

EXHIBIT C

PART 1

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Attorneys for iMesh, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ARISTA RECORDS LLC, et al.

Plaintiffs,

-against-

LIME GROUP LLC, et al.

Defendants.
-----X

06 CIV 05936 (KMW/DCF)

**RESPONSE OF NON-PARTY
iMESH, INC. TO SUBPOENA
AND ACCOMPANYING
DEMAND FOR THE
PRODUCTION OF
DOCUMENTS**

Non-party iMesh, Inc. (“iMesh”), by and through its attorneys, Meister Seelig & Fein LLP, hereby responds to the Subpoena To Testify at a Deposition in a Civil Action dated September 22, 2010 (the “Subpoena”) and the accompanying demand for the production of documents (the “Requests”) as follows:

General Objections

iMesh asserts the following general objections (collectively, the “General Objections”), which are incorporated by reference into each of the following responses to individual Requests for the production of documents set forth in the Subpoena:

1. iMesh objects to the Requests for all of the reasons articulated in Plaintiffs’ letter to Magistrate Judge Debra C. Freeman dated September 27, 2010 (the “9/27 Letter”), attached hereto as Exhibit A.

2. iMesh objects to the Requests on the grounds that iMesh's deposition has already been taken pursuant to a subpoena and notice of deposition dated March 25, 2008 directed to iMesh and iMesh's principal, Talmon Marco. Mr. Marco appeared for deposition, which was recorded by videotape, on April 14, 2008 pursuant to the March 25, 2008 notice of deposition and accompanying subpoena (*see* Paragraph 3 below). Defendants' March 25, 2008 Notice of Deposition with respect to Talmon Marco is attached hereto as Exhibit B. Defendants are not entitled to depose iMesh for a second time.

3. iMesh objects to the Requests on the grounds that the Defendants have already served two (2) subpoenas requesting production of substantially the same documents requested herein from iMesh and iMesh's principal, Talmon Marco, on September 14, 2007 and March 25, 2008. Defendants' September 14, 2007 subpoena is attached as Exhibit H to the above-referenced letter from Plaintiffs to Magistrate Judge Debra C. Freeman dated September 27, 2010 (*See Exhibit A* hereto). Defendants' March 25, 2008 subpoena is attached hereto as Exhibit C. On October 19, 2007, iMesh served responses to the September 14, 2007 subpoena, and on April 9, 2008 iMesh produced documents Bate Stamped IMESH 00001 – 00630 in response to the March 25, 2008 subpoena. IMESH 00001 – 00630. iMesh's October 19, 2007 responses to the September 14, 2007 subpoena are attached hereto as Exhibit D. iMesh incorporates by reference, as if fully incorporated herein, all objections asserted in iMesh's October 19, 2007 responses to the September 14, 2007 subpoena. iMesh also refers Defendants to documents already produced by iMesh to Defendants in this action Bate Stamped IMESH 00001 – 00630. Defendants' service of the Subpoena seeking documents of substantially

the same type and scope of those which Defendants sought and received previously through two prior subpoenas amounts to outright harassment. iMesh is a non-party to the action, and yet has already had to shoulder the heavy burden of locating and selecting a broad range of documents and producing a witness for deposition. Given that history, Defendants are not entitled to continue pursuing iMesh for further documents and testimony through yet another overbroad and unduly burdensome subpoena.

4. iMesh objects to the Requests on the grounds that fact discovery cut-off date has already passed in this action as of April 18, 2008.

5. iMesh objects to the Requests insofar as liability has already been decided in the referenced action by summary judgment, as of May 2008, holding Defendants liable for intentionally inducing the infringement of Plaintiffs' copyrighted works, and the discovery sought by the Requests herein is irrelevant to the sole remaining issue of damages.

6. iMesh objects to the Requests on the grounds that they are overly broad, unduly burdensome, or seek documents not relevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Among other things, the Subpoena is clearly overly broad and unduly burdensome in that it seeks extensive, detailed information over a period of nearly six years with respect to 11,602 sound recordings listed in a spreadsheet which itself runs some 414 pages.

7. iMesh objects to the Requests on the grounds that they seek documents and tangible things already in the possession, custody or control of the parties in this action (the "Parties") or concerning the Parties' own conduct or statements of the Parties

or which are equally accessible to the Parties as they are to iMesh, or which can be obtained more readily from a source other than iMesh.

8. iMesh objects to the Requests insofar as they seek documents that are privileged or protected from disclosure by the attorney-client privilege.

9. iMesh objects to the Requests insofar as they seek documents that are privileged or protected from discovery under Federal Rule of Civil Procedure 26(b)(3), in that the documents were prepared in connection with or in anticipation of litigation or for trial and/or constitute the work product, mental impressions, conclusions, opinions or legal theories of counsel or other representatives of iMesh.

10. iMesh objects to the Requests on the grounds that they seek production of materials and information which contain trade secrets and/or confidential and proprietary information of iMesh and certain other third parties.

11. iMesh objects to the Requests insofar as they seek to impose any continuing obligation on iMesh to produce documents in addition to the obligation expressly provided for in the Federal Rules of Civil Procedure.

12. iMesh objects to the Requests insofar as they purport to impose burdens or obligations that exceed the scope of permissible discovery under the Federal Rules of Civil Procedure or the Rules of the United States District Court for the Southern District of New York.

13. iMesh objects to the Requests on the grounds that they violate Local Rule 26.3(a) of the Southern District of New York in that they contain definitions and/or rules of construction which are broader than the uniform definitions set forth in Local Rule 26.3(c) and (d).

14. iMesh objects to the Requests on the grounds that they seek electronically stored information which is not reasonably accessible because of undue burden and/or cost.

15. iMesh objects to the Requests on the grounds that it has previously had to absorb substantial costs and attorneys' fees in connection with complying with Defendants' previous two subpoenas in this action, and because compliance with the Subpoena would require iMesh to expend substantial additional costs and attorneys' fees. In the event that iMesh is required to comply with the Subpoena, Defendants must first pay all of iMesh's associated actual and anticipated costs, including, without limitation, iMesh's reasonable attorneys' fees.

16. iMesh objects to the Requests insofar as they are unintelligible, vague or otherwise unclear as to the precise documents sought.

17. iMesh objects to the Defendants' use of the terms "any" and "all."

18. iMesh's responses are submitted without waiving, and while specifically preserving, (a) all objections as to the competency, relevancy, materiality and admissibility of the responses or the subject matter thereof, including documents, at the trial of this action, or in any other action or proceeding; (b) all objections to any demand for additional production of documents; and (c) the right at any time to amend or supplement iMesh's responses as more information becomes available.

Specific Responses and Objections

1. All contracts, licenses, or other agreements (including all drafts thereof and any supplements or modifications thereto) between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence, seeks information that is already in the possession, custody or control of parties to this action, and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information. Without waiving the foregoing objections, iMesh directs Defendants to iMesh's October 19, 2007 responses to Defendants' September 14, 2007 subpoena and documents Bate Stamped IMESH 00001 – 00630 previously produced to Defendants on or about April 9, 2008 in response to Defendants' March 25, 2008 subpoena.

2. All communications (including emails) concerning any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence, seeks information that is already in the possession, custody or control of parties to this action, and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information. Without

waiving the foregoing objections, iMesh directs Defendants to iMesh's October 19, 2007 responses to Defendants' September 14, 2007 subpoena and documents Bate Stamped IMESH 00001 – 00630 previously produced to Defendants on or about April 9, 2008 in response to Defendants' March 25, 2008 subpoena.

3. All documents concerning any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand; concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence, seeks information that is already in the possession, custody or control of parties to this action, and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information. Without waiving the foregoing objections, iMesh directs Defendants to iMesh's October 19, 2007 responses to Defendants' September 14, 2007 subpoena and documents Bate Stamped IMESH 00001 – 00630 previously produced to Defendants on or about April 9, 2008 in response to Defendants' March 25, 2008 subpoena.

4. Documents sufficient to show the amounts paid by You to any Plaintiff pursuant to any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence, seeks information that is already in the possession, custody or control of parties to this action, and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information. Without waiving the foregoing objections, iMesh directs Defendants to iMesh's October 19, 2007 responses to Defendants' September 14, 2007 subpoena and documents Bate Stamped IMESH 00001 – 00630 previously produced to Defendants on or about April 9, 2008 in response to Defendants' March 25, 2008 subpoena.

5. All documents sufficient to show the amounts paid by You annually to any Plaintiff for any Song on Exhibit 1.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence, seeks information that is already in the possession, custody or control of parties to this action, and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information.

6. All documents concerning Defendants and/or the LimeWire software application.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information. Without waiving the foregoing objections, iMesh directs Defendants to iMesh's October 19, 2007 responses to Defendants' September 14, 2007 subpoena and documents Bate Stamped IMESH 00001 – 00630 previously produced to Defendants on or about April 9, 2008 in response to Defendants' March 25, 2008 subpoena.

7. All documents concerning any communication (including emails) between You and any person regarding any actual or potential license for the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information.

8. All documents produced in the Grokster Litigation.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information

9. All documents concerning any claims, suits, actions, complaints, or other legal proceedings (whether commenced or threatened to be commenced) against, or any cease and desist letters issued to, You by any Plaintiff concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information.

10. All documents You produced, provided or made available to, or otherwise shared with, any Plaintiff in connection with any claims, suits, actions, complaints, or other legal proceedings (whether commenced or threatened to be commenced) against You by any Plaintiff concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.

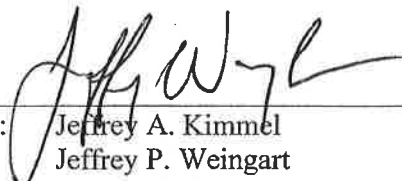
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11. For each of the Songs, documents sufficient to show the total aggregate number of upload views since the Song was made available for upload viewing by You, as well as the total aggregate number of upload views on a daily, weekly, monthly, and yearly basis.

Response: iMesh hereby restates and incorporates each of the General Objections. iMesh objects to this Request as overly broad, vague, ambiguous, and/or unduly burdensome. Further, this Request seeks documents which are neither relevant to the subject matter of this litigation, the issue of damages in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence and seeks information protected from disclosure under the attorney client privilege and/or work product doctrine, as well as highly confidential and proprietary information.

Dated: New York, New York
October 1, 2010

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EXHIBIT A

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A PROFESSIONAL CORPORATION

VIA FACSIMILE (212) 805-4258

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

Re: Arista Records LLC et al. v. LimeWire LLC et al.,
Case No. 06 CV 5936 (KMW)

Dear Judge Freeman:

We are counsel for the record company Plaintiffs in this matter, which Judge Wood assigned to Your Honor for General Pretrial purposes last week (Doc. No. 323). We are writing because a significant issue has arisen within the last several days that threatens the orderly progression of this case toward the January 18, 2011 trial date. Defendants – who already have been adjudicated liable for inducing the mass infringement of Plaintiffs' copyrighted works through the "LimeWire" system (Doc. No. 223), and who are desperate to delay the trial to determine the amount of damages they must pay – last week served *fifteen* document/deposition subpoenas to third parties. The only purpose behind these subpoenas is to delay the January trial date. The subpoenas purport to require the third parties to produce massive quantities of documents across broad categories by this Friday, October 1, and purport to set depositions for next Thursday, October 7. We respectfully request that the Court Order Defendants to withdraw the subpoenas or at a minimum Order that any compliance be held in abeyance pending a hearing on this Motion. We can be available for a conference in person or by phone as the Court prefers. Because time is of the essence, we request that the Court issue an Order before Friday.

11763837.2

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We recognize that this case was just assigned to Your Honor, so some background is in order. This case has been pending since 2006. It was originally assigned to Judge Lynch, who entered orders setting the fact discovery cut-off at April 18, 2008. *See* Exs. A-B (Doc. Nos. 52 & 69).¹ While discovery remained open, Defendants requested and subpoenaed massive quantities of documents from Plaintiffs and multiple third parties. In response to Defendants' requests and subpoenas, Plaintiffs and third parties produced more than six million pages of documents to Defendants. In May of this year, Judge Wood (to whom the case was assigned following Judge Lynch's appointment to the Second Circuit) granted Plaintiffs' summary judgment motion, holding Defendants liable for intentionally inducing the infringement of Plaintiffs' copyrighted works. Judge Wood has set January 18, 2011, as the date for trial on the damages that Defendants will pay on the claims they have been adjudicated liable on, and the merits of Plaintiffs' remaining claims (for vicarious liability and Defendants' fraudulent transfer of assets to hide them from a judgment). Judge Wood made it clear that she has trials scheduled before and after this one, and that the January date is one that the Court intends to hold to. *See* Ex. C at 27:15-17; 28:13-16 (June 7, 2010 Hearing Tr.).

Judge Wood has authorized discovery between now and November 15, 2010 (Doc. No. 319). The Court's re-opening of discovery in advance of the damages trial was not a license for the parties to re-open discovery that could and should have been taken between 2006 and 2008. On the contrary, the Court allowed discovery to proceed during a very narrow window to allow for targeted discovery on a narrow range of issues that Judge Lynch – when he was presiding over the case – had made clear should await a ruling on Defendants' liability (which happened in May of this year). The relevant issues for discovery all relate to matters that are *specific to* the individual copyrighted works (which number in the thousands) that are the basis for Plaintiffs' damages claims. These areas are:

- work-specific discovery regarding Plaintiffs' ownership of the copyrighted works.
- work-specific discovery regarding the direct infringement of those works by LimeWire users
- work-specific discovery regarding the damages that Defendants will have to pay under the statutory damages provision of the Copyright Act.

The requests that Defendants have served on the third parties have nothing to do with any of these limited issues. None of the requests seek documents or testimony regarding the general topics of Plaintiffs' ownership of the works or the direct infringement of those works by LimeWire users, much less requests that relate specifically to ownership or infringement of particular works. When we asked Defendants to meet-and-confer with us last week on these issues, the only relevance that their counsel told us these requests have to the case concerns where in the range of statutory damages their liability should be set. But nothing in Defendants'

¹ In order to get this letter to the Court as soon as possible, we are transmitting this letter by facsimile, and are sending hard copies of the exhibits by messenger. We are sending copies of the letter and exhibits by email to Defendants' counsel at the same time this letter is being faxed.

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broad requests have anything to do with the amount of statutory damages for any particular work. The requests instead are broadly worded to seek documents regarding any aspect of any relationship or potential relationship at any time between each third party and one or more of the Plaintiffs. To the extent this discovery ever had any relevance to any issues in the case, this is discovery that Defendants could and should have taken between 2006 and 2008, when fact discovery remained open. Not only could Defendants have taken this discovery, but Defendants' former lawyers actually subpoenaed it from many of the same third parties years ago.

We attempted to meet-and-confer with Defendants' new counsel. As discussed below, they could not articulate any rational justification for allowing this eleventh-hour do-over of what already has been inordinately delayed and expensive discovery in this case.

Plaintiffs' Subpoenas

Last Monday, Defendants started serving subpoenas on numerous third parties. By Friday, Defendants had served subpoenas on 15 such entities, including Amazon.com, AOL, Apple, ArtistDirect, eMusic, Google, iMesh, Media Defender, MusicLab, MySpace, Napster, RealNetworks, Vevo and Yahoo! Vevo, MediaDefender, and Napster. It does not appear that Defendants exercised any discretion in selecting the subpoena recipients, but instead indiscriminately issued a subpoena to any entity they could think of that has anything to do with the digital dissemination of music. The subpoenas are incredibly broad in scope, seeking, *inter alia*, the production of all license agreements between Plaintiffs and the third parties, all documents and communications regarding such agreements, all documents showing specific amounts paid to Plaintiffs pursuant to such agreements for particular song recordings, all documents regarding LimeWire, and all communications between the third party and other parties regarding actual or potential licenses. *See* Ex. D (iMesh subpoena).

Upon learning of these subpoenas, Plaintiffs' counsel immediately requested a meet-and-confer with Defendants' counsel for them to explain how these subpoenas were warranted under the Court's prior discovery orders, and their relevancy to the remaining issues to be tried in the case. During the parties' telephonic conference on Thursday, September 23, 2010, Defendants' counsel offered only boilerplate assertions that the subpoena requests were "relevant" to "damages" and the "conduct and attitude" of the parties for purposes of statutory damages.

Defendants' Subpoenas Are Not Authorized Under the Court's Discovery Orders

This is not open discovery season. General merits and damages discovery closed years ago, and the parties are well beyond the "reasonably calculated" standard of Rule 26(b)(1). Defendants' subpoenas are not authorized under the Court's orders, which were entered for the purpose of narrowing any remaining discovery on the limited issues to be tried in January 2011.

At the December 7, 2007 status conference, Judge Lynch explicitly rejected Defendants' request to bifurcate merits discovery from damages discovery. Judge Lynch made clear that damages-related discovery would proceed simultaneously with merits discovery, and that only

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limited damages discovery relating to issues such as “how many copyrights” were at issue in the case would conceivably be postponed until after the merits stage Dec. 7, 2007 Hearing Tr. at 10:19-11:4 (Ex. E). In other words, Defendants should have sought, and indeed in many respects did seek, the discovery they now seek *years ago*.

As noted above, Judge Wood has carefully circumscribed the scope of permissible discovery for these last few months before trial. In her August 7, 2010 Order, Judge Wood made clear that this “stage of the litigation is the proper time” for “the parties to *complete related discovery as necessary*.” Ex. F, Order at 3-4 (Doc. No. 302) (emphasis added). Indeed, Judge Wood specifically rejected Defendants’ request for Plaintiffs to supplement their document production with current third-party license agreements and related communications and documents, which Defendants nonetheless *request yet again* in their third-party subpoenas. *Id.* at 6; *see also* Defendants’ July 2, 2010 Letter to the Court (Ex. G) at 10-11. Judge Wood concluded her Order by stating that the parties “shall proceed with discovery *as consistent with the instant Order*,” and “[i]f any additional disputes arise with respect to discovery, the parties shall promptly notify the Court, providing factual and legal support for their respective positions.” Ex. F at 9-10 (emphasis added). Pursuant to the Court’s prior Orders, the parties have raised certain discovery disputes with the Court, including Defendants’ requests for highly detailed profit-and-loss data, on a track-by-track basis, for every one of the thousands of sound recordings in issue. That request mirrors Plaintiffs’ current request for all revenue data for existing licenses.

Instead of meeting-and-conferring with Plaintiffs or waiting for the Court to resolve the pending issues that bear directly on the permissible scope of remaining discovery, Defendants have rushed ahead and served these incredibly broad and burdensome subpoenas. Defendants made no effort to contact Plaintiffs first to request this information, despite the fact that many of the requests seek information (e.g., license agreements) that, if it existed, would be within Plaintiffs’ possession. It is clear that Defendants are attempting to circumvent the established framework set forth in the Court’s prior orders regarding the scope of remaining discovery.

Defendants’ Subpoenas Are Redundant With Prior Discovery

Over three years ago, Defendants served nearly identical subpoenas on the same third parties as they now do, including Apple, Napster, iMesh, MediaDefender, Yahoo!, Real Networks, Amazon.com, and AOL. The earlier subpoenas sought the same information as the present ones, including license agreements with Plaintiffs, documents relating to these licenses and the actual or potential licensing of Plaintiffs’ copyrighted works, documents relating to the pricing of downloaded works on the Internet, and documents relating to LimeWire generally. *See* Ex. H (2007 iMesh subpoena). Several third parties produced thousands of pages of documents in response. *See, e.g.*, GOOG 001 - GOOG 219 (Google production); IMESH 00001 - IMESH 00630 (iMesh production); Yahoo! CDs produced on March 16 and 22, 2007.

Moreover, Plaintiffs themselves produced over 3,000 documents consisting of license agreements, drafts of agreements, and emails and communications concerning such agreements.

The Honorable Debra C. Freeman

September 27, 2010

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See EMI-LW00410670 - EMI-LW00415061; SONY-LW02292190 - SONY-LW02302045; UMG-LW00886884 - UMG-LW00941268; WMG-LW01008168 - WMG-LW01011597. When Plaintiffs' counsel inquired about why these already-produced documents were not sufficient, Defendants could not offer a reasoned explanation, beyond the conclusory retort that the new agreements contain more "updated" information and may be "structured" differently.

With respect to the requested financial information, Plaintiffs have offered to provide (or have provided already) all the financial information that Defendants possibly could be entitled to in connection with damages discovery, including aggregate revenue from all third-party download partners for *each* sound recording at issue. During the meet-and-confer, Defendants took the position that they desired individual revenue breakdowns by each third-party partner, but could not offer any explanation as to the relevance of such individualized information.

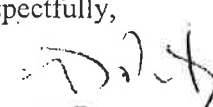
And, as noted, the Court already has rejected some of Defendants' subpoena requests. Defendants recently sought the production of updated license agreements and related documents and communications under the guise of the copyright misuse defense. In Judge Wood's August 7, she flatly denied those requests. Defendants should not be permitted now to thwart that order by making the same requests to third parties under the pretext of "damages"-related discovery.

Defendants' Subpoena Requests Are Not Relevant To the Issues Remaining To Be Tried

For nearly every request in their subpoenas, Defendants' counsel went back to the same refrain that they were broadly relevant to "damages" and the "attitude and conduct" of the parties. Beyond the fact that Defendants could have, should have, and did seek this discovery years ago – and despite the fact that millions of pages of documents have been produced – Defendants have not articulated, and cannot articulate, any showing of relevance for these new requests for the limited issues remaining to be tried. Defendants have made no showing as to why current contracts, even if somehow focused on the specific new sound recordings added to the case, would add anything materially different than the thousands of agreements and related documents already produced, or how they would be relevant to the issues to be tried.

Accordingly, Plaintiffs respectfully request a conference as soon as possible to address Defendants' unauthorized third-party subpoenas. Defendants should be ordered to withdraw their served subpoenas immediately, and to cease serving any additional subpoenas.

Respectfully,


Glenn D. Pomerantz

cc: Joseph Baio, Willkie Farr (counsel for Defendants) (via email)
Tariq Mundiya, Willkie Farr (counsel for Defendants) (via email)

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

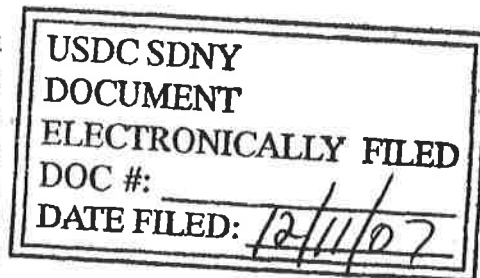
ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER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

Plaintiffs,

-v.-

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

Defendants,



06 Civ. 5936 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

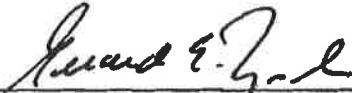
The parties having appeared before the Court at a conference on December 7, 2007, it is hereby ORDERED that:

1. Document discovery shall be substantially completed by January 31, 2008. On or before that date, defendants shall submit to the Court a letter outlining the specific factual issues relating to their copyright misuse defense that they propose to explore in depositions. Defendants shall also identify the portions of the documentary record supporting their proposed inquiry of deposition witnesses relating to their copyright misuse defense.
2. Fact depositions shall be completed by March 31, 2008.
3. Expert reports shall be provided by March 31, 2008; rebuttal reports shall be provided by April 30, 2008; and expert depositions shall be completed by May 31, 2008.

4. The parties shall appear before the Court for a post-discovery conference on Friday, April 11, 2008, at 2 p.m.

SO ORDERED.

Dated: New York, New York
December 10, 2007



GERARD E. LYNCH
United States District Judge

Exhibit B

(New)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

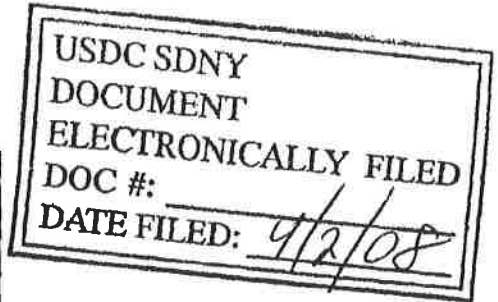
ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER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

Plaintiffs,

v.

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

Defendants.



06 Civ. 5936 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

The parties having appeared before the Court at a conference on March 12, 2008, it is hereby **ORDERED** that:

1. Fact depositions shall be completed by **April 18, 2008**.
2. Expert reports shall be provided by **April 18, 2008**; rebuttal reports shall be provided by **May 19, 2008**, and expert depositions shall be completed by **June 18, 2008**.
3. Dispositive motions are to be served and filed by **July 9, 2008**.
Answering papers are to be served and filed by **August 27, 2008**.
Reply papers are to be served and filed by **October 1, 2008**.

All motions and applications shall be governed by the Court's Individual Practice Rules, which are available on the Internet at <http://www.nysd.uscourts.gov>. Note that under those rules, *two* courtesy copies of *all* motion papers are to be provided to chambers by the movant at the time the reply is filed. It is the responsibility of the *movant* to make sure that copies of all parties' papers are provided at that time.

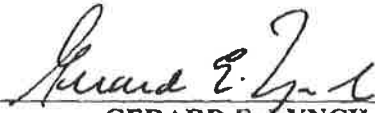
Any party may request oral argument by letter at the time reply papers are filed. Whether or not requested, the Court will determine whether and when oral argument is to be held.

4. The joint pretrial order shall be filed no later than 30 days after the completion of expert depositions or 30 days after the final decision of any dispositive motion, whichever date is later, unless a different date is set by order of the Court. The requirements for the pre-trial order and other pre-trial submissions shall be governed by the Court's Individual Practice Rules.

SO ORDERED.

Dated: New York, New York

March 1, 2008
April



GERARD E. LYNCH
United States District Judge

Exhibit C

0671aric
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 ARISTA RECORDS, LLC, et al.,
3
4 Plaintiffs,

5 v.

06-CV-5936 (KMW)

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

8 Defendants.

Conference

9 -----x

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

11 Before:

12 HON. KIMBA M. WOOD,

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.

25 SOUTHERN DISTRICT REPORTERS, P.C.
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1 counsel for the defense on that motion. I expect those
2 discussions to end very quickly, one way or the other. And
3 that motion itself may be filed, you know, today or this week.
4 We will -- we will discuss -- if it is filed, we will discuss a
5 briefing schedule with the defendants to see -- to work it
6 through with these other motions, and if not, I would suggest
7 we submit another letter to your Honor with our alternative
8 positions on briefing and you can just tell us which one you
9 prefer. We'll try to reach agreement on that if we end up
10 filing the motion.

11 THE COURT: All right. I want to note that your trial
12 date seems reasonable to me. I would have difficulty trying
13 the case sooner than January because I have a long criminal
14 trial coming up this fall with many defendants. But I would
15 expect to keep to the trial date. That is an early January
16 2011 trial date. In order to do that, the case may move along
17 and take precedence over counsel's other matters.

18 MR. SOMMER: Your Honor, I just -- as I'm sure you
19 saw, we raised to the Court an agreement that January seems
20 like a logical time, provided we could get the scope of
21 ownership discovery that we seek. If that gets delayed or
22 plaintiffs need additional time, as they have suggested they
23 might need because they anticipate a big task, we had proposed
24 an alternative time frame of April, which is on the final page
25 of Mr. Pomerantz' letter. And obviously the number of works in

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1 the case for which there will need to be discovery about direct
2 infringement, if that's going to be permitted, if there's going
3 to be -- if they are going to be permitted to expand the number
4 of works beyond what was in the complaint, that can have an
5 impact on timing. So while we agree -- while we agreed in the
6 letter that January seemed sensible and we will keep our
7 schedules clear for that, your Honor, there's little roads to
8 travel between now and then, and I just didn't want to sit
9 silently and not alert your Honor that some of these issues
10 about the number of works and the ownership evidence could have
11 some impact on that. But we will work hard to try to overcome
12 any such issue.

13 THE COURT: I hear you. I will probably need to
14 schedule other long criminal trials after this trial, so I'm
15 intending to keep to a January date; I'm not intending to have
16 it go off until April. As you negotiate with one another, I
17 ask you to keep in mind that I am likely to allow an expansion
18 of the numbers of recordings that will be the subject of this
19 case for the reasons stated by Mr. Pomerantz. I do believe
20 that updated net worth discovery is very likely to be
21 warranted, so I urge you to keep that in mind as you negotiate.

22 Is there anything else that we can helpfully discuss
23 now?

24 MR. POMERANTZ: Your Honor, the only thing -- maybe
25 you said it and I just missed it. But with respect to

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Exhibit D

See 2/16/2011

Jeffrey P. Weingart
Declaration Exhibit B