

# EXHIBIT D

Issued by the  
UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

NEW YORK

ARISTA RECORDS LLC, et al.

SUBPOENA IN A CIVIL CASE

V.

LIME GROUP LLC, et al.

Case Number:<sup>1</sup> 06 Civ.05936 (GEL)

TO: lMesh, Inc.  
c/o Meister Seelg & Fein LLP.  
140 East 45th Street, 19th Floor  
New York, NY 10017

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |               |
|---------------------|---------------|
| PLACE OF DEPOSITION | DATE AND TIME |
|---------------------|---------------|

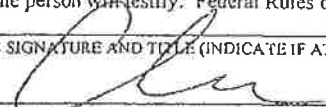
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Exhibit "A" attached:

|       |  |               |                   |
|-------|--|---------------|-------------------|
| PLACE | Offices of Porzio, Bromberg & Newman, P.C., 156 West 56th St., New York, NY 10019-3800 | DATE AND TIME | 10/5/2007 9:30 am |
|-------|--|---------------|-------------------|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |               |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

|   |         |
|---|---------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) | DATE    |
|      | 9/14/07 |

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Charles S. Baker, Porter & Hedges, LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002 (713) 226-6000

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

|                        |                   |
|------------------------|-------------------|
| DATE                   | PLACE             |
| SERVED                 |                   |
| SERVED ON (PRINT NAME) | MANNER OF SERVICE |
| SERVED BY (PRINT NAME) | TITLE             |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

|             |      |                     |
|-------------|------|---------------------|
| Executed on | DATE | SIGNATURE OF SERVER |
|             |      | ADDRESS OF SERVER   |

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena a written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(1)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a company to attend or produce at a place not within the limits provided by clause (i) of subparagraph (c)(3)(A).

EXHIBIT "A"  
INSTRUCTIONS

1. Answer each request for production separately by listing the documents and by describing them as defined below. If documents are numbered for production, in each response provide both the information that identifies the document and the document's number.
2. For each document you contend is privileged or otherwise immune from discovery, you shall prepare and produce a schedule of all such documents stating the specific basis for such claim of privilege or other grounds for exclusion, as well as the following information with respect to each document:
  - i. the identity of the person(s) originating, preparing and sending the documents;
  - ii. the identity of every addressee, distributee and copying recipient of the documents;
  - iii. the date, general type (*e.g.* letter, memo, report, invoice, *etc.*), title, identifying number, if any, and the general subject matter of the documents; and
  - iv. the identity of the present custodian of the document.
3. These document requests apply to all documents in your possession, custody or control regardless of their location, and regardless of whether such documents are held by your subsidiaries, affiliates, consultants, agents, employees, representatives, attorneys or any other person. In searching for any documents responsive to these requests, you should also search all devices or media capable of containing

electronic or magnetic data including, without limitation, hard drives of all computers used by any person with knowledge of the facts relevant to this dispute, network servers, back-up and archival storage systems, home computers, laptop computers, voice mail systems, floppy disks, removable data cartridges, and any personal data assistants (e.g., a Palm Pilot).

4. If any copy of any document whose production is sought is not identical to any other copy thereof, by reason of any alterations, different form (e.g., electronic form), metadata or metatags, marginal notes, comments or other material contained thereon, attached thereto, or otherwise, all such non-identical copies shall be produced separately. Such other copies include, without limitation, all revisions in electronic or magnetic format.
5. Electronic or magnetic data shall be produced in its native computer readable format with an identification of the specific computer or computer device from which it was taken and its associated software application and computer system, and on CD-ROMs readable by PC computers. The data produced must contain an exact copy of the source hard drives, or other electronic or magnetic media or storage device containing the original data, and include not only active files, but all deleted, erased, or discarded copies, and prior versions or drafts of the data.
6. Documents produced in response to any individual request below shall be physically segregated from documents produced in response to other requests, and a request to which they are responsive shall be specifically identified. If a document is responsive to more than one request, each of the requests to which such document is responsive shall be specified.

7. In producing documents, all documents which are physically attached to each other in your files shall be left so attached. Documents which are segregated or separated from other documents whether by inclusion in binders, files, some files or by use of dividers, tabs or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained, in the file where found.
8. If the documents sought by these requests are within the possession, custody, or control of your agents, employees, attorneys, or representatives, or any other person over whom you have control, or have a superior right to compel to do an act or produce an item, the request shall be understood to require the production of such documents or tangible things.
9. If any document requested to be produced by these requests was, but no longer is, in your possession, custody or control, or if the document or tangible thing is no longer in existence, please state whether the document or thing is:
  - a. missing or lost;
  - b. destroyed;
  - c. in the possession or control of others and, if so, please identify the current custodian; or
  - d. disposed of, or otherwise unavailable.

Also, identify each person having knowledge about the disposition or loss of the document, and identify any other document evidencing the lost document's existence or any facts about the lost document.

## DEFINITIONS

1. "Defendant" or "Lime Wire" means and refers to (a) Lime Wire LLC; and (b) its officers, directors, employees, authorized agents and authorized representatives.
2. "RIAA" shall mean (a) the Recording Industry Association of America; and (b) its officers, directors, employees, attorneys, authorized representatives, and authorized agents.
3. "Plaintiffs" shall mean all of the plaintiffs in this lawsuit and their respective officers, directors, employees, attorneys, authorized representatives, and authorized agents.
4. The "Major Labels" shall mean Warner Music Group, EMI, Sony BMG and Universal Music Group and their respective subsidiaries, affiliates, predecessors, successors, assigns, divisions, partnerships, joint ventures or other entities under their operation and control, and their respective officers, directors, employees, attorneys, authorized representatives, authorized agents, and anyone acting on their behalf.
5. "iMesh", "You" or "Your" shall mean (a) iMesh LLC; and (b) its subsidiaries, affiliates, predecessors, successors, assigns, divisions, partnerships, joint ventures or other entities under their operation and control, and their respective officers, directors, employees, attorneys, authorized representatives, and authorized agents.
6. The "Hummer Winblad Litigation" shall mean that lawsuit pending in the United States District Court for the Northern District of California styled *UMG Recordings, et al. v. Hummer Winblad Venture Partners, et al.*, No. C MDL-00-1369 (MHP).

7. "Document" and "documents" shall be used in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms "document" and "documents" shall include all agreements, contracts, communications, correspondence, letters, telegrams, telexes, messages, memoranda, records, reports, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drawings, specifications, drafts, graphs, maps, charts, tables, accounts, analytical records, consultants' reports, appraisals, addenda, bulletins, amendments, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records of obligation and expenditure, invoices, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sell orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, vouchers, analyses, studies, surveys, transcripts of hearings, transcripts of testimony, expense reports, microfilm, microfiche, articles, speeches, tape or disc recordings, sound recordings, video recordings, film, tape photographs, punch cards, programs, data



compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically-stored matter, including without limitation, information stored on computer data disks and hard drives, electronic mail (e-mail) and network messages, however and by whomever produced, prepared, reproduced, disseminated, or made. The terms "document" and "documents" shall include all copies of documents by whatever means made, except that where a document is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced. "Document" or "documents" mean and include all matter within the foregoing description that is in the possession, control or custody of you or in the possession, control or custody of any attorney, accountant or financial advisor for you. Without limiting the term "control," a document is deemed to be within your control if you have ownership, possession or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical possession hereof.

8. "Communication" or "communications" shall mean communication(s) of every form and manner by which information may be transmitted or received, whether written, oral or otherwise. If an allegation or event involves an oral communication, identify the date and persons who participated in said communication.

9. The term "entity" shall mean any commercial business or operation in any form, including, but not limited to, partnership, corporation, unincorporated association, trust, sole proprietorship, or other group however organized, and its present and former officers, directors, partners, employees, agents, representatives, parent, subsidiaries, affiliates, attorneys, predecessors in interest, and all other natural persons or businesses or legal entities, presently or previously, acting or purporting to act for or on behalf of the entity.
10. The term "person" shall mean natural persons, and also includes professional associations, corporations, partnerships, associations, federations, local or state or federal governments and any of their agencies, and any other entity.
11. The terms "indicating", "concerning," "referencing," "reflecting", "relating to," and "referring to" shall be interpreted so as to encompass the scope of discovery set forth in FED. R. CIV. P. 26(b)(1). For example, documents that "indicate", "concern," "reflect", "relate to," or "refer to" any given subject means all documents that constitute, deal with, refer to, describe, evidence, contain, discuss, embody, reflect, identify, state or concern in any way, the subject or is in any way pertinent to that given subject including, but not limited to, documents concerning the preparation of other documents.
12. The singular includes the plural, and vice versa.
13. "Including" means "including, but not limited to."
14. The term "any" should be understood in either its most or its least inclusive sense as necessary to bring within the scope of discovery request all responses that might otherwise be construed to be outside of its scope.

15. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery request all responses that might otherwise be construed to be outside of its scope.
16. Unless otherwise specifically stated, the Documents requested below are those prepared from January 1, 1999 to the present.
17. This request in no way should be deemed to be a waiver of or limitation on the right of the Plaintiff to demand further discovery from You as otherwise permitted by the Federal Rules.

**REQUEST FOR PRODUCTION**

1. All Documents that refer, relate or pertain to any of the Defendants and/or the LimeWire software application.
2. All Documents that refer, relate or pertain to any and all strategies, plans, analyses, reports or recommendations (including drafts thereof) regarding or related to the entry into, the potential entry into, or investigation of potential entry into, the market for online distribution of content (including both audio and video files).
3. All Documents which refer, relate or pertain to any business plans/dealings, proposed or otherwise, with any entity or person that utilizes or distributes peer-to-peer technology.
4. All Documents that evidence and/or refer to any Communications between You and any person, including, but not limited to, any Plaintiff, any Major Label or the RIAA concerning any or all of the following:
  - a. The Defendants;

- 
- b. The LimeWire software application;
  - c. Peer-to-peer exchanging of files through the Internet;
  - d. Any company providing software that enables peer-to-peer file sharing;
  - e. Any alleged effect on Your business, sales, revenues, and/or profits allegedly caused by the use of peer-to-peer technology, including the use of the LimeWire software application;
  - f. All Your policies, directives, proposals, strategies, suggestions or plans concerning the distribution of music over the Internet;
  - g. MusicNet;
  - h. Pressplay;
  - i. Any policies, directives, strategies, proposals, suggestions or plans to limit, prevent or control the online distribution of musical content.
  - j. Napster;
  - k. Altnet;
  - l. Sharman Networks;
  - m. Kazaa;
  - n. eDonkey;
  - o. StreamCast Networks;
  - p. BearShare;
  - q. Free Peer, Inc.;
  - r. Grokster, Ltd.;
  - s. Any licensing, or proposed licensing, of the right to distribute copyrighted musical works over the Internet; and

- t. Any plans, strategies, programs or efforts to have any Major Label not license, or refuse to license, any person or entity the right to distribute copyrighted musical works over the Internet.
5. All Documents that refer, relate or pertain to minutes of any meetings, or notes from any meetings with any person or entity, including Board meetings, during which any one or more of the following subjects was discussed:
- a. The Defendants;
  - b. The LimeWire software application;
  - c. Peer-to-peer exchanging of files through the Internet;
  - d. Any company providing software that enables peer-to-peer file sharing;
  - e. Any alleged effect on Your business, sales, revenues, and/or profits allegedly caused by the use of peer-to-peer technology, including the use of the LimeWire software application;
  - f. All Your policies, directives, proposals, strategies, suggestions or plans concerning the distribution of music over the Internet;
  - g. MusicNet;
  - h. Pressplay;
  - i. Any policies, directives, strategies, proposals, suggestions or plans to limit, prevent or control the online distribution of musical content.
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- n. eDonkey;
  - o. StreamCast Networks;
  - p. BearShare;
  - q. Free Peer, Inc.;
  - r. Grokster, Ltd.;
  - s. Any licensing, or proposed licensing, of the right to distribute copyrighted musical works over the Internet; and
  - t. Any plans, strategies, programs or efforts to have any Major Label not license, or refuse to license, any person or entity the right to distribute copyrighted musical works over the Internet.
6. All Documents which evidence and/or refer to any Communications between You and any person or their representative regarding any actual or potential license for the digital distribution of any copyrighted works of any Plaintiff or any Major Label, including, but not limited to, any negotiations or any inquiries for such license.
7. All Documents which evidence and/or refer to any of the Your policies or directives, suggestions, recommendations, proposals, or advice concerning any of the following:
- a. The licensing of the rights to distribute copyrighted works over the Internet;
  - b. The entities what should or should not be involved in the distribution of copyrighted works over the Internet; and

- c. The technology, including software, that should or should not be used for the distribution of copyrighted works over the Internet.
- 8. All Documents which evidence or refer to any decision not to do business with or enter into any license agreements with any of the following:
  - a. The Defendants; and
  - b. Any other person or entity that distributes or utilizes or is involved with the distribution or utilization of peer-to-peer technology.
- 9. All Documents that evidence, refer to or are relevant to any investigation by the Justice Department concerning the distribution of music over the Internet, including, but not limited to, any and all Justice Department requests for Documents, all correspondence between any Plaintiff, or any Major Label and the Justice Department, and any and all Documents produced to the Justice Department.
- 10. All Documents that evidence or refer to any inquiry or investigation by the FTC or the New York Attorney General into price fixing activity concerning the distribution of music over the Internet.
- 11. All Documents constituting, evidencing, reflecting, or relating to Communications of or with any person (including their counsel) regarding this lawsuit or the underlying dispute.
- 12. Documents sufficient to set forth the organizational structure and personnel from January 1999 to the present of the department, division or group of Your organization that has responsibility or has had responsibility at any time for (a) developing and/or investigating business plans or strategies, (whether

implemented or potential), for distributing or licensing musical files over the Internet; and (b) negotiating any license agreement concerning the distribution of musical content over the Internet.

13. All Documents constituting, evidencing, reflecting or relating to meetings or Communications of or with any Plaintiff, any Major Label or the RIAA or any of its representatives regarding peer-to-peer services, Internet-related copyright infringement, Internet-related copyright enforcement, and Internet-related distribution and licensing of copyrighted works.
14. All Documents produced in the Hummer Winblad Litigation, if any.
15. All Documents related to the Hummer Winblad Litigation.
16. All Documents, including all Communications relating to the actual or potential revenues and/or profits relating to online distribution of digital sound recordings.
17. All Documents including all Communications relating to actual or potential licensing fees paid or to be paid in connection with online distribution of digital sound recordings.
18. All Documents that contain, describe, refer to or reflect any studies or surveys, whether conducted by You or by any third party, relating to the impact of the availability of music on the Internet via peer-to-peer networks or providers.
19. All Documents relating to any Communications with third parties contacted by You for the purpose, in part or in whole, of collecting, studying or analyzing information relating to the pricing of music for distribution over the Internet.



20. All Documents relating to any internal or external discussions or assessments of the potential benefits or risks of licensing or not licensing musical content to any peer-to-peer software provider/distributor.
21. All Documents relating to any Communication, meeting, conversation, or agreement between You and any Plaintiff, any Major Label or the RIAA, relating to the prices, discounts, terms of service, or any other terms or conditions for the sale, the offer for sale, streaming, licensing or transmission of music over the Internet.
22. All Documents relating to how You reached Your decision for the charging of downloading/purchasing musical content.
23. All license agreements with any Major Label or any Plaintiff.
24. Documents sufficient to reflect the profits/profitability of the sale of musical content.
25. All Documents that refer, relate or pertain to any settlement of any litigation between You, Free Peers, Inc. and/or MusicLab LLC on the one hand and any of the Plaintiffs or any of the Major Labels on the other.
26. All Communications between You and the RIAA or its counsel.