

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

Plaintiff

v.

Civil Action No. 08-11364-GAO

ZACK ANDERSON, RJ RYAN,  
ALESSANDRO CHIESA, and the  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendants

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**PLAINTIFF'S REQUEST FOR RULE 16 SCHEDULING CONFERENCE AND  
INTERIM DISCOVERY ORDER**

**Introduction**

Pursuant to Fed. R. Civ. P. 16(a) and Local Rule 16.1, the plaintiff, Massachusetts Bay Transportation Authority ("MBTA") hereby requests (a) a Scheduling Conference for the limited purposes set out below, and (b) the issuance of an Interim Scheduling Order requiring the defendants to comply with the pending discovery, identified in paragraph 3. The MBTA request that this Conference take place at the close of the Hearings set for 11:00 A.M. on Thursday, August 14, 2008.

As grounds for this Request, the MBTA states as follows:

**The Record for the Preliminary Injunction Hearing;  
Absence of Testimony from the Defendants**

1. The Temporary Restraining Order ("TRO") currently in place will expire on Tuesday, August 19. The MBTA currently plans to move this Court to convert the TRO to a Preliminary Injunction on or before Tuesday, August 19.

2. Although the MBTA has provided a range of affidavit testimony in this matter, none of the defendants has yet to provide any such testimony. The MBTA believes that discovery from the defendants, including time-limited deposition discovery, will aid in a ruling on the MBTA's anticipated Preliminary Injunction Motion.

### **The MBTA's Targeted Discovery Requests**

3. On Wednesday, August 13, 2008, the MBTA served the following discovery requests on the defendants:

- A Request for Production containing seven (7) Requests (not including sub-parts). A copy of this Request is included as Exhibit 1.
- A Notice of Deposition of Zack Anderson. This deposition is limited to four (4) hours, on Friday, August 15, from 9:00 to 1:00. A copy of this Notice is attached as Exhibit 2.
- A Notice of Deposition of Professor Ron Rivest. This deposition is limited to two (2) hours, on Friday, August 15, from 2:30 to 4:30. A copy of this Notice is attached as Exhibit 3.

4. The MBTA has provided Initial Disclosures (Exhibit 4). Given the parties' disputes over the MIT Undergrads' refusal even to produce the "A" paper they wrote for Professor Rivest's class (the paper that set in motion the events that led to the current state), more detailed conferences on discovery issues would not be productive, in the MBTA's view.

### **The Relevance of the Discovery to the Preliminary Injunction Issues**

#### **What Threat Is Posed**

5. The defendants Zack Anderson, RJ Ryan, and Alessandro Chiesa (the "MIT Undergrads") through counsel argue that "the information the original TRO sought to keep confidential has now been publicly disclosed by MBTA." Declaration of Jennifer Granick, ¶5. The MIT Undergrads therefore seek to be released from the TRO.

6. Yet the EFF in its Motion papers admits that "more" information is available. *See* Motion at 5 ("most ... of the significant facts known to the students ... are now public").

7. With its discovery requests, the MBTA seeks to determine what relevant, non-public information exists, and to obtain the "disclosure" element of the "Responsible Disclosure".

8. Indeed, the EFF provided a document to the MBTA on Wednesday August 13, 2008 at 5:52, which the EFF, the MBTA understands, intends to reference during the Thursday August 14 hearing. This document appears to contain a volume of new information concerning MBTA Fare Media security issues.

9. Given the history of delayed and partial disclosure in this matter, the MBTA is entitled to discovery to test and verify the MIT Undergrads' disclosure.

#### **Advocacy of Violations of Law**

10. The MIT Undergrads claim that the TRO represents an unlawful prior restraint on their claimed First Amendment rights.

11. The requested discovery, in addition, is targeted toward showing the existence of improper "advocacy of illegal activity", which conduct removes First Amendment protections.

#### **Balancing of Harms**

12. The MIT Undergrads did not disclose their Presentation to the MBTA until the morning of the TRO hearing. Yet the Undergrads claim "clean hands," and assert that they "sought to help the MBTA." These arguments are relevant to, among other points, the "balancing of the harms" and "equities" element in a preliminary injunction analysis.

13. The MBTA is entitled to discovery to demonstrate that the MIT Undergrads in fact were not forthcoming about their plans, refused when requested to provide their

Presentation, and otherwise sought to block attempts by the MBTA to determine whether their threatened "get free subway rides for life" was merely a prank, or a significant threat.

**Conclusion**

Wherefore, the plaintiff, Massachusetts Bay Transportation Authority, respectfully requests (a) a Scheduling Conference after the hearings set for August 14, 2008 at 11:00, and (b) an Interim Scheduling Order requiring the defendants to comply with the pending discovery, identified in paragraph 3.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By its attorneys,

/s/ Ieuan G. Mahony

Ieuan G. Mahony (BBO #552349)  
Maximillian J. Bodoïn (BBO # 667240)  
HOLLAND & KNIGHT LLP  
10 St. James Avenue  
Boston, MA 02116  
(617) 523-2700

/s/ Thomas F.S. Darling III

Thomas F.S. Darling III (BBO #558848)  
MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY  
State Transportation Building  
7<sup>th</sup> Floor  
10 Park Plaza  
Boston, MA 02116  
(617) 222-3174

Dated: August 13, 2008  
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above-captioned proceeding, hereby certify that on this 13<sup>th</sup> day of August, 2008, I served the foregoing **Plaintiff's Request For Rule 16 Scheduling Conference and Interim Discovery Order** by e-mail upon the following interested parties:

**Party**

**Counsel**

Zack Anderson, RJ Ryan,  
and Alessandro Chiesa  
(the "MIT Undergrads")

Emily Berger, Esquire  
Email: [emily@eff.org](mailto:emily@eff.org)

Kurt Opsahl, Esquire  
Email: [kurt@eff.org](mailto:kurt@eff.org)

Marcia Hofmann, Esquire  
Email: [marcia@eff.org](mailto:marcia@eff.org)

Jennifer Granick, Esquire  
Email: [jennifer@eff.org](mailto:jennifer@eff.org)

Massachusetts Institute  
of Technology ("MIT")

Jeffrey Swope, Esquire  
Email: [JSwope@eapdlaw.com](mailto:JSwope@eapdlaw.com)

/s/ Ieuan G. Mahony\_\_\_\_\_

# 5542779\_v1

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

Plaintiff

v.

Civil Action No. 08-11364-GAO

ZACK ANDERSON, RJ RYAN,  
ALESSANDRO CHIESA, and the  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendants

---

**PLAINTIFF'S REQUEST TO DEFENDANTS ZACK ANDERSON, RJ RYAN, AND  
ALESSANDRO CHIESA FOR EXPEDITED PRODUCTION OF DOCUMENTS AND  
THINGS FOR PURPOSES OF PRELIMINARY INJUNCTION HEARING**

**Introduction**

Pursuant to Fed. R. Civ. P. 26 and 34, the plaintiff, Massachusetts Bay Transportation Authority ("MBTA") hereby requests that the defendants Zack Anderson, RJ Ryan, and Alessandro Chiesa (the "MIT Undergrads") produce for inspection and copying at the offices of Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts, all of the documents and things described below which are within the MIT Undergrad's possession, custody or control and to respond in writing to this request on an expedited basis, for purposes of the Preliminary Injunction Hearing, on or before Thursday, August 14, at 5:00 PM eastern.

**Definitions**

The definitions of Local Rule 26.5 are incorporated in these Requests, with the additional definitions, and modifications, below. Further terms are defined in context:

“And” as well as “or” shall be construed either conjunctively or disjunctively so as to bring within the scope of the request any documents that might otherwise be considered outside the scope of the request.

“Communication” or “communication” shall mean any oral or written transmittal of information or request for information made from one person to another person whether made in person, by telephone, by voicemail, by e-mail, or by any other means; or documents made for the purpose of recording a communication, an idea, statement, opinion or belief.

“Complaint” shall refer to the Complaint filed by MBTA in this lawsuit against the MIT Undergrads, and all allegations therein.

“Concerning” or “concerning” shall mean referring to, describing, evidencing or constituting.

“Correspondence” or “correspondence” shall mean any letter, telegram, telex, e-mail message, voicemail message, notice, memorandum, or other written communication or transcription or notes of a communication.

“DEFCON Conference” means the 2008 DEFCON 16 Conference, held at the Riviera Hotel & Casino in Las Vegas, Nevada, during the period August 8-10, 2008. *See* <https://www.defcon.org/>

“DEFCON” means the entity organizing and hosting the DEFCON Conference.

“Document” or “document” shall mean the original and each copy that is not identical with the original or that contains any commentary or notation that does not appear on the original of any written, printed, digital, recorded, or graphic matter, including but not limited to correspondence, emails, minutes of meetings, reports, records, lists, memoranda, manuals, schedules, calendars, diaries, voicemails, notes of telephone conversations, notebooks, audio or



video recordings, advertisements, press releases, and/or opinions or reports of consultants, whether stored in tangible, electronic, mechanical or electric form or representation of any kind (including (i) digital materials on or in network storage, laptop or desktop storage, computer tapes, disks, and other memory devices or media, and (ii) backup copies and 'deleted' files on a computer or computer storage device or media), wherever located.

"MBTA" or "plaintiff" shall refer to the plaintiff in this lawsuit, Massachusetts Bay Transportation Authority, and its employees, agents, trustees and representatives.

"MIT Undergrads," "Individual Defendants" or "you" shall mean the individual defendants in this lawsuit, Zack Anderson, RJ Ryan, and Alessandro Chiesa, individually, collectively, and in any combination, as well as their agents, representatives, or anyone acting on their behalf or for their benefit.

"Person" or "person" shall mean any natural person, individual, proprietorship, partnership, corporation, association, organization, trust, or other entity.

"Presentation" means the 87 page set of PowerPoint slides prepared by the MIT Undergrads and entitled "*Anatomy of a Subway Hack*." A copy of the Presentation is attached as Exhibit 7 to the Supplemental Affidavit of Ieuan G. Mahony.

"Report" means the five page document entitled "*Fare Collection Vulnerability Assessment Report: Analysis and Recommendations*," dated as of Friday, August 8, 2008. A copy of the Report is attached as Exhibit 1 to the Declaration of Scott Henderson.

"Tangible things" or "things" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a)(1)(B), and shall include but not be limited to (i) objects that embody human compiled or generated information, including computers, laptops, hard drives, storage media, and other devices from which information can be obtained or which,

if necessary, can be translated into reasonably usable forms; (ii) transit system fare media; (iii) equipment to modify, evaluate, copy, or derive information from transit system fare media; and (iv) equipment to modify, evaluate, copy, or derive information from fare media systems employed for public transit purposes.

### **Document Requests**

1. **DEFCON relationship.** Please provide documents that evidence, discuss, or relate to your relationship with DEFCON concerning the DEFCON 16 Conference. Please include in your response:
  - 1.1. Permissions, waivers, and other agreements between the MIT Undergrads and DEFCON concerning submission of the Presentation.
  - 1.2. Written communications (including email) between the MIT Undergrads and DEFCON
  - 1.3. Documents that evidence, discuss, or relate to the date(s) on which the MIT Undergrads submitted the Presentation to DEFCON.
2. **Class Paper.** Please provide documents that evidence, discuss, or relate to the paper the MIT Undergrads submitted for Professor Rivest's class concerning MBTA security system(s) (the "**Class Paper**"). Please include in your response:
  - 2.1. A copy of the Class Paper.
  - 2.2. Drafts, notes, and other materials used or consulted by the MIT Undergrads in connection with the preparation of the Class Paper.
  - 2.3. Copies of any comments, critiques, or evaluations by Professor Rivest (i) of the Class Paper, (ii) of any outlines underlying or summaries of the Class Paper, and (iii) of any of its drafts.
  - 2.4. Copies of any comments, critiques, or evaluations by anyone other than Professor Rivest or an MIT Undergrad (i) of the Class Paper, (ii) of any outlines underlying or summaries of the Class Paper, and (iii) of any of its drafts.
3. **Transit Police and FBI Meeting.** Please provide documents that evidence, discuss, or relate to the face-to-face meeting that included (a) the MIT Undergrads, (b) the MBTA Transit Police, and (c) the FBI (the "**August Law Enforcement Meeting**"). Please include in your response:
  - 3.1. Documents that evidence, discuss, or relate to the date on which August Law Enforcement Meeting took place.

- 3.2. Copies of any documents provided to the MBTA Transit Police or the FBI by the MIT Undergrads, Professor Rivest, or MIT Counsel at the August Law Enforcement Meeting.
  - 3.3. Notes or transcriptions of any discussions that occurred during the August Law Enforcement Meeting.
  - 3.4. Documents that evidence, discuss, or relate to communications between the MIT Undergrads and the MBTA concerning the August Law Enforcement Meeting, including concerning any discussions that took place during the August Law Enforcement Meeting.
  - 3.5. Copies of any information in written form that the MIT Undergrads had prepared, as of the August Law Enforcement Meeting, to assist or aid the MBTA with respect to correct security vulnerabilities perceived by the MIT Undergrads ("**Assistive Materials**").
  - 3.6. Documents that evidence, discuss, or relate to the date(s) on which the MIT Undergrads (a) began preparation of the Assistive Materials; and (b) provided Assistive Materials to the MBTA.
4. **Fare Media.** Please provide documents and things that constitute, evidence, discuss, or relate to any physical MBTA fare media that the MBTA Undergrads altered, manipulated, or created (collectively, "**Altered MBTA Fare Media**"). Please include in your response:
- 4.1. All physical MBTA fare media that the MBTA Undergrads altered, manipulated, or created (collectively, "**Altered MBTA Fare Media**"). Include in this response (a) all Altered MBTA Fare Media employed for purposes of the Class Paper; (b) all Altered MBTA Fare Media employed for purposes of the Presentation; and (c) all Altered MBTA Fare Media employed for any other purpose.
  - 4.2. Documents and things that evidence, discuss, or relate to any individuals other than the MIT Undergrads who received Altered MBTA Fare Media created by the MIT Undergrads.
  - 4.3. All physical equipment and software used by the MIT Undergrads in connection with analyzing CharlieTickets and CharlieCards.
  - 4.4. All physical equipment and software used by the MIT Undergrads in connection with analyzing MBTA systems that process, manage, deliver, or otherwise interact with CharlieTickets and CharlieCards.
  - 4.5. All physical equipment and software used by the MIT Undergrads in connection with creating Altered MBTA Fare Media.

- 4.6. Documents that evidence, discuss, or relate to any use of Altered MBTA Fare Media on MBTA equipment, including use (a) on Fare Gates; and (b) on Fare Vending Machines.
5. **The Presentation.** Please provide documents and things that constitute, evidence, discuss, or relate to the Presentation. Please include in your response:
  - 5.1. Documents that evidence, discuss, or relate to the date(s) on which the MIT Undergrads (a) began preparation of the Presentation; and (b) completed preparation of the Presentation.
  - 5.2. Drafts, notes, and other materials used or consulted by the MIT Undergrads in connection with the preparation of the Presentation.
  - 5.3. Copies of any comments, critiques, or evaluations by anyone other than an MIT Undergrad (i) of the Presentation, (ii) of any outlines underlying or summaries of the Presentation, and (iii) of any of its drafts.
  - 5.4. Provide copies of all software tools, software modules, lines of code, and software applications the MIT Undergrads intended to distribute or demonstrate at DEFCON (collectively, "**DEFCON-related Software Tools**").
  - 5.5. Provide copies of all materials, other than (a) the Presentation, and (b) the DEFCON-related Software Tools, that the MIT Undergrads intended to distribute or demonstrate at DEFCON ("**Additional DEFCON Materials**").
  - 5.6. Documents that evidence, discuss, or relate to any requests by the MBTA for copies of materials that the MIT Undergrads planned to present at DEFCON.
  - 5.7. Documents that evidence, discuss, or relate to any requests by the MBTA for discussions with the MIT Undergrads, after completion of the August Law Enforcement Meeting, concerning DEFCON or perceived security vulnerabilities.
  - 5.8. Documents that evidence, discuss, or relate to the date(s) on which the MIT Undergrads (a) provided the Presentation to the MBTA; (b) provided DEFCON-related Software Tools to the MBTA; and (c) provided Additional DEFCON Materials to the MBTA.
6. **The Report.** Please provide documents and things that constitute, evidence, discuss, or relate to the Report. Please include in your response:
  - 6.1. Documents that evidence, discuss, or relate to the date on which the MIT Undergrads began preparation of the Report.
  - 6.2. Drafts, notes, and other materials used or consulted by the MIT Undergrads in connection with the preparation of the Report.

7. **Responsible Disclosure.** Please provide documents and things that constitute, evidence, discuss, or relate to the MIT Undergrads' their understanding of the concept of "responsible disclosure" (the "**Documented MIT Undergrad-Defined Responsible Disclosure**"). Please include in your response:
- 7.1. Copies of documents (if any) upon which the MIT Undergrads rely to define or support the Documented MIT Undergrad-Defined Responsible Disclosure.
- 7.2. Documents that evidence, discuss, or relate to the MIT Undergrads' compliance with Documented MIT Undergrad-Defined Responsible Disclosure.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By its attorneys,

/s/ Ieuan G. Mahony

Ieuan G. Mahony (BBO #552349)  
Maximillian J. Bodoïn (BBO # 667240)  
HOLLAND & KNIGHT LLP  
10 St. James Avenue  
Boston, MA 02116  
(617) 523-2700

/s/ Thomas F.S. Darling III

Thomas F.S. Darling III (BBO #558848)  
MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY  
State Transportation Building  
7<sup>th</sup> Floor  
10 Park Plaza  
Boston, MA 02116  
(617) 222-3174

Dated: August 13, 2008  
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above-captioned proceeding, hereby certify that on this 13<sup>th</sup> day of August, 2008, I served the foregoing **Request For Production of Documents** by hand delivery and by e-mail upon the following interested parties:

**Party**

**Counsel**

Zack Anderson, RJ Ryan,  
and Alessandro Chiesa  
(the "MIT Undergrads")

Emily Berger, Esquire  
Lowrie, Lando & Anastasi, LLP  
One Main Street  
Cambridge, MA 02142  
E-mail: [emily@eff.org](mailto:emily@eff.org)

Massachusetts Institute  
of Technology ("MIT")

Jeffrey Swope, Esquire  
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111 Huntington Avenue  
Boston, Massachusetts 02199 USA  
Email: [JSwope@eapdlaw.com](mailto:JSwope@eapdlaw.com)

/s/ Ieuan G. Mahony

**EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

Plaintiff

Civil Action No. 08-11364-GAO

v.

ZACK ANDERSON, RJ RYAN,  
ALESSANDRO CHIESA, and the  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendants

---

**NOTICE OF DEPOSITION**

**NOTICE OF DEPOSITION OF ZACK ANDERSON**

To: Emily Berger, Esquire  
Lowrie, Lando & Anastasi, LLP  
One Main Street  
Cambridge, MA 02142

**NOTICE OF DEPOSITION**

**PLEASE TAKE NOTICE** that plaintiff, Massachusetts Bay Transportation Authority (“MBTA”), by and through its counsel, will take an abbreviated deposition upon oral examination of the defendant, Zack Anderson (“Anderson”), pursuant to Federal Rule of Civil Procedure Rules 30(b)(6), at the offices of Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts, for purposes of the preliminary injunction hearing. The abbreviated deposition will begin on **August 15, 2008 at 9:00 a.m.** and conclude for these limited purposes at 1:00. The deposition will be taken upon oral examination before a notary public or other officer authorized by law to administer oaths.



You are invited to attend and cross-examine.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By its attorneys,

/s/ Ieuan G. Mahony

Ieuan G. Mahony (BBO #552349)  
Maximillian J. Bodoïn (BBO # 667240)  
HOLLAND & KNIGHT LLP  
10 St. James Avenue  
Boston, MA 02116  
(617) 523-2700

Dated: August 13, 2008  
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above-captioned proceeding, hereby certify that on this 13<sup>th</sup> day of August, 2008, I served the foregoing **Notice of Deposition** by hand delivery and by e-mail upon the following interested parties:

**Party**

**Counsel**

Zack Anderson, RJ Ryan,  
and Alessandro Chiesa  
(the "MIT Undergrads")

Emily Berger, Esquire  
Lowrie, Lando & Anastasi, LLP  
One Main Street  
Cambridge, MA 02142  
E-mail: [emily@eff.org](mailto:emily@eff.org)

Massachusetts Institute  
of Technology ("MIT")

Jeffrey Swope, Esquire  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Massachusetts 02199 USA  
Email: [JSwope@eapdlaw.com](mailto:JSwope@eapdlaw.com)

/s/ Ieuan G. Mahony\_\_\_\_\_

**EXHIBIT 3**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

Plaintiff

Civil Action No. 08-11364-GAO

v.

ZACK ANDERSON, RJ RYAN,  
ALESSANDRO CHIESA, and the  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendants

---

**NOTICE OF DEPOSITION**

**NOTICE OF DEPOSITION OF RON RIVEST**

To: Emily Berger, Esquire  
Lowrie, Lando & Anastasi, LLP  
One Main Street  
Cambridge, MA 02142

**NOTICE OF DEPOSITION**

**PLEASE TAKE NOTICE** that plaintiff, Massachusetts Bay Transportation Authority (“MBTA”), by and through its counsel, will take the abbreviated deposition upon oral examination of the defendant, Professor Ron Rivest (“Rivest”), pursuant to Federal Rule of Civil Procedure Rules 30(b)(6), at the offices of Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts for purposes of the preliminary injunction hearing. The abbreviated deposition will begin on **August 15, 2008 at 2:30 p.m.** and conclude for these limited purposes at 4:30. The deposition will be taken upon oral examination before a notary public or other officer authorized by law to administer oaths.

You are invited to attend and cross-examine.

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY

By its attorneys,

/s/ Ieuan G. Mahony

Ieuan G. Mahony (BBO #552349)

Maximillian J. Bodoïn (BBO # 667240)

HOLLAND & KNIGHT LLP

10 St. James Avenue

Boston, MA 02116

(617) 523-2700

Dated: August 13, 2008  
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above-captioned proceeding, hereby certify that on this 13<sup>th</sup> day of August, 2008, I served the foregoing **Notice of Deposition** by hand delivery and by e-mail upon the following interested parties:

**Party**

**Counsel**

Zack Anderson, RJ Ryan,  
and Alessandro Chiesa  
(the "MIT Undergrads")

Emily Berger, Esquire  
Lowrie, Lando & Anastasi, LLP  
One Main Street  
Cambridge, MA 02142  
E-mail: [emily@eff.org](mailto:emily@eff.org)

Massachusetts Institute  
of Technology ("MIT")

Jeffrey Swope, Esquire  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Massachusetts 02199 USA  
Email: [JSwope@eapdlaw.com](mailto:JSwope@eapdlaw.com)

/s/ Ieuan G. Mahony\_\_\_\_\_

**EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

Plaintiff

v.

ZACK ANDERSON, RJ RYAN,  
ALESSANDRO CHIESA, RONALD L.  
RIVEST, and the MASSACHUSETTS  
INSTITUTE OF TECHNOLOGY

Defendants

Civil Action No. 08-11364-GAO

**PLAINTIFF MASSACHUSETTS BAY TRANSPORTATION AUTHORITY'S  
RULE 26(a)(1) INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiff Massachusetts Bay Transportation Authority (the "MBTA") hereby makes the following initial disclosures based upon information it has acquired to date, without yet having had the benefit of formal discovery or production of documents. The MBTA's disclosures are based on the current status of the pleadings. Moreover, the MBTA reserves the right, consistent with its obligation under Rule 26(e) of the Federal Rules of Civil Procedure, to modify, amend, retract, and/or supplement the disclosures made herein as additional evidence and information becomes available.



## DISCLOSURES

**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

- Zack Anderson, East Campus, 3 Ames St., Hall 2W, Room W210, Cambridge, MA 02142: information concerning the Fare Media System.<sup>1</sup>
- RJ Ryan, East Campus, 3 Ames St. Hall 2W, Room W214, Cambridge, MA 02142: information concerning the Fare Media System.
- Alessandro Chiesa, East Campus, 3 Ames St., Hall 4W, Room 409, Cambridge, MA 02142: information concerning the Fare Media System.<sup>2</sup>
- Massachusetts Institute of Technology ("MIT"), 77 Massachusetts Avenue, Cambridge, MA 02139: information concerning the MIT Undergrads and MIT policies.
- Ron Rivest, 77 Massachusetts Avenue, Cambridge, MA 02139: information concerning the MIT Undergrads.
- Jacob Shaver, Agent for the FBI, (to be supplemented later).
- Massachusetts Bay Transportation Authority, the State Transportation Building, 10 Park Plaza, Boston, MA 02116: information regarding the MBTA.
- Joseph Kelley, Deputy General Manager for Systemwide Modernization for the MBTA, the State Transportation Building, 10 Park Plaza, Boston, MA 02116: information regarding the MBTA.
- Gary Foster, Chief Technology Officer for the MBTA, the State Transportation Building, 10 Park Plaza, Boston, MA 02116: information concerning the MBTA.
- Scott Henderson, Systems Project Manager for the Automated Fare Collection System for the MBTA, the State Transportation Building, 10 Park Plaza, Boston, MA 02116: information concerning the MBTA.
- Richard Sullivan, Sergeant Detective in the Transit Police of the MBTA, the State Transportation Building, 10 Park Plaza, Boston, MA 02116: information regarding fare media and communications with Defendants.

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<sup>1</sup> The term "Fare Media System" means the system that meets the following two criteria: the system (i) is employed by the MBTA to manage, track, charge for, and collect fares; and (ii) relies on CharlieTicket passes and/or CharlieCard passes.

<sup>2</sup> Zack Anderson, RJ Ryan and Alessandro Chiesa are collectively referred to as the "MIT Undergrads."

- Daniel Terryn, Technical Software Manager of Scheidt & Bachmann: information on the Fare Media System.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody or control of the party, and that the disclosing party may use to support its claims and defenses, unless solely for impeachment.**

The MBTA identifies the following categories of documents, data compilations, and tangible things in its possession, custody, or control under Fed. R. Civ. P. 26(a)(1)(B), located to date. The documents described below are located at the MBTA's offices in Boston, Massachusetts. Certain of these documents may contain sensitive information, and will be provided pursuant to a protective order.

- Technical documents regarding the MBTA's Fare Media System including related security measures.
- Communications with MIT Undergrads.
- Communications requesting disclosure of presentation.
- Communications with MIT.
- Communications with Professor Rivest.
- Public statements made by Defendants and Defendants' counsel regarding these proceedings.
- Documents concerning the relationship of the parties with the DEFCON conference.
- Documents relating to the MIT Undergrads' class paper.
- Documents concerning the Transit Police and the FBI meeting.
- Documents concerning fare media.
- Documents concerning the presentation.
- Documents concerning the MIT Undergrads' report.
- Documents concerning responsible disclosure.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other**

**evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of the injuries suffered.**

Because these proceedings have just begun and the parties have not disclosed sufficient documents, the MBTA is currently unable to compute the damage caused by the Defendants. Accordingly, the MBTA reserves the right to supplement its disclosure after receiving sufficient information from the Defendants.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

The Defendants have not raised claims that would implicate potential insurance.

The MBTA's initial disclosures are made without it waiving: (i) the right to object to discovery on the grounds of competency, protection from discovery including the attorney client privilege or work product doctrine, undue burden, relevancy and materiality, or any other proper ground, (ii) the right to object to the use of any such information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (iii) the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of this disclosure.

MASSACHUSETTS BAY TRANSPORTATION  
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By its attorneys,

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Dated: August 13, 2008  
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**CERTIFICATE OF SERVICE**

I, Ieuan G. Mahony, Counsel for Plaintiff the Massachusetts Bay Transportation Authority, hereby certify that on this 13<sup>th</sup> day of August, 2008, I served the foregoing document on Plaintiffs' counsel of record, via hand delivery, as follows:

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