

**EXHIBIT “A”**

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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 ) No.  
COMPANY, L.P.; PRIORITY RECORDS ) 06 CV 05936 (GEL)  
LLC; SONY BMG MUSIC ENTERTAINMENT; )  
UMG RECORDINGS, INC.; VIRGIN )  
RECORDS AMERICA, INC.; and WARNER )  
BROS. RECORDS INC., )

Plaintiffs/Counterclaim )  
Defendants, )

v. )

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

Defendants. )

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VIDEOTAPED DEPOSITION OF ELLIS HOROWITZ, PH.D.  
LOS ANGELES, CALIFORNIA  
TUESDAY, JUNE 10, 2008

REPORTED BY:

JEAN F. HOLLIDAY

CSR No. 4535, RPR, CRR

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Defendants. )

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Videotaped deposition of ELLIS HOROWITZ,  
PH.D., taken on behalf of Defendants, at  
11377 West Olympic Boulevard, Los  
Angeles, California, beginning at 9:31  
a.m., and ending at 4:23 p.m., on  
Tuesday, June 10, 2008, before JEAN F.  
HOLLIDAY, CSR No. 4535.

1 APPEARANCES:

2

3 FOR THE PLAINTIFFS/COUNTERCLAIM DEFENDANTS:

4 CRAVATH, SWAINE & MOORE LLP  
5 BY: TEENA-ANN V. SANKOORIKAL, ESQ.  
6 825 Eighth Avenue  
7 New York, New York 10019-7475  
8 (212)474-1784  
9 tsankoorikal@cravath.com

7

8 CRAVATH, SWAINE & MOORE LLP  
9 BY: SEAN THOMPSON, ESQ.  
10 825 Eighth Avenue  
11 New York, New York 10019-7475  
12 (212)474-1910  
13 sthompson@cravath.com

10

11 CRAVATH, SWAINE & MOORE LLP  
12 BY: YONATAN EVEN  
13 825 Eighth Avenue  
14 New York, New York 10019-7475  
15 (212)474-1958  
16 yeven@cravath.com

14

15 FOR THE PLAINTIFF UNIVERSAL MUSIC GROUP:

16 UNIVERSAL MUSIC GROUP  
17 BY: SCOTT H. BAUMAN, ESQ.  
18 2220 Colorado Avenue  
19 Santa Monica, California 90404  
20 (310)865-8095  
21 scott.bauman@umusic.com

19

20 FOR THE DEFENDANTS/COUNTERCLAIM PLAINTIFFS:

21 PORTER & HEDGES, LLP  
22 BY: CHARLES S. BAKER, ESQ.  
23 1000 Main Street  
24 36th Floor  
25 Houston, Texas 77002-6336  
(713)226-6676  
cbaker@porterhedges.com

25

1 average person, you know, would not be readily capable  
2 of doing that.

3 Q. Getting back to my original question,  
4 LimeWire is capable of finding authorized content, is  
11:32:03 5 it not?

6 A. Only -- oh, authorized content?

7 Q. Yes.

8 A. Yes, in theory it would be capable of finding  
9 authorized content.

11:32:15 10 Q. Did you attempt to find any authorized  
11 content?

12 A. Yes, I did.

13 Q. Were you successful at all?

14 A. Not particularly. I searched for the Bible  
11:32:22 15 and I found the Golf Bible, Python Bible. I found a  
16 bunch of copyrighted works that have Bible in them.

17 Q. Did you search for any Creative Commons  
18 music?

19 A. Yes, I did, and in all cases where I could  
11:32:45 20 find content with a Creative Commons license, when I  
21 tried to verify the license, the license could not be  
22 verified.

23 Q. All right. What do you mean by that?

24 A. What the musical file will have embedded  
11:33:04 25 within it is a pointer to its Creative Commons

1 STATE OF CALIFORNIA )  
 ) SS  
2 COUNTY OF LOS ANGELES )

3

4 I, Jean F. Holliday, a Certified Shorthand  
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in the  
7 foregoing proceedings was by me duly sworn to testify to  
8 the truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken before me at the  
10 time and place therein set forth, and were taken down by  
11 me in shorthand and thereafter transcribed into  
12 typewriting under my direction and supervision;

13 I further certify that I am neither counsel for,  
14 nor related to, any party to said proceedings, nor in  
15 anywise interested in the outcome thereof.


16 In witness whereof, I have hereunto subscribed my  
17 name.

18

19 Dated: \_\_\_\_\_

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21

  
22 Jean F. Holliday  
23 CSR No. 4535, RPR, CRR

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## **EXHIBIT “B”**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 ARISTA RECORDS LLC; ATLANTIC  
5 RECORDING CORPORATION; BMG MUSIC;  
6 CAPITOL RECORDS, INC; ELEKTRA  
7 ENTERTAINMENT GROUP INC.; INTERSCOPE  
8 RECORDS; LAFACE RECORDS LLC;  
9 MOTOWN RECORD COMPANY, LP; PRIORITY  
10 RECORDS LLC; SONY BMG MUSIC UMG  
11 RECORDINGS, INC.; VIRGIN RECORDS  
12 AMERICA, INC.; and WARNER BROS.  
13 RECORDS INC.,

Plaintiffs,

Civil Action No.  
06 CIV 05936  
(GEL)

-against-

14 LIME WIRE LLC; LIME GROUP LLC;  
15 MARK GORTON; GREG BILDSON, and  
16 MJG LIME WIRE FAMILY LIMITED  
17 PARTNERSHIP,

Defendants.

18 -----x

19 April 14, 2008  
20 9:33 a.m.

21 CONFIDENTIAL - ATTORNEY'S EYES ONLY

22 Videotaped Deposition of MARK GORTON, taken  
23 by Plaintiffs, pursuant to notice, at the  
24 offices of Cravath, Swaine & Moore, LLP, 825  
25 Eighth Avenue, New York, New York, before  
SUZANNE PASTOR, a Shorthand Reporter and Notary  
Public within and for the State of New York.



## 1 A P P E A R A N C E S:

2 CRAVATH, SWAINE & MOORE, LLP  
Attorneys for Plaintiffs  
3 Worldwide Plaza  
4 825 Eighth Avenue  
New York, New York 10019

5 BY: KATHERINE FORREST, ESQ.  
AND: GABRIEL F. SOLEDAD, ESQ.  
6 AND: ANDREJ LANG, ESQ.

7 (212) 474-1155  
kforrest@cravath.com

8

9

10 PORTER & HEDGES, LLP  
Attorneys for Defendants  
11 1000 Main Street  
Houston, Texas 77002

12 BY: CHARLES S. BAKER ESQ.

13 (713) 226-6676  
cbaker@porterhedges.com

14

15

16

## 17 ALSO PRESENT:

18 KENNETH L. DOROSHOW,  
Recording Industry Association of  
19 America

20

21 WILLIAM PACE, Videographer

22

23

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25

1 MARK GORTON - ATTORNEYS' EYES ONLY

09:33:06 2 THE VIDEOGRAPHER: This is the  
09:33:48 3 video operator speaking, William Pace for  
09:33:52 4 Merrill Legal Solutions, 25 West 45th Street,  
09:33:55 5 New York, New York. Today is April 14, 2008 and  
09:33:57 6 the time is 9:33 a.m.

09:34:00 7 We're at the offices of Cravath,  
09:34:04 8 Swaine & Moore, 825 Eighth Avenue, New York, New  
09:34:06 9 York to take the videotaped deposition of Mark  
09:34:09 10 Gorton in the matter of Arista Records LLC, et  
09:34:14 11 al. versus LimeWire LLC, et al. in the United  
09:34:17 12 States District Court, Southern District of New  
09:34:19 13 York, Civil Action No. 06 CIV 05936.

09:34:23 14 Counsel, please introduce  
09:34:24 15 themselves and state whom you represent.

09:34:26 16 MS. FORREST: Katherine Forrest for  
09:34:28 17 the plaintiffs.

09:34:32 18 MR. SOLEDAD: Gabriel Soledad for  
09:34:33 19 the plaintiffs.

09:34:36 20 MR. DOROSHOW: Kenneth Doroshow for  
09:34:36 21 the plaintiffs.

22 MR. LANG: Andrej Lang for the  
09:34:38 23 plaintiffs.

09:34:38 24 MR. BAKER: Charles Baker on behalf  
09:34:40 25 of the defendants.

1 MARK GORTON - ATTORNEYS' EYES ONLY

11:04:03 2 if I can just talk about paragraph 5 as an  
11:04:05 3 entirety here, I might be able to do -- it sort  
11:04:08 4 of strikes me that he is mixing a couple of  
11:04:11 5 conversations into one here because "shortly  
11:04:14 6 after I received my cease and desist letter, I  
11:04:16 7 spoke with Mark Gorton" -- so I believe that the  
11:04:19 8 first sentence probably refers to one  
11:04:22 9 conversation. And then the remainder of the  
11:04:28 10 paragraph refers to -- this is actually one of  
11:04:35 11 the few times I've actually met him. So I  
11:04:38 12 believe the first sentence was probably a phone  
11:04:40 13 call because I met him a few times.

11:04:42 14 And the remainder of paragraph 5  
11:04:46 15 refers to a time when we spoke when we were  
11:04:52 16 actually in the RIAA offices when we went down  
11:04:57 17 and visited. So there was a day where on the  
11:05:00 18 same day it was me and Mr. Falco and Sam Yagan  
11:05:09 19 all had separate meetings all kind of lined up  
11:05:11 20 in a row at the RIAA offices. And I believe my  
11:05:17 21 meeting went first, followed by the BearShare  
11:05:20 22 meeting.

11:05:20 23 In between my time on my way out I  
11:05:22 24 spoke very briefly with Mr. Falco. And I think  
11:05:25 25 that that is the conversation that he is talking

1 MARK GORTON - ATTORNEYS' EYES ONLY

11:05:28 2 about there. But I will say that it's clearly  
11:05:32 3 inaccurate to me because he said "Gorton told me  
11:05:35 4 he was not worried about being sued." And I can  
11:05:38 5 absolutely tell you that I was highly concerned  
11:05:41 6 about being sued.

11:05:42 7 So "he created a Family Limited  
11:05:47 8 Partnership." I mean, I definitely did tell  
11:05:51 9 Vinny I had done some estate planning, and that  
11:05:57 10 one of the benefits of the estate planning that  
11:05:59 11 I had done was that it did help protect the  
11:06:06 12 assets in the event of a legal judgment against  
11:06:13 13 me personally. But I did not -- I certainly did  
11:06:19 14 not tell him that he should do the same. I  
11:06:22 15 believe I told him that he might want to talk to  
11:06:24 16 a lawyer about this.

11:06:26 17 Q. Was one of the reasons that you set  
11:06:28 18 up the MJG LimeWire Family Partnership to  
11:06:33 19 protect some of your personal assets in the  
11:06:37 20 event of a legal judgment?

11:06:38 21 A. The primary reason I set them up  
11:06:41 22 was for estate planning purposes. I'd been  
11:06:46 23 planning to do that for years, and I've had  
11:06:48 24 accountants telling me to do it for years and  
11:06:51 25 years. And I finally got around to doing it.

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MARK GORTON - ATTORNEYS' EYES ONLY

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, SUZANNE PASTOR, a Shorthand  
Reporter and Notary Public within and for the  
State of New York, do hereby certify:

That MARK GORTON, the witness whose  
deposition is hereinbefore set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by the witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 23 day of April, 2008.

Suzanne Pastor  
SUZANNE PASTOR

MARK GORTON - ATTORNEYS' EYES ONLY

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

I wish to make the following changes, for the following reasons:

PAGE LINE 37 18  
CHANGE FROM: in  
CHANGE TO: or  
REASON: in correct

42 24 CHANGE FROM: 373  
CHANGE TO: 377  
REASON: in correct

196 13 CHANGE FROM: --  
CHANGE TO: word  
REASON: in correct

254 4 CHANGE FROM: everything  
CHANGE TO: anything  
REASON: in correct

CHANGE FROM: \_\_\_\_\_  
CHANGE TO: \_\_\_\_\_  
REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_  
CHANGE TO: \_\_\_\_\_  
REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_  
CHANGE TO: \_\_\_\_\_  
REASON: \_\_\_\_\_

[Signature]

Subscribed and sworn to before me this 19 day of May, 2008.

Jeffrey R. Farmer, Esq.  
Notary Public, State of New York  
No. 02FA6116985  
Qualified in New York County  
Commission Expires October 12, 2009

[Signature]

MARK GORTON - ATTORNEYS' EYE ONLY

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STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

I wish to make the following changes, for the following reasons:

PAGE LINE 336 13  
CHANGE FROM: Lime Wire  
CHANGE TO: Lime Wire story  
REASON: incorrect

430 24 CHANGE FROM: I have  
CHANGE TO: I have no  
REASON: incorrect

523 11 CHANGE FROM: Bilc Bsky  
CHANGE TO: Balovsky  
REASON: spelling

546 18 CHANGE FROM: stream  
CHANGE TO: string  
REASON: incorrect

593 17 CHANGE FROM: no  
CHANGE TO: to  
REASON: incorrect

CHANGE FROM: \_\_\_\_\_  
CHANGE TO: \_\_\_\_\_  
REASON: \_\_\_\_\_

CHANGE FROM: \_\_\_\_\_  
CHANGE TO: \_\_\_\_\_  
REASON: \_\_\_\_\_

MM Gort

Subscribed and sworn to before me this 14<sup>th</sup> day of May, 2008.

Jeffrey R. Farmer, Esq.  
Notary Public, State of New York  
No. 02FA6116985  
Qualified in New York County  
Commission Expires October 12, 2008

Jeffrey R. Farmer  
5-14-08