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 GROUP LLC; LIME WIRE LLC; MARK
GORTON; and GREG BILDSON, and M.J.G.
LIME WIRE FAMILY LIMITED
PARTNERSHIP

Defendants.

ECF

06 CV 5936 (GEL)

DECLARATION OF SAM BERLIN IN SUPPORT
OF DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Sam Berlin, the undersigned, hereby declare as follows:

1.   My name is Sam Berlin. I reside in Brooklyn, New York. I am over eighteen
years of age, of sound mind, and in all ways qualified and competent to make this declaration. I
have personal knowledge of the facts contained in this declaration and they are true and correct.

2.   I am a senior software developer at Lime Wire LLC ("LW"). I am one of the
chief software developers at LW for the software program called "LimeWire". My current title
is Development Director and Client Team Lead.

regardless of whether the other users are running the Lime Wire software application or some other Gnutella-based application, such as FrostWire.

8. Each Lime Wire user has the option of "sharing" files on the user's computer, or making such files available to other users of the Gnutella network for downloading. In order to share a file, a user must identify which files or folders the user wishes to make available for sharing with other users of LimeWire. A user is not required to share any files in order to use the software.

9. A LimeWire user who chooses to search the Gnutella network, must enter a search term or terms (a "search string") into the LimeWire software's Search screen on the user's computer. Exhibit 1 attached hereto is a true and correct copy of a screen print from the LimeWire "Search" page. The LimeWire software then begins transmitting the search request to a computer known as an "ultrapeer" which is directly connected to, which in turn pass along the search request to other computers or "leafs" which themselves pass along the request to other computers. LimeWire also searches a file's "metadata" –information about the file, such as author, file formatting, date or original creation, or the like. Like a giant game of "Telephone," the search request propagates through the Gnutella network to other computers connected to the ultrapeer. The use of ultrapeers is not unique to LimeWire, several other Gnutella applications select users on high-performance computers to serve as "ultrapeers" as well. In this role, the high-performance computer provided indexing services for a number of lesser-performing computers, thereby improving the efficiency of searches in the network. The LimeWire software selects ultrapeers by employing its own internal algorithms – LW plays no role in promoting or demoting computers to or from ultrapeer status. At no time does any search request from a

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Gnutella client (including any edition of LimeWire) pass through any computer owned or controlled by LW.

10.   Ultrapeers contain what is known as a QRP table which in turn contains data about what files are being shared by the leaves connected to the ultrapeer. QRP tables do not somehow "shield" the identity of files being shared or allow users to upload anonymously.

11.   LW has never condoned the use of its software for copyright infringement. LW has always sought to warn its users to not use the software for copyright infringement. For example, LW maintains several pages on its website dedicated to informing users and potential users that it is illegal to use LimeWire to download copyrighted files without permission.

12.   In addition, before a user could download LimeWire version 4.16, the user had to agree that he or she would not use the software to commit copyright infringement. The user is shown a page in which the "copyright infringement" question is asked. If the potential user does not agree to not use Lime Wire for copyright infringement, he or she will not be allowed to download the software.

13.   The LimeWire client does include various audio "genre" from which a user can choose to use when searching for any sort of audio files. These genres are contained in metadata in an mp3 audio file known as ID3. ID3 "tags" typically include all sorts of information about the file, including title, artist, album, track number or other information about he file itself. Genre information is one of the subsets of information typically contained in ID3 tags. The ID3v1 tag occupies 128 bytes, and is placed at the end of an MP3 file. This tag allows 30 bytes for the title, artist, album and a "comment," four bytes for the year and a byte to identify the genre of a song, from a predefined list of 148 values. Lime Wire did not decide which sort of genres to include; it simply adopted the standard categories.

14. Searching for mp3 files based on genre will result in a variety of results, some of which that may not fit within a users perceived categorization. For example, searching for "Top 40" does not mean that the mp3 file is associated with a "Top 40" song; because people can categorize songs differently, what one thinks as "Top 40" may not equate to the person who categorized that file. Also, people may categorize a file as "Top 40" so to gain more attention when in fact no one would associate the file with "Top 40" music.

15. I was asked a series of questions in my deposition about the Lime Wire Forums and the Gnutella Forums.

16. As to the moderators of the Lime Wire Forums, Lime Wire has agreed to allow certain non-employees, such as Aaron Walkhouse and Only a Hobo (a user name), to act as moderators for these Forums. Lime Wire does not monitor these Forums, and because these individuals asked to become moderators, Lime Wire thought it was a good idea. These moderators are not agents of Lime Wire. We did instruct these moderators as to certain rules and precautions that we believed were appropriate as to assisting users. We have always explained to these moderators that they were to not help any user who appeared to be asking for assistance in committing copyright infringement. A warning is also prominently displayed on each page of the forum.

17. In my deposition, I was shown a series of posts by a couple of moderators that appeared to be assisting others to locate or download copyrighted material. Since no one at Lime Wire actively moderates the Forums, I had never seen these posts. Since that time I have reminded all of the moderators to not knowingly assist others if they suspect infringement is an issue.

18. Any moderator of the LimeWire Forums can ban individuals or entities by IP address from accessing the LimeWire Forums. Any administrator on the LimeWire Forums can ban entities by IP address from accessing the LimeWire Forums.

19. I am listed as an administrator on the LimeWire Forums but I do not monitor the activities on those forums. My role is mainly to help open-source developers and other users of LimeWire's codebase.

20. I designed the TLS encryption that is currently in place in the LimeWire client. TLS encryption is an extension to SSL (Secure Sockets Layer), a standard encryption mechanism used by any website that begins with https. A LimeWire user who enables TLS is still visible on the Gnutella network. Any Gnutella client can still view the shared files of that user and can still search that user's shared library.

21. I examined SnoCap's SDK for use with LimeWire. SnoCap did not provide adequate filtering technology. The results led to many false positives (filtering valid songs), and SnoCap did not provide adequate explanations of why this occurred.

22. I am not aware of any Lime Wire employee intentionally placing the IP address of any known anti-piracy company on any hostile.txt list.

23. LimeWire includes a media player and not a player for video files, or a viewer for image or text files. Viewing video was not incorporated because Java does not allow developers to do that easily. Viewing images and text files was not incorporated because it is typically a one-time event, whereas audio (and video, if the Java platform allowed) requires an ongoing focus of attention. The LimeWire Store uses a string in the file to identify the file, as opposed to a hash, because it is able to create the file and distribute it. If the store were not able to create the

file, the next best method available to LimeWire would be to use the SHA1 of the distributed file.

24.   As noted previously, I have been working at Lime Wire for over five (5) years, principally on the client development side. During this time, I am unaware of any design choice, feature or functionality that has ever been implemented in the LimeWire software so as to allow users to more easily locate and download unauthorized content. We at Lime Wire have worked very hard to develop a content agnostic file searching tool that allows users to efficiently locate and download all sorts of digital files.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in New York, New York on September 25, 2008.

Sam Berlin