

—

From: [REDACTED]
Sent: Monday, June 13, 2011 4:44 PM
To: 'wkettlewell@collorallp.com'
Cc: [REDACTED]
Subject: Aaron Swartz

Dear Bill:

[REDACTED] tells me that you contacted him on behalf of your client Aaron Swartz. MIT cooperates with law enforcement and will do so as it concerns Mr. Swartz. However, MIT is not taking a position concerning whether he should be prosecuted. If a criminal case is filed and you have particular questions, you should feel free to call me.

Sincerely,

[REDACTED]
Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139

tel: [REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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—

From: [REDACTED]
Sent: Tuesday, September 13, 2011 4:23 PM
To: 'wkettlewell@collorallp.com'
Subject: Meeting tomorrow

Bill –

[REDACTED] is still happy to meet with Bob Swartz tomorrow morning at 8:30 a.m. I understand that neither you nor Andy Good will be there, but you have no objection to me attending. Please feel free to call if you have any questions or concerns.

[REDACTED]
Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139

tel: [REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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—

From: [REDACTED]
Sent: Tuesday, September 20, 2011 2:13 PM
To: 'Kettlewell, William'
Subject: MIT/Swartz

Bill – Got your voicemail. I'm away on Friday, so it sounds like Thursday's the only day we can meet this week. Any time before 11 or after 2 is good. If it can wait until Monday, we could have a working/catch-up lunch.

[REDACTED]
 Nutter
Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard, Boston, MA 02210
Direct line [REDACTED] Fax [REDACTED]
www.nutter.com

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From: [REDACTED]
Sent: Friday, September 23, 2011 12:20 PM
To: Kettlewell, William
Subject: Re: MIT/Swartz

Surely. Renaissance hotel. Have a good weekend.

Sent from my iPhone

On Sep 23, 2011, at 10:55 AM, "Kettlewell, William" <wkettlewell@collorallp.com> wrote:

We still on for monday lunch at 100?

William H. Kettlewell

<DC10007-logo.gif>

600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct
617 429 3517 cell
617 371 1000 main
617 371 1037 fax
collorallp.com

Collora LLP, formerly Dwyer & Collora.
New name. Same firm.

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From: [REDACTED] [[mailto:\[REDACTED\]@nutter.com](mailto:[REDACTED]@nutter.com)]
Sent: Tuesday, September 20, 2011 2:13 PM
To: Kettlewell, William
Subject: MIT/Swartz

Bill – Got your voicemail. I'm away on Friday, so it sounds like Thursday's the only day we can meet this week. Any time before 11 or after 2 is good. If it can wait until Monday, we could have a working/catch-up lunch.

[REDACTED]
<image001.jpg>
Nutter McClennen & Fish LLP

Seaport West
155 Seaport Boulevard, Boston, MA 02210
Direct line [REDACTED] Fax [REDACTED]
www.nutter.com

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From: [REDACTED]
Sent: Monday, September 26, 2011 12:15 PM
To: 'Kettlewell, William'
Subject: RE: Lunch

Yes. Could you be there at 12:45? If not, 1 is fine.

-----Original Message-----

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Monday, September 26, 2011 12:11 PM
To: [REDACTED]
Subject: Lunch

We still on at 100?

William H. Kettlewell

600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct
617 429 3517 cell
617 371 1000 main
617 371 1037 fax
<http://www.collorallp.com/>

Collora LLP, formerly Dwyer & Collora.
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From: [REDACTED]
Sent: Monday, September 26, 2011 12:16 PM
To: 'Kettlewell, William'
Subject: RE: Lunch

No problem. See you there.

-----Original Message-----

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Monday, September 26, 2011 12:13 PM
To: [REDACTED]
Subject: Re: Lunch

Sorry 100 is best

----- Original Message -----

From: [REDACTED] <[REDACTED]@nutter.com>
To: Kettlewell, William
Sent: Mon Sep 26 12:14:43 2011
Subject: RE: Lunch

Yes. Could you be there at 12:45? If not, 1 is fine.

-----Original Message-----

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Monday, September 26, 2011 12:11 PM
To: [REDACTED]
Subject: Lunch

We still on at 100?

William H. Kettlewell

600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct
617 429 3517 cell
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From: Kettlewell, William [wkettlewell@collorallp.com]
Sent: Tuesday, September 27, 2011 12:09 PM
To: [REDACTED]
Subject: Follow-up To our Meeting
Attachments: Agreement.pdf; Automatic discovery.pdf

[REDACTED] Attached to this e-mail are the Swartz/ Jstor Settlement Agreement and AUSA Heymann's only automatic discovery disclosure to date. You will note the amount of clearly discoverable material which is being withheld at this point. Motions will soon follow and I will keep you abreast of developments. Talk soon. Billk

William H. Kettlewell

COLLORA^{LLP}

600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct

617 429 3517 cell

617 371 1000 main

617 371 1037 fax

collorallp.com

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AGREEMENT

This Agreement ("Agreement") is made as of June 14, 2011, by and between Aaron Swartz ("Swartz") and ITHAKA (collectively "the Parties") to resolve and settle potential claims that ITHAKA may have against Swartz, and exchange valuable consideration as follows:

RECITALS

WHEREAS, JSTOR is a service of ITHAKA. JSTOR and ITHAKA individually and/or collectively are hereafter referred to as "JSTOR."

WHEREAS, JSTOR preserves and makes available online to people and institutions including colleges, universities, libraries, research institutions and schools the full text of academic journals and other scholarly content.

WHEREAS, from on or about August 2010 to January 2011, on multiple occasions through a research institution, Swartz obtained access to the JSTOR database and downloaded from the database numerous journal articles and other material ("the Downloaded Data").

WHEREAS, JSTOR and Swartz dispute whether Swartz accessed a computer and JSTOR's database without authorization or exceeded any authorized access.

WHEREAS, the Parties wish to resolve this dispute without litigation, and JSTOR wishes to assure the security of its database and the Downloaded Data, fully address any loss and damage it may have suffered, and resolve any and all claims it may have against Swartz;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, and intending to be legally bound, the Parties agree as follows:

AS

PROMISES

1. Within three business days after both parties have executed this agreement, Swartz will secure the Downloaded Data by delivering all hard drive copies of it not already seized by the government to law enforcement officials with a copy of the receipt to be delivered to JSTOR.

2. Swartz undertakes, promises and assures JSTOR each of the following, and in the event of a breach of any of the following, Swartz shall be liable to JSTOR for all remedies provided by law including but not limited to damages, penalties, injunctive and all other relief including payment of reasonable attorney fees:

a. that Swartz has not directly or indirectly engaged, or caused others to engage, in any substantial downloading of JSTOR data apart from what is described in the third WHEREAS clause above, or otherwise interfered with JSTOR's data or computer systems;

b. that the hard drive copies that Swartz will deliver pursuant to paragraph 1 comprise all of the Downloaded Data in his possession, custody or control; and

c. that none of the Downloaded Data has been or will be used, used to prepare derivative works, copied, reproduced (except for no-longer-extant copies temporarily made in the course of downloading and storing the data), disseminated, distributed, displayed to others or transferred in any manner whatsoever without the express written permission of JSTOR's President or General Counsel.

3. Swartz agrees not to download or disseminate, or encourage or induce others to download or disseminate, harm or interfere with JSTOR data (including the



Downloaded Data) in violation of the Terms and Conditions stated on the JSTOR website, or harm or interfere with or encourage or induce others to harm or interfere with JSTOR computer systems or the computer systems of any of JSTOR's officers, trustees, employee and other representatives.

4. Swartz agrees not to disparage JSTOR (meaning both JSTOR and ITHAKA, individually or collectively, and any of their officers, trustees, employees and other representatives) by any means, including by making any disparaging remarks or sending any disparaging communications to any person or entity, about JSTOR, its reputation or business, except that Swartz may make privileged communications with his legal team and privileged statements in judicial proceedings in the course of defending himself in criminal or civil litigation.

5. Upon execution of this Agreement and delivery to Swartz of invoices detailing the legal fees and legal costs, Swartz agrees to pay within 5 business days not more than \$25,000 for legal fees and costs incurred by JSTOR for services rendered in negotiating this agreement, and \$1,500 for nominal damage and loss resulting directly or indirectly from the access and downloading described in the third WHEREAS clause above executing this Agreement.

6. Upon execution of this Agreement, JSTOR irrevocably releases Swartz of any and all claims of any nature it has or may have against Swartz, existing as of the date of this Agreement, including, but not limited to, claims under 18 U.S.C. § 1030(g) and similar federal, state and local laws, except that in the event of any breach of paragraph 1, 2, 3 or 4 above, the release specified in this paragraph shall be null and void, and the applicable statute of limitations for any claim by JSTOR against Swartz shall be deemed

AS

applicable statute of limitations for any claim by JSTOR against Swartz shall be deemed to have been tolled between the date of this Agreement and the discovery by JSTOR of the breach.

7. This Agreement constitutes the entire agreement between the Parties and does not bind any person or entity that is not expressly a party to this Agreement. Except as explicitly set forth herein with regard to the settlement of the referenced dispute, there are no representations, warranties or inducements, whether oral, written, expressed, or implied, that in any way affect or condition validity of this Agreement or alter its terms. This agreement and any remedies sought for breach are governed by the laws of the State of New York. This Agreement may not be amended, modified, supplemented except by any instrument in writing signed by the Parties hereto.

Signed this day 3 of June 2011



Aaron Swartz



ITHAKA

By:



23442771v4



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

United States Courthouse, Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

August 12, 2011

Mr. Andrew Good
Good and Cormier
83 Atlantic Avenue
Boston, MA 02110

Re: United States v. Aaron Swartz
Criminal No. 11-CR-10260

Dear Counsel:

Pursuant to Fed. R. Crim. P. 16 and Rules 116.1(C) and 116.2 of the Local Rules of the United States District Court for the District of Massachusetts, the government provides the following automatic discovery in the above-referenced case:

- A. Rule 16 Materials
 - 1. Statements of Defendant under Rule 16 (a)(1)(A) & (a)(1)(B)
 - a. Written Statements

The defendant's booking sheet and fingerprint card from the Cambridge Police Department are contained on enclosed Disk 5.

There are numerous relevant statements not made to government agents drafted by Defendant Swartz before the date of his arrest contained in electronic media, such as Twitter postings, websites and e-mail. These are equally available to the defendant. Those that the government intends to use in its case-in-chief are available for your review, as described in paragraph A(3) below.

Subject thereto, there are no relevant written statements of Defendant Swartz made

following his arrest in the possession, custody or control of the government, which are known to the attorney for the government.

b. Recorded Statements

The defendant made recorded statements at the time of his booking by Cambridge Police on January 6, 2011. A copy of his booking video is enclosed on Disk 7.

c. Grand Jury Testimony of the Defendant

Defendant Aaron Swartz did not testify before a grand jury in relation to this case.

d. Oral Statements to Then Known Government Agents

Defendant Aaron Swartz made oral statements at the time of the search of his apartment to individuals known to him at the time to be government agents. The only statements made by him then which the government believes at this time to be material are memorialized in the affidavit in support of the search warrant for his office at Harvard, a copy of which affidavit is enclosed on Disk 3.

2. Defendant's Prior Record under Rule 16 (a)(1)(D)

Enclosed on Disk 3 is a copy of the defendant's prior criminal record.

3. Documents and Tangible Objects under Rule 16(a)(1)(E)

All books, papers, documents and tangible items which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial of this case, or were obtained from or belong to the defendant, may be inspected subject to a protective order by contacting the undersigned Assistant U.S. Attorney and making an appointment to view the same at a mutually convenient time.

Because many of these items contain potentially sensitive, confidential and proprietary communications, documents, and records obtained from JSTOR and MIT, including discussion of the victims' computer systems and security measures, we will need to arrange a protective order with you before inspection. Please review the enclosed draft agreement and let us know your thoughts.

4. Reports of Examinations and Tests under Rule 16 (a)(1)(F)

Enclosed you will find Disks 1, 2, 5 & 6 containing reports of examination of the following:

- Acer laptop computer recovered at MIT
- Western Digital hard drive recovered at MIT
- HP USB drive seized from the defendant at the time of his arrest
- Apple iMac computer seized at Harvard
- Western Digital hard drive seized at Harvard
- HTC G2 cell phone seized during the search of the defendant's residence
- Nokia 2320 cell phone seized during the search of the defendant's residence
- Sony Micro Vault seized during the search of the defendant's residence
- Four Samsung hard drives delivered to the Secret Service by Defendant Swartz and his counsel on June 7, 2011 (Please note that because of the number of files contained on Samsung model HD154UI hard drive, serial number S1Y6J1C2800332, it has not been practicable to date to make a complete file list in an Excel readable format, unlike the other drives.)
- A fingerprint analysis report from the Cambridge Police Department with respect to the Acer Laptop and Western Digital hard drive recovered at MIT
- A supplemental fingerprint analysis report with respect to these items

While not required by the rules, intermediate as well as final forensic reports where available are enclosed for many of the recovered and seized pieces of equipment on Disks 6 and 1, respectively.

B. Search Materials under Local Rule 116.1(C)(1)(b)

Search warrants were executed on multiple pieces of electronic equipment and at multiple locations. Copies of the search warrants, applications, affidavits, and returns have already been provided to you, but are further found on Disk 3.

Four Samsung Model HD154UI hard drives were examined following their consensual and unconditional delivery to the United States Secret Service on June 7, 2011. As an additional precaution, a warrant, enclosed on Disk 3, was also obtained.

C. Electronic Surveillance under Local Rule 116.1(C)(1)(c)

No oral, wire, or electronic communications of the defendant as defined in 18 U.S.C. § 2510 were intercepted relating to the charges in the indictment.

D. Consensual Interceptions under Local Rule 116.1(C)(1)(d)

There were no interceptions (as the term "intercept" is defined in 18 U.S.C. § 2510(4)) of wire, oral, or electronic communications relating to the charges contained in the indictment, made with the consent of one of the parties to the communication in which the defendant was intercepted or which the government intends to offer as evidence in its case-in-chief.

E. Video Recordings

On January 4, 2011 and January 6, 2011, Defendant Aaron Swartz was recorded entering a restricted wiring closet in the basement of MIT's Building 16. Copies of relevant portions of the recordings (where he is seen entering, in, or exiting the closet) are enclosed on Disk 4.

F. Unindicted Coconspirators under Local Rule 116.1(C)(1)(e)

There is no conspiracy count charged in the indictment.

G. Identifications under Local Rule 116.1(C)(1)(f)

Defendant Aaron Swartz was a subject of an investigative identification procedure used with a witness the government anticipates calling in its case-in-chief involving a photospread documented by MIT Police [REDACTED]. Relevant portions of the police report of [REDACTED] and a copy of the photospread used in the identification procedure are enclosed on Disk 3. In both instances, the name of the identifying MIT student has been redacted to protect the student's continuing right to privacy at this initial stage of the case. On page 2 of the Report of Photo Array, USAO-000007, the initials beside each of the enumerated items have been redacted for the same reason.

H. Exculpatory Evidence Under Local Rule 116.2(B)(1)

With respect to the government's obligation under Local Rule 116.2(B)(1) to produce "exculpatory evidence" as that term is defined in Local Rule 116.2(A), the government states as follows:

1. The government is unaware of any information that would tend directly to negate the defendant's guilt concerning any count in the indictment. However, the United States is aware of the following information that you may consider to be discoverable under Local Rule 116.2(B)(1)(a):

- Email exchanges between and among individuals at MIT and JSTOR as they sought to identify the individual responsible for massive downloads on the dates charged in the Indictment. While the defendant has admitted to being responsible for the downloads and produced one copy of most of what was downloaded on these dates, these e-mails reflect JSTOR's and MIT's initial difficulties in locating and identifying him in light of the furtive tactics he was employing. The email exchanges will be made available in accordance with paragraph (A)(3) above.
- Counsel for the government understands that a number of external connections were made and/or attempted to the Acer laptop between January 4, 2011 and January 6, 2011, including from a Linux server at MIT and from China. The Linux server was connected to a medical center at Harvard periodically during the same period. While government

counsel is unaware of any evidence that files from JSTOR were extracted by third parties through any of these connections, the connection logs will be made available to you in accordance with paragraph (A)(3) above.

- An analysis of one of the fingerprints on the Acer laptop purchased and used by the defendant cannot exclude his friend, Alec Resnick. The analysis is being produced for you; see paragraph (A)(4) above.
- While not a defense or material, one or more other people used or attempted to use scrapers to download JSTOR articles through MIT computers during the period of Defendant Swartz's illegal conduct. On the evening of November 29, 2010, the network security team at MIT was contacted and investigated journal spidering occurring on the site of the Institute of Electrical and Electronic Engineers. It was tracked to a group of shared computers on which anyone at MIT can host a virtual machine. It was determined that a virtual machine had been compromised. The user was notified that scripts placed on it were downloading journals from JSTOR, IEEE and APS. The machines were taken offline early the morning of November 30, 2010.
- The login screen on the Acer laptop when observed by Secret Service Agent Pickett on January 4, 2011 identified the user currently logged in as "Gene Host." A user name is different from a host name, and accordingly is similarly immaterial.

2. The government is unaware of any information that would cast doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief and that could be subject to a motion to suppress or exclude.

3. Promises, rewards, or inducements have been given to witness Erin Quinn Norton. Copies of the letter agreement with her and order of immunity with respect to her grand jury testimony are enclosed on Disk 3.

4. The government is aware of one case-in-chief witness who has a criminal record.

Please be advised that one of the government's prospective trial witnesses was the subject of a charge in Somerville District Court in 1998 of being a minor in possession of alcohol and that the case was dismissed the following month upon payment of court costs. The government intends to make no further disclosures with respect to this matter, as the criminal charge could have no possible admissibility under either Fed.R.Crim.P. 609 or 608(b). If you believe you are entitled to additional information, including the identity of the prospective witness, please advise the undersigned, in which event the government will seek a protective order from the court to permit non-disclosure.

5. The government is aware of one case-in-chief witnesses who has a criminal case pending.

Please be advised that one of the government's prospective trial witnesses has pending state charges brought on July 7, 2009, involving the Abuse Prevention Act, Possession of Burglarious Tools, Criminal Harassment, and Breaking and Entering in the Daytime With Intent to Commit a felony. The events underlying the charges arise from the break-up of a personal relationship. The government has withheld the name of the witness and the others involved to protect their privacy, but will make them available along with the police reports in its possession subject to a protective order ensuring that the names, events and reports will not be disclosed publicly until the trial of this case, should the Court determine that a charge or information contained in the police reports is admissible for the purposes of cross-examination.

6. Based on the timeline as the government presently understands it from [REDACTED] report described in paragraph G above and contained on Disk 3, no named percipient witnesses failed to make a positive identification of the defendant with respect to the crimes at issue. As reflected in the report, three students present when the Acer computer and Western Digital hard drive were recovered from Building 20 by law enforcement stated that they did not see anyone come in and place the computer there. However, as the timeline reflects, this was not a failed identification, but rather that they were not percipient witnesses to the event which had occurred earlier.

I. Other Matters

The government has preliminary analysis notes prepared at Carnegie Mellon of certain code and files contained on the Acer Laptop, as referenced on Page 2 of SA Michael Pickett's Forensic Cover Report contained on Disk 1. While these are not encompassed by Rule 16 (a)(1)(F) (formerly 16(a)(1)(D)), the government will make these available for review as described in section (A)(3), above, subject to the same procedures proscribed for preliminary transcripts in Local Rule 116.4 (B)(2).

Your involvement in the delivery of four hard drives containing documents, records and data obtained from JSTOR creates potential issues in this case under the Rules of Professional Conduct, as I am sure you are aware. To avoid the potential for those issues under Rule 3.7 in particular, we propose a stipulation from your client that the hard drives were from him, thus taking you out of the middle and rendering the origin an uncontested issue under the Rule. This stipulation would be without prejudice to all arguments on both sides as to the admissibility of the drives and their contents at any proceeding.

The government is aware of its continuing duty to disclose newly discovered additional evidence or material that is subject to discovery or inspection under Local Rules 116.1 and 116.2(B)(1) and Rule 16 of the Federal Rules of Criminal Procedure.

The government requests reciprocal discovery pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure and Local Rule 116.1(D).

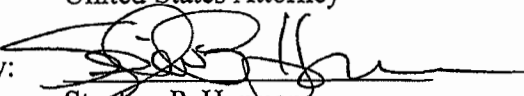
The government demands, pursuant to Rule 12.1 of the Federal Rules of Criminal Procedure, written notice of the defendant's intention to offer a defense of alibi. The time, date, and place at which the alleged offenses were committed is set forth in the indictment in this case a copy of which you previously have received.

Please call the undersigned Assistant U.S. Attorney at 617-748-3100 if you have any questions.

Very truly yours,

CARMEN M. ORTIZ
United States Attorney

By:


Stephen P. Heymann
Scott L. Garland
Assistant U.S. Attorneys

enclosures

From: [REDACTED]
Sent: Tuesday, September 27, 2011 3:06 PM
To: 'Kettlewell, William'
Subject: RE: Follow-up To our Meeting

Bill,

Thanks for sending me these materials. I took a quick look at the Settlement Agreement, and will read the discovery letter later. One question for now: is the Settlement Agreement public, and if so where is it filed?

It was good to see you yesterday.

Regards,

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Tuesday, September 27, 2011 12:09 PM
To: [REDACTED]
Subject: Follow-up To our Meeting

[REDACTED] Attached to this e-mail are the Swartz/ Jstor Settlement Agreement and AUSA Heymann's only automatic discovery disclosure to date. You will note the amount of clearly discoverable material which is being withheld at this point. Motions will soon follow and I will keep you abreast of developments. Talk soon. Billk

William H. Kettlewell

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—

From: [REDACTED]
Sent: Friday, April 20, 2012 4:04 PM
To: 'Kettlewell, William'
Subject: MIT/Swartz

Can you and Marty meet Weds. early afternoon instead of 10 a.m.?



 **Nutter**

Nutter McClennen & Fish LLP

Seaport West

155 Seaport Boulevard, Boston, MA 02210

Direct line [REDACTED] Fax [REDACTED]

www.nutter.com

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—

From: [REDACTED]
Sent: Friday, April 20, 2012 7:28 PM
To: Kettlewell, William
Subject: Re: MIT/Swartz

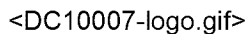
Let's meet at my office at 12:30. I'll have sandwiches etc. brought in. OK?

Sent from my iPhone

On Apr 20, 2012, at 5:47 PM, "Kettlewell, William" <wkettlewell@collorallp.com> wrote:

What time? We can do it over lunch if you wish

William H. Kettlewell



600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct
617 429 3517 cell
617 371 1000 main
617 371 1037 fax
collorallp.com

STATEMENT OF CONFIDENTIALITY: The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Collora, LLP immediately at either (617) 371-1041 or at info@collorallp.com. Do not copy, distribute or use the contents and destroy all copies of this message and any attachments.

CIRCULAR 230 DISCLOSURE: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: [REDACTED] [mailto:[\[REDACTED\]@nutter.com](mailto:[REDACTED]@nutter.com)]
Sent: Friday, April 20, 2012 4:04 PM
To: Kettlewell, William
Subject: MIT/Swartz

Can you and Marty meet Weds. early afternoon instead of 10 a.m.?

[REDACTED]
<image001.jpg>

Nutter McClennen & Fish LLP

Seaport West

155 Seaport Boulevard, Boston, MA 02210

Direct line [REDACTED]

Fax [REDACTED]

www.nutter.com

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—

From: Kettlewell, William [wkettlewell@collorallp.com]
Sent: Thursday, May 17, 2012 11:46 AM
To: [REDACTED]
Subject: RE: MIT/Swartz

see you then

From: [REDACTED] [mailto:[REDACTED]@nutter.com]
Sent: Thursday, May 17, 2012 11:46 AM
To: Kettlewell, William; Martin Weinberg
Subject: RE: MIT/Swartz

Tuesday here at 11:30 is good. I have a meeting here at 12:30, but can be a little late. If something has to give, it will be the [REDACTED]

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Thursday, May 17, 2012 11:42 AM
To: Martin Weinberg; [REDACTED]
Subject: RE: MIT/Swartz

Either works for me

William H. Kettlewell

COLLORA^{LLP}

600 Atlantic Avenue
Boston, MA 02210

617 371 1005 direct
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From: Martin Weinberg [mailto:owlmgw@att.net]
Sent: Thursday, May 17, 2012 11:41 AM
To: [REDACTED] Kettlewell, William
Cc: owlmgw@att.net
Subject: Re: MIT/Swartz

Tuesday at 11:30 would be perfect, otherwise Thursday at 2 or 2:30??

5/17/2012

----- Original Message -----

From: [REDACTED]
To: 'marty@martinweinberglaw.com' ; 'Kettlewell, William'
Sent: Thursday, May 17, 2012 11:31 AM
Subject: MIT/Swartz

Bill and Marty,

I'm back from [REDACTED] and have received a briefing on the facts of the case from MIT. I'm around next Tues. through Thurs. if you want to meet again. (I got your message Bill, and know you're out of town through Monday.) I'll be talking with folks in the MIT GC office in the next couple days.

Let me know a couple times that work for both of you.

Regards,

[REDACTED]

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From: Martin Weinberg [owlmgw@att.net]
Sent: Thursday, May 17, 2012 11:51 AM
To: [REDACTED] 'Kettlewell, William'
Subject: Re: MIT/Swartz

perfect, confirmed, and feel free to send the pics beforehand

----- Original Message -----

From: [REDACTED]
To: 'Kettlewell, William'; Martin Weinberg
Sent: Thursday, May 17, 2012 11:46 AM
Subject: RE: MIT/Swartz

Tuesday here at 11:30 is good. I have a meeting here at 12:30, but can be a little late. If something has to give, it will be the

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To: Martin Weinberg; [REDACTED]
Subject: RE: MIT/Swartz

Either works for me

William H. Kettlewell

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Let me know a couple times that work for both of you.

Regards,

[REDACTED]

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-

From: Martin Weinberg [owlmgw@att.net]
Sent: Friday, September 14, 2012 11:17 AM
To: [REDACTED]
Cc: owlmgw@att.net
Subject: Aaron Swartz

[REDACTED]

I am Aaron Swartz' principal defense counsel. His dad, Robert Swartz, informed me of his meeting with you and the potential for a followup meeting between Aaron's counsel and yourself. If such a meeting is possible, are you available anytime on Sept 25?? Thanks

Marty Weinberg
Martin G. Weinberg
MARTIN G. WEINBERG, PC
20 Park Plaza, Suite 1000
Boston, MA 02116
617 227 3700
617 338 9538 (FAX)

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From: [REDACTED]
Sent: Friday, September 14, 2012 10:00 PM
To: Martin Weinberg
Cc: [REDACTED] [REDACTED]@nutter.com)
Subject: RE: Aaron Swartz

Mr. Weinberg:

I have been traveling today, but I want to acknowledge your email. I will get back to you.

[REDACTED]
[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307
[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owimgw@att.net]
Sent: Friday, September 14, 2012 11:17 AM
To: [REDACTED]
Cc: owimgw@att.net
Subject: Aaron Swartz

[REDACTED]
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From: [REDACTED]
Sent: Friday, September 14, 2012 10:00 PM
To: 'Martin Weinberg'
Cc: [REDACTED]@mit.edu); [REDACTED]@nutter.com)
Subject: RE: Aaron Swartz

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[REDACTED]

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77 Massachusetts Ave
Cambridge, MA 02139-4307

fax [REDACTED]
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Subject: Aaron Swartz

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From: Martin Weinberg [owlmgw@att.net]
Sent: Thursday, September 20, 2012 10:09 AM
To: [REDACTED]
Cc: owlmgw@att.net
Subject: Re: Aaron Swartz

Have you and your team been able to schedule a conference with me and Bill Kettlewell who has been involved in the Swartz representation? The 25th still works. But there is no magic in that date. Late on the 24th (after 4) would work as well. Thanks. Marty

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To: Martin Weinberg
Cc: [REDACTED]@nutter.com)
Sent: Friday, September 14, 2012 10:00 PM
Subject: RE: Aaron Swartz

Mr. Weinberg:

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[REDACTED]

[REDACTED]

Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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Subject: Aaron Swartz

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From: [REDACTED]
Sent: Thursday, September 20, 2012 10:29 AM
To: 'Martin Weinberg'
Subject: RE: Aaron Swartz
Marty:

We can meet, but when is still up in the air. MIT's [REDACTED] will join the meeting. He joined me in meeting with Robert Swartz. I've asked [REDACTED] to join as well. I'm looking for a day next week. I'll propose a day and time – a couple times if I can – for meeting next week.

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
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fax: [REDACTED]
[REDACTED]@mit.edu

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To: [REDACTED]
Cc: owlmgw@att.net
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Sent: Friday, September 14, 2012 10:00 PM
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[REDACTED]
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77 Massachusetts Ave
[REDACTED]

Cambridge, MA 02139-4307

fax [redacted]
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[redacted]
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From: Martin Weinberg [owlmgw@att.net]
Sent: Thursday, September 20, 2012 10:36 AM
To: [REDACTED]
Subject: Re: Aaron Swartz
Thanks for the update. Marty

----- Original Message -----

From: [REDACTED]
To: Martin Weinberg
Sent: Thursday, September 20, 2012 10:28 AM
Subject: RE: Aaron Swartz

Marty:

We can meet, but when is still up in the air. MIT's [REDACTED] will join the meeting. He joined me in meeting with Robert Swartz. I've asked [REDACTED] to join as well. I'm looking for a day next week. I'll propose a day and time – a couple times if I can – for meeting next week.

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Cc: owlmgw@att.net
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—

From: [REDACTED]
Sent: Thursday, September 20, 2012 2:25 PM
To: 'Martin Weinberg'
Cc: [REDACTED]@nutter.com)
Subject: RE: Aaron Swartz

Marty:

Friday, Sept. 28, 2-3pm: I've got [REDACTED] who is MIT's [REDACTED] plus [REDACTED] and myself, set. Let's meet at my office.

Here's a link to the MIT map. I'm in [REDACTED]
[REDACTED]

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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Subject: Re: Aaron Swartz

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----- Original Message -----

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To: Martin Weinberg
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Sent: Friday, September 14, 2012 10:00 PM
Subject: RE: Aaron Swartz

Mr. Weinberg:

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[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave

[REDACTED]
Cambridge, MA 02139-4307

fax: [REDACTED]
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From: Martin Weinberg [owlmgw@att.net]
Sent: Thursday, September 20, 2012 3:20 PM
To: [REDACTED]
Cc: owlmgw@att.net
Subject: Re: Aaron Swartz

Thanks [REDACTED] Bill Kettlewell and I will see you at your office at 2 on the 28th. Marty

----- Original Message -----
From: [REDACTED]
To: Martin Weinberg
Cc: [REDACTED]@nutter.com)
Sent: Thursday, September 20, 2012 2:24 PM
Subject: RE: Aaron Swartz

Marty:

Friday, Sept. 28, 2-3pm: I've got [REDACTED], who is MIT's [REDACTED] plus [REDACTED] and myself, set. Let's meet at my office.

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[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owlmgw@att.net]
Sent: Thursday, September 20, 2012 10:36 AM
To: [REDACTED]
Subject: Re: Aaron Swartz

Thanks for the update. Marty

----- Original Message -----
From: [REDACTED]
To: Martin Weinberg
Sent: Thursday, September 20, 2012 10:28 AM
Subject: RE: Aaron Swartz

Marty:

We can meet, but when is still up in the air. MIT's [REDACTED] will join the meeting. He joined me in meeting with Robert Swartz. I've asked [REDACTED] to join as well. I'm looking for a day next week. I'll propose a day and time – a couple times if I can – for meeting next week.

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave

[REDACTED]
Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owimgw@att.net]

Sent: Thursday, September 20, 2012 10:09 AM

To: [REDACTED]

Cc: owimgw@att.net

Subject: Re: Aaron Swartz

[REDACTED]
Have you and your team been able to schedule a conference with me and Bill Kettlewell who has been involved in the Swartz representation? The 25th still works. But there is no magic in that date. Late on the 24th (after 4) would work as well. Thanks. Marty

----- Original Message -----

From: [REDACTED]

To: Martin Weinberg

Cc: [REDACTED]@nutter.com)

Sent: Friday, September 14, 2012 10:00 PM

Subject: RE: Aaron Swartz

Mr. Weinberg:

I have been traveling today, but I want to acknowledge your email. I will get back to you.

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave

[REDACTED]
Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]

[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owimgw@att.net]
Sent: Friday, September 14, 2012 11:17 AM
To: [REDACTED]
Cc: owimgw@att.net
Subject: Aaron Swartz

[REDACTED]
I am Aaron Swartz' principal defense counsel. His dad, Robert Swartz, informed me of his meeting with you and the potential for a followup meeting between Aaron's counsel and yourself. If such a meeting is possible, are you available anytime on Sept 25?? Thanks

Marty Weinberg
Martin G. Weinberg
MARTIN G. WEINBERG, PC
20 Park Plaza, Suite 1000
Boston, MA 02116
617 227 3700
617 338 9538 (FAX)

This Electronic Message contains information from the Law Office of Martin G. Weinberg, P.C., and may be privileged. The information is intended for the use of the addressee only. If you are not the addressee, please note that any disclosure, copying, distribution, or use of the contents of this message is prohibited.

From: [REDACTED]
Sent: Thursday, September 20, 2012 3:21 PM
To: 'Martin Weinberg'
Subject: RE: Aaron Swartz
Confirmed.

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307
[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owlmgw@att.net]
Sent: Thursday, September 20, 2012 3:20 PM
To: [REDACTED]
Cc: owlmgw@att.net
Subject: Re: Aaron Swartz

Thanks [REDACTED] Bill Kettlewell and I will see you at your office at 2 on the 28th. Marty

----- Original Message -----

From: [REDACTED]
To: Martin Weinberg
Cc: [REDACTED]@nutter.com)
Sent: Thursday, September 20, 2012 2:24 PM
Subject: RE: Aaron Swartz

Marty:

Friday, Sept. 28, 2-3pm: I've got [REDACTED] who is MIT's [REDACTED] plus [REDACTED] and myself, set. Let's meet at my office.

Here's a link to the MIT map. I'm in [REDACTED]

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307
[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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Sent: Thursday, September 20, 2012 10:36 AM
To: [REDACTED]
Subject: Re: Aaron Swartz

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----- Original Message -----

From: [REDACTED]
To: Martin Weinberg
Sent: Thursday, September 20, 2012 10:28 AM
Subject: RE: Aaron Swartz

Marty:

We can meet, but when is still up in the air. MIT's [REDACTED] will join the meeting. He joined me in meeting with Robert Swartz. I've asked [REDACTED] to join as well. I'm looking for a day next week. I'll propose a day and time – a couple times if I can – for meeting next week.

[REDACTED]
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Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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Sent: Thursday, September 20, 2012 10:09 AM
To: [REDACTED]
Cc: owimgw@att.net
Subject: Re: Aaron Swartz

[REDACTED]
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----- Original Message -----

From: [REDACTED]
To: Martin Weinberg
Cc: [REDACTED]@nutter.com)

Sent: Friday, September 14, 2012 10:00 PM
Subject: RE: Aaron Swartz

Mr. Weinberg:

I have been traveling today, but I want to acknowledge your email. I will get back to you.

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave
[REDACTED]
Cambridge, MA 02139-4307

[REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

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From: Martin Weinberg [mailto:owlmgw@att.net]
Sent: Friday, September 14, 2012 11:17 AM
To: [REDACTED]
Cc: owlmgw@att.net
Subject: Aaron Swartz

[REDACTED]
I am Aaron Swartz' principal defense counsel. His dad, Robert Swartz, informed me of his meeting with you and the potential for a followup meeting between Aaron's counsel and yourself. If such a meeting is possible, are you available anytime on Sept 25?? Thanks

Marty Weinberg
Martin G. Weinberg
MARTIN G. WEINBERG, PC
20 Park Plaza, Suite 1000
Boston, MA 02116
617 227 3700
617 338 9538 (FAX)

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From: [REDACTED]
Sent: Tuesday, October 09, 2012 10:20 AM
To: 'Kettlewell, William'
Subject: RE: Swartz Motions

Bill – I got these on PACER yesterday; they will take some time to digest. I'll be in touch later this week.

From: Kettlewell, William [mailto:wkettlewell@collorallp.com]
Sent: Tuesday, October 09, 2012 9:41 AM
To: [REDACTED]
Subject: FW: Swartz Motions

[REDACTED] I would appreciate an update when you have information. Billk

William H. Kettlewell

COLLORA LLP

We've Moved!

Please note our new Boston Address:

100 High Street
Boston, MA 02110-2321

617 371 1005 direct
617 429 3517 mobile
617 371 1000 main
617 371 1037 fax
collorallp.com

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—

From: [REDACTED]
Sent: Thursday, October 25, 2012 12:30 PM
To: 'Martin Weinberg'; 'Kettlewell, William'
Subject: MIT/Swartz
Expires: Wednesday, January 23, 2013 12:00 AM

Do either or both of you have a little time tomorrow (before 9:30 or after 4) or Monday (any time except 10-11:30) to talk by phone? Follow-up from Marty's meeting with the [REDACTED] and [REDACTED]

—

From: owlmgw@att.net
Sent: Thursday, November 01, 2012 5:40 PM
To: [REDACTED]
Subject: Re: Swartz/MIT

[REDACTED]
Yes, true.

Best

Marty

Sent from my Verizon Wireless BlackBerry

From: [REDACTED]<[REDACTED]@nutter.com>
Date: Thu, 1 Nov 2012 16:23:50 -0400
To: 'Martin Weinberg'<owlmgw@att.net>; 'Kettlewell, William'<wkettlewell@collorallp.com>
Subject: Swartz/MIT

Marty, I have a voice message from a San Fran lawyer who says he's taking over the Swartz matter for you. Is this true?
Bill, do you still represent Bob Swartz?

[REDACTED]

Nutter McClennen & Fish LLP
Seaport West
155 Seaport Boulevard, Boston, MA 02210
Direct line [REDACTED] Fax [REDACTED]
www.nutter.com

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Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: [REDACTED]
Sent: Thursday, November 01, 2012 11:24 PM
To: epeters@kvn.com
Subject: Aaron Swartz/MIT

Hello Elliot,

I got your voicemail message. I'll be in a deposition all day tomorrow. If I don't reach you late in the day, we can talk on Monday.

Regards,

[REDACTED]

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 02, 2012 10:48 AM
To: [REDACTED]
Subject: RE: Aaron Swartz/MIT

Thanks [REDACTED] Either way. My direct is 415 676-2273. Cell is 415 652-1944.
Best,
Elliot

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Thursday, November 01, 2012 08:25 PM Pacific Standard Time
To: Elliot Peters
Subject: Aaron Swartz/MIT

Hello Elliot,

I got your voicemail message. I'll be in a deposition all day tomorrow. If I don't reach you late in the day, we can talk on Monday.

Regards,

[REDACTED]
Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Elliot Peters [EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 11:32 AM
To: [REDACTED]
Subject: Swartz/MIT
Attachments: KVNDOC1-#708039-v1-SWARTZ-D-ATTACHMENT_A_TO_MIT_SDT.DOC

Hi [REDACTED]
I hope all is well.

Thanks for taking some time last week to talk with me about this case.

Attached is a list of documents we are very interested in seeing, or understanding more about. It can readily be turned into a subpoena, to the extent that seems appropriate or makes things easier. But the purpose of this message is to use it to illustrate the type of cooperation we would hope to receive from a neutral MIT. I would also very much like to speak to [REDACTED] and [REDACTED] sooner rather than later. I will be in Boston on 11/19 and the morning of 11/20, and am happy to meet to discuss these, or any other matters. Thanks in advance.

Best regards,
Elliot Peters

ATTACHMENT A

DEFINITIONS

1. “You” or “your” means Massachusetts Institute of Technology (“MIT”) and/or any of its divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.
2. “MIT” refers to Massachusetts Institute of Technology and/or any of its divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.
3. “JSTOR” refers to JSTOR (or “Journal Storage”) and/or any of its divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.
4. “DOCUMENT(S)” shall mean and include all “writings” as defined in the Federal Rules of Evidence, Rule 1001(l), as well as all writings of any nature whatsoever within your possession, custody, or control, including, but not limited to, communications, correspondence, accounting records, ledgers, checks, memoranda, notes, records, reports, books, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, minutes or records of meetings, work papers, drafts, copies, graphs, emails, computer tapes, disks, or other electronic storage media.
5. “COMMUNICATION” means every manner or method of disclosure or transfer or exchange of information, whether orally or by DOCUMENT, and whether face to face, by telephone, mail, e-mail, personal delivery or otherwise.
6. “CONCERNING” means relating to, referring to, describing, evidencing, or constituting. Requests for documents “concerning” any subject matter include documents concerning communications regarding that subject matter.
7. “ALL” means all, any, each, and every.
8. “RELATE” or “RELATING TO” means and includes comprising, constituting, concerning, referring to, summarizing, reflecting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, supporting, showing, commenting on, evidencing, or otherwise describing the subject.

INSTRUCTIONS

1. Use of the singular or plural in this subpoena should not be deemed a limitation, and the use of the singular should be construed to include, where appropriate, the plural. The conjunctive form “and” and the disjunctive form “or” are mutually interchangeable and encompass each other. The terms “any” and “all” are mutually interchangeable and encompass each other.
2. DOCUMENTS should be identified with the producing party’s initials and should be consecutively numbered.
3. DOCUMENTS should be produced in the booklet, binder, file, folder, envelope, or other container in which the DOCUMENTS are kept or maintained by YOU. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings. DOCUMENTS attached to each other should not be separated.
4. If a DOCUMENT once existed, but has been lost, destroyed, erased or otherwise is no longer in your possession, identify the DOCUMENT and state the details concerning the

loss or destruction of such DOCUMENT, including the name and address of the present custodian of any such DOCUMENT known to you.

5. In the event any DOCUMENT is withheld on a claim of attorney/client privilege or work product immunity, provide a detailed privilege log that includes:

- a. the date of the DOCUMENT;
- b. the author(s) of the DOCUMENT;
- c. the recipient(s) of the DOCUMENT;
- d. a description of the subject and purpose of the DOCUMENT sufficient to permit an evaluation of the claim of privilege.

DOCUMENTS REQUESTED

- 1) All documents reflecting rules, policies and procedures relating to guest access to the MIT computer network during 2010 and 2011. This request includes documents created at a prior time, but which established rules, policies and procedures in effect during 2010 and 2011.
- 2) All documents reflecting the reasons for, or any discussions or communications concerning, the rules, policies and procedures relating to guest access to the MIT computer network during 2010 and 2011.
- 3) All documents relating to MIT's decision to have an "open" computer network during 2010 and 2011. By "open" computer network, we mean a network that anyone could access from the MIT campus without a password or other computer security protocol.
- 4) All documents relating to MIT's policy regarding access to its campus, or any building on that campus, by any member of the public in effect during 2010 and 2011.
- 5) All documents reflecting communications and agreements between MIT and JSTOR regarding access to JSTOR by MIT guests during 2010 and 2011.
- 6) All communications or memoranda, both internal, with JSTOR, or with anyone else, concerning excessive JSTOR downloading during 2010 and 2011.
- 7) All documents sufficient to show the Network Architecture of MIT's computer network in Building 16 as it existed between September 1, 2010 and January 30, 2011.
- 8) Documents sufficient to show the configuration of the switch in the "closet" on the lower level of Building 16 between September 1, 2010 and January 30, 2011.
- 9) All MIT DHCP logs for the following dates:
 - September 24, 25 and 26, 2010
 - October 2-9, 2010

- November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 10) All MIT Radius Server Logs for the following dates:
- September 24, 25, and 26, 2010
 - October 2-9, 2010
 - November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 11) Documents sufficient to show the network architecture or implementation of the captured portal on MIT's guest network between September 1, 2010 and January 30, 2011.
- 12) All MIT captured portal server logs for the following dates:
- All logs from MIT's captured portal server logs for the following dates:
 - September 24, 25, and 26, 2010
 - October 2-9, 2010
 - November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 13) Documents relating to MIT's capture and retention policy for network data in effect during 2010 and 2011.
- 14) All documents reflecting amounts paid to or billed by JSTOR for any downloading of JSTOR content by a user on the MIT network during 2010 and 2011.
- 15) All documents relating to damage to or impairment of MIT computers due to downloading from JSTOR between September 26, 2010 to January 6, 2011.
- 16) All documents that form the basis of [REDACTED] April 13, 2011 letter to Stephen P. Heymann regarding "Grand Jury Subpoena to MIT – JSTOR Investigation."
- 17) All documents reflecting the actual earnings from September 1, 2010 to January 30, 2011 of all the individuals listed on page 1 of [REDACTED] April 13, 2011 letter to Stephen P. Heymann.

- 18) Any contemporaneous time records of work performed by any individuals listed on page 1 of [REDACTED] April 13, 2011 letter to Stephen P. Heymann.
- 19) Calendars or all calendar entries for any of the individuals listed on page 1 of [REDACTED] [REDACTED] April 13, 2011 letter to Stephen P. Heymann during the period from September 1, 2010 to January 30, 2011.

From: [REDACTED]
Sent: Wednesday, November 14, 2012 5:20 PM
To: 'Elliot Peters'
Subject: RE: Swartz/MIT

Expires: Tuesday, February 12, 2013 12:00 AM

Elliot,

I'll be speaking with folks at MIT about your request on Friday. I don't know if I'll have a substantive response by Monday, but it makes sense to meet at least briefly. Where will you be during the day on Monday?

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 11:32 AM
To: [REDACTED]
Subject: Swartz/MIT

Hi [REDACTED]
I hope all is well.

Thanks for taking some time last week to talk with me about this case.

Attached is a list of documents we are very interested in seeing, or understanding more about. It can readily be turned into a subpoena, to the extent that seems appropriate or makes things easier. But the purpose of this message is to use it to illustrate the type of cooperation we would hope to receive from a neutral MIT. I would also very much like to speak to [REDACTED] and [REDACTED] sooner rather than later. I will be in Boston on 11/19 and the morning of 11/20, and am happy to meet to discuss these, or any other matters. Thanks in advance.

Best regards,
Elliot Peters

From: Elliot Peters [EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 6:55 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Thanks [REDACTED] Monday I am visiting with Bill and Marty, and also hopefully with Scott Garland and Steve Heymann. So I will be in your general neighborhood. Maybe we could meet either at 11 am or in the afternoon around 4:30 or so? The only moving part is when I can gain access at the Secret Service to see the downloaded contraband.

Best,
Elliot

From: [REDACTED]@nutter.com]
Sent: Wednesday, November 14, 2012 5:20 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

Elliot,

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Regards,
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Best regards,
Elliot Peters

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From: [REDACTED]
Sent: Wednesday, November 14, 2012 8:36 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

I'll keep both times open for now. My office is a five-minute walk from the federal courthouse.

From: Elliot Peters [EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 6:54 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Thanks [REDACTED] Monday I am visiting with Bill and Marty, and also hopefully with Scott Garland and Steve Heymann. So I will be in your general neighborhood. Maybe we could meet either at 11 am or in the afternoon around 4:30 or so? The only moving part is when I can gain access at the Secret Service to see the downloaded contraband.

Best,
Elliot

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Subject: RE: Swartz/MIT

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Elliot Peters

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11/14/2012

From: [REDACTED]
Sent: Monday, November 19, 2012 5:23 PM
To: 'Elliot Peters'
Subject: RE: Swartz/MIT
Expires: Sunday, February 17, 2013 12:00 AM

Elliot – I'm assuming we aren't meeting today. We should talk by phone early next week.

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 6:55 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Thanks [REDACTED] Monday I am visiting with Bill and Marty, and also hopefully with Scott Garland and Steve Heymann. So I will be in your general neighborhood. Maybe we could meet either at 11 am or in the afternoon around 4:30 or so? The only moving part is when I can gain access at the Secret Service to see the downloaded contraband.

Best,
Elliot

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Subject: RE: Swartz/MIT

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Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 11:32 AM
To: [REDACTED]
Subject: Swartz/MIT

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11/19/2012

—

From: [REDACTED]
Sent: Monday, November 19, 2012 5:55 PM
To: 'Elliot Peters'
Subject: RE: Swartz/MIT
Expires: Sunday, February 17, 2013 12:00 AM

I have a morning meeting outside the city. Maybe we can talk by phone later in the day.

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, November 19, 2012 5:51 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Hi [REDACTED]
I am in Boston and could meet first thing tomorrow, although I have an 11 am flight to DC. Any news from MIT? Thanks.
Best,
Elliot

From: [REDACTED]@nutter.com]
Sent: Monday, November 19, 2012 5:23 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

Elliot – I'm assuming we aren't meeting today. We should talk by phone early next week.

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 6:55 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Thanks [REDACTED] Monday I am visiting with Bill and Marty, and also hopefully with Scott Garland and Steve Heymann. So I will be in your general neighborhood. Maybe we could meet either at 11 am or in the afternoon around 4:30 or so? The only moving part is when I can gain access at the Secret Service to see the downloaded contraband.
Best,
Elliot

From: [REDACTED]@nutter.com]
Sent: Wednesday, November 14, 2012 5:20 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

Elliot,
I'll be speaking with folks at MIT about your request on Friday. I don't know if I'll have a substantive response by Monday, but it makes sense to meet at least briefly. Where will you be during the day on Monday?
Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 11:32 AM
To: [REDACTED]
Subject: Swartz/MIT

Hi [REDACTED]
I hope all is well.

Thanks for taking some time last week to talk with me about this case.

Attached is a list of documents we are very interested in seeing, or understanding more about. It can readily be turned into a subpoena, to the extent that seems appropriate or makes things easier. But the purpose of this message is to use it to illustrate the type of cooperation we would hope to receive from a neutral MIT. I would also very much like to speak to [REDACTED] and [REDACTED] sooner rather than later. I will be in Boston on 11/19 and the morning of 11/20, and am happy to meet to discuss these, or any other matters. Thanks in advance.

Best regards,
Elliot Peters

Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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From: Elliot Peters [EPeters@KVN.com]
Sent: Monday, November 19, 2012 5:58 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

Okay
Whenever is convenient for you
My cell is 415 652-1944.
I have a 3 pm hearing tomorrow in DC

From: [REDACTED]@nutter.com]
Sent: Monday, November 19, 2012 5:55 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

I have a morning meeting outside the city. Maybe we can talk by phone later in the day.

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, November 19, 2012 5:51 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

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Best,
Elliot

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Sent: Monday, November 19, 2012 5:23 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

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From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 6:55 PM
To: [REDACTED]
Subject: RE: Swartz/MIT

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Best,
Elliot

From: [REDACTED]@nutter.com]
Sent: Wednesday, November 14, 2012 5:20 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

Elliot,

I'll be speaking with folks at MIT about your request on Friday. I don't know if I'll have a substantive response by Monday, but it makes sense to meet at least briefly. Where will you be during the day on Monday?

Regards,

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, November 14, 2012 11:32 AM
To: [REDACTED]
Subject: Swartz/MIT

Hi [REDACTED]
I hope all is well.

Thanks for taking some time last week to talk with me about this case.

Attached is a list of documents we are very interested in seeing, or understanding more about. It can readily be turned into a subpoena, to the extent that seems appropriate or makes things easier. But the purpose of this message is to use it to illustrate the type of cooperation we would hope to receive from a neutral MIT. I would also very much like to speak to [REDACTED] and [REDACTED] sooner rather than later. I will be in Boston on 11/19 and the morning of 11/20, and am happy to meet to discuss these, or any other matters. Thanks in advance.

Best regards,
Elliot Peters

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—

From: [REDACTED]
Sent: Tuesday, November 20, 2012 4:07 PM
To: 'Elliot Peters'
Subject: RE: Swartz/MIT
Expires: Monday, February 18, 2013 12:00 AM

Before responding to your requests, MIT and I have some questions. I'm generally available before noon PCT on Monday Nov. 26th. The rest of next week gets more difficult, though some times on 11/28 and 11/30 would work. Enjoy the holiday.

From: [REDACTED]
Sent: Wednesday, November 21, 2012 11:21 AM
To: Elliot Peters
Subject: RE: Swartz/MIT

That works. I'll call. Hands free, I hope. Have a good Thanksgiving.

From: Elliot Peters [EPeters@KVN.com]
Sent: Wednesday, November 21, 2012 11:14 AM
To: [REDACTED]
Subject: RE: Swartz/MIT

Thanks [REDACTED] How about 11:15 eastern, 8:15 am pacific on Monday 11/26? I will be in the car. Cell is 415 652-1944. Would that work?

Have a good Thanksgiving.

From: [REDACTED]@nutter.com]
Sent: Tuesday, November 20, 2012 4:07 PM
To: Elliot Peters
Subject: RE: Swartz/MIT

Before responding to your requests, MIT and I have some questions. I'm generally available before noon PCT on Monday Nov. 26th. The rest of next week gets more difficult, though some times on 11/28 and 11/30 would work. Enjoy the holiday.

Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Elliot Peters [EPeters@KVN.com]
Sent: Tuesday, November 27, 2012 5:03 PM
To: [REDACTED]
Subject: MIT

Hi [REDACTED]

Reflecting on our call yesterday, many of our information needs might most efficiently be addressed if MIT could make available a knowledgeable person about the MIT network as of September 2010 through January, 2011, who could answer some questions posed by me or my partner, and our expert. The questions will be simple and straightforward. We really want to know about the topics I outlined yesterday and have no desire to harass or create work for MIT.

Thanks for considering.

Elliot

—

From: [REDACTED]
Sent: Tuesday, November 27, 2012 8:23 PM
To: Elliot Peters
Subject: RE: MIT

Eliot,

I'm talking to MIT counsel tomorrow, and will pass on your suggestion and get back to you. I appreciate your reflection on our call. MIT doesn't need me to be immersed in the facts or the law, but they're happy to have me explore mutual interest.

Regards,

From: Elliot Peters [EPeters@KVN.com]
Sent: Tuesday, November 27, 2012 5:03 PM
To: [REDACTED]
Subject: MIT

Hi [REDACTED]
Reflecting on our call yesterday, many of our information needs might most efficiently be addressed if MIT could make available a knowledgeable person about the MIT network as of September 2010 through January, 2011, who could answer some questions posed by me or my partner, and our expert. The questions will be simple and straightforward. We really want to know about the topics I outlined yesterday and have no desire to harass or create work for MIT.

Thanks for considering.

Eliot

—

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:44 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena
Attachments: SWARTZ-002.pdf; SWARTZ-001.pdf

Hi [REDACTED]
I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

United States of America)

v.)

AARON SWARTZ)

Defendant)

Case No. Crim. No. 11-CR-10260-NMG

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

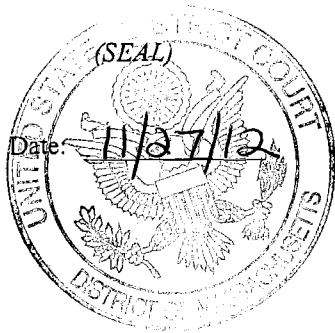
To: Agent for Service of Process, Massachusetts Institute of Technology ("MIT")
Office of the General Counsel
77 Massachusetts Avenue, Room 7-206
Cambridge, MA 02139-4307

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance:	Courtroom No.:
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):
See ATTACHMENT A.

Documents to be produced to Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809; telephone: 415-391-5400; facsimile: 415-397-7188 within thirty (30) days of the date of issuance of this subpoena.



CLERK OF COURT

Kellyann Moore
Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) _____ Defendant

AARON SWARTZ _____, who requests this subpoena, are:

Michael J. Pineault
Clements & Pineault, LLP
24 Federal Street
Boston, MA 02110
Tel.: (857) 445-0135
Fax: (857) 366-5404

Case No. Crim. No. 11-CR-10260-NMG

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ATTACHMENT A

DEFINITIONS

1. "You" or "your" means Massachusetts Institute of Technology ("MIT") and/or any of its divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.

2. "MIT" refers to Massachusetts Institute of Technology and/or any of its divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.

3. "JSTOR" refers to JSTOR (or "Journal Storage") and/or any of its parents (including ITHAKA), divisions, affiliates, employees, agents, representatives, attorneys, consultants, or other persons acting on its behalf.

4. "DOCUMENT(S)" shall mean and include all "writings" as defined in the Federal Rules of Evidence, Rule 1001(l), as well as all writings of any nature whatsoever within your possession, custody, or control, including, but not limited to, communications, correspondence, accounting records, ledgers, checks, memoranda, notes, records, reports, books, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, minutes or records of meetings, work papers, drafts, copies, graphs, emails, computer tapes, disks, or other electronic storage media.

5. "COMMUNICATION" means every manner or method of disclosure or transfer or exchange of information, whether orally or by DOCUMENT, and whether face to face, by telephone, mail, e-mail, personal delivery or otherwise.

6. "CONCERNING" means relating to, referring to, describing, evidencing, or constituting. Requests for documents "concerning" any subject matter include documents concerning communications regarding that subject matter.

7. "ALL" means all, any, each, and every.

8. "RELATE" or "RELATING TO" means and includes comprising, constituting, concerning, referring to, summarizing, reflecting, containing, embodying, pertaining to, involved with, mentioning, discussing, consisting of, supporting, showing, commenting on, evidencing, or otherwise describing the subject.

INSTRUCTIONS

1. Use of the singular or plural in this subpoena should not be deemed a limitation, and the use of the singular should be construed to include, where appropriate, the plural. The conjunctive form "and" and the disjunctive form "or" are mutually interchangeable and encompass each other. The terms "any" and "all" are mutually interchangeable and encompass each other.

2. DOCUMENTS should be identified with the producing party's initials and should be consecutively numbered.

3. DOCUMENTS should be produced in the booklet, binder, file, folder, envelope, or other container in which the DOCUMENTS are kept or maintained by YOU. If for any reason the container cannot be produced, please produce copies of all labels or other identifying markings. DOCUMENTS attached to each other should not be separated.

4. If a DOCUMENT once existed, but has been lost, destroyed, erased or otherwise is no longer in your possession, identify the DOCUMENT and state the details concerning the

loss or destruction of such DOCUMENT, including the name and address of the present custodian of any such DOCUMENT known to you.

5. In the event any DOCUMENT is withheld on a claim of attorney/client privilege or work product immunity, provide a detailed privilege log that includes:

- a. the date of the DOCUMENT;
- b. the author(s) of the DOCUMENT;
- c. the recipient(s) of the DOCUMENT;
- d. a description of the subject and purpose of the DOCUMENT sufficient to permit an evaluation of the claim of privilege.

DOCUMENTS REQUESTED

- 1) All documents reflecting rules, policies and procedures relating to guest access to the MIT computer network during 2010 and 2011. This request includes documents created at a prior time, but which established rules, policies and procedures in effect during 2010 and 2011.
- 2) All documents reflecting the reasons for, or any discussions or communications concerning, the rules, policies and procedures relating to guest access to the MIT computer network during 2010 and 2011.
- 3) All documents relating to MIT's decision to have an "open" computer network during 2010 and 2011. By "open" computer network, we mean a network that anyone could access from the MIT campus without a password or other computer security protocol.
- 4) All documents relating to MIT's policy regarding access to its campus, or any building on that campus, by any member of the public in effect during 2010 and 2011.
- 5) All documents reflecting communications and agreements between MIT and JSTOR regarding access to JSTOR by MIT guests during 2010 and 2011.
- 6) All communications or memoranda, both internal, with JSTOR, or with anyone else, concerning excessive JSTOR downloading during 2010 and 2011.
- 7) All documents sufficient to show the Network Architecture of MIT's computer network in Building 16 as it existed between September 1, 2010 and January 30, 2011.
- 8) Documents sufficient to show the configuration of the switch in the "closet" on the lower level of Building 16 between September 1, 2010 and January 30, 2011.
- 9) All MIT DHCP logs for the following dates:
 - September 24, 25 and 26, 2010
 - October 2-9, 2010

- November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 10) All MIT Radius Server Logs for the following dates:
- September 24, 25, and 26, 2010
 - October 2-9, 2010
 - November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 11) Documents sufficient to show the network architecture or implementation of the captured portal on MIT's guest network between September 1, 2010 and January 30, 2011.
- 12) All MIT captured portal server logs for the following dates:
- All logs from MIT's captured portal server logs for the following dates:
 - September 24, 25, and 26, 2010
 - October 2-9, 2010
 - November 29, 2010 – December 26, 2010
 - December 27, 2010 – January 6, 2011
- 13) Documents relating to MIT's capture and retention policy for network data in effect during 2010 and 2011.
- 14) All documents reflecting amounts paid to or billed by JSTOR for any downloading of JSTOR content by a user on the MIT network during 2010 and 2011.
- 15) All documents relating to damage to or impairment of MIT computers due to downloading from JSTOR between September 26, 2010 to January 6, 2011.
- 16) All documents that form the basis of [REDACTED] April 13, 2011 letter to Stephen P. Heymann regarding "Grand Jury Subpoena to MIT – JSTOR Investigation."
- 17) All documents reflecting the actual earnings from September 1, 2010 to January 30, 2011 of all the individuals listed on page 1 of [REDACTED] April 13, 2011 letter to Stephen P. Heymann.

- 18) Any contemporaneous time records of work performed by any individuals listed on page 1 of [REDACTED] April 13, 2011 letter to Stephen P. Heymann.
- 19) Calendars or all calendar entries for any of the individuals listed on page 1 of [REDACTED] [REDACTED] April 13, 2011 letter to Stephen P. Heymann during the period from September 1, 2010 to January 30, 2011.

CERTIFICATE OF AUTHENTICITY
OF BUSINESS RECORDS

I, _____, attest that:

I am employed by _____;

that my official title is _____; and

that I have been appointed the keeper of the attached records.

Each of the attached records is the original or a duplicate of the original records in the custody of _____.

I further state that:

- A) these records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) these records were kept in the course of a regularly conducted business activity; and
- C) it was the regular practice of this business to make such records.

I certify that the foregoing is true and accurate.

Executed on _____
Date

Signature

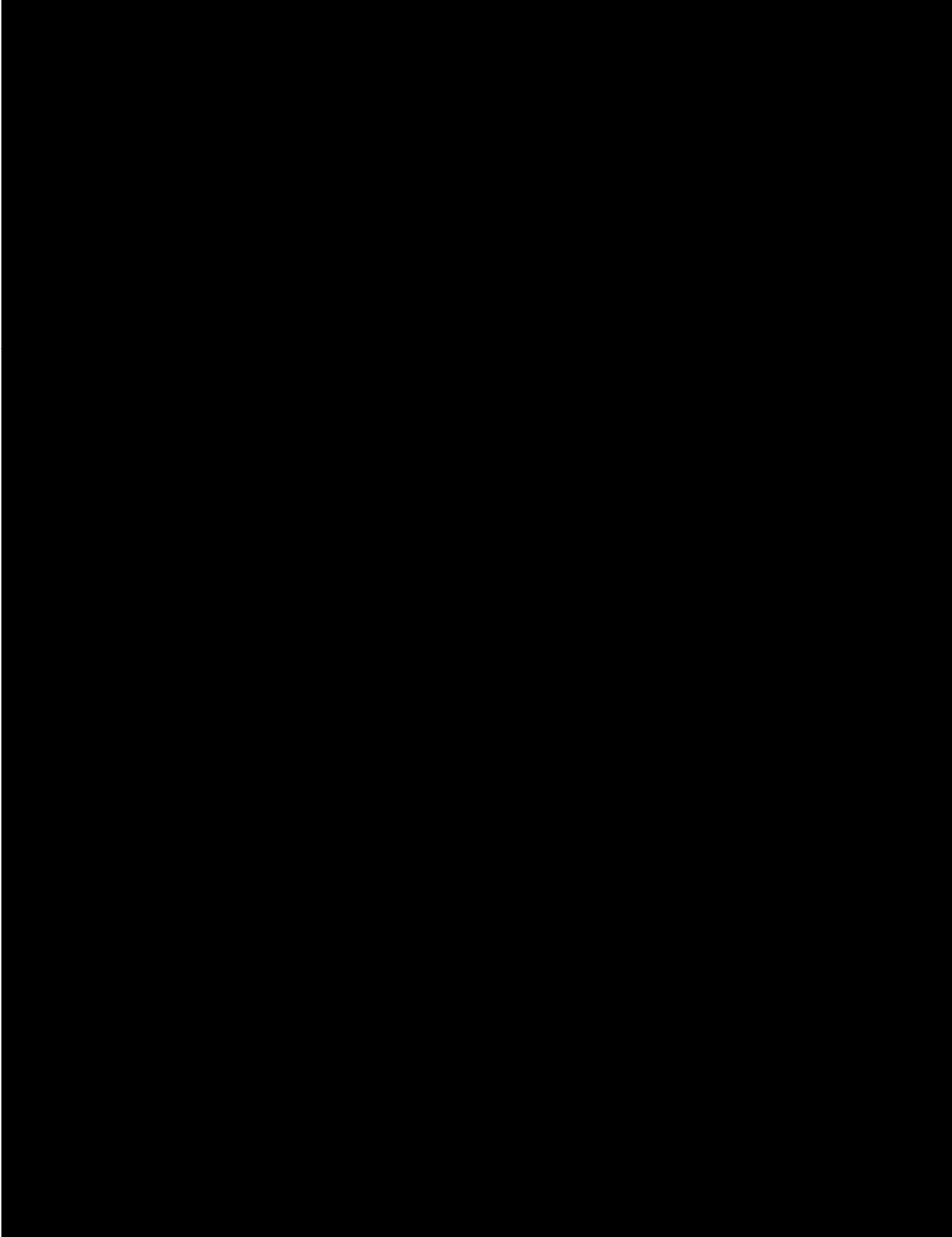
Location

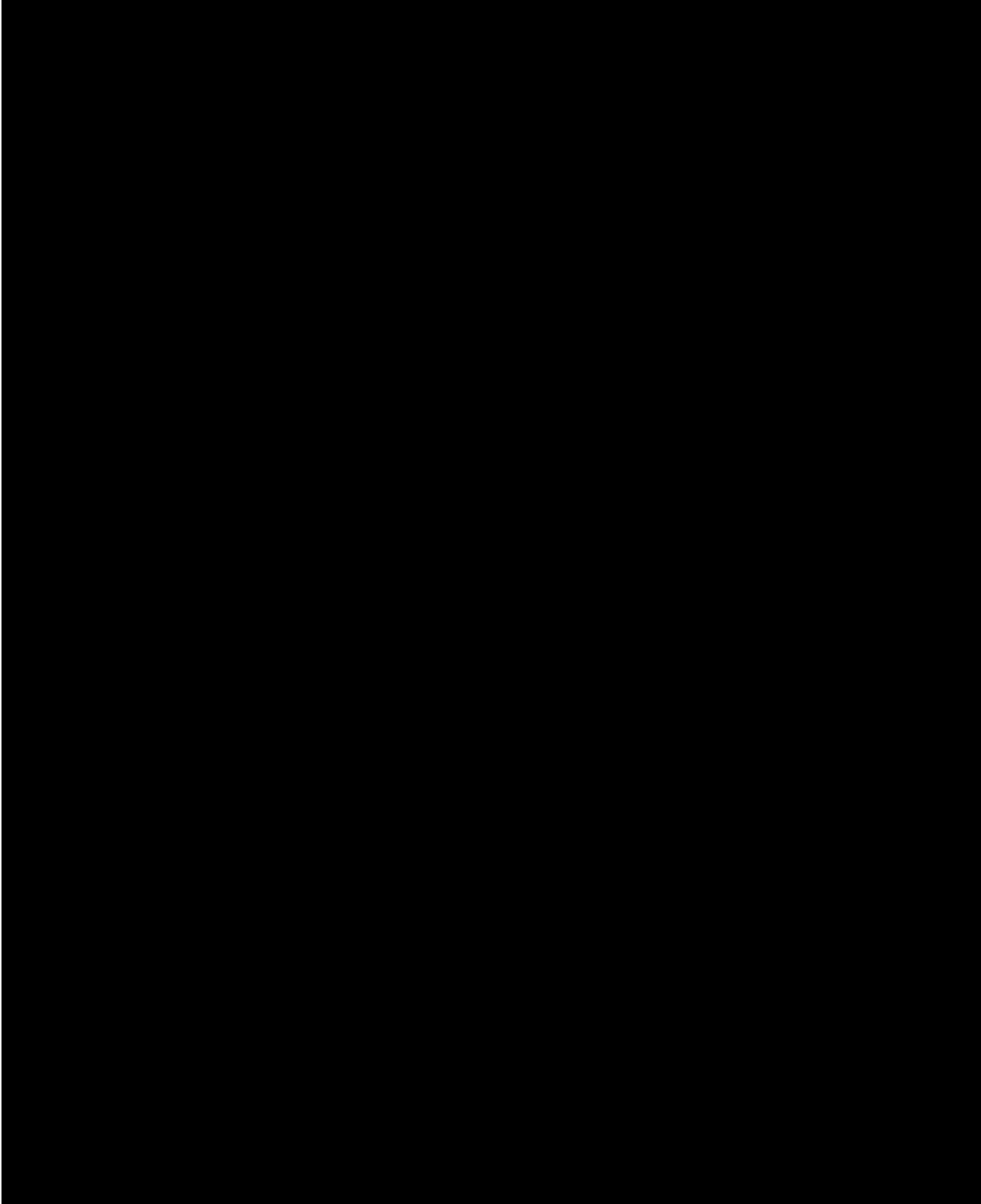
Notarization:

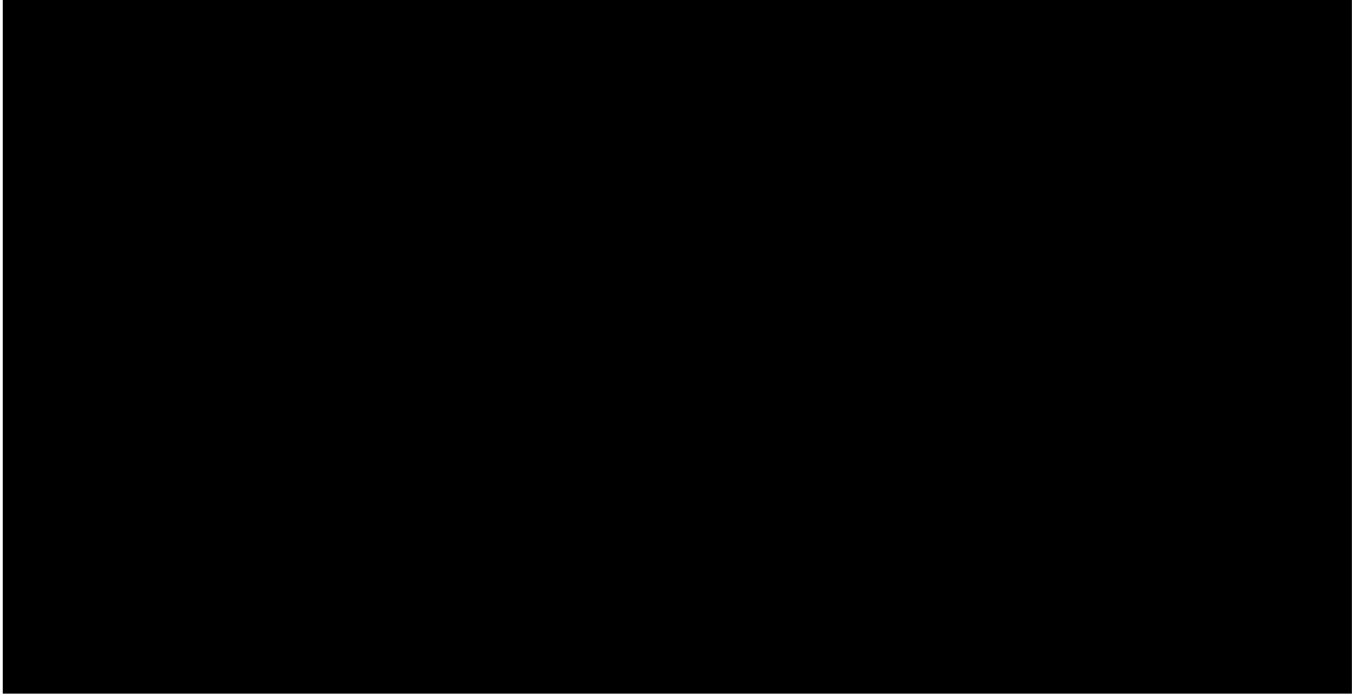
Sworn to before me this _____ day of _____.

Notary Public

My commission expires:







From: [REDACTED]
Sent: Friday, November 30, 2012 5:29 PM
To: 'Elliot Peters'
Subject: RE: US v. Swartz -- MIT subpoena

Expires: Thursday, February 28, 2013 12:00 AM

I'm checking with MIT to make sure I'm authorized to accept service. I'm sure I'll hear back by early Monday at the latest. When did you receive notice that the order had been issued?

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:44 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 5:32 PM
To: [REDACTED]
Subject: RE: US v. Swartz -- MIT subpoena

Thanks, [REDACTED]

I just got notice today, about 45 minutes before I emailed it to you.. It was mailed to us. Our local counsel in Boston still hasn't received the copy mailed to him!

From: [REDACTED]@nutter.com]
Sent: Friday, November 30, 2012 2:29 PM
To: Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

I'm checking with MIT to make sure I'm authorized to accept service. I'm sure I'll hear back by early Monday at the latest. When did you receive notice that the order had been issued?

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:44 PM
To: [REDACTED]
Cc: Daniel Purcell
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Best regards,
Elliot Peters

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—

From: [REDACTED]
Sent: Saturday, December 01, 2012 2:23 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

—

From: Elliot Peters [EPeters@KVN.com]
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
Thanks for your message.
A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish. Thanks.
Best,
Elliot

Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,
[REDACTED]

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

12/3/2012

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

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—

From: [REDACTED]
Sent: Monday, December 03, 2012 5:17 PM
To: 'Elliot Peters'
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena
Expires: Sunday, March 03, 2013 12:00 AM

Elliot,

MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

I'll be in touch about timing.

Regards,

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]

Thanks for your message.

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Best,
Elliot

Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

12/3/2012

Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]
I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
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From: Elliot Peters [EPeters@KVN.com]
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com]
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.
I'll be in touch about timing.

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
Thanks for your message.
A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish. Thanks.
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Cc: Daniel Purcell
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To: [REDACTED]
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Subject: US v. Swartz -- MIT subpoena

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—

From: [REDACTED]
Sent: Thursday, December 06, 2012 12:11 PM
To: 'Elliot Peters'
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena
Expires: Wednesday, March 06, 2013 12:00 AM

Elliot,
[REDACTED] and [REDACTED] are both available next Tuesday. [REDACTED] is available 9:30-1 and 2-5 EST; [REDACTED] is available before 1:30 EST. I've told [REDACTED] to be available for an hour, though I'll be surprised if you need that much time with [REDACTED]. I've told [REDACTED] to be available for 90 minutes. Let me know what times would be best in these windows.

I'm assuming that you plan to speak by phone, not in person. Before Tuesday, please let me know which lawyer(s) and which expert will be participating. Obviously, the time will be better spent if your participants have some familiarity with the case and computer networks. I know you're new to the case, but I encourage you and your expert to review the pre-trial discovery, because you already have many of the documents that you are requesting.

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com]
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

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Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]

Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
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Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hello Elliot,

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Regards,
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From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]
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Best regards,

12/6/2012

Elliot Peters

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From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, December 07, 2012 11:15 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

Thank you very much for your efforts trying to put this together. Unfortunately, I am in a full day mediation in San Francisco on Tuesday, December 11 and am not available. I would very much like to meet these people myself, so I consider this timing somewhat unfortunate. However, given your offer, and the tightness of the trial schedule at present, I believe that my partner Dan Purcell, and our expert are able to try and make face to face meetings that day. I will ask Dan to get back to you to arrange specific times and agree on a place. You and I have discussed our interest in gathering information about how access to the MIT computer network (and then to JSTOR) would have been accomplished from an Ethernet port on the campus in late 2010 and early 2011. We are also interested in whether the Ethernet Port in the basement room of Building 16 was any different than an Ethernet port upstairs in a classroom, or in the library, in that regard. We also have some questions about MIT computer network terms of service, the JSTOR agreement, and general questions about MIT's so-called "open campus" and "open network." Do you think that [REDACTED] and [REDACTED] are able to answer those questions? If not, would it make sense for us to talk to someone else in addition to those two? We identified [REDACTED] and [REDACTED] based on documents we received from the government (mostly emails), but do not know for sure whether they are the right people to address the information we are looking for, so I mention only to make sure that we take full advantage of your offer, which is much appreciated. Who will attend in addition to you and the folks we will be meeting? Thanks again.

Best regards,
Elliot

From: [REDACTED]@nutter.com]
Sent: Thursday, December 06, 2012 9:11 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

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Subject: RE: US v. Swartz -- MIT subpoena

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To: Elliot Peters
Cc: Daniel Purcell
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Sent: Friday, November 30, 2012 4:43 PM

To: [REDACTED]

Cc: Daniel Purcell

Subject: US v. Swartz -- MIT subpoena

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—

From: [REDACTED]
Sent: Friday, December 07, 2012 1:39 PM
To: 'Elliot Peters'
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena
Expires: Thursday, March 07, 2013 12:00 AM

Elliot and Dan,

I'm fairly confident that between [REDACTED] and [REDACTED] your questions will be covered, but I will let them know the topics, and if necessary we can find someone else, or they can make inquiries. We would be meeting on the MIT campus at the General Counsel Office, [REDACTED] MIT's in-house counsel [REDACTED] and I will be joining the witnesses. It makes sense to meet with both witnesses in the morning, as [REDACTED] is unavailable after 1:30 and I have [REDACTED]

We realize this is short notice for everyone, but Weds. through Fri. next week simply won't work, and we understand that, if the Swartz schedule doesn't change, time is of the essence.

It might be helpful to know something about your expert before the meeting.

Regards,

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, December 07, 2012 11:15 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

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From: [REDACTED]@nutter.com]
Sent: Thursday, December 06, 2012 9:11 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

12/7/2012

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To: ██████████
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi ██████████
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To: ██████████
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Elliot Peters
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415 676-2273

-----Original Message-----

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To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

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From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, December 07, 2012 2:11 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

Our expert is an excellent and highly regarded computer security consultant. He works for blue chip companies and is highly responsible. We will provide you his name if you agree that that will remain confidential as between us, and not be shared with anyone, especially the government, until we disclose him to them at the appropriate time.

Thanks,
Elliot

From: [REDACTED]@nutter.com]
Sent: Friday, December 07, 2012 10:39 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

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Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

Thank you very much for your efforts trying to put this together. Unfortunately, I am in a full day mediation in San Francisco on Tuesday, December 11 and am not available. I would very much like to meet these people myself, so I consider this timing somewhat unfortunate. However, given your offer, and the tightness of the trial schedule at present, I believe that my partner Dan Purcell, and our expert are able to try and make face to face meetings that day. I will ask Dan to get back to you to arrange specific times and agree on a place. You and I have discussed our interest in gathering information about how access to the MIT computer network (and then to JSTOR) would have been accomplished from an Ethernet port on the campus in late 2010 and early 2011. We are also interested in whether the Ethernet Port in the basement room of Building 16 was any different than an Ethernet port upstairs in a classroom, or in the library, in that regard. We also have some questions about MIT computer network terms of service, the JSTOR agreement, and general questions about MIT's so-called "open campus" and "open network." Do you think that [REDACTED] and [REDACTED] are able to answer those questions? If not, would it make sense for us to talk to someone else in addition to those two? We identified [REDACTED] and [REDACTED] based on documents we received from the government (mostly emails), but do not know for sure whether they are the right people to address the information we are looking for, so I mention only to make sure that we take full advantage of your offer, which is much appreciated. Who will attend in addition to you and the folks we will be meeting? Thanks again.

Best regards,
Elliot

From: [REDACTED]@nutter.com]
Sent: Thursday, December 06, 2012 9:11 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
[REDACTED] and [REDACTED] are both available next Tuesday. [REDACTED] is available 9:30-1 and 2-5 EST; [REDACTED] is available before 1:30 EST. I've told [REDACTED] to be available for an hour, though I'll be surprised if you need that much time with [REDACTED] I've told [REDACTED] to be available for 90 minutes. Let me know what times would be best in these windows.

I'm assuming that you plan to speak by phone, not in person. Before Tuesday, please let me know which lawyer(s) and which expert will be participating. Obviously, the time will be better spent if your participants have some familiarity with the case and computer networks. I know you're new to the case, but I encourage you and your expert to review the pre-trial discovery, because you already have many of the documents that you are requesting.

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com]
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

I'll be in touch about timing.

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]

Thanks for your message.

A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish. Thanks.

Best,
Elliot

Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

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—

From: [REDACTED]
Sent: Friday, December 07, 2012 2:15 PM
To: 'Elliot Peters'
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena
Expires: Thursday, March 07, 2013 12:00 AM

Elliot, I was assuming that we wouldn't disclose his name to the government, and will confirm that the client shares my view.

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, December 07, 2012 2:11 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

Our expert is an excellent and highly regarded computer security consultant. He works for blue chip companies and is highly responsible. We will provide you his name if you agree that that will remain confidential as between us, and not be shared with anyone, especially the government, until we disclose him to them at the appropriate time.

Thanks,
Elliot

From: [REDACTED]@nutter.com]
Sent: Friday, December 07, 2012 10:39 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot and Dan,

I'm fairly confident that between [REDACTED] and [REDACTED] your questions will be covered, but I will let them know the topics, and if necessary we can find someone else, or they can make inquiries. We would be meeting on the MIT campus at the General Counsel Office, [REDACTED] MIT's in-house counsel [REDACTED] and I will be joining the witnesses. It makes sense to meet with both witnesses in the morning, as [REDACTED] is unavailable after 1:30 and I have [REDACTED]

We realize this is short notice for everyone, but Weds. through Fri. next week simply won't work, and we understand that, if the Swartz schedule doesn't change, time is of the essence.

It might be helpful to know something about your expert before the meeting.

Regards,

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, December 07, 2012 11:15 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

Thank you very much for your efforts trying to put this together. Unfortunately, I am in a full day mediation in San Francisco on Tuesday, December 11 and am not available. I would very much like to meet these people myself, so I consider this timing somewhat unfortunate. However, given your offer, and the tightness of the trial schedule at present, I believe that my partner Dan Purcell, and our expert are able to try and make face to face meetings that day. I will ask Dan to get back to you to arrange specific times and agree on a place. You and I have discussed our interest in gathering information about how access to the MIT computer network (and then to JSTOR) would have been accomplished from an Ethernet port on the campus in late 2010 and early 2011. We are also interested in whether the Ethernet Port in the basement room of Building 16 was any different than an Ethernet port upstairs in a classroom, or in the library, in that regard. We also have some questions about MIT computer network terms of service, the JSTOR agreement, and general questions about MIT's so-called "open campus" and "open network." Do you think that [REDACTED] and [REDACTED] are able to answer those questions? If not, would it make sense for us to talk to someone else in addition to those two? We identified [REDACTED] and [REDACTED] based on documents we received from the government (mostly emails), but do not know for sure whether they are the right people to address the information we are looking for, so I mention only to make sure that we take full advantage of your offer, which is much appreciated. Who will attend in addition to you and the folks we will be meeting? Thanks again.

Best regards,
Elliot

From: [REDACTED]@nutter.com]
Sent: Thursday, December 06, 2012 9:11 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
[REDACTED] and [REDACTED] are both available next Tuesday. [REDACTED] is available 9:30-1 and 2-5 EST; [REDACTED] is available before 1:30 EST. I've told [REDACTED] to be available for an hour, though I'll be surprised if you need that much time with [REDACTED]. I've told [REDACTED] to be available for 90 minutes. Let me know what times would be best in these windows.

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Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com]
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,

MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

I'll be in touch about timing.

Regards,

From: Elliot Peters [mailto:EPeters@KVN.com]

Sent: Monday, December 03, 2012 11:56 AM

To: [REDACTED]

Cc: Daniel Purcell

Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]

Thanks for your message.

A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish. Thanks.

Best,

Elliot

Elliot Peters

Keker& Van Nest LLP

415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com]

Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time

To: Elliot Peters

Cc: Daniel Purcell

Subject: RE: US v. Swartz -- MIT subpoena

Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,

From: Elliot Peters [EPeters@KVN.com]

Sent: Friday, November 30, 2012 4:43 PM

12/7/2012

To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

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From: Daniel Purcell [DPurcell@KVN.com]
Sent: Saturday, December 08, 2012 4:28 PM
To: [REDACTED] Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED] Tuesday morning works for us. Please let us know when you'd like us to meet you.

As Elliot mentioned yesterday, we're happy to share our expert's name with you if you can confirm you'll keep that confidential until we disclose to the government.

Thanks again for your cooperation.

From: [REDACTED]@nutter.com]
Sent: Friday, December 07, 2012 10:38 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot and Dan,

I'm fairly confident that between [REDACTED] and [REDACTED] your questions will be covered, but I will let them know the topics, and if necessary we can find someone else, or they can make inquiries. We would be meeting on the MIT campus at the General Counsel Office, [REDACTED] MIT's in-house counsel [REDACTED] and I will be joining the witnesses. It makes sense to meet with both witnesses in the morning, as [REDACTED] is unavailable after 1:30 and I have [REDACTED].

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Sent: Friday, December 07, 2012 11:15 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]

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Cc: Daniel Purcell
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Elliot Peters
Keker& Van Nest LLP
415 676-2273

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Cc: Daniel Purcell
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Regards,
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From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
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From: [REDACTED]
Sent: Sunday, December 09, 2012 11:21 AM
To: Daniel Purcell; Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

Dan,
We agree to keep confidential your expert's name.
We'll probably start around 9:30 on Tuesday. I'll confirm the start time and let you know.

I look forward to meeting you and your expert.
Regards,
[REDACTED]

From: Daniel Purcell [DPurcell@KVN.com]
Sent: Saturday, December 08, 2012 4:27 PM
To: [REDACTED]; Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED] Tuesday morning works for us. Please let us know when you'd like us to meet you.

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From: [REDACTED]@nutter.com]
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Cc: Daniel Purcell
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To: [REDACTED]
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Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]<mailto:[mailto:EPeters@KVN.com]>
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com]<mailto:[mailto:[REDACTED]@nutter.com]>
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,

MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

I'll be in touch about timing.

Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com]<mailto:[mailto:EPeters@KVN.com]>
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]

Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
Thanks for your message.
A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish.
Thanks.
Best,
Elliot

Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com<mailto:[REDACTED]@nutter.com>
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,
[REDACTED]

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]
I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.
Best regards,
Elliot Peters

Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that

any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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From: Elliot Peters [EPeters@KVN.com]
Sent: Sunday, December 09, 2012 2:04 PM
To: [REDACTED] Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]
Our expert is Alex Stamos, founder of iSEC Partners and also of Artemis Internet, both internet security firms. Sorry I will miss Tuesday's get-together.
Best,
Elliot

-----Original Message-----

From: [REDACTED]@nutter.com]
Sent: Sunday, December 09, 2012 8:21 AM
To: Daniel Purcell; Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

Dan,
We agree to keep confidential your expert's name.
We'll probably start around 9:30 on Tuesday. I'll confirm the start time and let you know.
I look forward to meeting you and your expert.
Regards,
[REDACTED]

From: Daniel Purcell [DPurcell@KVN.com]
Sent: Saturday, December 08, 2012 4:27 PM
To: [REDACTED] Elliot Peters
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED] Tuesday morning works for us. Please let us know when you'd like us to meet you.

As Elliot mentioned yesterday, we're happy to share our expert's name with you if you can confirm you'll keep that confidential until we disclose to the government.

Thanks again for your cooperation.

From: [REDACTED]@nutter.com]
Sent: Friday, December 07, 2012 10:38 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot and Dan,

I'm fairly confident that between [REDACTED] and [REDACTED] your questions will be covered, but I will let them know the topics, and if necessary we can find someone else, or they can make inquiries. We would be meeting on the MIT campus at the General Counsel Office, [REDACTED]. MIT's in-house counsel [REDACTED] and I will be joining the witnesses. It makes sense to meet with both witnesses in the morning, as [REDACTED] is unavailable after 1:30 and I have [REDACTED]

We realize this is short notice for everyone, but Weds. through Fri. next week simply won't work, and we understand that, if the Swartz schedule doesn't change, time is of the essence.

It might be helpful to know something about your expert before the meeting.

Regards,

[REDACTED]
From: Elliot Peters [mailto:EPeters@KVN.com]
Sent: Friday, December 07, 2012 11:15 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

[REDACTED]
Thank you very much for your efforts trying to put this together. Unfortunately, I am in a full day mediation in San Francisco on Tuesday, December 11 and am not available. I would very much like to meet these people myself, so I consider this timing somewhat unfortunate. However, given your offer, and the tightness of the trial schedule at present, I believe that my partner Dan Purcell, and our expert are able to try and make face to face meetings that day. I will ask Dan to get back to you to arrange specific times and agree on a place. You and I have discussed our interest in gathering information about how access to the MIT computer network (and then to JSTOR) would have been accomplished from an Ethernet port on the campus in late 2010 and early 2011. We are also interested in whether the Ethernet Port in the basement room of Building 16 was any different than an Ethernet port upstairs in a classroom, or in the library, in that regard. We also have some questions about MIT computer network terms of service, the JSTOR agreement, and general questions about MIT's so-called "open campus" and "open network." Do you think that [REDACTED] and [REDACTED] are able to answer those questions? If not, would it make sense for us to talk to someone else in addition to those two? We identified [REDACTED] and [REDACTED] based on documents we received from the government (mostly emails), but do not know for sure whether they are the right people to address the information we are looking for, so I mention only to make sure that we take full advantage of your offer, which is much appreciated. Who will attend in addition to you and the folks we will be meeting? Thanks again.

Best regards,
Elliot

From: [REDACTED]@nutter.com]
Sent: Thursday, December 06, 2012 9:11 AM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
[REDACTED] and [REDACTED] are both available next Tuesday. [REDACTED] is available 9:30-1 and 2-5 EST; [REDACTED] is available before 1:30 EST. I've told [REDACTED] to be available for an hour, though I'll be surprised if you need that much time with [REDACTED]. I've told [REDACTED] to be available for 90 minutes. Let me know what times would be best in these windows.

I'm assuming that you plan to speak by phone, not in person. Before Tuesday, please let me know which lawyer(s) and which expert will be participating. Obviously, the time will be better spent if your participants have some familiarity with the case and computer networks. I know you're new to the case, but I encourage you and your expert to review the pre-trial discovery, because you already have many of the documents that you are requesting.

Regards,

[REDACTED]
From: Elliot Peters [mailto:EPeters@KVN.com]<mailto:[mailto:EPeters@KVN.com]>
Sent: Wednesday, December 05, 2012 9:00 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
How are we doing? We agree about working together.
Thanks.
Elliot

From: [REDACTED]@nutter.com [mailto:[mailto:[REDACTED]@nutter.com]]>
Sent: Monday, December 03, 2012 2:17 PM
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Elliot,
MIT intends to be cooperative. We expect to make both [REDACTED] and [REDACTED] available, probably next week. I encourage you not to think in terms of bidding against yourself or MIT. As Judge Gorton stated in his order, he expects us to work together to resolve any disputes about the proper scope of production. Litigating a motion to quash doesn't serve either party's interests.

I'll be in touch about timing.
Regards,
[REDACTED]

From: Elliot Peters [mailto:EPeters@KVN.com] [mailto:[mailto:EPeters@KVN.com]]>
Sent: Monday, December 03, 2012 11:56 AM
To: [REDACTED]
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena

Hi [REDACTED]
Thanks for your message.
A chance to talk to a knowledgeable person would help a lot and would help us narrow our subpoena, to the benefit of both sides. It would not obviate the need for the subpoena entirely, but would help us narrow it. We remain interested in talking to [REDACTED] and [REDACTED] as well, and will certainly need the backup to [REDACTED] letters to Heymann about purported financial harm. However, I don't have the subpoena in front of me right now, nor do I have any real sense of how cooperative MIT is prepared to be. I can't do this piecemeal, or bid against myself, but I am prepared to have a meaningful global discussion about our needs and MIT's burdens, so we can get what we need (and are lawfully entitled to) to defend the case, without any undue burden on MIT. If MIT's is truly "neutral," it would seem easy to arrange this. So let's see what we can accomplish. Thanks.

Best,
Elliot

Elliot Peters
Keker& Van Nest LLP
415 676-2273

-----Original Message-----

From: [REDACTED]@nutter.com [mailto:[mailto:[REDACTED]@nutter.com]]>
Sent: Saturday, December 01, 2012 11:24 AM Pacific Standard Time
To: Elliot Peters
Cc: Daniel Purcell
Subject: RE: US v. Swartz -- MIT subpoena Hello Elliot,

MIT has authorized me to accept service of the subpoena, so you don't need to do anything more to effect service. Earlier this week, you suggested that the best way to proceed was for MIT to make available a knowledgeable person about the MIT network as of September 2010 through January 2011, who could answer questions posed by you or your partner, and your expert. Please let me know if learning about issuance of Judge Gorton's order changes your views. Otherwise, we will find the right person(s) with whom you can speak.

Regards,

From: Elliot Peters [EPeters@KVN.com]
Sent: Friday, November 30, 2012 4:43 PM
To: [REDACTED]
Cc: Daniel Purcell
Subject: US v. Swartz -- MIT subpoena

Hi [REDACTED]

I hope all is well. Attached please find a subpoena to MIT. Also attached please find an Order from Judge Gorton authorizing the subpoena, and commanding compliance within thirty days of service. I caution you that the Order was filed under Seal, but we think it apparent that Judge Gorton contemplated its disclosure to MIT and to JSTOR. Please inform me if you are authorized to accept service of the subpoena, and whether this email will suffice, or whether we need to serve MIT in some other fashion. As previously discussed, we are happy to work cooperatively with you and MIT in connection with subpoena compliance. Thank you.

Best regards,
Elliot Peters

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—

From: [REDACTED]
Sent: Monday, December 17, 2012 9:06 PM
To: Daniel Purcell
Cc: Elliot Peters
Subject: Re: MIT Subpoena

Before 9:30 or 12-3 PCT. What works for you?

Sent from my iPhone

On Dec 17, 2012, at 7:35 PM, "Daniel Purcell" <DPurcell@KVN.com> wrote:

[REDACTED] is there a good time tomorrow for you to talk about narrowing our document requests in light of last week's interviews? Thanks again.

From: [REDACTED]
Sent: Tuesday, December 18, 2012 8:40 AM
To: 'Daniel Purcell'
Cc: Elliot Peters
Subject: RE: MIT Subpoena

Expires: Monday, March 18, 2013 12:00 AM

Call my office then, [REDACTED]

-----Original Message-----

From: Daniel Purcell [mailto:DPurcell@KVN.com]
Sent: Monday, December 17, 2012 10:36 PM
To: [REDACTED]
Cc: Elliot Peters
Subject: RE: MIT Subpoena

I could talk at 3 ET/noon PT.

From: [REDACTED]@nutter.com]
Sent: Monday, December 17, 2012 6:06 PM
To: Daniel Purcell
Cc: Elliot Peters
Subject: Re: MIT Subpoena

Before 9:30 or 12-3 PCT. What works for you?

Sent from my iPhone

On Dec 17, 2012, at 7:35 PM, "Daniel Purcell" <DPurcell@KVN.com<mailto:DPurcell@KVN.com>> wrote:

[REDACTED], is there a good time tomorrow for you to talk about narrowing our document requests in light of last week's interviews? Thanks again.

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—

From: [REDACTED]
Sent: Friday, December 21, 2012 4:22 PM
To: 'Daniel Purcell'
Subject: USA v. Swartz
Attachments: SKMBT_50012122111520.pdf

Dan,

This is the first of four emails that I'm sending you this afternoon, with attachments that are responsive to your subpoena. We will continue to collect responsive documents, subject to the limitations on the subpoena's scope that we discussed last week by phone.

Attached to this email is the letter that MIT attorney [REDACTED] sent to the government on April 13, 2011, with backup to the letter. MIT reports that it did not incur any costs related to repair of MIT's computers resulting from Aaron Swartz's conduct.

Copies of logs and other responsive items were produced to the government before our firm was involved in the matter. The easiest way to proceed as to those items is to get confirmation from AUSA Heymann that the items have been produced in pre-trial discovery. Please let me know before Jan. 2, 2013 if you have any objection to this inquiry.

This email also confirms that, in light of our efforts to date and the upcoming holidays, you have postponed the return date on the subpoena, at least through early January.

Enjoy the holidays,

[REDACTED]

12/21/2012

Massachusetts Institute of Technology

Office of the General Counsel

77 Massachusetts Avenue
Cambridge, Massachusetts
02139-4307

Phone
Fax
Email @mit.edu

**VIA E-MAIL AND
FIRST CLASS MAIL**

April 13, 2011

Stephen P. Heymann, Esq.
Department of Justice
United States Attorney's Office
John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, MA 02210



Re: **Grand Jury Subpoena to MIT - JSTOR Investigation**

Dear Assistant U.S. Attorney Heymann:

I am writing in response to the request in the above-referenced subpoena for "[a]ll records of expenditures of time and money to respond to the events."

As we have discussed, MIT employees do not, as a matter of course, track their time working on a particular task or assignment. As a result, there are no original documents reflecting that information. I have, however, asked the primary employees involved to give a rough estimate of the time they devoted to responding to the events. Below is that estimate:

60 hours @ \$55/hour
- 10 hours @ \$67/hour
- 20 hours @ \$55/hour
- 38 hours @ \$67/hour
- 8.5 hours @ \$55/hour
- 9 hours @ \$55/hour
- 6 hours @ \$55/hour
- 8 hours @ \$55/hour
13.75 hours @ \$55/hour

For IS&T employees (i.e., everyone except for [redacted] the hourly rates are based on rates that IS&T uses to estimate software development costs, with managers charged at \$67 per hour and staff charged at \$55 per hour. For [redacted] the hourly rate is based on [redacted] actual salary and benefits (it is just a coincidence that [redacted] hourly rate also worked out to \$55 per hour).

Stephen P. Heymann, Esq.

April 13, 2011

Page 2

With the exception of [REDACTED], [REDACTED], and [REDACTED], nearly all of the time was spent after law enforcement became involved. For [REDACTED] and [REDACTED] the amount of time spent prior to the involvement of law enforcement is estimated at 40 hours, 5 hours, and 8.75 hours, respectively. There may have been small amounts of time expended by others, as well, but these estimates reflect the bulk of MIT resources devoted to this matter. I estimate that I have spent approximately 25 hours responding to the subpoena.

As before, MIT requests the same protections relating to confidentiality and non-disclosure that are routinely provided by the U.S. Attorney's Office for documents and information produced in response to grand jury subpoenas.

Please let me know if you have any questions or concerns.

Sincerely,

[REDACTED]

HOURS

Timeline of events related to JSTOR downloading incident:
9/26/10 - 1/6/11

People involved:

[Redacted]	JSTOR	[Redacted]
Joseph Murphy	JSTOR	[Redacted]
Michael Pickett	Cambridge Police Detective	[Redacted]
[Redacted]	United States Secret Service Special Agent	[Redacted]
[Redacted]	MIT	[Redacted]
[Redacted]	MIT	[Redacted]
[Redacted]	MIT	[Redacted]
[Redacted]	MIT	[Redacted]
[Redacted]	MIT	[Redacted]
[Redacted]	MIT	[Redacted]
26 hrs	MIT	[Redacted]
38 hrs	MIT	[Redacted]
8.5 hrs	MIT	[Redacted]
9 hrs	MIT	[Redacted]
6 hrs	MIT	[Redacted]
6 hrs	MIT	[Redacted]
8 hrs	MIT	[Redacted]
	MIT	[Redacted]
	MIT	[Redacted]
	MIT	[Redacted]
	MIT	[Redacted]

Sun 9/26/10 | 12:31pm Email is received from [Redacted] of JSTOR stating that at 8am excessive downloading of journals started and that all of MIT's access to JSTOR has been blocked.

Mon 9/27/10 | 10:28am Security team receives email from [Redacted] regarding excessive downloading from two IP addresses 18.55.6.216 & 18.55.6.215 and needs help identifying the user of those addresses. [Redacted] follows up with [Redacted] that we're looking into identifying user.

Mon 9/27/10 | pm JSTOR restores MIT's access having changed their blocking to just 18.55.6.*; user information discovered reveals bogus guest network registration named Gary Host (ghost@mailinator.com) with host registration occurring on Fri 9/24/10.

[REDACTED]

From: [REDACTED]
Sent: Wednesday, February 16, 2011 2:51 PM
To: [REDACTED]
Subject: Hours spent on JSTOR

20 hours total

9 hours initially
3 hrs with my laptop as the network capture
2 hours consolidating logs and records
2 hours examining the network capture files
2 hours investigating why the network capture laptop dopped of the network. Drove in after
hours. Turned out it was just the command and control wireless adapter. The physical
network adapter performing the capture was unaffected.
2 hours of meetings regarding the incident.

[REDACTED]

Information Services and Technology (IS&T)
Massachusetts Institute of Technology

[REDACTED]
Cambridge, MA 02139

[REDACTED]
[REDACTED]
[\[REDACTED\]@mit.edu](mailto:[REDACTED]@mit.edu)

[REDACTED]

From: [REDACTED]
Sent: Wednesday, February 16, 2011 3:58 PM
To: [REDACTED]
Subject: Hours spent on JSTOR

So far I would estimate about:

38 hours total

8 hrs Jan 4

4 hrs Jan 6

20 hrs analyzing data

4 hrs meetings (1 - [REDACTED] mtg, 1 - [REDACTED] mtg, 1 - [REDACTED] mtg, 1 - conf call)

2 hrs collecting data

--

[REDACTED]
Massachusetts Institute of Technology
77 Massachusetts Ave, [REDACTED]
Cambridge, MA 02139
Phone: [REDACTED]
Email: [REDACTED]@mit.edu

[REDACTED]

From: [REDACTED]@MIT.EDU]
Sent: Wednesday, February 16, 2011 2:46 PM
To: [REDACTED]
Subject: JSTOR Hours

Jan 4th: 3.5 hours
Jan 5th: 2 hours
Jan 6th: 3 hours

--

[REDACTED]
Massachusetts Institute of Technology
[REDACTED]@mit.edu [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Wednesday, February 16, 2011 2:07 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Hours Spent on Building 16 Security Incident

Hey [REDACTED]

I spent about 9 hours on the building 16 security incident.

[REDACTED]

[REDACTED]

Information Services & Technology, MIT

[REDACTED]

[REDACTED]@mit.edu

[REDACTED]

[REDACTED]

From: [REDACTED]@MIT.EDU
Sent: Wednesday, February 16, 2011 2:44 PM
To: [REDACTED]
Cc:
Subject: hours spent on jstor event

Hi [REDACTED] I'd estimate I spent 6 hours on items relating to this event.

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Wednesday, February 16, 2011 2:44 PM
To: [REDACTED]
Subject: hours for JSTOR event

I'd estimate 8 hours.

[REDACTED]

=====
[REDACTED]

MIT Information Services & Technology

[REDACTED]
77 Massachusetts Avenue
Cambridge, MA 02139
[REDACTED]@mit.edu

[REDACTED]

From: [REDACTED]
Sent: Thursday, February 03, 2011 10:29 AM
To: [REDACTED]
Subject: time estimate for JSTOR case

[REDACTED] as a *very rough* estimate, here's the time I spent on the JSTOR case. I break it down in case you want to omit certain elements.

Talk with JSTOR 1 hr
Email with JSTOR 3 hrs
Email internally 4 hrs
Talk with [REDACTED] 1 hr
Talk with [REDACTED] .5 hr
Schedule JSTOR meeting .25 hour
Investigate amount paid to JSTOR 1 hr
Prepare summary notes, timeline for interview with Attorney general's office 3 hrs

TOTAL 13.75 hrs

[REDACTED]

[REDACTED]

MIT Libraries

P [REDACTED]

[REDACTED]@mit.edu

<http://libraries.mit.edu/scholarly>

[REDACTED]

From: [REDACTED]
Sent: Wednesday, April 13, 2011 11:38 AM
To: [REDACTED]
Subject: RE: time estimate for JSTOR case

This is actually the "hourly" rate plus EB cost for [REDACTED] (\$84K base) – rounded up a bit – and probably just a coincidence that it equals the IS&T number. [REDACTED]

From: [REDACTED]
Sent: Wednesday, April 13, 2011 10:06 AM
To: [REDACTED]
Subject: RE: time estimate for JSTOR case

[REDACTED]

I will use this. I'll need to explain the basis for it. Is this a standard project rate the Libraries use? It's actually the same rate that IS&T gave me, so my impression is that it might be standard.

[REDACTED]

[REDACTED]

Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139
tel: [REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

This message and any attached documents contain information which may be confidential, subject to privilege, or exempt from disclosure under applicable law. These materials are intended only for the use of the intended recipient. Delivery of this message to any person other than the intended recipient shall not compromise or waive such confidentiality, privilege, or exemption from disclosure as to this communication.

From: [REDACTED]
Sent: Wednesday, April 13, 2011 7:48 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: time estimate for JSTOR case

[REDACTED] – Please use \$55/hr as the cost basis for [REDACTED] time. Thanks, [REDACTED]

From: [REDACTED]
Sent: Tuesday, April 12, 2011 12:23 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: time estimate for JSTOR case

Hi [REDACTED]

This is for an estimate of time and money spent responding to a law enforcement matter, which has been requested by the United States Attorney's Office. Most of the MIT personnel time was IS&T staff, but [REDACTED] was involved as well, so we need to estimate the "cost" of [REDACTED] time (13.75 hours).

Is that enough? I'm happy to talk if you have any questions.

[REDACTED]
Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139
tel: [REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

This message and any attached documents contain information which may be confidential, subject to privilege, or exempt from disclosure under applicable law. These materials are intended only for the use of the intended recipient. Delivery of this message to any person other than the intended recipient shall not compromise or waive such confidentiality, privilege, or exemption from disclosure as to this communication.

From: [REDACTED]
Sent: Monday, April 11, 2011 9:16 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: time estimate for JSTOR case

Hi [REDACTED]

On occasion we charge back staff time for special projects or efforts, but tend most often to use the actual hourly cost (salary + benefits) of the people involved rather than a standard rate. If you can tell us a bit more detail, we'd be happy to give you some figures.

Thanks,

[REDACTED]
[REDACTED]
MIT Libraries [REDACTED]

From: [REDACTED]
Sent: Monday, April 11, 2011 8:05 AM
To: [REDACTED]
Subject: FW: time estimate for JSTOR case

From: [REDACTED]
Sent: Friday, April 08, 2011 1:31 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: time estimate for JSTOR case

Thanks, [REDACTED]

[REDACTED] if you have any thoughts, I'd be happy to share a bit more detail.

[REDACTED]
Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139
tel: [REDACTED]
fax: [REDACTED]
[REDACTED]@mit.edu

This message and any attached documents contain information which may be confidential, subject to privilege, or exempt from disclosure under applicable law. These materials are intended only for the use of the intended recipient. Delivery of this message to any person other than the intended recipient shall not compromise or waive such confidentiality, privilege, or exemption from disclosure as to this communication.

From: [REDACTED]
Sent: Friday, April 08, 2011 9:42 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: time estimate for JSTOR case

Hi [REDACTED]

I imagine we have some figure we use for internal calculations, etc. , and we do have at least one cost-recovery unit that would involve chargebacks for time. I would consult with [REDACTED] our HR person, to see if she has those figures. I'm copying her here.

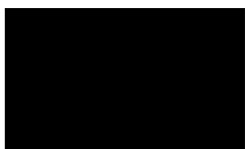
[REDACTED] this has to do with calculating the value of the time Libraries staff spent on a license compliance issue involving JSTOR content.

[REDACTED]
MIT Libraries
P [REDACTED]
[REDACTED]@mit.edu
<http://libraries.mit.edu/scholarly>

From: [REDACTED]
Sent: Friday, April 08, 2011 9:36 AM
To: [REDACTED]
Subject: RE: time estimate for JSTOR case

Great. Thanks, [REDACTED]

Do you know whether the Libraries ever "charge" (even if only in an internal accounting kind of way) for their time? I'm trying to find a way to allocate an hourly rate to the people involved. I have our business manager looking into it with the financial folks, but I'm wondering whether you have any insight?



Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, [redacted]
Cambridge, MA 02139

tel: [redacted]
fax: [redacted]

[redacted]@mit.edu

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[REDACTED]

From: [REDACTED]
Sent: Tuesday, April 12, 2011 11:48 AM
To: [REDACTED]
Subject: RE: Employee "Billing" Rate

Hi [REDACTED]
I could not reach [REDACTED] but talked with one of the IST financial staff who gave me rates they use for software developers when estimating project costs.. Probably fine to use for this situation. Managers \$67/hr, other staff \$55/hr. I looked at the IST org chart, so came up with this:

3 Managers ([REDACTED] and [REDACTED] are [REDACTED] [REDACTED] a [REDACTED] in the MIT Directory) \$67/hr each, or \$201/hr as a group.
6 regular staff ([REDACTED]) at \$55/hr each or \$330 as a group.

Hope this helps, let me know anything else you need.

[REDACTED]

[REDACTED] Office of the General Counsel
Phone [REDACTED]
Fax [REDACTED]
[REDACTED]@mit.edu

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From: [REDACTED]
Sent: Thursday, April 07, 2011 3:36 PM
To: [REDACTED]
Subject: Employee "Billing" Rate

[REDACTED]

Below is a list of the employees who were involved in this matter. With the exception of [REDACTED] they are all IS&T employees. [REDACTED] works for the MIT Libraries.

[REDACTED]

Office of the General Counsel
Massachusetts Institute of Technology

77 Massachusetts Avenue, [REDACTED]
Cambridge, MA 02139

tel: [REDACTED]

fax: [REDACTED]

[REDACTED]@mit.edu

This message and any attached documents contain information which may be confidential, subject to privilege, or exempt from disclosure under applicable law. These materials are intended only for the use of the intended recipient. Delivery of this message to any person other than the intended recipient shall not compromise or waive such confidentiality, privilege, or exemption from disclosure as to this communication.

From: [REDACTED]
Sent: Friday, December 21, 2012 4:24 PM
To: 'Daniel Purcell'
Subject: USA v. Swartz

Attachments: 13.2.pdf; 11.1.pdf; 11.2.pdf



13.2.pdf (156 KB) 11.1.pdf (24 KB) 11.2.pdf (96 KB)

Dan,

I have attached Sections 11.1, 11.2, and 13.2 of MIT's policies & procedures as they existed during the relevant time period. The current versions are accessible online.
Regards,

OLD

13.0 Information Policies

13.2 Policy on the Use of Information Technology

Information technology policies ensure that everyone's use of the Institute's computing and telecommunications resources supports its educational, research, and administrative mission in the best possible way. Effective support of the Institute's mission requires complying with relevant legal, contractual, professional, and policy obligations whenever information technology is used. Effective support also means that individuals should not interfere with the appropriate uses of information technology by others.

This policy statement covers privacy of Institute records; information security and preservation; responsible use of MIT computers, networks, and telephones; privacy of electronic communications; and the acquisition and use of third-party products and services.

13.2.1 Privacy of Institute Records

All members of the MIT community are responsible for ensuring that their handling of information about individuals is consistent with the Institute's policy on privacy of information (see [Section 11.2](#)). This policy applies to all records of the Institute and to any other appearances of all or part of the information in those records.

The privacy of individuals must be protected, regardless of the form or the location in which the information about them is stored, including computer media. Access to personal information must be limited to authorized users for approved purposes. Such information must be safeguarded from unauthorized access. Individuals who are authorized to access personal information about others should not make unauthorized disclosure or use of it.

The availability of computerized information about individuals may appear to encourage the use of those records for purposes beyond those for which the information was originally collected. Such secondary uses of information about individuals are inappropriate, unless undertaken in accordance with the Institute's policy on privacy.

13.2.2 Information Security and Preservation

MIT has an obligation to provide accurate, reliable information to authorized recipients and to preserve vital records (see [Section 13.3 Archival Policy](#)). MIT is increasingly dependent on the accuracy, availability, and accessibility of information stored electronically and on the computing and networking resources that store, process, and transmit this information. Records created and maintained in electronic form are included in the Institute's definition of archival materials.

Individuals who manage or use the information and computing resources required by the Institute to carry out its mission must protect them from unauthorized modification, disclosure, and destruction. Information — including data and software — is to be protected, regardless of the form or medium that carries the information. Protection shall be commensurate with the risk of exposure and with the value of the information and of the computing resources.

13.2.3 Responsible Use of MIT Computers, Networks, and Telephones

MIT's computers, networks, and telephones offer many opportunities to share information on campus and

to access resources off campus. All members of the MIT community are obligated to use these facilities in accordance with applicable laws, with Institute standards of honesty and personal conduct, and in ways that are responsible, ethical, and professional.

The use of MIT's telephones is restricted to Institute business and necessary personal telephone calls. Necessary personal telephone calls include calls to arrange family and personal schedules, medical-related calls, and other reasonable calls; these calls should be brief. No reimbursement to MIT is required for such calls.

Telephone calls related to personal businesses and activities are prohibited unless a personal telephone credit card is used or an explicit agreement for reimbursement to MIT has been established with the appropriate organization.

MIT's computing and networking facilities and services are to be used for Institute purposes only and not for the benefit of private individuals or other organizations without authorization. Unauthorized access to and use of MIT computer and network services violates this policy.

Members of the Institute community should not take unauthorized actions to interfere with or alter the integrity of MIT computers, networks, telephones, or the information accessed through them. Efforts to restrict or deny access by legitimate users of the Institute's computers, networks, and telephones are unacceptable. Individuals should not use MIT facilities to interfere with or alter the integrity of any other computers, networks, telephones, or information, irrespective of their location.

Destruction, alteration, or disclosure of data or programs belonging to others without authorization is inappropriate. Individuals should not connect unauthorized equipment to or tamper with MIT information technology facilities or equipment. Using any of the information technology resources of the Institute for unethical purposes, such as harassment, is unacceptable.

13.2.4 Privacy of Electronic Communications

Federal laws protect the privacy of users of wire and electronic communications from illegal interception. Individuals who access electronic files or intercept network communications at MIT or elsewhere without appropriate authorization violate Institute policy and may be subject to criminal penalties.

The law also regulates disclosure of information within an electronic mail system by providers of electronic mail services. MIT departments and other providers of electronic mail services at the Institute who are asked to disclose information from an individual's electronic files without the individual's authorization should seek guidance from the Office of the Vice President for Information Systems.

13.2.5 Acquisition and Use of Third-Party Products and Services

Special restrictions are often placed on the use of information technology products and services — such as hardware, software, documentation, and databases — acquired from outside sources. Members of the MIT community are required to abide by the restrictions imposed by suppliers on information technology products and services acquired for use at the Institute.

Unless it has been placed in the public domain, most third-party software is protected by copyright law. Under US copyright law, it is illegal to duplicate copyrighted software or documentation — except for one archival copy — without the permission of the copyright owner. Unauthorized copying includes lending software to others so that they can make unauthorized copies, as well as letting someone use your computer to make an unauthorized copy. It is illegal to distribute unauthorized copies of software by any means, including a computer network.

Use of hardware, software, databases, and documentation may be further restricted by patent law, as a trade secret, or by contract law in the form of a license or other agreement. When a department, laboratory, center, or individual acquires hardware, software, documentation, or access to proprietary databases from outside sources for use at MIT, the department is responsible for obtaining Institute approval that the terms and conditions of any associated license or other agreement are consistent with relevant Institute policy, such as the research policy statements and the policies on Intellectual Property (see [Section 13.1](#)).

When supervisors, instructors, or others arrange for authorized distribution of information technology products and services from outside sources, those individuals are responsible for ensuring that the people having access to the products and services are advised of all the associated usage restrictions.

OLD

11.0 Privacy and Disclosure of Information

11.1 Protection of Privacy

MIT is committed to protecting the personal privacy of members of the MIT community. Invasions of privacy can take many forms, often inadvertent or well-intentioned. The mutual trust and freedom of thought and expression essential to a university rest on a confidence that privacy will be respected and disclosures of personal information will be made with the informed consent of the individual. While the organizations collecting and having custody of information are immediately responsible for its protection, the ultimate protection comes from a community-wide awareness of the importance of privacy in our society and the many ways it can be eroded.

OLD

11.0 Privacy and Disclosure of Information

11.2 Policy on Privacy of Information

Recognizing that specific items of information about current (as well as former) individual students, faculty, and staff must be maintained for educational, research, and other institutional purposes, it is MIT policy that such information be collected, maintained, and used by the Institute only for appropriate, necessary, and clearly defined purposes, and that such information be controlled and safeguarded in order to ensure the protection of personal privacy to the extent permitted by law. The educational records of students are also subject to MIT's policy on the privacy of student records (see [Section 11.3](#)).

When a member of the MIT community is asked by an office or individual at the Institute to provide information about himself or herself, that person should be informed of the purposes for which it will be used and the consequences, if any, of not supplying it. Such information should not be used or exchanged within the Institute for purposes other than those stated or legitimate purposes that would be reasonably expected.

Federal and state laws give students and employees, respectively, the right to see certain records maintained about them. In accordance with such laws, and while respecting the privacy of others and the traditional confidentiality of faculty peer review and evaluation, an individual should be provided the means for seeing and obtaining copies of records about him or her maintained by the Institute, as well as for challenging their accuracy and completeness and the propriety of their use.

Personal information, other than directory information about students and standard personnel information, should not be released to anyone outside MIT without the permission of the individual, except in the case of court orders and/or legal process (see [Section 11.2.1](#)), in cases where such release would be clearly expected (employment references, award nominations, etc.), or in extraordinary circumstances. Directory information about students includes name, term and permanent addresses, term telephone number, term electronic mail address, date of birth, department, class, degrees received, dates of attendance, any honors and awards received, and for an intercollegiate athletic team member, weight and height (see also [Section 11.3.2 Disclosure of Information about Students](#)). Standard personnel information comprises dates of MIT employment, job classification or title, the department in which an individual is or was employed, and MIT telephone extension for current employees.

Requests for information about foreign nationals, other than directory information about students and standard personnel information, should be directed to the Provost, who may release such information provided that the query is specific (rather than general, as in a form letter), that it concerns a named individual rather than a class of people, that it is made by a senior government official, and that it is lawful to release the information; it must also be apparent that a response is warranted by serious considerations of national security or law enforcement.

Persons with responsibility for records containing personal information should exercise care to ensure accuracy and completeness. Safeguards should be provided to protect personal information against accidental or intentional misuse or improper disclosure within or outside MIT.

When records containing personal information are no longer actively needed, they should be retired and maintained in accordance with the Institute Archival Policy ([Section 13.3](#)), which ensures all rights of privacy stated in this section and in [Section 11.3 Privacy of Student Records](#), with one modification:

Under special circumstances, the Archivist may grant scholarly researchers access to records that have been inactive for many years. Students' educational records maintained by the Institute Archivist are subject to all of the rights and restrictions provided by the Family Educational Rights and Privacy Act of 1974 (see Section 11.3 Privacy of Student Records).

11.2.1 Court Orders and Legal Process

In the case of court orders or subpoenas for information about an individual, that individual should ordinarily be notified of the request as soon as possible, unless a court order prohibits such notification, and the required information should be released only by an authorized officer of the Institute.

From: [REDACTED]
Sent: Friday, December 21, 2012 4:31 PM
To: 'Daniel Purcell'
Subject: USA v. Swartz
Attachments: JSTOR Expenditures, MIT Libraries, FY10 and FY11.xls

Dan,

I have attached a chart showing MIT's expenditures for JSTOR for FY10 (7/1/09-6/30/10) and FY11 (7/1/10-6/30/11). These expenditures were based on the size of the institution, not usage. MIT reports that there were no additional charges for Swartz's downloading, and it does not bill users for their access.

There has been no substantive amendment to the main JSTOR license agreement. Periodically MIT submits a rider stating what additional materials it would like to have access to, which in turn affects how much it is charged. These riders do not seem relevant to the issues in the case.

Regards,

[REDACTED]

Ongoing Fees

FY2010	FY2011	TITLE
\$3,750.00	\$3,750.00	JSTOR Arts & Sciences I Collection
\$6,000.00	\$6,000.00	JSTOR Arts & Sciences II Collection
\$7,500.00	\$7,500.00	JSTOR Arts & Sciences III Collection
\$7,125.00	\$7,125.00	JSTOR Arts & Sciences IV Collection
\$7,500.00	\$7,500.00	JSTOR Arts & Sciences V Collection
\$3,000.00	\$7,500.00	JSTOR Arts & Sciences VI Collection
\$4,000.00	\$4,000.00	JSTOR Arts & Sciences VII Collection
\$850.00	\$3,825.00	JSTOR Arts & Sciences VIII Collection
\$11,250.00	\$11,250.00	JSTOR Life Sciences Collection
\$50,975.00	\$58,450.00	

One-time Fees

FY2010	FY2011	Title
\$9,750.00		JSTOR A&S VI Archive Capital Fee
\$12,075.00		JSTOR A&S VIII Archive Capital Fee
\$21,825.00	\$0.00	

Total Spend

FY2010	FY2011
\$72,800.00	\$58,450.00

From: [REDACTED]
Sent: Friday, December 21, 2012 4:39 PM
To: 'Daniel Purcell'
Subject: USA v. Swartz

Dan,
I have attached a link to a photo of a sample switch in one of MIT's buildings. Every building connected to the MIT network has a main distribution room - BDF (base distribution frame) - which serves as the connection between the broader network using fiber optics. From that distribution room, other fiber optics connect to any number of other network closets within a building.

MIT tells me that it has no document containing the technical specifications of the captured/captive portal.

Regards,
[REDACTED]

http://www.core.net.nz/products_pictures/13102010327.jpg

From: Daniel Purcell [DPurcell@KVN.com]
Sent: Friday, December 21, 2012 5:01 PM
To: [REDACTED]
Subject: RE: USA v. Swartz

Thanks, [REDACTED].

From: [REDACTED]@nutter.com]
Sent: Friday, December 21, 2012 1:38 PM
To: Daniel Purcell
Subject: USA v. Swartz

Dan,
I have attached a link to a photo of a sample switch in one of MIT's buildings. Every building connected to the MIT network has a main distribution room - BDF (base distribution frame) - which serves as the connection between the broader network using fiber optics. From that distribution room, other fiber optics connect to any number of other network closets within a building.

MIT tells me that it has no document containing the technical specifications of the captured/captive portal.

Regards,
[REDACTED]

http://www.core.net.nz/products_pictures/13102010327.jpg

Circular 230 Disclosure: To ensure compliance with IRS Circular 230, we inform you that any federal tax advice included in this communication (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of (i) avoiding the imposition of federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

—

From: Daniel Purcell [DPurcell@KVN.com]
Sent: Wednesday, January 09, 2013 5:01 PM
To: [REDACTED]
Cc: Elliot Peters; Katherine M. Lovett
Subject: Subpoena Follow-Up
Attachments: MIT_Affidavit.docx

[REDACTED]

I'm writing to follow up on our previous discussions, and in particular on your December 21, 2012 emails producing materials in response to Aaron Swartz's subpoena to your client MIT. To begin with, thanks very much for the material you provided. We appreciate your and MIT's cooperation. That said, there are a few categories of requested information not addressed in MIT's production so far.

First, as I've mentioned before, we would like MIT to produce to us any materials it produced to the Government that are within the scope of the subpoena. During our meeting at MIT in December, your client [REDACTED] said that MIT's practice would be to produce the same materials to both the Government and Mr. Swartz. To the extent MIT has produced any documents or other materials to the Government that it has not shared with us, we ask that MIT produce those materials to us directly.

Second, during our meet and confer call the week of December 17, 2012, I tried to narrow our requests 7 and 8, for documents sufficient to show (a) the network architecture of the MIT network in Building 16; and (b) the configuration of the switch in Room 004 on the lower level of Building 16 by asking if MIT had any schematics showing that architecture and configuration. To date, MIT has produced only a link to a picture of sample switch in one of MIT's buildings. You have also told me that MIT has "no document containing the technical specifications of the captured/captive portal," which was the subject of a different request (number 11). Unless I'm misunderstanding, this response does not answer the question whether MIT has documents responsive to requests 7 and 8. We ask again that MIT produce any technical schematics or other documents in its possession sufficient to show the architecture of the MIT network in Building 16 and the switch in Room 004.

Third, although we appreciate the materials you forwarded about MIT's privacy policies, we also requested policies, to the extent MIT has any, about MIT's decision to have an open computer network that, at least during the relevant time period in 2010 and 2011, was freely accessible to guests. If MIT has policies discussing those issues, we would like copies of them.

Finally, although we appreciate your production of backup materials to [REDACTED] April 13, 2011 letter and information showing MIT's payments to JSTOR, these materials do not address much of the subject matter of our document requests, including whether (a) the calculations in [REDACTED] letter reflect actual additional money paid by MIT as the result of the downloading at issue in this case; and (b) MIT ever pays JSTOR any a la carte charges as the result of any individual downloads, including the downloading event at issue in this case. That said, we understand that this information may not be readily available in a single document and we want to ease the burden on MIT of producing documents where we can. Accordingly, we have prepared the attached draft affidavit, which states the facts regarding these issues as we understand them. The draft affidavit also addresses the question whether MIT has any additional DHCP server, Radius server, or captured portal logs beyond those produced to the Government. We hope that the affidavit is a simple way for MIT to provide us with the information we need while avoiding the burdens of additional document searches. Obviously, to the extent anything in the affidavit is inaccurate, please let us know. We are happy to revise. Alternatively, if MIT would prefer to produce documents containing this information, that could work as well.

I am happy to discuss these issues at your convenience. Thanks again.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

No. 11-CR-10260-NMG

v.

AARON SWARTZ,

Defendant.

AFFIDAVIT OF _____

I, _____, hereby state and declare as follows:

1. I am currently employed by the Massachusetts Institute of Technology (“MIT”) as _____. I submit this affidavit on behalf of MIT in response to a subpoena for documents and information served on MIT by Aaron Swartz on November 27, 2012. I state the facts herein based on personal knowledge and, if called as a witness, could and would testify competently thereto.

2. I am familiar with an April 13, 2011 letter from MIT Assistant General Counsel _____ to Assistant United States Attorney Stephen P. Heymann, in which _____ responded to a subpoena from the United States Government for “[a]ll records of expenditures of time and money to respond to” events related to downloading of material from the JSTOR archive through the MIT computer network. _____ letter then provides a list of hours spent by, and hourly rates for, certain MIT employees related to MIT’s response to the downloading event. A true and correct copy of that letter is attached as Exhibit A.

3. All of the individuals listed on _____ letter are exempt MIT employees who are paid a yearly (or monthly) salary. None of those individuals are paid by the hour, or paid the specific hourly rates set forth in _____ letter. As _____ letter noted, the hourly rates quoted in that letter “are based on rates that [MIT] uses to estimate software

development costs.” Those hourly rates were applied to these employees’ time for purposes of responding to the Government’s subpoena. MIT did not pay any of these employees any additional amounts because of their work responding to the downloading event. It paid each of those employees their usual salary, and would have paid them that same amount had there been no downloading event to investigate. As a result, MIT did not pay out any more money to these employees as a consequence of the downloading event than it would have paid otherwise.

4. Further, with respect to downloading of material from the JSTOR archive through the MIT network, MIT is billed by JSTOR on a yearly basis for access to each particular JSTOR collection (e.g., JSTOR’s Arts & Sciences collections or Life Sciences collection). MIT pays a flat fee to JSTOR for unlimited access to each JSTOR collection. In other words, MIT’s payables to JSTOR do not depend on the volume of materials accessed by MIT network users from the JSTOR collections. Similarly, no individual accessing the JSTOR archive through the MIT network pays an à la carte charge for downloading any JSTOR material. Those downloads are paid for by MIT through the lump-sum, unlimited-access payments described above. MIT did not pay any more to JSTOR as a result of the downloading event than it would have had that event not occurred.

5. Mr. Swartz’s subpoena also asks for logs for certain computer equipment used on the MIT network for the periods from (a) September 24-26, 2010; (b) October 2-9, 2010; (c) November 29-December 26, 2010; and (d) December 27, 2010-January 6, 2011. In particular, the subpoena asks for MIT’s DHCP server logs, Radius server logs, and captured portal server logs. To the extent MIT has any of the requested logs from the specified time periods, it has produced those logs to the Government in connection with this case. Other than the materials produced to the Government, MIT did not preserve, and does not have, any other requested logs.

I swear under penalty of perjury that the foregoing is true and correct and that this affidavit was executed on _____, 2013 at Cambridge, Massachusetts.

From: [REDACTED]
Sent: Wednesday, January 09, 2013 9:25 PM
To: Daniel Purcell
Cc: Elliot Peters; Katherine M. Lovett
Subject: RE: Subpoena Follow-Up

Dan,
I'll discuss your email tomorrow with in-house counsel at MIT. I'm up against a Friday discovery deadline in a federal civil case. Let me know a couple times that work for you early next week for a phone call.
Regards,
[REDACTED]

From: Daniel Purcell [DPurcell@KVN.com]
Sent: Wednesday, January 09, 2013 5:00 PM
To: [REDACTED]
Cc: Elliot Peters; Katherine M. Lovett
Subject: Subpoena Follow-Up

[REDACTED]

I'm writing to follow up on our previous discussions, and in particular on your December 21, 2012 emails producing materials in response to Aaron Swartz's subpoena to your client MIT. To begin with, thanks very much for the material you provided. We appreciate your and MIT's cooperation. That said, there are a few categories of requested information not addressed in MIT's production so far.

First, as I've mentioned before, we would like MIT to produce to us any materials it produced to the Government that are within the scope of the subpoena. During our meeting at MIT in December, your client [REDACTED] said that MIT's practice would be to produce the same materials to both the Government and Mr. Swartz. To the extent MIT has produced any documents or other materials to the Government that it has not shared with us, we ask that MIT produce those materials to us directly.

Second, during our meet and confer call the week of December 17, 2012, I tried to narrow our requests 7 and 8, for documents sufficient to show (a) the network architecture of the MIT network in Building 16; and (b) the configuration of the switch in Room 004 on the lower level of Building 16 by asking if MIT had any schematics showing that architecture and configuration. To date, MIT has produced only a link to a picture of sample switch in one of MIT's buildings. You have also told me that MIT has "no document containing the technical specifications of the captured/captive portal," which was the subject of a different request (number 11). Unless I'm misunderstanding, this response does not answer the question whether MIT has documents responsive to requests 7 and 8. We ask again that MIT produce any technical schematics or other documents in its possession sufficient to show the architecture of the MIT network in Building 16 and the switch in Room 004.

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Finally, although we appreciate your production of backup materials to [REDACTED] April 13, 2011 letter and information showing MIT's payments to JSTOR, these materials do not address much of the subject matter of our document requests, including whether (a) the calculations in [REDACTED] letter reflect actual additional money paid by MIT as the result of the downloading at issue in this case; and (b) MIT ever pays JSTOR any a la carte charges as the result of any individual downloads, including the downloading event at issue in this case. That said, we understand that this information may not be readily available in a single document and we want to ease the burden on MIT of producing

documents where we can. Accordingly, we have prepared the attached draft affidavit, which states the facts regarding these issues as we understand them. The draft affidavit also addresses the question whether MIT has any additional DHCP server, Radius server, or captured portal logs beyond those produced to the Government. We hope that the affidavit is a simple way for MIT to provide us with the information we need while avoiding the burdens of additional document searches. Obviously, to the extent anything in the affidavit is inaccurate, please let us know. We are happy to revise. Alternatively, if MIT would prefer to produce documents containing this information, that could work as well.

I am happy to discuss these issues at your convenience. Thanks again.