

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,

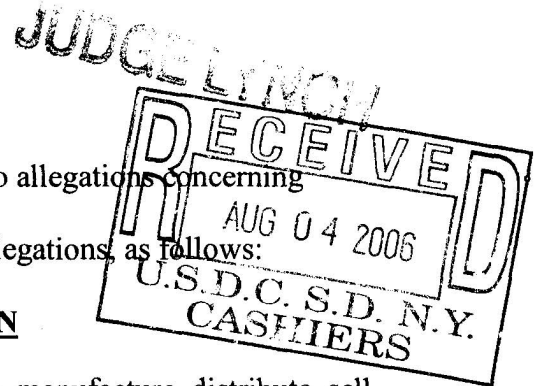
v.

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

Defendants.

COMPLAINT FOR FEDERAL
COPYRIGHT INFRINGEMENT,
COMMON LAW COPYRIGHT
INFRINGEMENT, AND UNFAIR
COMPETITION

06 CV 5936



Plaintiffs hereby allege on personal knowledge as to allegations concerning
themselves, and on information and belief as to all other allegations, as follows:

NATURE OF THE ACTION

1. Plaintiffs are record companies that produce, manufacture, distribute, sell,
and license the vast majority of commercial sound recordings in this country.

Defendants' business, operated under the trade name "LimeWire" and variations thereof,
is devoted essentially to the Internet piracy of Plaintiffs' sound recordings. Defendants
designed, promote, distribute, support and maintain the LimeWire software,
system/network, and related services to consumers for the well-known and overarching
purpose of making and distributing unlimited copies of Plaintiffs' sound recordings

without paying Plaintiffs anything. Plaintiffs bring this action to stop Defendants' massive and daily infringement of Plaintiffs' copyrights.

2. The scope of infringement caused by Defendants is staggering. Millions of infringing copies of Plaintiff's sound recordings have been made and distributed through LimeWire — copies that can be and are permanently stored, played, and further distributed by LimeWire's users. LimeWire thus substantially replaces the need to *buy* recordings from legitimate retailers and displaces authorized online sales and distribution services, including existing and developing "peer to peer" ("P2P") systems that operate lawfully. Plaintiffs and others have invested and risked tremendous amounts of money, time, and energy to develop these emerging markets. The harm that Defendants cause to these nascent markets, and the damage Defendants cause Plaintiffs every day, are both enormous and obvious.

3. Despite the scope of Defendants' wrongdoing, this case is by now a familiar and straightforward one. The LimeWire software and system, and the actions by which Defendants have built LimeWire into the leader for online infringement of sound recordings today, are essentially the same as those establishing copyright infringement liability in the *Napster*, *Aimster*, *Grokster*, and other pirate P2P cases already decided in Plaintiffs' favor by federal courts — including, most recently, the United States Supreme Court.¹ Nevertheless, Defendants have continued to promote, market, and distribute LimeWire as the successor-in-infringement to these pirate services. Like their

¹ *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001); *In re Aimster Copyright Litig.*, 334 F.3d 643 (7th Cir. 2003); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764 (2005).

predecessors, Defendants should be ordered to cease their continuing unlawful actions, and they should be held accountable for the massive damage they have already caused.

JURISDICTION AND VENUE

4. This is a civil action seeking injunctive relief and damages for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and for unfair competition and common-law copyright infringement under New York law with respect to Plaintiffs' sound recordings fixed prior to February 15, 1972.

5. The Court has original subject matter jurisdiction over the Copyright Act claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and the state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

6. The Court has personal jurisdiction over the Defendants because each resides and/or may be found in New York, does systematic and continuous business in New York, and has performed acts directed at and causing harm in New York which give rise to this Complaint.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c) and 28 U.S.C. §1400(a).

THE PLAINTIFFS AND THEIR BUSINESS

8. Plaintiffs, well-known and respected record companies, are in the business of producing, manufacturing, distributing, selling, licensing, and facilitating the distribution and sale of sound recordings (*i.e.*, recorded music) in the United States. The considerable artistic and technical quality of Plaintiffs' sound recordings are known in the State of New York, and throughout the United States and the world.

9. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

10. Plaintiff Atlantic Recording Corporation is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

11. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

12. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

13. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

14. Plaintiff Interscope Records is a general partnership duly organized and existing under the laws of the State of California, with its principal place of business in the State of California.

15. Plaintiff LaFace Records LLC is a limited liability corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

16. Plaintiff Motown Record Company, L.P. is a limited partnership duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

17. Plaintiff Priority Records LLC is a limited liability company with its principal place of business in the State of California.

18. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a general partnership duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

19. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

20. Plaintiff Virgin Records America, Inc. is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

21. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

22. Plaintiffs are the copyright owners or owners of exclusive rights (by way of agreement) with respect to the vast majority of copyrighted sound recordings sold in the United States. Under the Copyright Act, Plaintiffs have, *inter alia*, the exclusive rights to “reproduce the copyrighted work[s],” to “distribute copies or phonorecords of the copyrighted work[s] to the public,” to perform publicly the copyrighted works by

means of digital transmission, and to authorize or license any such activities. 17 U.S.C. §§ 106(1), (3), (6).

23. Additionally, Plaintiffs have entered into various agreements by which they obtained the common-law copyright rights in sound recordings embodying certain musical performances which were initially “fixed” prior to February 15, 1972 (the “Pre-1972 Recordings”) and therefore are subject to protection under state rather than federal copyright law. 17 U.S.C. § 301(c). Pursuant to these agreements and New York State common law, Plaintiffs possess, *inter alia*, the exclusive rights to manufacture, distribute, and sell these recordings.

24. Plaintiffs manufacture, distribute, license, and sell phonorecords (*i.e.*, the material objects containing recorded music) in the form of CDs, cassettes and other tangible media. Plaintiffs also distribute, license, and sell their sound recordings in the form of digital audio files delivered or performed via the Internet. The Internet now features a substantial number of legitimate avenues for the sale and digital distribution of music, including Apple’s iTunes, Rhapsody, AOL Music, Yahoo! Music, Walmart.com, Napster and others. Some of these services even use P2P technology like Defendants — but unlike Defendants, they operate lawfully and pay Plaintiffs for sound recordings that they distribute. Other services are emerging.

25. Plaintiffs have invested and continue to invest significant money, time, effort, and creative talent to discover and develop recording artists, and to create, manufacture, advertise, promote, sell, and license sound recordings embodying their performances. Plaintiffs, their employees, their recording artists, and others in the music industry are compensated for their creative efforts and monetary investments largely from

the sale and distribution of sound recordings to the public, including the authorized online sale and distribution described above.

26. Attached as Exhibit A is a non-exhaustive, exemplary list of over 3,000 of Plaintiffs' sound recordings that have been copied, publicly distributed, and/or publicly performed without Plaintiffs' authorization, through the conduct described in this Complaint. The copyright in each of these sound recordings is registered in the United States Copyright Office. 17 U.S.C. §§ 409-412.

27. Attached as Exhibit B is a non-exhaustive, exemplary list of Pre-1972 Recordings in which Plaintiffs hold exclusive rights under New York law and which have been copied and/or publicly performed without Plaintiffs' authorization, through the conduct described in this Complaint.

THE DEFENDANTS

28. Defendants design, build, promote, distribute, sell, and support software and related services under the "LimeWire" name and variations thereof.

29. Defendant Lime Group LLC is a Delaware limited liability corporation with its principal place of business in New York, New York.

30. Defendant Lime Wire LLC is a Delaware limited liability corporation with its principal place of business in New York, New York, and is a wholly-owned subsidiary of defendant Lime Group LLC, with which it shares offices and officers/employees. Lime Wire LLC and Lime Group LLC directly and indirectly designed LimeWire and update, improve, promote, distribute and market LimeWire.

31. At all times relevant to this action, defendant Lime Group LLC has had exclusive and complete domination and control over defendant Lime Wire LLC, such that LimeWire LLC is its alter ego and mere instrumentality. There is a substantial and

continuing connection between Lime Group LLC and Lime Wire LLC with respect to the actions complained of herein.

32. Defendant Mark Gorton is a principal and the Chief Executive Officer of defendant LimeWire LLC. He is also a member and the Chief Executive Officer of defendant Lime Group LLC. Mr. Gorton is the dominant influence in Lime Group LLC, and, along with Defendant Greg Bildson, in Lime Wire LLC. Mr. Gorton has been personally and substantially involved in and profits greatly from the design, promotion, marketing and distribution of LimeWire.

33. Defendant Greg Bildson is the Chief Technology Officer and Chief Operating Officer of defendant LimeWire LLC. Along with Defendant Mark Gorton, Mr. Bildson is the dominant influence in defendant Lime Wire LLC and has been personally and substantially involved in and profits greatly from the design, promotion, marketing and distribution of LimeWire.

34. At all times relevant to this action, defendants Mark Gorton and Greg Bildson have, in both their corporate and personal capacities, participated in and caused Lime Wire LLC and Lime Group LLC to participate in the acts complained of herein. Both Gorton and Bildson have each, for example, (i) participated in the design, promotion, marketing and distribution of LimeWire and had the right and ability to supervise others taking those actions, (ii) possessed policy-making authority and control over Lime Wire LLC and direct supervisory responsibility over Lime Wire LLC's employees, (iii) been aware of, personally overseen or directed, and approved of the actions complained of herein, and (iv) made public statements that have encouraged,

facilitated and induced copyright infringement of Plaintiffs' sound recordings through LimeWire.

35. The design, promotion, marketing and distribution of LimeWire are the result of decisions and actions that have been made jointly among the Defendants.

36. At all times relevant to this action, each of the Defendants is and was a party to the unlawful actions complained of, and acted in concert or combination with each of the other Defendants and/or has acted as an agent for each of the other Defendants with respect to the actions and matters described in this Complaint.

BACKGROUND DESCRIPTION OF THE ILLEGAL CONDUCT

37. Beginning in or around August 2000, and continuing through today, Defendants have designed, promoted, marketed, distributed, sold, supported, and maintained the software and network system known as "LimeWire." LimeWire, like similar systems that preceded it, such as Napster, Aimster, Kazaa, and Grokster, is an online tool for infringement. Indeed, Defendants have taken steps to attract users to LimeWire from other infringing services through, *inter alia*, advertisements and comparative public statements. Those efforts have succeeded in large part — LimeWire has now become the leading P2P software for infringing Plaintiffs' sound recordings.

38. LimeWire is, from a bare technical standpoint, a "peer to peer filesharing" (P2P) program and network that connects individual computer users via the Internet, and allows them to transfer files from one user's hard drive to another's. The LimeWire software uses the so-called "Gnutella network protocol," which Defendants also have substantially developed and maintained, though others have contributed to it. Defendants' design of the software, however, and their development and maintenance of the network, are targeted to and predicated on highly-efficient finding and copying of

large volumes of Plaintiffs' copyrighted sound recordings — and that is in fact how LimeWire is known and used. In essence, Defendants have virtually assured, and have encouraged and capitalized on, the fact that, at any given time, a LimeWire user can find and download a permanent copy of virtually any popular sound recording in Plaintiffs' catalogs.

39. Defendants have designed, updated (via release of new versions), promoted, marketed and distributed two types of LimeWire software. A free version of LimeWire software, called "LimeWire Basic," is offered for on-line download from LimeWire's web site. An enhanced version, called "LimeWire PRO," promising "faster downloads," is sold by LimeWire for approximately \$19. The two types of LimeWire are fully compatible with one another. LimeWire PRO users are able to search for and download files from each other *and* from LimeWire Basic users, and vice versa.

40. Use of LimeWire begins with the installation process. As described above, the basic or enhanced version of LimeWire can be installed via a download from LimeWire's web site. Defendants designed LimeWire so that when a user installs the software on his/her computer, LimeWire automatically searches the computer for media files (*i.e.*, sound recording files) to be "shared" (*i.e.*, made available to other LimeWire users for downloading). This feature allows each LimeWire user to quickly and easily make his/her entire collection of sound recordings available to other LimeWire users around the world.

41. Once installed, LimeWire is easy for the user to launch and run. Indeed, to increase the number of users who are actually running LimeWire at any given time — and thereby increase the number of Plaintiffs' sound recordings on the network that are

available for users to download — Defendants have designed LimeWire to automatically launch upon startup of the user’s computer (unless the user specifically designates otherwise).

42. After launching LimeWire, which connects the user to the LimeWire system/network, the LimeWire user can search the files made available for “sharing,” *i.e.*, copying, by other users on LimeWire. As indicated on LimeWire’s web site: “In the network-wide sense, it’s correct that one person’s files [*i.e.*, his/her collection of sound recordings] are available to millions of users.”

43. LimeWire “shares,” or makes available for download, files that have been copied to a designated portion of the user’s hard drive, typically the “shared folder.” Defendants have taken steps to ensure that LimeWire users “share” a large number of files on LimeWire, thereby maintaining the draw and reputation of LimeWire as a vast, unauthorized repository of commercial sound recordings. For example, Defendants designed the LimeWire installation process to automate the copying of sound recording files to the designated “share” location. Indeed, Defendants further designed LimeWire to punish those users – called “freeloaders” by LimeWire – who do not “share” enough files with other LimeWire users. Freeloaders can be blocked from downloading files from a LimeWire user if that user so chooses. Defendants highlight and promote the “freeloader” blocking feature on the LimeWire website, stating, for example, “If you’re not sharing enough files, users with certain connection preferences won’t let you connect to them for downloading. For this reason, *we recommend all LimeWire users share generously with one another*” (emphasis added). As the vast majority of the files “shared,” *i.e.* copied, through LimeWire are copyrighted sound recordings owned by the

Plaintiffs, the Defendants' exhortation for LimeWire users to "share" files is a call for LimeWire users to engage in unlawful reproduction and distribution of Plaintiffs' copyrighted material.

44. LimeWire facilitates the search for and download of Plaintiffs' recordings in various other ways. Users can search by genre of sound recordings, including the genres of "Top 40" and "Classic Rock" — which are by definition comprised almost entirely of copyrighted sound recordings owned by the Plaintiffs. Moreover, when (as is nearly always the case) a user's search yields multiple sources for a given sound recording, LimeWire displays the connection speed (*e.g.*, dial-up, cable, T1, etc.) of each source, to allow the user to choose the fastest download option. This feature, along with allowing the user to start a queue of multiple downloads at once, permits maximum copying in limited time.

45. Other features show that LimeWire was designed for sound recordings. It includes a built-in audio player (but not text editor, picture viewer, or other tools for using non-audio files). The player not only enables users to listen immediately to sound recordings downloaded, but also has a preview function that plays *part* of the sound recording before the whole file is downloaded. This feature permits users to verify the "authenticity" or quality of the sound recording that they found on LimeWire and began downloading based on a title or artist search, thus preventing downloads of partial or "bad" files, and facilitating the downloading of a greater number of infringing files.

46. LimeWire PRO in particular has been designed and promoted for its superior infringement capabilities. For example, Defendants state that "[t]he purchase of

LimeWire PRO gives users better search results, turbo-charged download speeds, connections to more sources, [and] a guarantee of no ads or nagware”

47. The very design and promotion of LimeWire show that Defendants know (actually as well as constructively) of the massive infringement of Plaintiffs’ copyrights occurring via LimeWire. Defendants’ knowledge and intent are apparent in other respects as well. For example, Defendants make it easy for a user to download and install LimeWire even *after* indicating that he/she “intend[s] to use LimeWire for copyright infringement.” Following a perfunctory refusal by Defendant’s web site, the user simply navigates back to the prior page, changes his/her answer, and is allowed to continue with the download.

48. Defendants also, *inter alia*, (i) have the ability to view searches of LimeWire users, (ii) have made statements on LimeWire’s web site such as: “Keep in mind that many users disobey copyright laws,” (iii) know of well-publicized infringement actions brought by or on behalf of copyright holders against LimeWire users, (iv) know of press accounts in which individuals have acknowledged using LimeWire to reproduce and distribute unauthorized copyrighted sound recordings, and (v) know of statements in online chat rooms and message boards operated and/or monitored by Defendants, indicating that users are using LimeWire for the distribution and reproduction of unauthorized copyrighted works.

49. Furthermore, Plaintiffs served written notice of infringement to Defendants on September 13, 2005. That notice informed Defendants that LimeWire had been and was inducing, enabling, encouraging and facilitating massive infringement of

Plaintiffs' copyrighted sound recordings, and demanded that Defendants cease and desist their continued activities. Defendants have refused to do so.

50. Defendants not only have known of the infringement, but have promoted and relied upon it to build their business. For example, at various times relevant to this action, Defendants actively promoted the use of LimeWire to reproduce and distribute copyrighted sound recordings by, *inter alia*, purchasing advertisements directed at potential users who are likely to, or already exhibit the desire to, infringe Plaintiffs' copyrights – such as users of other illegal services. Defendants also instruct LimeWire users on how to reproduce and distribute copyrighted sound recordings through, *inter alia*, the LimeWire website, on-line forums and bulletin boards.

51. Defendants have the right and ability to supervise and control the infringing activities of LimeWire users on Defendants' system/network. For example, Defendants can view searches on LimeWire, and view what is being "shared" via LimeWire at a given time. Defendants provide the LimeWire software to users, distribute updates and upgrades, and have dictated license terms governing the use of the software. Defendants maintain email addresses of LimeWire PRO users, and provide those users with personalized technical support and free access to updated versions of LimeWire PRO within the first six months of purchase of LimeWire PRO.

52. Defendants also recruit users and others (*e.g.*, by requests on LimeWire's web site) to act as connection points on the network, and communicate these connection points to other LimeWire users. Indeed, Defendants have the ability to send messages to computers running LimeWire at any given time, and Defendants have used this ability to facilitate distribution and sale of updates and upgrades to LimeWire.

53. The extent of Defendants' control further is evident in features that Defendants built into the LimeWire software, including "freeloader" blocking and content filters such as for spam – features that can be and are updated via the process described above. Defendants are aware of means to exclude Plaintiffs' copyrighted works from LimeWire, as other P2P providers have done on their systems and software. Defendants, however, have failed to do so.

54. There is little or no incentive for Defendants to exclude Plaintiffs' works from LimeWire, for they have created direct and substantial profits for Defendants. The availability of Plaintiffs' copyrighted sound recording is *the* draw to the LimeWire system, and the motivation for users to purchase LimeWire software from Defendants. Indeed, Defendants use the free version of LimeWire to help "seed" the LimeWire network with infringing material, to entice paying users of LimeWire PRO. Defendants have derived substantial profits from purchases of its software.

55. In addition, Defendants have, at certain times relevant to this action, profited from LimeWire Basic users through payments received from third-parties for: (i) advertisements displayed on LimeWire Basic, (ii) third-party software bundled with LimeWire Basic, and (iii) a "shopping" function in LimeWire Basic. The amount of payments received from each of these features is directly related to the number of users or extent of use of LimeWire Basic — use that consists almost exclusively of the infringement of Plaintiffs' copyrights.

56. Since Defendants first made LimeWire available in August 2000, hundreds of millions of copies of LimeWire have been downloaded by users. LimeWire's website, which boasts of the number of "hosts" from whom LimeWire users

can download files, indicates that, at any given moment, the electronic files of more than two million persons can be downloaded using LimeWire. Millions of downloads occur through LimeWire, the vast majority of which are unauthorized downloads of copyrighted material – including especially Plaintiffs’ copyrighted works, examples of which are listed in Exhibit A.

COUNT I: INDUCEMENT OF COPYRIGHT INFRINGEMENT

57. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 55 above.

58. Individuals using LimeWire software and services have directly infringed and are directly infringing Plaintiffs’ copyrights on a daily basis by, for example, creating unauthorized reproductions of Plaintiffs’ copyrighted sound recordings and distributing copies of such sound recordings to the public in violation of Plaintiffs’ exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501. The scope of infringement is massive, encompassing thousands of Plaintiffs’ sound recordings (including without limitation those listed in Exhibit A) and millions of separate infringing acts.

59. Defendants are liable for inducing the copyright infringement of LimeWire users. Defendants design, promote, and market LimeWire as optimized for the unauthorized copying and transmission of copyrighted sound recordings, thereby actively facilitating, encouraging and enticing LimeWire users to engage in the infringement. Indeed, Defendants intend to bring about such infringements.

60. Defendants have induced and continue to induce infringement by, for example, aiming to satisfy a known source of demand for copyright infringement, including the market comprising users of other infringing services that were shut down or

compelled to block access to Plaintiffs' copyrighted works, such as Napster, Grokster, and Kazaa.

61. Defendants further have induced and continue to induce infringement by, for example, failing to block or diminish access to infringing material using LimeWire, even though there are technological means to do so — means that are known to Defendants, and some of which have already been employed successfully by Defendants' competitors who operate legally.

62. Defendants further have induced and continue to induce infringement by, for example, building and maintaining a business model to profit directly from a high volume of infringing use, including sales of the "PRO" version of LimeWire designed specifically to facilitate high volumes of infringement, and the draw of which is the millions of infringing files placed on the network by LimeWire Basic (and other PRO) users.

63. Each violation of each Plaintiff's rights in and to each copyrighted sound recording constitutes a separate and distinct act of copyright infringement.

64. Through the conduct described above, Defendants are liable for inducing the infringement described herein.

65. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

66. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to the maximum statutory damages under 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each timely-registered work that was infringed. An

exemplary list of infringed works is included in Exhibit A. Exhibit A is non-exhaustive and undoubtedly includes only a small fraction of Plaintiffs' works that were infringed. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly.

67. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages, if any), Plaintiffs at their election prior to judgment are entitled to recover their "actual damages and any additional profits of the [Defendants]" attributable to the infringement. 17 U.S.C. § 504(a)-(b).

68. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

69. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction prohibiting further infringement of Plaintiffs' copyrights.

COUNT II: CONTRIBUTORY COPYRIGHT INFRINGEMENT

70. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 55 above.

71. Individuals using LimeWire software and services have directly infringed and are directly infringing Plaintiffs' copyrights on a daily basis by, for example, creating unauthorized reproductions of Plaintiffs' copyrighted sound recordings and distributing copies of such sound recordings to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501. The scope of infringement is massive,

encompassing thousands of different sound recordings (including without limitation those listed in Exhibit A) and millions of separate infringing acts.

72. Defendants are liable as contributory infringers for the copyright infringement committed via LimeWire software and services. Defendants have knowledge of the massive infringement that has occurred and continues to occur through LimeWire, and Defendants have caused, enabled, facilitated, and materially contributed to that infringement.

73. Defendants' knowledge of infringement is both actual and constructive. Written and oral statements by Defendants and user testimonials posted on LimeWire's web site and in advertising; express promotional comparisons to other notorious and illegally operated P2P systems; features of LimeWire optimized for finding and distributing popular sound recordings, and for interfering with enforcement efforts; and Defendants' failure to act upon Plaintiffs' written notice of infringement many months ago all exhibit Defendants' awareness and intent that the overarching purpose and use of LimeWire is to infringe Plaintiffs' copyrighted sound recordings.

74. Defendants have caused, enabled, facilitated, and materially contributed to the infringement complained of herein. Defendants have, in addition to the actions above, provided the tools, support, and instruction for the infringement via LimeWire; directly and indirectly promoted the infringement via LimeWire and intentionally built a business model to profit directly from it; and refused to exercise their ability to stop the infringement on LimeWire.

75. The occasional purported "warnings" against copyright infringement now appearing on the LimeWire web site and software are illusory and do not affect

Defendants' knowledge or contribution to the infringement (or, in the case of Defendants' knowledge, actually confirm it). Notwithstanding purported warnings, Defendants' prior and ongoing actions have made it common knowledge among Internet users that Defendants' product and services, like Napster and Grokster before them, are optimized and intended for obtaining copyrighted sound recordings.

76. Each violation of each Plaintiff's rights in and to each copyrighted sound recording constitutes a separate and distinct act of copyright infringement.

77. Through the conduct described above, Defendants are contributorily liable for the infringement described herein.

78. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

79. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to the maximum statutory damages under 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each timely-registered work that was infringed. An exemplary list of infringed works is included in Exhibit A. Exhibit A is non-exhaustive and likely only includes a small fraction of Plaintiffs' works that were infringed. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly.

80. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages, if any), Plaintiffs at their election prior to judgment are entitled to recover their "actual damages and any additional profits of the [Defendants]" attributable to the infringement. 17 U.S.C. § 504(a)-(b).

81. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

82. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction prohibiting further infringement of Plaintiffs' copyrights.

COUNT III: VICARIOUS COPYRIGHT INFRINGEMENT

83. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 55 above.

84. Individuals using LimeWire software and services have directly infringed and are directly infringing Plaintiffs' copyrights on a daily basis by, for example, creating unauthorized reproductions of Plaintiffs' copyrighted sound recordings and distributing copies of such sound recordings to the public in violation of Plaintiffs' exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 501. The scope of infringement is massive, encompassing thousands of Plaintiffs' sound recordings (including without limitation those listed in Exhibit A) and millions of separate infringing acts.

85. Defendants are liable as vicarious infringers for the copyright infringement committed via LimeWire software and services. At all times relevant to this action, Defendants (i) have had the right and ability to control and/or supervise the infringing conduct of LimeWire users, and (ii) have had a direct financial interest in, and derived substantial financial benefit from, the infringements of Plaintiffs' copyrighted sound recordings via LimeWire.

86. Among other things, Defendants exhibit their ability to control activity on LimeWire by building filtering mechanisms into client software that, for example, block spam and the like; preventing LimeWire PRO subscribers from updating their software following the expiration of their subscription; causing or encouraging LimeWire users to upgrade to new versions of LimeWire software when Defendants desire; and their influence on and control of certain technical aspects of the LimeWire network.

87. Defendants have derived direct and substantial benefit from infringement by selling significant numbers of its LimeWire PRO software, the value of which is based essentially on the draw of obtaining unlimited and fast access to Plaintiffs' copyrighted sound recordings for free. Indeed, Defendants' revenues are based more blatantly on infringement than predecessor P2P systems that were driven by, for example, advertising or spyware revenues. And Defendants avoided substantial "start up" costs to its business by offering the Basic version of LimeWire for free, thereby "seeding" its network with free copies of Plaintiffs' works to attract the paying users.

88. Each violation of each Plaintiff's rights in and to each copyrighted sound recording constitutes a separate and distinct act of copyright infringement.

89. Through the conduct described above, Defendants are vicariously liable for the infringement described herein.

90. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard of the rights of Plaintiffs, and has caused substantial damage to Plaintiffs.

91. As a direct and proximate result of Defendants' infringement, Plaintiffs are entitled to the maximum statutory damages under 17 U.S.C. § 504(c), in the amount

of \$150,000 with respect to each timely-registered work that was infringed. An exemplary list of infringed works is included in Exhibit A. Exhibit A is non-exhaustive and likely only includes a small fraction of Plaintiffs' works that were infringed. The identities of additional infringed works and the total number of infringed works will be determined during discovery, and the pleadings adjusted accordingly.

92. As an alternative to statutory damages (and for infringed works that do not qualify for statutory damages, if any), Plaintiffs at their election prior to judgment are entitled to recover their "actual damages and any additional profits of the [Defendants]" attributable to the infringement. 17 U.S.C. § 504(a)-(b).

93. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

94. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction prohibiting further infringement of Plaintiffs' copyrights.

COUNT IV: COMMON LAW
COPYRIGHT INFRINGEMENT OF PRE-1972 RECORDINGS

95. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 55 above.

96. Plaintiffs' Pre-1972 Recordings are subject to common-law copyright protection under the law of New York. As the owners of valid common-law copyrights in the Pre-1972 Recordings, Plaintiffs possess the exclusive rights to manufacture, copy, sell, distribute, and otherwise exploit the recordings.

97. Plaintiffs have not authorized or licensed the Defendants or any users of LimeWire to copy or distribute the Pre-1972 Recordings in any manner.

98. The creation and widespread dissemination through LimeWire of unauthorized copies of Plaintiffs' Pre-1972 Recordings, including but not limited to those recordings listed in Exhibit B hereto, constitutes infringement of Plaintiffs' common-law copyrights in the Pre-1972 Recordings. Through the conduct described above, Defendants are liable for the common law copyright infringement of the Pre-1972 Recordings.

99. As a direct and proximate result of Defendants' willful, wanton and reckless copyright infringement, Plaintiffs are entitled to compensatory damages in such amounts as will be proven at trial, as well as punitive damages.

100. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief prohibiting Defendants from further violating Plaintiffs' rights in the Pre-1972 Sound Recordings.

COUNT V: UNFAIR COMPETITION AS TO PRE-1972 RECORDINGS

101. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 55 above.

102. Plaintiffs possess exclusive ownership interest in and to the Pre-1972 recordings, and those ownership interests are protected under New York state law.

103. Plaintiffs are engaged in the business of selling and distributing the Pre-1972 Recordings, both in tangible forms, such as CDs, vinyl records and cassettes and also digitally, over the Internet and otherwise.

104. Through the conduct described above, Defendants are violating Plaintiffs' rights in the Pre-1972 Recordings, including but not limited to those recordings listed in Exhibit B hereto, and are guilty of unfair competition under the common law of the state of New York. By the foregoing acts, Defendants are unfairly competing with Plaintiffs' use, sale, distribution and exploitation of the Pre-1972 Recordings, and otherwise taking advantage of and undermining Plaintiffs' substantial creative and financial investment therein, and unfairly misappropriating Plaintiffs' rights to the Pre-1972 Recordings for Defendants' own commercial benefit.

105. As a direct and proximate result of Defendants' willful, wanton and reckless engagement in unfair competition, the Plaintiffs have been damaged, and Defendants have been unjustly enriched, in an amount to be proved at trial for which damages and/or restitution and disgorgement are appropriate. Plaintiffs are additionally entitled to punitive damages. As a direct and proximate result of Defendants' conduct, the Plaintiffs are further entitled to recover all proceeds and other compensation received or to be received by Defendants arising from Defendants' infringements of the Pre-1972 Recordings.

106. Defendants' conduct has caused, and unless enjoined by this Court, will continue to cause Plaintiffs irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief prohibiting Defendants from further violating Plaintiffs' rights in the Pre-1972 Sound Recordings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against

Defendants as follows:

(a) for a ruling that Defendants have willfully infringed Plaintiffs' copyrights, including copyrights in all of the sound recordings listed in Exhibit A, and that Defendants' actions constitute unfair competition and other violations of New York state law;

(b) for injunctive relief requiring that Defendants and Defendants' agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, cease infringing, whether directly or indirectly, and cease causing, enabling, facilitating, encouraging, promoting, inducing, contributing to, and participating in the infringement of, any of Plaintiffs' respective copyrights or exclusive rights protected by the Copyright Act or common law, whether now in existence or hereafter created;

(c) as to Counts I-III, for maximum statutory damages pursuant to 17 U.S.C. §504(c), specifically, \$150,000 per work with respect to each and every timely registered sound recording owned by Plaintiffs that was willfully infringed and \$30,000 per work with respect to each and every other timely registered sound recording owned by Plaintiffs that was infringed, if any;

(d) as to Counts I-III, as an alternative to statutory damages at Plaintiffs' election prior to final judgment, for an accounting of Defendants' profits attributable to the infringement to be provided by Defendants pursuant to 17 U.S.C. § 504(b), and for payment of such profits and Plaintiffs' actual damages suffered from infringement;

(e) as to Counts IV and V, for compensatory damages and/or disgorgement and punitive damages in such amount as may be found or established at trial, arising from Defendants' willful and wanton violations of state law;

(f) for prejudgment and post-judgment interest;

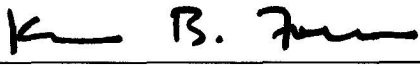
(g) for Plaintiffs' costs and disbursements in this action, including reasonable attorneys' fees; and

(h) for such other and further relief as the Court deems proper and just.

Respectfully submitted,

August 4, 2006

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by 

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