

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; ARISTA MUSIC, fka BMG MUSIC; CAPITOL RECORDS, LLC fka CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY MUSIC ENTERTAINMENT fka SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,

Plaintiffs,

-against-

LIME GROUP LLC; LIME WIRE LLC; MARK GORTON; GREG BILDSON; and M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

06 Civ. 05936 (KMW)
ECF CASE

DECLARATION OF CHARLES CIONGOLI ON BEHALF OF UMG RECORDINGS, INC., INTERSCOPE RECORDS, AND MOTOWN RECORD COMPANY L.P.

I, Charles Ciongoli, hereby declare as follows:

1. I am currently employed as the Executive Vice President and Chief Financial Officer for Universal Music Group, North America. I have held that position or a similar position at all times relevant to this declaration. I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called as a witness.

2. The Universal Music Group ("UMG") is the colloquial name given to the group of music related companies owned by Vivendi S.A. UMG is the largest music group in the

world and consists of record companies, music publishing companies, and manufacturing and distribution companies. I am responsible for the financial activities of UMG's North American Operations, which includes the three UMG plaintiffs in this action: UMG Recordings, Inc., Interscope Records, and Motown Record Company L.P ("the UMG Plaintiffs"). I am familiar with the UMG Plaintiffs' practices and procedures for developing, exploiting and distributing sound recordings and the costs and revenues associated therewith. I am also familiar with the process by which the UMG Plaintiffs account for income and costs in connection with the sound recordings they produce, distribute and offer for sale to the public, and the manner in which the UMG Plaintiffs keep, maintain and account for their records with respect to such income and expenses.

3. I understand that this declaration is to be submitted to the Court in connection with requests for discovery from the UMG Plaintiffs by Defendants Lime Wire LLC, Lime Group LLC and Mark Gorton (collectively "Defendants" or "Lime Wire"). In connection with this declaration and the matters set forth herein, I have the following understandings:

- I understand that the present lawsuit has been pending for nearly four years, and that during that time the UMG Plaintiffs alone have already produced more than 1.3 million pages of documents;
- I also understand that Plaintiffs have to date identified in excess of 10,000 sound recordings as at issue in this case, with more than 3,000 attributable to the UMG Plaintiffs;
- I understand that Defendants seek production of the UMG Plaintiffs' documents concerning revenues and profits (such as accountings, royalty statements, and any

- other documents relating to revenues and profits) in connection with their exploitation of their copyrighted sound recordings that have been infringed by Lime Wire; and
- I further understand that Defendants have argued that their requests are reasonable because they seek only those documents “sufficient to show” revenue, costs, net profits, gross profits, and other financial information for each work at issue.

4. As explained below, given the scope of Lime Wire’s infringement, locating, collecting, and reviewing such materials would be a nearly impossible undertaking. Lime Wire’s requests encompass the documentation about the costs and receipts involved in the exploitation of recorded music—the core business of the UMG Plaintiffs. The UMG Plaintiffs create and maintains numerous different types of documentation relating to every record or album that it releases. Locating, collecting, and reviewing all such documentation for a broad range of sound recordings would require a full-time staff working for many months, thousands of hours of employee time, additional time from in-house and outside attorneys to oversee the process, and would be hugely disruptive to the UMG Plaintiffs. The costs associated with such a production would be dramatic.

5. The process of releasing a sound recording for sale to the public is an extremely lengthy and involved process that involves a number of categories of both income and expenses. At each stage of this process, each source of income and cost is accounted for and recorded. Dozens (if not hundreds) of broad categories of income and expense records are generated in connection with a single album. And for each of those categories, there may be literally hundreds, if not thousands, of pages of individual records.

6. By way of example, for a typical album, I would estimate that tens of thousands of pages of income and expense records are generated. Such records may include:

(a) Signing an Artist: There are a large number of attendant expenses in connection with the signing of an artist and execution of a recording agreement. These include A&R (“artist and repertoire”) expenses, signing costs, and other miscellaneous transaction costs associated with the negotiation, drafting and ultimate execution of the recording agreement. Documents reflecting those expenses may include correspondence, invoices, vouchers evidencing advances paid to artists, and receipts for travel, meals or entertainment.

(b) Creating an Album: While normally the record label is not involved in the creative process (i.e., the actual creation of the sound recording), it almost always provides the funding for the recording process. For example, generally an artist will submit a recording budget which will include estimated costs for studio time, musicians, producers, and equipment rental. Once the budget is approved by the record label, purchase orders for these goods or services will be issued and thereafter invoices are received and paid. These expenditures are coded with a specific project number assigned to that artist for a particular album (and not for a single recording). The files containing the back-up documents for these expenditures (e.g., the purchase orders) are also maintained according to that project number. A summary of these expenditures are reflected on the artist royalty statements. Thus, these expenses cannot be traced to a specific recording, but rather only to the project number assigned to the artist for that album. The creation, production and recording of an album is usually an expensive process, and there are often a large number of documents reflecting those costs. Although it would be difficult to catalog each and every type of expense, among the documents that may be generated in connection with the initial production of the album are: correspondence with studios or talent; studio invoices for in-studio session time; invoices, receipts, or purchase orders for the purchase or rental of musical or technical equipment; travel receipts; catering receipts; records reflecting

money paid to any person employed to assist with the production or recording of an album (including producers, technicians, or other assistants); budgets; checks reflecting any payment made to any person in connection with these expenses; and checks, correspondence, and invoices; the cost of creating the graphic designs for the CD cover, as well as writing and designing the liner notes and label copy for an album.

(c) Post-Recording Marketing: After an album has been recorded and delivered to the record label, the label may be responsible for additional payments due upon delivery of the album. At this point, the record label's marketing and promotion departments are enlisted to prepare a complete media package to launch the release of the album, including, but not limited to, artist photo shoots, creation of a press kit, and the selection of the first single release. In connection with the release of the first single on an album, there are also costs relating to video production (including payments to video production companies; for talent, props, filming and editing; for the use of a particular location, and for any post-production work); promotional touring; and a host of advertising and other promotional expenses ranging from expenses incurred in connection with the creation of the advertisement such as photo shoots and artwork, to the creation and distribution of promotional materials such as in-store displays, promotional copies of records, and posters, to the costs associated with placing an advertisement in a newspaper or magazine. The record label may maintain expense records related to all aspects of the marketing process, including, without limitation, invoices, checks, receipts, requisition requests, correspondence, and promotional materials. For any single record, this may amount to thousands of pages of documents.

(d) Distribution and Marketing: Part of the marketing process is to promote the first single release and develop interest in the artist and the album. To accomplish this goal,

the record label's promotion and sales departments conduct meetings nationwide with popular radio and television stations as well as retailers to promote the album release and solicit orders for units of the album. When a retailer or vendor places an order for an album, whether electronically or manually, the record label records that sale in an electronic database. These orders are then recorded on the general ledger and summarized on a daily, weekly, and monthly basis. Sale order entries are organized by purchaser or retailer (i.e., ABC Record Store - 450 units). The record label can receive thousands of sales invoices on a daily basis. The back-up documentation for sales invoices received from retailers is maintained according to retailer. Again, only album sales are reflected—not sales of any particular recording on an album. Additionally, the record label accounts for the costs of distributing and manufacturing an album. These include costs for creating an album's artwork, pressing the album, printing the materials that accompany the album, and storing the finished albums.

(e) Licensing: In addition to the revenue generated from the sale and distribution of an album, the record label may also receive licensing revenue. Licensing activity may range from licenses of recordings for use in third party compilations to licenses for the use of songs in television or motion pictures. The record label maintains files relating to licensing, including all correspondence and agreements that may be received or generated. Proceeds from licensing are reported to the royalty department and tracked according to royalty participant.

(f) Digital Exploitation: Additionally, albums or individual recordings may be distributed through digital means, for instance as permanent downloads sold over the internet, as ringtones for mobile phones, or as part of a streaming music service. The record labels receive periodic payments and accountings for digital sales and exploitation from its digital distributors.

7. The UMG Plaintiffs also typically pay royalties to artists and other royalty participants (e.g., producers) pursuant to the artist agreement and other agreements. These royalties are reported in statements prepared and rendered twice a year. In the normal course of business, compiling all of the documentation underlying a single royalty statement, covering only sales information for sound recordings for a six-month period, is a very lengthy process. But even these artist royalty statements—each of which is the product of hours and hours of employee time—do not include the level of detail that Defendants here request. Artist royalty statements reflect only those revenues and recoupable costs that are contemplated in the artist’s particular recording agreements. While some of the costs in creating an album are recoupable from royalties payable to artists, many costs are not recoupable and thus are not reflected in a typical artist royalty statement. The recoupable costs are defined according to an individual artist’s agreement, and it is only those particular recoupable costs that an artist’s royalty statement reflects. (For instance, significant costs like manufacturing and marketing are typically not recoupable, and so are not reflected in the artist royalty statements.) Thus, while the royalties department at UMG collects and compiles some sales and costs data, it does not approach the level of detail that Lime Wire here requests. And yet even compiling and collecting that subset of data for a particular artist takes months.

8. In addition to the sheer volume of material requested by Lime Wire, there are additional serious logistical issues that need to be considered.

(a) First, in order to gather all of the records reflecting or evidencing all of the income and expenditures relating to an album, the UMG Plaintiffs would first have to conduct research to determine the project number assigned to the album and locate all of the back-up documentation connected to that project number for each stage of the record release process.

This is problematic because records reflecting the different stages of the record release process are kept in different locations and, in any event, are not song specific.

(b) Second, where certain records are kept will also be governed by when those records were generated. Many documents are maintained in storage facilities and are not organized by artist or album. For example, sales invoices are kept according to the retailer. Therefore, someone would have to sort through virtually hundreds and hundreds of boxes of documents to find the back-up income and expense records connected to a specific project number.

(c) Third, UMG (and UMG Plaintiff UMG Recordings, Inc.) have labels, divisions and offices throughout the country, including in New York (Universal Motown, Universal Republic, Island Def Jam, Verve, Decca Classics), Santa Monica (Interscope, Geffen, A&M, Dreamworks, Universal Music Enterprises), Universal City (royalties), Woodland Hills (Universal Music Latin Entertainment), and Nashville (Universal Music Nashville). Each office has its own staff and files that would have to be searched.

(d) Fourth, much of the information sought by Lime Wire is not maintained in physical files but is only maintained electronically. The cost associated with creating and searching the electronic databases of all potential custodians would be prohibitive. Lime Wire's requests go to virtually every single aspect of the UMG Plaintiffs' business, so it would be impossible to create a reasonably limited custodian list. Conducting a search of the electronic files of every person who is likely to come across an income or cost item for the thousands of tracks at issue in this case would be staggeringly expensive.

9. The fact that Lime Wire asks for documents "sufficient to show" this extensive revenue, costs, royalties, "net profits," and "gross profits" does not change my opinion on the

burdensomeness of this exercise. On rare occasions, when forced to do so in defending against copyright damages claims, UMG has had to undergo the significant, onerous burden of compiling this information in order to prepare a profit and loss statement for a single recording reflecting the kind of information Defendants here seek. Staff estimates reflect that it generally takes several departments hundreds of hours to create such a statement, based on past experiences covering only one work. In light of those estimates, it would be impossible to compile such information into similar statements for the thousands of works at issue without dedicating a full-time staff of employees working around the clock. Even then it would take several months if not years to complete.

10. I understand that Defendants contend the UMG Plaintiffs must be able to produce financial material related to the works at issue works because of contractual obligations to allow artists to audit their royalty accounts. But in an artist royalty audit, the artist's representatives are not reviewing the broad categories of information sought by Lime Wire. They are reviewing the artist's royalty accounts and statements to ensure (for example) that the artist's correct royalty rates are applied, and that the recoupable costs are accurately reflected. Artist royalty audits do not review the significant non-recoupable costs the UMG Plaintiffs incur in developing and exploiting sound recordings. Moreover, the right to audit an artist's royalties is usually constrained in the recording agreement to a limited number of audit opportunities. Audit rights are so constrained in part because of the burden the audit imposes on the UMG Plaintiffs to provide information to artists' auditors. A single audit can span periods of years and involve many hours of employee time to provide an auditor with requested information.

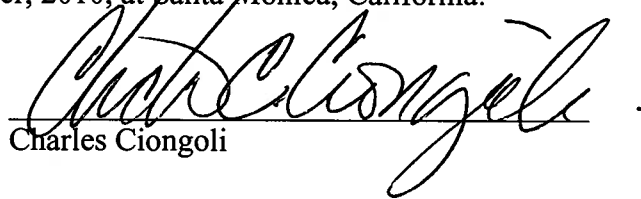
11. I also understand that Defendants contend the UMG Plaintiffs must be able to readily produce the requested financial information because UMG is required periodically to

report on its financials. UMG does not report its revenue, costs or profits to its parent company on a song-by-song, album-by-album, or even label-by-label basis. Each individual label's finance department is responsible for reporting its label-wide profits and losses to my department, where it is compiled into further summary reports that are eventually consolidated into financial reports reflecting the performance of UMG's business as a whole.

12. I understand that Lime Wire relies on a discovery order in other litigation between UMG and DivX, Inc. to contend that Lime Wire should be due extensive discovery here. But UMG did not produce the broad categories of financial information Lime Wire requests here in *DivX*. *DivX* involved musical compositions and videos as well as sound recordings. For the sound recordings at issue in *DivX*, UMG produced revenue reports detailing revenue received from digital exploitation and from film and TV licensing. The UMG Plaintiffs have offered in this case to provide a report detailing the revenue received from digital exploitation of the sound recordings identified thus far as having been infringed by Lime Wire. The proposed report details revenues received from the digital exploitation of the recordings at issue for the last five years, including revenue from sales of permanent downloads and from subscription and other streaming services. As explained above, it would be extremely difficult and burdensome to provide the additional detailed financial information Lime Wire seeks.

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

Executed this 8th day of September, 2010, at Santa Monica, California.


Charles Ciongoli