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2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

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5 UMG RECORDINGS, INC., et al,

6

Plaintiffs, 05 CV 1095
(DGT)(RML)

7

vs.

8

9 MARIE LINDOR,

10 Defendant.

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11

12 February 23, 2007

13 9:30 a.m.

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15 DEPOSITION of Expert Witness,

16 DR. DOUGLAS W. JACOBSON, held at the offices

17 of Vanderberg & Feliu, LLP, 110 East 42nd

18 Street, New York, New York, pursuant to

19 Notice, before ELIZABETH SANTAMARIA, a

20 Notary Public of the State of New York.

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24 Reported by:

ELIZABETH SANTAMARIA

25 JOB NO. 54123

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2 A p p e a r a n c e s :

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4 HOLME ROBERTS & OWEN LLP

5 Attorneys for Plaintiffs

6 1700 Lincoln Street

7 Denver, Colorado 80203-4541

8 BY: RICHARD L. GABRIEL, ESQ.

9

10 VANDENBERG & FELIU, LLP

11 Attorneys for Defendant

12 110 East 42nd Street

13 New York, New York 10017

14 BY: RAY BECKERMAN, ESQ.

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ALSO PRESENT: ZI MEI

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1 Jacobson

2 A. I guess I'm not clear what you mean

3 by that.

4 Q. Well, it's true, is it not, that

5 there can be more than one computer operating under

6 a single IP address?

7 MR. GABRIEL: Object to the form.

8 A. As I talked about it in the report

9 with public IP addresses, in order for the internet

10 to function there can only be -- every public IP

11 address has to be globally unique within that window

12 of time.

13 Q. But there can be more than one

14 computer operating behind that IP address?

15 MR. GABRIEL: Same objection.

16 A. Every -- I don't understand what you

17 are asking. Every device connecting to the public

18 internet has to have a global unique address.

19 Q. And a device doesn't have to be a

20 computer, does it?

21 A. That's correct.

22 Q. It could be a router, correct?

23 A. Yes.

24 Q. It could be a wired router?

25 A. Yes.

1 Jacobson

2 address to demonstrate which computer it is.

3 Q. No, I'm asking you to demonstrate it

4 now for me. You said, "I will testify to the

5 procedures and results obtained by MediaSentry

6 coupled with the information compiled by defendant's

7 ISP to demonstrate the defendant's internet account

8 and computer were used to download and upload

9 copyrighted music from the internet using the KaZaA

10 peer-to-peer network."

11 Please demonstrate for me that

12 defendant's computer was used to download and upload

13 copyrighted music.

14 A. I can demonstrate through the

15 MediaSentry material.

16 Q. Okay.

17 A. I don't have the MediaSentry

18 material.

19 MR. BECKERMAN: We will mark as

20 Exhibit 10 a two-page printout, page

21 numbers 46 to 47.

22 (Defendant's Exhibit 10, two-page

23 printout of page numbers 46 to 47, marked

24 for identification, as of this date.)

25 MR. BECKERMAN: We will mark as

1 Jacobson

2 Exhibit 11 a printout, page numbers 49 to
3 187.

4 (Defendant's Exhibit 11, printout of
5 page numbers 49 to 187, marked for
6 identification, as of this date.)

7 MR. BECKERMAN: And you already
8 have Exhibit 6 and we have Exhibit 12,
9 which is a screen shot, pages 199 to 224.

10 (Defendant's Exhibit 12, printout of
11 pages 199 to 224, marked for identification,
12 as of this date.)

13 MR. BECKERMAN: And we will mark as
14 Exhibit 13 a one-page printout marked as
15 page number 48.

16 (Defendant's Exhibit 13, one-page
17 printout of page numbered 48, marked for
18 identification, as of this date.)

19 MR. BECKERMAN: And we will mark as
20 Exhibit 14 a printout of pages numbers 188
21 through 198.

22 (Defendant's Exhibit 14, printout of
23 pages numbers 188 through 198, marked for
24 identification, as of this date.)

25 Q. Now would you please demonstrate how

1 Jacobson

2 you can show that it's the defendant's computer that
3 was used.

4 MR. BECKERMAN: Off the record.

5 (Recess taken.)

6 Q. Please demonstrate that the
7 defendant's computer was used.

8 MR. GABRIEL: If I can ask you, if
9 you refer to an exhibit, please say what
10 the exhibit is.

11 THE WITNESS: Yes.

12 Q. Before we go into that, let me just
13 ask you something.

14 When you say "defendant's computer"
15 in your report, you're referring to the computer
16 that was accessed by MediaSentry; is that correct?

17 A. I'm referring to the -- yeah, the
18 computer with the IP address shown in Exhibit 6 that
19 we discussed earlier.

20 Q. And it's your contention that the
21 computer as to which you examined the hard drive is
22 a different computer than the one that was accessed
23 by MediaSentry; is that correct?

24 A. Yes.

25 Q. Now, going to the first computer, how

10 described in Exhibit 15.

11 Q. Did you know who prepared this?

12 A. I know it was on the hard drive and

13 it in the directory of user Kathleen on the system.

14 Q. Do you know who typed it?

15 A. No.

16 Q. Now, what does it say next to the

17 word "e-mail" in this resume?

18 A. J-C-Q-L-L-I-N-E.

19 Q. What tools did you use to determine

20 that the hard drive had not been used for a KaZaA

21 account?

22 A. I used EnCase to examine the captured

23 hard drive.

24 Q. When you used EnCase, did you know

25 that this matter was in litigation and that you were

101

1 Jacobson

2 an expert witness in this case?

3 A. Yes.

4 Q. Did you not have screens? When you

5 used EnCase, didn't you look at a computer screen?

6 A. Yes.

7 Q. Did you save what was on that screen?

8 A. No.

1 Jacobson

2 Q. Is there a way through the internet
3 to remotely control someone else's computer?

4 MR. GABRIEL: Objection to form.

5 Lack of foundation.

6 A. It's possible.

7 Q. What is a zombie?

8 A. In reference to computer security, a
9 zombie is a program that is under control of some
10 other master program which is under control of some
11 individual.

12 Q. What is a cracker?

13 A. When I use the term, it is in
14 reference to either a person or process to break
15 passwords.

16 Q. What is a drone?

17 A. Again, in computer security
18 terminology that, again, would be a piece of
19 software that's under control by another individual.

20 Q. When you provide your investigations,
21 do you do anything to verify or to determine whether
22 or not the computer in question was under control by
23 an outside remote user?

24 A. No.