

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC  
RECORDING CORPORATION; BMG MUSIC;  
CAPITOL RECORDS, INC.; ELEKTRA  
ENTERTAINMENT GROUP INC.;  
INTERSCOPE RECORDS; LAFACE  
RECORDS LLC; MOTOWN RECORD  
COMPANY, L.P.; PRIORITY RECORDS LLC;  
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.

CIVIL ACTION NO. 06 CV. 5936  
(GEL)

**STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1(a)  
IN SUPPORT OF DEFENDANT LIME WIRE LLC'S  
MOTION FOR SUMMARY JUDGMENT**

Of counsel:

Lauren E. Handler  
SDNY (LEH 6908)  
PORZIO, BROMBERG &  
NEWMAN, P.C.  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962-1997  
(973) 538-5146 (Facsimile)  
(973) 889-4326 (Telephone)  
[lehandler@pbn.com](mailto:lehandler@pbn.com)

Charles S. Baker (CB1365)  
Joseph D. Cohen (JC3017)  
Susan K. Hellinger (SH8148)  
PORTER & HEDGES, LLP  
1000 Main Street, 36<sup>th</sup> Floor  
Houston, Texas 77002  
(713) 226-6000 (Telephone)  
(713) 228-1331 (Facsimile)  
[cbaker@porterhedges.com](mailto:cbaker@porterhedges.com)  
[jcohen@porterhedges.com](mailto:jcohen@porterhedges.com)  
[shellinger@porterhedges.com](mailto:shellinger@porterhedges.com)

*Attorneys for Defendants*

REDACTED VERSION – COMPLETE VERSION FILED UNDER SEAL

Pursuant to Rule 56.1(a) of the Local Rules of the United States District Court for the Southern District of New York, Defendant Lime Wire LLC (“LW”) contends that there is no genuine issue to be tried with respect to the following material facts:

**I. The LimeWire Software and How It Works**

1. The LimeWire client software provides its users with the ability to share computer files with each other, and with users of other Gnutella-compliant client software, over the Internet. For example, using LimeWire software, a user can make photos, movie files, audio files, computer software, word processing documents, and any other kind of computer file available for other users to find and download. Declaration of Dr. Steven Gribble (“Gribble Decl.”) at ¶ 10.

2. Napster was commonly described as a peer-to-peer file-sharing application, and indeed a substantial part of how it worked took advantage of a decentralized, peer-to-peer architecture. However, Napster in fact had a hybrid architecture, as its search functionality was centralized. When connecting to the Napster service, a Napster client uploaded to Napster’s centralized servers a list of files the client possessed and was willing to share. When a user searched for a file, the user’s client software sent a query to the Napster server, which then looked through the lists of files that clients had previously reported to it in order to find a match. (This aggregate list of files available through Napster is commonly called an “index.”) The server then returned a list of matching files, and the IP addresses of the Napster clients that possessed them. Gribble Decl. at ¶ 25.

3. To transfer files, Napster clients communicated directly with each other. The client that wanted to download the file initiated a network connection to one or more

clients that possessed the file, and the file was then transferred over this direct connection. Thus, while searching was centralized in Napster, file transfers were implemented in a decentralized, peer-to-peer fashion. Gribble Decl. at ¶ 26.

4. Because Napster clients had to rely on the centralized Napster servers when searching for files, and because clients reported the list of files they were sharing to those servers, it was possible for the operators of Napster to monitor and control the activities of its users. Gribble Decl. at ¶ 27.

5. Not all hybrid peer-to-peer architectures enable monitoring and control of user activity. For example, the LimeWire file-sharing software, which incorporates more recent versions of the Gnutella protocol and specification, takes advantage of a new architectural component called an “ultrapeer.” An individual Gnutella peer can choose to promote itself to become an ultrapeer. Ultrapeers provide service to a relatively small number of Gnutella peers; a peer that uses the services of an ultrapeer is called a “leaf” of that ultrapeer. Gribble Decl. at ¶ 28.

6. An ultrapeer acts in a manner somewhat reminiscent of Napster’s centralized servers, in that it manages searches on behalf its leaf peers. However, instead of an ultrapeer indexing all files from all peers participating in the Gnutella network, an ultrapeer learns a small amount of information about the files made available by its leaves. Using this information, the ultrapeer routes queries between its leaves, and also potentially forwards queries on to other ultrapeers within the Gnutella network. Gribble Decl. at ¶ 29.

7. Ultimately, ultrapeers reduce the number of hosts with which a peer must communicate in order to find a file, and as a result, ultrapeers increase the efficiency,

performance, and scalability of the Gnutella network. An ultrapeer does not, however, have the ability to force a peer to become its leaf, and no ultrapeer has a complete view of the entire Gnutella network. Accordingly, ultrapeers have only a very limited ability to monitor or control the behavior of peers in Gnutella. Gribble Decl. at ¶ 30.

8. The file-searching and file-sharing capabilities of LimeWire are based on Gnutella. Gnutella is an open, decentralized file-sharing network. Users that participate in the Gnutella network can make files available to others, search for files, and download files from other users on the network. Peers participating within the Gnutella network consist of privately-owned and operated computers. Gribble Decl. at ¶ 31.

9. By open it is meant that the communications protocol used within the Gnutella network is a public specification, allowing anybody who so chooses to implement Gnutella-compliant software that can participate in the network. By decentralized, it is meant that there are no centralized components that the Gnutella network relies on to operate. Instead, the network is based on a hybrid peer-to-peer architecture, and it is comprised of a vast number of voluntarily participating peers, ultrapeers, and other components. Because of Gnutella's decentralized nature, it would be virtually impossible for any one entity to monitor or control the Gnutella network or its users. Gribble Decl. at ¶ 32.

10. Gnutella is an open protocol, which means that its implementation details are publicly available for everyone to use, and its development and evolution are the result of collaboration in an open forum in which anybody can participate. Anyone can implement the protocol by creating Gnutella-compatible software (a "Gnutella client") that will enable users to access and use the Gnutella network. Because all Gnutella

clients are based on implementations of the same, open protocol, a Gnutella-compliant client will interoperate with other Gnutella-compliant clients developed by other entities, thereby forming a single, worldwide network that is described as the Gnutella network. The Gnutella protocol and network was first created in early 2000 by developers working at a company called Nullsoft, which was a subsidiary of AOL-Time Warner. Since then, the Gnutella protocol has been refined substantially to improve the performance, reliability, features, and scalability of the network. Today, there are many Gnutella-compliant software clients. Users of any one of these products can search for and share files with users of the others. Gribble Decl. at ¶ 33.

11. The decentralized, peer-to-peer nature of Gnutella has various implications for its operation:

a. First, its decentralized structure makes Gnutella robust. Because there is no central, single point of failure, the failure or termination of a single peer has virtually no impact on the continued operation of the network as a whole. Even if a majority of peers shut down, the network will most likely continue to function. Indeed, research into peer-to-peer networks has demonstrated that most of the peers that participate in the Gnutella network only remain connected for short periods of time, implying that over the period of several hours, the structure and membership in the Gnutella network undergoes significant change, all the while continuing to operate correctly. Gribble Decl. at ¶ 34.

b. Second, no one entity, including LW, has the power to control the Gnutella network or to shut it down. In a client-server based system, the central server is typically owned and operated by, or on behalf of, a specific entity (*e.g.*, Yahoo). This