EXHIBIT 3

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

560 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

WRITER'S DIRECT LINE
(213) 683-9171
(213) 683-4071 FAX
Melinda.LeMoine@mto.com

VIA FACSIMILE (212) 805-4258 AND HAND DELIVERY

February 4, 2011

The Honorable Debra C. Freeman
United States Magistrate Judge
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Arista Records LLC et al. v. Lime Wire LLC et al.*, Case No. Civ. 06-5936 (KMW)

Dear Judge Freeman:

In advance of today's hearing, Plaintiffs write to inform the Court about events directly relevant to Defendants' pending requests.

Since last June – when the post-liability phase and discovery commenced – Plaintiffs have produced nearly one million pages of documents, nearly 10 gigabytes of natively produced material, and over 200 CDs containing data that Defendants have demanded and this Court has compelled. In the last three weeks, Defendants have deposed a dozen of Plaintiffs' most senior executives, including the CEO of Warner Music and the COO of Universal Music. In those depositions, Defendants asked questions concerning literally only a handful of documents from the most recent massive production, and asked barely any questions *about Lime Wire*. The virtual irrelevance of the massive production that Plaintiffs already have made (much of it in response to the Court's Orders) as well as Lime Wire to Defendants' questioning places Defendants' current requests for more discovery, more documents and more depositions into proper context.

The senior executives Defendants deposed are some of the most knowledgeable people at each company about the issues remaining to be tried in this case. Defendants deposed all four of Plaintiffs' Chief Financial Officers, who obviously would have been excellent resources as to each companies' revenues and expenses. They deposed Warner Music Group's Chairman and CEO and Universal Music Group's President and COO for hours on end. Defendants also deposed Plaintiffs' most senior executives in charge of digital distribution of music: Sony Music's President of Global Digital Business for United States Sales and Corporate Strategy, EMI's Executive Vice President in charge of Global Business Development, Warner Music's Executive Counsel in Business Affairs in charge of Strategic and Digital Initiatives, and Universal's Executive Vice President of Business Development, Business and Legal Affairs for its digital division. Indeed, Defendants even deposed two of the senior executive counsel who are in charge of managing this very litigation.

Even though each of these knowledgeable witnesses sat and responded to questions for hours, Defendants did not take the opportunity to question them about the issues they have been arguing to this Court are so critical that they require even more time and even more discovery. For example:

- ***Defendants asked no questions of any of Plaintiffs' CFOs about the produced detailed revenue reports***. Months ago, Plaintiffs produced reams of revenue information that Defendants insisted on obtaining in the most granular detail. On January 24, Defendants sent a multi-page letter to counsel listing numerous questions about these revenue reports. *See* Ex. 1 (Jan. 24 Ltr from Cosenza to LeMoine) And yet Defendants did not ask Plaintiffs' Chief Financial Officers any of these questions. Indeed, Defendants did not ask Plaintiffs' Chief Financial Officers about these reports at all.

- ***Defendants asked no questions about Plaintiffs' "conduct and attitude" towards LimeWire--and indeed moved to strike any reference to LimeWire when Plaintiffs' witnesses uttered the word.*** Defendants' numerous recent letters claim that Plaintiffs' "conduct and attitude" toward LimeWire and efforts to "blacklist" LimeWire are some of the most "highly relevant" issues remaining in the entire case. And yet, in a dozen depositions of Plaintiffs' most senior executives, Defendants did not ask any of Plaintiffs' executives a single question about LimeWire. Indeed, when Plaintiffs' witnesses mentioned LimeWire, Defendants repeatedly moved to strike the answer. *See, e.g.*, Ex. 2 (Ring Rough Tr. at 119-120, 126, 155-56).[1]

- ***Defendants used scarcely a single third-party digital agreement as an exhibit with Plaintiffs' senior digital deal executives***. Plaintiffs produced literally hundreds of agreements with third-party providers of digital music in response to this Court's Orders. Defendants deposed the most senior

[1] David Ring's depositions was yesterday so citations here are to his rough transcript. Plaintiffs can lodge the transcripts for all of these depositions in support of this letter at the Court's request.

executives at each company in charge of negotiating these agreements. And yet Defendants pulled out only a very few of these agreements as exhibits. Even when Defendants deigned to use an agreement with a witness, they largely showed the agreements to witnesses who had nothing to do with their negotiation.

- ***Defendants asked no questions about the thousands of artists' royalty statements.*** Plaintiffs produced literally thousands of royalty statements for hundreds of artists in response to this Court's Orders. And yet Defendants did not ask any of Plaintiffs' witnesses a single question about any of these royalty statements.

- ***Defendants selected very few emails between Plaintiffs and a third-party distributor to use as exhibits.*** Plaintiffs produced nearly one hundred thousand e-mails amounting to hundreds of thousands of pages of communications between Plaintiffs and fifteen prominent distributors of digital music in response to this Court's Orders. And yet Defendants again used only a very few of these emails with Plaintiffs' witnesses. In the few cases in which Defendants selected such emails as exhibits, it is utterly incomprehensible what relevance the particular email could have to the issues. For example, Defendants spent considerable time examining Warner Music Group's senior digital music executive about the scheduling of a conference call with YouTube. *See* Ex. 3 (WMG-7183897-98).

- ***Defendants asked about three of the scores of third-party research reports this Court compelled Plaintiffs to produce***. Plaintiffs produced thousands of pages of third-party research reports in response to this Court's Orders compelling such production. And yet Defendants only selected *three* such documents to discuss with Plaintiffs' witnesses.

Even when attempting to question witnesses about issues relevant to the case, Defendants' apparent aim was only to make a record to support this application for more time—not to seriously inquire as to any actual issues in the case. For example, Defendants quizzed Sony Music's counsel, Wade Leak, about his declaration submitted in support of Plaintiffs' Motion for Summary Judgment on Ownership. But Defendants did not ask about the ownership of any particular work at issue. Instead, Defendants primarily focused their questions for Mr. Leak on whether documents had been produced in this litigation. *See, e.g.*, Ex. 4 (Leak Tr. at 107-117). Mr. Leak did not produce the nearly 200,000 pages of documents related to ownership in this case—Plaintiffs' counsel did. As a part of that production, we have repeatedly asked Defendants to meet and confer about any issues underlying that production. But Defendants instead forced Mr. Leak to undergo an impromptu pop quiz about the production, presumably to yield a string of uncertain answers to bolster their belated demand for a Rule 30(b)(6) witness rather than to genuinely resolve any outstanding issues. A rudimentary search of Plaintiffs' production conducted once the deposition ended revealed that many of the documents Defendants asked about had, in fact, been long produced. Defendants simply refuse to look for

them in the production, electing instead to grill Plaintiffs' client representative about what the production contains.

In summary, in response to Defendants' endless letters demanding more and more discovery over the last several months, Plaintiffs have produced nearly a million pages (and numerous gigabytes and CDs full of electronic material) as a result of tremendous effort. Yet, in the many hours spent deposing Plaintiffs' most senior executives, Defendants used nearly none of them. The overwhelming majority of the exhibits marked at these depositions—*nearly 80%*—were either previously produced material or material apparently obtained from Internet searches and public filings. That could only mean that Defendants either found nothing worth discussing in the mounds of documents produced, or that Defendants have not looked for anything worth discussing in the mounds of documents produced. Whatever the reason, Defendants' deposition conduct confirms that they cannot justify the relief they now seek from this Court. Defendants can depose Plaintiffs' witnesses about whatever topics they choose. But what they cannot do is demand and obtain extraordinarily burdensome discovery that they claim is essential to their case, and then come to this Court pleading for more time, more documents, and more depositions when they have completely failed to make use of what they already have been given. That is an abuse of the discovery process that this Court should not allow.

To change the Case Management Order, or to obtain additional depositions beyond the limit, Defendants must demonstrate "good cause." The failure to explore discovery sufficiently before the cut-off cannot possibly constitute "good cause." *Bracy v. New York*, 2001 WL 1550666 at *1 (S.D.N.Y. December 5, 2001) ("If oversight alone constituted 'good cause' to modify a scheduling order, all scheduling orders would quickly become meaningless."). Defendants have never explained what possible "good cause" can justify the extension here, or can justify exceeding the presumptive limit of ten depositions per side three, four and even five times over, as they have already done. *See Ritchie Risk-Linked Strategies Trading (Ireland), Ltd. v. Coventry First LLC*, ___ F. Supp. 2d. ___, 2010 WL 5174759, at *2 (S.D.N.Y. Dec. 7, 2010) (affirming this Court's denial of additional depositions because party "failed to satisfy their burden of demonstrating cause to exceed the ten deposition limit contemplated by the Federal Rules"); *Atkinson v. Goord*, Case No. 01 Civ 0761, 2009 WL 890682 (S.D.N.Y. April 02, 2009) (denying in excess of ten depositions for failure to show cause). Based on the record from the depositions conducted over the last three weeks, it is clear that Defendants cannot make a showing of good cause to extend fact discovery further, or to obtain even more depositions beyond the presumptive limits of Rule 30.

Respectfully submitted,

Melinda E. LeMoine

Melinda E. LeMoine