

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UMG RECORDINGS, INC., et al.,

05 CV 1095 (DGT)(RML)

Plaintiffs,

- against

MARIE LINDOR,

Defendant
-----X

**DECLARATION OF TOM MIZZONE IN OPPOSITION TO
DEFENDANT'S MOTION IN LIMINE**

I, TOM MIZZONE, declare:

1. I am the Director of the MediaSentry Product Development unit of Safenet, Inc., formerly MediaSentry, Inc. ("MediaSentry"). I have personal knowledge of all of the matters discussed in this Declaration except as where stated on information and belief. As to such facts, I believe them to be true.

2. MediaSentry is one of the principal providers of online anti-piracy services worldwide. It specializes in providing services to detect and prevent unauthorized distribution of music, films, software, and other content on the Internet.

3. MediaSentry has been engaged by the Recording Industry Association of America ("RIAA") on behalf of the Plaintiffs to assist them in locating individuals infringing their copyrights over peer-to-peer networks and gathering evidence of their infringement. To perform this task, MediaSentry searches peer-to-peer networks for individuals distributing infringing files for download and gathers evidence concerning that infringement.

#1246173 v1

SN 008

4. In gathering evidence of infringement, MediaSentry does not do anything that any user of a peer-to-peer network cannot do and does not obtain any information that is not available to anyone who logs onto a peer-to-peer network. Thus, when MediaSentry searches for sound recordings on the peer-to-peer network, views the files that each peer-to-peer user is disseminating to others, obtains the IP address and screen name of each user, and downloads copyrighted works distributed by each user, it is using functionalities that are built into the peer-to-peer protocols that each user has chosen to use to upload (or distribute) and download (or copy) music.

5. MediaSentry searches peer-to-peer networks, looking for users distributing (“uploading”) files that appear to be digital copies of sound recordings whose copyrights are owned by the RIAA’s member record companies. When MediaSentry finds such a file, it may download the file. As part of that downloading process, MediaSentry, like any other peer-to-peer user, receives basic information about the user from whom the work is being downloaded. That information includes, among other things, the Internet Protocol (“IP”) address of the user.

6. Once connected to the user’s computer MediaSentry also seeks to determine what other files the individual is distributing to others for download. KaZaA and other file-copying programs permit users to share all of the files in their shared folders, and they may contain a feature that permits users to browse the entire shared folder of another user. When available, MediaSentry invokes this feature of a peer-to-peer program, just as any other user could do, and is able to determine whether the individual user is merely distributing one or two music files or whether the user is distributing hundreds or even thousands of music files.

7. Again using a feature of the peer-to-peer software available to any user, MediaSentry can then capture a list of all of the files that the user is distributing to others for download. MediaSentry collects this information in two forms. First, MediaSentry takes screen shots, which are actual pictures of the screens that MediaSentry or any other user of the peer-to-peer network can see when reviewing the files being distributed. Second, MediaSentry captures as a text file all of the contents of the user's shared directory, such as the names of each file and the size of each file, as well as additional information (called "metadata") about each file. Metadata may include a wide range of information about a file. Metadata, for example, can include information such as identification of the person or group that originally copied the file and began disseminating it unlawfully. MediaSentry does nothing to create this text file. It exists on the user's hard drive.

Deleted: it

8. Once MediaSentry has the list of files being distributed, it searches the list of files for copyrighted works owned by the record companies, just as any other user could do. Once MediaSentry has found a user disseminating files that appear to be copyrighted works owned by the record companies, MediaSentry downloads a sampling of these files, again, as any other peer-to-peer user could do.

9. At the end of its evidence gathering with respect to any individual user, MediaSentry has gathered substantial evidence, including (1) a sampling of individual audio files that the individual is making available in his or her shared directory; (2) a user log identifying all of the files that the individual was distributing for download, as well as metadata about each of the files being distributed; (3) screen shots of the user's shared directory that show the files the individual was distributing; and (4) the IP address, date, and time of the infringement, as well as

the alias or username (when available) chosen by the individual when participating in the peer-to-peer network. MediaSentry does nothing to create any of this data. It exists on the user's hard drive. MediaSentry merely collects such data.

10. MediaSentry's process for identifying potential infringers and gathering evidence of infringement has multiple fail-safes to ensure that the information gathered is accurate. MediaSentry takes numerous steps to check and double-check the IP address of the potential infringer to prevent misidentification.

11. MediaSentry followed the procedures outlined above with respect to the evidence that it gathered in this case. Specifically, on August 7, 2004 at approximately 6:12 A.M. EDT, MediaSentry detected the username "jrlindor@KaZaA" logged into the KaZaA file-sharing network at IP address 141.155.57.198. Attached as Exhibit A is a true and correct copy of a compilation of screen shots captured by MediaSentry on August 7, 2004 showing the list of files that the computer connected to KaZaA with the IP address of 141.155.57.198 was distributing to others for download.

Deleted: 15

12. Consistent with the procedures noted above, on August 7, 2004 at approximately 6:15 A.M. EDT, MediaSentry downloaded a sampling of .MP3 "audio" files from the IP address 141.155.57.198. A true and correct listing of the sampling of audio files that MediaSentry downloaded is attached as Exhibit B. This list is a subset of the sound recordings found on the shared folder shown in Exhibit A. Exhibit C is also a subset of the sound recordings found on the shared folder shown in Exhibit A, and it is true and correct.

13. Exhibit D is a true and correct copy of the SystemLog.txt file captured by MediaSentry while connected to the computer that was connected to the Internet through IP

address 141.155.57.198 on August 7, 2004 at approximately 6:12 A.M. EDT. MediaSentry did not create this data. Rather, it was created automatically when MediaSentry's computer communicated with the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:12 A.M. EDT.

Deleted: 15

Deleted: 15

14. Exhibit E is a true and correct copy of the UserLog (compressed) .txt file captured by MediaSentry while connected to the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:12 A.M. EDT.

Deleted: 15

15. Exhibit F is a true and correct copy of the UserLog.txt file captured by MediaSentry while connected to the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:12 A.M. EDT.

Deleted: 15

16. Exhibit G is a true and correct copy of the DownloadData.txt file captured by MediaSentry while connected to the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:15 A.M. EDT.

17. Exhibit H is a true and correct copy of the Traceroute.txt file captured by MediaSentry while connected to the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:15 A.M. EDT. ←?

18. MediaSentry did not create the files attached as Exhibits E-H. These files existed on the hard drive of the computer that was connected to the Internet through IP address 141.155.57.198 on August 7, 2004 at approximately 6:12 A.M. Media Sentry merely captured this data.

Deleted: 15

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

Executed this ____ day of May, 2007 at New York, New York.

TOM MIZZONE