

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC., VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,

Plaintiffs,

v.

LIME WIRE LLC; LIME GROUP LLC; MARK GORTON; and GREG BILDSON,

Defendants.

CIVIL ACTION NO. 06 CV. 5936
(GEL)

I, Martin C. Lafferty, hereby declare:

1. I have been the Chief Executive Officer (“CEO”) of the Distributed Computing Industry Association (“DCIA”) since its inception. Formed in 2003, the DCIA is a non-profit trade organization engaged in the development and adoption of business and technical standards and practices to advance the commercial development of the rapidly-growing distributed computing industry, which includes peer-to-peer (“P2P”) technologies. DCIA Member companies span all sectors of the distributed computing industry, including content providers, software developers and distributors, Internet service providers (“ISPs”) and service-and-support companies.

2. To develop standards and practices, DCIA Member companies form and participate in DCIA sponsored Working Groups and in DCIA moderated forums. Through these Working Groups and forums, interested parties (including both DCIA Members and non-members) exchange ideas and develop recommendations to the Membership and ultimately the industry at large relating to the establishment of business and technical practices. To date, the DCIA has addressed issues ranging from codes of ethics to security, protection of intellectual property (“IP”) rights, licensing, royalties, public interest, compatibility, quality of service, network management, and other technical, legal and policy matters.

3. While implementation is voluntary, the DCIA actively continues to work to establish standards and practices by:

- Advocating their adoption by businesses and Internet standards organizations
- Monitoring their implementation
- Ensuring compliance
- Resolving disputes

Additionally, the DCIA publishes the work products and findings of its Working Groups and serves as a resource for information, commerce, communication, and collective understanding in the public and private sector, as well as to governments and interested organizations around the world.

4. For the past five years, DCIA Members have built successful and profitable businesses that depend on the distributed computing properties of P2P. For example, DCIA Members include independent music labels that use P2P for promoting and distributing content and for facilitating the discovery of content, such as Nettwerk Music Group. DCIA Members also include developers of P2P applications that enable licensed distribution of authorized content, such as BitTorrent. Other DCIA Members include ISPs, which must address network management concerns including bandwidth usage by P2P applications, such as Verizon, and developers of payment systems for content distributed by means of P2P technologies, such as Javien Digital Payment Solution, along with developers of digital rights management (“DRM”) technologies for controlling access to P2P-distributed files, such as DigitalContainers.

5. DCIA Member companies generally build their offerings on, or distribute their products and services through the Internet, using P2P software applications similar to that developed and distributed by Lime Wire. Although P2P technologies can pose a competitive threat to the “brick and mortar” music content distribution systems developed over the years and controlled by the major record labels, the innovation associated with new, more efficient distribution and communications systems powered through P2P technologies is unparalleled. This innovation not only includes more cost-effective distribution of a greater selection of content to a wider audience than even website-based platforms can achieve competitively, but also extends to a variety of businesses, from other kinds of distributed computing software technologies to a growing array of telecommunications services. Furthermore, DCIA Member companies possess competitive advantages because their implementations of P2P distribution technologies do not require the same investment as distribution technologies centered on web-based servers or other types of content transmission methodologies, and are more popular among consumers.

6. I am personally familiar with the Lime Wire software application and how it works generally. Lime Wire’s software allows users to locate and download myriad computer files directly from other users of the same communications protocol. This particular distributed computing technology, which requires no central website servers, has enormous commercial potential. The ability to make content available without a web server improves the ability to locate a larger selection of content at a lower cost than otherwise. It allows for more efficient content distribution and maintenance of a larger inventory of available content files than centralized distribution architectures can support. Rather than placing all bandwidth costs on the

original distributor, with P2P technology the distribution expense is spread among millions of Internet users. Spreading distribution costs gives content owners far more flexibility in making their works available to the public. P2P has empowered not only content providers, but also has spawned many new business applications that utilize distributing computing technologies similar to that which forms the core of the Lime Wire software.

7. In addition to being innovative, the non-infringing uses of P2P software are both substantial and commercially significant. Examples of some important uses of P2P software for both content distribution and business applications include:

Skype (www.skype.com)

8. Skype is the first Internet telephony technology to use P2P distributed computing. P2P telephony utilizes decentralized networking technology to significantly increase call completion rates compared with more costly, centralized voice-over-IP technologies. Skype allows for free calls to other Skype users, paid calls to land and cellular telephones, file transferring, and instant messaging (IM). Skype relies on P2P technology not only for completing phone calls, but also for distributing its telephony software by bundling its application with other popular P2P software.

GridNetworks, Inc. (www.gridnetworks.com)

9. GridCasting from GridNetworks is an Internet Television Delivery Service that enables content owners and rights holders (television networks, online video outlets, cable operators, video portals, community organizations, etc) to deliver broadcast-quality programming to broadband Internet users for display on either their personal computers or televisions. The GridCasting platform was explicitly designed to enable the secure delivery of commercial content from known sources, utilizing a “one-to-many” delivery control model that is well understood by conventional broadcasters. In order to meet the required performance, reliability, scale and cost requirements for this emerging market, GridCasting employs many advanced networking principles derived from grid computing and grid networking technology.

Abacast, Inc. (www.abacast.com)

10. Abacast’s technology is a combination of P2P delivery together with the features of central server or unicast delivery (“Hybrid P2P”). The Hybrid P2P Network uses a central server to communicate with each user. However, the actual stream may be provided by either the server itself or, more likely, by another user or users who simply redirect the stream or portions of the stream.

NFA Group, Inc. d/b/a BuyDRM (www.buydrm.com)

11. BuyDRM provides a digital rights platform called KeyOS to its customers, which allows BuyDRM’s customers to market, monetize, and monitor their services using P2P technology. P2P technology allows BuyDRM’s customers to acquire new customers in a safe, secure, and seamless manner. P2P technology provides a global audience that allows BuyDRM’s customers to expand their client base. Without P2P technology, BuyDRM’s

customers could not reach the large audience necessary to remain competitive in the technology marketplace.

RazorPop, Inc. (www.razorpop.com)

12. RazorPop is a developer of filesharing technology, much like Lime Wire. RazorPop is the owner, developer and distributor of TrustyFiles, a multi-P2P network software. TrustyFiles allows a user to access other networks such as Gnuetella and Bit Torrent, just like Lime Wire. RazorPop's Street Team is an effort to get artists to use RazorPop's software in order to distribute media, music, and videos. Perhaps the most well known artist who has used TrustyFiles to distribute his music is Grammy award-winning artist Sananda Maitreya, formerly known as Terence Trent D'Arby. Sananda Maitreya is best known for hits such as "Wishing Well," "Sign Your Name," and "If You Let Me Stay." In 2002, Sananda released his Wildcard! album for free over the Internet. In 2004, he became the first major artist to use TrustyFiles to distribute his "Angels and Vampires" project. In fact, Sananda made two new songs and a video exclusively available over P2P.

Raketu Communications, Inc. (www.raketu.com)

13. Raketu is a leader in P2P based communications, information, entertainment, and social networking services. Raketu's proprietary P2P services utilize distributed peer nodes in a networked environment to significantly reduce costs, improve quality and reliability, and decrease security risks associated with other P2P and centralized services. Raketu allows free calls to other Raketu users, free and paid calls to land and cellular phones, free and paid calls from phone-to-phone, file transfers, instant messaging, offline messaging, and distribution and viewing of P2P-based streaming content (webTV).

Joost (www.joost.com)

14. Joost is an online video platform, delivering high-quality, full screen, professionally produced video content to users on a free (advertising-supported) basis using P2P technology. Distributing high quality video requires significant bandwidth, and by utilizing P2P technology to harness the combined bandwidth of its users, Joost has developed an efficient and scalable distribution model, which enables content producers and advertisers to reach new audiences, and gives consumers access to a range of professionally-produced video content that they cannot find on traditional television. Joost distributes its video files in encrypted fragments, so that no video file resides in its entirety on any user's computer, and this, combined with Joost's ability to control users' access to content on a territory-by-territory basis, has made Joost an attractive and legitimate distribution platform for a wide range of content owners, including a number of the Plaintiffs in the current action.

Pando Networks, Inc. (www.pando.com)

15. Pando Networks, Inc. ("Pando") distributes P2P software that makes downloading, streaming, and sharing large media files fast and easy. Pando's software allows users to email large attachments, instant message a folder, publish downloadable videos to the

web and watch full-screen HD Internet TV. Pando is a managed, hybrid P2P content delivery platform. All networking communications are routed via Pando's trackers and web services. Consumers only supply bandwidth and storage to content that they have proactively consumed.

Jun Group, LLC (www.jungroup.com)

16. Jun Group, LLC ("Jun Group") is an Internet marketing company that utilizes P2P technology. It creates branded music, video, sports, and game programming, which it delivers to consumers using P2P networks. Jun Group created the first music video program featuring major artists that was distributed over P2P networks, which was comprised of two music videos featuring singers Ne-Yo and Jay-Z for Coca-Cola. The Ne-Yo video garnered 3.2 million downloads, with the Jay-Z video reaching an even larger audience.

17. Jun Group also released one previously unavailable song and two videos from rock legend Steve Winwood on behalf of *Access Hollywood* over P2P networks. Within 5 weeks, nearly 3 million users had obtained the files and over 208,000 consumers visited the *Access Hollywood* Web site. Album sales increased 1,300% in the markets in which it was promoted and the album became the #3 online seller for 4 weeks on FYE.com.

18. Jun Group released five previously unavailable tracks from recording artist *Kevin Martin and the HiWatts* over P2P networks. Within two weeks, over 3 million users had downloaded the files. The Yoo-hoo Web site experienced the largest spike in traffic since its inception and Web sites around the world linked to the Yoo-hoo site of their own volition.

19. Three tracks from Lake Trout, a new recording artist were distributed by Jun Group three days prior to release of the artist's first album. Within two weeks, over 2 million users had obtained the files and chat rooms were filled with hundreds of users discussing the artist. In fact, CD sales quadrupled expectations for the first month, with no support from traditional marketing, advertising, or public relations.

20. Jun Group released footage from "Starting Over," a daytime television program, into the file sharing community for promotional purposes. Within two weeks, the footage was viewed by over 500,000 users, over 95,000 users participated in chats and "threaded" conversations in forums and more than 200,000 users viewed postings in online forums. The client reported a measurable spike in ratings for four straight days during the promotion

21. The Scene, Jun Group's first original P2P series was a huge success. Each of the first three episodes has been downloaded 1 to 2 million times. More than 650 Web sites currently link to the series' Web site and downloads have been recorded in over 70 countries.

22. A true and correct copy of the PowerPoint submitted by Jun Group to the DCIA for the 2005 P2P MEDIA SUMMIT New York is attached hereto as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on July 16, 2008.

Martin C. Lafferty

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