

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

SOUTHERN

DISTRICT OF

NEW YORK

UMG RECORDINGS, INC. et al,  
 V.

**SUBPOENA IN A CIVIL CASE**

MARIE LINDOR.

Case Number:<sup>1</sup> 05 CV 1095 (DGT) (RML)

TO:  
 SAFENET, INC.  
 c/o Thomas M. Mullaney, Esq.  
 708 Third Avenue, Suite 2500, New York, NY 10017

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.\*

PLACE OF DEPOSITION	DATE AND TIME
Vandenberg & Feliu, LLP 110 East 42nd Street, Suite 1502 New York, NY 10017	2/13/2008 10:00 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

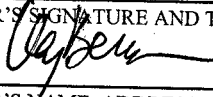
See SCHEDULE annexed hereto and incorporated by reference herein.

PLACE	DATE AND TIME
Vandenberg & Feliu, LLP 110 East 42nd Street, Suite 1502 New York, NY 10017	12/17/2007 10:00 am

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 ATTORNEY FOR DEFENDANT	11/13/2007

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Ray Beckerman, Esq., Vandenberg & Feliu, LLP 110 East 42nd Street, Suite 1502, New York, NY 10017 (212) 763-6800

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

\*The subject of inquiry at the deposition will be your investigation and detection of the activity alleged in the complaint annexed hereto as Exhibit G and/or concerning the use of internet protocol address 141.155.57.198 on August 7, 2004, at or about 6:15 a.m. Pursuant to Fed.R.C.P. 30(b)(6), you are hereby advised of your duty to make a designation of one or more persons who consent to testify on your behalf.

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## **SCHEDULE**

### **Instructions and definitions**

1. A “document” is all forms of recorded information, and includes but is not limited to both DIGITAL DATA and PAPER PRINTOUTS of said digital data.
2. When asked to produce a “document” you are being requested (a) to produce both the DIGITAL DATA and, where possible, a PAPER PRINTOUT, and (b) to identify, whether by location or otherwise, the digital data to which the printout makes reference, and to identify, with respect to such digital data produced, the software, if any, needed to open, read or use the data.
3. Unless otherwise specified, the applicable time period for all items is January 1, 2004, to the date of your response.
4. “The Account” relates to anything relating to (a) Marie Lindor or an internet access account paid for by her or otherwise in her name, (b) the Kazaa username “jrlindor@kazaa”, and/or (c) the use of IP address 141.155.57.198 on August 7, 2004, at 6:15 A.M.
5. With respect to digital data, you are instructed (a) to produce same on a CD-ROM, DVD or similar media, in its original, unaltered, unprocessed digital form in such manner that the dates and times of original file creation are readable, (b) if digital data has been altered, to produce same in its altered form as well in such manner that the dates and times of file modifications are readable, (c) to set forth the chain of custody thereof from initial creation to the date of your response, (d) to state whether it was created by MediaSentry or by an outside source, and if the latter to identify the outside source, and (e) to identify the means by which it was created and/or retrieved, including the identify of the person(s) and/or programs who created and/or retrieved same, whether it was through an automated process or by a natural person.
6. “MediaSentry”, as used hereinafter, refers to MediaSentry, Inc. and/or Safenet, Inc., including but not limited to MediaSentry Production Development unit of Safenet, Inc., formerly MediaSentry, Inc.
7. “Exhibit A” refers to the document (copy annexed hereto) that was marked as Defendant’s Exhibit 6 at the February 23, 2007 deposition of Douglas W. Jacobson in The Account.
8. “Exhibit B” refers to the document (copy annexed hereto) that was marked as Defendant’s Exhibit 10 at the February 23, 2007 deposition of Douglas W. Jacobson in The Account.
9. “Exhibit C” refers to the document (copy annexed hereto) that was marked as Defendant’s Exhibit 11 at the February 23, 2007 deposition of Douglas W. Jacobson in The Account.
10. “Exhibit D” refers to the document (copy annexed hereto) that was marked as Defendant’s Exhibit 12 at the February 23, 2007 deposition of Douglas W. Jacobson in The Account.

11. "Exhibit E" refers to the document (copy annexed hereto) that was marked as Defendant's Exhibit 14 at the February 23, 2007 deposition of Douglas W. Jacobson in The Account.

12. "Exhibit F" refers to Plaintiff's Response to Defendant's First Set of Interrogatories and Request for Production of Documents to Plaintiff dated April 18, 2006 (a copy of which is annexed hereto as Exhibit F).

13. The "complaint" is the complaint annexed hereto as Exhibit G.

14. As to any documents or data which have been destroyed, replaced, superseded, or deleted, please provide details as to date of preparation, date of destruction, identity of natural person or person(s) who destroyed same, reason for destruction, and nature and description of same.

15. As to any document(s) resulting from compilation of more than one document(s), the original data source document(s) must also be produced, and the means of their creation disclosed as set forth above.

### **Documents to produce**

All documents relating to The Account, including but not limited to:

1. All documents relating to (a) any investigative licenses, or other licenses having any bearing on The Account, held by MediaSentry, Tom Mizzone ("Mizzone"), and/or any person supervising Mizzone, and (b) the dates, times and locations of any services performed by Mizzone or any other person employed or otherwise associated with MediaSentry having any relationship to The Account.

2. (a) All documents sufficient to show all compensation received by MediaSentry from January 1, 2003, to date from the RIAA affiliated companies for any purpose, (b) all documents relating to the specific method, rates, and amounts of compensation applicable to The Account, and (c) all documents relating to the scope of MediaSentry's retention in connection with The Account, including any instructions, guidelines, goals, or parameters.

3. All documents relating to communications of MediaSentry or Mizzone with plaintiffs, plaintiffs' counsel, Matthew J. Oppenheim ("Oppenheim"), the RIAA, and/or Dr. Doug Jacobson, in connection with The Account.

4. Transcripts of any testimony given, and copies of any declarations or affidavits made, by Mizzone or any other MediaSentry representative in any p2p file sharing case in the United States.

5. All reports, memoranda, correspondence, notes and e-mails sent to, or received from plaintiffs, their attorneys and/or the RIAA relating to or concerning The Account.

6. All documents containing, evidencing or otherwise concerning (a) methods and procedures to be used and protocols to be followed for investigating, detecting and monitoring

the activity alleged in the complaint, including, but not limited to validation methodology, testing procedures, failure rates and work flow methods, (b) procedures, if any, followed by MediaSentry, during its investigation of the activity alleged in the complaint, for mitigating the misidentification of IP addresses caused by IP address spoofing, (c) procedures followed by MediaSentry, during its investigation of the activity alleged in the complaint, for mitigating the effect and consequences of virus and malware infections, and/or (d) procedures followed by MediaSentry, during its investigation of the activity alleged in the complaint, for ensuring the validity and integrity of information returned by superpeers.

7. All documents evidencing, reflecting, explaining, referring to or otherwise concerning the setting, synchronization, and maintenance of clock time on the computers and servers that MediaSentry used in the investigation and detection of the activity alleged in the complaint.

8. All documents evidencing, reflecting, or otherwise concerning the amount of time that MediaSentry and its employees and agents were engaged in investigating, detecting and reporting the activity alleged in the complaint.

9. Complete digital copies of all packet logs of traffic sent to and from the measurement infrastructure and the P2P network in connection with the investigation and detection of the activity alleged in the complaint, including all packet logs of traffic sent to and from the Kazaa bootstrap superpeer and Kazaa session superpeer.

10. All documents sufficient to identify the software(s), hardware systems and other tools and devices that were used to detect and monitor the activity alleged in the complaint.

11. Digital copy of the source code of the software(s) used to detect and monitor the activity alleged in the complaint.

12. Manuals for the software(s) used to detect and monitor the activity alleged in the complaint.

13. Digital copies of all electronic files, including metadata, downloaded or accessed by MediaSentry relating to The Account.

14. Digital copies of the Kazaa or other peer to peer software program installed on the computers or servers that MediaSentry used in connection with its investigating, detecting and monitoring the activity alleged in the complaint.

15. (A) All documents identifying, evidencing, reflecting or otherwise concerning the software that was used to generate the data in Exhibit A. (B) All documents identifying, evidencing or otherwise concerning (i) the natural person or persons, if any, who generated, or caused to be generated, Exhibit A hereto, and/or (ii) the hardware used to generate, or cause to be generated, said exhibit. (C) Digital copy of the .txt file from which Exhibit A was printed. (D) Digital copies of all files whose data was used in the creation of, or incorporated into, said .txt file.

16. (A) All documents identifying, evidencing, reflecting or otherwise concerning the software that was used to generate the data in Exhibit B. (B) All documents identifying, evidencing or otherwise concerning (i) the natural person or persons, if any, who generated, or caused to be generated, the document annexed hereto as Exhibit B, and/or (ii) the hardware used to generate, or cause to be generated, said exhibit. (C) Digital copy of the .txt file from which Exhibit B was printed. (D) Digital copies of all files whose data was used in the creation of, or incorporated into, said .txt file. (E) A printout of the .txt file from which Exhibit B was printed, which sets forth all of the data in said file, including text that was cut off on the right margin of Exhibit B. (F) All documents identifying, evidencing, reflecting or otherwise concerning (i) "Rule Name: Hubcap" as referred to on the second line of page 1 of Exhibit B, (ii) "agent ID 194" as referred to on the fourth line of page 1 of Exhibit B, and/or (iii) "Scanner Name: DAYSC17" as referred to on the fourth line of page 1 of Exhibit B. (G) Digital copies of the eleven (11) files allegedly downloaded on 8/7/2004 from 6:41:26 AM to 7:08:33 AM, as set forth in Exhibit B. (H) Digital copies of the eleven (11) files for which downloads were logged on 8/7/2004 from 7:09:40 AM to 7:09:43 AM, as set forth in Exhibit B.

17. All documents identifying, evidencing, reflecting or otherwise concerning (A) the software that was used to generate the data in Exhibit C, (B) the algorithm and procedures used to generate the data in Exhibit C, (C) the natural person or persons who generated, or caused to be generated, Exhibit C and the digital version of same.

18. (A) Digital copy of the .txt file from which Exhibit C was printed. (B) Digital copies of all files whose data was used in the creation of, or incorporated into, said .txt file. (C) All documents defining or containing the definition of the term "Distinct Matches" as used in Exhibit C. (D) All documents reflecting, evidencing or otherwise concerning how the .txt file in Exhibit C came to be named "Lindor Marie-UserLog-6190165.txt". (E) All documents identifying, evidencing or otherwise concerning the person or persons who named the .txt file, from which the document annexed hereto as Exhibit C was printed, "Lindor Marie-UserLog-6190165.txt". (F) All documents reflecting, evidencing or otherwise concerning how the IP address 141.155.57.198 came to be included in the .txt file from which Exhibit C was printed.

19. Digital copies of the file(s) from which the document annexed hereto as Exhibit D was printed.

20. All other screenshots, user activity logs, and reports ever generated by MediaSentry in connection with The Account.

21. All documents identifying, evidencing, reflecting or otherwise concerning (A) the software that was used to generate the data in Exhibit E, (B) the algorithm and procedures used to generate the data in Exhibit E, and (C) the natural person or persons who generated exhibit E, or caused it to be generated.

22. (A) Digital copy of the .txt file from which Exhibit E was printed. (B) Digital copies of all files whose data was used in the creation of, or incorporated into, said .txt file. (C) All documents defining or containing the definition of the term "Distinct Matches" as used in Exhibit E. (D) All documents reflecting, evidencing or otherwise concerning (i) how the

.txt file, from which Exhibit E was printed, came to be named “Lindor Marie-UserLog(Compressed)-6190165.txt”, (ii) the natural person or persons who named the .txt file, from which Exhibit E was printed, “Lindor Marie-UserLog(Compressed)-6190165.txt”, (iii) how the IP address 141.155.57.198 came to be included in the .txt file from which Exhibit E was printed. (E) All documents identifying, evidencing, referring to, or otherwise concerning the natural person at MediaSentry who on August 7, 2004 at 6:15 a.m. “detected an individual who was engaged in the distribution of Plaintiff’s copyrighted sound recordings using the screen name jrlindor@kazaa and Internet Protocol (“IP”) address 141.155.57.198,” as alleged on page 5 of Exhibit F. In the event no such documents are produced indicate whether it is because the documents are unavailable, or whether it is because there was no ‘detection of an individual’

23. Curriculum vitae and other documents representing, evidencing or otherwise concerning the technical background and experience of the natural person(s) referred to above, and any other persons who will or may testify at the trial of this action, who are employees or agents of MediaSentry.

24. All documents identifying, evidencing, referring to, or otherwise concerning the natural person or persons, if any, at MediaSentry who listened to downloaded files with respect to The Account for the purpose of determining the nature and content of such files.

25. All documents identifying, evidencing, referring to, or otherwise concerning the date, time and location that downloaded files with respect to The Account were listened to.

26. All memoranda, notes, emails, reports, correspondence and other documents written, created or prepared by the natural person(s) referred to above concerning The Account.

27. (A) All documents relating to any attempts by MediaSentry, or any other person or entity, to verify the accuracy of Verizon’s subpoena response, (B) all documents relating to the accuracy and/or synchronization of server clocks and logging instruments at Verizon, (C) the actual DHCP logs for that day, and (D) all email communications between Verizon and any other parties concerning the DHCP records.

28. All documents relating to any attempts by MediaSentry, or any other person or entity, to verify that any person was using an “online media distribution system” through defendant’s internet access account after August 7, 2004.

29. All contracts and agreements between MediaSentry and the Recording Industry Association of America, Inc. (“RIAA”) or between MediaSentry and any of the RIAA’s affiliated companies, including plaintiffs, relating to The Account.