

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

MALIBU MEDIA, LLC, )

)

Plaintiff, )

)

CIVIL CASE NO.

v. )

1:13-cv-00205-WTL-MJD

)

KELLEY TASHIRO, )

)

Defendant. )

The deposition upon oral examination of  
KELLEY TASHIRO, a witness produced and sworn before  
me, Deanne S. Hutson, a Notary Public in and for the  
County of Marion, State of Indiana, taken on behalf  
of the Plaintiff at the offices of Circle City  
Reporting, 135 North Pennsylvania Street, Suite 1720,  
Indianapolis, Marion County, Indiana, at 6:24 p.m.  
on the 25th day of February, 2014, pursuant to the  
Federal Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF: Paul J. Nicoletti  
(telephonically) NICOLETTI & ASSOCIATES  
36880 Woodward Avenue  
Suite 100  
Bloomfield Hills, Michigan 48304

FOR THE DEFENDANT: Jonathan L.A. Phillips  
(telephonically) SHAY KEPPLER PHILLIPS  
418 Fulton Street  
Suite 255  
Peoria, Illinois 61602

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1           took it apart and took the hard drive out.

2       Q    Do you recall when that was?

3       A    It's been years ago.    I don't remember when.

4           At least -- I would say five years ago at least.

5       Q    Who took the computer apart?

6       A    My husband did.

7       Q    Did you help him?

8       A    I was with him, yes.

9       Q    And he put the hard drive from Mr. Shovers'  
10           computer into an external enclosure?

11      A    Correct.

12      Q    Then what was done with the hard drive after it  
13           was put in the external enclosure?

14      A    I don't know if he accessed it much or not, but  
15           I did not have much access to it as far as using  
16           it.   I did not use it much.   I don't remember  
17           using it, except possibly to put photos on it.

18      Q    When do you recall putting photos on that drive?

19      A    It would have been after we had just made it  
20           into an external hard drive.   From then I did  
21           not use it.

22      Q    Do you recall what year that was?

23      A    No, I do not.

24      Q    So it's your testimony that your husband used it  
25           after you put the photos on it?

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1 MR. PHILLIPS: Objection. That  
2 mischaracterizes her testimony.

3 Q You can go ahead and answer it.

4 THE WITNESS: I'm sorry. Jonathan?

5 MR. PHILLIPS: Kelley, you can go ahead  
6 and answer.

7 A That I do not know.

8 Q After you put the photos on it, did your husband  
9 use that drive?

10 A That I do not know.

11 Q I thought I heard you say that you only put the  
12 photos on it and then after that your husband  
13 had used it?

14 A After that I don't know if he used it or not.

15 Q Who had possession -- where was the drive  
16 physically located?

17 A I believe it was in a closet outside the office.

18 Q When was the last time that you saw the drive  
19 prior to the time that it was taken to  
20 QDiscovery?

21 A I hadn't seen it for years. I mistakenly  
22 thought it was the Sony Vaio one.

23 Q Is it safe for me to assume that you took it out  
24 of the closet and that it was taken to  
25 QDiscovery?

1 drive and that that was actually the Sony.

2 Q Where did the Sony Vaio hard drive -- first of  
3 all, how do you know it's a Sony Vaio hard  
4 drive?

5 A Because I remember it being the Sony Vaio  
6 desktop that I had.

7 Q You say it in past tense. When was the last  
8 time you had the Sony Vaio desktop?

9 A I believe it was around 2009, before I got the  
10 Dell Inspiron laptop.

11 Q What happened to the Sony?

12 A It crashed.

13 Q How do you know that it crashed?

14 A It wasn't working for me.

15 Q When you say it wasn't working, what was it  
16 doing?

17 A It just wasn't working fast when I would try to  
18 pay bills online or do anything like that.

19 Q So that drive obviously was installed in a  
20 computer. When was the Sony drive taken out of  
21 the Sony computer?

22 A It would have been in, I believe, 2008 or 2009.  
23 I'm thinking 2009.

24 Q Is it fair for me to assume that Charles removed  
25 the drive from that computer?

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- 1 A He did. I was with him when he removed it.
- 2 Q And that drive was put into an external
- 3 enclosure?
- 4 A Yes.
- 5 Q What usage did the Sony drive have after it was
- 6 removed from the computer?
- 7 A It was picture storage and hoping to recover
- 8 anything that I had on it when it was a desktop.
- 9 Q The information on the Sony drive, were you able
- 10 to access it?
- 11 A I believe I was, but that was 2009.
- 12 Q Is it safe for me to assume that you don't
- 13 recall the Sony drive at any point in time being
- 14 inaccessible?
- 15 A No, I don't remember that.
- 16 Q So then obviously it came as a shock to you when
- 17 QDiscovery said they couldn't access it?
- 18 A Very much so.
- 19 Q Did you discuss that fact of what QDiscovery
- 20 said with Charles?
- 21 A Yes.
- 22 Q What did he say?
- 23 A He was surprised too.
- 24 Q When was the last time that the Sony drive was
- 25 in operation in terms of when was the last time



1 that you had saved pictures to it?

2 A It was during 2009. Once I got the laptop, I  
3 didn't use it.

4 Q So as far as you know, you've turned over all of  
5 the hard drives that were in your home?

6 A Yes.

7 Q What was the Sony computer used for when it was  
8 operational?

9 A It was personal use, paying bills, pictures,  
10 normal use.

11 Q To your knowledge, did anyone damage the Sony  
12 hard drive prior to turning it over to  
13 QDiscovery?

14 A No.

15 Q Do you know what BitTorrent is?

16 A I've now heard of it. I don't know exactly  
17 what it is.

18 Q You say you've now heard of it. So is it safe  
19 to assume after the lawsuit you discovered what  
20 it was?

21 A I've heard of it. I honestly cannot give you a  
22 prescription of what BitTorrent is.

23 Q When did you first hear of BitTorrent?

24 A When I received the notice of the lawsuit.

25 Q Are you aware that BitTorrent clients and files

1 A Not to my knowledge, no.

2 Q The hard drive from the Sony, was there an image  
3 that had ever been made of that Sony hard drive?

4 A No.

5 Q Was there ever a backup that had been made of  
6 that Sony hard drive?

7 A No.

8 Q Prior to submitting the hard drives that we've  
9 talked about to QDiscovery, did you erase any  
10 computer files or folders?

11 A No, I did not.

12 Q Do you know if your husband ever erased any of  
13 the computer files or folders?

14 MR. PHILLIPS: Objection as to the time  
15 frame. Do you mean ever or do you mean  
16 immediately before -- I'm sure people delete  
17 folders, if you know what I'm saying.

18 MR. NICOLETTI: The time frame is the  
19 night before.

20 A No, I don't believe he did.

21 Q It's come to your attention that files were  
22 deleted from the one external hard drive;  
23 correct?

24 MR. PHILLIPS: Objection. I just want  
25 to make it clear Patrick Page has said they have



1 A No.

2 Q How do you know that?

3 A It's my house. I live there.

4 Q So you recall December 22nd of 2013?

5 A Yes, that is the night before I turned over the  
6 hard drives. Correct?

7 Q That is correct.

8 A Yes, I remember that night.

9 Q How is it that you remember that night?

10 A Because I was turning over hard drives to my  
11 computer the next day.

12 Q Did you have a discussion with your husband the  
13 night of December 22, 2013, about the hard  
14 drives?

15 A Yes, we were discussing that we were turning  
16 them over.

17 Q Was there any discussion about deleting  
18 information from the hard drives?

19 A Not at the time. Neither of us had deleted  
20 anything.

21 Q What did your husband say about the fact that  
22 the drives were being turned over on December  
23 22, 2013?

24 A Said that I really shouldn't worry since I did  
25 not do anything wrong.

1 the computer, or had the hard drive been  
2 replaced?

3 A No, that was original. It was bought new.

4 Q And where was it purchased from?

5 A I believe it was Best Buy as well.

6 Q Do you have a receipt for the purchase of that  
7 computer in 2003?

8 A I would not still have it, no.

9 MR. NICOLETTI: I have no further  
10 questions.

11 MR. PHILLIPS: Nor do I. I think we're  
12 all done, Kelley.

13 MR. NICOLETTI: Thank you, Kelley.

14 THE WITNESS: Thank you.

15 (Whereupon, the proceedings concluded at  
16 8:10 p.m.)

17

18

19 AND FURTHER THE DEPONENT SAITH NOT:

20

21

22 \_\_\_\_\_  
KELLEY TASHIRO

23 (Signature waived)

24

25