

MEMO ENDORSED

DOCUMENT ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/7/10

Arista Records LLC et al v. Lime Wire LLC et al

Doc. 384

WILLKIE FARR & GALLAGHER LLP

MARY EATON
212 728 8626
meaton@willkie.com

787 Seventh Avenue
New York, NY 10019-6099
Tel: 212 728 8000
Fax: 212 728 8111

The within application to compel compliance with a subpoena served by defendants on non-party RIAA is denied, for the reason that the court lacks jurisdiction to enforce a subpoena issued out of the U.S. District Court for the District of Columbia. The court is not persuaded that an exception to the jurisdictional rule applies in this case.

SO ORDERED: DATE: 12/7/10
Debra Freeman
DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE

November 19, 2010

VIA HAND DELIVERY

The Honorable Debra C. Freeman
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Arista Records LLC, et al. v. Lime Wire LLC, et al.*, No. 06 CV 5936 (KMW) (DCSD)

Dear Judge Freeman:

Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants"), submit this letter brief in support of their application for an Order, pursuant to Federal Rules of Civil Procedure 16 and 45, overruling the objections asserted by the Recording Industry Association of America (the "RIAA"), and directing the RIAA to produce documents responsive to the subpoena served on it by the Defendants on September 23, 2010 (the "Subpoena"). A copy of the Subpoena and the Responses and Objections to the Subpoena served by the RIAA on Defendants on November 4, 2010 (the "RIAA Objections") are filed herewith as Exhibits A and B.

Background

In objecting to Defendants' subpoena, the RIAA purports to be a "non-party" who should not be burdened with the obligation of producing documents or a witness to sit for deposition. The reality, however, is far different. As the RIAA's website explains, it "is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world." (See Ex. C.) Those music labels, of course, are the named Plaintiffs in this case — Sony Music Entertainment, EMI Recorded Music, Universal Music Group, and Warner Music Group. Of the 23 members of the RIAA's Board of Directors, 16 are representatives of record companies that are either named Plaintiffs here or are wholly owned subsidiaries of those Plaintiffs. (Id.) Indeed, Wade Leak, Deputy General Counsel at Sony Music Entertainment, has testified that the four major record labels that are Plaintiffs in this case "coordinate[d]" their "anti-piracy efforts through the [RIAA]." (Ex. D, Transcript of Jury Trial Day