

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 ARISTA RECORDS, LLC et al., : 06-CV-5936
5 Plaintiffs, :
6 v. : November 1, 2010
7 LIME WIRE LLC, et al., : 500 Pearl Street
8 : New York, New York
9 Defendants. :
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10 TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY DISPUTES
11 BEFORE THE HONORABLE DEBRA C. FREEMAN
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

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25 Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE COURT: Okay. I may be just -- it's getting to
2 be a long conference and I may be losing my ability to focus on
3 what everybody is saying but let's take -- and defendants'
4 counsel, if you think I'm missing your point, please say,
5 Judge, you're missing our point. It could well be.

6 If you take a time line -- I'll move it in this
7 direction -- from the beginning -- the beginning of time up
8 through the present and there's some point along the way where
9 you have evidence of a particular download and a particular
10 song and you've captured evidence of that happening at a
11 certain point and you intend to rely on it and you have reduced
12 it, do you also have evidence of the capture of a download
13 reported at a certain point in time earlier than that that you
14 have not provided to defendants?

15 MR. POMERANTZ: I don't believe we've searched for
16 that, so it's hard for me to make a representation to this
17 court because we don't think it's legally relevant. And,
18 again, what their point is that we have not offered proof that
19 the first recording happened after we registered the copyright.
20 And we're saying, you're right. We haven't offered proof that
21 the very first time -- the very first Lime Wire user
22 downloaded --

23 THE COURT: But what if you have one in your
24 possession that is earlier -- an earlier capture of download
25 information so you can pinpoint it in time and it happens to be

1 prior to this date of registration and it would actually
2 demonstrate not only have you not proven but you cannot prevail
3 on that claim and you had that in your possession and you did
4 not turn that over? Is that what defendants are asking for?

5 MR. BAIIO: Yes, Your Honor, it is.

6 MR. POMERANTZ: But, Your Honor, it would be legally
7 irrelevant because Your Honor was right on the right track.
8 When user number two downloads the recording that is a separate
9 act of infringement under the copyright law. It's crystal
10 clear. And Lime Wire is jointly and severally liable with each
11 user that downloaded a particular recording but those users are
12 not jointly and severally liable with each other because they
13 didn't copy from each other.

14 So Lime Wire is going to be -- so each one is a
15 direct act of infringement -- a separate act of infringement.
16 We will show in our legal brief to Judge Wood that therefore
17 because each of these are separate acts of infringement and we
18 know that every one that we're proving up happened after we
19 registered the copyright, that's all that matters. That is
20 when that investigator downloaded those recordings it was after
21 the copyrights were registered. That's undisputed and we're
22 going to rely on that to say that is a separate act of
23 infringement --

24 THE COURT: You're asking for statutory damages for
25 each act of infringement?

1 MR. POMERANTZ: The way the law works is it's per
2 work. Here it's a recording. Per infringement, so --

3 THE COURT: So you are looking for a calculation of
4 damages based on some number of individual infringements of
5 individual works. You have to have the number --

6 MR. POMERANTZ: Correct.

7 THE COURT: -- to do the math.

8 MR. POMERANTZ: Correct.

9 THE COURT: And those infringements all had to have
10 happened. You had to have -- to be able to show that they
11 happened and I think defendants are asking for the information
12 as to -- for any given song the first one of those on which you
13 planned to --

14 MR. POMERANTZ: No. No. What they're asking for is
15 the very first time, the very first Lime Wire user downloaded a
16 particular recording and then they want to argue that if that
17 happened before registration, then we're at up for that
18 entire -- no matter -- even if millions of Lime Wire users
19 thereafter downloaded the same recording they say we're out of
20 luck. We say as the legal proposition that's wrong and that's
21 the issue that will be --

22 THE COURT: But if that proposition is right -- I'm
23 not going to say now whether it's right or wrong -- if that
24 proposition is right and you are in possession of information
25 about a download that happened preregistration of a particular

1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.



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5 _____
6 Shari Riemer

7 Dated: November 3, 2010
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