

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)

**DECLARATION OF RICHARD PRELINGER IN SUPPORT
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Richard Prelinger, hereby declare as follows:

1. My name is Richard Prelinger. I reside in San Francisco, California.
2. I am currently founder and president of Prelinger Associates, Inc., known in the trade as Prelinger Archives, which I founded in 1985. Prelinger Archives is a for-profit archive of historical moving images that furnishes stock footage to the media production community through Getty Images, Inc., its exclusive representative.
3. I served on the Board of Directors of the Association of Moving Image Archivists (AMIA), a professional organization, between 1993 and 1997, and was also AMIA's

representative on the National Film Preservation Board, as appointed by the Librarian of Congress, from 2001 through 2005.

4. Before founding Prelinger Archives, I worked as a researcher and archival consultant on motion pictures and television programs. Between 1989 and 1995, I was Director of Archival Development at The Comedy Channel and Home Box Office, both in New York City. In 1989, my company published *Footage 89: North American Film and Video Sources*, the definitive compendium of public and private moving image collections. I attended the University of California at Berkeley, completing four years of classwork in 1979.

5. Prelinger Archives has assembled a collection of over 60,000 “ephemeral” (advertising, educational, industrial, documentary and amateur) films produced between 1903 and 1990. Approximately 60% of this material is in the public domain; we own rights to approximately 5%; and the remainder, currently under copyright, is available for on-site reference use only. We are known in the industry for both breadth of imagery and high image quality, and for our exclusive coverage of many aspects of American cultural and social history.

6. Prelinger Archives is a commercial, for profit venture. The market for our stock images and sounds is wide and continues to broaden as the number of media outlets increases. We license footage to motion picture producers both in and out of Hollywood; broadcast and cable television networks and production companies; software developers and publishers; educational media producers; corporate video producers for both in-house and external use; to advertising agencies for commercials, print advertisements and presentations; to concert promoters and theatrical promoters for use in conjunction with their events and productions; to government agencies at every level; to artists and nonprofit organizations for a wide variety of projects; and clients in many other market areas.

7. Historically, collectors or custodians of public domain materials have exercised a high degree of physical and contractual control over the material in their possession. This custom has caused problems because it leads to a monopoly and exclusivity of imagery, which does not serve the interests of research, education and free expression. Though we shared this controlling perspective out of concern for widespread unauthorized copying when we began in business, we quickly found this to be shortsighted.

8. In 1987, we partnered with The Voyager Company, a pioneer publisher of videodiscs and CD-ROMs, to publish two one-hour anthologies of key ephemeral films from our collection. Though the first two compilations sold only some 20,000 copies, they proved influential in building our reputation as a source for unique and evocative historical imagery within the production community, and, though we had not anticipated that they would so function, ended up serving as excellent "demo reels" of our holdings, bringing us new business (as well as national publicity on every major television network).

9. In 1994, we began production on an expanded anthology of 12 CD-ROMs, 10 of which were published, that contained a substantial number of historical films from our collection together with contextual material. This anthology also brought us a good deal of press attention and new business. It is important to note that we did not prohibit users of this second anthology from copying the movies and using them for their own purposes.

10. Our experience with these digital anthologies convinced us that widespread distribution of our films, along with the resultant publicity, built our "brand" in the area of archival footage. Our willingness to distribute freely in digital format also served to differentiate us from the growing pool of other companies specializing in this area.

11. As a result of our early experiences with digital distribution, Prelinger Archives in 2001 started the process of arranging to have many of our most popular public domain films digitized and made available through the Internet Archive. As of today, close to 2,000 such films are available through the Internet Archive, and by the end of this year that number will be over 2,500. In an effort to maximize the commercial value of this wide distribution, further reuse and redistribution of the digitized films (whether by the community of peer-to-peer software users or otherwise) has been left unrestricted.

12. Our partnership with the Internet Archive has addressed many business issues for us in a promising way.

13. First, by building the largest publicly available archival film collection on the Web, we have accomplished an enviable goal – the capability of providing demo reels to anyone, anywhere, at no cost to ourselves. When a prospective client requests a copy of a given film or image, it is usually already available online for free. This means that our active involvement with the transaction begins after the choice has been made, and we don't have to pass through the laborious research stage.

14. Second, free distribution through the Internet Archive, and from there, further redistribution through other sources, has increased brand visibility for Prelinger Archives.

15. Third, since the images in the Internet Archive are freely downloadable, they can be used more readily than images in other collections. In the stock image business, ubiquity equals sales. Some years ago, the director of the Time-Life Photo Collection told me that the most used, yet also most remunerative image in her collection was the famous photograph of the 3-D film audience, all seated wearing stereoscopic glasses. This picture has been reproduced so often as to become a cliché but this has actually increased sales. From our perspective, frequent

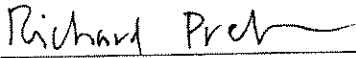
use of our images increases the frequency of demand for them. And, indeed, this has been borne out in practice. Since 2002, we have seen a steady and sometimes dramatic increase in income from stock footage sales. Getty Images staff has told us that many people who license stock footage from our collection became aware of our materials through contact with them online in one or more of their freely available forms. Prelinger Archives is much more financially secure than it was prior to beginning our efforts with Internet Archive.

16. Fourth, we can now refer worthy but financially-challenged users to the website, where they can get material for free without ourselves having to incur any costs. We still gain from the publicity they generate for us, and the visibility of the images they use ultimately benefits us. Our materials are also used for educational purposes at all levels of education, from home schooling to universities.

17. Peer-to-peer networks represent a very exciting opportunity, as they will propagate images even more widely without increasing our costs. As discussed above, Prelinger Archives believes that widespread, unrestricted digital distribution of our films brings important commercial benefits. As a result, we welcome further redistribution of the Prelinger films made available at the Internet Archive by individuals using peer-to-peer software, and based on my own experiences as well as those reported to me by others, I know that many of the Prelinger films are available on peer-to-peer networks.

18. By voluntarily "hosting" our films and making them available to the millions of others in the peer-to-peer community, the users of these peer-to-peer software products are amplifying the availability of the Prelinger films, extending our reach beyond that of the Internet Archive alone. To the extent this is done without imposing any additional costs on Prelinger Archives, whether in the form of hosting or bandwidth charges, this is great for us.

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 San Francisco, California on July 16, 2008.



Richard Prelinger