

CRIMINAL COMPLAINT

ORIGINAL

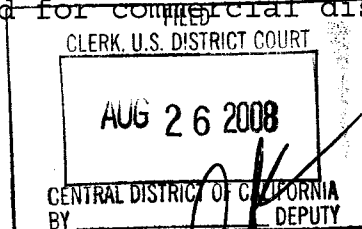
UNITED STATES DISTRICT COURT	CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA v. KEVIN COGILL, aka "Skwerl,"	DOCKET NO. MAGISTRATE'S CASE NO. 08-2089M

Complaint for violation of Title 17, United States Code, Section 506(a)(1)(C)

NAME OF MAGISTRATE JUDGE STEPHEN J. HILLMAN	UNITED STATES MAGISTRATE JUDGE	LOCATION Los Angeles, CA
DATE OF OFFENSE June 18, 2008	PLACE OF OFFENSE Los Angeles County	ADDRESS OF ACCUSED (IF KNOWN)

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

On or about June 18, 2008, in Los Angeles County, within the Central District of California, defendant KEVIN COGILL, aka "Skwerl," knowingly and willfully distributed a copyrighted work being prepared for commercial distribution, namely nine previously unreleased songs by the band Guns n' Roses, by making the songs available on a computer network accessible to members of the public, knowing that the works were intended for commercial distribution.



BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:

(See attached affidavit which is incorporated as part of this Complaint)

MATERIAL WITNESSES IN RELATION TO THIS CHARGE:

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT

[Signature]

OFFICIAL TITLE

JENSEN D. PENALOSA
Special Agent - FBI

Sworn to before me and subscribed in my presence,

SIGNATURE OF MAGISTRATE JUDGE(1)

[Signature]

DATE

August 26, 2008

1) See Federal Rules of Criminal Procedure rules 3 and 54.

A F F I D A V I T

I, Jensen D. Penalosa, being duly sworn, hereby state as follows:

1. I am employed as a Special Agent ("SA") of the Federal Bureau of Investigation ("FBI") and have been so employed since October 2005. I am currently assigned to the Los Angeles Field Division, Cyber Crime Squad, which is responsible for investigating a variety of crimes involving the use of computers and the Internet, including crimes relating to intellectual property. I have received training in computer-related investigations and issues from the FBI, and have interviewed individuals who have used computers in connection with criminal activity. I have a Bachelors Degree in Computer Science from California State University, Fullerton.

2. This affidavit is made in support of a complaint and arrest warrant charging Kevin Cogill (COGILL), also known as ("aka") "Skwerl," with a violation of Title 17, United States Code Section, 506 (a)(1)(C) (copyright infringement), which provides as follows:

Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed . . . by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work

was intended for commercial distribution.

Violation of this section is a felony punishable by imprisonment for not more than 3 years or, if the offense was committed for commercial advantage or private financial gain, for not more than 5 years.

3. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from various FBI agents and witnesses. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not purport to set forth all of my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

BACKGROUND REGARDING COMPUTERS, THE INTERNET,

E-MAIL AND INSTANT MESSAGING

4. Based on my education, training, and experience, and the experience of other law enforcement officers with whom I have worked and spoken, I have an in-depth understanding of the Internet and how it operates. The Internet is a worldwide computer network which connects computers and allows communications and transfer of information and data across state and national boundaries. Individuals who utilize the Internet can communicate by using electronic mail (hereinafter "e-mail"). The following paragraphs describe some of the functions and

features of the Internet as it relates to the subject of this investigation.

5. Internet Service Providers ("ISPs"). Individuals who have an Internet account and an Internet based e-mail address must have a subscription, membership, or affiliation with an organization or commercial service that provides access to the Internet. A provider of Internet access and services is referred to as an Internet Service Provider or "ISP."

6. Electronic Mail ("e-mail"). E-mail is an electronic form of communication that usually contains written correspondence. It is similar to conventional paper mail in that it is addressed from one individual to another. An e-mail usually contains a message "header" that generally displays the sender's e-mail address, the recipient's e-mail address, and the date and time of the e-mail transmission. If a sender chooses to do so, he or she can type a subject line into the header. E-mail message "headers" usually contain information, such as identification of the sender's ISP, which enables law enforcement officers to trace the message back to the original sender.

7. Internet Addresses. Every device on the Internet has an address that allows other devices to locate and communicate with it. An Internet Protocol (IP) address is a unique number that identifies a device on the Internet. Other addresses include Uniform Resource Locator (URL) addresses, such as "http://www.dhs.gov," which are typically used to access web

sites or other services on remote devices. Domain names of Web sites, host names, and machine addresses are other types of addresses associated with Internet use. Domain name registrars contain registration information concerning the identity of the owner of a domain name.

8. Internet Protocol Address ("IP address"). A unique 32-bit numeric address represented by four numbers, each from 0 to 255, separated by periods. These numbers range from four to twelve digits in length (0.0.0.0 through 255.255.255.255). IP addresses are used by computers on the Internet, in a manner similar to a telephone number. Every computer attached to the Internet must be assigned an IP address so that Internet traffic can be directed properly from its source to its destination. A common point of IP address assignment is an Internet Service Provider.

9. Domain Name. Naming system designed to organize internet traffic. Organized hierarchically and read right to left, the right most component is the "top level domain." This includes the ".com," ".gov," ".mil," and ".edu" domains as well as many others. Top level domains are owned and managed by the Internet sanctioning organizations. The second part of the domain name is owned by the registrant who first registered the name with the sanctioning organizations. It is common to refer to a registered domain and top level domain combination as a "domain name." Examples include "google.com" and

"cybercrime.gov." Domain name owners can then create sub domains to provide addresses to resources they own and/or control. For example, the DNS sub domain "www" ("world wide web") is generally used to denote an organization's web server, so "www.google.com" would, and does, point to Google's main web site. Another sub domain, "maps.google.com," points to Google's online mapping web site. Domain names are commonly inserted into the Uniform Resource Locator (URL) on a web browser application in order to "point" the computer user to that particular resource or service on the internet. World wide web URLs begin with "http://".

10. Web hosting. This refers to providing space for a web site, or content, on the Internet. Typically when someone registers a domain, he or she points that domain to the location of the corresponding web site or service, whether it's located on a computer or server owned by the end user or one owned by a web hosting service. Many companies exist that provide such hosting. The owner of a domain is free to change hosting providers at any time. All he or she would have to do is provide the new IP address of the host location to the registry service.

11. Internet Protocol address log. A history of IP addresses maintained by a computer of addresses that have accessed it.

12. WHOIS database query. A method for querying an online database in order to determine the owner of a domain name, an IP address, or an anonymous system number on the Internet.

PROBABLE CAUSE

13. On or about June 19, 2008, I spoke to Tom Rackleff, who is an investigator employed by the Recording Industry Association of America (RIAA), who told me the following:

(a) On June 18, 2008, an individual using the nickname "Skwerl" made available to the public over the Internet nine previously unreleased songs ("the songs") that were then being prepared for commercial distribution by the rock band Guns n' Roses ("Guns n' Roses" or "the band"). He had done so by "posting" -- i.e., making files containing the songs available to the public -- to a web site called www.antiquiet.com.

(b) Attorneys for the band sent a "cease and desist" letter to the administrator of the server which hosted the www.antiquiet.com web site demanding the songs be taken down.

(c) A person going by the nickname "Skwerl" responded to the cease and desist letter using an e-mail address of "skwerl@gmail.com." The response stated that he had in fact made the unreleased songs available and that as a result of his posting the songs the ensuing number of "hits" caused the web site to crash. He also told the band's attorney that he had deleted the songs from his server and from his personal computer. The message was signed "Kevin 'Skwerl' Cogill."

14. On or about June 20, 2008, I did a "whois" query for the web site www.antiquiet.com. The information I reviewed listed the contact information for that web site as: Digital

Workers Union, Kevin Skwerl, XXXX Canfield Ave, Apt #X, Los Angeles, California 900XX, (XXX) XXX-XXXX.

15. I also reviewed California Department of Motor Vehicles (DMV) records and found that the records listed COGILL's residence address as XXXX Canfield Ave, Apt #X, Los Angeles, California 900XX. That is the same address listed in the whois information for the registrant for the web site www.antiquiet.com.

16. On June 23, 2008, I interviewed COGILL at his place of employment, Gorilla Nation Media and Crave Online, which are located at XXXX W. Goldleaf Circle, Los Angeles, California. During the interview, COGILL told me that he had posted the unreleased Guns n' Roses songs on his web site www.antiquiet.com. COGILL also said that he had corresponded with Laurie Soriano using the email address skwerl@gmail.com.

17. On June 24, 2008, I interviewed COGILL at his residence, XXX Glendon Ave #XXX, Los Angeles, California 900XX. COGILL provided a typed, signed confession which stated that he had posted the unreleased Guns n' Roses songs to the Internet on his web site www.antiquiet.com. He also confirmed that his telephone number was (XXX) XXX-XXXX, which is the same telephone number listed on the whois information for the registrant of the web site www.antiquiet.com.

18. On August 21, 2008, I spoke with Daniel Green ("Green"). Green owns the computer server that hosted the web

site www.antiquiet.com where the songs were posted. Green stated that according to his IP address logs, an article was posted to www.antiquiet.com from a computer using IP address 63.139.86.3. According to another witness in the case, that article included a link to the 9 unreleased Guns n' Roses songs.

19. On or about August 22, 2008, I performed a whois lookup to get information about the IP address 63.139.86.3. According to the information I reviewed, the owner of that IP address is Gorilla Nation Media, which is COGILL's employer.

20. On or about August 22, 2008, I viewed the contact information for Gorilla Nation at <http://www.gorillanation.com/contact/>. The address listed for the corporate headquarters was XXXX W. Goldleaf Circle Floor 3, Los Angeles, CA 900XX, the same location where I interviewed COGILL on June 23, 2008.

21. On August 23, 2008, I spoke with COGILL over the telephone and he told me that he was at work when he uploaded the songs to his web site www.antiquiet.com.

22. Based on the information stated above, I submit that there is probable cause to believe KEVIN COGILL, aka "Skwerl," violated 17 U.S.C. § 506(1)(c) when he posted the previously


//

//

//

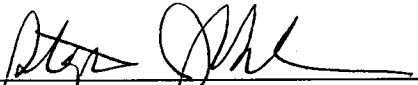
//

unreleased Guns n' Roses songs on his web site and thereby made
them available to the public via the Internet.



Jensen D. Penalosa
Special Agent, FBI

Subscribed and sworn to before
me on August 26, 2008.



HON. STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE