

CLERK'S OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED

JUL 19 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

GRANT STANLEY

Case No. 2:06CR17

PLEA AGREEMENT

My counsel and I have entered into a plea agreement with the United States of America, by counsel, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms and conditions of this agreement are as follows:

1. CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WAIVER OF RIGHTS

I will enter a plea of guilty to the United States Attorney's Information which charges violations of 17 U.S.C. § 506 and 18 U.S.C. §§ 2319 and 371. The proposed Information would charge me with having willfully conspired with others to commit offenses against the United States -- to wit, to willfully infringe a copyrighted work for purposes of commercial advantage and private financial gain, by reproducing and distributing during a 180-day period ten (10) or more copies of one or more copyrighted works, which have a total retail value of more than \$2,500, in violation of Title 18, United States Code, Sections ~~347~~ ^{RR 371, RDX} 2319(b)(1), and Title 17, United States Code, Section 506(a)(1). I admit that there is a factual basis for the plea and further fully understand that the elements of the crime are:

Defendant's Initials: *GS*

- (1) that two or more persons entered into the unlawful agreement charged in the information;
- (2) that the defendant knowingly and willfully became a member of the conspiracy;
- (3) that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the information; and
- (4) that the overt act was committed to further some objective of the conspiracy.

As to Count Two of the Information, I admit to willfully violating Title 17 United States Code, Section 506(a)(1)(C) and Title 18 United States Code, Section 2319(d)(2) (criminal copyright infringement), and I admit that there is a factual basis for the plea and further fully understand that the elements of the crime are:

- (1) A copyright exists for the infringed work;
- (2) The infringed work was being prepared for commercial distribution
- (3) The defendant knew, or should have known, that the work was intended for commercial distribution;
- (4) The defendant distributed the work by making it available on a computer network accessible to members of the public;
- (5) The defendant acted willfully.

I understand that the the subject offenses are each punishable by a maximum term of imprisonment of five (5) years, restitution, and a maximum fine of not more than \$250,000, or both. A special assessment of \$100 must be imposed by the sentencing court on each count of conviction. The sentencing court must impose a term of supervised release of at least two years and may impose a term of supervised release of up to three years. If I violate any condition of supervised release following imprisonment, I may be returned to prison for all or part of the term of supervised release.

I acknowledge that I have had all of my rights explained to me and I expressly recognize that I have the following constitutional rights and that by voluntarily pleading guilty, I

Defendant's Initials: GA

knowingly waive and give up these valuable constitutional rights:

- a. The right to plead not guilty and persist in that plea.
- b. The right to a speedy and public jury trial.
- c. The right to assistance of counsel at that trial and in any subsequent appeal.
- d. The right to remain silent at trial.
- e. The right to testify at trial.
- f. The right to confront and cross-examine witnesses.
- g. The right to present evidence and witnesses in my own behalf.
- h. The right to compulsory process of the court.
- i. The right to compel the attendance of witnesses at trial.
- j. The right to be presumed innocent.
- k. The right to a unanimous guilty verdict.
- l. The right to appeal a guilty verdict.

I am pleading guilty as described above because I am in fact guilty and because I believe it is in my best interest to do so and not because of any threats or promises. There has been no representation made whatsoever by any agent or employee of the United States to me as to what the final disposition of this matter should or will be.

I understand that the matter of sentencing is within the sole discretion of the Court subject to the Court's consideration of the United States Sentencing Guidelines ("Guidelines") and the factors set forth at Title 18, United States Code, Section 3553(a). I have discussed sentencing issues with my attorney and realize that there is a substantial likelihood that I will be incarcerated. I understand that I will not be eligible for parole during any term of imprisonment imposed. I understand that a sentencing guideline range will be determined presumptively from a variety of factors involved in the offense and related conduct, including my role in the offense and my prior criminal history.

I agree and stipulate that the matters set forth in all of the counts of the charging document(s) should be included as relevant conduct as defined in the Guidelines.

Defendant's Initials: BT

2. ACCEPTANCE OF RESPONSIBILITY

I agree to accept responsibility for my conduct. If I fulfill my obligations under this plea agreement and accept responsibility for my conduct, the United States will recommend that the Court grant me a two-level reduction in my offense level, pursuant to U.S.S.G. § 3E1.1(a).

However, I hereby agree and stipulate that if I do any of the following, I should not receive credit for acceptance of responsibility and the United States will be free to (a) make any recommendations it wishes at sentencing, (b) declare a breach of this plea agreement and/or (c) apply the remedies set forth in the "REMEDIES FOR FAILURE TO COMPLY WITH ANY PROVISION OF THE PLEA AGREEMENT" section:

(1) attempt to withdraw my guilty plea; (2) deny that I committed any crime to which I have pled guilty; (3) fail to cooperate with law enforcement agents; (4) fail to testify truthfully, as to any matter, if called upon to do so (at my sentencing or any other court proceeding); (5) refuse to answer any question; (6) make a false statement; (7) fail to comply with any provision of the section entitled "MANDATORY ASSESSMENT, RESTITUTION AND FINES;" (8) fail to comply with any reasonable request of the United States; (9) fail a polygraph examination; (10) refuse to take a polygraph examination; (11) make or adopt any arguments or objections to the presentence investigation report that are inconsistent with this plea agreement; (12) obstruct justice; (13) commit any other crime; or (14) otherwise indicate that I have not accepted responsibility for my conduct.

Defendant's Initials: CS

In addition, I understand and agree that the United States will have a continuing objection to my receiving credit for acceptance of responsibility until I have testified truthfully at my sentencing hearing. I agree that the United States will not be required to make any other notice of its objection on this basis.

3. SENTENCING PROVISIONS

The United States and I negotiated this Plea Agreement according to the procedures in Federal Rule of Criminal Procedure 11(c)(1)(B). I understand that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the "Sentencing Guidelines") is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case.

I agree and stipulate based on information currently available to the government, the following computations under the United States Sentencing Guidelines are warranted by the evidence:¹

- a. *Offense Conduct / Base Offense Level:* The base offense level is eight (8) pursuant to U.S.S.G. § 2B5.3(a).
- b. *Specific Offense Characteristics:* Pursuant to U.S.S.G. § 2B5.3(b)(1), if the infringement amount exceeds \$5,000, the base offense level should be increased by the number of levels indicated in the table found in § 2B1.1 corresponding to the loss amount. For a loss valued more than \$10,000 and less than \$30,000, the base offense level should be increased four (4) levels. U.S.S.G. § 2B1.1(b)(1)(F). Pursuant to U.S.S.G. § 2B5.3(b)(2), the base offense level should be increased by an additional two (2) levels because the offense involved the "uploading of infringing items."

¹ Counts 1 and 2 are grouped together as closely related counts according to U.S.S.G. § 3D1.2.

Defendant's Initials: 

- c. *Acceptance of Responsibility:* The government will likely recommend that the defendant should receive a two (2) level deduction pursuant to U.S.S.G. § 3E1.1(a) if I demonstrate acceptance of responsibility. Section 3E1.1(b) does not apply to this case.
- d. *Estimated Total Offense Level:* Based on these estimates, the anticipated adjusted base offense level should be twelve (12).

Any and all stipulations made are based upon facts presently known to the United States. They are made as recommendations to the Court and are not binding upon the Court. If new evidence becomes available to the government or the Court prior to sentencing, I understand that the Court may be required to apply the Sentencing Guidelines differently than contemplated in the parties' non-binding stipulations, and the United States reserves the right to argue differently than indicated in the stipulation(s), subject to the limitations set forth in U.S.S.G. § 1B1.8.

The United States agrees that if I accept responsibility for my conduct and otherwise comply with my obligations under the plea agreement, it will stipulate that the Guidelines' sections set forth in this paragraph should apply to my conduct.

I understand that other Guidelines' sections may be applicable to my case and the United States and I will be free to make arguments that these sections should or should not apply; to the extent that the arguments are not inconsistent with the stipulations, recommendations and terms set forth in this plea agreement.

I understand that the Court is not bound by any recommendation or stipulation and may sentence me up to the statutory maximum. I understand that I will not be allowed to withdraw my plea of guilty if the Court disregards the stipulations and/or recommendations set forth in the plea agreement. I understand that the government will object to any sentence below the

Defendant's Initials: 

Guidelines' range.

4. ADMISSIBILITY OF STATEMENTS

I understand that any statements I make (including this plea agreement and my admission of guilt) during or in preparation for any guilty plea hearing, sentencing hearing, or other hearing and any statements I make or have made to law enforcement agents, in any setting, may be used against me in this or any other proceeding. I knowingly waive any right I may have under the Constitution, any statute, rule or other source of law to have such statements, or evidence derived from such statements, suppressed or excluded from being admitted into evidence.

I understand that my attorney may be present at any debriefing or contact with any agent or attorney of the United States. However, my attorney and I expressly waive the presence of counsel at such meetings. Government agents and attorneys may contact me without the prior approval of my attorney. At any time during such meetings or contacts with government agents and attorneys, I may request the presence of my attorney and the meeting will be suspended until my attorney arrives.

5. AGREEMENT TO BE TRUTHFUL AND COOPERATE

I agree to cooperate fully with law enforcement agents and disclose to law enforcement agents my knowledge of any criminal activity. I agree that I will testify truthfully. I agree to be debriefed by law enforcement agents concerning any matter and waive any right I may have to refuse to answer any questions. I agree that if the United States has any doubts concerning my truthfulness, I will take and pass a polygraph examination administered by an examiner chosen by the United States Attorney's Office as to any matters alleged in the charging document(s)

Defendant's Initials: CS

and/or anything discussed in the debriefings.

I understand that any false statements given to law enforcement agents may result in a prosecution against me for a felony offense. I understand that if I testify falsely I will be prosecuted for perjury, a felony offense.

I agree not to falsely implicate anyone and understand that if I falsely implicate anyone the United States may prosecute me to the full extent of the law and make any sentencing recommendations it wishes.

6. MANDATORY ASSESSMENT, RESTITUTION AND FINES

I agree to make good faith efforts toward payment of all mandatory assessments, restitution and fines, with whatever means I have at my disposal. I agree that failure to do so will constitute a violation of this agreement. I will execute any documents necessary to release the funds I have in any repository, bank, investment, other financial institution, or any other location in order to make partial or total payment toward the mandatory assessments and fines imposed in my case.

I understand and agree that, pursuant to Title 18, United States Code, Sections 3613 and 3664(m) whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for by statute. I understand that if the Court imposes a schedule of payments, that schedule is only a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Defendant's Initials: GS

Regardless of whether or not the Court specifically directs participation or imposes a schedule of payments, I agree to fully participate in inmate employment under any available or recommended programs operated by the Bureau of Prisons.

I agree that any payments made by me shall be applied fully to the non-joint and several portion of my outstanding restitution balance until the non-joint and several portion of restitution is paid in full.

I understand that persons convicted of crimes are required to pay a mandatory assessment of \$100.00 per felony count of conviction. I agree that I will submit to the U.S. Clerk's Office, a certified check, money order, or attorney's trust check, made payable to the "Clerk, U.S. District Court" for the total amount due for mandatory assessments within 7 days of my plea of guilty.

7. **WAIVER OF RIGHT TO APPEAL**

I understand that I will have a copy of my presentence report in advance of my sentencing hearing and that I will have an opportunity to go over it with my attorney and may file any objection to all or parts of it that I feel are not correct. I understand that I will have an opportunity at the sentencing hearing to bring witnesses, cross-examine the government's witnesses, and demonstrate to the Court what an appropriate sentence would be under the Guidelines. I agree that I will not appeal the conviction or sentence imposed. I am knowingly and voluntarily waiving any right to appeal and am voluntarily willing to rely on the Court in sentencing me. I understand that the United States expressly reserves all of its rights to appeal. I agree and understand that if I file any court document (including but not limited to a notice of appeal) seeking to disturb, in any way, the judgment and/or sentence imposed in my case, the

Defendant's Initials: JS

United States will be free to take whatever actions it wishes based on this failure to comply with my obligations under the plea agreement.

8. WAIVER OF RIGHT TO COLLATERALLY ATTACK THE JUDGMENT AND SENTENCE IMPOSED BY THE COURT

I agree not to collaterally attack the judgment and/or sentence imposed in this case and waive my right to collaterally attack, pursuant to Title 28, United States Code, Section 2255, the judgment and any part of the sentence imposed upon me by the Court. I agree and understand that if I file any court document seeking to disturb, in any way, the judgment and/or sentence imposed in my case, the United States will be free to take whatever actions it wishes based on this failure to comply with my obligations under the plea agreement.

9. INFORMATION ACCESS WAIVER

I knowingly and voluntarily agree to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

10. WAIVER OF WITNESS FEE

I agree to waive all rights, claims or interest in any witness fee that I may be eligible to receive pursuant to Title 28, United States Code, Section 1821, for my appearance at any Grand Jury, witness conference or court proceeding.

Defendant's Initials: *LS*

11. FORFEITURE, OFFICIAL USE OR DESTRUCTION OF ITEMS SEIZED

I understand that under 17 U.S.C. § 506(b), the Court must order forfeiture of all infringing copies of copyrighted works and all implements, devices, and equipment (including computers, computer peripherals, and data storage devices) used in the manufacture, reproduction, or distribution of such infringing copies. I agree that all such items, which were seized from his custody or control on May 25, 2005, shall be subject to forfeiture and destruction or other disposition. I hereby represent that I am the sole owner of such items or that, to the extent I am not the sole owner, I obtained the items from third parties involved in the conspiracy whose whereabouts I do not know. I agree to assist the government in its defense against any third-party claims that may be asserted with respect to the referenced items to be forfeited. I further agree to waive the provisions of Federal Rules of Criminal Procedure 7(c)(2) and 32.2, and to execute any additional papers or agreements as necessary to accomplish the purposes of this paragraph.

I also understand and agree that by virtue of my plea of guilty I waive any rights or cause of action to claim that I am a "substantially prevailing party" for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. §2465(b)(1).

12. WAIVER OF STATUTE OF LIMITATIONS & AGREEMENT TO ALLOW GOVERNMENT TO PROCEED BY INFORMATION

I agree that if, for any reason, my conviction is set aside, or I fail to comply with any obligation under the plea agreement, the United States may file, by indictment or information, any charges against me which were filed and/or could have been filed concerning the matters

Defendant's Initials: 

involved in the instant investigation. I hereby waive my right under Federal Rule of Criminal Procedure 7 to be proceeded against by indictment and consent to the filing of an information against me concerning any such charges. I also agree to waive any statute of limitations argument as to any such charges.

13. SUBSTANTIAL ASSISTANCE

I understand that the United States retains all of its rights pursuant to Fed. R. Crim. P. 35(b), U.S.S.G. §5K1.1 and 18 U.S.C. § 3553(e). I understand that even if I fully cooperate with law enforcement, the United States is under no obligation to make a motion for the reduction of my sentence. I understand that if the United States makes a motion for a reduction in my sentence, the Court, after hearing the evidence, will determine how much of a departure, if any, I should be given.

14. LIMITATION OF AGREEMENT

This agreement is limited to the Western Judicial District of Virginia and does not bind other federal judicial districts, nor does it bind any state or local authorities.

15. EFFECT OF MY SIGNATURE

I understand that my signature on this agreement constitutes a binding offer by me to enter into this agreement. I understand that the United States has not accepted my offer until it signs the agreement.

16. REMEDIES FOR FAILURE TO COMPLY WITH ANY PROVISION OF THE PLEA AGREEMENT

Defendant's Initials: lsj

I understand that if I fail to comply with any provision of this agreement, at any time, the United States Attorney's office may, at its election, pursue any or all of the following remedies: (a) declare this plea agreement void; (b) refuse to recommend that I be credited with acceptance of responsibility; (c) refuse to dismiss any charges; (d) reinstate any dismissed charges; (e) file new charges; (f) terminate my opportunity to perform substantial assistance, if such opportunity has been provided; (g) refuse to make a substantial assistance motion, regardless of whether substantial assistance has been performed; (h) withdraw any substantial assistance motion made, regardless of whether substantial assistance has been performed; (i) refuse to abide by any stipulations and/or recommendations contained in this plea agreement; (j) take any other action provided for under this agreement or by statute, regulation or court rule. The remedies set forth above are cumulative and not mutually exclusive.

17. EFFECTIVE REPRESENTATION

I have discussed the terms of the foregoing plea agreement and all matters pertaining to the charges against me with my attorney and am fully satisfied with my attorney and my attorney's advice. At this time, I have no dissatisfaction or complaint with my attorney's representation. I agree to make known to the Court no later than at the time of sentencing any dissatisfaction or complaint I may have with my attorney's representation.

18. GENERAL UNDERSTANDINGS

I understand that the Court is not bound by any recommendations or stipulations contained in this agreement and may sentence me up to the maximum provided by law.

I understand that if the sentence is more severe than I expected, I will have no right to

Defendant's Initials: *GS*

withdraw my guilty plea.

I understand that a thorough presentence investigation will be conducted and sentencing recommendations independent of the United States Attorney's Office will be made by the presentence preparer, which the Court may adopt or take into consideration. I understand that any calculation regarding the Guidelines by the United States Attorney's Office or by my attorney is speculative and is not binding upon the Court, the Probation Office or the United States Attorney's Office. No guarantee has been made by the United States Attorney's Office regarding the effect of the Guidelines on my case.

I understand that the prosecution will be free to allocate or describe the nature of this offense and the evidence in this case and, in all likelihood, will recommend that I receive a substantial sentence.

I understand that the United States retains the right, notwithstanding any provision in this plea agreement, to inform the Probation Office and the Court of all relevant facts, to address the Court with respect to the nature and seriousness of the offense(s), to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report and to respond to any statements made to the Court by or on my behalf.

I willingly stipulate that there is a sufficient factual basis to support each and every material factual allegation contained within the charging document(s) to which I am pleading guilty.

I understand that this agreement does not apply to any crimes or charges not addressed in this agreement. I understand that if I should testify falsely in this or in a related proceeding I may be prosecuted for perjury and statements I may have given authorities pursuant to this

Defendant's Initials: 


agreement may be used against me in such a proceeding.

I have not been coerced, threatened, or promised anything other than the terms of this plea agreement, described above, in exchange for my plea of guilty. I understand that my attorney will be free to argue any mitigating factors on my behalf; to the extent that they are not inconsistent with the terms of this agreement. I understand that I will have an opportunity to personally address the Court prior to sentence being imposed.

This writing sets forth the entire understanding between the parties and constitutes the complete plea agreement between the United States Attorney for the Western District of Virginia and me, and no other additional terms or agreements shall be entered except and unless those other terms or agreements are in writing and signed by the parties. This plea agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between the United States and me.

I have consulted with my attorney and fully understand all my rights with respect to the offenses charged in the charging document(s). Further, I have consulted with my attorney and fully understand my rights. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it. Being aware of all of the possible consequences of my plea, I have independently decided to enter this plea of my own free will, and am affirming that agreement on this date and by my signature below.

Date: 5-3-06


GRANT T. STANLEY
Defendant

Defendant's Initials: GS

I have fully explained to my client all rights available to my client with respect to the offenses charged in the pending indictment. I have carefully reviewed every part of this plea agreement with my client. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: May 3, 2006

Richard O. Kennedy
RICHARD KENNEDY
Counsel for Defendant

Date:

July 19, 2006

Randy Ramsey
RANDY RAMSEYER
Assistant United States Attorney
Virginia State Bar No. 33837

ANDREA M. SHARRIN
Senior Counsel
Computer Crime and Intellectual Property Section
Criminal Division
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Defendant's Initials: RS