

**REDACTED VERSION
COMPLETE VERSION FILED UNDER SEAL**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC
RECORDING CORPORATION; ARISTA
MUSIC, fka BMG MUSIC; CAPITOL
RECORDS, INC.; ELEKTRA
ENTERTAINMENT GROUP INC.;
INTERSCOPE RECORDS; LAFACE
RECORDS LLC; MOTOWN RECORD
COMPANY, L.P.; PRIORITY RECORDS LLC;
SONY MUSIC ENTERTAINMENT, fka 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; and M.J.G. LIME
WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

ECF Case

06 CV 5936 (KMW)

**DECLARATION OF DAN C. KOZUSKO IN SUPPORT OF DEFENDANTS' RESPONSE
TO NON-PARTY MYSPACE INC.'S OBJECTIONS TO MAGISTRATE JUDGE
FREEMAN'S JANUARY 31, 2011 ORDER COMPELLING THE PRODUCTION OF
INTERNAL AND EXTERNAL COMMUNICATIONS**

I, Dan C. Kozusko, declare as follows:

1. I am a member of the bar of this court and an attorney with the law firm of Willkie Farr & Gallagher LLP. This law firm represents Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants") in the above-captioned action.

2. I have personal knowledge of the facts set forth below. I submit this Declaration in support of Defendants' Response to Non-Party MySpace Inc.'s Objections to Magistrate Judge Freeman's January 31, 2011 Order Compelling the Production of Internal and External Communications.

3. True and correct excerpts of the 2010 News Corp. 10-K are attached hereto as Exhibit A.

4. A true and correct copy of the September 23, 2010 Subpoena (the "Subpoena") served on My Space by Defendants is attached hereto as Exhibit B.

5. In addition to MySpace, Defendants, on or about September 23, 2010, served subpoenas on a number of other non-parties whom they believed to be in possession of information relevant to the issues to be tried before Judge Wood. The subpoenas served on the non-parties contain substantially the same requests as the subpoena served on MySpace.

6. On September 27, 2010, Plaintiffs' counsel made a letter application to Magistrate Judge Freeman to quash Defendants' subpoenas to My Space and all other non-parties, as purportedly beyond the scope of discovery permitted by Judge Wood.

7. On September 29, 2010, Magistrate Judge Freeman conducted a telephonic oral argument on Plaintiffs' motion to quash, during which she took the matter on submission. In the interim, Magistrate Judge Freeman stated that none of the subpoenaed parties were under any obligation to comply with the subpoenas, but did not prohibit them from doing so voluntarily. Defendants' counsel agreed to put My Space's document production on hold pending Magistrate Judge Freeman's decision on Plaintiffs' motion to quash. Defendants agreed to adjourn the return dates of the Subpoenas served on the nonparties until after the Court ruled on Plaintiffs' motion to quash.

8. A true and correct copy of MySpace's October 1, 2010 objections to the Subpoena is attached hereto as Exhibit C.

9. A true and correct copy of my October 17, 2010 e-mail to MySpace's counsel, Jonathan Gottlieb, Senior Vice President, Litigation, of Fox Group Legal, is attached hereto as Exhibit D.

10. On October 22, 2010, Mr. Gottlieb and I had a telephonic meet and confer regarding the Subpoena, in which I informed Mr. Gottlieb that the documents Defendants were most interested in receiving from My Space consisted of agreements between My Space and any Plaintiff, together with related communications and revenue/use information, and proposed that My Space produce those categories of documents in the first instance. I emphasized to Mr. Gottlieb that Defendants hoped to resolve their differences with My Space to avoid costly motion practice.

11. A true and correct copy of Mr. Gottlieb's November 2, 2010 e-mail is attached hereto as Exhibit E.

12. A true and correct copy of my December 10, 2010 e-mail to Mr. Gottlieb is attached hereto as Exhibit F.

13. On December 17, 2010, Mr. Gottlieb and I held a second telephonic meet and confer regarding the subpoena. During that conference, we were able to resolve certain issues concerning My Space's production of documents responsive to the Subpoena. Despite our best efforts, however, we reached an impasse over Defendants' request for the production of communications relating to My Space's agreements with Plaintiffs. In order to address concerns about the purported "scores if not hundreds of individuals" at MySpace who might, due to their involvement in the negotiation and implementation of agreements with Plaintiffs, have in their

possession communications responsive to Defendants' document requests, I made the following offer to Mr. Gottlieb: Defendants would propose a targeted list of search terms designed to capture the most relevant communications, while My Space, given its superior knowledge about which individuals were specifically involved in negotiating with Plaintiffs, would come back with a substantially narrower set of custodians whose files would be searched for relevant communications. Mr. Gottlieb rejected that proposal. He indicated that even if the parties were to reach an agreement limiting the search terms and custodians, My Space would still not be willing to produce any communications. Mr. Gottlieb indicated that the production of communications responsive to Defendants' request would require "dozens of hours" of his time, along with "days if not weeks" of time spent by My Space's information technology group. He indicated that he and My Space were unwilling to commit that time to respond to Defendants' request. Although I indicated Defendants' willingness to work with My Space to minimize the burden by restricting the search terms and the number of custodians at issue, Mr. Gottlieb declined, on behalf of My Space, to produce any communications or to make a counterproposal to the one I had advanced. In response, I indicated that Defendants reserved their right to file a joint stipulation in accordance with Central District court of California Local Rule 37-2.

14. A true and correct copy of the Joint Stipulation Regarding Central District Non-Party Subpoena to MySpace, Inc., filed on January 7, 2011, is attached hereto as Exhibit G.

15. Defendants and MySpace were able to reach an agreement with respect to the production of MySpace's agreement with Plaintiffs and related financial information. On December 20, 2010, MySpace produced 5 pages of documents to Defendants reflecting agreements with three of the four major record labels. On December 23, 2010, MySpace supplemented their production with documents regarding the amounts that it has paid Plaintiffs

pursuant to their agreements with the record labels. MySpace, however, would not agree to produce any internal or external communications requested by the Subpoena. By contrast, other non-parties whom Defendants had subpoenaed elected to work with Defendants concerning the scope of their production of communications. As a result, several non-parties have produced or are producing communications pursuant to agreements with Defendants that address whatever concerns those non-parties had as to burden.

16. In an Order, dated January 19, 2011, a true and correct copy of which is attached hereto as Exhibit H, the Honorable Patrick J. Walsh, United States Magistrate Judge for the Central District of California, transferred Defendants' Motion to Compel to the United States District Court for the Southern District of New York, and to Magistrate Judge Freeman, in particular.

17. A true and correct copy of Defendants January 24, 2011 reply in further support of their application for an Order overruling discovery objections asserted by MySpace is attached hereto as Exhibit I.

18. A true and correct copy of an e-mail chain between counsel for Defendants and counsel for MySpace, dated February 2-4, 2011, is attached hereto as Exhibit J.

19. MySpace filed its Objections to Judge Freeman's January 31, 2011 Order on February 15, 2011.

20. [REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

23. A true and correct copy of UMG Recordings, Inc.'s complaint against MySpace, dated November 17, 2006, is attached hereto as Exhibit N.

24. A true and correct copy of a news article announcing the settlement of UMG's lawsuit against MySpace is attached hereto as Exhibit O. Michael Arrington, *Confirmed: MySpace to Launch New Music Joint Venture with Big Labels*, TECH CRUNCH, Apr. 2, 2008.

[REDACTED]

[REDACTED]

27. A true and correct copy of the January 14, 2011 Letter from Mary Eaton to Magistrate Judge Freeman is attached hereto as Exhibit R.

28. Defendants have reviewed Plaintiffs' document productions and it appears that Plaintiffs have produced approximately 500 communications between non-party iMesh, Inc. and Plaintiffs.

29. I declare under penalty of perjury of the laws of the United States that the foregoing statements are true and correct to the best of my knowledge and belief.

February 24, 2011 in New York, NY


Dan C. Kozusko