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AT BIG STONE GAP, VA
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JUN 26 2008

JOHN F. CONCORAN, CLERK
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DEPUTY CLERK

FINAL JURY INSTRUCTIONS

UNITED STATES

v.

DANIEL DOVE

2:07CR00015

Chief Judge James P. Jones
June 26, 2008

Instruction No. 1

1 Ladies and gentlemen of the jury, I'm going to give you final instructions now,
2 since you will soon leave the courtroom to begin your deliberations. I will also send
3 a written copy of these instructions with you.

4 As I told you earlier, the government has accused the defendant of committing
5 certain crimes. These are only charges. In order for you to find a defendant guilty,
6 you must be convinced beyond a reasonable doubt that the defendant committed the
7 crime as charged. If you are not convinced beyond a reasonable doubt that the
8 defendant committed the crime as charged, you must find the defendant not guilty of
9 that crime.

10 During the course of the trial, you received all the evidence you may properly
11 consider to decide the case. Your decision in the case must be made solely on the
12 evidence presented at the trial. You should consider all the evidence that was
13 presented to you.

14 Do not allow sympathy or prejudice to influence you. The law demands of you
15 a just verdict, unaffected by anything except the evidence, your common sense, and
16 the law as I give it to you.

17 At times during the trial you saw lawyers make objections to questions or to
18 answers by witnesses. This simply means that the lawyers were requesting that I
19 make a decision on a particular rule of law. Do not draw any conclusion from such

1 objections, or from my rulings on the objections. These are only related to the legal
2 questions I had to determine, and should not influence your thinking. When I
3 sustained an objection to a question the witness was not allowed to answer it. Do not
4 attempt to guess what answer might have been given had I allowed the question to be
5 answered. Similarly, when I told you not to consider a particular statement, you were
6 told to put that statement out of your mind, and you may not refer to that statement
7 in your deliberations.

8 Neither in these instructions nor in any ruling, action or remark that I have
9 made during the course of this trial have I intended to give any opinion or suggestion
10 as to what your verdict should be. During this trial, I have occasionally asked
11 questions of witnesses in order to bring out facts not then fully covered in testimony.
12 Do not assume that I hold any opinion on the matter to which my questions are
13 related.

Instruction No. 2

1 It is my job to decide what rules of law apply to this case. I've explained some
2 of these rules to you during the course of the trial, and I will explain others to you
3 before you go to the jury room. While the lawyers may have properly commented
4 during the trial on some of these rules, you are to be guided only by what I say about
5 them. You must follow all the rules as I explain them to you. You may not follow
6 some and ignore others. Even if you disagree or don't understand the reasons for
7 some of the rules, you are bound to follow them.

Instruction No. 3

1 If you decide that the government has proved beyond a reasonable doubt that
2 the defendant is guilty, it will also be my job to decide what punishment will be. You
3 should not try to guess what the punishment might be. It should not enter into your
4 considerations or discussions at any time.

Instruction No. 4

1 The decision you reach in the jury room, whether guilty or not guilty, must be
2 unanimous. You must all agree. Your deliberations will be secret. You will never
3 have to explain your verdict to anyone.

Instruction No. 5

1 The law presumes the defendant to be innocent of a crime. Thus, the
2 defendant, although accused, begins the trial with a clean slate. That is to say with
3 no evidence against him, and the law permits nothing but legal evidence presented
4 before the jury to be considered in support of any charge against the defendant. So,
5 the presumption of innocence alone is sufficient to acquit the defendant unless the
6 jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the
7 evidence in the case. This presumption of innocence is an abiding presumption that
8 goes with the defendant throughout the entire case and applies at every stage. As I
9 have said many times, the government has the burden of proving the defendant's guilt
10 beyond a reasonable doubt. Some of you may have served as jurors in civil cases
11 where you were told that it was only necessary to prove that a fact is more likely true
12 than not. In criminal cases, the government's proof must be more powerful than that;
13 it must be beyond a reasonable doubt.

Instruction No. 6

1 An important part of your job will be making judgments about the testimony
2 of the witnesses who testified in this case. You should decide whether you believe
3 what each person had to say, and how important that testimony was. In making that
4 decision I suggest that you ask yourself a few questions. Did the person impress you
5 as honest? Did he or she have any particular reason not to tell the truth? Did he or
6 she have a personal interest in the outcome of the case? Did the witness seem to have
7 a good memory? Did the witness have the opportunity and ability to observe
8 accurately the things he or she testified about? Did he or she appear to understand
9 the questions clearly and answer them directly? Did the witnesses' testimony differ
10 from the testimony of other witnesses? These are a few of the considerations that will
11 help you determine the accuracy of what each witness said.

Instruction No. 6A

1 You have received evidence that certain of the witnesses, including the defendant Daniel
2 Dove, have been previously convicted of a crime. You may consider prior conviction of a felony
3 in determining a witness' credibility as a witness, because the testimony of a witness may be
4 discredited or impeached by evidence showing that the witness has been convicted of a felony.
5 However, you should not conclude that because the defendant may have committed a crime in the
6 past, that he is more likely to have committed the offenses with which he is currently charged. Nor
7 should you conclude that any prior conviction shows general bad character or a likelihood that the
8 defendant would commit future crimes.

9 As I have instructed, the defendant is presumed innocent until proven guilty of the current
10 charges.

Instruction No. 7

1 There are two types of evidence which are generally presented during a
2 trial—direct evidence and circumstantial evidence. Direct evidence is the testimony
3 of a person who asserts or claims to have actual knowledge of a fact, such as an
4 eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances
5 indicating the existence of a fact. The law makes no distinction between the weight
6 or value to be given to either direct or circumstantial evidence. Nor is a greater
7 degree of certainty required of circumstantial evidence than of direct evidence.

8 While you should consider only the evidence in the case, you are permitted to
9 draw such reasonable inferences from the testimony and exhibits as you feel are
10 justified in the light of common experience. In other words, you may make
11 deductions and reach conclusions which reason and common sense lead you to draw
12 from the facts which have been established by the evidence in the case.

Instruction No. 8

1 The defendant is on trial only for the crimes charged in the Indictment and for
2 no other. You have heard evidence that the defendant engaged in using information
3 obtained from the Elite Torrents organization to send “pop-up” advertisements to
4 computer users. You may consider this evidence only for the limited purpose of
5 determining whether the government has proved beyond a reasonable doubt the
6 elements of the crimes charged, including the defendant’s intent or motive.

Instruction No. 8A

1 You have heard that the defendant gave a statement that the government contends
2 incriminated himself.

3 Whether this statement was voluntarily given and, if so, what weight to give it is
4 entirely up to you. In other words, these are questions of fact which are up to a jury to
5 decide.

6 In determining whether the statement was voluntary and what weight to give it, if
7 any, you should consider what we call “the totality of the circumstances.”

8 You may consider, for example, whether the statement was induced by any
9 promise or threat. You may also consider any other factor which your common sense tells
10 you is relevant to the issue of voluntariness.

Instruction No. 9

1 During the trial items were received into evidence as exhibits. Any or all of
2 these exhibits will be sent into the jury room if you request. Examine the exhibits
3 if you think it would help you in your deliberations.

Instruction No. 10

1 The defendant Daniel Dove is charged with two violations of federal law, each
2 of which is set forth in a separate part, or count, of the Indictment.

3 Count One charges the defendant with conspiracy to commit copyright
4 infringement.

5 Count Two charges the defendant with copyright infringement.

6 You must consider the evidence separately as to each count of the Indictment.

Instruction No. 11

1 The word “knowingly,” as used in these instructions, means that the act in
2 question was done voluntarily and intentionally, not by mistake or accident.

Instruction No. 12

1 The word “willfully” as used in the Indictment and these instructions means a
2 voluntary, intentional violation of the law or violation of a legal duty. An act or
3 failure to act is “willfully” done if done voluntarily and intentionally, and with
4 specific intent to do something the law forbids.

5 In determining whether the defendant acted willfully, you may consider
6 evidence of the defendant’s words, acts, or omissions, along with all the other
7 evidence in the case, including direct and circumstantial evidence.

8 Conduct is not “willful” if due to negligence, inadvertence, or mistake.
9 Moreover, evidence of reproduction or distribution of a copyrighted work, by itself,
10 shall not be sufficient to establish willful infringement.

Instruction No. 13

1 Count One charges the defendant Daniel Dove with conspiracy to commit
2 copyright infringement. Specifically, it charges that the defendant conspired with
3 other members of the Elite Torrents organization to willfully, and for the purpose of
4 private financial gain, infringe copyrights by reproducing and distributing, during a
5 180-day period, ten or more copies of copyrighted works having a total retail value
6 exceeding \$2,500.

Instruction No. 14

1 A conspiracy is an agreement or a mutual understanding between two or more
2 persons to violate the law by some joint or common plan or course of action. A
3 conspiracy is, in a very true sense, a partnership in crime.

4 One may become a member of a conspiracy without knowing all the details of
5 the unlawful scheme or the identities of all of the other alleged conspirators. If a
6 defendant understands the unlawful nature of a plan or scheme, and knowingly and
7 intentionally joins in that plan or scheme on one occasion, that is sufficient to convict
8 him for conspiracy, even though the defendant had not participated before, and even
9 though the defendant played only a minor part. The government need not prove that
10 the alleged conspirators entered into any formal or written agreement, nor that they
11 directly stated between themselves all the details of the scheme.

12 Similarly, the government need not prove that all of the details of the scheme
13 alleged in the Indictment were actually agreed upon or carried out, nor must it prove
14 that all of the persons alleged to have been members of the conspiracy were such, or
15 that the alleged conspirators actually succeeded in accomplishing their unlawful
16 objectives.

Instruction No. 15

1 To meet its burden of proof as to Count One, the government must prove the
2 following essential elements beyond a reasonable doubt:

3 First, that there was an agreement or mutual understanding between two or
4 more persons to commit copyright infringement, as described in the Indictment;

5 Second, that the defendant knew of the unlawful purpose of the agreement or
6 conspiracy and knowingly joined it; and

7 Third, that at least one member of the conspiracy committed an “overt act” in
8 furtherance of the conspiracy.

9 Unless the government proves all of these elements beyond a reasonable doubt,
10 you must acquit the defendant of this charge.

Instruction No. 16

1 The first element that the government must prove is that there was an
2 agreement or understanding between two or more persons to willfully, and for the
3 purpose of private financial gain, infringe copyrights by reproducing and distributing,
4 during a 180-day period, ten or more copies of copyrighted works having a total retail
5 value exceeding \$2,500.

6 As the conspiracy or agreement itself is the crime being charged in Count One,
7 the government need not prove that the conspirators actually succeeded in
8 accomplishing their alleged plan.

Instruction No. 17

1 The second element the government must prove is that the defendant
2 knowingly joined the conspiracy. To demonstrate this, the evidence must show that
3 the defendant knew the purpose of the agreement or conspiracy and deliberately
4 entered into the agreement intending, in some way, to accomplish the goal or purpose
5 by this common plan or joint action. If the evidence establishes beyond a reasonable
6 doubt that the defendant knowingly and deliberately entered into an agreement to
7 commit copyright infringement, the fact that the defendant did not join the agreement
8 at its beginning, did not know all of the details of the agreement, did not participate
9 in each act of the agreement, or did not play a major role in accomplishing the
10 unlawful goal is not important to your decision regarding membership in the
11 conspiracy.

12 Mere association with others and discussing common goals, mere similarity of
13 conduct between or among such persons, mere presence at the place where a crime
14 takes place or is discussed, or even knowledge about criminal conduct does not, of
15 itself, make someone a member of the conspiracy or a conspirator. A person who has
16 no knowledge of a conspiracy, but who happens to act in a way which advances some
17 purpose of a conspiracy does not thereby become a conspirator.

Instruction No. 18

1 The third element that the government must prove is that at least one member
2 of the conspiracy committed an "overt act" in furtherance of the conspiracy. The term
3 "overt act" means some type of outward, objective action performed by either the
4 defendant or one of the members of the agreement or conspiracy which evidences that
5 agreement. The government must prove that this overt act was committed knowingly,
6 during the existence or life of the conspiracy, and to further the goal of the conspiracy
7 or agreement.

8 Although you must unanimously agree that the same overt act was committed,
9 the government is not required to prove more than one of the overt acts charged. The
10 overt act may, but for the alleged illegal agreement, appear totally innocent and legal.

11 The overt acts alleged by the government are set forth in Paragraph 14 of the
12 Indictment.

Instruction No. 19

1 Evidence has been received in this case regarding co-conspirators of the
2 defendant that have done or said things during the existence or life of the alleged
3 conspiracy in order to further or advance its goal.

4 Such acts and statements of these other individuals may be considered by you
5 in determining whether or not the government has proven the charge of conspiracy
6 in Count One against the defendant.

7 However, since these acts may have been performed and these statements may
8 have been made outside the presence of the defendant and even done or said without
9 the defendant's knowledge, these acts or statements should be examined with
10 particular care by you before considering them against the defendant.

Instruction No. 20

1 Count Two charges the defendant Daniel Dove with copyright infringement.
2 Specifically, it charges that the defendant willfully, and for the purpose of private
3 financial gain, infringed copyrights by reproducing and distributing, during a 180-day
4 period, ten or more copies of copyrighted works having a total retail value exceeding
5 \$2,500.

6 To meet its burden of proof as to this count, the government must prove the
7 following essential elements beyond a reasonable doubt:

8 First, that one or more copyrights exist;

9 Second, that the defendant infringed the copyright of at least one copyrighted
10 work;

11 Third, that the defendant reproduced or distributed at least ten copies of one or
12 more of these copyrighted works, within a 180-day period;

13 Fourth, that the total retail value of the infringed copyrighted works exceeded
14 \$2,500;

15 Fifth, that the defendant infringed the copyrights willfully; and

16 Sixth, that the defendant infringed the copyrights for the purpose of private
17 financial gain.

18 Unless the government proves all of these elements beyond a reasonable doubt,
19 you must acquit the defendant of this charge.

Instruction No. 21

1 The first element that the government must prove is the existence of at least
2 one copyrighted work. A copyright exists from the moment an original work is put
3 in fixed form for the first time, for instance, from the moment it is written down or
4 recorded. The owner of the copyright for each work—usually the person or entity
5 that made it—has the exclusive right to reproduce and distribute that work, or to give
6 others permission to do those things.

7 The owner of a copyright is entitled to obtain a Certificate of Registration from
8 the United States Copyright Office for that copyrighted work. This certificate shows
9 that the Copyright Office has confirmed that the work is subject to copyright, and that
10 the legal and formal requirements for a copyright have been met.

11 A Certificate of Registration is sufficient evidence that the work is copyrighted,
12 unless it is outweighed by some other evidence presented in the case.

13 The absence of a Certificate of Registration does not mean that a work is not
14 copyrighted.

Instruction No. 22

1 The second element that the government must prove is that the defendant
2 infringed the copyright of at least one copyrighted work. Copyright infringement
3 occurs when someone other than the copyright owner copies or distributes the
4 copyrighted work without authorization. In Count Two, the government alleges that
5 the defendant infringed copyrights owned by motion picture and computer software
6 companies by reproducing and distributing numerous copies of copyrighted works for
7 profit.

8 The government does not need to show that the copies allegedly made or
9 distributed by a defendant are identical to the original works in all respects. It is
10 enough to show that the original works and the copies are at least substantially
11 similar.

12 You are further instructed that the government can prove infringement using
13 either direct or circumstantial evidence, or both.

Instruction No. 23

1 The fourth element that the government must prove is that the “total retail
2 value” of the infringed copyrighted works was more than \$2,500. The term “retail
3 value” refers to prices of legitimate, authorized goods for sale at the retail level at the
4 time of the infringement at issue.

Instruction No. 24

1 The sixth element that the government must prove is that the defendant
2 engaged in copyright infringement for the purpose of private financial gain. The
3 government, however, need not prove that a defendant actually received a profit from
4 the infringement. The government need only establish that a defendant acted with the
5 expectation of receiving something of value, which can include receiving other
6 copyrighted works.

Instruction No. 25

1 A person may violate the law even though he or she does not personally do
2 each and every act constituting the offense if that person “aided and abetted” the
3 commission of the offense. Before a defendant may be held responsible for aiding
4 and abetting others in the commission of a crime, the government must prove beyond
5 a reasonable doubt that the defendant knowingly and deliberately associated himself
6 in some way with the crime charged and participated in it with the intent to commit
7 the crime.

8 In order to be found guilty of aiding and abetting the commission of the crime
9 of criminal copyright infringement charged in Count Two, the government must
10 prove the following beyond a reasonable doubt:

11 First, that the defendant Daniel Dove knew that the willful copyright
12 infringement charged was to be committed or was being committed;

13 Second, that the defendant knowingly and willfully did some act for the
14 purpose of aiding the commission of the copyright infringement; and

15 Third, that the defendant acted with the intention of causing the copyright
16 infringement to be committed.

17 The government need not prove that the defendant Daniel Dove participated
18 at every stage of an illegal venture, only that he participated at some stage
19 accompanied by knowledge of the result and intent to bring about that result.

1 Before Defendant Daniel Dove may be found guilty as an aider or an abettor
2 to the crime of criminal copyright infringement, the government must also prove,
3 beyond a reasonable doubt, that some person or persons committed each of the
4 essential elements of copyright infringement as detailed for you in Instruction No. 20.

5 Merely being present at the scene of the crime or merely knowing that a crime
6 is being committed or is about to be committed is not sufficient conduct for the jury
7 to find that a defendant aided and abetted the commission of that crime.

8 The government must prove that the defendant knowingly and deliberately
9 associated himself with the crime in some way as a participant—someone who
10 wanted the crime to be committed—not as a mere spectator.

Instruction No. 25A

1 You may find that the defendant acted “knowingly” and “willfully” if you
2 conclude that he was “willfully blind” to what was obviously taking place. You may
3 find that the defendant was “willfully blind” if the evidence proves beyond a
4 reasonable doubt that he deliberately closed his eyes to what would have otherwise
5 been obvious to him. That is, that he had a conscious purpose to avoid enlightenment.

6 Stated another way, a defendant’s knowledge of a fact may be inferred from
7 willful blindness to the existence of a fact. Actual knowledge and deliberate or
8 conscious avoidance of knowledge are the same thing.

9 On the other hand, for you to conclude that the defendant was “willfully blind”
10 to the criminal nature of what was taking place, the evidence must show something
11 more than careless disregard or mistake. Therefore, if this is all the evidence shows,
12 you must find the defendant not guilty.

Instruction No. 26

1 Charts or summaries have been prepared by the government, have been
2 admitted into evidence, and have been shown to you during the trial for the purpose
3 of explaining facts that are allegedly contained in books, records, or other documents
4 which are also in evidence in the case. You may consider the charts and summaries
5 as you would any other evidence admitted during the trial and give them such weight
6 or importance, if any, as you feel they deserve.

Instruction No. 27

1 The Indictment charges that certain events or conduct occurred “on or about”
2 a specific date. The government does not have to prove that the events or conduct
3 occurred on the exact dates alleged. Rather, it is sufficient if they occurred on a date
4 reasonably near the date stated in the Indictment.

Instruction No. 28

1 It is your duty as jurors to talk with one another and to deliberate in the jury
2 room. You should try to reach an agreement if you can. Each of you must decide the
3 case for yourself, but only after consideration of the evidence with the other members
4 of the jury. While this is going on, do not hesitate to re-examine your own opinions
5 and change your mind if you are convinced that you were wrong. But do not give
6 up your honest beliefs solely because the others think differently, or merely to get the
7 case over with. In a very real way you are judges, judges of the facts. Your only
8 interest is to determine whether the government has proved the defendant guilty
9 beyond a reasonable doubt.

10 When you go to the jury room to begin considering the evidence in this case,
11 you should first select one of the members of the jury to act as your foreperson. This
12 person will help to guide your discussions in the jury room. Once you are there, if
13 you need to communicate with me, the foreperson will send a written message to me.

14 However, don't ever tell me how you stand as to your verdict, numerically or
15 otherwise. As I mentioned before, the decision you reach must be unanimous, you
16 must all agree.

17 I will give you a verdict form to take with you to the jury room. I will also
18 send to the jury room with you a copy of the Indictment. And again, I remind you
19 that the Indictment is not evidence of anything. It is simply a charge. And when

- 1 you have reached a decision, and the verdict form is completed, you should have the
- 2 foreperson sign the verdict form at the end and tell the Bailiff you are ready to return
- 3 to the courtroom.