the Rule 104 hearing,  
25 which we had a couple weeks ago, and I still intend to do

1 that. But I'm going to do that promptly.

2 Now, you say you wanted to submit some findings, and  
3 I'll -- but I would -- I need to have those by Wednesday for a  
4 lot -- for -- I'm going to complete this --

5 MR. LIPSCOMB: We'll -- we'll --

6 THE COURT: -- hopefully, by this Friday or Monday  
7 at the latest.

8 MR. LIPSCOMB: Be my pleasure. I -- I would look  
9 for -- I would hope you'd write an opinion about what happened  
10 at this trial and the findings might --

11 THE COURT: Well, I'm going to --

12 MR. LIPSCOMB: -- might go in that opinion.

13 THE COURT: I'm going to write an opinion about what  
14 happened in the case overall, but it's -- I'm not going to  
15 submit a draft to anybody for editing.

16 MR. LIPSCOMB: No, I don't want you to.

17 THE COURT: I'm going to -- but you're welcome to  
18 submit to me proposed findings.

19 MR. LIPSCOMB: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. LIPSCOMB: Thank you.

22 THE COURT: And conclusions of the law if you want.  
23 Now, I am making no --

24 MR. LIPSCOMB: And conclusions of law.

25 THE COURT: What?

1 MR. LIPSCOMB: And -- okay. Great.

2 THE COURT: I'm making no commitments whatsoever.  
3 The only commitment I'm making is I'll read it.

4 MR. LIPSCOMB: Thank you.

5 THE COURT: Okay. And then I'm going to think -- do  
6 what I think should be done just so other Judges here and  
7 perhaps in other districts will see what has happened  
8 because -- well, I'm -- I'm going to make some other remarks  
9 when I come back after the recess.

10 Now -- so that's number one. So I'd like to have  
11 that by the -- and other counsel are free to submit anything  
12 if you want to, okay, by -- so that needs to be by close of  
13 business on this Wednesday, which I would interpret to be like  
14 4:00.

15 Now, the other thing is this. I am prepared to --  
16 and I've been looking at this, to go through the factors that  
17 other Courts have used in determining the range of damages for  
18 statutory infringement, which I think applies here, and that  
19 would apply -- and those factors would apply to all three  
20 defendants.

21 Now, I am -- you know, Judges are not supposed to  
22 give advisory opinions, and as you said last Thursday, you  
23 have agreed with John Doe 1 and John Doe 13 as to the amount  
24 of damages that they will pay, and that is a confidential  
25 settlement, and we have confidential settlements in this Court

1 all the time. There's nothing improper about that.

2 As a matter of fact, they frequently help  
3 settlements to take place, but because sometimes the plaintiff  
4 and sometimes it's the defendant and sometimes both of them  
5 that don't want the amount publicized.

6 So I have a little bit of trouble, Mr. Lipscomb, in  
7 making any specific dollar ranges for John Doe 1 and John Doe  
8 13. I have to tell you that. But I'm prepared to go through  
9 the factors and, you know, eliminate, which I -- I think apply  
10 here, and -- and I can tell you right now what I -- what I  
11 think is appropriate here, is that John -- of the three  
12 defendants, John Doe 13 should be at the lowest range because  
13 he never denied anything, and he -- I mean I think he was  
14 within his rights to stand ground and see if you could prove  
15 your case.

16 And one of the reasons that I wanted to have a  
17 bellwether trial, and I know I put you through a very  
18 difficult schedule to get to this day, but I think it was  
19 worthwhile, and maybe in retrospect you'll think it was  
20 worthwhile, too, but one of the things that I believe in is  
21 that, you know, setting firm trial dates is a very important  
22 way of getting cases resolved on the merits.

23 So when the day came, John Doe 13 got on the witness  
24 stand and admitted liability. So my -- I think, clearly, of  
25 the three defendants he would be at the low end.



1           And then John Doe 1 would be at the middle and John  
2 Doe 16, Mr. Brian White, would be at the high end for reasons  
3 I'll go through in more detail.

4           So I don't think -- so you're welcome to comment on  
5 this, but I don't feel appropriate in stating a dollar range  
6 for John Doe 1 and John Doe 13. I think that would be in the  
7 nature of an advisory opinion, which I shouldn't give.

8           MR. LIPSCOMB: Will you publish the audio tape from  
9 today?

10          THE COURT: All audio tapes are -- they're available  
11 tonight.

12          MR. LIPSCOMB: I'm okay. You don't -- I'm not going  
13 to ask you again to --

14          THE COURT: All right. So -- but I'm going to take  
15 a 10-minute recess and determine exactly what I'm going to say  
16 and -- and the verdict I'm going to reach for John Doe --

17          MR. LIPSCOMB: One more thing --

18          THE COURT: -- for Mr. White.

19          What?

20          MR. LIPSCOMB: One more thing on the -- the opinion  
21 that -- that you'll write. There are two cases in Michigan  
22 that have gone through really wonderful descriptions of how  
23 the BitTorrent technology works.

24          Can I file those under a notice of filing?

25          THE COURT: Yes, sure.

1 MR. LIPSCOMB: Because it might save you or your law  
2 clerk time and --

3 THE COURT: Sure.

4 MR. LIPSCOMB: -- and not having to reinvent the  
5 wheel.

6 THE COURT: Yes. Just give me the citations when I  
7 come back, if you want.

8 MR. LIPSCOMB: I don't have them right off the top  
9 of my head, but --

10 THE COURT: All right. Well, then you --

11 MR. LIPSCOMB: -- I'll -- I'll file the notice. I  
12 know them --

13 THE COURT: All right.

14 MR. LIPSCOMB: One from Judge Randon. One came out  
15 three weeks ago, and they are better than I could have done,  
16 how this technology works.

17 THE COURT: All right.

18 MR. LIPSCOMB: I mean they're phenomenal.

19 THE COURT: Okay. Sure, I welcome that. All right.  
20 Fine. Okay. A 10-minute recess. Thank you.

21 (Recess taken, 2:43 p.m. to 3:02 p.m.)

22 UNIDENTIFIED ATTORNEY: Your Honor, just going to  
23 get the other attorneys.

24 THE COURT: Yes, please.

25 (Pause)

1           THE COURT: Okay. Well, I've paid a lot of  
2 attention to this case since it was filed, and -- since Chief  
3 Judge Joyner asked me to be monitoring it, and I determined  
4 that the bellwether trial was the best device to bring this to  
5 a conclusion.

6           I want to say at the outset that copyright laws are,  
7 in my view, essential to a free society, that one of the  
8 pivots of our civilization is the First Amendment and the  
9 right of people to speak and the right to a free press, and  
10 obviously there's no copyright in reporting the news, but  
11 there's got to be protection for creative works, for people to  
12 exercise their freedom of expression.

13           And it's worth noting, in -- in my view, that for  
14 many years printed material was really what was most in -- the  
15 subject of copyright laws because we didn't have the internet,  
16 and we didn't have the concept of music being played in mobile  
17 devices and CDs and things like that. So the original  
18 copyright cases were all -- were basically all concerned with  
19 books, some of them maybe with -- with artworks, as well. But  
20 certainly books were the major things.

21           And Vladimir Nabokov, who became very famous as the  
22 author of Lolita but published many, many other works, was  
23 known to have strongly objected to piracy of his -- of his  
24 literary works, and he complained about it a great deal in  
25 letters he wrote to different people, some of the nonfiction

1 works that he published.

2 And he thought it was a most offensive thing that  
3 having emigrated to the United States from Russia where, of  
4 course, his family lost everything by being -- when the  
5 Bolshevik Revolution came about, his family lost all the  
6 property they had, and he became a -- he really became a  
7 refugee in many different countries and eventually coming into  
8 the United States where he achieved a good deal of fame and  
9 fortune, principally as a result of Lolita, but he published  
10 many other things. And he was always very bothered by the  
11 concept of literary piracy.

12 Then we came to the music files and the stealing of  
13 musics and music downloads, and we've had a number of cases in  
14 this Court and many other federal Courts on that issue, and  
15 then, of course, with the internet the situation has become  
16 very severe and common, and I took the position when I  
17 first -- by the way, I never had a computer -- a music  
18 copyright case. I know a number of my colleagues had them,  
19 but I never had one.

20 And the only copyright case I ever did have was --  
21 involved a trade dress case in which the plaintiff was not --  
22 was only seeking an injunction, wasn't seeking damages. So I  
23 found it was a violation of the copyright laws, but I didn't  
24 have the occasion to impose damages.

25 So the -- and I'm aware of the fact that the so-

1 called blogosphere, where many people, once again, taking  
2 advantage of our First Amendment, put things on the internet,  
3 and they're not all true, but they're certainly accessible.

4 There are a number of websites which have taken a  
5 position that these cases for BitTorrent -- using BitTorrent  
6 to download copyrighted material are false or fictitious or  
7 being brought by so-called copyright trolls or patent trolls,  
8 and I want to emphasize that Malibu Media, in this case, are  
9 not troll cases. They are cases brought by bona fide owners  
10 of copyrighted material.

11 Now, adult content or pornography or sexually  
12 explicit videos, whatever you want to call them, is not to  
13 everyone's taste, but it is clear, and I think I cited cases  
14 to this in one of my earlier opinions that the copyright laws  
15 are content-neutral, and there is no distinction between  
16 sexually explicit material and a work of -- that's purely in  
17 print and doesn't have any pictures whatsoever as far as the  
18 copyright laws are concerned.

19 If it's a -- if it's a work created by an  
20 individual, then it's a -- and it's subject to the copyright,  
21 it doesn't matter what the content is.

22 So pornography and adult films are not to everyone's  
23 taste, but I cannot as a Judge neglect the -- the fact that  
24 the copyright laws are content-neutral or have any prejudice  
25 or distinction based on the content of -- of the work product

1 of Malibu Media.

2 Now -- so I want to -- I want to compliment all  
3 counsel, plaintiff's counsel and defense counsel, for being  
4 agreeable to the concept of a bellwether case, and I -- the  
5 opinion that I wrote on -- and filed on October 3<sup>rd</sup>, which laid  
6 out a number of the legal issues that were in the case and  
7 some of the prior proceedings and established the Bellwether  
8 module originally had a trial forecast in April, which would  
9 have been six months, and for various reasons that I discussed  
10 with counsel and appear on the docket that date eventually  
11 became today, June 10<sup>th</sup>.

12 But I know, particularly in the last couple months,  
13 that counsel were very busy with a lot of pretrial  
14 proceedings, and I appreciate their -- their working to keep  
15 the schedule as they did.

16 Even so, I think completion of all the pretrial  
17 proceedings in the eight months since October 3<sup>rd</sup> has been  
18 worthwhile in -- in terms of the final -- in the final result.

19 The issue of damages here is not an easy one, and  
20 there are a lot of cases.

21 I -- Mr. Lipscomb, I've looked at all the cases you  
22 handed, and most of those are pretty old cases. They're pre-  
23 internet cases, and I think they're instructive, but I found a  
24 more instructive case, or my -- my law clerk led me to it, and  
25 it's a recent case decided by the Eighth Circuit entitled --

1 the first plaintiff is Capitol Records. Let me give you  
2 the -- do you have the exact citation here?

3 This is a case that has a very -- here it is --  
4 Capitol Records, Inc. vs. Thomas-Rasset, 692 F.3d 899. It's a  
5 2012 case from the Eighth Circuit. It's an opinion by Judge  
6 Colin, and he's a very fine Judge, and I believe the cert --  
7 certiorari was recently denied. It's a very complicated  
8 procedural history.

9 But in that case there was also a concealment and --  
10 and false testimony by the accused infringer, and there were  
11 three trials, actually, and the -- the result of the jury  
12 trial found -- and it was also a wilful infringement case --  
13 found statutory damages of \$9,250 for each of 24 infringed  
14 songs that were downloaded through file sharing.

15 And there was an argument that this was  
16 constitutionally excessive.

17 Now, the trial Judge initially vacated that and had  
18 a third trial in which the trial Judge set a lower amount, and  
19 on appeal the Eighth Circuit vacated the trial Judge's setting  
20 of a lower amount and entered judgment in the \$9,250 found by  
21 the jury in what I believe it was the second trial.

22 MR. LIPSCOMB: Your Honor --

23 THE COURT: What?

24 MR. LIPSCOMB: -- real quickly. In Sony v.  
25 Timenbaum, the First Circuit held that the entire range of

1 damages between 750 and 150,000 were constitutional and  
2 expressly rejected that anything that a judge decided to award  
3 or a jury decided to award in between that range was  
4 unconstitutional, and this was argued on the other side by a  
5 Harvard professor.

6 THE COURT: Yes. Well, I have it the Sony v.  
7 Timenbaum citation. That's 721 F.Supp.2d 85, District of  
8 Massachusetts, 2010.

9 But there, I think the Judge allowed a reduction to  
10 the \$2,250 per infringed work, but there are many, many --  
11 there were 30 copyrighted works.

12 Well, let me -- let me get to the point. I mean  
13 there are a lot of cases that discuss damages, and some of  
14 them -- but a lot of them start with the 2250, and the  
15 reason -- the \$2,250, and the reason they get there is they  
16 take the \$750 minimum for a wilful infringement, and then they  
17 use a trebling concept from the concept of punitive damages,  
18 such as we have in antitrust cases and also certain types of  
19 patent cases where you have a trebling of damages.

20 So a lot of Judges -- and, you know, to start out  
21 with the \$2,250 amount, and -- and, actually, I'm going to  
22 start with that, as well, because it's so frequently used.

23 Now, the factors that I think are relevant here in  
24 the case of Brian White, who was previously known as John Doe  
25 16, are this.



1 I think the -- that he's a knowledgeable person. He  
2 was knowledgeable about computers, and I think that his  
3 downloading was wilful, and I think that that is important.  
4 So he is -- he's placed in the category of a wilful infringer.

5 I also think that he caused damage to the owner.  
6 Now, I don't think any case law would allow me to assess  
7 against him anything approaching what Ms. Field testified was  
8 the overall damage to their company because he's only one of  
9 thousands, maybe hundreds of thousands of people, who  
10 infringe. But I do think that there has to be a trebling  
11 aspect to his -- his wilful infringing.

12 I don't -- he's not a -- there's no evidence he has  
13 any wealth. I have no idea what his assets are so I don't  
14 want to -- I have no reason to increase the amount of the  
15 award to account for the fact that he gained any wealth from  
16 this. He didn't -- I don't think he -- there's no evidence he  
17 has any wealth, and there's no evidence he gained any wealth.  
18 At the same time, he doesn't get any credit for that.

19 There's no evidence he made any profit from this,  
20 purely -- this was purely personal, but that doesn't, in my  
21 view warrant a deduction, but nor does it warrant any kind of  
22 increase.

23 But what I do think is very important from a -- from  
24 a deterrent point of view, from the penalty point of view, is  
25 the fact of the concealment and the perjury, and I -- I really

1 find that it's inexcusable, and I -- I think that a Judge  
2 faced with this kind of evidence must react strongly, and what  
3 I have determined to do is as follows.

4 I'm going to take the \$750, which is the minimum  
5 statutory damage. I'm going to apply the trebling, which has  
6 been often used as a penalty for infringement in many cases,  
7 and that results in a total of \$2,250.

8 I'm then going to increase that by tenfold because  
9 of the concealment and the perjury, and that will result in a  
10 calculation of \$22,500 per infringement. I'm going to  
11 multiply that times five for the number of infringements that  
12 have been proven here, and that results in a damage award of  
13 \$112,500. And that will be my verdict of the amount of  
14 damages in favor of plaintiff and against Brian White to be  
15 supplemented by attorneys' fees and costs.

16 And under the rule, Mr. Lipscomb, I need to wait for  
17 the award of attorneys' fees before I enter judgment so I  
18 would like you, even if you haven't -- and maybe Mr. Fiore has  
19 advised you about the Third Circuit jurisprudence on  
20 attorneys' fees. It's not a simple matter but I'll tell  
21 you -- I'll give you a case that I recently decided attorneys'  
22 fees on, and it was -- I'm forgetting the name. It was a case  
23 against the Veterans' Administration.

24 Well, I'll get you the name shortly, and if you just  
25 hang on, one of my law clerks will bring it back in.

1           And what I did there -- that was a case of partial  
2       victory for the plaintiff, but I basically accepted the  
3       plaintiff's version of the number of hours that had been used,  
4       and then I took the rate, well, the usual rate of the  
5       plaintiff's attorney, and he was an out-of-town lawyer, but he  
6       did all the work himself. He had been admitted, or he didn't  
7       have local counsel like you did.

8           And I took the number of hours, but because there  
9       was only partial success, I did not award the full amount of  
10      hours, and I didn't award the full amount of rate, either, and  
11      I -- the opinion shows a matrix, and the fact that -- the fact  
12      that you were here litigating against, initially, 52  
13      defendants and it later boiled down to three, is relevant  
14      'cause I don't think I can assess all of your time against Mr.  
15      White.

16           MR. LIPSCOMB: I'm going to parcel it out.

17           THE COURT: Yes. Well, I -- I'd like to --

18           MR. LIPSCOMB: To his motion --

19           THE COURT: -- that, if possible --

20           MR. LIPSCOMB: A full motion.

21           THE COURT: -- by the end of the week. Is that  
22      possible?

23           MR. LIPSCOMB: End of this week?

24           THE COURT: What?

25           MR. LIPSCOMB: Could I get till Monday? I'm going

1 back tomorrow, and -- and I have two other things --

2 THE COURT: Well, you can -- you can get till  
3 Monday, sure.

4 MR. LIPSCOMB: Monday.

5 THE COURT: But I -- I'm not going to promise you  
6 when I can do this, but, yes. If you can -- yes, you have  
7 till Monday.

8 MR. LIPSCOMB: Okay. Thank you. I'm sorry. I'm  
9 just -- got a lot to do.

10 THE COURT: But I -- I'd like you -- here's what I'd  
11 like you to do. Okay. I'd like to know what is the rate you  
12 and Mr. Fiore actually charge your client.

13 MR. LIPSCOMB: I charge people in Miami \$450.

14 THE COURT: What?

15 MR. LIPSCOMB: I charge \$450.

16 THE COURT: Well, do they pay that?

17 MR. LIPSCOMB: In Miami they actually do, yes. My  
18 clients --

19 THE COURT: No. Did Malibu Media pay you that  
20 amount?

21 MR. LIPSCOMB: No. I worked on a reduced hourly  
22 rate --

23 THE COURT: Well, I'm only --

24 MR. LIPSCOMB: -- for Malibu Media.

25 THE COURT: -- going to award what they actually

1 paid you.

2 MR. LIPSCOMB: They paid me \$300 an hour.

3 THE COURT: How much?

4 MR. LIPSCOMB: \$300 an hour.

5 THE COURT: All right. Well -- and that's what they  
6 actually paid you?

7 MR. LIPSCOMB: Yes.

8 THE COURT: Okay. Well, then I need you to make  
9 an -- and how about Mr. Fiore?

10 MR. FIORE: 275, Your Honor.

11 THE COURT: All right. You were actually paid that?

12 MR. FIORE: Yes.

13 THE COURT: All right. So I need you to make a -- I  
14 don't see any reason not to accept your representation as to  
15 the amount of hours you spent in total, but I need you to make  
16 an allocation of what you think is fairly allocated against  
17 the only defendant here against whom there's an attorneys' fee  
18 award.

19 MR. LIPSCOMB: That's what I'm going to do. I'm  
20 going to go through our -- our billing records and figure out  
21 what was against John Doe -- or Brian White --

22 THE COURT: All right.

23 MR. LIPSCOMB: -- and what was against other people,  
24 and I'm going to segregate out what --

25 THE COURT: Well, let me say this --

1 MR. LIPSCOMB: -- was only against him.

2 THE COURT: -- that the mainstream of the case, I  
3 think it would be a -- a reasonable assumption that he would  
4 only be responsible about one-third until we got to the last  
5 month when you knew that you were getting an admission of  
6 liability from John Doe 1 and John Doe 13, and at that point  
7 your full attention turned to Brian White.

8 So at that point I think you can allocate all of  
9 your time to Brian White, but until that I think it would be  
10 reasonable that he would only be responsible for one-third of  
11 the hours.

12 MR. LIPSCOMB: What --

13 THE COURT: Now, I'm -- you're welcome to make a  
14 presentation otherwise, but I just think --

15 MR. LIPSCOMB: That's fair.

16 THE COURT: -- the long and short of it is that that  
17 would be a fair way to start.

18 MR. LIPSCOMB: That -- that'll help me get it in a  
19 lot faster now.

20 What about the -- we paid Patrick Paige over \$30,000  
21 now, and I don't even -- I think it's going to be close 40 --

22 THE COURT: Well, once again --

23 MR. LIPSCOMB: Is that -- is that recoverable cost?

24 THE COURT: -- the work that you did -- well, you  
25 can put in for your costs and expenses, but the work that IPP

1 did for you at the very beginning of the case, you know, that  
2 you -- and I'm glad to hear you're only suing one defendant  
3 per case, because that was something else I was going to bring  
4 up and ask you about.

5 But, you know, you initially sued 52 defendants, so  
6 as far as I'm concerned, the initial go-around in this case,  
7 including what you paid to IPP, presumptively, Mr. White's  
8 share should only be 152<sup>nd</sup> of that, and it's not until all the  
9 other defendants were dismissed, as you said earlier, and the  
10 case boiled down to three, that I think you can start  
11 allocating a third of your expenses or your fees to Mr. White.

12 Do you understand what I'm saying?

13 MR. LIPSCOMB: I fully appreciate that, and --

14 THE COURT: Now, I intend --

15 MR. LIPSCOMB: -- and I will do it.

16 THE COURT: Now, I intend to be fair, but I think  
17 you've got to take into account that there were initially 52  
18 defendants, and it really wasn't until the October 3<sup>rd</sup> opinion  
19 and the bellwether trial when we started focusing -- I think  
20 at that time there were five defendants, and then two dropped  
21 out, that you would begin to have focused only on three  
22 defendants.

23 Before that I think you've got to --

24 MR. LIPSCOMB: For the drafting of --

25 THE COURT: I've got to consider that there were 52.

1           What?

2           MR. LIPSCOMB: For the drafting of the complaint,  
3 the motion for leave and everything that happened until then  
4 it -- the next step in the process was these five people  
5 filing a motion to quash --

6           THE COURT: Right.

7           MR. LIPSCOMB: -- and then they got stuck. So at  
8 that point those are the five that --

9           THE COURT: Right. So it --

10          MR. LIPSCOMB: But those first things --

11          THE COURT: So the 52 became five, and then the five  
12 became three. So I think you ought to have accurate dividing  
13 lines of when those events took place.

14          MR. LIPSCOMB: I will draw --

15          THE COURT: But as I said, in -- in approximately  
16 the last month when you had the admission of liability, at  
17 that point I think John Doe 16, Brian White, all of your  
18 expenses -- well, I can't say all of them. I would say the  
19 majority of them because you still -- you still have spent  
20 some time dealing with counsel for John Doe 1 and John Doe 16  
21 [sic] in preparing for your presentation today.

22                 So in my view, and if you look at this case you'll  
23 see the -- if you develop a matrix along the lines I'm talking  
24 about, I think it'll be -- it won't be a tremendous burden.  
25 Okay.



1 MR. LIPSCOMB: I'll look at the case, and I'll do --

2 THE COURT: All right. Now, here's the thing. So,  
3 Mr. Smith, assuming Mr. Lipscomb submits this by next Monday,  
4 I'll give you 10 days -- well, no. I would like to get your  
5 response by the 26<sup>th</sup>, is that possible? The 25<sup>th</sup>, rather.

6 MR. SMITH: Well, Your Honor, based upon things  
7 which have occurred between plaintiffs and defense this last  
8 week, most specifically since last Thursday, I don't think  
9 it's going to be a -- a big issue here.

10 THE COURT: All right.

11 MR. SMITH: Along the guidelines, Your Honor -- I'm  
12 sorry, I should be standing -- along the guidelines that you  
13 have indicated today I -- I don't think it's going to be any  
14 big issues here.

15 THE COURT: All right. Well, here's what I'd like  
16 you to do. Assuming Mr. Lipscomb files his petition for  
17 attorneys' fees by next -- as he says, by next Monday, which  
18 is --

19 MR. SMITH: Right.

20 THE COURT: -- June 17<sup>th</sup>, I'd like to have a response  
21 from you by June 24<sup>th</sup>, a week later.

22 MR. SMITH: If applicable.

23 THE COURT: Okay. Now, you can -- that -- it  
24 doesn't have to -- all right. You can just send me a letter,  
25 you know, and point out either you do object to this, you

1 don't object to that.

2 If you, on the contrary, want to submit a more  
3 comprehensive memorandum of law, just tell me how much time  
4 you need for that. Okay. I'm not going to cut you off, but  
5 I'd like to get an initial response from you by June 24<sup>th</sup>.  
6 Okay.

7 MR. SMITH: Yes, Your Honor.

8 THE COURT: All right.

9 MR. SMITH: And along those lines, Your Honor, do  
10 you have -- are you just going to issue an order or you're not  
11 going to --

12 THE COURT: I'm going to enter a verdict.

13 MR. SMITH: Right, but you're not going to require  
14 Florida counsel to come back here, and you're not going to --

15 THE COURT: No.

16 MR. SMITH: Just what --

17 THE COURT: I'm not going to have any more argument  
18 or hearings about this. I'm going to --

19 MR. LIPSCOMB: Rule on the papers.

20 THE COURT: What I'm going to do, I'm going to enter  
21 a verdict today, then I'm going to wait for -- and the  
22 verdict's just going to be like a one sentence, so the amount  
23 of the verdict --

24 MR. SMITH: Yeah, that's fine.

25 THE COURT: -- then state that the calculation

1 appears on the record. And then the -- I'm going to wait for  
2 Mr. Lipscomb's proposed findings of fact, which he promised by  
3 the close of business Wednesday. Then I'm going to issue this  
4 report on the proceedings --

5 MR. SMITH: Sure.

6 THE COURT: -- and then the next thing will be the  
7 award of attorneys' fees and costs and the entry of a  
8 judgment.

9 MR. SMITH: Thank you.

10 THE COURT: That's what's, in my view, is  
11 required --

12 MR. SMITH: Yeah, that's fine.

13 THE COURT: -- under the rule.

14 MR. LIPSCOMB: Three final judgments, two --

15 THE COURT: Sorry?

16 MR. LIPSCOMB: Three final judgments. You can  
17 issue two of the final judgments now on liability because  
18 that -- the cases --

19 THE COURT: Well, now, wait a minute. Well -- okay.  
20 Well, then you're going to give me a form of what you want  
21 that to look like.

22 MR. LIPSCOMB: I will, and in fact I might even have  
23 it in my phone now. Let me see. But I will. I'll definitely  
24 do it, and I'll do it by the end of today.

25 THE COURT: All right.

1 MR. LIPSCOMB: I'll send you a -- a proposed final  
2 judgment on liability against John Doe 1 and 13 --

3 THE COURT: All right.

4 MR. LIPSCOMB: -- two different --

5 THE COURT: Well, if you want -- I mean it's not  
6 a -- okay.

7 MR. LIPSCOMB: Final judgment on liability.

8 THE COURT: All right. I can just say final  
9 judgment on liability as in favor of plaintiff and against  
10 the -- John Doe 1 and John Doe 13, is that satisfactory?

11 MR. LIPSCOMB: Yes, two -- two different --

12 THE COURT: All right. And that -- but then I'm  
13 going to say that the parties -- the plaintiff and John Doe 1  
14 and John Doe 13 have agreed on the amount of damages, and  
15 those cases are considered dismissed, but with prejudice.

16 MR. LIPSCOMB: I thought you --

17 THE COURT: That's what we do under Rule 41.

18 MR. LIPSCOMB: Okay.

19 THE COURT: Have you, Mr. Fiore, shared your local  
20 Rule 41?

21 MR. LIPSCOMB: I've read -- I've read your local  
22 rules at one point.

23 THE COURT: I think you ought to take -- it's not in  
24 there. It's the local rule.

25 MR. LIPSCOMB: Oh, I got you.

1           THE COURT: I can bring it in if you want to look at  
2 it, but that's -- that's how we --

3           MR. LIPSCOMB: That's fine.

4           THE COURT: That's how we get rid of cases that have  
5 been settled.

6           MR. LIPSCOMB: The alternative would just be to  
7 bifurcate, and then I voluntarily dismiss --

8           THE COURT: Well, I said I would bifurcate and --

9           MR. LIPSCOMB: So the bifurcate would be this. It  
10 would be --

11          THE COURT: But I -- but here's the same. This is  
12 what you have to understand.

13          I did bifurcate the case, and John Doe 1 and John  
14 Doe 13 admitted liability. Okay. And then -- but as to  
15 damages I'm not making an award because there's a settlement.

16          Now -- so we have a case here in which those three  
17 defendants are still defendants in the case. Before this case  
18 can be over, I've got to dispose of the case as to each  
19 defendant. So the way we generally do that is through local  
20 Rule 41. There's a settlement, and then we -- the case is,  
21 therefore, dismissed with prejudice.

22          Now, as to Brian White, there's going to be a  
23 verdict and then a judgment, a money judgment, and that -- so  
24 that is accomplished under Rule 50 -- I think it's 54. Yes,  
25 that's accomplished under Rule 54.

1 But Rule 54(a), and I -- I don't want to get  
2 technical here, but I think we just have to cover this. But  
3 Rule 54(a) says, "A judgment as used in these rules includes a  
4 decree and any order from which an appeal lies."

5 Now, you've settled with John Doe 1 and John Doe 13.  
6 So it's not appealable. So I don't see how I can enter a  
7 judgment.

8 MR. LIPSCOMB: Sure, it is.

9 THE COURT: What?

10 MR. LIPSCOMB: A final judgment -- a final  
11 judgment --

12 THE COURT: I can enter a verdict as to liability,  
13 that they're --

14 MR. LIPSCOMB: Correct.

15 THE COURT: -- they've admitted liability.

16 MR. LIPSCOMB: Correct, and that's fine. I've --  
17 I've listened to you --

18 THE COURT: Well, why don't you come up with some  
19 language before you leave, and I'll -- I'll send rule -- I'll  
20 send the local rule in, along with the citation of this other  
21 case. All right.

22 MR. LIPSCOMB: Okay. I've listened to you, and I --  
23 I'm fine.

24 THE COURT: Yes. Pull the microphone closer.

25 MR. LIPSCOMB: I'm sorry. I've listened to you, and

1 I'm fine with the -- I've listened to you, and I'm fine with  
2 just the final judgment on liability and then --

3 THE COURT: Well, it would be a verdict on  
4 liability.

5 MR. LIPSCOMB: -- a final judgment on liability,  
6 right?

7 UNIDENTIFIED ATTORNEY: Verdict.

8 UNIDENTIFIED ATTORNEY: Verdict.

9 MR. LIPSCOMB: Or is it a verdict?

10 THE COURT: Well --

11 MR. LIPSCOMB: Is it a verdict or a judgment?

12 THE COURT: -- I can call it a judgment.

13 MR. LIPSCOMB: You're entering a judgment on part of  
14 the case. And then just dismiss -- and then noting --

15 THE COURT: But it's going to say that --

16 MR. LIPSCOMB: -- and noting in --

17 THE COURT: -- there's been a settlement on the  
18 amount of damages.

19 MR. LIPSCOMB: Noting in the final judgment that the  
20 damages portion was settled.

21 THE COURT: All right. And --

22 MR. LIPSCOMB: And then there'll just be final  
23 judgment --

24 THE COURT: -- pursuant to local Rule 41 the case is  
25 dismissed as to John -- with prejudice, as to John Doe 1 and

1 16 -- John 1 and 13.

2 MR. LIPSCOMB: Yes.

3 THE COURT: Well, I'll send the local rule in, and  
4 you can take a look at it.

5 MR. LIPSCOMB: Is this -- is this one piece of  
6 paper, or is it two? Is it a final judgment against --  
7 that -- that's against one against 1 and one against 13, so I  
8 know what to send you or --

9 THE COURT: Yeah, probably be one piece paper.

10 MR. LIPSCOMB: One piece of paper against both.

11 THE COURT: Yes.

12 MR. LIPSCOMB: I'll draft that, and I'll submit it  
13 to you guys via email or fax or -- or however you want.

14 THE COURT: Well, you -- you ought to put it on ECF.

15 MR. LIPSCOMB: A proposed, a notice of --

16 THE COURT: Yes.

17 MR. LIPSCOMB: -- filing proposed.

18 THE COURT: Yes.

19 MR. LIPSCOMB: Oh, I will do that.

20 MR. SMITH: Your Honor --

21 THE COURT: Yes, Mr. Smith.

22 MR. SMITH: On number 16 I know there's some  
23 language, but I -- I don't think this really has to do with  
24 His Honor, but we -- we do have a private understanding, as  
25 well, Your Honor. And I -- and I think some of the language



1 here in front of you may dispute what is part of our final  
2 settlement.

3 THE COURT: Well, you're -- you're welcome -- you  
4 know, as far as I'm concerned, I've made a damages award, and  
5 I'm going to enter a judgment, a money judgment.

6 Now as far as the -- what happens to that judgment,  
7 you and Mr. Lipscomb are free to make any --

8 MR. SMITH: Okay.

9 THE COURT: -- award you want, but -- yes.

10 MR. SMITH: Okay. Thank you.

11 THE COURT: All right. Okay. Anything further?

12 MR. FIORE: Nothing further, Your Honor.

13 THE COURT: All right. Okay. So just hang on for  
14 five minutes, and I'll get you the name of that case.

15 All right. Court's in recess. Thank you.

16 MS. FIELD: Thank you.

17 (Proceedings concluded at 3:31 p.m.)

18 \* \* \* \* \*

## C E R T I F I C A T I O N

I, Tara Martin, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

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TARA MARTIN

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DATE

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