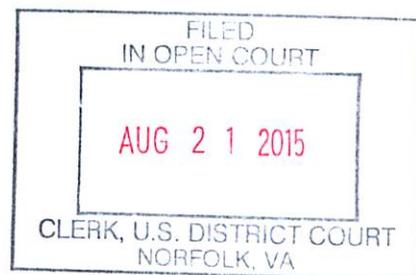


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



UNITED STATES OF AMERICA)
)
)
 v.) CRIMINAL NO. 2:15cr95
)
)
 ROCKY P. OUPRASITH)

STATEMENT OF FACTS

If this matter had gone to trial, the United States would have proven the charge contained in count one of the criminal information beyond a reasonable doubt, by proof of the following facts, among others:

At all times pertinent to the criminal information, ROCKY P. OUPRASITH created and operated the music website RockDizMusic.com. On his LinkedIn profile page, OUPRASITH identified himself as the owner of RockDizMusic.com. In conjunction with his website, OUPRASITH also utilized websites located at RockDizFile.com and SfShare.se, which hosted hyperlinks to content being offered for streaming or download on RockDizMusic.com. After operating these websites for some time, OUPRASITH conducted business through the entity, RPO Productions, LLC, which he incorporated in North Carolina on October 9, 2013.

From in or about May 2011, the exact date being unknown, through October 15, 2014, OUPRASITH operated RockDizMusic.com as a site where Internet users could find and download infringing digital copies of popular, copyrighted songs and albums for free. OUPRASITH willfully and illegally reproduced and distributed infringing copies of such content in the following manner. First, OUPRASITH sought out and found digital copies of copyrighted songs and albums online. Second, OUPRASITH encouraged and solicited others, referred to as "affiliates" or as registered or premium account users, to seek and to upload digital copies of

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copyrighted songs and albums to RockDizFile.com. To encourage such activity, OUPRASITH agreed to pay these affiliates based upon the number of times copies of the affiliates' songs and albums were downloaded from his website. Third, OUPRASITH processed the content that he personally obtained and/or received from others by readying the digital files for use on his websites by using certain naming conventions, by sorting the content by artist and genre, and by identifying the publisher of such content as RockDizMusic.com. Fourth, after processing the content files, OUPRASITH made them available for reproduction and download via hyperlinks which he posted on RockDizMusic.com. Fifth, once website users clicked on these hyperlinks, OUPRASITH designed his website and servers to reproduce and distribute infringing copies of the copyrighted music and albums to such users' computers, all without permission from copyright owners holding the exclusive rights to reproduce and distribute the songs and albums in question.

For example, users visiting RockDizMusic.com found a website organized by OUPRASITH which offered users the ability to download an extensive selection of thousands of single songs, music videos, hundreds of albums, mixtapes, oldies, and the like. RockDizMusic.com included, for example, listings for "Latest Tracks," "Albums," and "Recent Mixtapes," which contained links to major label artists performing, for example, current pop, hip-hop, and rhythm and blues hits. After identifying a song to download on RockDizMusic.com, a user then clicked upon one or more links which re-directed the user to RockDizFile.com or SfShare.se. At these sites, the user again was directed to click upon a link for the desired song, whereupon it began downloading to the user's computer for free.

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To operate these websites, OUPRASITH rented and used computer servers in the United States and abroad. OUPRASITH hosted the website RockDizMusic.com on servers originally located in France and later in Canada. One of OUPRASITH's linking websites, at

RockDizFile.com, operated from a computer server in Illinois furnished by the webhosting provider, GigeNET. A second linking website used by OUPRASITH, at SfShare.se, was hosted from a computer server in Russia. Finally, OUPRASITH utilized cyber lockers, or online data hosting services in the Netherlands and France, to host infringing copies of copyrighted music content which were ultimately reproduced and downloaded to users' computers.

OUPRASITH actively sought to profit from the operation of these websites. To generate revenues to pay for the activities and rentals described above, OUPRASITH did several things. First, he sold premium subscriptions to users, at a cost of up to \$90.00 per year, which offered access to faster download speeds and other premium features on his websites. Second, he entered into agreements with at least nine online advertising firms, which paid OUPRASITH for placing advertisements for major retailers and service providers on his websites. Third, OUPRASITH sought to increase traffic to his websites and thereby generate increased advertising revenue, by actively promoting RockDizMusic on various social networking websites and, as described above, by identifying music content reproduced and distributed to others as having originated from RockDizMusic.com.

These efforts resulted in substantial traffic and visits to OUPRASITH's websites and his receipt of considerable revenue. For example, in statistics compiled by OUPRASITH for RockDizMusic for the month of January 2014, he reported 1,652,253 site visits, 937,116 unique site visitors, and 7,498,998 page views. Similarly, in Skype chat messages recovered from a laptop seized from OUPRASITH's house pursuant to a search warrant, OUPRASITH stated on April 15, 2014 that he "probably made like [\$75,000 last year] and then spent [\$66,000.00] to run [his] business." Later, in the same conversation, OUPRASITH revised these figures, stating that he "made 80k last year [and] payout 60k." To make payments and receive revenues, OUPRASITH used accounts with PayPal.

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According to the Recording Industry Association of America¹ (RIAA), due to the activities noted above, the website RockDizFile.com emerged, during 2013, as the second largest online file sharing site specializing in the reproduction and distribution of infringing copies of copyrighted music in the United States. This activity, in turn, attracted the attention of copyright holders, their representatives, and law enforcement. During 2013, for example, numerous copyright holders and their representatives (including the RIAA and the International Federation of the Phonographic Industry (IFPI)), directly and indirectly² sent emails to OUPRASITH complaining that RockDizFile.com contained links to infringing copies of copyrighted songs and albums owned by others. These emails, sent pursuant to the notice and takedown procedures specified in the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 512, typically notified OUPRASITH that his website/server hosted unauthorized copies of sound recordings for download and requested that he immediately remove the infringing files from his system and/or disable access to such files. OUPRASITH received hundreds of such emails during 2013 and 2014. In response, he either ignored the emails sent directly to him and/or notified GigeNET and/or the complaining copyright holders and representatives he had removed the files in question.

In fact, as the repeated, complaining emails and further HSI investigation later revealed, OUPRASITH sometimes pretended to comply with the provisions of the DMCA by temporarily removing links to the infringing content (for example, on RockDizFile.com), but soon thereafter posted new and different links to the very same infringing files. For example, on October 27,

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¹ The RIAA is a trade organization that supports and promotes major music companies, including record labels and distributors, engaged in recording, producing, and selling music in the United States. As part of its mission, the RIAA investigates the illegal copying and distribution of copyrighted works, including songs and albums, for its members.

² Many complainants sent email complaints to GigeNET.com, the website hosting provider for RockDizFile.com, which forwarded the complaints to its customer, OUPRASITH.

2013, an HSI Special Agent visited RockDizMusic.com seeking to download songs and albums and selected links which re-directed him to RockDizFile.com. From the site, the HSI agent selected links and downloaded, to a computer in Norfolk in the Eastern District of Virginia, infringing copies of the copyrighted works contained on Kelly Clarkson's album "Wrapped in Red," Linkin Park's album "Recharged," and The Wanted's songs "Glow in the Dark" and "Summer Alive." By using network analysis software, the agent determined the downloaded files came from a computer server in the Netherlands. According to the RIAA, copies of these albums and songs were distributed and reproduced online, without the permission of the copyright holders.

After these downloads, on October 27, 2013, the RIAA sent a takedown notice to RockDizFile.com, via the website's email account, inquiry@RockDizFile.com, and listed the hyperlinks to the infringing content to assist with the takedown. Just under two weeks later, on November 6, 2013, the HSI agent located the same songs and albums on RockDizMusic and RockDizFile.com and again downloaded them, and other infringing songs and albums, to a computer in the Eastern District of Virginia from the same server in the Netherlands. In the course of doing so, however, the agent determined that the hyperlinks for the albums and songs previously downloaded on October 27, 2013 had all been changed. By using a mathematical algorithm to compare the two sets of songs and albums downloaded on October 27 and November 6, 2013, however, investigators determined that that the hash values for the songs "Glow in the Dark" and "Summer Alive" were, in fact, identical. In other words, OUPRASITH never took down the infringing files pursuant to the DMCA takedown notices. Instead, he simply created a new hyperlink to the same illegal content.

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In the course of making 27 downloads of infringing copies of copyrighted albums and song files to the Eastern District of Virginia from October 16, 2013 through September 22, 2014,

HSI agents regularly found that OUPRASITH later changed the hyperlinks for the infringing content from those used in prior downloads.

During the 180-day period from October 16, 2013 through April 14, 2014, in the Eastern District of Virginia and elsewhere, OUPRASITH willfully reproduced and distributed ten or more infringing copies of copyrighted works, including 8 songs and 15 albums downloaded to the Eastern District of Virginia by HSI agents accessing RockDizMusic.com and RockDizFile.com. As a result of the seizure and the forensic examination of hard drives containing data pertaining to RockDizFile.com, HSI agents further discovered OUPRASITH uploaded to the site approximately 810 infringing copies of copyrighted songs during that same 180-day period. Likewise, visitors to RockDizFile.com then downloaded infringing copies of these songs and albums approximately 709,410 times during the same time period. This occurred without the copyright owners' authorization and in contravention of the owners' exclusive rights to reproduce and distribute copies of their songs and albums.

On October 15, 2014, HSI agents executed warrants to search OUPRASITH's residence in Charlotte, North Carolina, and the computer server for RockDizFile.com hosted by GigeNET.com, in Chicago, Illinois. Simultaneously, and pursuant to mutual legal assistance treaty requests, authorities in the Netherlands and France took enforcement action to seize the servers utilized by OUPRASITH. After being advised of his rights orally and in writing, OUPRASITH waived them and agreed to speak with investigators. OUPRASITH advised investigators that: (1) he created the websites RockDizMusic.com and RockDizFile.com in 2011; (2) in spite of his claim that he sought artists' permission to make their music available on RockDizMusic.com, he admitted that he did not have permission to do so from, for example, artists such as Michael Jackson, Daft Punk, or Linkin Park; (3) he earned money from the websites and estimated that over the last year he averaged \$3,000-\$4,000 per month in

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advertising revenues; (4) he downloaded digital copies of songs, albums, and mixtape music files from other Internet websites and replaced the artwork for such files so they bore the RockDizMusic logo and stored the actual music content on his computer servers in the Netherlands; (5) as a result of user requests for files, he became concerned that hosting music files was illegal, and he received DMCA "takedown notices" on a daily basis at RockDizFile.com; and (6) in response to such notices, he would delete the reported links to the content listed in the notices and then re-upload exactly the same content under new hyperlinks.

ROCKY OUPRASITH admits the following concerning his offense, associated relevant conduct, and the applicable sentencing guideline (U.S.S.G. § 2B5.3): (a) the base offense level is 8; (b) the infringement amount exceeds \$2,500,000 but is less than \$7,000,000; (c) he committed the offense for private financial gain; (d) the offense involved the manufacture or uploading of infringing items; and (e) the offense involved the reproduction of and distribution of works intended for commercial distribution (that is, he reproduced and distributed songs and albums, such as such as Kelly Clarkson's album "Wrapped in Red" and The Wanted's songs "Glow in the Dark" and "Summer Alive", before the copyright owners had commercially distributed and sold such works). Further, ROCKY OUPRASITH agrees to forfeit all interest in: (a) the sum of \$50,851.05 as property constituting or derived from proceeds of the offense; (b) any infringing copies of any copyrighted works; and (c) the property used to commit and facilitate his copyright infringement and property traceable to and derived from the proceeds of

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the offense, as specified in ¶ 8 of the plea agreement.

Respectfully submitted,

Dana J. Boente
United States Attorney

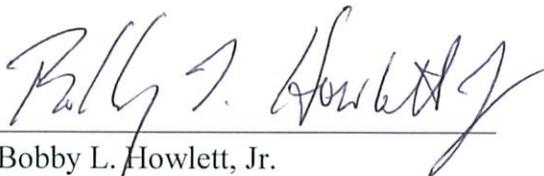
By: 
Randy C. Stoker
Assistant United States Attorney

By: 
John H. Zacharia
Assistant Deputy Chief for Litigation
Computer Crime and Intellectual Property Section

After consulting with my attorney, I hereby stipulate that the above statement of facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.


ROCKY P. OUPRASITH, Defendant

I am the attorney for ROCKY P. OUPRASITH. I have carefully reviewed the above statement of facts with the defendant. To my knowledge, the defendant's decision to stipulate to these facts is an informed and voluntary one.


Bobby L. Howlett, Jr.
Counsel for the Defendant

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