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10 TWENTIETH CENTURY FOX; COLUMBIA
PICTURES; PARAMOUNT PICTURES; WARNER
11 BROS.; COLUMBIA TRISTAR HOME
ENTERTAINMENT; and NEW LINE PRODUCTIONS

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 TWENTIETH CENTURY FOX FILM
16 CORPORATION, a Delaware
corporation; COLUMBIA PICTURES
17 INDUSTRIES, INC., a Delaware
corporation; PARAMOUNT PICTURES
18 CORPORATION, a Delaware
corporation; WARNER BROS.
19 ENTERTAINMENT INC., a Delaware
corporation; COLUMBIA TRISTAR
20 HOME ENTERTAINMENT, INC., a
Delaware corporation; and NEW
21 LINE PRODUCTIONS, INC., a
Delaware corporation,

22 Plaintiffs,

23 vs.

24 DOES 1 - 12,

25 Defendants.
26

27 I, Thomas Mizzone, have personal knowledge of the facts
28 stated below and, under penalty of perjury, hereby declare:

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WHA

CASE NO.

04-4862

DECLARATION OF THOMAS MIZZONE
IN SUPPORT OF MISCELLANEOUS
ADMINISTRATIVE REQUEST FOR
LEAVE TO TAKE DISCOVERY PRIOR
TO RULE 26 CONFERENCE

1 1. I am Vice President, Data Services for MediaSentry,
2 Inc. ("MediaSentry"), where I have been employed since March
3 2004. MediaSentry is a provider of online anti-piracy services
4 for the motion picture, music, game and business software, and
5 print publishing sectors. Before my employment with MediaSentry,
6 I held various senior level positions at companies that developed
7 Internet based technologies and have approximately ten years of
8 experience related to the protocols, technical architecture and
9 operation of the Internet.

10 2. I submit this declaration in support of Plaintiffs'
11 Miscellaneous Administrative Request for Leave to Take Discovery
12 Prior to Rule 26 Conference. This declaration is based on my
13 personal knowledge, and if called upon to do so, I would be
14 prepared to testify as to its truth and accuracy.

15 3. MediaSentry has developed a technology platform that
16 provides an effective means to detect unauthorized distribution
17 of digital music, software, games, content, and movies over
18 online media distribution systems, or "peer-to-peer" ("P2P")
19 networks. At MediaSentry, I am the head of the department that
20 carries out evidence collection using a platform known as
21 "MediaTarget." I work closely with our development team to
22 create credible techniques to scan for, detect, and download
23 copies of copyrighted material on multiple network protocols for
24 use by copyright owners.

25 4. MediaSentry was hired on behalf of Plaintiffs to
26 monitor and identify copyright infringement of specified motion
27 pictures on P2P networks. Under direct supervision of
28 Plaintiffs' counsel, MediaSentry engaged in a specific process

1 utilizing specially designed software and other technology to
2 identify direct infringers of Plaintiffs' copyrights on P2P
3 networks.

4 5. Plaintiffs provided MediaSentry with a list of
5 copyrighted motion pictures they believe may be offered for
6 distribution on P2P networks.

7 6. MediaSentry connects to various P2P networks and
8 searches for users who are offering one or more of Plaintiffs'
9 specified motion pictures. MediaSentry uses the same core
10 technical processes that are used by P2P users to identify users
11 who are offering Plaintiffs' motion pictures over the Internet.
12 Any user of a P2P network can obtain any of the information that
13 is obtained by MediaSentry from the P2P network.

14 7. Once MediaSentry's searching software program
15 identifies a P2P network user that is offering for download one
16 of the specified motion pictures, it obtains the Internet
17 Protocol ("IP") address of that user, and when available, it
18 obtains the user's screen name and examines the user's publicly
19 available directory on his computer for other files that
20 lexically match the motion pictures on Plaintiffs' list. Viewing
21 a user's shared directory is a functionality that is built into
22 many, but not all, of the P2P protocols for the relevant P2P
23 service. MediaSentry then downloads at least one motion picture
24 that the user is offering.

25 8. In addition to the file of the motion picture itself,
26 MediaSentry downloads other publicly available information from
27 the network user that is designed to help Plaintiffs identify the
28 user. Among other things, MediaSentry downloads or records for

1 each file downloaded from each user: (a) the video file's
2 metadata (digital data about the file), such as title and file
3 size, that is not part of the actual video content, but that is
4 attached to the digital file and helps identify the content of
5 the file; (b) the time and date at which the file was downloaded
6 from the user; and (c) the IP address assigned to each user at
7 the time of infringement. MediaSentry then creates evidence logs
8 for each user that store all this information in a central
9 database.

10 9. An IP address is a unique numerical identifier that is
11 automatically assigned to a user by its Internet Service Provider
12 ("ISP") each time a user logs on to the network. Each time a
13 subscriber logs on, he or she may be assigned a different IP
14 address. ISPs are assigned certain blocks or ranges of IP
15 addresses. ISPs keep track of the IP addresses assigned to its
16 subscribers at any given moment and retain such "user logs" for a
17 limited amount of time. These user logs provide the most
18 accurate means to connect an infringer's identity to its
19 infringing activity.

20 10. Although users' IP addresses are not automatically
21 displayed on the P2P networks, any user's IP address is readily
22 identifiable via the use of a packet "sniffer." A computer
23 operator's "sniffer" is a type of software program that can be
24 used to identify IP addresses connected to the operator's
25 computer by virtually "sniffing" packets of information shared
26 over a P2P network. Such applications are widely available to
27 the public and do not require a great degree of sophistication to
28 operate. Furthermore, any computer running on Microsoft Windows

1 is equipped with a utility to display IP addresses currently
2 connected to it. MediaSentry uses such a "sniffing" application
3 to ascertain users' IP addresses.

4 11. An infringer's IP address is significant because it is
5 a unique identifier that, along with the date and time of
6 infringement, specifically identifies a particular computer using
7 the Internet. However, the IP address does not enable
8 MediaSentry to ascertain with certainty the exact physical
9 location of the computer or to determine the infringer's
10 identity. It only enables MediaSentry to trace the infringer's
11 access to the Internet to a particular ISP and, in some
12 instances, to a general geographic area. Subscribing to and
13 setting up an account with an ISP is the most common and
14 legitimate way for someone to gain access to the Internet. An
15 ISP can be a telecommunications service provider such as Verizon,
16 an Internet service provider such as America Online, a cable
17 Internet service provider such as Comcast, or even an entity such
18 as a university that is large enough to establish its own network
19 and link directly to the Internet.


20 12. Here, the IP addresses identified by MediaSentry via
21 the use of a packet sniffer enable us to determine which ISP was
22 used by each infringer to gain access to the Internet. Publicly
23 available databases located on the Internet list the IP address
24 ranges assigned to various ISPs.

25 13. In this manner, MediaSentry determined that the Doe
26 Defendants here were using Pacific Bell Internet ("Pacific Bell")
27 to gain access to the Internet and distribute and make available
28 for distribution and copying the copyrighted motion pictures

1 identified. MediaSentry downloaded the motion picture file and
2 other identifying information described above and created an
3 evidence log for each Doe Defendant. Once MediaSentry identified
4 the ISP used by the Doe Defendants to gain access to the Internet
5 from the IP address, Plaintiff's counsel, using the MediaSentry
6 application, sent an e-mail to the relevant contact at Pacific
7 Bell informing Pacific Bell of the Doe Defendant's IP address and
8 the date and time of the infringing activity. That e-mail
9 message requested that Pacific Bell retain the records necessary
10 to identify its subscriber who was assigned that IP address at
11 that date and time. Once provided with the IP address, plus the
12 date and time of the infringing activity, the Doe Defendant's ISP
13 quickly and easily can use its subscriber logs to identify the
14 name and address of the ISP subscriber who was assigned that IP
15 address at that date and time.

16 I declare under penalty of perjury that the foregoing is
17 true and correct.

18
19 Executed on November 12, 2004, at Bernardsville, NJ.

20 
21 _____
22 Thomas Mizzone

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