

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 06-40 Erie
)
 SCOTT R. McCAUSLAND)

INFORMATION MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christian A. Trabold, Assistant United States Attorney for said District, and submits this Information Memorandum to the Court:

I. THE INFORMATION

A two-count Information was filed against the above-named defendant for alleged violations of federal law:

<u>COUNT</u>	<u>OFFENSE/DATE</u>	<u>TITLE/SECTION</u>
1	Conspiracy to commit copyright infringement United States In and around September 2004 through in and around May 2005	18 U.S.C. §371
2	Copyright infringement On or about May 18, 2005	17 U.S.C. §506(a)(1)(C) & 18 U.S.C. §2319(d)(2)

II. ELEMENTS OF THE OFFENSES

A. As to Count 1:

In order for the crime of conspiracy to commit copyright infringement, in violation of 18 U.S.C. §371, to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That two or more persons knowingly and willfully agreed or conspired, either expressly or tacitly, to commit the offenses against the laws of the United States described in the Information, that is, copyright infringement, in violation of Title 18, United States Code, Section 2319(b)(1) and Title 17, United States Code, Section 506(a)(1).

United States v. American Investors, 879 F.2d 1087 (3d Cir. 1989); United States v. Kapp, 781 F.2d 1008 (3d Cir. 1986), cert. denied, 479 U.S. 821 (1986); United States v. Flaherty, 668 F.2d 566 (1st Cir. 1981); United States v. Capeda, 768 F.2d 1515 (2d Cir. 1985); United States v. Sanzo, 673 F.2d 64 (2d Cir. 1982); cert. denied, 459 U.S. 858 (1982); United States v. Pintar, 630 F.2d 1270 (8th Cir. 1980); 1 L. Sand, J. Siffert, W. Loughlin, S. Reiss, Modern Federal Jury Instructions, ¶19.01 (1989).

2. That it was part of the agreement or conspiracy to carry out or commit the offenses described in the Information as objectives of the conspiracy.

United States v. American Investors, 879 F.2d 1087 (3d Cir. 1989); United States v. Rankin, 870 F.2d 109 (3d Cir. 1989); United States v. Kapp, 781 F.2d 1008 (3d Cir. 1986), cert. denied, 479 U.S. 821 (1986); United States v. Inadi, 748 F.2d 812 (3d Cir. 1984); United States v. Wander, 601 F.2d 1251 (3d Cir. 1984).

3. That the defendant willfully became a member of the conspiracy.

United States v. Gomberg, 715 F.2d 843 (3d Cir. 1983), cert. denied, 465 U.S. 1078 (1983); United States v. Graves, 669 F.2d 964 (5th Cir. 1982); United States v. McPartlin, 595 F.2d 1321 (7th Cir. 1979), cert. denied, 444 U.S. 833 (1979); 1 L. Sand, J. Siffert, W. Loughlin, S. Reiss, Modern Federal Jury Instructions, ¶19.01 (1989).

4. That one of the co-conspirators thereafter knowingly committed at least one overt act in furtherance of the conspiracy.

Braverman v. United States, 317 U.S. 49 (1942); United States v. Adamo, 534 F.2d 31 (3d Cir. 1976); United States v. Graves, 669 F.2d 964 (5th Cir. 1982); United States v. Sacco, 436 F.2d 780 (2d Cir. 1971), cert. denied, 404 U.S. 834 (1971); 1 L. Sand, J. Siffert, W. Loughlin, S. Reiss, Modern Federal Jury Instructions, ¶19.01 (1989).

5. That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy.

Grunewald v. United States, 353 U.S. 391 (1957); Braverman v. United States, 317 U.S. 49 (1942); United States v. Graves, 669 F.2d 964 (5th Cir. 1982); United States v. Provanzano, 615 F.2d 37 (2d Cir. 1980), cert. denied, 446 U.S. 953 (1980); 1 L. Sand, J. Siffert, W. Loughlin, S. Reiss, Modern Federal Jury Instructions, ¶19.01 (1989).

B. As to Count 2:

In order for the crime of copyright infringement, in violation of 17 U.S.C. §506(a)(1)(C) and 18 U.S.C. §2319(d)(2), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. A copyright exists for the infringed work.
2. The infringed work was being prepared for commercial distribution.
3. The defendant knew, or should have known, that the work was intended for commercial distribution
4. The defendant distributed the work by making it available on a computer network accessible to members of the public.
5. The defendant acted willfully.

17 U.S.C. §506(a)(1)(C).

III. PENALTIES

A. As to Count 1: conspiracy to commit copyright infringement (18 U.S.C. §371):

1. Individuals - The maximum penalties for individuals are:

(a) imprisonment of not more than five (5) years (18 U.S.C. §371).

(b) a fine not more than the greater of:

(1) \$250,000 (18 U.S.C. §3571(b)(3));

or

(2) an alternative fine in an amount not more than the greater of twice the gross pecuniary gain to any person or twice the pecuniary loss to any person other than the defendant, unless the imposition of this alternative fine would unduly complicate or prolong the sentencing process (18 U.S.C. § 3571(d)).

(c) a term of supervised release of not more than three (3) years (18 U.S.C. §3583).

(d) any or all of the above.

B. As to Count 2: copyright infringement (17 U.S.C. §506(a) (1) (C) and 18 U.S.C. §2319(d) (2)):

1. Imprisonment for not more than five (5) years (18 U.S.C. §2319(d) (2)).

2. A fine of not more than \$250,000 (18 U.S.C. §3571(b) (3)).

3. A term of supervised release of not more than three (3) years (18 U.S.C. 3583).

IV. MANDATORY SPECIAL ASSESSMENT

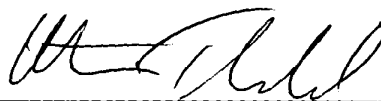
A mandatory special assessment of \$100.00 must be imposed at each count upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013.

V. RESTITUTION

Restitution may be required in this case as to Count Two, together with any authorized penalty, as part of the defendant's sentence pursuant to 18 U.S.C. §§3663, 3663A, and 3664.

Respectfully submitted,

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