

**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
TOM MONDAY**

SUBJECT TO PROTECTIVE ORDER
FILED UNDER SEAL

I, Tom Monday the undersigned, hereby declare:

1. I am over twenty-one (21) years of age and am of sound mind. I have personal knowledge of the facts stated herein, I am competent to testify thereto, and if called to testify, I could and would testify to the following.

2. I am currently Director of Partner Relations at Lime Wire LLC (“Lime Wire”). I have held this position since June, 2008.

3. In partnership with independent artists and record labels, Lime Wire LLC operates an online store (the “LimeWire Store,” located at <www.store.limewire.com>) where users can purchase music downloads. The music offered for sale from the LimeWire Store comes from more than 20,000 independent music labels with more than one artist on their rosters and more than 100,000 independent artists who operate through their own label and/or have only one artist on their roster. In total, the LimeWire Store offers some five million songs for sale from the

independent artist community. Each song is offered and sold under a written agreement between Lime Wire and the artist, label and/or record label aggregator.

4. The labels and artists who sell music through the LimeWire Store often work with Lime Wire to promote and advertise their music on the LimeWire software homepage. A true and correct copy of a screen shot showing one such promotional effort on the LimeWire software homepage is attached as Exhibit A.

5. To help promote independent artist content available at the Lime Wire Store, the company has undertaken a number of other efforts. Lime Wire has independently produced, paid for, and distributed 23 "Live at Lime" albums of live music by independent artists whose music is available from the online store. Each such album contains three to five songs. Lime Wire promotes these albums through the LimeWire software, and also offers them for sale on the online store. As of June 14, 2010, approximately 7,789 "Live at Live" albums have been downloaded. Many of the "Live at Lime" artists have chosen to make a "Live at Lime" song available for free online distribution.

6. In addition, Lime Wire has compiled and distributed 20 "Ear to the Ground" sampler albums, each with eight to twelve songs by eight to sixteen separate artists. Some of these artists also have work available for sale in the LimeWire Store, though some do not. Lime Wire makes the "Ear to the Ground" samplers available to users of the LimeWire software through free online distribution. It also makes the "Ear to the Ground" samplers available to users of the LimeWire Store in the same manner. The artists and labels involved approve the free online distribution of their works by Lime Wire. Lime Wire has agreements of this sort with approximately 300 artists for inclusion of their works in the "Ear to the Ground" samplers and authorization for distribution of the "Ear to the Ground" samplers through free online distribution. As of June 14, 2010, approximately 267,090 "Ear to the Ground" sampler albums have been downloaded through authorized free online distribution.

7. Lime Wire also partners with labels to promote their artists as “Featured Artists” on the homepage of the LimeWire software. Each week, “Featured Artist” campaigns link to a page where users can purchase the artist’s albums and view their tour dates. Many such “Featured Artist” campaigns include a free sample track for download to both users of the LimeWire software and users of the LimeWire Store.

I HEREBY DECLARE and certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed this 18 day of June 2010 in New York, New York.


