

software uses the so-called “Gnutella network protocol,” which Defendants also have substantially developed and maintained, though others have contributed to it. Defendants’ design of the software, however, and their development and maintenance of the network, are targeted to and predicated on highly-efficient finding and copying of large volumes of Plaintiffs’ copyrighted sound recordings — and that is in fact how LimeWire is known and used. In essence, Defendants have virtually assured, and have encouraged and capitalized on, the fact that, at any given time, a LimeWire user can find and download a permanent copy of virtually any popular sound recording in Plaintiffs’ catalogs.

41. Defendants have designed, updated (via release of new versions), promoted, marketed and distributed two types of LimeWire software. A free version of LimeWire software, called “LimeWire Basic,” is offered for on-line download from LimeWire’s web site. An enhanced version, called “LimeWire PRO,” promising “faster downloads,” is sold by LimeWire for approximately \$19. The two types of LimeWire are fully compatible with one another. LimeWire PRO users are able to search for and download files from each other *and* from LimeWire Basic users, and vice versa.

42. Use of LimeWire begins with the installation process. As described above, the basic or enhanced version of LimeWire can be installed via a download from LimeWire’s web site. Defendants designed LimeWire so that when a user installs the software on his/her computer, LimeWire automatically searches the computer for media files (*i.e.*, sound recording files) to be “shared” (*i.e.*, made available to other LimeWire users for downloading). This feature allows each LimeWire user to quickly and easily

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make his/her entire collection of sound recordings available to other LimeWire users around the world.

43. Once installed, LimeWire is easy for the user to launch and run. Indeed, to increase the number of users who are actually running LimeWire at any given time — and thereby increase the number of Plaintiffs' sound recordings on the network that are available for users to download — Defendants have designed LimeWire to automatically launch upon startup of the user's computer (unless the user specifically designates otherwise).

44. After launching LimeWire, which connects the user to the LimeWire system/network, the LimeWire user can search the files made available for "sharing," *i.e.*, copying, by other users on LimeWire. As indicated on LimeWire's web site: "In the network-wide sense, it's correct that one person's files [*i.e.*, his/her collection of sound recordings] are available to millions of users."

45. LimeWire "shares," or makes available for download, files that have been copied to a designated portion of the user's hard drive, typically the "shared folder." Defendants have taken steps to ensure that LimeWire users "share" a large number of files on LimeWire, thereby maintaining the draw and reputation of LimeWire as a vast, unauthorized repository of commercial sound recordings. For example, Defendants designed the LimeWire installation process to automate the copying of sound recording files to the designated "share" location. Indeed, Defendants further designed LimeWire to punish those users — called "freeloaders" by LimeWire — who do not "share" enough files with other LimeWire users. Freeloaders can be blocked from downloading files

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from a LimeWire user if that user so chooses. Defendants highlight and promote the “freeloader” blocking feature on the LimeWire website, stating, for example, “If you’re not sharing enough files, users with certain connection preferences won’t let you connect to them for downloading. For this reason, *we recommend all LimeWire users share generously with one another*” (emphasis added). As the vast majority of the files “shared,” *i.e.* copied, through LimeWire are copyrighted sound recordings owned by the Plaintiffs, the Defendants’ exhortation for LimeWire users to “share” files is a call for LimeWire users to engage in unlawful reproduction and distribution of Plaintiffs’ copyrighted material.

46. LimeWire facilitates the search for and download of Plaintiffs’ recordings in various other ways. Users can search by genre of sound recordings, including the genres of “Top 40” and “Classic Rock” — which are by definition comprised almost entirely of copyrighted sound recordings owned by the Plaintiffs. Moreover, when (as is nearly always the case) a user’s search yields multiple sources for a given sound recording, LimeWire displays the connection speed (*e.g.*, dial-up, cable, T1, etc.) of each source, to allow the user to choose the fastest download option. This feature, along with allowing the user to start a queue of multiple downloads at once, permits maximum copying in limited time.

47. Other features show that LimeWire was designed for sound recordings. It includes a built-in audio player (but not text editor, picture viewer, or other tools for using non-audio files). The player not only enables users to listen immediately to sound recordings downloaded, but also has a preview function that plays *part* of the sound

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recording before the whole file is downloaded. This feature permits users to verify the “authenticity” or quality of the sound recording that they found on LimeWire and began downloading based on a title or artist search, thus preventing downloads of partial or “bad” files, and facilitating the downloading of a greater number of infringing files.

48. LimeWire PRO in particular has been designed and promoted for its superior infringement capabilities. For example, Defendants state that “[t]he purchase of LimeWire PRO gives users better search results, turbo-charged download speeds, connections to more sources, [and] a guarantee of no ads or nagware”

49. The very design and promotion of LimeWire show that Defendants know (actually as well as constructively) of the massive infringement of Plaintiffs’ copyrights occurring via LimeWire. Defendants’ knowledge and intent are apparent in other respects as well. For example, Defendants make it easy for a user to download and install LimeWire even *after* indicating that he/she “intend[s] to use LimeWire for copyright infringement.” Following a perfunctory refusal by Defendant’s web site, the user simply navigates back to the prior page, changes his/her answer, and is allowed to continue with the download.

50. Defendants also, *inter alia*, (i) have the ability to view searches of LimeWire users, (ii) have made statements on LimeWire’s web site such as: “Keep in mind that many users disobey copyright laws,” (iii) know of well-publicized infringement actions brought by or on behalf of copyright holders against LimeWire users, (iv) know of press accounts in which individuals have acknowledged using LimeWire to reproduce and distribute unauthorized copyrighted sound recordings, and (v) know of statements in

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online chat rooms and message boards operated and/or monitored by Defendants, indicating that users are using LimeWire for the distribution and reproduction of unauthorized copyrighted works.

51. Furthermore, Plaintiffs served written notice of infringement to Defendants on September 13, 2005. That notice informed Defendants that LimeWire had been and was inducing, enabling, encouraging and facilitating massive infringement of Plaintiffs' copyrighted sound recordings, and demanded that Defendants cease and desist their continued activities. Defendants have refused to do so.

52. Defendants not only have known of the infringement, but have promoted and relied upon it to build their business. For example, at various times relevant to this action, Defendants actively promoted the use of LimeWire to reproduce and distribute copyrighted sound recordings by, *inter alia*, purchasing advertisements directed at potential users who are likely to, or already exhibit the desire to, infringe Plaintiffs' copyrights – such as users of other illegal services. Defendants also instruct LimeWire users on how to reproduce and distribute copyrighted sound recordings through, *inter alia*, the LimeWire website, on-line forums and bulletin boards.

53. Defendants have the right and ability to supervise and control the infringing activities of LimeWire users on Defendants' system/network. For example, Defendants can view searches on LimeWire, and view what is being "shared" via LimeWire at a given time. Defendants provide the LimeWire software to users, distribute updates and upgrades, and have dictated license terms governing the use of the software. Defendants maintain email addresses of LimeWire PRO users, and provide

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those users with personalized technical support and free access to updated versions of LimeWire PRO within the first six months of purchase of LimeWire PRO.

54. Defendants also recruit users and others (*e.g.*, by requests on LimeWire's web site) to act as connection points on the network, and communicate these connection points to other LimeWire users. Indeed, Defendants have the ability to send messages to computers running LimeWire at any given time, and Defendants have used this ability to facilitate distribution and sale of updates and upgrades to LimeWire.

55. The extent of Defendants' control further is evident in features that Defendants built into the LimeWire software, including "freeloader" blocking and content filters such as for spam – features that can be and are updated via the process described above. Defendants are aware of means to exclude Plaintiffs' copyrighted works from LimeWire, as other P2P providers have done on their systems and software. Defendants, however, have failed to do so.

56. There is little or no incentive for Defendants to exclude Plaintiffs' works from LimeWire, for they have created direct and substantial profits for Defendants. The availability of Plaintiffs' copyrighted sound recording is *the* draw to the LimeWire system, and the motivation for users to purchase LimeWire software from Defendants. Indeed, Defendants use the free version of LimeWire to help "seed" the LimeWire network with infringing material, to entice paying users of LimeWire PRO. Defendants have derived substantial profits from purchases of its software.

57. In addition, Defendants have, at certain times relevant to this action, profited from LimeWire Basic users through payments received from third-parties for:

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(i) advertisements displayed on LimeWire Basic, (ii) third-party software bundled with LimeWire Basic, and (iii) a “shopping” function in LimeWire Basic. The amount of payments received from each of these features is directly related to the number of users or extent of use of LimeWire Basic — use that consists almost exclusively of the infringement of Plaintiffs’ copyrights.

58. Since Defendants first made LimeWire available in August 2000, hundreds of millions of copies of LimeWire have been downloaded by users. LimeWire’s website, which boasts of the number of “hosts” from whom LimeWire users can download files, indicates that, at any given moment, the electronic files of more than two million persons can be downloaded using LimeWire. Millions of downloads occur through LimeWire, the vast majority of which are unauthorized downloads of copyrighted material – including especially Plaintiffs’ copyrighted works, examples of which are listed in Exhibit A.

59. Defendants have made large sums of money from their massive infringement.

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60. In the wake of the Supreme Court’s decision in *Grokster*, efforts were undertaken to insulate ill-gotten gains from creditors, including the Plaintiffs. Mr. Gorton stated that he had established a family limited partnership, into which he would later place assets in an effort to avoid financial liability in the event of a judgment against

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him. He specifically intended that the record companies would not be able to obtain his assets if Plaintiffs prevailed in a lawsuit against him.

61. The M.J.G. Lime Wire Family Limited Partnership was created on September 1, 2005, and is controlled by Mr. Gorton, who is the general partner of the M.J.G. Lime Wire Family Limited Partnership.

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**COUNT I: INDUCEMENT OF COPYRIGHT INFRINGEMENT
AGAINST LIME WIRE LLC, LIME GROUP LLC, MARK GORTON AND
GREG BILDSON**

65. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 64 above.

66. Individuals using LimeWire software and services have directly infringed and are directly infringing Plaintiffs' copyrights on a daily basis by, for example, creating unauthorized reproductions of Plaintiffs' copyrighted sound recordings and distributing copies of such sound recordings to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501. The scope of infringement is massive, encompassing thousands of Plaintiffs' sound recordings (including without limitation those listed in Exhibit A) and millions of separate infringing acts.

67. Defendants are liable for inducing the copyright infringement of LimeWire users. Defendants design, promote, and market LimeWire as optimized for the unauthorized copying and transmission of copyrighted sound recordings, thereby actively facilitating, encouraging and enticing LimeWire users to engage in the infringement. Indeed, Defendants intend to bring about such infringements.

68. Defendants have induced and continue to induce infringement by, for example, aiming to satisfy a known source of demand for copyright infringement, including the market comprising users of other infringing services that were shut down or

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compelled to block access to Plaintiffs' copyrighted works, such as Napster, Grokster, and Kazaa.

69. Defendants further have induced and continue to induce infringement by, for example, failing to block or diminish access to infringing material using LimeWire, even though there are technological means to do so — means that are known to Defendants, and some of which have already been employed successfully by Defendants' competitors who operate legally.

70. Defendants further have induced and continue to induce infringement by, for example, building and maintaining a business model to profit directly from a high volume of infringing use, including sales of the "PRO" version of LimeWire designed specifically to facilitate high volumes of infringement, and the draw of which is the millions of infringing files placed on the network by LimeWire Basic (and other PRO) users.

71. Each violation of each Plaintiff's rights in and to each copyrighted sound recording constitutes a separate and distinct act of copyright infringement.

72. Through the conduct described above, Defendants are liable for inducing the infringement described herein.

73. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

74. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to the maximum statutory damages under 17 U.S.C. § 504(c), in the amount

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of \$150,000 with respect to each timely-registered work that was infringed. An exemplary list of infringed works is included in Exhibit A. Exhibit A is non-exhaustive and undoubtedly includes only a small fraction of Plaintiffs' works that were infringed. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly.

75. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages, if any), Plaintiffs at their election prior to judgment are entitled to recover their "actual damages and any additional profits of the [Defendants]" attributable to the infringement. 17 U.S.C. § 504(a)-(b).

76. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

77. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction prohibiting further infringement of Plaintiffs' copyrights.

COUNT II: CONTRIBUTORY COPYRIGHT INFRINGEMENT
AGAINST LIME WIRE LLC, LIME GROUP LLC, MARK GORTON AND
GREG BILDSON

78. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 64 above.

79. Individuals using LimeWire software and services have directly infringed and are directly infringing Plaintiffs' copyrights on a daily basis by, for example, creating

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