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; and GREG BILDSON, and M.J.G.
LIME WIRE FAMILY LIMITED
PARTNERSHIP

Defendants.

CIVIL ACTION NO. 06 CV. 5936
(GEL)

DECLARATION OF SAM BERLIN IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Sam Berlin, the undersigned, hereby declare as follows:

1.   My name is Sam Berlin. I reside in Brooklyn, New York. I am over eighteen years of age, of sound mind, and in all ways qualified and competent to make this declaration. I have personal knowledge of the facts contained in this declaration and they are true and correct.

2.   I am a senior software developer at Lime Wire LLC ("LW"). I am one of the chief software developers at LW for the software program called "LimeWire". My current title is Development Director and Lead of the Client Team.

3.   I joined LW on a full-time basis beginning May, 2003. Since that time, I have been one of the chief software developers for LimeWire. I am extremely familiar with the design features and functionality of LimeWire and the Gnutella network in general.

4.   The LimeWire software application is a tool that allows users to connect and communicate with other people over the Gnutella network. The Gnutella network is "self-organizing", in that users communicate with each other without assistance from any central server or network, including LW. LW does not operate any computers, software programs or services or perform any function to support the function of the Gnutella network.

5.   LimeWire is a peer-to-peer software application that allows users to connect with others on the Gnutella network to exchange all sorts of digital files. It is content agnostic which means that the file–sharing capabilities of LimeWire do not favor one form of file over another. There are several other Gnutella-based software programs that interact with LimeWire to form the Gnutella network, including FrostWire, Morpheus and Shareaza. These programs independently join together to form a network of millions of interconnected but independently owned and controlled computers which comprise the Gnutella network. LimeWire is designed to interact with other computers on the user-created Gnutella network.

6.   LimeWire is distributed in two versions: a free version called Basic and a paid-for version called Pro. Basic and Pro essentially operate in the same fashion except that the Pro version includes a few minor enhancements that allow users the ability to locate files easier and download files more quickly. Pro users also have access to technical support.

7.   If a person wishes to download LimeWire, it can obtain it from several sources. First, a person can download the software directly from LW's website (in fact, this is the only location to purchase a Pro version). Second, one can download it from certain websites over the Internet such

as Download.com, which offers for downloading hundreds of software applications typically free of charge. A third source would be other locations over the Internet, such as oldversion.com. Also, in the past, LW has distributed certain versions via CD-ROM.

8. LimeWire users may search for and share any kind of computer file (including text, images, audio, video, and software files) with any other user of the Gnutella network regardless of whether the other users are running the Lime Wire software application or some other Gnutella-based application, such as FrostWire.

9. Each Lime Wire user has the option of "sharing" files on the user's computer, or making such files available to other users of the Gnutella network for downloading. In order to share a file, a user must identify which files or folders the user wishes to make available for sharing with other users of LimeWire. A user is not required to share any files in order to use the software.

10. There are a number of ways a user can locate other computers on the Gnutella network. The initial search for another computer connected to the Gnutella network is known as "bootstrapping," because the computer must locate another computer without first knowing the location of that computer; effectively "pulling" itself onto the Gnutella network "by the bootstraps."

11. LimeWire can "bootstrap" in two ways: by "entering an IP address," or by contacting a "hostcache".

12. First, a LimeWire user can connect to the Gnutella network by typing in the IP address of another computer connected to the Gnutella network. The user obtains the IP address by "plain old" word of mouth (talking to another network user) or by using an Internet search engine such as http:///www.Google.com, which finds web sites listing IP addresses of connected computers.

13. Second, LimeWire can contact a computer known as a "hostcache" to obtain a list of IP addresses of other computers active on the Gnutella network. A hostcache is a computer that

keeps a running list of the IP addresses of Gnutella "client" computers which have contacted it recently and are, presumably, "active" on the Gnutella network. A number of computers on the Internet serve as hostcaches for the Gnutella network. Hostcaches generally do not receive or store any information regarding the content being transferred or shared by the computers that contact it. The Gnutella client contacts the hostcache computer, which sends the Gnutella client a list of "active" IP addresses, while at the same time logging the Gnutella client's IP address, adding it to the hostcache's list of "active" IP addresses. The next Gnutella client contacting the hostcache will thus receive a list of IP addresses similar to the previous Gnutella client, plus possibly the IP address of the previous client. In this way the hostcache keeps the list of IP addresses as current as possible.

14. Once LimeWire obtains at least one IP address for a "possibly active" computer on the Gnutella network, it contacts the computer or computers until it locates a computer that is linked to the global Gnutella network.

15. After the initial "bootstrap", LimeWire keeps its own list of "active" IP addresses and can rely on its own list of IP addresses to connect to the network during subsequent connection attempts.

16. In order to operate the peer-to-peer functionality of LimeWire, users are not required to identify themselves with any "user name" or other unique word or code. The Gnutella network does not require or support a user-specific account or unique name. Thus, it is not currently possible to identify a Gnutella user with a unique screen name, user name, or account identifier. LimeWire also does not utilize such identifiers as a requirement for using the peer-to-peer functionality of LimeWire.

17. The only identifying information required for connecting to the Gnutella network is an IP address, which enables other computers to locate and interact with each other while connected

to the Internet. An IP address is not an effective method of identifying an individual user because IP addresses for LimeWire users typically change each time the user logs onto the Internet. LW does not maintain any log of the IP addresses of users who connect to the Gnutella network.

18.   A LimeWire user who chooses to search the Gnutella network, must enter a search term or terms (a "search string") into the LimeWire software's Search screen on the user's computer. Exhibit "_L_" attached hereto is a true and correct copy of a screen print from the LimeWire "Search" page. The LimeWire software then begins transmitting the search request to a computer known as an "ultrapeer" which is directly connected to, which in turn pass along the search request to other computers or "leafs" which themselves pass along the request to other computers. LimeWire also searches a file's "metadata" – information that is not part of the file's content, but contains information about the file's content, such as author, file formatting, date or original creation, or the like. Like a giant game of "Telephone," the search request propagates through the Gnutella network to other computers connected to the ultrapeer. The use of ultrapeers is not unique to LimeWire, several other Gnutella applications could select users on high-performance computers to serve as "ultrapeers" as well. In this role, the high-performance computer provided indexing services for a number of lesser-performing computers, thereby improving the efficiency of searches in the network. The LimeWire software selects ultrapeers by employing its own internal algorithms – LW plays no role in promoting or demoting computers to or from ultrapeer status. At no time does any search request from a Gnutella client (including any edition of LimeWire) pass through any computer owned or controlled by LW.

19.   LimeWire allows users to search and download files from other computers on the Gnutella network. To obtain a file from a search result, a user of LimeWire must select a file from the search result. Selecting a file from the search results establishes a direct connection between the

searching computer's computer and the computer on which the desired file is located (the "host computer").

20. Because the Gnutella network is self-organizing, LW has no involvement whatsoever in a LimeWire user's use of the peer-to-peer functions of the application. For users who choose to utilize the peer-to-peer functionality of LimeWire, all processes necessary to carry out that function are performed by computers or entities other than LW. LW does not maintain any indexes of files on the Gnutella network, does not process search results to or from a user, and does not monitor searches or displays of search results. LimeWire does not report any information on the content of searches to any LW computer server. LW's servers do not participate in identifying locations or titles of user files, do not participate in requesting those files for transfer, do not participate in the transfer files from one user to another, do not control or monitor transfer of files, and do not control or monitor management or use of files. LW's servers receive no information regarding any particular files being transferred among users.

21. The LimeWire product is widely available from third parties and on various peer-to-peer networks (the LimeWire software places "install" file in a users shared folder, thus making it widely available) or the Internet at large sites such as CNET's Download.com. Because the product has already been widely distributed, LW cannot stop a particular person or computer from obtaining a copy of the LimeWire product and cannot disable the peer-to-peer functionality of any particular installed program.

22. In addition, the LimeWire software contains a component that activates the user's "browser" software when the user "clicks-on" the "New@Lime" tab located in the LimeWire application. When the tab is clicked by a user, it contacts web servers maintained by LW and displays the resulting webpage. A true and correct copy of the results of clicking on the New@Lime tab is

attached hereto as Exhibit 2. In addition, when the LimeWire application starts up, a background image is retrieved from web servers maintained by LW to display a picture. A true and correct copy of the LimeWire background picture currently shown for 4.16.7 is attached hereto as Exhibit "3." The background graphics make the software user interface attractive, give LW the chance to broadcast messages and information to LimeWire software users. These servers have nothing to do with the file-sharing aspects of LimeWire.

23. In sum, once a user has installed LimeWire, LW has no effective control over a users sharing of files on the Gnutella network. Users must elect to run the software, and determine what (if any) files they wish to place in their "shared folder" on their hard drive. Users decide whether to use the software to connect to the Gnutella network, a public, decentralized network not affiliated with or in any way controlled by LW. LW cannot control what users decide to search for, find, make available, or download over the Gnutella network. Because the Gnutella network does not require or accept unique usernames or other identifiers, LW has no control over LimeWire users' access to the Gnutella network.

24. If LW ceased to operate, if its servers became inoperative (as has happened on occasion owing to technical malfunctions or maintenance), or if all network connections to LW servers were severed, the searching, indexing, transferring, downloading, managing, display and play functions of LimeWire would continue unaffected. Indeed, there currently exists a number of users of former, outdated versions the LimeWire software product who have chosen not to upgrade to newer LimeWire versions, but nevertheless have joined together and continue to operate a peer-to-peer user network using LimeWire software. That these networks are able to continue to operate without LW's involvement demonstrates that LW has extremely limited ability to control the users' use of the peer-to-peer function of the product.
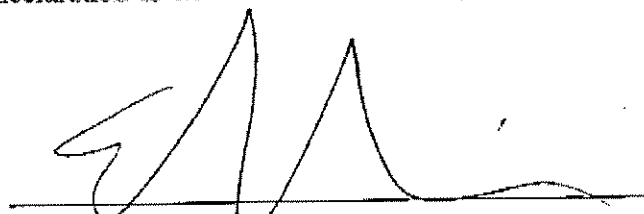
25.   LW has never condoned the use of its software for copyright infringement. LW has always sought to warn its users to not use the software for copyright infringement. For example, LW maintains pages on its website dedicated to informing users and potential users that it is illegal to use LimeWire to download copyrighted files without permission. Attached hereto as Exhibit _4_ is a true and correct copy of a page from the LW website.

26.   In addition, before a user could download LimeWire version 4.16, the user had to agree that he or she would not use the software to commit copyright infringement. The user is shown a page (a true and correct copy of which is attached hereto as Exhibit _5_) in which the "copyright infringement" question is asked. If the potential user does not agree to not use Lime Wire for copyright infringement, he or she will not be allowed to download the software.

27.   The LimeWire client supports two primary pieces of functionality; file location and file transfer. The file transfer is accomplished through the use of the http protocol, the exact same file transfer protocol that powers the worldwide web. In fact, the LimeWire client is capable of acting as a web server, like Apache, and serving up a website to a standard browser.

28.   Unlike the worldwide web, where the exact name and location of a file (the URL) must be known, Gnutella clients, including LimeWire, all for partial matching of file names. This feature has the advantage of allowing users to find and discovery files for which the exact name and location are not known. This capability also allows for the location of multiple files with one query.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in New York, New York on July _17_, 2008.

Sam Berlin