

EXHIBIT A

115JARIC Conference
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARISTA RECORDS LLC, et al.,
Plaintiffs,

v.

06 Civ. 5936 KMW

LIME WIRE LLC, et al.,
Defendants.

-----x

January 5, 2011
2:06 p.m.

Before:

HON. KIMBA M. WOOD,

District Judge

APPEARANCES

MUNGER, TOLLES & OLSON, LLP
Attorneys for plaintiffs
BY: KELLY M. KLAUS, Esq.
JENNIFER PARISER, Esq.
SCOTT ZEBRAK, Esq.
Of counsel

WILLKIE, FARR & GALLAGHER, LLP
Attorneys for defendants
BY: JOSEPH T. BAIO, Esq.
TARIQ MUNDIYA, Esq.
TODD G. COSENZA, Esq.
ROGER NETZER, Esq.
Of counsel

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1 MR. BAIO: Thank you, your Honor.

2 THE COURT: And any reply is due March 7th. All
3 right. Is there anything else you would like to take up now?

4 MR. KLAUS: Your Honor, yes, there are a couple of
5 additional points. One is just on the direct infringement
6 motion, would it also be the case that we would file our 56.1
7 statement simultaneously with that?

8 THE COURT: Yes.

9 MR. KLAUS: Thank you. There are three other matters
10 related to scheduling, your Honor, that I would like to take
11 up, if I could.

12 One of them has to do with, as your Honor knows,
13 shortly before the Christmas holiday we had a telephone
14 conference with your Honor regarding a motion to disqualify
15 defendants' counsel. I have been in New York this week taking
16 depositions related to that motion.

17 Our motion is due on Friday, your Honor, and within
18 the last -- on Monday evening of this week and then this
19 morning, in the middle of two depositions we have been provided
20 some additional documents. The additional documents show that
21 in February -- sorry -- in October of 2008, the law firm
22 Willkie Farr was approached by the Lime Wire defendants, asked
23 to represent the Lime Wire defendants in connection with this
24 litigation which was then pending before Judge Lynch.

25 A former Cravath associate, now Willkie partner who
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1 had worked on the case raised the issue in internal e-mails
2 about a potential conflict. We don't know from the documents
3 we have so far how that issue was resolved and how that may
4 impact the motion. We don't know whether we will need some
5 additional depositions or how to incorporate that into our
6 briefing.

7 I had asked Mr. Netzer, who is here from the Willkie
8 Farr firm handling this issue, whether there would be an
9 objection to our having one additional week from this Friday to
10 file our motions so we can consider whether to take any
11 additional discovery or whether and how to incorporate the
12 documents into our motion. I believe they have no objection to
13 that.

14 THE COURT: Let me ask Mr. Baio, how is it that this
15 document or documents were provided so late?

16 MR. BAIO: Your Honor, may I turn this over to Mr.
17 Netzer? He is the one handling that aspect of this matter.

18 THE COURT: Yes.

19 MR. BAIO: This is my partner, Roger Netzer.

20 THE COURT: Thank you.

21 MR. NETZER: Your Honor, since the time that we spoke
22 on phone, Willkie has produced responsive documents and,
23 indeed, made extensive document productions, but in the course
24 of preparing for the depositions which were originally
25 scheduled for two weeks ago, Mr. Klaus, certainly through no

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1 fault of his own, had to adjourn those depositions and we
2 rescheduled them for this week.

3 In the course of diligencing our production, have made
4 several supplemental productions. The document that we
5 produced the night before last is the only document that was
6 responsive to any of the document requests. The additional
7 documents we produced this morning were produced in response to
8 a document request made yesterday evening.

9 THE COURT: Okay. Let's just have an answer to my
10 question, and then you can expand as you like.

11 MR. NETZER: Why we didn't produce them?

12 THE COURT: Why was that one document produced so
13 late?

14 MR. NETZER: The reason it was produced so late, your
15 Honor, I only became aware of it approximately an hour before I
16 e-mailed it to Mr. Klaus.

17 THE COURT: How did that happen?

18 MR. NETZER: That reason that happened, as we renewed
19 our preparation of the witnesses, one of them said something
20 that caused me to think there might be such a document, and we
21 conducted another search for it.

22 THE COURT: This sounds so important with respect to
23 the conflict of interest, it seems close to inconceivable that
24 this would have come to light so late.

25 MR. NETZER: The reason -- I don't believe it is

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1 important, but I appreciate your Honor's concern that it would
2 be -- the reason it came to light so late, your Honor, is while
3 Mr. Klaus may be correct about some aspect of the conclusion,
4 what did not happen at the time in October of 2008 is counsel
5 hasn't changed.

6 Indeed, counsel changed subsequently almost two years
7 later to Wilson Sonsini. None of the persons, your Honor, who
8 are working on the Lime Wire case today were aware of this and,
9 indeed, Mr. Klaus has inquired about that at the deposition in
10 the last two days. This was not a matter that was undertaken
11 and --

12 THE COURT: Wait. The person, the name of the man --

13 MR. NETZER: Jeffrey Korn, your Honor.

14 THE COURT: All right. One would think that your firm
15 would have spoken to Mr. Korn right away and that he would have
16 said well, I've raised the issue or -- no?

17 MR. NETZER: Yes, your Honor. Indeed, he did raise
18 the issue many times. We produced those documents. What we
19 did not produce was this, the fact that he responded to an
20 e-mail back in 2008. Your Honor, he did not possess that
21 e-mail.

22 We researched his e-mails, and we have found it by an
23 idea I had the day before yesterday, and it wasn't until
24 preparing Mr. Korn, in the course of his deposition
25 preparation, I believe it was three days ago or two days ago,

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1 that I realized that he was referring, that he was mentioning
2 some additional time when he had raised the issue in 2008.

3 That document, your Honor, he did not possess. None
4 of the custodians we searched possessed it. We went and did
5 another kind of search. That is what happened, your Honor.

6 THE COURT: I understand. Yes, one more week from
7 this Friday is fine.

8 I have a concern that counsel expect more of a federal
9 court than is possible, and by saying that, I mean to focus you
10 on your 56.1 statements. Mr. Klaus mentioned that you will be
11 potentially giving the court CDs to look at, other information
12 to look at presumably for the court to ferret out whether a
13 material fact is in dispute or not. This is quite likely a
14 function for a special master rather than a judge if that is
15 what you have in mind.

16 MR. KLAUS: Just to be absolutely clear on the 56.1
17 statement, we think this would be very akin to what was placed
18 in evidence at the summary judgment stage with respect to the
19 30 sound recordings. The CDs that would contain the packets,
20 the digital packets showing the filed --

21 THE COURT: The court, of course, has reviewed the 30.
22 You're now talking about thousands?

23 MR. KLAUS: We think there would be, your Honor, no
24 dispute about the overwhelming majority of the thousands.

25 THE COURT: If there is a material fact in dispute, I
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1 expect counsel to find it. You should not expect a court to go
2 through CDs in order to try to figure it out.

3 MR. KLAUS: We wouldn't file it if we thought there
4 was a material issue of fact in dispute. If the defendants
5 believe there is a material issue of fact in dispute with
6 respect to any of those, we think it is their burden, as the
7 party opposing summary judgment, to bring those to the court's
8 attention.

9 THE COURT: Let's have a Plan B. I don't like Plan A.

10 The plan I'd like to have you follow is this: When
11 you file your 56.1 statement, three weeks later I want the
12 lawyers who worked on that to meet with the lawyers at Willkie
13 Farr who will be working on the response and go through each
14 one of them, show one another your hand, your documents, your
15 CDs, whatever, and come to some resolution that you agree upon.

16 If you don't agree, then I'd be prepared to put
17 lawyers on the stand, look at CDs and so forth, but I don't
18 want a situation where lawyers fail to attempt to work things
19 out reasonably among themselves before sending it to the court.

20 MR. KLAUS: That is fine with us, your Honor.

21 THE COURT: Good! Okay.

22 MR. BAIO: Us as well.

23 MR. KLAUS: That is now Plan A will be three weeks.

24 THE COURT: Good. Thank you. All right. I have
25 nothing else to raise.

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1 MR. KLAUS: I have two other issues, your Honor. They
2 both relate, your Honor, to orders that were entered by
3 Magistrate Judge Freeman on December 29th, which was a week ago
4 Wednesday.

5 One of them is just an issue with respect to the
6 timing of our objection. Your Honor had referred an issue to
7 Judge Freeman regarding the proposed interpretation of a
8 section of the Copyright Act that deals with the availability
9 of statutory damages called Section 412.

10 On December 29th Judge Freeman, the ECF system sent
11 out an order that she had signed the preceding day that adopted
12 the defendants' interpretation, and that provided that we had
13 the opportunity to file an objection in accordance with Rule
14 72. The issue arises, the only reason I bring this issue up,
15 we do intend to file an objection with your Honor. The ECF and
16 the docket show that the objection is due January 14th, 2011.
17 That is two weeks from the date the judge signed the order plus
18 the three days that are added under Rule 6 (d) for service.

19 We just, because of the importance of the timing
20 issues, we actually think because the order was entered on the
21 docket and served on us on December 29th, the timing
22 calculations take the date for our response to Tuesday, January
23 the 18th. I have conferred with counsel for the other side.
24 They, without agreeing to our calculation, don't object to the
25 time for our objection to be filed on January 18th.

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