

CUNEO DECLARATION

**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; GREG BILDSON; and M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

**06 Civ. 5936 (GEL)
ECF CASE**

DECLARATION OF ELIZABETH CUNEO IN FURTHER SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE EXHIBITS FILED AS PART OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND MOTION TO STRIKE

I, **ELIZABETH CUNEO**, hereby declare as follows:

1. I am a legal assistant with the law firm of Cravath, Swaine & Moore LLP, counsel for plaintiffs in the above-captioned action. I submit this declaration in further support of plaintiffs' opposition to defendants' motions for summary judgment and in support of plaintiffs' opposition to defendants' Motion to Strike Exhibits Filed as Part of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment, filed November 7, 2008.

2. On September 7, 2008, I accessed the website <http://www.gutenberg.org> and searched for the the following works of Mark Twain: *A Dog's Tale*, *A Double Barreled*

Detective Story, Captain Stormfield's Visit to Heaven, On the Decay of the Art of Lying, Is Shakespeare Dead?, The Man That Corrupted Hadleyburg, The American Claimant, and Tom Sawyer Abroad. I found that plain text versions of all of these works (except for *Is Shakespeare Dead?* which is available in MP3 format) are available for download directly from the Project Gutenberg website. Plaintiffs' Ex. 340 (submitted on September 26, 2008) consists of true and correct copies of printouts of my search results for these works on the Project Gutenberg website.

3. On September 6, 2008, I listened to the songs "Garden III" and "Gasaholic" provided on the CD produced by defendants at Bates LW DE 2461415 (Ex. 496) and found that the song "Garden III" on this CD has a length of approximately 4 minutes and 33 seconds and that the song "Gasaholic" on this CD has a length of approximately 13 minutes and 7 seconds.

4. On September 4, 2008, I searched on the Internet Archive website for Tea Leaf Green's March 3, 2005 concert but I was unable to locate it. However, I found recordings from Tea Leaf Green's March 5, 2005 concert at <http://www.archive.org/details/tlg2005-03-05.flac16>. From this website, I downloaded the songs "The Garden (Part III)" and "Gasaholic". Plaintiffs' Ex. 345 (submitted on September 26, 2008) consists of true and correct copies of screenshots of this website and of screenshots from the folder on my computer to which I downloaded these songs. On September 6, 2008, I listened to the songs that I downloaded and found that the song "The Garden (Part III)" has a length of approximately 5 minutes and 6 seconds and that the song "Gasaholic" has a length of approximately 12 minutes and 23 seconds.

5. On September 23, 2008, I accessed the website <http://americasarmy.com/downloads/>. Plaintiffs' Ex. 364 (submitted on September 26, 2008) contains a true and correct copy of a printout from this website. I took all the steps necessary for

downloading the America's Army game and found that this game is available for download directly from this website, without having to install or use the LimeWire software.

6. On September 23, 2008, I accessed the website <http://www.berkleeshares.com/voice>. Plaintiffs' Ex. 365 (submitted on September 26, 2008) contains a true and correct copy of a printout from this website. I took all the steps necessary for downloading Berklee Shares music lessons and found that these music lessons are available for download directly from this website, without having to install or use the LimeWire software.

7. On September 23, 2008, I accessed the website <http://dl.nin.com/theslip/signup> (previously, on August 25, 2008 I had made a printout from this website of which plaintiffs' Ex. 369 (submitted on September 26, 2008) is a true and correct copy). When I clicked on the link regarding the license for "the slip", I was redirected to the website <http://creativecommons.org/licenses/by-nc-sa/3.0/us/>. Plaintiffs' Ex. 370 (submitted on September 26, 2008) is a true and correct copy of a printout from this website.

8. On August 25, 2008, I accessed the website <http://www.jamendo.com/en/album/3661>. Plaintiffs' Ex. 376 (submitted on September 26, 2008) consists of a true and correct copy of a printout from this website. I was able to download the songs "Breathe", "Listen", and "Struttin'" directly from this website, without having to install or use the LimeWire software.

9. I accessed the websites <http://tryad.org/discography.php> (on August 25, 2008), <http://www.myspace.com/tryad> (on September 4, 2008), and <http://freealbums.blogspot.com/2008/06/14/tryad-listen/> (on August 25, 2008). Plaintiffs' Ex. 377 (submitted on September 26, 2008) consists of true and correct copies of printouts from

these websites. I found that links on these websites for Tryad's album "Listen" directed me to the jamendo.com website (see supra ¶ 8).

10. On August 25, 2008, I accessed the website http://www.marquisclassics.com/319_start.asp. Plaintiffs' Ex. 379 (submitted on September 26, 2008) consists of a true and correct copy of a printout from this website. I was able to download the song "Start Again" directly from this website, without having to install or use the LimeWire software.

11. On September 22, 2008, I accessed the website <http://www.epitonic.com/index.jsp?refer=http%3A%2F%2Fwww.epitonic.com%2Fartists%2Famericananalogset.html>. Plaintiffs' Ex. 380 (submitted on September 26, 2008) consists of a true and correct copy of a printout from this website. I was able to download the song "The Only One" directly from this website, without having to install or use the LimeWire software.

12. On August 25, 2008, I accessed the website http://music.download.com/appleseedcast/3600-8586_32-100064490html. Plaintiffs' Ex. 381 (submitted on September 26, 2008) consists of a true and correct copy of a printout from this website. I was able to download the song "Fight Song" directly from this website, without having to install or use the LimeWire software.

13. I accessed the websites <http://craphound.com/down/download.php> (on September 5, 2008), <http://www.gutenberg.org/etext/8086> (on August 25, 2008), <http://www.gutenberg.org/dirs/etext05/domkg10h.htm> (on September 4, 2008), and <http://www.feedbooks.com/book/194> (on August 25, 2008). Plaintiffs' Ex. 382 (submitted on September 26, 2008) consists of true and correct copies of printouts from these websites. I took all the steps necessary for downloading "Down and Out In the Magic Kingdom" and found that it

is available for download directly from these websites, without having to install or use the LimeWire software.

14. I accessed the websites <http://www.archive.org/details/MLKDream> (on August 25, 2008), <http://www.americanrhetoric.com/top100speechesall.html> (on August 25, 2008), <http://seattletimes.nwsourc.com/special/mlk/king/speeches.html> (on August 25, 2008), and http://blog.lextext.com/blog/_archives/2006/1/15/1676937.html (on August 27, 2008).

Plaintiffs' Ex. 383 (submitted on September 26, 2008) consists of true and correct copies of printouts from these websites. I was able to download audio and text files of Martin Luther King's "I Have a Dream Speech" directly from these websites, without having to install or use the LimeWire software.

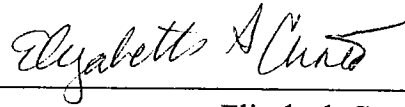
15. On September 4, 2008, I accessed the websites <http://www.gutenberg.org/etext/16780>, <http://www.constitution.org/usdeclar.pdf>, and <http://manybooks.net/titles/america1678016780-8.html>. Plaintiffs' Ex. 384 (submitted on September 26, 2008) consists of true and correct copies of printouts from these websites. I was able to download the Declaration of Independence directly from these websites, without having to install or use the LimeWire software.

16. On August 25, 2008, I accessed the websites <http://www.gpoaccess.gov/constitution/index.html>, <http://www.usconstitution.net/const.html>, and <http://www.law.cornell.edu/constitution/constitution.overview.html>. Plaintiffs' Ex. 385 (submitted on September 26, 2008) consists of true and correct copies of printouts from these websites. I was able to view or download the U.S. Constitution directly from these websites, without having to install or use the LimeWire software.

17. On August 25, 2008, I accessed the websites <http://shakespeare.mit.edu> and <http://www.bibliomania.com/0/6/3/frameset.html>. Plaintiffs' Ex. 387 (submitted on September 26, 2008) consists of true and correct copies of printouts from these websites. I was able to view various plays of Shakespeare directly on these websites, without having to install or use the LimeWire software.

I declare under penalty of perjury that the above is true and correct.

Executed on December 5, 2008

A handwritten signature in cursive script that reads "Elizabeth Cuneo". The signature is written in black ink and is positioned above a horizontal line.

Elizabeth Cuneo