

# EXHIBIT 10

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May 23, 2010

## Idea Man of LimeWire at a Crossroads

By JOSEPH PLAMBECK

Mark Gorton is a confident guy. He's confident about his ideas. He's confident about his enthusiasms. And he's confident that his successes — like making money on Wall Street and promoting alternative transportation in New York — provide a record that backs him up.

But that confidence faces a new test. Two weeks ago, a federal judge ruled that he and the popular file-sharing service he created, LimeWire, were liable for copyright infringement and could be forced to pay up to \$450 million in damages.

Mr. Gorton, 43, says he did not think it would come to this point. He thought that the record industry, sometime since the lawsuit was filed in 2006, would come to appreciate his vision for the future of LimeWire — a paid subscription service providing unlimited downloads of licensed songs — and want to join forces instead of continuing litigation.

“Perhaps I was naïve,” Mr. Gorton said in an interview last week at LimeWire's office near Chinatown in Manhattan. “If I knew when the lawsuit started what I know now about the music industry, maybe we would have done something different.”

Mr. Gorton, a successful Wall Street trader with a varied academic background that includes degrees from [Harvard](#), Yale and Stanford, is not the sort of figure who springs to mind when the phrase “Internet pirate” is spoken. Nor is he one, he insists.

All along, Mr. Gorton said, he thought he was following the law, despite a series of earlier lawsuits that ended badly for file-sharing services like Napster and Grokster. And where there were doubts about the legality, he said, he tried to remove them.

He reached out to record labels, for example, to get information about their catalogs so he could build a filter that would block those songs from being traded free, he said. But that attempt turned against him, as the ruling from Judge [Kimba M. Wood](#) of Federal District Court in Manhattan said that the company's plan to convert users to a paid service, in part by using such a filter, supported the industry's argument that he knew files on the service were being traded illegally.

"It's certainly frustrating," he said. "We were trying so hard to reach an accommodation."

The [Recording Industry Association of America](#), the industry group that managed the lawsuit on behalf of 13 record companies, said it thought he had willfully skirted the law, motivated by the money generated by the millions of users of LimeWire. Total revenue increased to an estimated \$20 million in 2006 from \$6 million two years earlier, according to the court ruling, much of it from a paid service that allowed for faster downloads.

"He thought with his cleverness that he could get away with it," Mitch Bainwol, the association's chief executive, said. "He's the Bernie Madoff of Internet crime. He was thumbing his nose at the rule of law to profiteer enormously."

Yet Mr. Gorton's foray into the music business was not part of any grand plan, either. In fact, he said, he consumes little music, and the bulk of his collection is from his college days. He does not own an [iPod](#).

He does like to build things, though. In seventh grade, he and a friend built 4-by-6-foot scale model of their school in New Jersey. After getting two degrees in electrical engineering, one at Yale and the other at Stanford, he made a modem for a defense contractor that could work in the face of an enemy's jamming systems.

In 1998, armed with a Harvard business degree and some Wall Street experience at Credit Suisse First Boston, he and a co-worker started a hedge fund, Tower Research Capital, that used quantitative trading and investment strategies. They created an [automated trading](#) program and then Lime Brokerage to handle the trades.

In 2007, Tower Research reportedly had \$117 million in assets. Mr. Gorton would not give specifics about the performance of his financial companies in recent years other than to say that the brokerage house lost money last year.

Back in 2000, when Mr. Gorton jumped into the peer-to-peer network business with LimeWire, he envisioned it growing into a popular service for commerce, he said. Users could search the network for a new television set, for example, and get results from retailers across the country.

He was not alone. At the time, [venture capital](#) and talent poured into other peer-to-peer companies.

“People have a short memory, and they’ve gotten caught up in the mythology of P2P’s being run by ne’er-do-wells and eye-patch pirates,” said Fred von Lohmann, a senior staff lawyer at the Electronic Frontier Foundation who has represented some of the file-sharing services in copyright cases. (Mr. Lohmann was named in the ruling as having given legal advice to the company about how to protect itself from liability.)

“LimeWire was not a fly-by-night operation,” he said.

Around the time Mr. Gorton started Tower Research Capital, several people who have known him for quite a while said, he started to express his views a little more outwardly. “He really blossomed into somebody with tremendous amount of confidence in his ideas,” said Sean B. Hecht, a friend from Yale who heads the Environmental Law Center at the [University of California](#), Los Angeles.

Many of those ideas, and his money, are going toward civic projects. Last year, Mr. Gorton said, he put about \$7 million into another of his ventures, the Open Planning Project. That group promotes, among other things, bringing open-source technology to governments, which would allow a local government to build off a computer system used by another government instead of starting from scratch.

He has also been involved closely with Transportation Alternatives in New York, working with the city to increase the number of bike lanes (he rides his bike to work every day from his brownstone on the Upper West Side) and improve pedestrian life. In each of the last six years, he has donated hundreds of thousands of dollars and provided up to a quarter of the group’s annual budget.

“He brought us a new communications strategy,” said Paul S. White, executive director of Transportation Alternatives. “Before Mark, we were preaching to the choir. We weren’t talking in a language that other people could understand.”

Mr. Gorton says he has tried to take that same strategy to the record labels to explain the new service he is proposing.

“I tell them to think of Woodstock,” he said. “The first one was free, but it ended up making the industry a lot of money and was a huge success. The second and third ones were very expensive for fans and were failures.”

But before he can hope to make any progress with the labels on his paid service, he will need to get the lawsuit behind him. And given the heated rhetoric from Mr. Bainwol and the record association, the coming negotiations may not be easy.

At a minimum, the record association says, LimeWire needs to shut the current service and Mr. Gorton needs to pay for damages out of his own pocket. A status conference with Judge Wood is scheduled for June 7.

Mr. Gorton says he knows that the music industry needs to alter the behavior of a generation of people who have grown accustomed to getting their music free.

Still, he says that LimeWire has a relationship with that generation that can help make the change. And he says he remains optimistic that, in the end, his idea will triumph.

“I don’t want to be on my deathbed thinking that I kept a bunch of musicians from making money,” Mr. Gorton said. “I have a lot of work to do to get my karma scores up.”