

# United States District Court

NORTHERN DISTRICT OF TEXAS

Wichita Falls Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

TIMOTHY KYLE DUNAWAY

Case Number: 7:08-CR-018-O (01)

U.S. Marshal's No.: 38096-177

Marc Miller for Alex C. Lewis, Assistant U.S. Attorney

Chris Curtis, Attorney for the Defendant

On October 30, 2008, the defendant, TIMOTHY KYLE DUNAWAY, entered a plea of guilty to Count One of the One Count Information filed on October 10, 2008. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

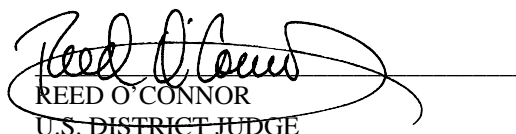
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
17 U.S.C. § 506(a)(1)(A) & 18 U.S.C. § 2319	Criminal Copyright Infringement	May 28, 2008	One

The defendant is sentenced as provided in pages two through five of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100 Count One of the One Count Information filed on October 10, 2008.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed February 17, 2009.

  
REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed February 17, 2009.

## IMPRISONMENT

The defendant, TIMOTHY KYLE DUNAWAY, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of FORTY-ONE (41) months on Count One of the One Count Information filed on October 10, 2008.

The Court recommends that the defendant be designated to a Bureau of Prison facility where he may participate in the Residential Drug Abuse Program, if eligible.

The defendant shall surrender for service of sentence to the institution designated on or before 2:00 P.M., March 24, 2009.

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of TWO (2) years on Count One of the One Count Information filed on October 10, 2008.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons;

provide to the probation officer any requested financial information;

pay any remaining balance of restitution in the amount of \$810,257.00, as set out in this Judgment;

refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the probation officer makes a determination that the defendant is in compliance with the payment schedule;

refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer;

provide to the probation officer complete access to all business and personal financial information;

maintain not more than one business and/or one personal checking account, and shall not open, maintain, be a signatory on, or otherwise use any other financial institution account without the prior approval of the probation officer;

not transfer, sell, give away, or otherwise convey any asset with a value of \$500 or more without the approval of the probation officer;

not enter into any self-employment while under supervision without prior approval of the probation officer;

not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the business of computer software without the probation officer's approval;

participate in individual or group counseling programs, as directed by the probation officer, for the purpose of evaluating and counseling the defendant for gambling addiction;

participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer conducting ongoing monitoring of his/her computer(s). The monitoring may include the installation of hardware and/or software systems which allows evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. The monitoring software may be disabled or removed at any time during the term of supervision at the discretion of the probation officer;

submit to periodic unannounced examination of his/her computer(s), storage media, and/or other electronic or Internet-capable device performed by the probation officer at a reasonable time and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider;

not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer;

not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer;

provide the probation officer with accurate information about his/her entire computer system. The defendant's email shall only be accessed through a pre-approved application;

not install new hardware, perform upgrades, or effect repairs on his/her computer system without receiving prior permission from the probation officer;

not access any service or use any software which allows for direct peer to peer contact which may include chat rooms, file sharing, or other similar activity without permission from the probation officer;

not engage in or utilize any service which allows peer-to-peer file sharing or file transfer protocol activity;

not download, possess, and/or install copyrighted materials without permission of your probation officer; and,

not possess or use removable media configured with bootable operating systems.

### **FINE/RESTITUTION**

The Court does not order a fine because the defendant does not have the financial resources or future earning capacity to pay a fine due to the large amount of restitution.

Pursuant to the Mandatory Victim Restitution Act of 1996, the defendant is ordered to pay restitution in the amount of \$810,257.00, payable to the U.S. District Clerk, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242. Restitution shall be payable immediately and any remaining balance shall be payable during incarceration. Restitution shall be disbursed to:

Adobe Systems Incorporated  
Attention: Chris Stickle  
Enforcement Manager, Anti-Piracy  
Reference: Timothy Dunaway

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance beginning 60 days after release from custody at the rate of \$100.00 per month until the restitution is paid in full. Further, it is ordered that interest on the unpaid balance is waived pursuant to 18 USC § 3612(f)(3).

### **FORFEITED PROPERTY**

As the result of his guilty plea on Count One of the One-Count Information, the defendant shall forfeit the following to the Government:

- a. One 1994 Ferrari model 348 TB bearing Vehicle Identification number ZFFRG35AXR0097938;
- b. One Men's Rolex Submariner watch purchased by Timothy Dunaway at Haltom's jewelry store located in Arlington, Texas; and
- c. All computers, hard drives, optical disc media, infringing works, and contraband seized from the Defendant and/or during the search of his residence on or about May 28<sup>th</sup>, 2008<sup>1</sup>.

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<sup>1</sup>The Information also alleged forfeiture of:

d. The hard drive and any forensic image(s) of the computer server assigned IP address 83.64.127.23 on the network of NETonE hosting the downloadable content, including its electronic contents seized in Vienna, Austria on or about May 28<sup>th</sup>, 2008.

However, the government advises that since the website and the server drive was seized by Vienna, Austria, authorities, forfeiture of this property is not necessary.

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The computer-related property seized from the residence consists of:

- 52 Software CD's;
- Sony Vaio Laptop computer Serial # cxsmm01brd02d110 Model#peg9wil /with power cord;
- IMAC computer w/power cord Serial#xao47o6njqj;
- Gateway laptop/w power cord Serial#n325a31007543, Model#mx7515;
- CD Tower Burner UFC#i30609236;
- Gateway laptop w/power cord Serial #r11014461r7060408;
- Desk Top Computer (no identifiers);
- Thumb Drive Serial#g08gfm2720499 Model# My Flash;
- I Omega External Hard-Drive w/power cord Serial#j4ag388008 Model#mdhp250-4;
- (2ea) Western Digital Hard Drives Serial# wmala1133601, #not visible, Model #wd1200, and #wd1200; and,
- Compaq desk top computer Serial#2h9bct9fm938.

**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
United States Marshal

BY \_\_\_\_\_  
Deputy Marshal