

September 5, 2008

Robert Muladore, Investigator
Commercial Enforcement Division
Michigan Department of Labor & Economic Growth
Bureau of Commercial Services
P.O. Box 30018
Lansing, MI 48909

RE: Complaint No. 309859
Media Sentry

Dear Muladore:

I am writing this third submission to your office to be included with my initial complaint regarding the unlicensed activities of Media Sentry, Inc. and its ongoing investigations of Michigan residents, including myself, without a private investigator's license as required by Michigan law.

The reason for this correspondence is my recent realization that the licensing statutes governing private investigators were substantially revised on May 28, 2008 in the state of Michigan. On that date, the Michigan governor signed into legislation an expanded revision of the state's professional investigator licensing act. My earlier complaint submissions to your agency were based entirely upon provisions and interpretations of the older version of your licensing statutes and not this newer version of the law. The new definitions make it absolutely clear that the activities of Media Sentry fall under the definition of a private investigator and that, as such, it needs to secure a license to investigate residents of Michigan. Specifically, the act now covers any business that contracts to make an investigation for the purpose of obtaining computer forensics to be used as evidence before a court.

"Computer forensics" is defined by the new law as:

"the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination thereof."

While this new legislation clearly brings the practice of "computer forensics" within the licensing provisions of the law and your agency, I am writing to express my firm belief that, even before the passage of this law, the earlier actions of Media Sentry

were also subject to the private investigation regulations of your office. Such a position is entirely consistent and in accord with your office's letter of February 22, 2008 to Media Sentry in which you informed it of your determination that it was not licensed and would need to take immediate steps to secure a private detective agency license if it intended to perform investigative activities within the state.

Well before the May 28, 2008 changes to the private investigators' licensing statute, the Michigan Department of Labor and Economic Growth ("DLEG") had taken and announced the position that computer forensic activities were considered investigative activities under the old statute. In 2006, Kessler International, a large international firm engaged in forensic accounting and computer forensics, conducted a national survey to determine each state's licensing requirements as a private investigator when practicing forensic accounting or computer forensics. Kessler's survey included private investigation licensing agencies and boards of every state in an effort to secure an official opinion as to the requirements regarding private investigator licensing when practicing these professions.

The questions that were asked of each state licensing board or agency were:

- 1) Does your State require that a Public or Private Accounting Firm be licensed/registered as a Private Investigator in order to provide forensic accounting services?
- 2) Does your State require that a CPA, working as an employee of a Private Investigation Firm, be licensed/registered as a Private Investigator?
- 3) Does your State require that an accountant who is engaged in providing forensic accounting services, on behalf of a Public or Private Accounting Firm, have to be licensed/registered as a Private Investigator?
- 4) Does your State require that a Computer Forensic Technician who is engaged in providing computer forensic services to the general public have to be licensed as a Private Investigator?
- 5) Does your State require that a firm offering computer forensic services be licensed as a Private Investigator in order to provide the service to the general public?

The response that the Kessler company received from the DLEG was unequivocal in the agency's position:

"Michigan does require that a "computer forensics technician" be licensed as a private detective".

- May 22, 2006 letter from Vita J. Danzo of the DLEG to Kessler International

The results of Kessler's national survey were released to the public on March 26, 2008. Those results included the response of the DLEG and an actual copy of the letter

that they received from the DLEG. Those results, specifically including the position of the DLEG, were also subsequently referenced and announced in several internet editions of the American Bar Association's Law Practice Management Section entitled Law Technology Today. Those editions carried the following headlines:

March/April 2008

"Regulation of Forensic Computing: North Carolina"

June 2008

"Impact of State Licensing of Private Investigators on Digital Forensics"

Had Media Sentry bothered to contact your office between May 22, 2006 and May 28, 2008 (before the new statute was passed into law) and inquired as to whether its computer forensics work in the investigation of Michigan residents on behalf of the recording industry was encompassed by your private investigation regulations, it would have received an affirmative response from your agency. Despite its carelessness in conforming its actions to applicable state regulations, by February 22, 2008, when the DLEG sent out its warning letter to Media Sentry, it was clearly on notice that it needed to secure a license from your agency if it intended to continue this type of work. Nevertheless, in my particular case, Media Sentry continued to operate, in an illegal and possibly criminal manner, in violation of these applicable regulations in its investigation of my activities and conduct as a Michigan resident while at the University of Michigan. Its investigative extracts, provided to me though the General Counsel's Office of the University in May of 2008, document an investigation that took place on March 18, 2008, almost a month after its receipt of your correspondence. Such actions are clearly a violation of the applicable regulations and statutes in effect at the time and merit a referral to the Attorney General's Office or a local prosecutor for their review and prosecution as provided for by these very same regulations and statutes.

A far more troubling development in this matter, however, is the recent filing on July 16, 2008, of a federal district court case against seven Michigan residents which is premised upon the investigative reports of Media Sentry, many of which were compiled after their receipt of your February 22, 2008 compliance notice. The case was filed in the Eastern District of the United States District Court of Michigan and is entitled LaFace Records, LLC, et al. v. Does 1 – 7, Civil Action No. 2:2008-CV-13065. The suit alleges copyright infringements by seven Michigan residents that were purportedly uncovered solely through the private investigation efforts of Media Sentry into the computer networks of the University of Michigan. Exhibit A to the complaint is a list of investigative extracts of Media Sentry that were prepared as part of their investigation of these Michigan residents. In these court papers, I have been identified as Doe #4. Furthermore, the Declaration of Carlos Linares in Support of Application for Leave to Take Immediate Discovery, which was filed with this complaint, specifically details the numerous investigative efforts that were undertaken by Media Sentry in connection with litigation.

If there ever was any doubt that Media Sentry was engaged in "securing evidence to be used before a court" (under the old or the new statute) or in "computer forensics to be used as evidence before a court" (under the new statute), those doubts have been resolved by the filing of this lawsuit with its numerous references and inclusions of the investigative work and reports of Media Sentry. The irony of this situation, however, is that I and the other John Doe defendants will never be afforded an opportunity to question or examine the veracity, accuracy or integrity of the investigation work of this company into my personal actions and activities as this case proceeds through the court. Since unlicensed investigations in Michigan are punishable as a felony, any agents or employees of Media Sentry would be able to properly assert their rights against self-incrimination in refusing to answer any questions regarding their investigation efforts in this matter.

Such a situation is untenable. The statutes of Michigan regarding the licensing of private investigators were not enacted to protect the self-interests of the investigators but were instead intended and designed to provide a measure of protection to the residents of Michigan who might utilize or be the subject of such activities. As a Michigan resident, I have been subjected to harassment, intimidation and invasions of my personal privacy as a result of the ongoing and continuing unlicensed activities of Media Sentry. As specifically provided by your own statutes, I once again call for you to fully investigate this situation and to make an appropriate referral of this matter to the Attorney General's Office or the local prosecutor's office for criminal and/or civil enforcement actions that will bring a halt to these unwarranted and illegal actions by this company.

I continue to be represented in this matter by Attorney K. Orlando Simon at the University of Michigan Student Legal Services. Any and all communications can and should be directed to his attention and he will see that they are forwarded to me.

Thank you in advance for your consideration of this matter.

Sincerely,

Case # 162983070

Case # 162983070
c/o Atty. K. Orlando Simon
University of Michigan
Student Legal Services
2304 Michigan Union
530 South Street, #549
Ann Arbor, MI 48109

Enc.

List of enclosed attachments:

- 1) February 22, 2008 letter from DLEG to Media Sentry
- 2) March 26, 2008 web page from the Kessler Notebook detailing their forensic accounting licensing survey
- 3) May 22, 2006 letter from DLEG to Kessler International
- 4) March/April 2008 web pages from the ABA Law Practice Management Section, Law Technology Today entitled "Regulation of Forensic Computing: North Carolina"
- 5) June 2008 web pages from the ABA Law Practice Management Section, Law Technology Today entitled "Impact of State Licensing of Private Investigators on Digital Forensics"
- 6) Copy of Complaint in the matter of LaFace Records, LLC at al. v. Does 1-7 including Exhibit A
- 7) Copy of Declaration of Carlos Linares in Support of Application for Leave to Take Immediate Discovery



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

February 22, 2008

Media Sentry
4690 Mellenium Dr., Ste. 400
Belcamp, MD 21017

RE: File No. 308967
Complaint of Randy L. Kruger

Dear Respondent:

It has been noted during a review of the above matter by the Department of Labor & Economic Growth that you are not licensed at the address provided. You may be in violation of Section 3(1) & (2) of 1965 PA 285, MCL 338.823(1) & (2).

"338.823.amended License required; violation; penalty.

Sec. 3. (1) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of private detective or investigator for hire, fee or reward, and shall not advertise his or her business to be that of detective or of a detective agency without first obtaining a license from the department.

(2) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of furnishing or supplying, for hire and reward, information as to the personal character of any person or firm, or as to the character or kind of business and occupation of any person, firm, partnership, company, limited liability company, or corporation and shall not own, conduct, or maintain a bureau or agency for the purposes described in this subsection except as to the financial rating of persons, firms, partnerships, companies, limited liability companies, or corporations without having first obtained a license from the department."

Unlicensed violations are considered serious by the Department. Continuation of this practice could result in criminal prosecution. Referral of this matter may be made to the local prosecutor or police department. The prosecutor can prosecute these cases as felonies with a maximum penalty of \$5,000 and/or up to four years in prison.

If you intend to perform activities that require a private detective agency license, you must obtain a license immediately. Please call (517) 241-9288 to obtain information on how to become licensed.

If you are licensed and we do not have correct information, please notify me at the number below.

Sincerely,

Ann Paruk
Administrative Law Specialist
Commercial Enforcement Division
(517) 241-9202

AP:ld

Wednesday, March 26, 2008

Computer Forensics and Forensic Accounting Licensing Survey - Results are In!

Kessler International, the leading forensic accounting, computer forensics and corporate investigations firm announced today the release of the results of a nationwide survey detailing each state's licensing requirements as a private investigator when practicing forensic accounting or computer forensics. The results of the survey can be found here: <http://www.investigation.com/surveymap/surveymap.html>

Kessler's survey included private investigation licensing agencies and boards of every state in an effort to secure an official opinion as to the requirements regarding PI licensing when practicing these professions. The survey disclosed drastic variances among the States which responded to the survey.

The questions that were asked of each state licensing board or agency are:

- 1) Does your State require that a Public or Private Accounting Firm be licensed/registered as a Private Investigator in order to provide forensic accounting services?

- 2) Does your State require that a CPA, working as an employee of a Private Investigation Firm, be licensed/registered as a Private Investigator?

- 3) Does your State require that an accountant who is engaged in providing forensic accounting services, on behalf of a Public or Private Accounting Firm, have to be licensed/registered as a Private Investigator?

- 4) Does your State require that a Computer Forensic Technician who is engaged in providing computer forensic services to the general public have to be licensed as a Private Investigator?

- 5) Does your State require that a firm offering computer forensic services be licensed as a Private Investigator in order to provide the service to the general public?

Prior to hiring or practicing as a forensic accountant or computer forensic examiner it is suggested that you consult with an attorney who is familiar with the licensing laws for the particular state.

The responses in this survey in some cases are the interpretations of the responding agency. Kessler International has determined that some responses from these agencies reflect conflicting opinions from the State's Attorney General Office regarding private investigative licensing concerning the practice of forensic accounting and computer forensics.

About

Kessler International is the leading international corporate investment forensic accounting, brand protection and computer forensics.

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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

ROBERT W. SWANSON
ACTING DIRECTOR

May 22, 2006

Michael G. Kessler
Kessler International
45 Rockefeller Plaza
Ste. 2000
New York, NY 10111-2000

Dear Mr. Kessler:

The issue of forensic accounting relative to the practice of private detective work is somewhat of a gray area. Because of the very broad definition (in Michigan statute) of work that constitutes that of a private detective, it could be construed that forensic accounting would require a private detective license. However, we feel that forensic accounting is within the statutory described job description of CPAs so we have not and would not take the position that a CPA practicing forensic accounting needs to have a private detective license. (we also license CPAs in this office). We have discussed the matter and have sought to have public accountants (CPAs) practicing forensic accounting be specifically exempted in statute from being required to obtain a private detective license.

Individuals (CPAs or otherwise) working for a licensed private detective do not hold a license. They work under the license of their employer.

Michigan does require that a "computer forensics technician" be licensed as a private detective.

In Michigan, a qualifying person holds the license and represents the business (his/her own business, or that of another). The business itself does not hold a license. Therefore, a business offering computer forensic services would need to be a licensed private detective agency, although as stated, would not itself be licensed.

I hope my responses to your questions have sufficiently addressed your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Vito J. Danzo".

Vito J. Danzo
Security Regulation
Board of Accountancy
517-241-9252

LAW TECHNOLOGY TODAY

EDD, LITIGATION SUPPORT AND LAW OFFICE TECHNOLOGY

In this Issue of Law Technology Today :: March/April 2008

VOL 2 NO 3

Regulation of Forensic Computing: North Carolina



BY JOE HOWIE

Regulations for professionals responsible for computer forensics vary from state to state, often causing confusion. Until there is national-scope forum for providing consistent regulation across the United States, bar associations, paralegal associations, ALSM groups, and ALSP chapters should make sure that the interests of legal and litigation support professionals and their clients are fully considered by legislators and regulators.

Litigation support professionals who have or may have cases involving electronic data from North Carolina should be aware that committees of the North Carolina Private Protective Services Board ("PPSB") are meeting in Sunset Beach NC on April 17 and 18 to consider whether computer forensics requires a private investigators license under the current legislation and to rewrite that legislation.

Depending on the outcomes, conducting computer forensics or even conceivably electronic discovery in North Carolina could require a PI license from the state. Under the current regulations that would involve having three years experience working for another private investigator (12 NCAC 07D .0401), filing an application and paying various fees. This type of regulation could substantially increase the cost and complexity of a discovery process that is already viewed by most people as being far too costly and complex. State private investigator regulation lacks consistency state-to-state and this is made worse by the lack of reciprocity state-to-state.

To demonstrate the confusion that the current state-to-state scheme causes, let's examine just some of the results of a survey conducted by Michael Kessler, a forensic accountant and computer forensics expert. He mailed a survey to various state agencies and posted their responses [here](#). The survey included the following two questions:

- 4) Does your State require that a Computer Forensic Technician who is engaged in providing computer forensic services to the general public have to be licensed as a Private Investigator?

Technology Calendar

5) Does your State require that a firm offering computer forensic services be licensed as a Private Investigator in order to provide service to the general public?

Some of the responses were as follows:

Michigan:

"Michigan does require that a 'computer forensics technician' be licensed as a private detective.

In Michigan, a qualifying person holds the license and represents the business (his/her own business, or that of another). The business does not hold a license. Therefore, a business offering computer forensic services would need to be a licensed private agency, although as stated, would not itself be licensed."

Letter of Vito J. Danzo, Security Regulation, Board of Accounting, Michigan Department of Labor & Economic Growth, to Mr. Kessler, dated May 22, 2006.

Nevada:

"Yes we would require an individual or a firm offering computer forensic services to be licensed in this state. This is a relatively new area and is being brought to our attention frequently."

Letter of Mechele Ray, Executive Director, Nevada Department of Justice, Private Investigators Licensing Board to Mr. Kessler dated July 19, 2006.

California

"Computer Forensic Technicians who only access and evaluate the computers (hard drive and etc.) are not required to be licensed as Private Investigators in California unless they are going out and performing investigations (interviewing people) in relation to the computers. See the definition of a Private Investigator and the exemptions."

Email from Noreene DeKoning, California Bureau of Security and Investigative Services Policy Unit, dated May 30, 2007.

Texas

"There is not an exemption for computer forensics in Chapter 1702 like there is for accounting, so 1702.104 takes precedence. If a computer forensics company contracts to provide service for a company, it may provide services limited to

Technology Calendar

Upcoming Technology Events

BY GEORGE ELSA
CHA

SUBMIT EVENT

Conference

ABA TECHSHOW 2009

American Bar Association
Law Practice Management Section
April 24, 2009

FULL CALENDAR

information from said company, and that company only, without a security license. For example, if a company mainframe's security was breached, a forensic investigator could legally determine where in that system the security lapse happened (without a license from the Private Security Bureau). However, if the forensic analyst were to follow the digital trail outside of the company it was contracted to in order to find the nature, location, or identity of the intruder, they must be licensed as a Private Investigator.

Again, if the nature of the investigation requires the firm to pursue information or property not in the possession of the client, a Private Investigator company license would be required."

Letter from Jeremy Dansby, Customer Service Rep III, Private Security Bureau, Texas Department of Public Safety to Mr. Kessler, dated May 16, 2007

Missouri – does not require licensing for private investigation. However, according to **this website**, Kansas City, St. Louis, Joplin, St. Joseph and Springfield require licensing.

How would a multi-state company plan a rational system of performing computer forensics in various states? In five states we've seen five different approaches:

- Requires state-licensed PI individual, but not company
- Requires state-licensed PI individual and company
- No state license needed *unless* the forensics person interviews (i.e. talks) to someone.
- No state license needed *unless* data from outside the client is investigated.
- No state license, but city licenses *may* be required.

Clearly there needs to be uniform state laws on this topic. This topic may be appropriate for the **National Conference of Commissioners on Uniform State Laws** to consider. The **International Association of Security and Investigative Regulators** is comprised of members from 37 agencies in 26 states and eight Canadian provinces and it could provide the most cost-effective forum to address computer forensics and e-discovery on a national scope as opposed to having each state implement a potentially slightly different approach (recognizing that each state will still have to enact any model or proposed legislation). Until there is national-scope forum for providing consistent regulation across the United States, bar associations, paralegal associations, ALSM groups, and ALSP chapters should make sure that the interests of legal and litigation support professionals and their clients are fully considered by legislators and regulators. Points that should be

**COUNT I
INFRINGEMENT OF COPYRIGHTS**

18. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

19. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of Exhibit A.

20. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

21. Plaintiffs are informed and believe that each Defendant, without the permission or consent of Plaintiffs, has continuously used, and continues to use, an online media distribution system to download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies on a Defendant-by-Defendant basis (one Defendant per page) the IP address with the date and time of capture and a list of copyrighted recordings that each Defendant has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public. Through his or her continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted Recordings, each Defendant has violated Plaintiffs' exclusive rights of reproduction and

distribution. Each Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive rights under copyright. (In addition to the sound recordings listed for each Defendant on Exhibit A, Plaintiffs are informed and believe that each Defendant has, without the permission or consent of Plaintiffs, continuously downloaded and/or distributed to the public additional sound recordings owned by or exclusively licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are ongoing. Exhibit A includes the currently-known total number of audio files being distributed by each Defendant.)

22. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A was accessible by each Defendant.

23. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

24. As a result of each Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against each Defendant for each infringement by that Defendant of each copyrighted recording. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

25. The conduct of each Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting each Defendant from further infringing Plaintiffs' copyrights, and ordering that each Defendant destroy all copies of copyrighted sound recordings made in violation of Plaintiffs' exclusive rights.

WHEREFORE, Plaintiffs pray for judgment against each Defendant as follows:

1. For an injunction providing:

“Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiffs' rights under federal or state law in the Copyrighted Recordings and any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiffs (or any parent, subsidiary, or affiliate record label of Plaintiffs) (“Plaintiffs' Recordings”), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload) any of Plaintiffs' Recordings, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control.”

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

SOBLE ROWE KRICHBAUM, LLP

Dated: July 16, 2008

By: s/Jason R. Gourley
Jason R. Gourley (P69065)
Matthew E. Krichbaum (P52491)
Attorneys for Plaintiffs
221 N. Main Street, Suite 200
Ann Arbor, Michigan 48104
(734) 996-5600
E-mail: jason@srkllp.com

EXHIBIT A DOE LIST

Doe # 1 IP Address: 141.213.206.192 2008-01-19 15:08:46 EST
Case ID: 156075240

Doe # 2 IP Address: 141.216.38.88 2008-02-04 14:53:57 EST
Case ID: 158041339

Doe # 3 IP Address: 141.211.71.166 2008-03-10 09:11:48 EDT
Case ID: 162003898

Doe # 4 IP Address: 141.213.250.26 2008-03-18 05:18:05 EDT
Case ID: 162983070

Doe # 5 IP Address: 141.216.36.20 2008-03-22 14:16:22 EDT
Case ID: 163505509

Doe # 6 IP Address: 67.194.40.161 2008-04-10 21:27:29 EDT
Case ID: 166089481

Doe # 7 IP Address: 141.213.246.243 2008-04-25 12:17:49 EDT
Case ID: 167712775

EXHIBIT A

IP Address: 141.213.206.192 2008-01-19 15:08:46 EST

CASE ID# 156075240

P2P Network: Gnutella

Total Audio Files: 403

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	Nelly Furtado	Maneater	Loose	387-509
UMG Recordings, Inc.	Weezer	We Are All On Drugs	Make Believe	376-565
SONY BMG MUSIC ENTERTAINMENT	System of a Down	Cigaro	Mezmerize	372-792
BMG Music	The Strokes	Between Love & Hate	Room on Fire	342-282
BMG Music	Dave Matthews Band	American Baby	Stand Up	385-935
BMG Music	Dave Matthews Band	Where Are You Going	Busted Stuff	321-902
SONY BMG MUSIC ENTERTAINMENT	Will Smith	Miami	Big Willie Style	249-123
SONY BMG MUSIC ENTERTAINMENT	The Offspring	Want You Bad	Conspiracy of One	288-853
UMG Recordings, Inc.	Ludacris	Roll Out	Roll Out (single)	303-066

EXHIBIT A

IP Address: 141.216.38.88 2008-02-04 14:53:57 EST

CASE ID# 158041339

P2P Network: Gnutella

Total Audio Files: 765

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	George Strait	You'll Be There	You'll Be There (single)	376-078
Capitol Records, LLC	Trace Adkins	Songs About Me	Songs About Me (single)	361-542
Warner Bros. Records Inc.	Avenged Sevenfold	Seize The Day	City Of Evil	374-368
Atlantic Recording Corporation	Shinedown	Fly from the Inside	Leave a Whisper	342-566
BMG Music	Brad Paisley	Alcohol	Time Well Wasted	366-007
BMG Music	Kenny Chesney	Keg in the Closet	When The Sun Goes Down	341-104
Capitol Records, LLC	Keith Urban	Making Memories Of Us	Be Here	353-271
UMG Recordings, Inc.	Blue October	Into the Ocean	Foiled	388-117

EXHIBIT A

IP Address: 141.211.71.166 2008-03-10 09:11:48 EDT

CASE ID# 162003898

P2P Network: Gnutella

Total Audio Files: 471

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Motown Record Company, L.P.	Lionel Richie	Stuck on You	Can't Slow Down	49-235
Capitol Records, LLC	Crowded House	Don't Dream It's Over	Crowded House	78-743
Capitol Records, LLC	Beastie Boys	Sabotage	Ill Communication	213-461
Priority Records LLC	Ice Cube	Check Yo Self	The Predator	169-617
Capitol Records, LLC	Coldplay	Fix You	X&Y	376-828
BMG Music	Foo Fighters	Best of You	In Your Honor	377-762
Warner Bros. Records Inc.	Chicago	You're the Inspiration	Chicago 17	54-174
UMG Recordings, Inc.	Nelly Furtado	Promiscuous	Promiscuous (single)	391-618
SONY BMG MUSIC ENTERTAINMENT	The Fugees	Ready Or Not	The Score	222-005
Capitol Records, LLC	Billy Idol	Cradle of Love	Charmed Life	115-717

EXHIBIT A

IP Address: 141.213.250.26 2008-03-18 05:18:05 EDT

CASE ID# 162983070

P2P Network: Gnutella

Total Audio Files: 529

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	Nelly	Grillz	Grillz (single)	385-148
SONY BMG MUSIC ENTERTAINMENT	Switchfoot	Meant to Live	The Beautiful Letdown	347-967
SONY BMG MUSIC ENTERTAINMENT	Mariah Carey	Someday	Mariah Carey	118-408
Capitol Records, LLC	Coldplay	Fix You	X&Y	376-828
Virgin Records America, Inc.	Gorillaz	Feel Good Inc.	Feel Good Inc. (single)	379-134
Arista Records LLC	Outkast	Rosa Parks	Aquemini	264-092
Capitol Records, LLC	Coldplay	Yellow	Parachutes	328-762
London-Sire Records Inc.	Eden's Crush	Get Over Yourself	Popstars	187-319
UMG Recordings, Inc.	Nelly Furtado	Say It Right	Loose	387-509

EXHIBIT A

IP Address: 141.216.36.20 2008-03-22 14:16:22 EDT

CASE ID# 163505509

P2P Network: Gnutella

Total Audio Files: 570

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	Blink-182	The Rock Show	Take Off Your Pants And Jacket	301-317
SONY BMG MUSIC ENTERTAINMENT	REO Speedwagon	Keep on Loving You	Keep on Loving You (single)	25-255
UMG Recordings, Inc.	Meat Loaf	Objects in the Rear View Mirror May Appear	Bat Out Of Hell II: Back Into Hell	172-277
UMG Recordings, Inc.	Nelly	Grillz	Grillz (single)	385-148
UMG Recordings, Inc.	Tom Petty	Refugee	Damn The Torpedoes	14-497
Capitol Records, LLC	Poison	Every rose has its thorn	Open Up & Say....Ahh!	93-741
Warner Bros. Records Inc.	Blake Shelton	I Drink	Blake Shelton's Barn & Grill	359-309
UMG Recordings, Inc.	Nirvana	Come As You Are	Nevermind	135-335
UMG Recordings, Inc.	Counting Crows	A Long December	Recovering The Satellites	226-415
Atlantic Recording Corporation	Collective Soul	Shine	Hints, Allegations and Things Left Unsaid	187-499

EXHIBIT A

IP Address: 67.194.40.161 2008-04-10 21:27:29 EDT

CASE ID# 166089481

P2P Network: Gnutella

Total Audio Files: 471

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	Hinder	Lips of an Angel	Extreme Behavior	379-192
Warner Bros. Records Inc.	Seal	Kiss From A Rose	Seal	194-147
LaFace Records LLC	TLC	No Scrubs	Fanmail	298-454
Atlantic Recording Corporation	En Vogue	Free Your Mind	Funky Divas	140-315
Capitol Records, LLC	David Bowie	Let's Dance	Let's Dance (single)	43-560
BMG Music	Velvet Revolver	Set Me Free	Contraband	332-304
SONY BMG MUSIC ENTERTAINMENT	Beyonce	Baby Boy	Dangerously in Love	342-236
Warner Bros. Records Inc.	Seal	Love's Divine	Seal IV	345-566
UMG Recordings, Inc.	The Pussycat Dolls	Stickwitu	PCD	377-102
Motown Record Company, L.P.	98 Degrees	The Hardest Thing	98 Degrees & Rising	237-315

EXHIBIT A

IP Address: 141.213.246.243 2008-04-25 12:17:49 EDT

CASE ID# 167712775

P2P Network: Gnutella

Total Audio Files: 83

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Karyn White	Superwoman	Karyn White	97-318
Atlantic Recording Corporation	Brandy	Afrodisiac	Afrodisiac	370-673
Warner Bros. Records Inc.	Jaheim	Still Ghetto	Still Ghetto	320-393
UMG Recordings, Inc.	The Police	Every Breath You Take	Synchronicity	44-862
SONY BMG MUSIC ENTERTAINMENT	Lyfe Jennings	Must Be Nice	Lyfe 268-192	363-168
SONY BMG MUSIC ENTERTAINMENT	Maxwell	Sumthin' Sumthin'	Maxwell's Urban Hang Suite	221-404
UMG Recordings, Inc.	Ready For the World	Love You Down	Love You Down (single)	77-953

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAFACE RECORDS LLC, a Delaware limited liability company; ARISTA RECORDS LLC, a Delaware limited liability company; ATLANTIC RECORDING CORPORATION, a Delaware corporation; BMG MUSIC, a New York general partnership; CAPITOL RECORDS, LLC, a Delaware limited liability company; LONDON-SIRE RECORDS INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; PRIORITY RECORDS LLC, a Delaware limited liability company; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; UMG RECORDINGS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; and WARNER BROS. RECORDS INC., a Delaware corporation,

Hon. :

Case :

Plaintiffs,

v.

DOES 1 - 7,

Defendants.

JASON R. GOURLEY (P69065)
MATTHEW E. KRICHBAUM (P52491)
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**DECLARATION OF CARLOS LINARES IN SUPPORT OF APPLICATION FOR
LEAVE TO TAKE IMMEDIATE DISCOVERY**

I, Carlos Linares, have personal knowledge of the facts stated below and, under penalty of perjury, hereby declare:

1. I am an attorney and Vice President, Anti-Piracy Legal Affairs for the Recording Industry Association of America, Inc. ("RIAA"), where I have been employed for over six years. My office is located at 1025 F Street, N.W., 10th Floor, Washington, DC 20004. I submit this Declaration in support of Plaintiffs' Application for Leave to Take Immediate Discovery.

2. As Vice President, Anti-Piracy Legal Affairs, I am responsible for evaluating and contributing to online strategies for the RIAA and its member record companies who are Plaintiffs in this action, including oversight of the investigations into online infringement of copyrighted sound recordings. As such, this Declaration is based on my personal knowledge, and if called upon to do so, I would be prepared to testify as to its truth and accuracy.

**The RIAA's Role in Protecting Its Member Recording Industry Companies From
Copyright Infringement**

3. The RIAA is a not-for-profit trade association whose member record companies create, manufacture, and/or distribute approximately ninety percent of all legitimate sound recordings produced and sold in the United States. The RIAA's member record companies comprise the most vibrant national music industry in the world. A critical part of the RIAA's mission is to assist its member companies in protecting their intellectual property in the United States and in fighting against online and other forms of piracy. All of the Plaintiffs in this action are members of the RIAA.

4. As part of that process, the RIAA, on behalf of its members, retains a variety of services from outside vendors to assist with its investigation of the unauthorized reproduction and distribution of copyrighted sound recordings online.

The Internet and Music Piracy

5. The Internet is a vast collection of interconnected computers and computer networks that communicate with each other. It allows hundreds of millions of people around the world to communicate freely and easily and to exchange ideas and information, including academic research, literary works, financial data, music, movies, graphics, and an unending and ever-changing array of other data. Unfortunately, the Internet also has afforded opportunities for the wide-scale piracy of copyrighted sound recordings and musical compositions. Once a sound recording has been transformed into an unsecured digital format, it can be copied further and distributed an unlimited number of times over the Internet, without significant degradation in sound quality.

6. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution systems. The most notorious example of such a system was Napster, which was enjoined by a federal court. Notwithstanding the court's decision enjoining Napster, similar online media distribution systems emerged and attempted to capitalize on the growing illegal market that Napster fostered. These include KaZaA, eDonkey, iMesh, Ares, BitTorrent, DirectConnect, and Gnutella, among others. To this day, some P2P networks continue to operate and to facilitate widespread copyright piracy. At any given moment, millions of people illegally use online media distribution systems to upload or download copyrighted material.

7. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to: (1) index files (including audio recordings)

into a share directory on a computer that are then searched for and transferred to other users; (2) search for files stored on other users' computers; (3) transfer exact copies of files from one computer to another via the Internet; and (4) allow users to further distribute the files to other users. P2P networks enable users who otherwise would have no connection with, or knowledge of, each other to offer to each other for distribution and copying files off of their personal computers, to provide a sophisticated search mechanism by which users can locate these files for downloading, and to provide a means of effecting downloads.

8. The major record companies generally have not authorized their copyrighted sound recordings to be copied or distributed in unsecured formats by means of P2P networks. Thus, the vast majority of the content that is copied and distributed on P2P networks is unauthorized by the copyright owner – that is, the distribution violates the copyright laws.

9. The scope of online piracy of copyrighted works cannot be underestimated. The RIAA member companies lose significant revenues on an annual basis due to the millions of unauthorized downloads and uploads of well-known recordings that are distributed on P2P networks by infringers who, in virtually all cases, have the ability to maintain their anonymity to all but the Internet Service Provider (“ISP”) they use to supply them with access to the Internet.

10. The persons who commit infringements by using the P2P networks are, by and large, anonymous to Plaintiffs. A person who logs on to a P2P network is free to use any alias (or computer name) whatsoever, without revealing his or her true identity to other users. Thus, Plaintiffs can observe the infringement occurring on the Internet, but do not know the true names or mailing addresses of those individuals who are committing the infringement.

The RIAA's Identification of Copyright Infringers

11. In order to assist its members in combating copyright piracy, the RIAA retained a third-party investigator, MediaSentry, Inc. ("MediaSentry"), to conduct searches of the Internet, as well as file-copying services, for infringing copies of sound recordings whose copyrights are owned by RIAA members. A search can be as simple as logging onto a P2P network and examining files being distributed by others logged onto the network. In gathering evidence of copyright infringement, MediaSentry uses the same functionalities that are built into P2P programs that any user of the software can use on the network.

12. Users of P2P networks who distribute files over a network can be identified by using Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files for distribution can be captured by another user during a search or a file transfer. Users of P2P networks can be identified by their IP addresses because each computer or network device (such as a router) that connects to a P2P network must have a unique IP address within the Internet to deliver files from one computer or network device to another. Two computers cannot effectively function if they are connected to the Internet with the same IP address at the same time. In some cases, more than one computer can access the internet over a single IP address by using network address translation, in which cases the computer port being used provides further identification of the computer engaged in the on-line communication. This is analogous to the telephone system where each location has a unique number (and the port acts much like a specific telephone extension off the main switch board). For example, in a particular home, there may be three or four different telephones, but only one call can be placed at a time to or from that home. Each computer or network device is connected to a network that is administered by an organization like a business, ISP, college, or university. Each network, in turn, is analogous to an area code. The network provider maintains a log of IP

address allocations. An IP address can be associated with an organization such as an ISP, business, college, or university, and that organization can identify the P2P network user associated with the specified IP address.

13. MediaSentry finds individuals using P2P networks to share music files over the Internet. Just as any other user on the same P2P networks as these individuals would be able to do, MediaSentry is able to detect the infringement of copyrighted works and identify the users' IP addresses because the P2P software being used by those individuals has file-sharing features enabled.

14. For each suspected infringer, MediaSentry downloads a number of the music files that the individual is offering to other users on the P2P network. Those music files for each such individual are listed in Exhibit A to the Complaint. MediaSentry assigns an identification number to each individual for which it detects copyright infringement and gathers additional evidence for each individual, such as metadata accompanying each file being disseminated that demonstrates that the user is engaged in copyright infringement. That evidence includes download data files that show for each music file the source IP address, user logs that include a complete listing of all files in the individual's share folder at the time, and additional data that track the movement of the files through the Internet.

15. After MediaSentry collects the evidence of infringement, the RIAA engages in a painstaking process to verify whether each individual was infringing. That process relies on human review of evidence supporting the allegation of infringement. For each suspected infringer, the RIAA reviews a listing of the music files that the user has offered for download by others from his or her computer in order to determine whether they appear to be copyrighted sound recordings. The RIAA also listens to the downloaded music files from these

users in order to confirm that they are, indeed, copies of sound recordings whose copyrights are owned by RIAA members. Exhibit A to the Complaint lists the details of these downloaded music files. In my role as Vice President, Anti-Piracy, I provide oversight over the review of the lists contained in Exhibit A to the Complaint and hereby attest to the veracity of those lists. The RIAA also reviews the other evidence collected by MediaSentry.

The Subpoena Process to Identify Copyright Infringers

16. The RIAA frequently has used the subpoena processes of Federal Rule of Civil Procedure 45 to obtain the names of infringers from ISPs. The RIAA typically has included in their subpoenas to ISPs an IP address and a date and time on which the RIAA, through its agent, MediaSentry, observed use of the IP address in connection with allegedly infringing activity. In some instances, providing the IP address alone to the ISP has been enough to enable the ISP to identify the infringer. Providing the date and time further assists some ISPs in identifying infringers, especially ISPs that use “dynamic IP addressing” such that a single computer may be assigned different IP addresses at different times, including, for example, each time it logs into the Internet.¹ Some ISPs also ask for the computer port information to further identify the infringer. Once provided with the IP address, plus the date and time of the infringing activity, the infringer’s ISP can typically identify the computer from which the infringement occurred (and the name and address of the subscriber that controls that computer), sometimes within a matter of minutes.

17. Since 1998, the RIAA and others have used subpoenas thousands of times to learn the names, addresses, telephone numbers, and e-mail addresses of infringers for the purpose of bringing legal actions against those infringers.

¹ ISPs own or are assigned certain blocks or ranges of IP addresses. An ISP assigns a particular IP address in its block or range to a subscriber when that subscriber goes “online.”

The RIAA's Identification of the Infringers in This Case

18. In the ordinary course of investigating online copyright infringement, the RIAA became aware that Defendants were distributing files to others on various P2P networks. The user-defined author and title of the files being distributed by each Defendant suggested that many were copyrighted sound recordings being disseminated without the authorization of the copyright owners. The RIAA downloaded and listened to a representative sample of the music files being distributed by each Defendant and was able to confirm that the files each Defendant was distributing were illegal copies of sound recordings whose copyrights are owned by RIAA members. The RIAA also recorded the time and date at which the infringing activity was observed and the IP address assigned to each Defendant at the time. See Complaint Exhibit A. The RIAA could not, however, determine the physical location of the users or their identities. The RIAA could determine that Defendants were all using University of Michigan - Ann Arbor internet service to distribute the copyrighted files.

19. The RIAA also has collected for each Defendant a list of the files each Defendant was distributing to the public. These lists often show thousands of files, many of which are sound recording (MP3) files that are owned by, or exclusively licensed to, Plaintiffs. Because of the voluminous nature of the lists, and in an effort not to overburden the Court with paper, I have not attached to this Declaration those lists. Such lists will be made available to the Court upon request. Exhibit A to the Complaint includes the username of the infringer if that was available, the identification number assigned by MediaSentry for that Defendant, and the number of audio files that were being shared by Defendant at the time that the RIAA's agent, MediaSentry, observed the infringing activity.

The Importance of Expedited Discovery in This Case

20. Obtaining the identity of copyright infringers on an expedited basis is critical to stopping the piracy of the RIAA members' copyrighted works.

21. First, every day that copyrighted material is disseminated without the authorization of the copyright owner, the copyright owner is economically harmed. Prompt identification of infringers is necessary in order for copyright owners to take quick action to stop unlawful dissemination of their works and minimize their economic losses.

22. Second, infringement often occurs with respect to sound recordings that have not yet been distributed publicly. Such infringement inflicts great harm on the initial market for new works. New recordings generally earn a significant portion of their revenue when they are first released, and copyright piracy during a recording's pre-release or early release period therefore deprives copyright owners of an important opportunity to reap the benefits of their labor.

23. Third, without expedited discovery, Plaintiffs have no way of serving Defendants with the complaint and summons in this case. Infringement occurs without name tags so Plaintiffs do not have Defendants' names or addresses, nor do they have an e-mail address for Defendants.

24. Fourth, computer evidence by its very nature is subject to being overwritten. At times, Plaintiffs have sought evidence from defendants' computers only to find that the evidence of infringement was destroyed (intentionally or unintentionally). Expedited discovery is critical to allow Plaintiffs to put Defendants on notice of the need to preserve the electronic evidence and avoid the loss of evidence.

25. Fifth, ISPs have different policies pertaining to the length of time they preserve "logs" which identify their users. ISPs keep log files of their user activities for only

limited periods of time – which can range from as short as a few days, to a few months – before erasing or overwriting the data they maintain. If an ISP does not respond expeditiously to a discovery request, the identification information in the ISP’s logs may be erased, making it impossible for the ISP to determine the identity of the infringer and eliminating the copyright owner’s ability to take action to stop the infringement. The RIAA notifies the ISPs when it has identified infringement for which it will seek identifying information and requests the ISPs to preserve the information. In most cases the ISPs preserve at least some of the information necessary to identify the infringer, but not always. Some ISPs have indicated they will preserve the information for a limited time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 8, 2008 in Washington, D.C.



Carlos Linares