

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

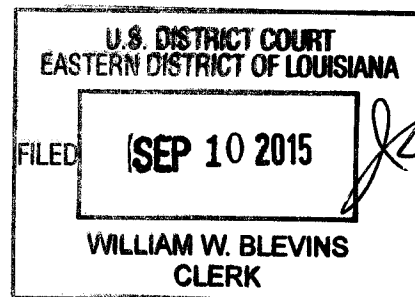
UNITED STATES OF AMERICA * **CRIMINAL NO. 14-035**

v. * **SECTION: "G"**

RAINER WITTICH *

* * *

FACTUAL BASIS



The defendant, **RAINER WITTICH** (hereinafter, "**WITTICH**"), has agreed to plead guilty as charged to the Fourth Superseding Bill of Information now pending against him, charging **WITTICH** with criminal copyright infringement, a misdemeanor, in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Section 2319(b)(3). Both the Government and **WITTICH** do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crime to which **WITTICH** is pleading guilty. The Government and **WITTICH** further stipulate that the Government would prove, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Fourth Superseding Bill of Information now pending against **WITTICH**.

Mercedes-Benz and the Star Diagnostic System

The Government would present testimonial evidence, including testimony from Special Agents from the Federal Bureau of Investigation ("FBI"), Daimler AG and Mercedes-Benz USA ("MBUSA"), as well as documentary evidence, that Daimler AG was an automaker headquartered in Stuttgart, Germany, that produced and sold Mercedes-Benz ("Mercedes-Benz") automobiles. Mercedes-Benz USA ("MBUSA"), a division of Daimler AG, was responsible for the distribution and marketing of Mercedes-Benz automobiles in the United States. In addition to automobiles,

Fee _____
Process _____
X Dktd _____
CtRmDep _____
Doc. No. _____

Daimler AG produced, and MBUSA distributed in the United States, automotive parts and equipment for both commercial and consumer use.

The Government would further establish, through the testimony of employees of Daimler AG and MBUSA, as well as documentary evidence, that Daimler AG produced the Star Diagnostic System (“SDS”), a portable computer designed to aid in the diagnosis of automotive systems with electronic controls and interfaces. Since at least June 2004, the SDS consisted of a tablet-type computer with a touch screen interface running the Windows XP operating system. Included with the SDS was a multiplexer (used for combining signals, and, in effect, negotiating the transmission of diagnostic information between an automobile and the SDS) and various connection cables. Installed on the SDS were software programs created by Mercedes-Benz to diagnose and repair Mercedes-Benz automobiles. Daimler AG also distributed regular software updates to authorized SDS users. The SDS software also sought to prevent unauthorized access to or use of the software by requiring the input of an alpha-numeric code sequence (a “key” or “license key”) to “unlock” the software.

Representatives of Daimler AG and MBUSA would provide testimony to establish that the software contained within the SDS and software updates constituted original works of authorship created and developed by Daimler AG that were fixed in a tangible medium of expression, now known or later developed, from which they could be perceived, reproduced, or otherwise communicated, either directly or the aid of a machine or device. As such the SDS software and software updates were protected by copyright laws of the United States. *See* 17 U.S.C. § 102(a). Consequently, Daimler AG enjoyed the exclusive right to copy, distribute, and make certain other uses of the SDS software and software updates.

The Government would further introduce documentary evidence that in order to purchase

or lease an SDS from MBUSA, a purchaser or lessee had to execute a license agreement that governed the usage and distribution of the SDS and the SDS software. The license agreement stipulated that the software on the SDS was “confidential, proprietary, trade secret information” and that recipients of a license were prohibited from transferring, assigning, or providing the software to others without authorization from Daimler AG or MBUSA.

MBUSA representatives would testify that the SDS was designed to accommodate software updates provided by Daimler AG as often as every month. The updates included information for new vehicles or fixes to flaws or incorrect information in the software. The retail price of a Mercedes-Benz SDS was between approximately \$8,300 and \$22,000 in the United States. Additionally, in some instances, purchasers of the SDS would pay Daimler AG (or, in the United States, MBUSA) an additional several thousand dollars per year to receive regular software updates.

Documentary evidence and eyewitness testimony would be introduced to prove that at all times described in the Bill of Information, **WITTICH** was a resident of River Ridge, Louisiana. **WITTICH** owned and operated The Brinson Company, a business located in Harahan, Louisiana that specialized in the sale of replacement parts and diagnostic equipment for Mercedes-Benz automobiles. **WITTICH** never obtained a license to maintain, modify, resell, or distribute the SDS or SDS software.

Wittich's Sale of Non-Authentic SDS Unit

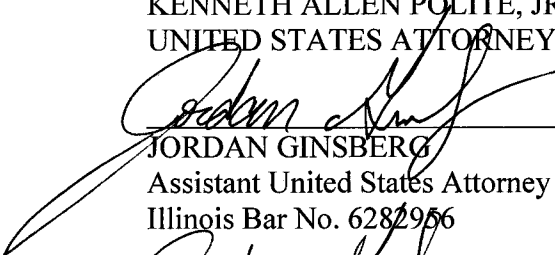
Testimony and documentary evidence, including emails and bank records, would be admitted to establish that **WITTICH**, for purposes of commercial advantage and private financial gain, infringed a copyright. Specifically, on about March 19, 2013, **WITTICH** sold and distributed a non-authentic SDS unit having a total retail value of more than \$1,000 that contained

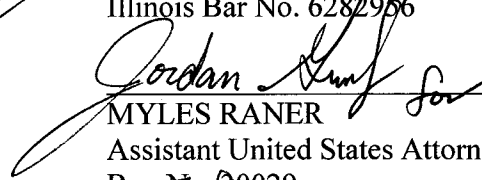
Daimler AG's propriety, copyrighted software, as described above, from Harahan, Louisiana to Customer 1 in Fort Worth, Texas.

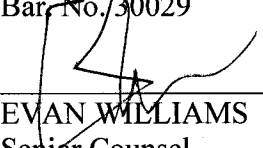
Representatives of Daimler AG would confirm that the Daimler AG software in this non-authentic SDS unit was distributed without Daimler AG's knowledge or authorization.

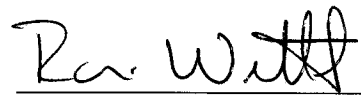
The above facts come from an investigation conducted by, and would be proven at trial by testimony from, Special Agents from the FBI, representatives of Daimler AG and MBUSA, eyewitnesses, and documents and tangible exhibits in the custody of the Federal Bureau of Investigations.

KENNETH ALLEN POLITE, JR.
UNITED STATES ATTORNEY

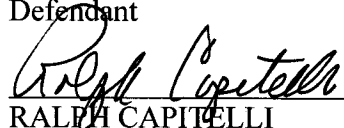

JORDAN GINSBERG
Assistant United States Attorney
Illinois Bar No. 6282956


MYLES RANER
Assistant United States Attorney
Bar No. 30029


EVAN WILLIAMS
Senior Counsel
Computer Crime & Intellectual Property
Section
United States Department of Justice
New York Bar No. 2848661


RAINER WITTICH
Defendant

8-10-15
DATE


RALPH CAPITELLI
Bar No. 3858
Attorney for Defendant

9/10/15
DATE