

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

UNITED STATES OF AMERICA

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v.

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CRIMINAL NO.: 13-149

WARREN STEWART

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SECTION: "K"

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F A C T U A L B A S I S

Should this matter proceed to trial, both the Government and the defendant, **WARREN STEWART** (hereinafter "Defendant" or "**STEWART**") do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crimes to which the defendant is pleading guilty. Specifically, **STEWART** has agreed to plead guilty as charged to the two-count Bill of Information charging him with unauthorized recording of a motion picture in a motion picture exhibition facility, in violation of Title 18, United States Code, Section 2319B (Count 1) and criminal infringement of copyright, in violation of Title 18, United States Code, Section 2319(b)(1) and Title 17, United States Code, Section 506(a)(1)(A) (Count 2). The Government and the defendant further stipulate that the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts,

beyond a reasonable doubt, to support the allegations in the Bill of Information now pending against the defendant:

“Camming”

Representatives from the Motion Picture Association of America (“MPAA”) would testify that the MPAA is an industry trade group that represents motion picture, home video, and television industries including major producers and distributors of entertainment programming for public viewing in movie theaters, television, cable, and home video. The MPAA provides anti-piracy security protection for their members, which include Disney Enterprise Ltd. and 20th Century Fox.

A representative of the MPAA would testify that as part of its ongoing anti-piracy motion picture protection efforts, the MPAA contracts with a company that places a watermark on each new motion picture prior to commercial distribution. Each unique watermark contains specific information identifying every reel of film, the theater authorized to display the motion picture, and the time period for which display is authorized at that theater. The watermarking process enables analysis of an unauthorized “pirated” copy of a motion picture from which can be determined the specific theater location where the pirated copy was originally recorded and the time period for which the motion picture was shown at that particular theater.

An agent with Immigration and Customs Enforcement- Homeland Security Investigations (HSI) agent would testify that on January 27, 2013, he conducted surveillance at the AMC Westbank Palace 16 movie theater, located at 1151 Manhattan Boulevard, Harvey, Louisiana, within the Eastern District of Louisiana.

Documentary evidence would be introduced to show that at all time relevant to this case, the AMC Westbank Palace 16 was a motion picture exhibition facility that routinely exhibited new, first-run movies that had not previously been available for public viewing or purchase.

HSI agents and MPAA representatives would testify that on January 27, 2013, a 10:30 a.m. showing of the first-run motion picture *Broken City* was scheduled to take place in Theater 11 of the AMC Westbank Palace 16. **STEWART** was present at Theater 11 and was seated in the back center of the theater. **STEWART'S** seat provided an unobstructed view of the motion picture viewing screen. **STEWART** proceeded to withdraw a Samsung flat screen camcorder, attached to a tripod and actively record (a/k/a "cam") *Broken City*, as the tripod was tucked in his waistband and the camera rested against Stewart's body.

A representative from the MPAA would testify that 20th Century Fox ("Fox") holds the copyright for the motion picture *Broken City*. Fox never grants permission for individuals to record Fox motion pictures in a theater using video cameras. Fox did not grant **STEWART** permission to record any of its motion pictures, including *Broken City*.

Representatives of the MPAA and HSI agents would testify that subsequent investigation revealed that **STEWART** uploaded the copy of *Broken City* via the Internet to servers organized and managed by individuals who collectively sought to obtain copies of the video and audio components of motion pictures currently showing in theaters that had not yet been commercially released on DVD/Blu-ray or in any other form for sale to the general public. After the "cammed" copies of a motion picture, such as *Broken City*, is uploaded to the server, other individuals refine and edit the video and audio portion of the motion picture, reproduce the motion picture, and distribute it (or make it available for download) without the permission of the copyright owners.

Representatives of the MPAA and HSI agents would testify that forensic analysis of other pirated, first-run motion pictures acquired by the MPAA revealed a pattern of activity establishing a connection between numerous pirated movies that had been reproduced, uploaded, and subsequently commercially distributed without authorization of the copyright owner and **STEWART’S** recording of *Broken City*. Specifically, information obtained by the MPAA and HSI during the course of the investigation revealed that the following motion pictures, which had their theatrical release at AMC Westbank Palace 16, were “cammed” at the AMC Westbank Palace 16 shortly after their theatrical release date on the dates below and bore numerous forensic similarities to **STEWART’S** recording of *Broken City*:

<u>Date</u>	<u>Motion Picture</u>
November 21, 2012	<i>Rise of the Guardians</i>
December 21, 2012	<i>Jack Reacher</i>
December 27, 2012	<i>Django Unchained</i>
January 6, 2013	<i>Parental Guidance</i>
January 7, 2013	<i>Texas Chainsaw Massacre 3D</i>
January 18, 2013	<i>Mama</i>
January 28, 2013	<i>Hansel & Gretel: Witch Hunters</i>
January 29, 2013	<i>Parker</i>

These characteristics, as well as forensic evidence, would be introduced to establish that **STEWART** recorded the aforementioned motion pictures in the same manner and at the same theater as he recorded the motion picture *Broken City*. **STEWART** subsequently duplicated and sold copies of some or all of the motion pictures he “cammed,” including *Mama* and *Broken City*, in the Eastern District of Louisiana.

Criminal Infringement

Representatives from the Recording Industry Association of America (RIAA) would testify that the RIAA is a trade association whose members produce, manufacture, and distribute approximately 85% of all legitimate recorded music made in the United States. Some of these member companies are: Universal Music Group, Sony Music Entertainment, Warner Music Group, and EMI Music. The public recognizes those names and marks of the various well-known record companies that are members of the RIAA and associates those names and marks with high quality pre-recorded sound products. The RIAA Anti-Piracy Unit was formed to assist federal, state, and local law enforcement agencies by providing expertise with respect to the sound recording industry and to assist in uncovering illicit counterfeiting, pirating, and bootlegging operations.

A Special Agent with HSI would testify that on or about February 16, 2013, HSI agents observed Defendant selling and attempting to sell numerous pirated compact discs (“CDs”) containing copyrighted musical works and digital video discs (“DVDs”) containing copyrighted motion pictures and audiovisual works (collectively, “discs”) from his residence, located at 1645 Carol Sue Avenue, Apartment 215, Terrytown, Louisiana 70056, within the Eastern District of Louisiana. Agents observed **STEWART**, for the purpose of commercial advantage and private financial gain, infringe the copyright of copyrighted works by reproducing and distributing and by attempting to do so during a 180-day period ten (10) or more copies of one or more of the copyrighted works having a retail value of \$2,500 or more.

An HSI agent would further testify that, on about March 6, 2013, HSI agents executed a validly issued federal search warrant at **STEWART’S** residence, located at 1645 Carol Sue

Avenue, Apartment 215, Terrytown, Louisiana 70056, within the Eastern District of Louisiana.

During the search, agents seized approximately 9,063 pirated DVDs containing copyrighted motion pictures and 3,241 pirated CDs containing copyrighted music. Specifically, agents found pirated, unauthorized DVDs of numerous motion pictures, including “Zero Dark Thirty,” “Mama,” and “G.I. Joe.” Agents also recovered pirated, unauthorized CDs of the numerous copyrighted musical works, including the following albums containing copyrighted musical works:

- “4,” by Beyonce’
- “Woman to Woman,” by Keyshia Cole
- “Girl on Fire,” by Alicia Keys

Further, agents located and seized three (3) DVD writer “tower burners,” which **STEWART** used to copy the copyrighted material contained on pirated DVDs and CDs onto new, blank discs.

Representatives of the copyright holders for the material contained on the pirated discs produced and distributed by **STEWART**, namely the MPAA (for the copyrighted motion pictures) and the RIAA (for the copyrighted music), would testify that, upon reviewing the discs produced and distributed by **STEWART**, they were able to identify music, motion pictures, and audiovisual works that were copyrighted; that they held the relevant copyright to that specific music, motion pictures, and audiovisual works on the discs; and that **STEWART** had not obtained permission to reproduce any of the music, motion pictures, or audiovisual works on the discs. The representatives would further confirm that the discs duplicated existing, commercially available, copyrighted materials, including music, motion pictures, and audiovisual works.

HSI agents would further testify that **STEWART** admitted that he did, for the purpose of commercial advantage and private financial gain, infringe the copyright of copyrighted works by reproducing and distributing and by attempting to do so during a 180-day period the aforementioned discs and that the retail value of the discs exceeded \$2,500.

The above facts come from an investigation conducted by agents from HSI, documents and statements provided by the holders of the copyrighted works contained on the discs produced and distributed by **STEWART**, evidence and testimony obtained in the course of the investigation by HSI, and voluntary statements made by the defendant, **WARREN STEWART**, to agents from HSI.

APPROVED AND ACCEPTED:

_____ Date
 WARREN STEWART
 Defendant

_____ Date
 THOMAS W. SHLOSMAN
 (Louisiana Bar No. _____)
 Attorney for Defendant Stewart

_____ Date
 JORDAN GINSBERG
 (Illinois Bar No. 6282956)
 Assistant United States Attorney