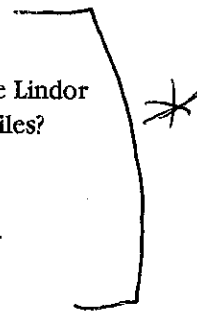




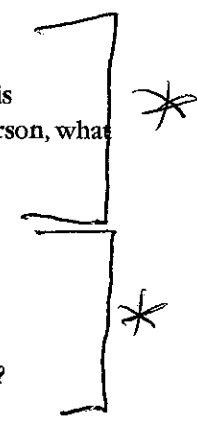
Jacobson

[1] Q: Hypothetically, had you discovered  
 [2] KaZaA software and song files or remnants of KaZaA  
 [3] software or song files resembling those that had  
 [4] appeared in a screen shot, would that have tended to  
 [5] support a finding that she had downloaded or  
 [6] uploaded copyrighted files?  
 [7] A: That would have supported a claim  
 [8] that that computer was used to make files available.  
 [9] Q: So it would have supported a finding  
 [10] that the computer whose hard drive you examined had  
 [11] been used for that purpose?  
 [12] A: Correct.  
 [13] Q: It would not have supported a  
 [14] finding, would it, as to whether Marie Lindor  
 [15] herself had used those programs or files?  
 [16] MR. GABRIEL: Object to the form.  
 [17] Lack of foundation.  
 [18] THE WITNESS: Please read it back.  
 [19] (Record read.)  
 [20] A: That's correct.  
 [21] Q: Hypothetically, had you discovered  
 [22] substantial deletions, would that have supported a  
 [23] finding that there had been the use of KaZaA file  
 [24] sharing to download or upload copyrighted files?  
 [25]



Jacobson

[1] sharing; is that correct?  
 [2] A: That's correct, as I testified or as  
 [3] I — in one of my documents, yes.  
 [4] Q: Are you aware of any evidence of  
 [5] anything that would point to Marie Lindor personally  
 [6] having done something as opposed to any other  
 [7] person?  
 [8] MR. GABRIEL: Objection to the  
 [9] form. Lack of foundation.  
 [10] A: I have examined evidence that shows  
 [11] that the computer registered to the IP address  
 [12] belonging to Marie Lindor was used to share  
 [13] copyrighted material.  
 [14] Q: But other than that, other than the  
 [15] fact that the computer was used, as you say, is  
 [16] there any evidence to show what natural person, what  
 [17] individual was the one who actually did it?  
 [18] A: No.  
 [19] Q: Do you know what processes and  
 [20] procedures MediaSentry employed?  
 [21] A: I do not know the inner works of  
 [22] MediaSentry processes and procedures.  
 [23] Q: Do you know what software they used?  
 [24] A: No.  
 [25]

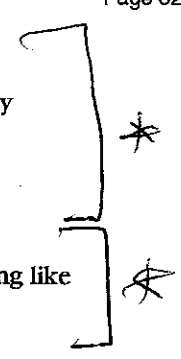


Jacobson

[1] MR. GABRIEL: Object to the form.  
 [2] Lack of foundation.  
 [3] A: Had I found substantial deletions of  
 [4] the KaZaA software and music files, that would have  
 [5] supported it.  
 [6] Q: Had you discovered that the hard  
 [7] drive had been entirely reformatted would that, in  
 [8] your view, have supported a finding that the  
 [9] computer had been used for uploading or downloading  
 [10] copyrighted works?  
 [11] MR. GABRIEL: Same objections.  
 [12] A: Had the computer been reformatted,  
 [13] there would have been no conclusion that I could  
 [14] have drawn as to what was on the computer prior to  
 [15] formatting.  
 [16] Q: Hypothetically, had you discovered  
 [17] substantial defragmentation of the hard drive, would  
 [18] that have supported a finding that the computer had  
 [19] been used to upload or download copyrighted works?  
 [20] MR. GABRIEL: Same objection.  
 [21] A: If that's all I had found, no, that  
 [22] would not have supported.  
 [23] Q: So you have concluded that the hard  
 [24] drive that you examined was not used for KaZaA file  
 [25]

Jacobson

[1] Q: Do you know if it was well known  
 [2] off-the-shelf software or if it was proprietary  
 [3] software?  
 [4] A: Again, I do not know the inner  
 [5] workings of MediaSentry's operations.  
 [6] Q: Do you know if their software had  
 [7] been peer-reviewed or published or anything like  
 [8] that?  
 [9] A: Not that I'm aware of.  
 [10] Q: Have you ever testified as an expert  
 [11] in a deposition?  
 [12] A: No.  
 [13] Q: Have you ever testified as an expert  
 [14] in a trial?  
 [15] A: No.  
 [16] Q: Have you ever testified as an expert  
 [17] in any other type of proceeding?  
 [18] A: I testified in front of a school  
 [19] board.  
 [20] Q: As an expert?  
 [21] A: Yes.  
 [22] Q: On what subject?  
 [23] A: A teacher was accused of viewing  
 [24] pornography at school.  
 [25]



Jacobson

[1] A: No.

[2] Q: How long have you been using your

[3] present method of determining whether a particular

[4] computer has been used for uploading or downloading

[5] copyrighted works?

[6] A: About a year and a half.

[7] Q: When did you learn your present

[8] method of determining whether a particular computer

[9] has been used for uploading or downloading

[10] copyrighted works? Or did you develop it yourself?

[11] A: Clarification. Are you talking about

[12] exams on the hard drives or just the process, the

[13] entire process?

[14] Q: Well, you have a method, do you not?

[15] A: I have a method for examining hard

[16] drives and I have a method for reviewing the

[17] MediaSentry material.

[18] Q: So these are two different things?

[19] One isn't tied into the other?

[20] A: They are two different processes.

[21] Q: Okay. So let's break it down. Your

[22] method of —

[23] The MediaSentry materials are

[24] gathered through the internet?

[25]

Jacobson

[1] A: Yeah. MediaSentry gathers the

[2] material through the internet.

[3] Q: How did you learn your method of

[4] interpreting — withdrawn.

[5] Are you able —

[6] I am having a little difficulty with

[7] this conceptually. You are breaking it down into

[8] two separate processes. Is it your testimony that

[9] there is a way to detect whether a computer has been

[10] used for uploading or downloading copyrighted works

[11] without both looking at the MediaSentry material and

[12] the hard drive?

[13] A: Yes.

[14] Q: Let's break it down, then, into two

[15] separate things.

[16] How did you learn your method of

[17] determining from the MediaSentry materials whether a

[18] particular computer has been used for uploading or

[19] downloading copyrighted works?

[20] A: It was a process that I developed.

[21] Q: You developed it on your own?

[22] A: Yes.

[23] Q: How did you learn your method of

[24] determining from a hard drive whether a particular

[25]

Jacobson

[1] computer has been used for uploading or downloading

[2] copyrighted works?

[3] A: Well, the forensic examination

[4] process I learned through self-study and through the

[5] forensic examiner's exam.

[6] Q: Now, am I correct that you were doing

[7] this for law enforcement before you were a certified

[8] forensic examiner?

[9] A: That's correct.

[10] Q: And when did you become a certified

[11] forensic examiner?

[12] A: September '04.

[13] Q: And why did you become a certified

[14] forensic examiner?

[15] A: Two reasons. One is to be able to

[16] better work with the law enforcement and the other

[17] is to help support our university's educational

[18] mission, since we teach computer forensics.

[19] Q: Wouldn't a third reason be that it

[20] might give you standing to testify in a court of law

[21] as to your forensic examinations of hard drives?

[22] A: That I would tie in with the first

[23] reason, to work better with law enforcement.

[24] Q: What about your private work for the

[25]

Jacobson

[1] recording industry of America?

[2] A: I was a certified examiner before I

[3] was engaged by the recording industry.

[4] Q: Isn't it a fact that you were engaged

[5] by the RIAA in 2002?

[6] A: It was in September '05.

[7] Q: You were not doing any work for them

[8] in 2002?

[9] A: No. My first work for them was in

[10] the fall of 2005. I can't remember my first trip to

[11] Kansas City.

[12] Q: And you weren't doing any work for

[13] them in 2003?

[14] A: No.

[15] Q: And you weren't doing any work for

[16] them in 2004?

[17] A: I started working with the law firm

[18] in the fall of 2005.

[19] MR. BECKERMAN: Off the record.

[20] (Discussion off the record.)

[21] Q: Has your method of determining from

[22] the MediaSentry materials whether a particular

[23] computer has been used for uploading or downloading

[24] copyrighted works been tested by any testing body?

[25]

