

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YOKO ONO LENNON, SEAN ONO
LENNON, JULIAN LENNON, and EMI
BLACKWOOD MUSIC, INC.,

Plaintiffs,

-against-

PREMISE MEDIA CORPORATION, L.P.,
C&S PRODUCTION L.P. d/b/a RAMPANT
FILMS, PREMISE MEDIA DISTRIBUTION
L.P. and ROCKY MOUNTAIN PICTURES,
INC.,

Defendants.

08 CV 3813 (SHS) (FM)

SUPPLEMENTAL DECLARATION OF
JOHN SULLIVAN

JOHN SULLIVAN declares and states under penalty of perjury that:

1. The purpose of this supplemental declaration is to address the issues raised in the Declaration of Walter “Chip” Cronkite III submitted to the Court after my prior declaration was submitted in this case. The matters stated herein are true and of my own personal knowledge.

2. I have reviewed Mr. Cronkite’s declaration. It is clear to me that Mr. Cronkite’s approach is to quantify the economic costs and time required to only remove the *Imagine* clip without also considering a documentarian’s right to choose how to express social commentary and criticism with symbolic free speech as protected by the First Amendment. That is, Mr. Cronkite’s approach fails to consider how *we* would present the messages that were expressed with use of the *Imagine* clip if we were forced to remove *Imagine*.

3. The proposed removal of the *Imagine* clip in the manner Mr. Cronkite chooses muzzles the message and the story we wish to tell. With use of the *Imagine* clip, we implicitly and explicitly criticize the song’s (and Mr. Lennon’s) anti-religious message, as I explained in my declaration dated May 13, 2008 in paragraphs 13 – 21. In short, in his song, Mr. Lennon advocated that a secular world would result in utopia. The song suggests that without religion “the world will be as one.” We, the filmmakers, believe that that view is extremely naïve and we specifically criticized the ideas in the *Imagine* clip by using the song coupled with images that demonstrate the social and political process we, the filmmakers, believe would be required to actualize the ideas promoted by Mr. Lennon in his song *Imagine*.

4. We believe that there is no substitute that can be used to convey this message we wish to express. *Imagine* is a secular anthem and is one of the most iconic songs of the 1970’s, and hearing the short excerpt of the song with the words simultaneously appearing on the screen reminds the audience in an emotionally powerful and familiar way that the ideas expressed by

many modern day scientists that society would be better off without religion are not new ideas, but have been articulated before.

5. However, if we are forced to take out the audio clip of the song, we would want to maintain our criticism of the song by using substitute footage. We believe that this result would be a substantially weakened expression of our message, but we would want to express our criticism nonetheless. At the point in the film, where *Imagine* is played we would need new video and audio footage to describe the song and its lyrics to convey our opinion that John Lennon's iconic song represents a naïve worldview that life without religion would constitute utopia.

6. To find and create the necessary substitute audio and video footage, there would be a considerable amount of work involved, which would take a significant amount of time to achieve. For example, we would have to re-engage researchers and writers (including Ben Stein) to consider how to convey the message that is expressed by use of the *Imagine* clip in a way that is, at least, substantially similar to the message originally conveyed. We would have to create the substitute audio or visual materials that would best convey our ideas succinctly, efficiently, and effectively. To create such a substitute scene, the writers would have to rewrite the script to ensure that there was a logical flow in the expression of ideas between the interviews. Depending on what substitute materials could be used, we might have to find and use additional stock footage or shoot footage that could be used in connection with the substitute segment. We could also have to substitute additional background music or other stock footage and consider the costs and approval of licensing different music or other materials, which certainly takes several weeks and can often takes months. Further, we would need to have the replacement footage narrated again, and would have to schedule a time with Mr. Stein when he would be available to

narrate the new replacement footage. Based on my past experience and judgment, creation of this substitute footage would take, at a bare minimum, four weeks to create substituted material that would attempt to convey a similar message.

7. Even putting aside our rights as documentarians to determine how to deliver our message, the elimination of *Imagine* from *Expelled* as described by Mr. Cronkite over simplifies the necessary steps and timeframe by not taking into account numerous elements in the process.

8. There are two separate requests by the Plaintiffs in the modification or removal of *Imagine* from *Expelled*. The first is the removal of *Imagine* from the body of the documentary requiring re-editing the sound and visuals. The second is the removal of the information of *Imagine* from the credits. To accomplish both requests requires unique contractors and facilities which the producers worked with to complete the original documentary.

9. Modifying the existing documentary to include previously unused material would likely require the following 16 steps.

1. Use offline version of final edit to re-edit that section of the documentary;
2. Export uncompressed format of new picture sequence;
3. Provide digital intermediate facility with new sequence for them to process (*i.e.* noise-reduction and provide upgraded resolution);
4. Reload the uncompressed picture from tape to computer;
5. Import new footage into color-correction suite;
6. Color-correct new sequence to match existing footage;
7. Render and export new reel to tape and computer file;
8. Provide final picture to composer;
9. Composer rescores new section of documentary;

10. Record voice over narration of Ben Stein if necessary;
11. Export required format of picture for mix stage;
12. Reload audio onto mix stage including new score and voiceover;
13. Conform sound edit to allow for change to picture;
14. Remix audio for that section of the documentary;
15. Re-export audio for the documentary with encoding by Dolby representative; and
16. Check sync and quality control on output picture and audio.

10. The timeframe to complete these 16 steps to modify the content of the documentary is approximately two weeks. Once the content of the documentary is finalized, it would need to be transformed from being a digital asset to 35 mm film. The 35 mm film shown in theaters is currently contained on five separate film reels, and the changes outlined above would require that two of the film reels be replaced for all prints of the film in circulation.

11. To replicate the required film prints for theaters, the two new master reels would need to be shipped internationally to the film replicator to create an answer print and inter-negative print. This print would be screened by the producers and a representative of the film replicator for quality control. Following approval the two reels would be sent to the replication plant to generate the new reels to be inserted into the film at theaters.

12. The film replicator would then rush ship the reels from their plant to the distributor's shipping depots. The new reels would then be delivered from the distribution depot facilities to the individual theaters showing the film.

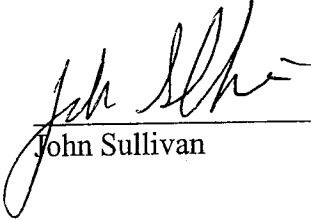
13. The process of removing the film prints from theaters, creating replacement film prints from the revised documentary, and then delivering those prints to theaters would take an additional week.

14. Only after the content of the documentary is finalized (which as stated above is estimated to require at least four weeks) can the process for putting the documentary on DVD for commercial use begin. This replication process would begin with the authoring of the DVD content, menu, and any additional footage. Once the authoring of the DVD was complete, it would need to be encoded in preparation for a glass master to be created. The master would then allow bulk replication of the DVD for commercial purposes. The timeline to fulfill these requirements for proper replication would be approximately three weeks. In contrast, the process Mr. Cronkite outlines in his declaration is DVD duplication (*i.e.*, “burning”) as opposed to the industry standard of commercial replication.

15. In short, Mr. Cronkite’s approach fails to consider the time, efforts, and costs in creating a substitute piece that can be used in an attempt to replicate the explicit and implicit messages expressed with use of the *Imagine* clip. Even aside from creating a substitute piece, Mr. Cronkite underestimates the time and efforts needed to remove *Imagine* from the documentary. To summarize, (1) the process of creating a replacement segment would take a minimum of four weeks, (2) the technical process to implement (a) the replacement segment or (b) remove the *Imagine* clip without creating a replacement segment would take an additional two weeks; and (3) the process of transferring the documentary (a) to film would take an additional week and (b) to DVD would each take an additional three weeks.

16. Under either scenario – revising the current version of the documentary with a new substituted clip or more drastically eliminating the *Imagine* clip without a replacement message – to modify the documentary would cause us to miss our deadline to finalize the DVD by the end of this month (May 2008) which means we will not be able to release the DVD in October 2008.

Dated: New York, New York
May 19, 2008



John Sullivan