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11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) CR No. 08-1222-PLA  
14 )  
Plaintiff, ) PLEA AGREEMENT FOR DEFENDANT  
15 ) KEVIN COGILL  
v. )  
16 )  
KEVIN COGILL, )  
17 )  
Defendant. )  
18 )  
19

20 1. This constitutes the plea agreement between KEVIN COGILL  
21 ("defendant") and the United States Attorney's Office for the  
22 Central District of California ("the USAO") in the above-  
23 captioned case. This agreement is limited to the USAO and cannot  
24 bind any other federal, state or local prosecuting,  
25 administrative or regulatory authorities.

26 PLEA

27 2. Defendant gives up the right to indictment by a grand  
28 jury and agrees to plead guilty to a one-count information in the

1 form attached to this agreement or a substantially similar form.  
2 Defendant further waives any applicable statute of limitations  
3 and his rights under the Speedy Trial Act to be indicted for the  
4 conduct described herein within the time limits specified in 18  
5 U.S.C. § 3161.

6 NATURE OF THE OFFENSE

7 3. In order for defendant to be guilty of a violation of  
8 Title 17, United States Code, Section 506(a)(1)(A), Title 18,  
9 United States Code, Section 2319(a), (b)(3), the following must be  
10 true: (1) a copyright exists, (2) defendant infringed the  
11 copyright, including by reproducing, distributing, or performing  
12 the copyrighted work, (3) defendant acted willfully, and  
13 (4) defendant acted for the purpose of commercial advantage or  
14 private financial gain. Defendant admits that defendant is, in  
15 fact, guilty of this offense as described in the information.

16 PENALTIES

17 4. The statutory maximum sentence that the Court can impose  
18 for a violation of Title 17, United States Code, Section  
19 506(a)(1)(A) and Title 18, United States Code, Section  
20 2319(a), (b)(3), a Class A misdemeanor, is a one-year period of  
21 incarceration, a one-year period of supervised release, a fine of  
22 \$100,000, and a special assessment of \$50.

23 5. Supervised release is a period of time following  
24 imprisonment during which defendant will be subject to various  
25 restrictions and requirements. Defendant understands that if  
26 defendant violates one or more of the conditions of any  
27 supervised release imposed, defendant may be returned to prison  
28 for all or part of the term of supervised release, which could

1 result in defendant serving a total term of imprisonment greater  
2 than the statutory maximum stated above.

3 6. Defendant also understands that, by pleading guilty,  
4 defendant may be giving up valuable government benefits and  
5 valuable civic rights, such as the right to vote, the right to  
6 possess a firearm, the right to hold office, and the right to  
7 serve on a jury.

8 7. Defendant further understands that the conviction in  
9 this case may subject defendant to various collateral  
10 consequences, including but not limited to, deportation,  
11 revocation of probation, parole, or supervised release in another  
12 case, and suspension or revocation of a professional license.  
13 Defendant understands that unanticipated collateral consequences  
14 will not serve as grounds to withdraw defendant's guilty plea.

15 FACTUAL BASIS

16 8. Defendant and the USAO agree and stipulate to the  
17 statement of facts provided below. This statement of facts  
18 includes facts sufficient to support a plea (or pleas) of guilty  
19 to the charges described in this agreement and to establish the  
20 sentencing guideline factors set forth in paragraph 11 below. It  
21 is not meant to be a complete recitation of all facts relevant to  
22 the underlying criminal conduct or all facts known to defendant  
23 that relate to that conduct.

24 At all times relevant herein, valid U.S. copyrights existed  
25 on each of nine songs from an unreleased album titled "Chinese  
26 Democracy" and performed by the rock band Guns N' Roses. Each of  
27 the songs, which were titled Chinese Democracy, Better, The  
28 Blues, Madagascar, There Was A Time, IRS, Rhiad And The Bedouins,

1 Prostitute, and If The World ("the songs"), were being prepared  
2 by Guns N' Roses and by Universal Music for commercial release.  
3 On June 18, 2008, after receiving an unauthorized copy of the  
4 songs, defendant wilfully and intentionally made them available  
5 to the public over the Internet by streaming copies of the songs  
6 on a blog defendant operated called antiquiet.com. As a result,  
7 members of the public played the songs and, using available  
8 technology, also copied and downloaded copies without  
9 authorization from the copyright holder. Defendant knew that  
10 offering the songs over the Internet violated the copyright  
11 holder's rights and was illegal. At least in part, defendant  
12 made the songs available over the Internet for private financial  
13 gain because defendant derived revenue from visitors to the site  
14 who clicked on ads provided by Google.

15 WAIVER OF CONSTITUTIONAL RIGHTS

16 9. By pleading guilty, defendant gives up the following  
17 rights:

- 18 a) The right to persist in a plea of not guilty.  
19 b) The right to a speedy and public trial by jury.  
20 c) The right to the assistance of legal counsel at  
21 trial, including the right to have the Court appoint counsel for  
22 defendant for the purpose of representation at trial. (In this  
23 regard, defendant understands that, despite his plea of guilty,  
24 he or she retains the right to be represented by counsel - and,  
25 if necessary, to have the court appoint counsel if defendant  
26 cannot afford counsel - at every other stage of the proceedings.)  
27 d) The right to be presumed innocent and to have the  
28 burden of proof placed on the government to prove defendant

1 guilty beyond a reasonable doubt.

2 e) The right to confront and cross-examine witnesses  
3 against defendant.

4 f) The right, if defendant wished, to testify on  
5 defendant's own behalf and present evidence in opposition to the  
6 charges, including the right to call witnesses and to subpoena  
7 those witnesses to testify.

8 g) The right not to be compelled to testify, and, if  
9 defendant chose not to testify or present evidence, to have that  
10 choice not be used against defendant.

11 By pleading guilty, defendant also gives up any and all  
12 rights to pursue any affirmative defenses, Fourth Amendment or  
13 Fifth Amendment claims, and other pretrial motions that have been  
14 filed or could be filed.

15 SENTENCING FACTORS

16 10. Defendant understands that the Court is required to  
17 consider the United States Sentencing Guidelines ("U.S.S.G." or  
18 "Sentencing Guidelines") among other factors in determining  
19 defendant's sentence. Defendant understands that the Sentencing  
20 Guidelines are only advisory, and that after considering the  
21 Sentencing Guidelines, the Court may be free to exercise its  
22 discretion to impose any reasonable sentence up to the maximum  
23 set by statute for the crimes of conviction.

24 11. Defendant and the USAO agree and stipulate to the  
25 following applicable sentencing guideline factors:

26 Base Offense Level : 8 [U.S.S.G. § 2B5.3]

27 Specific Offense  
28 Characteristics

(Prerelease work) : +2 [U.S.S.G. § 2B5.3(b)(2)]

(Uploading) : +2 [U.S.S.G. § 2B5.3(b)(3)]

Adjustments

(Acceptance) : -2 [U.S.S.G. § 3E1.1]

The parties further state that they disagree over the applicable infringement amount under § 2B5.3(b)(1), and both the government and defendant reserve their right to argue for an adjustment under that section. Subject to the parties' right to argue for the applicable infringement amount, defendant and the USAO agree not to seek, argue, or suggest in any way, either orally or in writing, that any other specific offense characteristics, adjustments or departures, from the applicable Offense Level be imposed.

12. There is no agreement as to defendant's criminal history or criminal history category.

13. The stipulations in this agreement do not bind either the United States Probation Office or the Court. Both defendant and the USAO are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court, (b) correct any and all factual misstatements relating to the calculation of the sentence, and (c) argue on appeal and collateral review that the Court's sentencing guidelines calculations are not error, although each party agrees to maintain its view that the calculations above are consistent with the facts of this case.

#### DEFENDANT'S OBLIGATIONS

14. Defendant agrees that he or she will:

a) Plead guilty as set forth in this agreement.

1           b) Not knowingly and willfully fail to abide by all  
2 sentencing stipulations contained in this agreement.

3           c) Not knowingly and willfully fail to: (i) appear as  
4 ordered for all court appearances, (ii) surrender as ordered for  
5 service of sentence, (iii) obey all conditions of any bond, and  
6 (iv) obey any other ongoing court order in this matter.

7           d) Not commit any crime; however, offenses which would  
8 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are  
9 not within the scope of this agreement.

10           e) Not knowingly and willfully fail to be truthful at  
11 all times with Pretrial Services, the U.S. Probation Office, and  
12 the Court.

13           f) Pay the applicable special assessment at or before  
14 the time of sentencing unless defendant lacks the ability to pay.

15           15. Defendant further agrees to cooperate fully with the  
16 USAO, the Federal Bureau of Investigation, and, as directed by  
17 the USAO, any other federal, state, or local law enforcement  
18 agency. This cooperation requires defendant to:

19           a) Respond truthfully and completely to all questions  
20 that may be put to defendant, whether in interviews, before a  
21 grand jury, or at any trial or other court proceeding.

22           b) Attend all meetings, grand jury sessions, trials  
23 or other proceedings at which defendant's presence is requested  
24 by the USAO or compelled by subpoena or court order.

25           c) Produce voluntarily all documents, records, or  
26 other tangible evidence relating to matters about which the USAO,  
27 or its designee, inquires.

THE USAO'S OBLIGATIONS

16. If defendant complies fully with all defendant's obligations under this agreement, the USAO agrees:

a) To abide by all sentencing stipulations contained in this agreement.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary, move for an additional one-level reduction if available under that section and to recommend that defendant be sentenced to probation.

c) Not to offer as evidence in its case-in-chief in the above-captioned case or any other prosecution that may be brought against defendant by the USAO, or in connection with any sentencing proceeding in any case that may be brought against defendant by the USAO, any statements made by defendant or documents, records, or tangible evidence provided by defendant pursuant to this agreement or the letter agreement previously entered into by the parties dated October 15, 2008 ("the Letter Agreement"). Defendant agrees, however, that the USAO may use such statements, documents, records, and tangible evidence: (1) to obtain and pursue leads to other evidence, which evidence may be used for any purpose, including any prosecution of defendant, (2) to cross-examine defendant should defendant testify, or to rebut any evidence, argument or representations made by defendant or a witness called by defendant in any trial, sentencing



1 hearing, or other court proceeding, and (3) in any prosecution of  
2 defendant for false statement, obstruction of justice, or  
3 perjury.

4           d) Not to use any information provided by defendant  
5 pursuant to this agreement or the Letter Agreement against  
6 defendant at sentencing for the purpose of determining the  
7 applicable guideline range, including the appropriateness of an  
8 upward departure, and to recommend to the Court that such  
9 information not be used in determining the sentence to be  
10 imposed. Defendant understands, however, that information  
11 provided by defendant pursuant to this agreement or the Letter  
12 Agreement will be disclosed to the probation office and the  
13 Court, and that the Court may use this information for the  
14 purposes set forth in U.S.S.G § 1B1.8(b) and for determining the  
15 sentence to be imposed.

16           e) In connection with defendant's sentencing, to  
17 bring to the Court's attention the nature and extent of  
18 defendant's cooperation.

19           f) If the USAO determines, in its exclusive judgment,  
20 that defendant has both complied with his obligations above and  
21 provided substantial assistance to law enforcement in the  
22 prosecution or investigation of another ("substantial  
23 assistance"), to move the Court pursuant to U.S.S.G. § 5K1.1 to  
24 fix an offense level and corresponding guideline range below that  
25 otherwise dictated by the sentencing guidelines, and to recommend  
26 a sentence within this reduced range.

27       DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

28       17. Defendant understands the following:

1 a) Any knowingly false or misleading statement by  
2 defendant will subject defendant to prosecution for false  
3 statement, obstruction of justice, and perjury and will  
4 constitute a breach by defendant of this agreement.

5 b) Nothing in this agreement requires the USAO or any  
6 other prosecuting or law enforcement agency to accept any  
7 cooperation or assistance that defendant may offer, or to use it  
8 in any particular way.

9 c) Defendant cannot withdraw defendant's guilty plea  
10 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1  
11 for a reduced guideline range or if the USAO makes such a motion  
12 and the Court does not grant it or if the Court grants such a  
13 USAO motion but elects to sentence above the reduced range.

14 d) At this time the USAO makes no agreement or  
15 representation as to whether any cooperation that defendant has  
16 provided or intends to provide constitutes substantial  
17 assistance. The decision whether defendant has provided  
18 substantial assistance rests solely within the discretion of the  
19 USAO.

20 e) The USAO's determination of whether defendant has  
21 provided substantial assistance will not depend in any way on  
22 whether the government prevails at any trial or court hearing in  
23 which defendant testifies.

24 BREACH OF AGREEMENT

25 18. If defendant, at any time between the execution of this  
26 agreement and the completion of defendant's cooperation pursuant  
27 to the agreement or defendant's sentencing on a non-custodial  
28 sentence or surrender for service on a custodial sentence,

1 whichever is later, knowingly violates or fails to perform any of  
2 defendant's obligations under this agreement ("a breach"), the  
3 USAO may declare this agreement breached. For example, if the  
4 defendant knowingly in an interview, before a grand jury, or at  
5 trial, falsely accuses another person of criminal conduct or  
6 falsely minimizes his (or her) own role, or the role of another,  
7 in criminal conduct, he will have breached this agreement. If  
8 the USAO declares this agreement breached, and the Court finds  
9 such a breach to have occurred, defendant will not be able to  
10 withdraw defendant's guilty plea, and the USAO will be relieved  
11 of all of its obligations under this agreement. In particular:

12           a) The USAO will no longer be bound by any agreements  
13 concerning sentencing and will be free to seek any sentence up to  
14 the statutory maximum for the crime to which defendant has  
15 pleaded guilty.

16           b) The USAO will no longer be bound by any agreements  
17 regarding criminal prosecution, and will be free to prosecute  
18 defendant for any crime including charges that the USAO would  
19 otherwise have been obligated not to prosecute pursuant to this  
20 agreement.

21           c) The USAO will be free to prosecute defendant for  
22 false statement, obstruction of justice, and perjury based on any  
23 knowingly false or misleading statement by defendant.

24           d) The USAO will no longer be bound by any agreement  
25 regarding the use of statements, documents, records, tangible  
26 evidence, or information provided by defendant, and will be free  
27 to use any of those in any way in any investigation, prosecution,  
28 or civil or administrative action. Defendant will not be able to

1 assert either (1) that those statements, documents, records,  
2 tangible evidence, or information were obtained in violation of  
3 the Fifth Amendment privilege against compelled self-  
4 incrimination, or (2) any claim under the United States  
5 Constitution, any statute, Rule 11(f) of the Federal Rules of  
6 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
7 any other federal rule, that statements, documents, records,  
8 tangible evidence, or information provided by defendant before or  
9 after the signing of this agreement, or any leads derived  
10 therefrom, should be inadmissible.

11 19. Following a knowing and willful breach of this  
12 agreement by defendant, should the USAO elect to pursue any  
13 charge that was dismissed or not filed as a result of this  
14 agreement, then:

15 a) Defendant agrees that any applicable statute of  
16 limitations is tolled between the date of defendant's signing of  
17 this agreement and the commencement of any such prosecution or  
18 action.

19 b) Defendant gives up all defenses based on the statute  
20 of limitations, any claim of preindictment delay, or any speedy  
21 trial claim with respect to any such prosecution, except to the  
22 extent that such defenses existed as of the date of defendant's  
23 signing of this agreement.

24 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

25 20. Defendant gives up the right to appeal any sentence  
26 imposed by the Court, and the manner in which the sentence is  
27 determined, provided that the sentence is within the statutory  
28 maximum specified above and is constitutional. Defendant also

1 gives up any right to bring a post-conviction collateral attack  
2 on the conviction or sentence, except a post-conviction  
3 collateral attack based on a claim of ineffective assistance of  
4 counsel, a claim of newly discovered evidence, or a explicitly  
5 retroactive change in the applicable Sentencing Guidelines,  
6 sentencing statutes, or statutes of conviction. Notwithstanding  
7 the foregoing, defendant retains the ability to appeal the amount  
8 or terms of any restitution order and the court's determination  
9 of defendant's criminal history category and the conditions of  
10 probation imposed by the court, with the exception of the  
11 following: standard conditions set forth in district court  
12 General Orders 318 and 01-05; the drug testing conditions  
13 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol  
14 and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

15 21. The USAO gives up its right to appeal the Court's  
16 sentence, provided that (a) the Court in determining the  
17 applicable guideline range does not depart downward in offense  
18 level or criminal history category (except by a downward  
19 departure in offense level pursuant to, and to the extent  
20 requested by, the USAO in a motion under U.S.S.G. § 5K1.1), (b)  
21 the Court determines that the total offense level is 11 or above  
22 prior to any departure under U.S.S.G. § 5K1.1, and (c) the Court  
23 imposes a sentence within or above the range corresponding to the  
24 determined total offense level (after any downward departure  
25 under U.S.S.G. § 5K1.1) and criminal history category.

26 COURT NOT A PARTY

27 22. The Court is not a party to this agreement and need not  
28 accept any of the USAO's sentencing recommendations or the

1 parties' stipulations. Even if the Court ignores any sentencing  
2 recommendation, finds facts or reaches conclusions different from  
3 any stipulation, and/or imposes any sentence up to the maximum  
4 established by statute, defendant cannot, for that reason,  
5 withdraw defendant's guilty plea, and defendant will remain bound  
6 to fulfill all defendant's obligations under this agreement. No  
7 one - not the prosecutor, defendant's attorney, or the Court -  
8 can make a binding prediction or promise regarding the sentence  
9 defendant will receive, except that it will be within the  
10 statutory maximum.

11 NO ADDITIONAL AGREEMENTS

12 23. Except as set forth herein, there are no promises,  
13 understandings or agreements between the USAO and defendant or  
14 defendant's counsel. This agreement supersedes and replaces the  
15 Letter Agreements. Nor may any additional agreement,  
16 understanding or condition be entered into unless in a writing  
17 signed by all parties or on the record in court.

18 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

19 24. The parties agree and stipulate that this Agreement  
20 will be considered part of the record of defendant's guilty plea  
21 hearing as if the entire Agreement had been read into the record  
22 of the proceeding.

23 //

24 //

25 //

26 //

27 //

28 //

1 This agreement is effective upon signature by defendant and  
2 an Assistant United States Attorney.

3 AGREED AND ACCEPTED

4 UNITED STATES ATTORNEY'S OFFICE  
5 FOR THE CENTRAL DISTRICT OF CALIFORNIA

6 THOMAS P. O'BRIEN  
7 United States Attorney

8 C.H.M. 6  
9 CRAIG H. MISSAKIAN  
Assistant United States Attorney

10/17/08  
Date

10 I have read this agreement and carefully discussed every  
11 part of it with my attorney. I understand the terms of this  
12 agreement, and I voluntarily agree to those terms. My attorney  
13 has advised me of my rights, of possible defenses, of the  
14 Sentencing Guideline provisions, and of the consequences of  
15 entering into this agreement. No promises or inducements have  
16 been made to me other than those contained in this agreement. No  
17 one has threatened or forced me in any way to enter into this  
18 agreement. Finally, I am satisfied with the representation of my  
19 attorney in this matter.

20  
21 [Signature]  
22 KEVIN COGILL  
Defendant

10/16/08  
Date

23  
24 I am Kevin Cogill's attorney. I have carefully discussed  
25 every part of this agreement with my client. Further, I have  
26 fully advised my client of his rights, of possible defenses, of  
27 the Sentencing Guidelines' provisions, and of the consequences of  
28 entering into this agreement. To my knowledge, my client's

1 decision to enter into this agreement is an informed and  
2 voluntary one.

3 

10/17/08

4 \_\_\_\_\_  
5 DAVID KOLYANIDES  
6 Counsel for Defendant  
7 KEVIN COGILL

\_\_\_\_\_  
Date