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' REPLY IN SUPPORT OF
MOTION FOR 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.

3.   I have had the opportunity to review the declaration of Greg Bildson dated September 10, 2008. I disagree with many of the statements made in this declaration, and I believe many of them to be false.

4.   In paragraph 4, Greg says, "I believed that creating a decentralized architecture for a file-sharing application created engineering complexities and certain inefficiencies." While I do not know Greg's belief, I have vivid recollection of him pushing for a decentralized architecture and often arguing for it on several occasions. On those occasions, when other developers argued for a centralized structure, Greg often countered that a decentralized structure would scale better (i.e., handle more users) and be easier to manage.

5.   In paragraph 4, Greg says, "Ultimately, LimeWire implemented an "ultrapeer" architecture, which collects information about the contents of "nodes" of users' computers on selected users' computers throughout the network, thus shielding most users from heavy search activity." This is an incorrect description of ultrapeers and "nodes" (nodes are typically called "leaves").An ultrapeer does not collect information about the contents of users' computers. The ultrapeer does not request the information, nor does the ultrapeer know the contents of a leaf's computer, at any time. Instead, a leaf sends encoded information to an ultrapeer.   That information is encoded due to the employment of a standard technology called a Bloom Filter. Bloom Filters reduce the volume of information while remaining efficient.

6.   In paragraph 4, Greg says, "To some extent, the ultrapeer architecture eventually implemented by LimeWire was viewed as providing much of the benefits of a Napster-style central server while side-stepping the legal consequences." This is incorrect. The ultrapeer architecture is still peer-to-peer technology; it simply has no central servers. No ultrapeer contains complete knowledge of any of its leaves' data. In the Napster architecture, a central

entity maintained total knowledge of the network, and that central entity sent results to users, directly. Because an Ultrapeer has no knowledge of the leaf's file system, an Ultrapeer cannot send results. Ultrapeers forward requests to the leaves and allow the leaves to decide.

7. In paragraph 5, Greg says, "LimeWire always understood that its users were primarily interested in obtaining and sharing copyrighted music files." This is incorrect.

8. In paragraph 5, Greg says, "Over the years, LimeWire purposefully designed certain features of the LimeWire client to, encourage, and facilitate this known usage." This is incorrect. No single feature in LimeWire was designed to encourage the sharing of unauthorized music files.

9. In paragraph 5, Greg says, "The LimeWire client was designed to include a number of audio-centric features." This too, is incorrect. LimeWire was designed to be content agnostic. It works equally well for sharing multiple file types, including, audio, video and image files. The audio centric features in LimeWire are audio-centric only because the Java language in which LimeWire is written did not contain support for similar features of other file types. Until a couple of weeks ago, the Java language did not have a built-in abililty to easily play video files.

10. In paragraph 8, Greg says, "LimeWire designed the LimeWire client to have all files that are downloaded using LimeWire be automatically placed in the user's shared folder by default. LimeWire did this to maximize the availability of audio files for downloading by other users." This is incorrect. A downloaded file is not shared only if it is an audio file. LimeWire chose to share downloaded files because it is a file-sharing program. It's very nature means files are shared. It does not favor sharing of audio files.

11.   In paragraph 9, Greg says, "The LimeWire client has additional features designed to maximize the number of audio files available for sharing." This is incorrect. There are zero features that encourage or make it easier to share audio files over other types of files (video, or images for instance).

12.   In paragraph 9, Greg says, "LimeWire designed a "wizard" that operates when the LimeWire client is installed on a user's computer to search for and find media files of competing file sharing products (such as Napster, Morpheus, Kazaa, BearShare and Grokster) that exist on the user's hard drive, and to encourage the user to share the files contained in those folders with other LimeWire users." This is incorrect. LimeWire has no ability to locate shared files from other file sharing products. The LimeWire client has not had a "wizard" in many years. When it had a wizard, it did not look for folders of other file-sharing products.

13.   In paragraph 9, Greg says, "This means that LimeWire automatically urged the sharing on LimeWire of any other music files that users may have downloaded or made available previously using Napster, Morpheus, Kazaa, Bearshare, and Grokster." This is incorrect. As said above, LimeWire did not look for folders of other file-sharing products. In addition, when LimeWire had a wizard, the files were not automatically shared.

14.   In paragraph 9, Greg says, "Therefore, this "wizard" acted as a method to increase the number of copyrighted music files available to other LimeWire users." This is incorrect. When the wizard did exist (which it no longer does), it neither distinguished between file types, nor did it employ any logic to encourage sharing unauthorized music files.

15.   In paragraph 9, Greg says, "During conversations I was part of with Mark Gorton in 2004 or 2005, he said he was particularly interested in the better metadata contained in Kazaa users' audio files and wanted to ensure that the LimeWire wizard picked up those files." This is

incorrect. Again, LimeWire did not look for other program's folders. Additionally, metadata on music files has nothing to do with the program from which the file is downloaded. Metadata on user-created files or files downloaded from Windows Explorer will have as much metadata as a file downloaded through other means.

16. In paragraph 10, Greg says, "LimeWire designed other features of the LimeWire client to facilitated and encourage music file sharing, including making music file sharing easier and more responsive for users." This is incorrect. There are no features in LimeWire that make it easier to share music files, and no features that make shared music files more responsive.

17. In paragraph 10, Greg says, "For example, LimeWire included a "bitrate" field in the LimeWire client because it was commonly understood that the bitrate field was important to music downloaders, even though bitrate was not important to the downloaders of other types of files." This is incorrect, as discussed in my deposition.

18. In paragraph 10, Greg says, "Similarly, to facilitate and encourage searching for audio music files, LimeWire provided for "artist" and "album" fields in a dedicated search box." LimeWire also provided dedicated fields for other file types.

19. In paragraph 13, Greg says, "This means that LimeWire has the current capability to configure the client and the crawler in a way that would allow it to collect detailed data concerning the upload, download and search activity of any LimeWire user." This is incorrect. The LimeWire client has no configurable means to report data on what files are being uploaded or downloaded, nor does it have the means to report what terms are being searched.

20. In paragraph 15, Greg says, "When LimeWire finally added a limited filtering capability of copyrighted content to the LimeWire client (after the 2005 Grokster decision), Mr.

Gorston instructed LimeWire employees to make sure the filter was turned "off" by default." This is incomplete. Mr. Gorton also requested that the filter be turned "on" by default.

21. In paragraph 17, Greg says, "At the time LimeWire developed IP blocking based upon this broad definition of spamming, it understood and intended that its blocking feature would result in the blocking of antipiracy companies such as Media Defender." This is incorrect. IP blocking has always been and still is intended to reduce spam and malicious results.
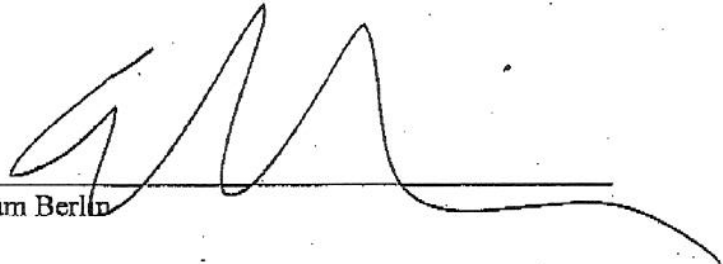
22. In paragraph 25, Greg says, "Mark Gorton was the ultimate decisionmaker at LimeWire. His approval was required for any major strategic and design decisions." The is incorrect. Mark Gorton had absolutely no say in decisions about the development or design of the LimeWire client, nor did he have any say in the development or design of the LimeWire.com website, nor did he have any say in the development or design of the LimeWire.org website.

23. In paragraph 26, Greg says, "Among the design decisions Mr. Gorton directed or approved were: the choice of a decentralized architecture, the startup wizard, the audio player, the design of the LimeWire filtering system and the decision that the filtering system would be turned "off" by default, the type of filter used, the introduction of ultrapeers, discussions related to the DHT, allocation of developer resources, and the design and operation of the user interface." This is incorrect. Mark Gorton had no part in any discussions in which I participated regarding the DHT. Furthermore, he had nothing to do with allocating developer resources or the design of the user interface. In addition, as mentioned before, Mark Gorton also requested that the filtering system be turned "on" by default.

24. In paragraph 28, Greg says, "I recall one time when someone was hired at LimeWire without consulting first with Mr. Gorton, and he told us to make sure to get his prior

approval in the future." This is inaccurate. All our discussions of hiring developers were made without any consultation to Mark Gorton.

25.   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 November 7, 2008.

Sam Berlin