

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 1:07CR195
	)	
Plaintiff,	)	
	)	Judge BOYKO
v.	)	
	)	
SCOTT D. HARVANEK,	)	
	)	<u>PLEA AGREEMENT</u>
Defendant.	)	

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney, and the Defendant, SCOTT D. HARVANEK (hereinafter "Defendant"), agree as follows:



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**MAXIMUM PENALTIES AND OTHER  
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or the Court, with the consent of the United States, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, and the right against compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent Defendant. Defendant understands that, if Defendant pleads guilty and that plea is accepted by the Court, there will not be a further trial of any kind, so that by pleading guilty Defendant waives the right to a trial.

2. **Maximum Sentence.** The statutory maximum sentence for the charge in the Information to which Defendant agrees to plead guilty is as follows:

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<u>Statute</u>	<u>Maximum sentence per count</u>
18 U.S.C. §§ 371	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
18 U.S.C. § 2319(d)(2); Title 17 U.S.C. § 506(a)(1)(C)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years

3. **Alternative Maximum Fine.** The maximum fine that the Court may impose is the greater of the statutory maximum stated above or twice the gross pecuniary loss or gain from the offense of conviction.

4. **Sentencing Guidelines.** Defendant understands that federal sentencing law requires the Court to impose a sentence which is reasonable and that the Court must consider the advisory U.S. Sentencing Guidelines in effect at the time of sentencing in determining a reasonable sentence.

5. **Special Assessment.** Defendant will be required to pay a mandatory special assessment of \$100 per count, due immediately upon sentencing.



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6. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

7. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

8. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

**ELEMENTS OF THE OFFENSE**

9. The elements of the offense to which Defendant will plead guilty are:

<b>18 U.S.C. § 371: Conspiracy to Commit Criminal Copyright Infringement</b>	
<b>One:</b>	Two or more persons conspired, or agreed, to commit the crime of criminal copyright infringement in violation of 17 U.S.C. § 506(a)(1)(A) and 18 U.S.C. § 2319(b)(1) as alleged in the information;
<b>Two:</b>	The Defendant knowingly and voluntarily joined the conspiracy; and
<b>Three:</b>	A member of the conspiracy did one of the overt acts described in the information which occurred within the five year statute of limitations for conspiracy for the purpose of advancing or helping the conspiracy.



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<b>17 U.S.C. § 506(a)(1)(C); 18 U.S.C. § 2319(d)(2): Criminal Copyright Infringement</b>	
<b>One:</b>	A copyright exists for the infringed work;
<b>Two:</b>	The infringed work was being prepared for commercial distribution;
<b>Three:</b>	The Defendant knew, or should have known, that the work was intended for commercial distribution; and
<b>Four:</b>	The Defendant distributed the work by making it available on a computer network accessible to members of the public.

**AGREEMENTS AND STIPULATIONS OF THE PARTIES**

**GUILTY PLEA / OTHER CHARGES**

10. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to a two-count Information in this case charging a violation of Title 18, U.S.C., Sections 371, 2319; and Title 17, United States Code, Section 506.

**FACTUAL BASIS**

The parties stipulate to the following facts, which satisfy all of the elements of the offense to which Defendant agrees to plead guilty:

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11. With respect to count 1, the Defendant agrees that if this matter were to proceed to trial the United States could prove beyond a reasonable doubt all of the facts as alleged in the Information as well as the following facts:

The Defendant was a member of Elite Torrents ("ET"), an online piracy organization using a BitTorrent based peer-to-peer network to facilitate infringement by its members. The ET organization placed special importance on reproducing or distributing pirated content either before or immediately following its public release. For example, many motion pictures were transferred over the ET network within days of their theatrical release and, on some occasions, before such release.

While a member of the ET network, the Defendant served as an Uploader. As an Uploader, Defendant would obtain access to pirated works including movies, software programs, computer games, and music and would upload such works onto the ET network for others to access, reproduce and distribute. Defendant and other conspirators willfully infringe the copyright of a copyrighted work for purposes of commercial advantage and private financial gain, by reproducing and distributing during a 180-day period ten (10) or more copies of one or more copyrighted works, with a total retail value of more than \$2,500. Defendant participated in transferring these works without authorization from the copyright holder and transferred such works knowing it was unlawful to do so.

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Specifically, ET used a computer server known as a tracker that maintained a database of each ET members uploads and downloads. Computer logs generated from the tracker would show that for any six month period between September 2004 and May 25, 2005, Defendant participated in transferring to and from the ET network thousands of pirated copyrighted works including movies, software programs, computer games and music with a total retail value in excess of \$10,000. Logs from the tracker database would show that from his home in the Northern District of Ohio, Defendant personally uploaded onto the ET network the following copyrighted movies, among other things, which were each downloaded by other members over a thousand times:

- a. On January 5, 2005, Defendant uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Being Julia*";
- b. On February 15, 2005, Defendant uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Are We There Yet*";
- c. On March 6, 2005, Defendant uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Racing Stripes*"; and,
- d. On May 6, 2005, Defendant uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Robots*."

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In exchange for making copyrighted works available for others on the ET network to download, the Defendant expected to receive and did receive pirated copies of copyrighted works for his own personal use. Computer logs generated from the ET tracker would show that from his home in the Northern District of Ohio, the Defendant downloaded over 100 pirated copies of copyrighted works including movies, software programs, computer games and music.

With respect to count 2:

The government would prove beyond a reasonable doubt that on March 6, 2005, in the Northern District of Ohio, the Defendant willfully infringed the copyright of a copyrighted work by the distribution of a work being prepared for commercial distribution, by making the motion picture "*The Jacket*" available on ET, a computer network accessible to members of the public, when he knew and should have known that the work was intended for commercial distribution.

Specifically, computer transfer logs from the tracker database would show that on March 6, 2005, at approximately 12:48 AM, Defendant uploaded the pirated copyrighted movie "*The Jacket*" onto the ET network for others to download within two days of its theatrical release on March 4, 2005. By uploading "*The Jacket*" onto the ET network Defendant made it available to over 133,000 ET members to download. Transfer logs



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from the tracker database show that over 3,200 ET members did download a copy of "*The Jucket*".

Defendant understands that he will have to swear under oath to the accuracy of this statement, and if he should be called upon to testify about this matter in the future, any intentional material inconsistencies in his testimony may subject him to additional penalties of perjury or false swearing which may be enforced by the United States under this agreement.

**WAIVER OF APPEAL AND POST-CONVICTION ATTACK**

12. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. The Defendant expressly waives those rights, except as reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any sentence to the extent it exceeds the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category found applicable by the Court. Nothing in this paragraph shall act as a bar to the Defendant perfecting any legal remedies Defendant may otherwise have on

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appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

**RESTITUTION**

13. Defendant understands that the Court may order restitution.

**SENTENCING STIPULATIONS AND AGREEMENTS**

14. **Recommendation to Use the Sentencing Guidelines Computation.** The parties agree to recommend that the Court impose a sentence within the range determined pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below. The government will not request a sentence higher than the advisory Sentencing Guidelines range and the Defendant will not request a sentence lower than the advisory Sentencing Guidelines range. Nothing in this Agreement precludes or in any way limits the right of the Defendant or the United States to argue that the statutory factors of 18 U.S.C. § 3553(a) merit a lower sentence or a higher sentence within the stipulated advisory Guideline calculation range recommended by both parties as set forth in this Agreement.

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15. **Stipulated Guideline Computation.** The parties agree that the following calculation represents the correct computation of the applicable offense level in this case. The parties agree that no other Sentencing Guideline adjustments apply.

Guideline §		
Base offense level	8	§2B5.3
Loss amount > \$10,000	4	§2B1.1(b)(1)(C)
Uploading	2	§2B5.3(b)(2)
Acceptance of Responsibility (See below)	-2	§3E1.1
<b>Subtotal</b>	12	

16. **Acceptance of Responsibility.** The United States has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. Defendant understands, however, that the Court will determine acceptance of responsibility based on Defendant's overall conduct as of the date of sentencing.

17. **Criminal History Category.** The parties have no agreement as to the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.



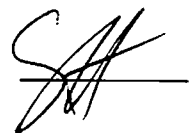
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**OTHER PROVISIONS**

18. **Agreement Silent as to Matters Not Expressly Addressed.** This agreement is silent as to all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

19. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the applicable sentencing range under the advisory Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside of the Guidelines, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty plea, Defendant will not have the right to withdraw such a plea if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

20. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty plea or conviction in this case are at any time rejected, vacated, or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that would otherwise be

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prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

21. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio (USAO). It does not bind any other United States Attorney, any other federal agency, or any state or local government.

22. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following statements: I acknowledge receiving the assistance of counsel from attorney Edward J. Vargas, Esq., concerning this plea agreement. I have fully discussed with my attorney all of my Constitutional trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, the Sentencing Guidelines, and the potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defense that I may have to those charges, and all personal and financial circumstances in possible mitigation of sentence. My attorney has done everything I have asked my attorney to do and I am satisfied with the legal services

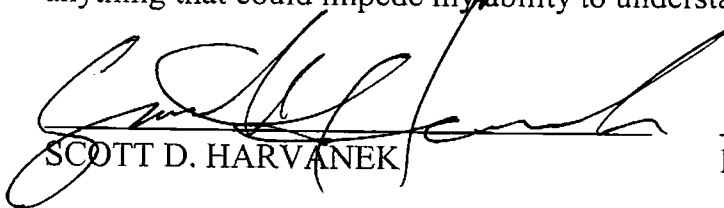
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and advice provided to me by my attorney and believe that my attorney has given me competent and effective representation.

23. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement constitutes the entire agreement between Defendant and the United States and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has, directly or indirectly, threatened or coerced Defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

**SIGNATURES**

**Defendant:** I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I have read, understood, and approved the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this agreement.

  
SCOTT D. HARVANEK

03/01/2007  
Date

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**Defense Counsel:** I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.



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3/01/07  
Date

**United States Attorney's Office:** I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.



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3/19/07  
Date

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**APPROVED:**

Christopher A. Boyle

4/30/07

Date

UNITED STATES DISTRICT JUDGE