

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 WIRE LLC; LIME GROUP LLC; MARK
GORTON; and GREG BILDSON,

Defendants.

CIVIL ACTION NO. 06 CV. 5936
(GEL)

**DECLARATION OF SUSAN E. CATES IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Susan E. Cates, hereby declare:

1. My name is Susan E. Cates. 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 an associate at the law firm of Porter & Hedges, L.L.P., and am licensed to practice law in the State of Texas.

3. On July 13, 2008, I conducted a search on LimeWire for "King - I have a Dream" in All Types of files. The search found Martin Luther King Jr.'s speech "I have a Dream" in mp3 format. I was then able to download Dr. King's speech. Attached as Exhibit 1 is a true and correct copy of the LimeWire screen demonstrating that the speech was downloaded.

4. On July 14, 2008, I conducted a search on LimeWire for “declaration of independence” in All Types of files. The search found the United States Declaration of Independence in Adobe format. I was able to download the document. Attached as Exhibit 2 is a true and correct copy of the LimeWire screen demonstrating that the Declaration of Independence was downloaded.

5. On July 14, 2008, I conducted a search on LimeWire for “US Constitution” in All Types of files. The search found the Preamble to the United States Constitution in word format. I was able to download the document. Attached as Exhibit 3 is a true and correct copy of the LimeWire screen demonstrating that the Preamble was downloaded.

6. On July 12, 2008, I went to www.nin.com, the website for Nine Inch Nails. On the website, there was a link titled “New Album: The Slip, Free Download.” I clicked on the link and a new screen came up with an image of a man in profile. I clicked on the screen and a new page came up. The page stated “we are giving away the new nine inch nails album one hundred percent free...” Although the website stated that it was giving the album away for free “exclusively via nin.com,” the website did not provide any restrictions on transferring the album. I entered my email address on the website and an email was sent to me. The email contained a link to download *The Slip* and a token needed to download it. I downloaded *The Slip* in mp3 format and was able to play the songs contained on the album, including track six, “Head Down.” On July 14, 2008, I conducted a search on LimeWire for “Nin – the slip” in All Types of files. The search found track six, “Head Down,” from *The Slip*. I was able to download the song in mp3 format. Attached as Exhibit 4 is a true and correct copy of the LimeWire screen demonstrating that the song was downloaded.

7. On July 14, 2008, I conducted a search on LimeWire for "shakespeare" in Documents. The search found several Shakespeare plays that I was able to download utilizing Microsoft Reader. Specifically, I downloaded the following plays: *Hamlet*, *Twelfth Night*, *Antony and Cleopatra*, *Love's Labour's Lost*, *Macbeth*, *All's Well That Ends Well*, and *Richard III*. Attached as Exhibit 5 is a true and correct copy of the LimeWire screen demonstrating that these plays were downloaded.

8. On July 15, 2008, I went to www.nugs.net and clicked on the link titled "Free Stash." A list appeared of numerous artists in alphabetical order. I clicked on Widespread Panic and then selected the October 25, 2000 concert in New Orleans, Louisiana to download. I was able to download the concert in mp3 format, including the song "Ride Me High." I did not see any restriction on www.nugs.net regarding the downloading or transferring of the concert performance. On LimeWire, I searched in All Types of files for the title "Ride Me High" and was able to find and download "Ride Me High" from the October 25, 2000 concert. Attached as Exhibit 6 is a true and correct copy of the LimeWire screen demonstrating that this song was downloaded.

9. On July 15, 2008, I went to www.jamendo.com and did a search on the website for Tryad. I then clicked on the link "Tryad Demo (Public Domain)." I clicked on the Download icon to download the four songs available. I was successfully able to download the four songs, including, "Breathe," "Listen," and "Struttin'" for free. I did not see any restrictions on the transfer of these songs. In fact, the home page for the website states that the artists on Jamendo allow anyone to download and share their music for free. Also on July 15, 2008, I conducted a search of LimeWire's Audio files by artist Tryad. I was able to download

“Breathe,” “Listen,” and “Struttin’” in mp3 format. Attached hereto as Exhibit 7 is a true and correct copy of the LimeWire screen demonstrating that these songs were downloaded.

10. On July 15, 2008, I typed in www.converse.com in the browser bar and was redirected to www.converse.com/connectivity/index.aspx. I clicked on the Unfold Fullscreen icon. The song “My Drive Thru” by Santogold, Julian Casablanc, and NERD began playing. I clicked on the “Download this Track” link under the title “My Drive Thru.” I was able to download “My Drive Thru” for free in mp3 format. It is my understanding that the song is being used as part of a Converse campaign. I did not see any restrictions on the transfer of the song. On July 15, 2008, I also conducted a search on LimeWire in All Types of files for “My Drive Thru.” The search found “My Drive Thru” and I was able to download the song in mp3 format. Attached hereto as Exhibit 7 is a true and correct copy of the LimeWire screen demonstrating that this song was downloaded.

11. On July 16, 2008, I typed www.gutenberg.org in the browser bar and was redirected to www.gutenberg.org/wiki/Main_Page, the Main Page for Project Gutenberg. The Main Page provides that Project Gutenberg is the first producer of free electronic books. There was a search box on the Main Page and I searched for Mark Twain in the author box. Numerous Mark Twain books appeared, including *The Adventures of Tom Sawyer*, *The American Claimant*, *The Adventures of Huckleberry Finn*, *A Double Barreled Detective*, *Captain Stormfield’s Visit to Heaven*, *Is Shakespeare dead*, *On the Decay of Lying*, *Man that Corrupted Hadleyburg*, *A Dog’s Tale*, *The Prince and the Pauper*, *Tom Sawyer Abroad*, and *The Stolen White Elephant*. Each time I clicked on a book title, a new screen appeared. This screen indicated that the book was not copyrighted in the United States. On those pages, I was able to download the books for free. Also on July 16, 2008, I searched on LimeWire in All Types of files for “Mark Twain.” The

search found several Mark Twain books that I was able to download using Microsoft Reader or as text files. I was able to download *The Adventures of Tom Sawyer*, *The American Claimant*, *The Adventures of Huckleberry Finn*, *A Double Barreled Detective*, *Captain Stormfield's Visit to Heaven*, *Is Shakespeare dead*, *On the Decay of Lying*, *Man that Corrupted Hadleyburg*, *A Dog's Tale*, *The Prince and the Pauper*, *Tom Sawyer Abroad*, and *The Stolen White Elephant*. Attached hereto as Exhibit 8 is a true and correct copy of the Limewire screen demonstrating that these books were downloaded.

12. On July 16, 2008, I went to www.magnetmix.com. There was a section of the page about Alfie Zappacosta. In that section, there was a link titled "Download the MP3 'Start Again' from the album Saint Something." I clicked on the link and LimeWire popped up with the "Start Again" song downloading on LimeWire itself. I then went to page 3 of the audio downloads and clicked on "Download 'The Only One' in a section on American Analogue Set. Similarly, the song downloaded in LimeWire. I also clicked on "Download the MP3 'Fight Song' from the album the Two Conversations in a section on The Appleseed Cast and that song downloaded in LimeWire. Attached hereto as Exhibit 9 is a true and correct copy of the LimeWire screen demonstrating that these three songs were downloaded. I also clicked on the Literature icon and then on the link to "Download 'Down and Out in the Magic Kingdom.'" The book downloaded in LimeWire in pdf format. Attached hereto as Exhibit 10 is a true and correct copy of the LimeWire screen demonstrating that the book was downloaded.

13. On July 16, 2008, I downloaded *Malice in the Palace*, a Three Stooges short movie at www.180solutions.com/destination/catalog/play/play.aspx?pid=744565. I did not see any information limiting the transfer of the movie. On that same date, I conducted a search on LimeWire in All Types of files for "three stooges – malice" and found the *Malice in the Palace*

Three Stooges short movie. Attached hereto as Exhibit 11 is a true and correct copy of the LimeWire screen demonstrating that this short movie was downloaded.

14. On July 17, 2008, I went to www.archive.org/index.php and conducted a search for "String Cheese Incident 2001-31." When the search results came up, I selected the link for the December 31, 2001 concert and was then able to download "Magic Carpet Ride" from that concert. I did not see anything on the Internet Archive website restricting the transfer of this song. On July 15, 2008, I conducted a search of LimeWire Audio files for artist String Cheese Incident. I was able to find and download "Magic Carpet Ride" from the December 31, 2001 concert. Attached as Exhibit 12 is a true and correct copy of the LimeWire screen demonstrating that this song was downloaded.

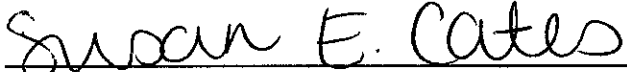
15. On July 17, 2008, I went to www.archive.org/index.php and conducted a search for "String Cheese Incident 2002." I then selected the link for the June 22, 2002 Bonnaroo Music Festival, and downloaded "Kashmir." I did not see anything on Internet Archive restricting the transfer of this song. On July 15, 2008, I conducted a search on LimeWire for Audio files for artist String Cheese Incident. I was able to find and download "Kashmir" from the June 22, 2002 Bonnaroo Music Festival in mp3 format. Attached as Exhibit 12 is a true and correct copy of the LimeWire screen demonstrating that this song was downloaded.

16. On July 17, 2008, I went to www.archive.org/index.php and conducted a search for "Tea Leaf Green 2005." I clicked on the link for Tea Leaf Green's March 3, 2005 concert and downloaded "Garden III" and "Gasaholic" in mp3 format. I did not see anything on the website limiting the transfer of these songs. On July 15, 2008, I searched Audio files by artist Tea Leaf Green on LimeWire. The search found "Garden III" and "Gasaholic" from the March

3, 2005 concert. I was able to download those songs in mp3 format. Attached as Exhibit 13 is a true and correct copy of the LimeWire screen demonstrating that these songs were downloaded.

17. On July 17, 2008, I went to www.vidablue.net, the website for Vida Blue. I clicked on the link "Multimedia." The next screen allowed me to download "Most Events Aren't Planned" from Vida Blue's July 9, 2002 concert in Seattle, Washington. I did not see anything on the website restricting the transfer of this song. On July 15, 2008, I searched Audio files on LimeWire by artist Vida Blue. I was able to download "Most Events Aren't Planned" from the July 9, 2002 concert in mp3 format. Attached as Exhibit 14 is a true and correct copy of the LimeWire screen demonstrating that these songs were downloaded.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on July 17, 2008.


Susan E. Cates