

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS et al.,

Plaintiffs,

v.

LIME WIRE LLC, et al.,

Defendants.

Case No. 06-CV-5936 (KW)

**ECF CASE**

**DECLARATION OF MARK GORTON IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION FREEZING DEFENDANTS' ASSETS**

I, Mark Gorton, declare as follows:

1. My name is Mark Gorton. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

**BACKGROUND**

2. I was born in 1966 and grew up in Oradell, New Jersey. I went to public school in Oradell and graduated valedictorian of my high school class. I then went to Yale University where I studied electrical engineering. I always enjoyed math and science, and I pursued engineering at the suggestion of my father. I graduated in 1988 and went to Stanford University where I received a master's degree in electrical engineering.

3. I focused my engineering studies on circuits and control systems, which entailed a knowledge of mathematics and had a number of applications in, for example, robotics and aircraft mechanics. My studies also involved digital signal processing which involves the use of computer algorithms to analyze and measure signals using mathematical techniques.

4. After Stanford, I went to work for Martin Marietta which is now part of Lockheed Martin. I worked in a division that was tasked with developing sophisticated electronics that would be used for electronic battlefield scenarios. Among other things, I worked with a group of engineers to develop a modem for the U.S. Air Force that could work in the face of enemy signal jamming.

5. I left Martin Marietta after two years and went to pursue an MBA at Harvard Business School. I had always been interested in business, and I believed that business school was a good way to make the transition from engineering to business. After graduation in 1993, I decided to move to New York City to work as a trader in the fixed income proprietary trading group at Credit Suisse First Boston ("CSFB").

6. My background in engineering and mathematics was good training for trading of financial instruments, particularly complex derivatives. For example, bonds involve a known series of cash flows over time and their valuation requires a mathematical discipline, building quantitative models and conducting historical studies on fluctuation of prices. I was successful in my trading and out of a number of traders in our group, I was the most profitable trader and the most consistently profitable trader over the course of about four years. My earnings from CSFB formed the basis for my capital which I have compounded over time through my investing.

#### **INVOLVEMENT IN BUSINESSES OTHER THAN LIME WIRE**

7. In early 1998, I left CSFB to form Tower Research Capital LLC ("Tower Research"). I was interested in pursuing a variety of trading strategies that I wasn't able to do within CSFB, where traders in the fixed income department were not allowed to trade stocks. I invested my earnings from CSFB alongside Alistair Brown, a colleague and fellow engineer.

We rented a loft in Greenwich Village and plugged in our computers to start trading. We also engaged an accountant and a lawyer to help us structure the hedge funds and management company to begin Tower Research, which was founded in March 1998.

8. Tower Research is a financial services firm specializing in quantitative trading and investment strategies. At Tower Research, I built trading models and brought on junior programmers who I taught how to build computerized trading models. Over time, Tower Research grew and increased the number of markets it traded and the number of strategies it employed. Within the first few months of trading, third parties, individuals and institutional investors began to invest money with Tower.

9. As the business grew, the number of private investment funds managed by Tower grew and we eventually formed a series of funds that trade or invest in a variety of financial instruments in over 20 global exchanges on behalf of nearly 100 investors. These funds include Tower Research Capital Investments LLC, Limestone Trading LLC, Sharp Rock Trading Ltd., Spire Master Fund Ltd., Split Level LLC and Tower Research Capital Europe LLC.

10. Tower Research also became registered as a commodity trading advisor and commodity pool operator regulated by the U.S. Commodity Futures Trading Commission due to its role in providing investment advice to its third party customers. Tower currently employs nearly 200 investment professionals worldwide, including portfolio managers, operations, accounting, IT systems, software infrastructure, legal and compliance.

11. By 1999, Tower Research was utilizing computer programs in connection with investments that required such rapid execution that we could not find a broker-dealer that could handle the business. We realized that if we were having this problem finding a fast electronic

broker-dealer that other people had to be having the same problem. So Alistair and I founded Lime Brokerage LLC to pursue this business opportunity.

12. Lime Brokerage LLC was formed in 2000. Lime Brokerage is an SEC-registered broker-dealer in 37 U.S. states and territories that offers super fast, very high throughput market access to computerized traders. Today Lime Brokerage has approximately 75 employees. It has offices in New York, Waltham, MA and Jersey City, NJ. Lime Brokerage Holdings LLC was later established as a holding company for Lime Brokerage. Lime Brokerage executes trades on behalf of approximately a hundred and fifty clients, and it maintains capital accounts at clearing brokers in order to support its customers' trading.

13. 377 Tower Realty LLC was created in 2000 and was fully funded by me at that time. It owns the condominium office located at 377 Broadway with a mortgage and a lease on one other floor.

14. In 2005 a college friend of mine, Dr. Richard Kim, and I were discussing how he spent over 3 hours each day filling out medical paperwork. Dr. Kim expressed frustration that such a large part of his time was spent doing repetitive paperwork. After much discussion, we decided that his expertise and understanding of the medical system and my software development expertise could be combined to help make his and other doctors' lives more efficient, so together, we decided to pursue this business opportunity that ultimately became Lime Medical LLC. Lime Medical is a software company that provides software to hospitals, medical practices, and doctors. We launched Lime Medical LLC with the intention of producing a software product that would help doctors deal with the large amount of paperwork that comes with their jobs. After 4 years in development, Lime Medical recently rolled out iPatient to the Sutter hospital system in California, and we are now in the process of rolling out the product to

other hospitals. Lime Medical now has 3 employees and is looking to grow. Lime Medical is not yet cash flow positive and depends upon me through entities in which I have an interest for continued funding. To date, approximately \$4.7 million has been invested in Lime Medical by me and/or entities in which I have an interest.

15. Through my experience managing many software projects, I noticed over the years that some software teams spent years struggling to produce very little while other teams were able to produce good working products in a matter of days or weeks. The secret of success of the speedy teams was that they were able to start with a pre-existing code base that almost fully met their needs. I realized that when it came to website development, many people were reinventing the wheel by building websites from scratch when nearly complete versions existed in the world. I perceived there was an opportunity to allow people to share a wide variety of open source websites, and I formed Lime Labs LLC with the intention of building a suite of tools to allow people to do just that.

16. Lime Labs LLC was formed in 2006. Contained within Lime Labs are several discrete yet interconnected software projects. Lime Bits is an easy to use website building tool that allows people to share websites and pieces of websites. The intent is to foster a community of website developers who virtually collaborate to create a rich set of tools with which to construct website. Lime Labs also offers people hosting, domain name registration (LimeDomains) and free application installation (LimeApps) in order to further make it easier for people to create and manage websites. Lime Labs also provides certain software development services to Lime Wire. Lime Labs has offices in New York City and in Noida, India. Altogether it has about 100 employees. It is still in product development mode, is not yet profitable, and is primarily dependent upon me (either directly or through entities in which I have

an interest) for its funding. To date, approximately \$19.3 million has been invested in Lime Labs by me and/or entities in which I have an interest. Based on historical funding needs, I estimate that absent continued funding Lime Labs would be out of operating funds within 8 months.

### **NOT-FOR-PROFIT ORGANIZATIONS AND CONTRIBUTIONS**

17. In addition to founding and working with businesses in various sectors, I also am, and have been for some time, deeply involved with several not-for-profit organizations.

#### **OpenPlans**

18. In 1999, I founded The Open Planning Project (currently d/b/a OpenPlans), a 501(c)(3) organization located in New York, New York, and with a staff of approximately 45. OpenPlans has several areas of focus. The Livable Streets Initiative within OpenPlans advocates for greener more sustainable forms of transportation, reducing traffic, and transforming our streets to safer pedestrian oriented places. Projects, including Streetsblog (streetsblog.org) and Streetfilms (streetfilms.org), are building a powerful movement for livable streets. Today, the Streetsblogs reach more than 175,000 monthly readers, and Streetfilms have been viewed online more than 2.5 million times. Attached hereto as Exhibit A is an article describing, among other things, the Livable Streets Initiative work of OpenPlans.

19. The Civic Works division of OpenPlans is focused on getting government to open their data and software systems. The open government movement is in its embryonic stage, and OpenPlans is a key player helping to catalyze a profound change in how our governments function. When government agencies free their data, advocates, companies, developers, and regular citizens can make use of these data to make smart decisions and improve neighborhoods. OpenPlans has helped municipal agencies in places like San Francisco and New York make their

data public in accessible and useful ways through initiatives like Open311 ([open311.org](http://open311.org)) and NY Transit Data ([nytransitdata.org](http://nytransitdata.org)).

20. The OpenGeo project at OpenPlans started and continues to develop GeoServer, an open source mapping engine that opens data in standard formats. It's been downloaded over 400,000 times, and is used in production by hundreds of government agencies, NGO's, and companies saving them millions of dollars. Major users of the software include the state of Massachusetts, Portland's main transit agency, New York City, San Francisco, the national mapping agencies of France, Spain, UK, Norway, Finland, Brazil, Guatemala, Italy, Denmark, and the Netherlands, the World Bank, the Gates Foundation, the United Nations (WHO, WFP, FAO, UNDP and more), European Union's JRC, University of Virginia, Duke, Penn State, the Global Biodiversity Information Facility, the Ocean Biogeographic Information System, OpenCongress, DigitalGlobe, Infoterra, NOAA, and many others.

21. Since its founding, I have always been OpenPlans' largest contributor.

#### **Other Charitable Activities**

22. In addition to supporting organizations that I have founded, I support a number of organizations in the sustainable transportation and livable streets movement. Since 2004, I have been the largest funder of Transportation Alternatives, which is a member supported organization that advocates for sustainable transportation solutions. In each of the past 6 years, my contributions have made up between 20-33% of Transportation Alternatives budget. I also fund the Tri-State Transportation Campaign and the Institute for Transportation and Development Policy (ITDP). These also are organizations devoted to encouraging people in cities to walk, ride their bicycles, or use mass transit as alternatives to driving, and to making cities more livable.

23. In addition to supporting the cause of greener transportation, I have also been supporting groups focused on improving the state of governance in New York State. In 2010, I have made donations to a variety of not-for-profit organizations including NYPIRG, Common Cause New York, and the Brennan Center for Justice.

#### **MY INVESTMENTS**

24. Since completing business school, I have been an active investor. Over the last decade my trading and investments have done well, and I have been fortunate to have made significant returns. For the most part, and other than to start new businesses and make charitable contributions, I have re-invested the gains on my investments. Together with my wife Jody, I only own one home in which we live with our 4 children. The bulk of my wealth has come from my investing and trading activities.

25. Since approximately August of 2003, I have received approximately \$15 million, either directly or indirectly, from Lime Wire LLC. I understand that taking into account my interests in investment distributions to Lime Group and Lime Wire FLP, that amount increases to approximately \$23 million. I maintain assets in the United States worth considerably more than \$23 million.

26. Neither I nor any entity in which I hold an interest has received a distribution from Lime Wire LLC since February of 2008. Since that time, Lime Wire's profits have largely been re-invested in a separate business unit referred to as LimeWire Store, which is an on-line music service offering licensed downloads of digital sound recordings, in the aim of working collaboratively with the recording industry.



### **ADDITIONAL ENTITIES NAMED BY PLAINTIFFS**

27. I have reviewed the list of entities defined by Plaintiffs as “Defendant Affiliates” in their proposed Preliminary Injunction Freezing Defendants’ Assets. To my knowledge, a number of the entities listed as Defendant Affiliates no longer exist including, A&M Roadhouse, Lime Overseas Fund, Ltd., Lime Capital Management Administrators, LLC, Lime Fund LLC, Tower Research Capital Holdings Inc., and Lime Capital Management LLC.

28. Although, Lime Lock LLC uses the Lime name, I am only tangentially involved in Lime Lock LLC. Lime Lock LLC is founded and run by Alexander Zehnbaht. I indirectly own a 48% interest in 20% of Lime Lock.

29. Six of the entities listed by Plaintiffs -- Limestone Trading LLC, Sharp Rock Trading, Ltd., Spire Master Fund, Ltd., Split Level LLC, Tower Research Capital Europe LLC and Tower Research Capital Investments LLC -- are some of the private investment funds managed by Tower Research on behalf of numerous investors. In addition to third parties, I have indirect investments in a number of these entities.

30. Plaintiffs have included several Family Limited Partnerships in their list of “Defendant Affiliates.” For each of these, I am a limited partner with between a 46% and 48% interest.

### **NO DISSIPATION OF ASSETS**

31. For many years, my accountants suggested that I talk to an attorney about estate and tax planning measures due to the breadth of my assets. In or around January of 2005, I finally took their advice. Following those discussions, my attorneys began setting up several family limited partnerships to which we agreed a portion of my and my immediate family’s assets would be transferred. Although the formal organization of the M.J.G. Lime Wire Family Limited Partnership was completed in June of 2005, the structure and assets to be contributed

was decided long before then. The establishment of the LW FLP was completed months before the RIAA sent a cease and desist letter regarding the LimeWire software.

32. While in 2005 I transferred many of my assets into limited partnerships for estate and tax planning purposes, I also maintained, and continue to maintain a significant portion of my assets outside of the FLPs. My wife and I jointly own a brownstone in Manhattan which we purchased in 2005 for \$4.8 million, and we maintain three bank accounts in New York holding approximately \$17 million. I also hold in my own name several direct investments worth another approximately \$2 million.

33. I have never “secreted” or otherwise transferred any of my assets in an effort to hide them from the plaintiffs in this case or anyone else. I do invest indirectly in some offshore hedge funds as part of my ordinary investing activities, and I have indirect ownership interests in entities that own subsidiaries in other countries, as part of their normal business activities. But I have no personal off-shore bank accounts, and have never set up any off-shore entities to hold my personal assets. Other than the offshore hedge fund investments, all of my assets are maintained within the United States.

#### **PLAINTIFFS’ PROPOSED ASSET FREEZE**

34. I have reviewed the Plaintiffs’ Motion for Preliminary Injunction to Freeze Defendants’ Assets. I do not believe there is any reason to freeze any portion of my assets since I have not and have no intention to hide my assets or otherwise make them unavailable for payment of any judgment against me in this action. Indeed, as I have for the past 12 years, my plan is to continue growing my assets through continued investments.

35. A strict freeze of my assets has the potential to destroy value and reduce the potential amount that any creditor could collect from me. Historically I have made significant profits investing my assets. If any of my assets are frozen, I will lose the opportunity to invest

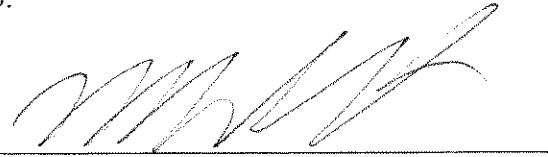
my capital at which historically I have been successful. By restricting my ability to continue funding Lime Labs and Lime Medical, I will likely lose my entire investments in these companies, and the chance that these start-up companies will reach profitability will be eliminated. A half completed project without funding has no value, but a company that reaches the stage of being cash flow positive has ongoing value. In addition, an asset freeze on either Lime Brokerage LLC or Tower Research Capital LLC or any of its investment funds has the potential to be damaging to these companies as their investors, customers or counterparties might be distressed at even the thought of an asset freeze.

36. My wife Jody and I share a credit card which we use like most people in this country for many regular expenses such as purchasing food and clothing, household supplies, and normal everyday living. Prohibiting the use of any credit card issued to me singly or jointly with my wife for any purpose would cause extreme and unnecessary inconvenience to my family. Having to get approval from a fiscal agent for any payment, including purchases of food and clothing for ourselves and our children, would be very time consuming, burdensome, and would be a hardship for our average daily lives.

37. In the event that the Court determines that an order freezing a portion of my assets is appropriate, I respectfully request that the Court enter an order specifying an amount of assets to be frozen. I can then identify for the Court assets to be frozen that are equal in value to the specified amount but that, if frozen, would have the least negative impact on my family and the businesses and not-for-profits I regularly work with.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in New York, NY on June 30, 2010.

A handwritten signature in black ink, appearing to read 'M. Gorton', is written above a horizontal line.

Mark Gorton

# **Exhibit A**

## The Man Who Closed Times Square to Traffic

January 26, 2010 | 5:50 p.m

Standing along a busy downtown Manhattan street, Mark Gorton lamented all the traffic.

"It's not that cars are inevitable; it's that we've tried really hard to jam these cars in here," said the founder of The Open Planning Project (TOPP), a nonprofit dedicated to transportation reform. On a wall of the nonprofit's office, just north of the vehicular chaos of Canal Street, sprawls a map of Manhattan. To Mr. Gorton, it represents a kind of Platonic Ideal—that of a city designed before the automobile and, therefore, destined for a future in which cars are banished.

"With a little bit of effort, they go away," he went on about the abundance of cars, as if he was up against a deeply dug-in army. "And, actually, congestion goes away, traffic moves better, people move faster, it's safer for kids, it's better for the environment."

Lanky with a head of wiry black curls, the 41-year-old, who also founded the file-sharing service LimeWire and the hedge fund Tower Research Capital, is the Ralph Nader of congestion. He's voluble on the subject, given to dispensing idealistic predictions about Americans forsaking their cars for bikes and buses. Last year's congestion pricing debacle may have proved that New York drivers aren't so sanguine about that prospect.

Still, Mr. Gorton has been right before: The tangible, everyday fruits of his influence, through TOPP and other initiatives, include the pedestrian plazas in the meatpacking district, beside Madison Square Park, and in Herald and Times squares, along with miles of new bike lanes installed since Mayor Bloomberg appointed Janette Sadik-Khan as transportation commissioner. As the mayor decides in the coming months whether to make the Broadway plazas permanent, and the Department of Transportation implements bus-only lanes on First and Second avenues, the streets of Manhattan will continue to be remade Mr. Gorton's way.

Mr. Gorton stood among dozens of Buddha statues a few blocks from TOPP, in the office of Lime Group, his umbrella company. He wore a blue shirt untucked, with its top two buttons undone, and a pair of khaki jeans. He speaks loudly, and when finished with a thought he seems to withdraw slightly, as if surprised by his own vehemence. He seems like the kind of guy you might have bought physics notes from in college. Like many such young men, he went into finance. Like not so many, he was astoundingly successful.

HE STARTED THINKING ABOUT road design 10 years ago, during his harrowing daily bike commute from the Upper West Side to his office. "Almost getting killed a bunch of times really focuses the mind," he said.

In the early 1990s, after getting his M.B.A. from Harvard, Mr. Gorton moved to New York and got a job on the proprietary trading desk at Credit Suisse First Boston. In 1998, he left to start Tower Research Capital, a quantitative hedge fund, with a combination of his own money and contributions from friends and family. After a couple of years, Mr. Gorton discovered that Tower needed faster execution for its trades than any of the electronic brokers could offer. So he started his

own, Lime Brokerage. But his heart wasn't in it. "I realized that what I liked was starting the company."

So, in the spirit of the tech boom, he started looking for the next company to start. His main obsession was street design, so he conceived TOPP as a transportation advocacy group in the mold of a software start-up. Getting Americans to give up their cars would be an impossible feat, but by 1999 it seemed like only an insoluble problem could keep Mr. Gorton's attention.

TOPP is a cross between a software start-up and a progressive policy think tank, and is made up of several smaller working groups. One group customizes and provides tech support for open-source mapping software that transit agencies use to keep track of their routes. Another works on applications that make it easier for people to communicate with city agencies-letting cyclists propose sites for bike racks to the city's DOT, for example. Another group produces Streetsblog, an opinionated blog on transportation issues.

Mr. Gorton "has a borderline obsessive sense of urgency," said Paul Steely White, executive director of Transportation Alternatives, an advocacy group formed in the early 1970s. "He dreams about this stuff. He thinks about this stuff in the shower every day. He's taken with this notion that we can dramatically improve our cities, our quality of life and go a long way toward solving the world's problems along the way."

Under Giuliani and Bloomberg's former transportation commissioner, Iris Weinshall, there was no question that city streets existed for cars alone. Despite installing about 200 miles of bike paths, Ms. Weinshall focused on increasing the efficiency of automobile traffic.

In 2003, TOPP was still a small group of programmers and planners with more ideas than practical know-how. The 30-year-old reform group Transportation Alternatives had a staff full of activists who were veterans of New York's bike-lane wars. According to Mr. Steely White, Mr. Gorton said over lunch that "he was very, very passionate about the cause" and had considerable resources to offer. He soon became Transportation Alternative's largest single source of funding, and now provides one-fifth of its \$2.2 million annual budget.

But that funding came with strings. Mr. Gorton wanted a big-picture approach to reform, with an emphasis on livable streets, the idea, widely held among European officials and urban planners, that streets are not just arteries for cars but public spaces to be shared by pedestrians, cyclists and mass transit. He envisioned an larger group called the New York City Streets Renaissance that would publicize these ideas through public events and activist networking.

"He can be kind of a pain in the ass sometimes," Mr. Steely White said fondly. "He has very specific ideas about where the movement needs to go. That can be a little off-putting to some people."

Mr. Gorton hosted events with business improvement district members. He also flew in experts like Danish architect and planner Jan Gehl, and Enrique Peñalosa, who as mayor of Bogota had instituted an annual car-free day.

In 2006, Mr. Gorton launched Streetsblog to push livable streets. "We had this audience of one," said former Streetsblog editor Aaron Naparstek, referring to then deputy mayor for economic development and rebuilding, Dan Doctoroff. "We wanted him to know that New York City transportation policy was really an embarrassment. We were being lapped by London and Paris."

Streetsblog held up European cities' policies-like slower car traffic and bus rapid transit lanes-as examples of best practices. "That's probably been their greatest impact to date," said Jon Orcutt, senior policy adviser for the DOT. "When they go to Europe and they bring back new ideas, we take a look. It just heightens the conversation in general."

MS. WEINSHALL RESIGNED resigned in April 2007. Her replacement, Ms. Sadik-Khan, was more sympathetic to livable-streets ideas. She had overseen long-term transportation planning under Mayor Dinkins, and was known for having a reformist policy bent. She brought in top aides from Streets Renaissance. In line with PlaNYC, Mayor Bloomberg's 25-year scheme for managing the city's growth, Ms. Sadik-Khan has started enacting those plazas and bike lanes proposed by Mr. Gorton's campaign.

Gale Brewer, a councilwoman representing the Upper West Side, credits Mr. Gorton with building a constituency for the changes. "Janette did it, but she couldn't have done it without the support of Mark and TA."

Mr. Gorton had produced results, earning him the grudging respect of more veteran activists, according to Mr. Steely White of Transportation Alternatives. "He won over people who initially saw him as a pushy billionaire type."

Inside the DOT, Streetsblog is considered part of the mainstream media, according to Mr. Orcutt. They have been effective at "giving voice to the constituency for these projects when these things are being debated." But even Mr. Gorton finds life difficult without a car-he confessed, sheepishly, to owning a Chevy Suburban, citing his four children. "I recognize it's a sin every time I get into it, but until the world is better planned and there are better transportation options, there's a certain amount of necessity for it."

Still, Mr. Gorton is no limousine liberal, according to Ms. Brewer, who says she often spots him riding around the Upper West Side with his daughters. "He has a bike that fits them all."