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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CRIMINAL NO. 02-00062ACK
	)	
Plaintiff,	)	Honolulu, Hawaii
	)	June 3, 2003
vs.	)	
	)	
THOMAS M. SCHNEPPER,	)	FURTHER JURY TRIAL
	)	(TESTIMONY OF MELISSA
	)	LYNN BERTSCH)
Defendant.	)	
_____	)	

PARTIAL TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ALAN C. KAY,  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	LAWRENCE L. TONG, Esq. Assistant U.S. Attorney District of Hawaii Room 6100 - PJKK Federal Bldg. 300 Ala Moana Blvd. Honolulu, Hawaii 96813
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For the Defendant:	RICHARD S. KAWANA, Esq. City Center 810 Richards Street, Suite 851 Honolulu, Hawaii 96813
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Official Court Reporter:	Cynthia Tando Fazio, RMR, CRR United States District Court P.O. Box 50131 Honolulu, Hawaii 96850
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Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

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I N D E X

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1 TUESDAY, JUNE 3, 2003

2

\* \* \* \* \*

3

(Start of partial transcript:)

4

THE COURT: Next witness.

5

MR. KAWANA: Your Honor, at this time we would call  
6 Melissa Bertsch.

7

MELISSA LYNN BERTSCH,

8

called as a witness by the Defendant, having been first duly  
9 sworn, was examined and testified as follows:

10

THE CLERK: Please be seated.

11

Please state your name and spell your first and last  
12 name.

13

THE WITNESS: Melissa Lynn Bertsch, Melissa is spelled  
14 M-E-L-I-S-S-A and Bertsch is spelled B-E-R-T-S-C-H.

15

DIRECT EXAMINATION

16

BY MR. KAWANA:

17

Q Good morning, Ms. Bertsch.

18

A Hello.

19

Q Where do you live?

20

A San Bernardino, California.

21

Q And how long have you lived there?

22

A I've lived there about three years.

23

Q And do you live there by yourself or with other people?

24

A No, I have a family. I'm engaged and I have a son.

25

Q And you say you are engaged. Does your fiance live with

1 you?

2 A Yes.

3 Q And how long has he lived with you?

4 A We've known each other for about seven years and we've  
5 lived together for about six.

6 Q And you also have a son, you say?

7 A Yes.

8 Q How old is your son?

9 A He's six.

10 Q And he's in the first grade or something like that?

11 A Yes, he just graduated from kindergarten.

12 Q And prior to coming here, did you have sort of a natural  
13 disaster occurring to your house?

14 A Yes. The morning that I left there was a minor  
15 earthquake, and my house is pretty old and I had some serious  
16 damage to my water pipe and my sewer pipe and the foundation of  
17 my house.

18 Q Well, we would like to thank you for coming to testify  
19 here today.

20 A You're welcome.

21 Q Now, are you -- are you a student in addition to whatever  
22 else you do?

23 A Yes, I go to school part-time at the University of  
24 Redlands.

25 Q And where is the University of Redlands?

1 A It's in the San Bernardino area about an hour-and-a-half  
2 east of Los Angeles.

3 Q And what are you taking up at the University of Redlands?

4 A I study chemistry.

5 Q And what are your career ambitions after you get your  
6 degree?

7 A I'd like to go into forensic chemistry.

8 Q How are your grades?

9 A Yeah, I just started so I've been taking pretty easy  
10 classes, my prerequisites and stuff.

11 Q Now, do you have an occupation that -- that -- what's your  
12 job?

13 A I'm an adult model and actress.

14 Q And what does it mean to be an adult model and actress?

15 A I perform in adult movies and adult magazines and stuff.

16 Q And does this mean that -- okay. I'd like you to take a  
17 look at Defendant's Exhibit L for identification.

18 A Okay.

19 Q Would you go through the exhibit, and tell me if you  
20 recognize what it is. There are five pages.

21 A This looks like my website.

22 Q Well, take a careful look so that you can tell us whether  
23 it is your website or not.

24 A Yes, it's my website.

25 Q Is this a true and accurate copy of your website? When

1 you say your website, this is something that's on the Internet?

2 A Yes, this is my web page on the Internet. And this is an  
3 accurate copy.

4 MR. KAWANA: Your Honor, at this time we'd like to  
5 move Exhibit L into evidence.

6 MR. TONG: No objection.

7 THE COURT: L is admitted.

8 (Defendant's Exhibit L was received in evidence.)

9 BY MR. KAWANA:

10 Q Now, taking a look at Exhibit L, the first page, what is  
11 the title of the exhibit?

12 A At the top, it says: "Melissa Ashley's Home Page."

13 Q What's the next line under that?

14 A "Welcome to my only official website."

15 Q Now, Melissa Ashley, is that your name also?

16 A That is one of my stage names.

17 Q What's a stage name?

18 A It's a fictitious name that people use in either movies or  
19 a pornographic movie so people don't know your actual name.

20 Q Now, in -- on the first page it talks about -- if you take  
21 a look on the left side, it says: "I want to join." What does  
22 that mean or what is that for?

23 A People who visit my website can click there to -- to join  
24 my website and become members and enter the members area.

25 Q And if they don't become members, then are they limited to

1 just your web page?

2 A If they don't become members, they can look at some of  
3 this other stuff that's on here. I have some free photos and I  
4 have a -- a page with some information about me and a calendar  
5 of things that I'm doing. Some other stuff.

6 Q Okay. Now, it says -- there's a picture on that page  
7 also, right?

8 A Yes.

9 Q Okay. Above the page, it says: "My free Yahoo! group."  
10 What does that mean?

11 A That is a link to my Yahoo! group, it's sort of like a fan  
12 club provided by Yahoo.com.

13 Q And is it an adult area or just a regular area?

14 MR. TONG: Your Honor, at this time, although  
15 interesting, I object to the relevancy of this.

16 MR. KAWANA: Well, I'm just trying to lay the  
17 foundation, Your Honor.

18 MR. TONG: Your Honor --

19 THE COURT: I think you have done pretty much of that.

20 MR. KAWANA: Okay.

21 MR. TONG: Your Honor, may we -- may we have a very  
22 brief sidebar, please?

23 THE COURT: All right.

24 (Bench conference on the record:)

25 MR. TONG: Your Honor, I listened very closely to the

1 defendant's testimony and I never heard him say that he went to  
2 her website. So what is on her website, while interesting, is  
3 really irrelevant because it cannot in any way, shape or form  
4 be part of the defendant's state of mind. And I had understood  
5 that this witness was being called primarily to testify she is  
6 the actress depicted in Government's Exhibit 8 and that she is  
7 not a minor. If that's the testimony, so be it. But what  
8 relevance does it have how titillating her website is or how  
9 you could join when there's no evidence the defendant had any  
10 contact with the website?

11 MR. KAWANA: Well, Your Honor, I believe that there  
12 was quite a bit of testimony about photographs floating on the  
13 Internet, and I hope to link up her testimony with why these  
14 photos are floating on the Internet where they can be accessed  
15 by anyone. So that's the purpose of my getting into some of  
16 this.

17 THE COURT: Well, let's get going.

18 MR. KAWANA: All right.

19 (End of bench conference.)

20 THE COURT: Please proceed, Mr. Kawana.

21 MR. KAWANA: Thank you, Your Honor.

22 BY MR. KAWANA:

23 Q Ms. Bertsch, turn to Page 2.

24 A Page 2 of Exhibit L?

25 Q Yes. Okay. Can you just read the title over there?



1 A It says: "Legal Notice."

2 Q Okay. Now, what is the purpose of "Legal Notice"?

3 MR. TONG: Objection, Your Honor. Relevance.

4 MR. KAWANA: Your Honor, I'm just going to get into  
5 the fact that -- that the only photographs that are pictured  
6 there are all models who appear within the web page on the  
7 site, at least 18 years of age when the photos were taken. I  
8 mean this ties in --

9 THE COURT: Ask her that one question and then move  
10 on.

11 BY MR. KAWANA:

12 Q Okay. All right. With respect to the legal notice, does  
13 the legal notice notify all who visit that all models who  
14 appear within -- appear on site were at least 18 years of age  
15 when the photos were taken and they've signed release forms  
16 allowing their photos to appear and provided proof of age and  
17 identification?

18 A Yes.

19 Q And -- and does this also -- right below that there is a  
20 copyright. In other words, are all of these photos copyrighted  
21 and belong to you?

22 A Yes.

23 MR. TONG: Objection. Relevance, Your Honor.

24 THE COURT: Sustained.

25 BY MR. KAWANA:

1 Q Okay. All right. Turn to the -- turn to the next page,  
2 okay, which is entitled "A Little About Me." Now, down below  
3 it says "How old are you?" And you see that part?

4 A Yes.

5 Q Okay. Would you read what it says below that.

6 A It says: "I'm 23 years old and I was born at the end of  
7 August, which makes me a Virgo."

8 Q Is that information accurate today?

9 A No, I'm 24 today. Obviously, I need to update that part.

10 Q Okay. Now, turn to the next page. Okay. Can you read  
11 the portion that starts at the top "Now the more important  
12 stuff," and the next two lines?

13 A Of the paragraph?

14 Q Yeah. No, just the title "Now the more important stuff,"  
15 and the next line.

16 MR. TONG: Objection to the relevance, Your Honor.

17 MR. KAWANA: Your Honor, we're just wanting to get  
18 across what her stage names are.

19 MR. TONG: Objection. Relevance.

20 THE COURT: She's already testified to that, hasn't  
21 she?

22 MR. KAWANA: Well, to some of them.

23 MR. TONG: Object to the relevance of her stage names.

24 MR. KAWANA: Well, they're on some of the other  
25 exhibits we have, Your Honor.

1 MR. TONG: The documents speak for itself.

2 MR. KAWANA: Well, we're entitled to --

3 THE COURT: I'll allow it.

4 BY MR. KAWANA:

5 Q Go ahead.

6 A It says, "Who is Melissa? Who is Ashley? And who is Anne  
7 Howe?"

8 Q Okay. Now, does that page explain that -- who they are?

9 A Yes, it explains that I have several stage names that I've  
10 used over the past few years, Melissa, Ashley and Anne Howe are  
11 a few, and there are a few others as well.

12 Q What are some of the others?

13 A BJ Lixx, Katy, Lisa, and I've seen myself called a few  
14 other names as well.

15 Q Okay. Now, turn to the next page, which is Page 5.

16 A Okay.

17 Q All right. Now, it says my -- the portion that says, "My  
18 XXX movies," triple X movies.

19 A Yes.

20 Q Okay. Now, have you performed in a number of triple X  
21 movies as stated there in the -- in Page 5?

22 A Yes, I've performed in all of these movies listed as well  
23 as others.

24 Q Okay. And were you over 18 at the time that you performed  
25 in those movies?

1 A Yes, in all of them.

2 Q Now, I'd like you to turn to Defendant's Exhibit M for  
3 identification and ask you to take a look at those pages.

4 There are four of them. Do you recognize Defendant's Exhibit  
5 M?

6 A Yes, I recognize this as Dave Cummings' website on the  
7 Internet.

8 Q Now, who is Dave Cummings?

9 A He is a male performer in the adult industry and a  
10 personal friend of mine.

11 Q Have you performed in any of his productions?

12 A Yes, I have been in three productions with him.

13 Q And are they listed in your own website, or at least some  
14 of them?

15 A Yes, I believe they all are.

16 Q With respect to Dave Cummings' website, I would like you  
17 to take a look at what appears on Page 3 -- excuse me, 4.

18 A It's a photo.

19 Q And in that photograph there's a male, an older male, and  
20 a younger female. Do you see that?

21 A Yes.

22 Q Now, who is the older male?

23 A That's Dave Cummings.

24 Q And he's the owner of the website and, as you say, your  
25 friend?

1 A Yes, he's owner of the website and of Dave Cummings  
2 Productions.

3 Q And who is the female that's -- that's pictured on the  
4 right?

5 A That's me.

6 Q Take a look at Page 5. Can you read the very -- the title  
7 of that particular page right above the box?

8 A It says: "Melissa-Ashley, slash, BJ Lixx, slash, Anne  
9 Howe."

10 Q And does that indicate your stage names?

11 A Yes, that is a few of my stage names.

12 Q All right. Now, take a look at the photographs, there are  
13 two small photographs right below that. One is on -- the one  
14 on the left side is that of a female. Who is that?

15 A That's me.

16 Q And the one on the right is of a male and a female. Who  
17 is that?

18 A That's Dave Cummings and I.

19 Q Thank you. Now, would you move to Exhibit N. Take a look  
20 at that and tell us if you recognize it after you go over it.

21 A I recognize it as an artist agreement or model's release.

22 Q It's entitled "Artist Agreement and Release," right?

23 A Yes.

24 Q Okay. Now, what is an artist agreement and model release?

25 A All models are required to sign one. Basically states

1 that you are 18 years of age or older, and it gives the  
2 production company, in this case Dave Cummings Production, full  
3 permission to use my photos and videos.

4 Q Take a look down at the very end of the model's release  
5 before the signature blocks where it says "waivers."

6 A Okay, I see it.

7 Q Would you go through that real quickly, and I have a  
8 couple of questions I wanted to ask you about that.

9 A Just read the paragraph?

10 Q Yeah.

11 A "Artist understands and agrees that" --

12 MR. TONG: Well, wait. Your Honor, it's not in  
13 evidence.

14 MR. KAWANA: Oh, I'm sorry. Okay.

15 BY MR. KAWANA:

16 Q Well, let -- let me back up. With respect to -- let's go  
17 back to Exhibit M. With respect to Exhibit M, is that a true  
18 and accurate copy of Dave Cummings' web page?

19 A Yes, it is.

20 MR. KAWANA: Your Honor, we would like to move Exhibit  
21 M into evidence.

22 MR. TONG: Brief voir dire, Your Honor?

23 THE COURT: You may.

24 VOIR DIRE EXAMINATION

25 BY MR. TONG:

1 Q I'm sorry, ma'am. I got confused with your different  
2 names. Your name is Melissa?  
3 A Melissa Bertsch is my real name.  
4 Q Bertsch?  
5 A Yes.  
6 Q All right. We are talking about Exhibit M, as in Mary,  
7 correct?  
8 A Yes.  
9 Q And that appears to be a few pages taken from a website  
10 maintained by Dave Cummings, correct?  
11 A That is correct.  
12 Q And the first page basically has a couple of icons you can  
13 click if you are a member or if you are a guest; is that  
14 correct?  
15 A That's correct.  
16 Q Now, you've seen this web page before, correct?  
17 A Yes, several times.  
18 Q You do not operate this web page, do you?  
19 A No, I do not.  
20 Q You are not the web administrator?  
21 A No.  
22 Q You don't maintain lists of members or guests?  
23 A No.  
24 Q You don't maintain any kind of log showing who accessed  
25 this web page?

1 A No. Dave Cummings has all those records.

2 Q You don't know whether the web page looked in exactly this  
3 form back in November of 2001, do you?

4 A I do look at his website periodically several times a  
5 year. I don't recall if I looked at it November 2001 or not.

6 Q And you can't say for certainty whether a particular  
7 person accessed this web page, can you?

8 A No, I cannot.

9 MR. TONG: Thank you, Your Honor. I would object. No  
10 foundation and no relevance given the state of our record.

11 MR. KAWANA: Your Honor, we would ask that it be  
12 admitted. I think there's been sufficient --

13 MR. TONG: Your Honor, if he is going to make an offer  
14 of proof, I don't think it should be in this fashion.

15 MR. KAWANA: No, I am not making an offer of proof,  
16 Your Honor. I am just simply saying we believe an adequate  
17 foundation has been laid. She says it's a true and accurate  
18 copy of the website for Dave Cummings that she's reviewed on a  
19 periodic basis, and she's already explained what some of the  
20 items that were in there are, which have a direct relationship  
21 with what the evidence -- the state of the evidence in this  
22 case is. So clearly we would submit that this is admissible  
23 and we would so move it into evidence.

24 THE COURT: I'll allow Pages 4 and 5, since she did  
25 identify photographs of herself on those pages.



1                   (Defendant's Exhibit M, Pages 4 and 5,  
2                   was received in evidence.)

3                   MR. KAWANA: So Pages 4 and 5 would be admitted then.  
4 Thank you, Your Honor.

5                   RESUMED DIRECT EXAMINATION

6 BY MR. KAWANA:

7 Q       Turning to Exhibit N. First of all, is this a true and --  
8 strike that. All right.

9                   MR. TONG: I'll stipulate to the admission of N, as in  
10 Norman.

11                  THE COURT: N is admitted.

12                  (Defendant's Exhibit N was received in evidence.)

13                  MR. KAWANA: Okay. Thank you.

14 BY MR. KAWANA:

15 Q       With respect to Exhibit N, please go ahead down to  
16 Paragraph 3 that you were talking about waivers and simply read  
17 that.

18 A       "Artist understands and agrees that, one, the performance  
19 and/or audio portion may be utilized in conjunction with  
20 sexually graphic or explicit material. Any sex scene involving  
21 artist may be simulated or actual at artist's sole discretion  
22 and without any change in compensation.

23                  "Two, producer shall have no obligation to release or  
24 complete the picture or to ever utilize the performance and/or  
25 the audio portion.

1           "Three, artist shall have no right to inspect or  
2 approve the finished product or its use in the pictures or in  
3 any other distorting, alteration, retouching, optical illusion  
4 or use of the performance and/or audio portion which may hold  
5 artist in false or unfavorable light, whether such action is  
6 intentional or otherwise."

7 Q     Okay. I think you missed the third line from the bottom  
8 that starts "were." Can you read that?

9 A     I'm sorry. It's very small.

10 Q    Kind of small type, typical lawyer-ese. Go ahead.

11 A    Where it starts with number four?

12 Q    Yeah.

13 A    "Artist releases producer and his employer, employees and  
14 other assigns from any liability for by virtue of blurring,  
15 distorting, alteration, retouching, optical illusion or use of  
16 the performance and/or audio portion which may hold artist in  
17 false or unfavorable light, whether such action is intentional  
18 or otherwise."

19 Q    Okay. Now, does that mean -- what does that mean to you,  
20 that they can -- once you signed a release, anything can be  
21 done to your photo?

22           MR. TONG: Object to the relevance.

23           MR. KAWANA: Well, Your Honor, I think it goes to the  
24 relevance of what Mr. Schnepfer testified about.

25           THE COURT: I'll allow it.

1 BY MR. KAWANA:

2 Q Go ahead.

3 A This paragraph means that when I signed this release and  
4 I'm paid for the work that I did, that my photos, my videos or  
5 the audio portion belongs to Dave Cummings and that he can use  
6 it in any way he sees fit.

7 Q Even if he changes it or makes it different, retouches it?

8 A Yes.

9 Q Okay. All right. Now, take a look at the date, what date  
10 was this agreement signed?

11 A January 31st, 1999.

12 Q Now, was this the first time that -- was this date the  
13 date that you met Dave Cummings for the first time?

14 A Yes, this was the first day that I met Dave.

15 Q Had you contacted him before then at all?

16 A No, a mutual friend introduced us that day and we decided  
17 to shoot together right away.

18 Q And take a look under there, it -- under the signature  
19 block, it says -- where it says, "Dave Cummings, producer,"  
20 does that appear to be his signature or do you recall seeing  
21 him sign it?

22 A Yes, I remember seeing him sign it.

23 Q And there are two names there; why is that?

24 A Dave Cummings is his stage name and the other name is his  
25 real name.

1 Q All right. And under the block that says "Artist," can  
2 you read what the first line says?

3 A That's my signature. That's my real name, Melissa  
4 Bertsch.

5 Q And the second line, would you read what's there?

6 A It says: BJ Lixx and Melissa Bertsch.

7 Q Okay. Now, is -- Melissa Bertsch is printed out. Is that  
8 the reason why you wrote it there?

9 A Yes.

10 Q And what about BJ Lixx?

11 A That's my stage name.

12 Q All right. The third line is, what? Would you read that.

13 MR. TONG: Your Honor, the document is in evidence.

14 What's the relevance of this?

15 THE COURT: I think you've got it all in now,

16 Mr. Kawana.

17 MR. KAWANA: Okay.

18 BY MR. KAWANA:

19 Q All right. Now, just a couple more questions then. Did  
20 you put your Social Security number on underneath your  
21 signature?

22 A Yes, I did.

23 Q And did you put -- is there a statement there about your  
24 compensation?

25 A Yes, there's a line that indicates how much I was paid for

1 the work I did that day.

2 Q All right. And then there's another signature. Was that  
3 yours?

4 A Yes, that's my signature.

5 Q Okay. I'd like you to turn now to Exhibit O for  
6 identification. And ask if you recognize that?

7 A Yes, I recognize this as my old Arizona driver's license.

8 Q Okay. Is this your -- is this a true and accurate copy of  
9 your old Arizona driver's license?

10 A Yes, it is.

11 MR. KAWANA: Your Honor, we'd move this into evidence.

12 MR. TONG: No objection.

13 THE COURT: O is admitted.

14 (Defendant's Exhibit O was received in evidence.)

15 BY MR. KAWANA:

16 Q Taking a look at the license, does it state when -- does  
17 it state your name on that -- that you've given us today?

18 A Yes, it does.

19 Q Okay. And what's your full name?

20 A Melissa Lynn Bertsch.

21 Q And you lived in Arizona at the time?

22 A Yes, I did.

23 Q Does it state your birth date on it?

24 A Yes, it does.

25 Q And what is that date?

1 A Says 8/24/1978.

2 Q And is that your correct birth date?

3 A That is correct.

4 Q Thank you. Would you take a look at Exhibit Q. And ask  
5 you if you recognize that document.

6 A Yes.

7 MR. TONG: Stipulate to the admission of Exhibit Q,  
8 Your Honor.

9 THE COURT: Q is admitted.

10 (Defendant's Exhibit Q was received in evidence.)

11 BY MR. KAWANA:

12 Q What is it?

13 A Exhibit Q is my current California identification card.

14 Q And does it have your full name on there?

15 A Yes.

16 Q And what's your full name listed on there?

17 A Melissa Lynn Bertsch.

18 Q And does it also have your date of birth?

19 A Yes, it does.

20 Q And what is that?

21 A 8/24/78.

22 Q Is that a correct copy of your date of birth?

23 A Yes, that's correct.

24 Q Now, on both Exhibit O and Exhibit Q, is there a portion  
25 that -- which shows your signature?

1 A Yes.

2 MR. TONG: Object to the relevance of her signature,  
3 Your Honor.

4 MR. KAWANA: Well, Your Honor, we're just --

5 MR. TONG: On two driver's licenses?

6 THE COURT: Sustained.

7 BY MR. KAWANA:

8 Q Okay. Take a look at Exhibit P for identification.

9 MR. TONG: Stipulate to its admission.

10 THE COURT: P is admitted.

11 (Defendant's Exhibit P was received in evidence.)

12 BY MR. KAWANA:

13 Q All right. Now, taking a look at Exhibit P, can you tell  
14 us what that is?

15 A Exhibit P is a certified abstract of my birth certificate.

16 Q And where -- what county or where was that abstract  
17 received from?

18 MR. TONG: Objection. Relevance to this case.

19 THE COURT: Sustained.

20 BY MR. KAWANA:

21 Q Does it state your date of birth?

22 A Yes, it does.

23 Q And what does it say?

24 A August 24th, 1978.

25 Q Now, going back to the artist agreements and release on

1 Exhibit N. When you signed that agreement on January 31st,  
2 1999, was that the first time that you had ever performed with  
3 David -- Dave Cummings as an adult actress?

4 A Yes.

5 Q How old were you at that time?

6 A I was 20.

7 Q And had you performed at any time before you were 18 years  
8 of age in any of these types of productions?

9 A No.

10 Q So it's clear to say that your first contact physically in  
11 performing with Dave Cummings was when you were 20 years of  
12 age?

13 A Yes, I was 20.

14 Q And how were you introduced into -- into this line of  
15 work?

16 MR. TONG: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MR. KAWANA:

19 Q Okay. Ms. Bertsch, I would like you to take a look at  
20 Government Exhibit 8 for identification.

21 A Is that in the black book?

22 Q It's in the white book.

23 A I found it.

24 Q Okay. This is the one that depicts the older male with a  
25 younger woman. Is that -- is that the same one we're looking



1 at?

2 A Yes.

3 Q Now, do you recognize who -- the people who are in that  
4 photograph?

5 A Yes, I recognize them both.

6 Q And who is the male?

7 A That's Dave Cummings.

8 Q And this is the same Dave Cummings that we've talked about  
9 with the website and --

10 A Yes.

11 Q -- the artist agreement? And who is the woman that is  
12 depicted?

13 A That's me.

14 Q And at that time that the photo was taken, were you -- how  
15 old were you?

16 A I was 20.

17 Q And was that about the same time that you signed the  
18 artist agreement with Mr. Cummings?

19 A Yes. It was right after I signed the artist agreement.

20 Q And --

21 A January 31st, 1999.

22 Q And are other photos similar to that on your website?

23 MR. TONG: Object to the relevance.

24 THE COURT: What's the relevance?

25 MR. KAWANA: Well, Your Honor, I just want to get into

1 the fact that these photographs are readily available on the  
2 Internet.

3 THE COURT: I'll allow it.

4 MR. KAWANA: All right. Thank you.

5 BY MR. KAWANA:

6 Q Are these photographs available on either your or  
7 Mr. Cummings' website?

8 A These particular photos are not on my website, but they  
9 are on Dave Cummings' website.

10 Q Okay. Now, on both of your -- well, on your website  
11 certainly there was something about copyright protection,  
12 right?

13 A Yes.

14 Q Why is it necessary to have a warning about copyright  
15 protection for your photographs?

16 MR. TONG: Objection. Relevance.

17 MR. KAWANA: Well --

18 THE COURT: I'll allow it.

19 BY MR. KAWANA:

20 Q Go ahead.

21 A I -- I found that a lot of people on the Internet, they  
22 download photos and they pass them around, they even sell them  
23 to other websites. The photos don't belong to them. And so  
24 every website that I've ever seen has a copyright disclaimer  
25 saying these photos belong to me and you do not have permission

1 to use them. However, people still do download them and pass  
2 them around and everything.

3 Q All right. So that's a real problem where you're  
4 basically running a commercial website; is that correct?

5 A Yes, it's a pretty serious problem.

6 Q All right. Now, and once they leave -- once they're  
7 downloaded, do you have any control over how they're used or  
8 whatever?

9 A No, if somebody downloads the photos, they could post them  
10 on news groups or other places or pretty much wherever they  
11 want.

12 Q Now, when you have a commercial website such as the one  
13 that you have, how many members do you typically have --

14 MR. TONG: Object to the relevance.

15 BY MR. KAWANA:

16 Q -- that could download these documents?

17 MR. TONG: Excuse me.

18 MR. KAWANA: Excuse me.

19 MR. TONG: I object to the relevance.

20 THE COURT: Sustained.

21 BY MR. KAWANA:

22 Q All right. Do you have -- do you cater -- does your  
23 website cater and do your photographs cater to the fantasies of  
24 your members and other people who go to your website?

25 A Yes, they do.

1 Q And what's your belief about the issue of the idea of  
2 fantasy on these adult websites such as yours?

3 MR. TONG: Object to the relevance and lay opinion,  
4 Your Honor.

5 MR. KAWANA: Well, she's --

6 THE COURT: Sustained.

7 BY MR. KAWANA:

8 Q Well, does fantasy have anything to do with how successful  
9 you are in maintaining a website?

10 MR. TONG: Objection. Relevance, Your Honor.

11 THE COURT: Sustained. You've already covered this,  
12 Mr. Kawana.

13 MR. KAWANA: Very well.

14 BY MR. KAWANA:

15 Q Now, just to make sure -- one other question then. How  
16 many photographs would you estimate that you have had taken  
17 with David Cummings in terms of adult --

18 MR. TONG: Object -- I'm sorry.

19 BY MR. KAWANA:

20 Q -- adult type photographs, movies or pictures?

21 MR. TONG: Objection. Relevance.

22 THE COURT: Sustained.

23 MR. KAWANA: Very well. No further questions, Your  
24 Honor.

25 Thank you, Ms. Bertsch.

1 THE WITNESS: You're welcome.

2 THE COURT: Any cross?

3 MR. TONG: Briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. TONG:

6 Q Good morning again.

7 A Good morning.

8 Q I want to see if I understand all your testimony. In  
9 essence, you are saying that you are the person in Exhibit 8  
10 and that you were over 18 at the time; is that correct?

11 A That's correct.

12 Q Okay. Now, Exhibit 8 shows you and Mr. Cummings engaged  
13 in sex; is that correct?

14 A That is correct.

15 Q Were you having sex at the time?

16 A Yes, we were.

17 Q And you just testified that once these pictures are taken,  
18 there's no control that you can exert to keep them in your  
19 website or elsewhere, correct?

20 A That is correct.

21 Q And they can get anywhere on the Internet, correct?

22 A Yeah, pretty much.

23 Q And once separated from your website, they're also  
24 separated from the disclaimer that you talked about; is that  
25 correct?

1 A That is correct.

2 Q And would you agree that you have a rather youthful  
3 appearance?

4 A Yes, I agree.

5 Q And that's part of what you market, isn't it?

6 A Not really.

7 Q Well, on the website you say that you have the, and I'm  
8 quoting, flattest chest in the business and you're proud of it,  
9 correct?

10 A That is correct.

11 Q And on one of those websites, it also lists the title of a  
12 video you did, it was called "Young and Anal 15"; is that  
13 correct?

14 A That is correct.

15 MR. TONG: Thank you. I have nothing further.

16 THE COURT: Anything more, Mr. Kawana?

17 MR. KAWANA: Yes, Your Honor, just a few questions  
18 based on Mr. Tong's questioning.

19 REDIRECT EXAMINATION

20 BY MR. KAWANA:

21 Q Mr. Tong asked you about the fact that you have a youthful  
22 appearance?

23 A Yes.

24 Q And that in fact on the website that you have, that you  
25 have statements saying that you had the flattest chest in --

1 in -- let's see if I can get that --

2 MR. TONG: That's your exhibit, Exhibit L, Page 5.

3 MR. KAWANA: Thank you.

4 Apparently you've studied it more than I. Excuse me.  
5 Sorry, strike that.

6 BY MR. KAWANA:

7 Q Okay. When you say that you have the flattest chest on  
8 the Internet or wherever, what was your purpose in putting that  
9 in?

10 A I found that some men prefer petite, smaller breasted  
11 women, and basically I cater to that. So I declare that on my  
12 website just because so everybody who visits knows that I am  
13 very, very petite.

14 Q And when you say that some men prefer that, does that have  
15 anything to do with what you're trying to sell in your website  
16 in terms of, you know --

17 A I try to cater to the people who do prefer petite women.  
18 I think most of us will agree that most women in the adult  
19 industry are quite, much bigger than me. And not everybody  
20 likes that. So my website is basically designed to appeal to  
21 the people who prefer smaller, petite women.

22 Q And with respect to the type of titles that you have  
23 performed in, such as "Young and Anal," is there any particular  
24 reason why you put the word "young" or -- in that particular --

25 A That movie was not produced by me. It was produced by

1 another company. I agree that I look very, very young, and  
2 basically I feel that men will be men and that men will look at  
3 women. That's one of the things they do. Some men are  
4 attracted to younger looking women, and if men look at me and  
5 fantasize that I'm younger than I am, I feel that's better than  
6 if they were just looking at some young girl.

7 MR. KAWANA: Thank you. I have no further questions.

8 MR. TONG: Nothing further.

9 THE COURT: Thank you. You're excused.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 (End of partial transcript.)

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COURT REPORTER'S CERTIFICATE

I, CYNTHIA FAZIO, Official Court Reporter, United States District Court, District of Hawaii, Honolulu, Hawaii, do hereby certify that the foregoing pages numbered 1 through 32 is a correct partial transcript of the proceedings had in connection with the above-entitled matter.

DATED at Honolulu, Hawaii, February 21, 2008.

/s/ Cynthia Fazio  
CYNTHIA FAZIO, RMR, CRR