

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/Counterclaim Defendants,

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)

**NOTICE OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Oral Argument Requested

PLEASE TAKE NOTICE that Defendants Lime Group LLC (“LG”), Mark Gorton (“Gorton”), Greg Bildson (“Bildson”) and M.J.G. Lime Wire Family Limited Partnership (the “FLP”) (collectively “Defendants”), by their undersigned counsel, hereby move this Court, before the Hon. Gerard E. Lynch, at the United States Courthouse, 500 Pearl Street, Courtroom 6B, New York, New York, for summary judgment in their favor, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that Defendants are seeking summary judgment in their favor on all counts of the First Amended Complaint against them;

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading was filed by means of the Court's ECF system on the 18th day of July, 2008. Accordingly, it is assumed that all counsel of record received notice of this filing from the ECF system. Lead counsel, listed below, will also receive a courtesy copy via Federal Express.

Katherine B. Forrest
Teena-Ann V. Sankoorikal
Cravath, Swaine & Moore, LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
(212) 474-3700 (fax)

Kenneth L. Doroshow
Karyn A. Temple
Recording Industry Association of America
1025 F Street, NW, 10th Floor
Washington, DC 20004
(202) 775-0101
(202) 775-7253 (fax)

/s/
Charles S. Baker

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 DEFENDANTS GREG BILDSON, MARK GORTON, LIME
GROUP LLC, AND M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP'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

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

Attorneys for Defendants

Pursuant to Rule 56.1(a) of the Local Rules of the United States District Court for the Southern District of New York, Defendants Lime Group LLC (“LG”), Mark Gorton (“Gorton”), Greg Bildson (“Bildson”), and the M.J.G. Lime Wire Family Limited Partnership (“FLP”) contend that there is no genuine issue to be tried with respect to the following material facts:

A. GREG BILDSON (“BILDSON”)

1. Bildson is the Chief Technology Officer (“CTO”) and the former Chief Operating Officer (“COO”) of LW. Declaration of Gregory L. Bildson (“Bildson Decl.”) at ¶ 2.

2. Bildson has been the CTO since the Fall of 2000, and was the COO from May, 2001 to May, 2008. *Id.*

3. Bildson is one of many software developers at LW who, among other things, have assisted in the development of the software program called “LimeWire.” *Id.*

4. While Bildson was employed at LW, one of his responsibilities was to assist in the development of the LimeWire software application. *Id.* at ¶ 3.

5. Bildson is not the chief software developer of the LimeWire software application. *Id.* at ¶ 2.

6. Originally, a software developer by the name of Chris Rohrs was hired to write the code for the first version of LimeWire, which he did in 2000. *Id.*

7. The initial team of software developers at LW included Bildson, Chris Rohrs, Adam Fisk, Sumeet Thadani, Rob Soule, Anurag Singla, and Tarun Kapoor. *Id.* at ¶ 4.

8. Over the years, the LW software development team has changed. *Id.* Today, LW's client development team is comprised of more than 10 software developers. *Id.*

9. There has never been one single person at LW that has led the development of the LimeWire software. *Id.* at ¶ 5.

10. The development of LimeWire has been fairly spread out among all of LW's software developers. *Id.*

11. With respect to making decisions relating to changes in the features or functionality of LimeWire, LW's approach has typically been team-based. *Id.*

12. Like the other developers at LW, Bildson has written certain areas of the underlying code of the LimeWire program. *Id.* at ¶ 6.

13. Bildson's principal contribution with respect to LimeWire has been on the LimeWire Pro purchase system, as well as early contributions to the user interface and features such as magnet link handling. *Id.*

14. Bildson has never assisted in the preparation of any forecasts, budgets or financial statements relating to LW. *Id.* at ¶ 7.

15. Bildson has never had any ownership interest in either LW or LG. *Id.* at ¶ 8.

16. Bildson has never had the right or ability to supervise or control what is or is not done at LW, especially with respect to the distribution of the LimeWire software. *Id.*

17. Bildson never knowingly assisted any person to commit copyright infringement, including any LimeWire user. *Id.* at ¶ 9.

18. Bildson has not had any involvement in what LimeWire users use the software for. *Id.*

19. Bildson does not have the right or ability to supervise or control what LimeWire users do with the software. *Id.*

20. With the exception of a few rare occasions, Bildson has had no direct contact, including technical support, with LimeWire users. *Id.* at ¶ 11.

21. Bildson has never provided any technical assistance to any LimeWire user, nor has he ever assisted any Lime Wire user to directly infringe any copyrights. *Id.*

22. Bildson does not have any knowledge of what LimeWire users are searching for or downloading at any given time. *Id.*

B. MARK GORTON (“GORTON”)

23. Mark Gorton is the Chairman of LW and LG. Declaration of Mark Gorton (“Gorton Decl.”) at ¶ 2.

24. Gorton was previously the Chief Executive Officer of LW until 2006. *Id.*

25. Gorton is not a salaried employee of either LW or LG, and does not presently own a direct interest in either LW or LG. *Id.*

26. At one point in time, Gorton owned a majority interest in LG. *Id.*

27. Gorton never had any specific direct contact or conversation with any LimeWire user in the context of their use of LimeWire. *Id.* at ¶ 8.

28. Gorton never knowingly provided any technical support or assistance to any LimeWire user. *Id.*

29. Gorton never obtained specific, actual knowledge of what LimeWire users were searching for or downloading. *Id.*

30. During the time that Gorton was the CEO of LW, he had very little day-to-day interactions with LW personnel. *Id.* at ¶ 10.

C. LIME GROUP LLC (“LG”)

31. LG is a limited liability management company that provides various services to several entities with which Gorton is associated, including LW. Gorton Decl. at ¶ 3; Declaration of Jesse Rubenfeld (“Rubenfeld Decl.”) at ¶ 3; Declaration of Elizabeth Weiner (“Weiner Decl.”) at ¶ 3.

32. At one time, LG owned approximately 87% of LW, but that has not been the case since the Summer of 2005. Gorton Decl. at ¶ 3; Rubenfeld Decl. at ¶ 3.

33. Currently, LG has 11 employees. Weiner Decl. at ¶ 3.

34. During the time that LG owned an interest in LW, it received periodic cash distributions from LW, as did the other members of LW. Gorton Decl. at ¶ 5.

35. LG was strictly a silent membership holder in LW, and never had any direct or indirect input over, or even a voice in, any decision made at LW. *Id.*

36. To the extent that Gorton ever made any decisions at LW, he did so in his capacity as LW’s CEO, not as a representative of LG. *Id.*

37. The services that LG provides to these various companies, including LW, have varied over time. Rubenfeld Decl. at ¶ 4.

38. The services that LG provides have generally included accounting, maintenance of books and records, and preparation of financial statements. *Id.*; Weiner Decl. at ¶ 4.

39. LG has also provided reception and cleaning services. Rubenfeld Decl. at ¶ 4.

40. On the occasions that LG employees have provided services to LW, LW reimburses LG for these services. *Id.*; Weiner Decl. at ¶ 4.

41. LG is and always has been a separate company from LW. Gorton Decl. at ¶ 3.

42. LW has its own set of books and records that are kept separate from LG and any other entity. Rubenfeld Decl. at ¶ 5; Weiner Decl. at ¶ 5.

43. LW maintains its own checking accounts and does not commingle its assets with LG. Gorton Decl. at ¶ 4; Rubenfeld Decl. at ¶ 5; Weiner Decl. at ¶ 5.

44. LW also prepares its own separate financial statements. Rubenfeld Decl. at ¶ 5; Weiner Decl. at ¶ 5.

45. Since the tax year 2001, LW has never filed consolidated tax returns with LG or any other entity. Rubenfeld Decl. at ¶ 5; Weiner Decl. at ¶ 5.

46. LG does not own or operate any servers associated whatsoever with the use of the LimeWire software application. Weiner Decl. at ¶ 6; Bildson Decl. at ¶ 13.

47. No LG employee has ever contributed to the development of LimeWire. Bildson Decl. at ¶ 13.

48. No LG employee has ever assisted or knowingly had direct contact with any LimeWire users. Bildson Decl. at ¶ 11; Gorton Decl. at ¶ 9.

C. M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP (“FLP”)

49. For many years, Gorton’s accountants and tax advisors had recommended that Gorton consider a variety of estate planning measures. Gorton Decl. at ¶ 6.

50. Eventually Gorton took their advice and met with Kenneth Rubinstein, an attorney, on January 7, 2005, in order to discuss his estate planning options. *Id.*

51. Gorton retained Mr. Rubinstein and his firm to assist him with estate and tax planning matters. *Id.*

52. As part of their estate planning advice, in the Summer of 2005, Gorton's attorneys set up five separate family limited partnerships at the same time, including the FLP. *Id.*; Ex. 1 to Gorton Decl.

53. Gorton is the general partner of the FLP. Ex. 1 to Gorton Decl. There are four limited partners in the FLP: Gorton, Jody Gorton, Mira Eve Gorton, and Zachary Kaleb Gorton. *Id.*

54. The FLP now owns the interest in LW that was previously held by LG. Gorton Decl. at ¶ 6; Ex. 1 to Gorton Decl.

55. The FLP paid for the LW membership interest in an arms-length transaction that closed on June 30, 2005. *Id.*; Weiner Decl. at ¶ 7; Ex. 1 to Gorton Decl.

56. The FLP now receives the periodic cash distributions from LW that previously would have been paid to LG. Gorton Decl. at ¶ 6.

57. LG was solvent at the time of the transfer of the LW interest to the FLP and has remained solvent through today. Weiner Decl. at ¶ 7.

58. Gorton did not conceive of this plan to use family limited partnerships in order to avoid any potential legal exposure to the Plaintiffs in this lawsuit or anyone else. *Id.* at ¶ 7.

59. At the time Gorton established the FLP, he did not believe that he or LW would be sued for copyright infringement. *Id.*

60. The first time Plaintiffs ever threatened Gorton with legal action was by a letter dated September 13, 2005. *Id.*; Ex. 2 to Gorton Decl.

