

**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.

Case No. 06 CV 5936 (KMW)

ECF Case

**DECLARATION OF BRIAN G.
MENDONCA IN SUPPORT OF
DEFENDANTS' OPPOSITION
TO MOTION FOR PERMANENT
INJUNCTION**

I, Brian G. Mendonca, declare as follows:

1. I am an attorney associated with the law firm of Wilson Sonsini Goodrich & Rosati, counsel for Defendants. I am duly licensed to practice law in the state of California. I make this declaration in support of Defendants' Opposition to Motion for Permanent Injunction. I am over the age of eighteen and, except as otherwise noted, I have personal knowledge as to the facts set forth in this declaration. If called to testify, I could and would testify competently thereto.

2. On June 16 and June 17, 2010, I accessed a computer on which version 5.5.9 of the LimeWire software had been installed. I performed searches on the LimeWire software in an effort to identify content that could be available using the LimeWire software.

3. On June 16, 2010, I performed a number of searches using the LimeWire software in an effort to identify available literary works that are in the public domain. During my review, I observed the following files available for download:

- The Hound of the Baskervilles, by Sir Arthur Conan Doyle
- Macbeth, by William Shakespeare
- A Connecticut Yankee in King Arthur's Court, by Mark Twain
- Adventures of Huckleberry Finn, by Mark Twain
- Adventures of Tom Sawyer, by Mark Twain
- Plymouth Rock and the Pilgrims, by Mark Twain

4. On June 17, 2010, I reviewed the websites at the URLs dl.nin.com/theslip/signup and creativecommons.org/licenses/by-nc-sa/3.0/us. Based on my review of these sites, my understanding is that the band Nine Inch Nails made its album "The Slip," which included the songs "Demon Seed," "Discipline," "Echoplex" and "Head Down," available for download and sharing pursuant to a Creative Commons "Attribution-Noncommercial-Share Alike 3.0 United States."

5. On June 17, 2010, I ran searches using the LimeWire software and my results indicated that files constituting the songs "Demon Seed," "Discipline," "Echoplex" and "Head Down" from the album "The Slip" by the band Nine Inch Nails were available for download on LimeWire.

6. On June 16, 2010, I reviewed the website at the URL www.stringcheeseincident.com/tapingpolicy.html, which indicates that the band The String Cheese Incident permits the taping of its live concerts. Additionally, the website at the URL www.archive.org/details/StringCheeseIncident indicates that The String Cheese Incident generally approves of the sharing of electronic files of its live performances.

7. On June 17, 2010, I ran various searches using the LimeWire software. The results indicated that files of live performances by The String Cheese Incident are available for download.

8. On June 16, 2010, I reviewed the website at the URL www.archive.org/details/GavinDeGraw, which indicates that the musician Gavin DeGraw generally approves of the sharing of electronic files of his live performances.

9. On June 17, 2010, I ran various searches using the LimeWire software. The results indicated that files of live performances by Gavin DeGraw are available for download.

10. On June 19, 2010 I visited the website at the URL www.oyez.org, which is the website for the Oyez Project. A logo on the home page of the Oyez Project's website indicates that the content on the site is subject to a Creative Commons license. Clicking on that logo brought me to the web page at the URL creativecommons.org/licenses/by-nc-sa/3.0. That page indicates that content on the Oyez Project is subject to an Attribution-Noncommercial-Share Alike 3.0 Unported license, meaning that Oyez Project content can be shared on a peer-to-peer network as long as the requirements of that license are met.

11. Attached hereto as Exhibit A is a true and correct copy of the Amended Report and Recommendation in *Arista Records LLC v. Usenet.com, Inc.*, No. 07 Civ. 8822 (HB) (THK), (S.D.N.Y. Feb. 2, 2010).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of June, 2010, at San Mateo, California.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 

Brian G. Mendonca

Attorneys for Defendants