

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

COPY

Plaintiffs,

Civil Action No.

-against-

06 CIV 05936

(GEL)

LIME WIRE LLC; LIME GROUP LLC;
MARK GORTON; GREG BILDSON, and
MJG LIME WIRE FAMILY LIMITED
PARTNERSHIP,

Defendants.

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April 14, 2008

9:33 a.m.

CONFIDENTIAL - ATTORNEY'S EYES ONLY

Videotaped Deposition of MARK GORTON, taken
by Plaintiffs, pursuant to notice, at the
offices of Cravath, Swaine & Moore, LLP, 825
Eighth Avenue, New York, New York, before
SUZANNE PASTOR, a Shorthand Reporter and Notary
Public within and for the State of New York.

1 MARK GORTON - ATTORNEYS' EYES ONLY

10:58:41 2 A. I guess by "set up," what do you
10:58:44 3 mean?

10:58:44 4 Q. Established.

10:58:45 5 A. Established.

10:58:48 6 MR. BAKER: Same objection.

10:58:51 7 A. Again, I don't really remember the
10:58:53 8 specific dates. I think I provided about the
10:58:56 9 tightest window I'm going to be able to provide.

10:59:04 10 Q. Do you recall when the MJG LimeWire
10:59:07 11 Family Partnership first obtained any ownership
10:59:11 12 interest at all in LimeWire?

10:59:12 13 A. It was in that same window.

10:59:15 14 Q. Do you recall that the MJG LimeWire
10:59:18 15 Family Partnership was set up of an after the
10:59:22 16 Grokster decision came out in the summer of
10:59:24 17 2005?

10:59:24 18 MR. BAKER: Same objection. It's
10:59:26 19 vague.

10:59:27 20 A. Again, I know that the process of
10:59:30 21 creating those partnerships took probably almost
10:59:35 22 a year, and that I was working on that for well
10:59:41 23 in advance of the Grokster decision.

10:59:48 24 Q. Do you know an individual by the
10:59:51 25 name of Vinny Falco?

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A. Yes.

Q. Who is Mr. Falco?

A. He is the guy who used to run BearShare.

Q. Do you recall having a conversation with Mr. Falco in which you discussed in part your establishment of the MJG LimeWire Family Partnership?

A. So I don't believe I ever discussed a specific Family Limited Partnership with Mr. Falco.

Q. Do you recall having a conversation with Mr. Falco in which you discussed with him potential liability in connection with copyright infringement lawsuits?

A. I don't really recall.

MS. FORREST: Let me have marked as Exhibit number 593 a two-page document entitled Declaration of Vincent Falco.

(Plaintiffs Exhibit 593 for identification, Declaration of Vincent Falco.)

A. (The witness reviews the document.)

Yes.

Q. And I would like to read if you

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would, please, the fifth paragraph of
Mr. Falco's declaration.

A. "Shortly after I received my cease
and desist letter" --

Q. You can read it to yourself.

A. Yeah, I already read it.

Q. It says that Mr. Falco -- he refers
to a conversation that you and he had after
LimeWire had received a cease and desist letter
from the RIAA. Do you see that in paragraph 5?

A. Could you say that again?

Q. Sure. Maybe I will read this first
sentence of paragraph 5. It says, "Shortly
after I," which is Mr. Falco, "received my cease
and desist letter, I spoke with Mark Gorton.
Mark mentioned to me that he had also received a
cease and desist letter." Do you see that?

A. Yes.

Q. Do you recall having a conversation
with Mr. Falco in which the two of you discussed
cease and desist letters that you had each
received?

A. No.

Q. Then it goes on -- do you think

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11:03:12 2 that you didn't have a conversation or you just
11:03:13 3 don't recall having it?

11:03:15 4 A. I don't recall such a conversation.

11:03:16 5 Q. Did you in fact speak with
11:03:19 6 Mr. Falco from time to time?

11:03:20 7 A. I've probably spoken with him like
11:03:24 8 just a handful of times in my life.

11:03:25 9 Q. When was the last time you spoke to
11:03:28 10 Mr. Falco?

11:03:30 11 A. It was after BearShare sold the
11:03:36 12 company -- itself to iMesh.

11:03:38 13 Q. Was it relatively close in time to
11:03:41 14 that transaction or was it more recently?

11:03:43 15 A. No, it was about the time of that
11:03:44 16 transaction.

11:03:45 17 Q. Turning back if you would, please,
11:03:47 18 to Exhibit 593, it says, this is Mr. Falco, "I
11:03:51 19 told him that I was worried that if the record
11:03:53 20 company sued BearShare, I might lose a lot of
11:03:56 21 money." Do you see that?

11:03:57 22 A. Mm-hmm.

11:03:58 23 Q. Do you recall Mr. Falco expressing
11:04:00 24 that to you?

11:04:00 25 A. All right, well, so -- I mean, so

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11:04:03 2 if I can just talk about paragraph 5 as an
11:04:05 3 entirety here, I might be able to do -- it sort
11:04:08 4 of strikes me that he is mixing a couple of
11:04:11 5 conversations into one here because "shortly
11:04:14 6 after I received my cease and desist letter, I
11:04:16 7 spoke with Mark Gorton" -- so I believe that the
11:04:19 8 first sentence probably refers to one
11:04:22 9 conversation. And then the remainder of the
11:04:28 10 paragraph refers to -- this is actually one of
11:04:35 11 the few times I've actually met him. So I
11:04:38 12 believe the first sentence was probably a phone
11:04:40 13 call because I met him a few times.

11:04:42 14 And the remainder of paragraph 5
11:04:46 15 refers to a time when we spoke when we were
11:04:52 16 actually in the RIAA offices when we went down
11:04:57 17 and visited. So there was a day where on the
11:05:00 18 same day it was me and Mr. Falco and Sam Yagan
11:05:09 19 all had separate meetings all kind of lined up
11:05:11 20 in a row at the RIAA offices. And I believe my
11:05:17 21 meeting went first, followed by the BearShare
11:05:20 22 meeting.

11:05:20 23 In between my time on my way out I
11:05:22 24 spoke very briefly with Mr. Falco. And I think
11:05:25 25 that that is the conversation that he is talking

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11:05:28 2 about there. But I will say that it's clearly
11:05:32 3 inaccurate to me because he said "Gorton told me
11:05:35 4 he was not worried about being sued." And I can
11:05:38 5 absolutely tell you that I was highly concerned
11:05:41 6 about being sued.

11:05:42 7 So "he created a Family Limited
11:05:47 8 Partnership." I mean, I definitely did tell
11:05:51 9 Vinny I had done some estate planning, and that
11:05:57 10 one of the benefits of the estate planning that
11:05:59 11 I had done was that it did help protect the
11:06:06 12 assets in the event of a legal judgment against
11:06:13 13 me personally. But I did not -- I certainly did
11:06:19 14 not tell him that he should do the same. I
11:06:22 15 believe I told him that he might want to talk to
11:06:24 16 a lawyer about this.

11:06:26 17 Q. Was one of the reasons that you set
11:06:28 18 up the MJG LimeWire Family Partnership to
11:06:33 19 protect some of your personal assets in the
11:06:37 20 event of a legal judgment?

11:06:38 21 A. The primary reason I set them up
11:06:41 22 was for estate planning purposes. I'd been
11:06:46 23 planning to do that for years, and I've had
11:06:48 24 accountants telling me to do it for years and
11:06:51 25 years. And I finally got around to doing it.

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11:06:53 2 And as I was in the process of setting it up, I
11:06:56 3 found out that there was an additional benefit
11:06:58 4 in terms of protection against judgments.

11:07:02 5 Q. At the time that you first thought
11:07:04 6 about setting up the MJG LimeWire Family
11:07:08 7 Partnership, had you intended to have the
11:07:10 8 entirety of your interest in LimeWire put into
11:07:13 9 that partnership? Or did you not really have a
11:07:19 10 plan?

11:07:19 11 A. I think what happened is -- the
11:07:21 12 whole Family Limited Partnership thing came
11:07:24 13 about at sort of a series of meetings with
11:07:27 14 accountants and then with lawyers. So I didn't
11:07:30 15 have a plan and was to a large extent listening
11:07:33 16 to the advice of the experts.

11:07:35 17 Q. Did the experts indicate to you
11:07:38 18 after the Grokster decision came down that it
11:07:42 19 would be advisable to transfer the entirety of
11:07:44 20 your LimeWire interest into that partnership?

11:07:47 21 MR. BAKER: Let me object. I don't
11:07:49 22 want you to disclose any conversations you had
11:07:50 23 with any lawyers.

11:07:51 24 A. Oh, okay. Well -- so then now ask
11:07:57 25 the question again.

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11:07:58 2 Q. Without revealing the content of
11:07:59 3 conversations you've had with lawyers, but if
11:08:01 4 you've had that with accountants, that's free
11:08:04 5 game, did there come a time when you were
11:08:06 6 advised to transfer -- strike that. Did there
11:08:11 7 come a time after the Grokster decision came
11:08:13 8 down in 2005 that you were advised to put the
11:08:16 9 entirety of your LimeWire interest into the MJG
11:08:22 10 LimeWire Family Partnership?

11:08:24 11 MR. BAKER: Wait a second. Let her
11:08:26 12 finish a question and then let me make an
11:08:28 13 objection. Assumes facts not in evidence.
11:08:30 14 There's not been establishment that he only put
11:08:33 15 in partial before the Grokster, so.

11:08:36 16 A. Let me just say that the entirety
11:08:38 17 of the planning for the creation of the Family
11:08:41 18 Limited Partnerships was done well in advance of
11:08:44 19 the Grokster decision. I mean, as I said
11:08:46 20 before, it took about a year to do this. And
11:08:51 21 somewhere in the earlier part of that time the
11:08:55 22 structure was put in place.

11:08:58 23 Q. And when you say the entirety of
11:09:00 24 the planning was done before Grokster, did that
11:09:04 25 include the amount of interest that you were

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going to put into the MJG LimeWire Family Partnership?

A. Yes.

Q. How can you -- are there documents that you can show me that would demonstrate that the entirety of the planning was done before Grokster? Is there any sort of written documentation that would demonstrate that?

A. Again, I'm not familiar with what documentation is around. I certainly -- again -- well, there were a whole bunch of meetings with lawyers.

MR. BAKER: I think she just wants to establish if there are any documents.

A. But I think that in the course of the meetings with those lawyers, they drafted legal documents and I suspect that they have -- I know they sent those documents to me months in advance of the -- so there are probably drafts of the plan and all the stuff that predates the Grokster decision by months.

Q. Now, prior to the Grokster decision coming down in the summer of 2005, had you ever contemplated the possibility that LimeWire might