

EXHIBIT 5

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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3 ARISTA RECORDS, LLC, et al.,

3
4 Plaintiffs,

5 v. 06-CV-5936 (KMW)

5
6 LIME WIRE, LLC, LIME GROUP
6 LLC, MARK GORTON and GREG
7 BILDSON,

7
8 Defendants. Conference

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9 New York, N.Y.
10 June 7, 2010
10 11:06 a.m.

11 Before:

12 HON. KIMBA M. WOOD,
13
13 District Judge

14 APPEARANCES

15 MUNGER, TOLLES & OLSON LLP
16 Attorneys for Plaintiffs
16 BY: GLENN D. POMERANTZ, ESQ. KELLY M. KLAUS, ESQ.

17 COWAN, LIEBOWITZ & LATMAN, PC
18 Attorneys for Plaintiffs
18 BY: ROBERT W. CLARIDA, ESQ.

19 RECORDING INDUSTRY ASSOCIATION OF AMERICA
20 LAW DEPARTMENT
20 For Plaintiffs
21 BY: JENNIFER L. PARISER, ESQ.

22 WILSON, SONSINI, GOODRICH & ROSATI
22 Attorneys for Defendants
23 BY: MICHAEL S. SOMMER, ESQ.
23 TONIA O. KLAUSNER, ESQ.
24 COLLEEN BAL, ESQ.

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1 have the absolute right to do, and then we'll go starting --
2 putting together our list. In other words, from the date your
3 Honor rules on that issue and the few other issues, give us 45
4 to 60 days from that time period, from that ruling, and we will
5 get them the pieces of information that we have identified.

6 THE COURT: Now suppose I were to rule that you can
7 add to that list. How far into the future or into the past do
8 you want to go?

9 MR. POMERANTZ: Well, we would be --

10 THE COURT: Do you have a cutoff in mind?

11 MR. POMERANTZ: No, I don't, your Honor, because what
12 we don't want to do is to come back and have a second trial on
13 new works that were infringed. It just makes no sense.
14 There's been two, three years of infringement since the time,
15 and under their approach we'd have to retry that issue. I
16 mean, we'd obviously have -- have, you know, collateral
17 estoppel, res judicata issues, but we'd have to have another
18 trial, and that doesn't make any sense.

19 We think -- so we intend to advance, you know, come up
20 to as current as we can, but we also want to go back to the
21 past where we now, as we're reviewing the evidence, see
22 additional recordings that have been infringed. We don't want
23 to be precluded from going back earlier than 2008. But we will
24 give them a definitive list. And I don't see any prejudice to
25 them other than it raises their liability, that kind of

1 prejudice. But the evidence, in this kind of a case, it's not
2 as if it's unique evidence of infringement of this recording
3 versus that. You know, it's all the same conduct that they
4 engaged in.

5 So again, I'm not asking you to rule today. We have
6 a -- we're ready to brief that issue, and we're confident of
7 our position on that issue. But once your Honor rules,
8 whatever -- we will add whatever we're going to add and we'll
9 give them a list, we'll give them ownership documents, and
10 we'll give them proof of direct infringement. And then it's
11 their turn. And I really do think at the end of the day, how
12 in the world are they going to, in this case, really make any
13 material challenge to our ownership of copyrights or to the
14 fact that LimeWire was a system that had a whole bunch of
15 direct infringements? It just it seems to me that those are
16 two issues that we should stipulate to before trial. It's just
17 not something that needs to be -- we have to go through work by
18 work and show those kind of things because we know how the
19 system operates, and we know what a record company's business
20 is. So I really don't think, at the end of the day, we're
21 going to have to spend huge time on discovery on these issues.
22 We should stipulate to them before trial. And then we should
23 have a trial on really the issues that remain disputed.

24 One item I forgot to mention, your Honor, most of the
25 information at the end of that 45 to 60 days will come from us

1 to them, but there is one piece of information that we ask that
2 comes from them to us, and that is evidence of net worth, of
3 the net worth of the defendants. Under the common law
4 copyright claims and unfair competition claims, we're entitled
5 to punitive damages, and at this phase of the case, we're
6 entitled to get net worth information. And again, I'm not
7 asking your Honor to rule on that today. It's one of the
8 issues that divides us. And that would be briefed in this
9 first set of issues. I think there's four issues that we
10 identified in our letter. And those four issues would be
11 briefed in the short term. That's in paragraph (B), (B)(1)(c),
12 on page 2 and 3. And so it looks like maybe there's five.

13 THE COURT: Five, right.

14 MR. POMERANTZ: Yeah. And so those issues we would
15 propose that we address through a letter brief and we establish
16 a schedule today for briefing those issues.

17 THE COURT: Yes.

18 MR. POMERANTZ: And then whenever your Honor rules on
19 those issues, we think we should have 45 to 60 days to give our
20 information, they should have 45 to 60 days to give us their
21 net worth information, and then we reverse it and they have 45
22 to 60 days to take whatever necessary discovery they need from
23 us relating to those issues, and we get 45 to 60 days to take
24 whatever discovery from them. When those issues are resolved,
25 we then have whatever short period of time we need for any