

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA

VS: CASE NO: 2:06CR00017

GRANT T. STANLEY

DEFENDANT

DEFENDANT GRANT STANLEY'S SENTENCING MEMORANDUM

Comes now the Defendant, Grant T. Stanley [hereinafter "Grant Stanley"], by counsel, pursuant to 18 U. S. C. §3553 (a) and the Court's April 21, 2005 Order regarding Sentencing Procedures, and respectfully represents as follows:

Grant Stanley pled guilty in this Court on July 19, 2006, to a 2 count information of conspiracy to commit copyright infringement in violation of 18 U. S. C. §371 and to copyright infringement in violation of 18 U. S. C. §2319(d)(2) and 17 U. S. C. §506 (a)(1)(C). The United States and the defense stipulated by Plea Agreement to the applicable guideline offense level which has been incorporated into the Pre-Sentence Investigation Report. It must be acknowledged by the defense that the Plea Agreement and stipulated offense level offered by the Department of Justice in this case were fair, including the absence of any enhancement for role in the offense (as reflected in Paragraph 48 –Impact of the Plea Agreement of the Pre-Sentence Investigation Report). Each party reserved the right to present argument at sentencing as to the consideration of the factors set forth in 18 U. S. C. §3553 and as to the appropriate sentence

CONSIDERATION OF THE FACTORS PURSUANT
TO 18 U. S. C. §3553(a)

1. Nature and Circumstances of the Offense. This matter presents a case of first impression for this counsel, and perhaps for other parties as well. Paragraphs 5, 6 and 7 of the Pre-Sentence Investigation Report (Offense Conduct) provide an overview of the offense. To

simplify, Grant Stanley was a member of Elite Torrents – a web based “peer-to-peer” file-sharing community whereby its thousands of members and users file shared movies, music, games and other software. Many of these media works were copyrighted materials and the unauthorized use and transfer of these works through file-sharing constituted copyright infringement.

Admittedly, Grant Stanley was a member of the Elite Torrents file-sharing network and held administrative positions as a “Moderator” and “Uploader” which facilitated the availability and transfer of infringed works to other members over the Elite Torrents network. It must be noted, however, that like most file-sharing networks, Elite Torrents was not a fee-based service. No monetary compensation was paid to Grant Stanley for his involvement in Elite Torrents and he was not paid for any “up-loading” or sharing of file materials. However, from a pure legal perspective, his conduct was “for the purpose of commercial advantage or private financial gain” pursuant to the information and statutory language, as “commercial advantage or private financial gain” is defined as “the receipt, or expectation of receipt, of anything of value including other protected works” in Application Note 1 of U.S.S.G. §2B5.3 (Copyright Infringement). Clearly, Grant Stanley received access to “other protected works” from other members and users of Elite Torrents by the very nature of the file-sharing network, and this satisfies the statutory element. However, the distinction must be drawn that Grant Stanley received no personal financial remuneration for his activity. As a matter of fact, counsel is confident that Grant Stanley, at this stage of his prosecution, would declare that the minimal “reward” of accessing other media works though the network is quite insufficient to compensate for the legal position he now finds himself.

In summation, community file-sharing of copyrighted works is absolutely pervasive in the United States and all other countries. It is undeniably part of our entertainment culture, and has been for years. Even the rather benign copying of a market purchased CD or tape between

individuals is technically a “bootleg” pirated work, which criminally infringes the copyright. Furthermore, there truly has been a sense of complacency based on the absence of any real consequences for the millions of individuals who copy and/or share copyrighted entertainment works. While these perspectives offer no defense to the copyright violation, hopefully it offers insight into the current proliferation of copyright infringement accomplished through advanced technological expertise and gratuitous sharing – two concepts which are normally considered culturally positive. It may also help explain how a responsible young man such as Grant Stanley finds himself in the Federal criminal justice system as a convicted felon facing potential incarceration and other penalties.

2. The level of honesty, acceptance of responsibility, co-operation and compliance.

Clearly, the Government and the Probation Office’s Pre-Sentence Investigation Report have found that Grant Stanley should receive an acceptance of responsibility reduction; limited to 2 points based on the low offense level. However, this may not accurately reflect Grant Stanley’s extremely high level of honesty, co-operation and compliance in his own prosecution, which include the following:

(1) He fully admitted his conduct; accepted full responsibility; was very co-operative; and provided factual and technical information to Federal authorities regarding his offense at and during (a) the initial execution of the search warrant upon his residence in Wise, Virginia by FBI Special Agents Timothy Burke and Doug Fender on May 25, 2005 and (b) his video teleconference proffer conducted by the Computer Crimes Division of the Department of Justice at the Abingdon U. S. Attorney’s Office on July 21, 2005. [This representation is made by counsel with the agreement of Andrea M. Sharrin, Senior Counsel, U. S. Department of Justice; provided

however, it was also agreed that this representation was not intended to be the basis for a 5K1.1 Substantial Assistance Motion or Reduction.]

(2) He voluntarily consented to waive Indictment and to plead to an Information which spared the Government the substantial inconvenience of Grand Jury proceedings and Indictment, especially since the primary prosecution venue is in California and the investigating Federal agency is in Washington, D. C.;

(3) He voluntarily consented to the forfeiture of all of his personal property seized in the FBI search, including computers, monitors, printers, keyboards, and related items; sparing the Government the necessity of instituting formal forfeiture proceedings; and

(4) He has complied with all requests of the Court, the U. S. Attorney's Office, the Department of Justice, and the Probation Office, and has already personally paid his mandatory assessment fee.

Grant Stanley's level of honesty, acceptance of responsibility, co-operation and compliance should be considered by this Court as a factor for variance or alternative sentence below the applicable guideline range.

3. The history and characteristics of the Defendant. Grant Stanley is currently 23 years old, and was only 20 years old at the time of the offense. He has no prior juvenile or adult criminal history. He is married and has been employed for over 2 years by Crutchfield, Inc., in Wise, Virginia as a member of the technical support staff. Attached hereto as Exhibit A is a September 8, 2006, letter from James N. Mullins, his immediate supervisor at Crutchfield, which details Grant Stanley's excellent work ethic and history, and indicates that the supervisor certainly desires to continue Grant Stanley's employment if possible. It should further be noted that Grant Stanley has continuously sought and maintained employment, working as a technician at Sykes

Enterprises in Wise, Virginia in 2002 to 2003 and at Payless Super Market in Coeburn, Virginia and Video World in Wise, Virginia from 1999 to 2002; being jobs he began when he was 16 years old.

Likewise, Grant Stanley is well-known and has an excellent reputation within the Wise County community. Attached hereto as Exhibits B, C and D respectively are the September 16, 2006 letter from Town of Wise Chief of Police Tony Bates; the July 26, 2006 letter from Town of Pound Chief of Police Jeff Rose; and the August 2, 2006 letter from Thompson and Litton President Ronald G. Helton: all of which provide very positive commentary from community leaders who have all known Grant Stanley his entire life.

Finally, and somewhat surprising to this counsel, Grant Stanley admitted to his Probation Officer that he has been a casual user of alcohol and marijuana, and had experimentally tried cocaine once in 2002. In reality, this is conduct that would have most likely never been discovered by the Probation Office or law enforcement other than by Grant Stanley's own voluntary disclosure. Again, his level of personal honesty is highly commendable.

This analysis of Grant Stanley's characteristics and history shows that he is an extremely honest, industrious, dependable and respectable young man, which is a rather uncommon presentation for a defendant in the Federal criminal justice system. It appears that his inherent curiosity, especially for technological and scientific adventures, may be the one cause for deviation from an otherwise exemplary life. It is a curiosity which I am sure has been tempered appropriately at this juncture.

4. The need for the sentence imposed to reflect the seriousness of the offense; to promote respect for the law; to provide just punishment for the offense; and to afford adequate deterrence to criminal conduct. In an individual such as Grant Stanley, all of these sentencing goals have

already been satisfied by the investigation, prosecution and plea. The need for the actual sentence itself to act as further or more severe punishment and deterrence is greatly diminished under the defendant's circumstances and the unique nature of this copyright offense; a factor the Court should consider for variance or alternative sentence below the applicable guideline range.

5. The need for the sentence to protect the public from further crimes of the defendant.

This factor has almost no application in this case as the sentence of a defendant such as Grant Stanley does not need to be enhanced in any way "to protect the public from further crimes"; conversely, it is a factor which should be considered for variance or alternative sentence below the applicable guideline range.

6. The need for the sentence to provide the defendant with needed educational or vocation training, medical care or other correctional treatment. Grant Stanley has no mental or physical disability, or any other specialized needs. An important point for this analysis is that Grant Stanley already has specialized technological skills and training and is gainfully employed utilizing those skills. In his case, the sentence would better serve the goals of 18 U. S. C. §3553(a) if it permitted him to maintain continuous employment utilizing those skills; a factor that should be considered for variance or alternative sentence below the applicable guideline range.

7. The kinds of sentences available and the sentencing range. Grant Stanley's sentencing guidelines place him in Zone C classification, which by its very nature is reserved for lower level defendants with alternative sentencing potential. This counsel always found Zone C classification somewhat of an anomaly during the prior Dark Ages of mandatory guidelines. While Zone C clearly placed a defendant in a favorable sentencing zone, it still imposed a "mandatory minimum" of at least one-half of the minimum term of imprisonment pursuant to U.S.S.G. §5C1.1(d)(2). Oddly, there simply was no "safety valve" available to avoid this "mandatory minimum" even

though such “safety valves” were available to other more serious offenses, such as drug offenders under U.S.S.G. §5C1.2.

However, in the post-Booker Renaissance, the Court should be free to re-examine the goals of Zone C classification and to consider the above-referenced anomaly which may not have been adequately addressed or taken into consideration by the guidelines. First, the goals of Zone C appear to provide alternative sentencing for low-level, low risk defendants and to encourage integration as a productive member of society, including the acquisition and maintenance of gainful employment. Both of these goals can certainly be accomplished by a sentence which does not automatically impose a period of institutional incarceration, and this would clearly be applicable to Grant Stanley’s situation. Second, the “mandatory minimum” aspect of Zone C classification can be mitigated as this imposition seems to circumvent the very goals of Zone C classification. Furthermore, the denial of any “safety valve” to avoid imposition of the “mandatory minimum” in Zone C, arguably being the more deserving of defendants, effects an inequity not adequately contemplated by the guidelines. Accordingly, the Court should consider these factors as a basis for variance or alternative sentence below the applicable guideline range.

8. The need for the sentence to be sufficient, but not greater than necessary, to satisfy 18 U. S. C. §3553(a)(2). The mandate of 18 U. S. C. §3553(a) is that the sentence be sufficient, but not greater than necessary. The question must be posed whether it is “necessary” to incarcerate Grant Stanley, which would also terminate his employment at a skilled position in a growing, successful company in which he performs admirably and stands to be promoted (even with his conviction). Defense counsel proffers that it is simply not necessary for Grant Stanley to receive a sentence of institutional incarceration under the facts of his case or to achieve the statutory sentencing goals.

Admittedly, his guideline range, standing alone, includes a period of incarceration. But other than that fact, there is no good or valid reason to impose such a sanction on this young man. It serves no purpose that has not already been accomplished. Instead, the Court has hopefully been provided valid reasons not to impose a sanction of incarceration, and has numerous options in this case to fashion an alternative sentence that is fair, just, reasonable, appropriate and “not greater than necessary.”

GRANT T. STANLEY
BY COUNSEL

STURGILL & KENNEDY
ATTORNEYS AT LAW
944 NORTON ROAD
P. O. BOX 3458
WISE, VIRGINIA 24293
TELEPHONE NO: (276) 328-8600
FAX NO: (276) 328-3903

BY: /s/ RICHARD D. KENNEDY
VIRGINIA STATE BAR #32883
COUNSEL FOR DEFENDANT

CERTIFICATE

I, Richard D. Kennedy, do hereby certify that on October _____, 2006, I electronically filed the foregoing Defendant Grant Stanley’s Sentencing Memorandum with the Clerk of the Court using the CM/ECF system which will send notification of the filing to Randy Ramseyer, Assistant U. S. Attorney and the U. S. Probation Office. I have also provided a copy by U. S. Postal Service and Telefax to Non-Participant Andrea Sharrin, Senior Counsel, Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, Suite 600, Washington, D. C. 20530.

/s/ RICHARD D. KENNEDY
COUNSEL