

# **ATTACHMENT A**

**Response to Defendants' Evidentiary Objections to Plaintiffs' Exhibits**

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>2</b>	<i>Relevance</i>	Lime Wire LLC's offer letter to George Searle is relevant because it is probative of the fact that Mark Gorton was not replaced as CEO of Lime Wire by George Searle before 2007. Initially Mark Gorton said that this date was in 2006. ( <i>See</i> Gorton 07/18/08 Declaration ¶ 2.) In his most recent declaration, Gorton now acknowledges that he was the CEO of Lime Wire until April 2007. ( <i>See</i> Gorton 09/26/08 Decl. ¶ 2; <i>see also</i> DR50F 09/26/08 ¶ 16.)
<b>13</b>	<i>Hearsay</i>	Exhibit 13 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Kotzen was a Business Development Associate of Lime Wire LLC at the time he made the statement "[d]ue to the Napster-like capabilities of the [Gnutella] software, AOL soon thereafter ordered the software to be taken down off the Nullsoft web site" in a draft letter that he prepared on behalf of Cho, the Business Development Leader of Lime Wire LLC. ( <i>See</i> Attach. C.) <sup>1</sup> It is apparent from the e-mail to Bildson and Cho containing the draft letter that Kotzen's statement was related to a matter within the scope of his employment.
<b>14</b>	<i>Authenticity</i>	Exhibit 14 is authenticated by the testimony of Christopher Rohrs (Rohrs Tr. 117:14-118:11). <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay; Hearsay within Hearsay</i>	Exhibit 14 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Rohrs was employed as a software engineer at Lime Wire LLC at the time he stated in his post on the slashdot website that LimeWire interoperates with other Gnutella clients. ( <i>See</i> Attach. C.) Rohrs developed the first version of LimeWire LLC. ( <i>See</i> Bildson 07/18/08 Decl. ¶ 3) ("[A] software developer by the name of Chris Rohrs was hired to write that code for the first version of LimeWire, which he did in 2000."). Rohrs' post on the slashdot website was related to a matter within the scope of his employment. Further, he signed the post as "Christopher Rohrs - LimeWire".
<b>15</b>	<i>Hearsay</i>	Exhibit 15 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). <i>First</i> , Samuel Berlin was, at the time of this post, the Senior Software Developer at Lime Wire LLC. ( <i>See</i> Attach. C.) <i>Second</i> , his statement that "[LimeWire version] 3.7.1 fixed interoperability with BearShare" was sent from his e-mail address at Lime Wire (sberlin@limepeer.com ( <i>see</i> Berlin Tr.

<sup>1</sup> Attachment C ("Attach. C") contains the relevant names and titles of the officers, directors, and employees of Lime Wire LLC and their respective periods of employment.

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		5:12-5:21)) and is related to a matter within the scope of his employment. <i>Third</i> , Greg Bildson was the administrator of the <a href="mailto:gdf@yahoo.com">gdf@yahoo.com</a> (Gnutella Developer Forum (Rohrs Tr. 75:3-11; <i>see also</i> Exhibits 206-08)) to which Berlin posted this message. ( <i>See</i> Bildson Tr. 388:3-20.)
	<i>Relevance</i>	Exhibit 15 is not a personal post. ( <i>See supra</i> Ex. 15 hearsay response) Moreover, defendants themselves discuss and concede the interoperability of the various Gnutella clients an issue. ( <i>See</i> LW 7/18/08 SOF ¶¶ 1, 10.) Exhibit 15 indicates that adjustments to Gnutella clients are necessary to maintain interoperability.
17	<i>Optional Completeness Rule</i>	Fed. R. Evid. 106 does not require the inclusion of the complete Change Log. Plaintiffs submitted the relevant excerpts for the Court's convenience, as required by the Court's rules. <i>See</i> S.D.N.Y. ECF Rule 5.2. In any event, defendants themselves submitted the complete Change Log as Exhibit 43 to their Response in Opposition of Plaintiffs' Motion for Partial Summary Judgment.
26	<i>Authenticity</i>	While defendants object to Exhibit 26, they do not object to Exhibit 25 which, like Exhibit 26, is a screenshot of the LimeWire software. Moreover, defendants themselves have submitted various screenshots of the LimeWire software as Exhibits to the declaration of Susan E. Cates. ( <i>See, e.g.</i> , Cates 07/17/08 Decl., Exhibits 1-4). Exhibit 26 is properly authenticated by Minarovich 11/7/08 Decl. ¶ 2 and is further authenticated by the testimony of Samuel Berlin. (Berlin Tr. 178:16-179:18.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 26 is not hearsay because a screenshot -- a picture of the software program's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).
27	<i>Authenticity</i>	<i>See supra</i> Ex. 26 authenticity response. Further, Exhibit 27 is authenticated by the testimony of Samuel Berlin. (Berlin Tr. 181:15-182:24). <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	( <i>See supra</i> Ex. 26 hearsay response.)
31	<i>Hearsay</i>	Exhibit 31 is not hearsay because plaintiffs do not offer it for its truth, but to demonstrate that Lime Wire LLC received notice and had knowledge of the fact that LimeWire users had hundreds of music files listed in their LimeWire directories. <i>See</i> Fed. R. Evid. 801(c).
33	<i>Hearsay; multiple exhibits in one</i>	Exhibit 33 consists of various e-mail chains, specifically emails between Bildson and Sarah Brook of CNet/download.com. The statements made by Bildson in his e-mails to Brook are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
35	<i>Authenticity</i>	Exhibit 35 consists of a screenshot and a printout of a webpage (CNET Download.com LimeWire Download Page). It is authenticated by the

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		<p>Forrest 07/18/08 Decl. at 6, which specifies the URL of the webpage and the date the printouts were made. <i>See</i> Fed. R. Evid. 901(1). As evidenced by the screenshot of this webpage, Exhibit 35 is further authenticated by its appearance and distinctive characteristics, taken in conjunction with the circumstances. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any explanation why Exhibit 35 is not authentic. Further, defendants themselves offer numerous printouts from various websites without even specifying the date of the printout. (<i>See</i> Baker 07/17/08 Decl. ¶¶ 5-32.) Thus, defendants have waived their objection to Exhibit 35.</p>
39	<i>Hearsay</i>	<p>Exhibit 35 is not hearsay because plaintiffs do not offer it for its truth of the matter asserted but to demonstrate that the LimeWire software was available for download on the CNET Download.com webpage and that the webpage stated that as of July 12, 2008, Lime Wire had been downloaded from the site 152,452,975 times. <i>See</i> Fed. R. Evid. 801(c).</p> <p>Exhibit 39 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). At the time Harris stated “[w]e have over two million unique users in a given month.” he was in Business Development at Lime Wire (<i>See</i> Attach. C) and used his business e-mail account (aharris@limepeer.com). The statement was drafted in response to a French journalist’s inquiry and is related to a matter within the scope of Harris’ employment. With respect to Exhibit 39, Harris testified that he was doing “some work in public relations” (Harris Tr. 40:3-40:5) and that “[s]ince [he] was replying on the behalf of Lime Wire, [he] was replying how the company would reply”. (Harris Tr. 207:3-207:8.) To the extent Exhibit 39 is offered to demonstrate that Lime Wire LLC made statements such as “[c]opyright law has been so corrupted over time”, it is offered to show defendant’s state of mind. <i>See</i> Fed. R. Evid. 801(c).</p>
42	<i>Hearsay</i>	<p>Exhibit 42 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge of the fact that the LimeWire client “is installed on 18.71% of all computers worldwide.” <i>See</i> Fed. R. Evid. 801(c). Moreover, Exhibit 42 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Jason Pelzer, the lead developer of the Lime Wire store, (<i>see</i> Attach. C), sent this e-mail from his business e-mail address jason.pelzer@limewire.com to storedev@limewire.com, (the e-mail address of the Lime Wire Store (Catillaz Tr. 55:9-55:11)) and incorporated a post prepared by another party into his e-mail. Accordingly, Mr. Pelzer has adopted its contents. <i>See</i> Fed. R. Evid. 801(d)(2)(B).</p>

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	<i>Relevance</i>	Exhibit 42 is relevant because it is probative of Lime Wire's knowledge of a report indicating that its client was installed on 18.71% of all computers worldwide.
43	<i>Hearsay</i>	Exhibit 43 is not hearsay because it is not being offered for its truth, but to (1) demonstrate that BigChampagne reported that "17.7% of U.S. internet users have installed LimeWire's software" and (2) show that Lime Wire LLC's Chief Financial Officer Jesse Rubenfeld was quoted saying "[i]t's legal to buy music through our store". See Fed. R. Evid. 801(c). Further, Rubenfeld testified in his deposition that he remembered making this statement (Rubenfeld Tr. 290:19-24).
	<i>Relevance</i>	Exhibit 43 is relevant because it is probative of (1) the fact that Lime Wire LLC knew of BigChampagne's estimates about LimeWire's distribution was reported and that Lime Wire was aware of the popularity of the LimeWire client and (2) that Rubenfeld's quote noted music purchased through the Lime Wire store was legal.
44	<i>Hearsay</i>	Exhibit 44 is not hearsay because it is not being offered for its truth but to demonstrate that it was reported that Lime Wire LLC's CEO, George Searle, made these statements in his November 2007 speech. See Fed. R. Evid. 801(c).
49	<i>Authenticity</i>	Exhibit 49 is authenticated by the testimony of Eric German. (German Tr. 347:10-348:5.) See Fed. R. Evid. 901(1).
	<i>Hearsay</i>	Exhibit 49 is not hearsay because it is not being offered for its truth but to illustrate the reason Mercurio agreed that his initial report that the file install_easyshare.exe was inaccurately classified as "Highly Likely Infringing" was in error. See Fed. R. Evid. 801(c). (See Pls. 07/18/08 SOF ¶¶ 115-117.)
50	<i>Authenticity</i>	Exhibit 50 is authenticated by the Forrest 07/18/08 Decl. at 8 and by the Minarovich 11/7/08 Decl. ¶ 4. (See also <i>supra</i> Ex. 26 authenticity response.)
	<i>Hearsay</i>	Exhibit 50 is not hearsay. (See <i>supra</i> Ex. 26 hearsay response.)
55	<i>Authenticity</i>	Exhibit 55 is authenticated by the testimony of Adam Fisk. (Fisk Tr. 161:13-162:23.) See Fed. R. Evid. 901(b)(1). Further, Exhibit 55 is authenticated because it was produced by defendants in discovery. (See Forrest 11/7/08 Decl. ¶ 28.)
	<i>Hearsay</i>	Exhibit 55 is not hearsay because it is not being offered for its truth but to demonstrate that Fisk ( <i>see</i> Attach. C), made these statements and as circumstantial evidence of his beliefs and thoughts. See Fed. R. Evid. 801(c). (See Attach. C.) Further, Fisk confirmed these statements in his deposition. (See Fisk Tr. 162:9-163:2.)
	<i>Relevance</i>	Fisk's statement that "when you're enabling copyright infringement on

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		a massive scale, you'd have to suck pretty badly not to succeed" is probative of a Lime Wire LLC employee's expressed belief that Lime Wire LLC, a member of the p2p industry, was built on copyright infringement by the users of its software. Fisk confirmed that he had evidence that many users used LimeWire for infringement. (See Fisk Tr. 179:09-19.)
63	<i>Hearsay</i>	Exhibit 63 is not hearsay because it is not being offered for its truth but to demonstrate Lime Wire LLC's knowledge of BigChampagne's report indicating that, as of July 2006, over 90% of all P2P usage was audio or video. See Fed. R. Evid. 801(c). Further, the BigChampagne presentation is also a market report, which was generally used and relied upon by persons in the digital entertainment business, and in particular by Lime Wire LLC. (Catillaz Tr. 313:13-314:13.) It is therefore also admissible hearsay. See Fed. R. Evid. 803(17).
64	<i>Relevance</i>	Exhibit 64 is relevant because it shows that in 2002 defendants' own expert, Steven Gribble and his co-authors, concluded that 94% of the data transferred over the Gnutella Network was audio and video files. (See Gribble Tr. 142:24-144:15.) The LimeWire software operates over the Gnutella network. (See Pls. 7/18/08 SOF ¶ 46.) Thus, Exhibit 64 is probative of the fact that the LimeWire software was used for the transfer of audio and video files.
65	<i>Authenticity</i>	Exhibit 65 is properly authenticated because it was produced by defendants in discovery. (See Forrest 07/18/08 Decl. at 10.)
	<i>Hearsay; Hearsay within Hearsay</i>	Exhibit 65 is neither hearsay, nor hearsay within hearsay, as it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge of a report that Napster had to shut down its file sharing service following a copyright-infringement lawsuit by the recording industry. See Fed. R. Evid. 801(c); see also <i>In re Napster Copyright Litigation</i> , 479 F.3d 1078, 1082 (9th Cir. 2007).
	<i>Relevance</i>	Exhibit 65 is probative of Lime Wire's knowledge of a report that Napster had to shut down its file sharing service following a copyright infringement lawsuit by the recording industry.
66	<i>Authenticity</i>	Exhibit 66 is a printout of a webpage (www.sonic.com). It is authenticated by the Forrest 07/18/08 Decl. at 10, which specifies the URL of the webpage and the date the printout was made. See Fed. R. Evid. 901(1). Exhibit 66 is further authenticated by its appearance and distinctive characteristics. See Fed. R. Evid. 901(4). (See also <i>supra</i> Ex. 35 authenticity response.)
	<i>Hearsay</i>	Exhibit 66 is not hearsay as it is not being offered for its truth but to demonstrate that it was announced that Napster re-opened as a licensed service through which users could acquire music for a fee. See Fed. R. Evid. 801(c).

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
	<i>Relevance</i>	Exhibit 66 is probative of Lime Wire LLC's knowledge of a report that Napster re-opened as a licensed service.
<b>67</b>	<i>Relevance</i>	Exhibit 67 is probative of Lime Wire LLC's knowledge of a report that Napster re-opened as a licensed service.
<b>69</b>	<i>Hearsay</i>	Exhibit 69 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Steven Cho was the Leader of Business Development at Lime Wire LLC when he made the statements in this e-mail. ( <i>See</i> Attach. C.) Cho's statements are related to a matter within the scope of his employment.
<b>75</b>	<i>Authenticity</i>	Exhibit 75 is authenticated by the testimony of Greg Bildson (Bildson Tr. 543:17-544:13). <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 75 is further authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 29.)
	<i>Hearsay</i>	Exhibit 75 is not hearsay because it is not being offered for its truth but to show that Greg Bildson was quoted as having made these statements and that Lime Wire LLC, which produced this exhibit in discovery, had knowledge of the statements and maintained files that included this and other articles discussing LimeWire and Gnutella as Napster clones or Napster alternatives. <i>See</i> Fed. R. Evid. 801(c).
<b>77</b>	<i>Authenticity</i>	Exhibit 77 is authenticated by the Gorton 09/26/08 Decl. ¶ 19 and by the testimony of Mark Gorton. ( <i>See</i> Gorton Tr. 267:13-268:25.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 77 is further authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 30.)
	<i>Hearsay</i>	Exhibit 77 is not hearsay because it is not being offered for its truth but to demonstrate that after a meeting with Mark Gorton, Scott Ward of Widmeyer Communications ("Widmeyer"), drafted a public-relations campaign proposal for LimeWire including the statements in question. The statement is also offered to show that Lime Wire LLC, which produced this exhibit in discovery, had knowledge that public relations professionals believed the demise of Napster would benefit Lime Wire LLC. <i>See</i> Fed. R. Evid. 801(c).
<b>81</b>	<i>Authenticity</i>	Exhibit 81 is authenticated by the testimony of Greg Bildson. ( <i>See</i> Bildson Tr. 285:21-286:9.) Fed. R. Evid. 901(b)(1). Moreover, Exhibit 81 was produced pursuant to a subpoena requiring Barret, a former employee of Lime Wire LLC, represented by defendants' counsel, and with no interest adverse to that of defendants, to produce documents. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 31.)
<b>82</b>	<i>Hearsay</i>	Exhibit 82 is admissible as a business record of Google Inc. ("Google") under the hearsay exception in Fed. R. Evid. 803(6). Exhibit 82 has been produced in discovery by Google pursuant to subpoena. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 32.) Google designated Jill T. Randell to testify on its behalf under Fed. R. Civ. P. 30(b)(6).

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		Randell is a strategic partner manager at Google (Randell Tr. 3:12-3:18) and was previously "an account manager with the AdWords team" and "an account coordinator" with Google. (Randell Tr. 4:23-6:4.) Ms. Randell testified that Exhibit 82 is "a copy of what someone from Google would see when logging into our internal AdWords system". (Randell Tr. 11:12-11:15.) She further testified that this exhibit was "a business record". (Randell Tr. 12:5-12:11). Ms. Randell's testimony is sufficient foundation for the business records exception.
83	<i>Hearsay</i>	Exhibit 83 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson circulated this French article and wrote "Gnutella is prepared to take the place of Napster"! LimeWire especially". Further, Exhibit 83 demonstrates that Lime Wire LLC, which produced this exhibit in discovery, maintained files that included such articles. <i>See</i> Fed. R. Evid. 801(c). Further, Bildson's statements are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
84	<i>Hearsay</i>	The documents contained in Exhibit 84 are not hearsay because they are not offered for their truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, "maintained files that included articles, e-mails, and forum posts indicating that LimeWire and Gnutella were Napster clones or Napster alternatives." ( <i>See</i> Pls. 07/18/08 SOF ¶ 168.) <i>See</i> Fed. R. Evid. 801(c).
85	<i>Hearsay</i>	Exhibit 85 is not hearsay because it is not being offered for its truth but to show that Bildson circulated the article from the <i>Wall Street Journal</i> entitled "Napster Alternatives". <i>See</i> Fed. R. Evid. 801(c). Further, Bildson's statement is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
87	<i>Hearsay</i>	Exhibit 87 is not hearsay because it is not being offered for its truth but to show that J.K. Barret (managing Lime Wire LLC public relations at the time ( <i>see</i> Barret Tr. 21:19-21:21)) forwarded this article to Bildson, Cho, and Gorton ( <i>see</i> Pls. 7/18/08 SOF ¶ 173) and that Lime Wire LLC had knowledge of the article's contents.
89	<i>Authenticity</i>	Exhibit 89 is authenticated by the testimony of Greg Bildson. ( <i>See</i> Bildson Tr. 584:25-586:6.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 89 is not hearsay because it is not being offered for its truth but to show that Bildson circulated this article under the subject line "LimeWire good article". <i>See</i> Fed. R. Evid. 801(c). Further, this is also an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
	<i>Relevance</i>	Exhibit 89 is relevant because it is probative of the fact that Bildson circulated an email that stated that LimeWire was perceived in the media as a Napster "clone[]".



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90	<i>Authenticity</i>	Exhibit 90 is authenticated by the testimony of J.K. Barret. ( <i>See Barret Tr. 201:7-201:24.</i> ) <i>See Fed. R. Evid. 901(b)(1).</i> Exhibit 90 is further authenticated because it was produced in discovery pursuant to a subpoena by Barret, a former employee of Lime Wire LLC, who was represented by defendants' counsel and has no interest in this litigation or no interest adverse to that of defendants. ( <i>See Forrest 11/07/08 Decl. ¶ 33.</i> )
	<i>Hearsay</i>	Exhibit 90 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson circulated the PC Pitstop report's figures about the installation of file-sharing services including Napster and LimeWire. Further, the statements made by officers and employees of Lime Wire (Bildson, Cho, Kotzen ( <i>see Attach. C</i> )) in the e-mails that comprise Exhibit 90 are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i>
91	<i>Authenticity</i>	Exhibit 91 is an excerpt from the PC Pitstop Research Report which defendants' counsel authenticated by submitting it as Defendants' Exhibit 7. ( <i>Baker 09/26/08 Decl. ¶ 9.</i> ) Exhibit 91 is further authenticated by the testimony of J.K. Barret ( <i>see Barret Tr. 204:6-204:20.</i> ) <i>See Fed. R. Evid. 901(b)(1).</i> Moreover, Exhibit 91 is authenticated because it was produced in discovery pursuant to a subpoena by Barret, a former employee of Lime Wire LLC, who was represented by defendants' counsel and has no interest in this litigation or no interest adverse to that of defendants. ( <i>See Forrest 11/07/08 Decl. ¶ 34.</i> )
	<i>Hearsay</i>	Exhibit 91 is not hearsay because it is not being offered for its truth but to demonstrate that the PC Pitstop Research Report asserted that LimeWire was one of the "Top Napster Competitors" and that Lime Wire LLC knew of the report. <i>See Fed. R. Evid. 801(c).</i> Further, the Pitstop Report is a market report that was used by Lime Wire, which is indicated by the e-mails contained in Exhibit 90. Thus, Exhibit 91 is also admissible hearsay. <i>See Fed. R. Evid. 803(17).</i> Moreover, defendants have proffered this document as their own Exhibit 7 ( <i>see Baker 9/26/08 Decl. ¶ 9</i> ), thereby waiving their objections to Exhibit 91.
	<i>Relevance</i>	Exhibit 91 is relevant because it is probative of the fact that Lime Wire was reported to be a "Top Napster Competitor" and that Lime Wire LLC knew of the report. ( <i>See also supra Ex. 91 hearsay response.</i> )
92	<i>Authenticity</i>	Exhibit 92 is properly authenticated because it was produced by defendants in discovery. ( <i>See Forrest 11/07/08 Decl. ¶ 35.</i> ) Further, Exhibit 92 is listed as Appendix I in drafts to the Lime Wire Offering Memorandum (submitted as Plaintiffs' Exhibits 93, 94, and 95 -- defendants do not not object to their authenticity).
	<i>Hearsay</i>	Exhibit 92 is not hearsay because it is not being offered for its truth but

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		to demonstrate that Lime Wire LLC attached this article about Napster as Appendix I to drafts of the Lime Wire Offering Memorandum. <i>See</i> Fed. R. Evid. 801(c).
96	<i>Authenticity; multiple exhibits in one</i>	Exhibit 96 consists of various printouts of newspaper articles from newspapers webpages. These printouts are authenticated by the Forrest 07/18/08 Decl. at 13-14, which specifies the URL of the webpages and the dates the printouts were made. <i>See</i> Fed. R. Evid. 901(1). These newspaper articles are further authenticated by their appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Plaintiffs note that defendants object to the authenticity of these newspaper articles while defendants themselves have submitted printouts from the webpages of the <i>same</i> newspapers. ( <i>See</i> Baker 07/17/08 Decl. ¶¶ 7, 9, 11, 13, 22.) ( <i>See also supra</i> Ex. 35 authenticity response.)
	<i>Hearsay</i>	The newspaper articles contained in Exhibit 96 are not hearsay because they are not offered for their truth but to demonstrate that it was reported that Grokster, Morpheus and Kazaa enabled users to copy and transfer copyrighted music files. <i>See</i> Fed. R. 801(c).
97	<i>Authenticity</i>	Exhibit 97 is an excerpt from Lime Wire LLC's 2004 Marketing Plan, which defendants' counsel authenticated by submitting it as Defendants' Exhibit 6. ( <i>See</i> Baker 09/26/08 Decl. ¶ 8.) Moreover, defendants have waived their objection to this Exhibit by affirmatively using the same document to which they object. Exhibit 97 is further authenticated by the testimony of Kathryn Catillaz. ( <i>See</i> Catillaz Tr. 41:25-43:19.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 97 is also authenticated because it was produced in discovery by defendants. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 36.). Moreover, Exhibit 97 is authenticated as a marketing plan of Lime Wire LLC by its appearance, contents and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(b)(4).
100	<i>Authenticity</i>	Exhibit 100 is further authenticated because it was produced in discovery by defendants. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 37.)
	<i>Hearsay</i>	Exhibit 100 is not hearsay because it is not being offered for its truth but to demonstrate that Gorton's parents--investors in Lime Wire LLC--followed the legal proceedings surrounding Grokster and Morpheus and believed articles about those proceedings going well for the P2P's would make Gorton "happy". Further, this exhibit demonstrates that Lime Wire LLC, which produced this exhibit in discovery, knew that its investors followed these proceedings and, themselves, knew of the proceedings. <i>See</i> Fed. R. 801(c).
	<i>Relevance</i>	Exhibit 100 is probative of Lime Wire LLC's and its investors' knowledge of the <i>Grokster</i> proceedings.
102	<i>Hearsay</i>	Exhibit 102 is the same type of business record as Exhibit 82. ( <i>See</i>

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		<i>supra</i> Ex. 82 hearsay response.)
103	<i>Authenticity</i>	Exhibit 103 is authenticated by the affidavit of Pravin Sahane. ( <i>See</i> Sahane Aff., Ex. 485.) <i>See</i> Fed. R. Evid. 901(b)(1). The documents in Exhibit 103 were produced in discovery by Yahoo! Inc. ("Yahoo") and are therefore authentic.
	<i>Hearsay</i>	Exhibit 103 is admissible as a business record of Yahoo's Search Marketing division ("YSM"). <i>See</i> Fed. R. Evid. 803(6). The Sahane Aff. establishes that the data collected in response to plaintiffs subpoena were "copies of data prepared, received and/or maintained in the regular course and scope of business of Y!SM." (Sahane Aff. ¶ 4). Further, the statements contained in the e-mail sent from Lime Wire LLC to Yahoo (Yahoo 009; <i>see also</i> Sahane Aff. ¶ 7) are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
105	<i>Authenticity</i>	Exhibit 105 is a printout from Lime Wire LLC's website (www.limewire.com). It is authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any explanation why Exhibit 105 is "inauthentic". Exhibit 105 is further authenticated by the Forrest 11/07/08 Decl. ¶ 38.
	<i>Hearsay</i>	Exhibit 105 is not hearsay because it is not being offered for its truth but to show that Lime Wire LLC advertised LimeWire as a client that "Outperforms Morpheus!". <i>See</i> Fed. R. Evid. 801(c). Further, Exhibit 105 is being offered to show that Lime Wire LLC's own webpage was marked with the words "Copyright 2007 Lime Wire LLC. All rights reserved", circumstantial evidence that Lime Wire LLC had awareness of the copyright laws.
107	<i>Authenticity</i>	Exhibit 107 was produced in discovery pursuant to a subpoena by Angel Leon, a former employee of Lime Wire LLC, who was represented by defendants' counsel and has no interest in this litigation or no interest adverse to that of defendants. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 39.) Defendants' counsel expressly stipulated (1) on behalf of Leon that the documents were printed on March 15, 2005 from certain webpages ( <i>see</i> Stipulation regarding Authenticity of Documents, Feb. 27, 2008, Exhibit 489 ¶ 4-6, 8-10), and (2) on behalf of defendants that "they will not contest the authenticity of the Leon Documents within the meaning of Federal Rule of Evidence 901". ( <i>Id.</i> ¶ 12).
	<i>Hearsay</i>	Exhibit 107 is not hearsay because it is not being offered for its truth but to show that Lime Wire LLC posted this banner in large letters at the top of its homepage to advertise LimeWire. <i>See</i> Fed. R. Evid. 801(c). ( <i>See also supra</i> Ex. 105 hearsay response.)
110	<i>Hearsay; multiple exhibits in one</i>	Exhibit 110 is not hearsay because it is not being offered for its truth but to show that Lime Wire LLC made the statements therein and displayed the slogans and comparison charts on its website. <i>See</i> Fed. R. Evid. 801(c). Further, the statements made in the e-mail exchange

Exhibit	Objection	Plaintiffs' Response to Objection
		between Bildson, Berlin and Schmidt about the slogan "Faster than Kazaa" (LW DE 1937177-78) and the document prepared by Adam Harris (LW DE 1152036) are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2).
114	<i>Hearsay</i>	Exhibit 114 is not hearsay because it is not being offered for its truth but to demonstrate that Harris ( <i>see</i> Attach. C) made the statement that LimeWire "[s]imilar to the popular Kazaa . . . enables the sharing, searching, and downloading of MP3 files". <i>See</i> Fed. R. Evid. 801(c). Further, Harris' statements in Exhibit 114 are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
115	<i>Authenticity; no foundation</i>	Exhibit 115 is authenticated by the Minarovich 11/07/08 Decl. ¶ 5.
	<i>Hearsay</i>	The statements of Bildson in the interview with moderator Phil Leigh are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
119	<i>Authenticity</i>	Exhibit 119 is authenticated by the testimony of Kathryn Catillaz. ( <i>See</i> Catillaz Tr. 161:15-162:6.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 119 is not hearsay because it is not being offered for its truth but to show that Lime Wire LLC posted testimonials comparing LimeWire and Kazaa, and advertised LimeWire's music downloading capabilities, on its French website. <i>See</i> Fed. R. Evid. 801(c).
122	<i>Hearsay</i>	Exhibit 122 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced Exhibit 122 in discovery, knew that its press release had been disseminated and printed. <i>See</i> Fed. R. Evid. 801(c). Further, Exhibit 122 contains the same text as Exhibit 121 to which defendants do not object.
128	<i>Authenticity</i>	Greg Bildson authenticated Exhibit 128 by recognizing his handwriting. ( <i>See</i> Bildson Tr. 850:18-850:22.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 128 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson made the statement "until we catch up to Kazaa -- no inventing". <i>See</i> Fed. R. Evid. 801(c). Further, Bildson's statements are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
129	<i>Hearsay</i>	Exhibit 129 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, received automated Google Alerts/News tracking for "kazaa" and that Lime Wire LLC employees had knowledge of the automated tracking. <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 129 is relevant as probative of the fact that Lime Wire LLC employees received and recorded automated news tracking of Kazaa.
130	<i>Hearsay</i>	( <i>See supra</i> Ex. 129 hearsay response.)
	<i>Relevance</i>	( <i>See supra</i> Ex. 129 relevance response.)
133	<i>Authenticity</i>	Exhibit 133 is authenticated because it was produced in discovery by

Exhibit	Objection	Plaintiffs' Response to Objection
		defendants. (See Forrest 11/07/08 Decl. ¶ 40.)
	<i>Hearsay</i>	Exhibit 133 is not hearsay because it is not offered for its truth but to demonstrate that this press release was published and that Lime Wire LLC, which produced this exhibit in discovery, had knowledge that it was disseminated and published. See Fed. R. Evid. 801(c).
137	<i>Authenticity</i>	These documents were produced in discovery pursuant to a subpoena by J.K. Barret, a former employee of Lime Wire LLC, who was represented by defendants' counsel and has no interest in this litigation or no interest adverse to that of defendants. (See Forrest 11/07/08 Decl. ¶ 41.). Exhibit 137 is therefore properly authenticated.
	<i>Hearsay</i>	Exhibit 137 is not hearsay because it is not being offered for its truth but to show that Barret, who completed the download.com registration form on behalf of Lime Wire, chose the keyword "mp3". (See JB 0152.) Further, the statements made by Barret are admissions by a party opponent. See Fed. R. Evid. 801(d)(2). (See Attach. C.)
147	<i>Hearsay</i>	Exhibit 147 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge that Bildson was quoted in the <i>New York Post</i> as saying, "We're trying to put you [Tower Records] out of business." See Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 147 is probative of Lime Wire LLC's knowledge of a report indicating Lime Wire purported to be in the music distribution business.
149	<i>Authenticity</i>	Exhibit 149 is properly authenticated because it was produced by defendants in discovery. (See Forrest 07/18/08 Decl. at 20.) Defendants' counsel sent this copy of the CD sleeve for LimeWire PRO as an attachment to his May 14, 2008 e-mail to plaintiffs' counsel. (See Exhibit 486.)
	<i>Hearsay</i>	Exhibit 149 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire included a user testimonial stating "Hands-down the best current mp3 search tool!" on the LimeWire PRO CD sleeve. See Fed. R. Evid. 801(c). Further, Exhibit 149 is offered to demonstrate that the CD sleeve for the LimeWire software was marked with the statement "© Copyright 2002 Lime Wire LLC".
151	<i>Authenticity</i>	Exhibit 151 is authenticated because it was produced by defendants in discovery. (See Forrest 07/18/08 Decl. at 20.)
	<i>Hearsay</i>	Exhibit 151 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC made these statements and as circumstantial evidence of Lime Wire LLC's belief that its software attracts a "large number" of users who "do not differentiate between legal and illegal downloading". See Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 151 is probative of the fact that Lime Wire LLC stated that a large number of the LimeWire users were infringing copyrights.

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>152</b>	<i>Authenticity</i>	Exhibit 152 is a printout from Lime Wire's Music Blog (blog.limewire.com). It is authenticated by the Forrest 07/18/08 Decl. at 20, which specifies the URL of the webpage and the date the printout was made. <i>See</i> Fed. R. Evid. 901(1). Exhibit 152 is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any explanation why Exhibit 152 is not authentic.
	<i>Relevance</i>	Exhibit 152 is probative of the fact that Lime Wire positioned and promoted itself as a participant in music distribution.
<b>155</b>	<i>Authenticity</i>	Exhibit 155 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 351:19-351:24.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Relevance</i>	Exhibit 155 is probative of the fact that Lime Wire had the capability to prevent users from accessing the LimeWire forums, which were often utilized to assist infringing users.
<b>156</b>	<i>Authenticity</i>	Exhibit 156 is authenticated as a printout from the Lime Wire Forums webpage by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). It is further authenticated by the Minarovich 11/07/08 Decl. ¶ 6.
	<i>Hearsay</i>	Exhibit 156 is not hearsay because a screenshot -- a picture of the software program's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).
<b>157</b>	<i>Authenticity</i>	Exhibit 157 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 30:9-30:17.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 157 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Berlin's statement that he "made the 'Moderator's Lounge' forum private only for admins/moderators at their request" in an e-mail sent from his business e-mail address (sam@limewire.com) relates to a matter within the scope of his employment. ( <i>See also</i> Attach. C.)
<b>158</b>	<i>Authenticity</i>	Exhibit 158 is a printout from a CD containing the database index file for www.limewire.org/forum. Defendants produced this CD which is Bates-stamped LW 0006674 in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 42; Ex. 481.) Exhibit 158 is therefore authenticated.
	<i>Hearsay</i>	Exhibit 158 is not hearsay because it is not being offered for its truth, but as an illustration to Berlin's testimony cited by plaintiffs. <i>See</i> Fed. R. Evid. 801(c). ( <i>See also supra</i> Ex. 26 hearsay response.)
<b>159</b>	<i>Authenticity</i>	Exhibit 159 is authenticated by the testimony of Samuel Berlin, who also confirmed that he is the "Sam" mentioned therein. ( <i>See</i> Berlin Tr. 19:13-20:17.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 159 is further authenticated because it is a printout from a CD that was produced by defendants in discovery. ( <i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 43.)
	<i>Hearsay</i>	Exhibit 159 is a screenshot from the LimeWire Forums webpage. It is

Exhibit	Objection	Plaintiffs' Response to Objection
		not hearsay because it is not being offered for its truth but to illustrate how a "thread" (a series of related posts under a common heading) on the Lime Wire Forums appears. <i>See</i> Fed. R. Evid. 801(c). ( <i>See also supra</i> Ex. 26 hearsay response.)
160	<i>Authenticity</i>	Exhibit 160 is authenticated by the testimony of Samuel Berlin, who also confirmed that he is the "Sam" mentioned therein. ( <i>See</i> Berlin Tr. 54:11-55:07.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 160 is further authenticated because it is a printout from a CD that was produced by defendants in discovery. ( <i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 44.)
	<i>Hearsay</i>	<i>First</i> , Exhibit 160 is not hearsay as used in Pls. 07/18/08 SOF ¶ 267. ( <i>See supra</i> Ex. 159 hearsay response.) <i>Second</i> , Exhibit 160 is not hearsay, as used in Pls. 07/18/08 SOF ¶ 277, because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Berlin's statement that he will grant a moderator administrative privileges within the scope of his employment. ( <i>See</i> Berlin Tr. 12:2-12:8; Attach. C.)
161	<i>Authenticity</i>	Exhibit 161 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 33:04-34:03.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 161 is further authenticated because it is a printout from a CD that was produced by defendants in discovery. ( <i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 45.)
	<i>Hearsay</i>	Exhibit 161 is not hearsay because a screenshot -- a picture of the Moderator Manager's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).
162	<i>Authenticity</i>	Exhibit 162 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 44:09-45:13.) Fed. R. Evid. 901(b)(1). Exhibit 162 is further authenticated because it is a printout from a CD that was produced by defendants in discovery. ( <i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶46.)
	<i>Hearsay</i>	( <i>See supra</i> Ex. 161 hearsay response.)
163	<i>Authenticity</i>	Exhibit 163 is authenticated by the testimony of Samuel Berlin, who confirmed that he participated in this "private message exchange". ( <i>See</i> Berlin Tr. 106:12-106:24.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 163 is further authenticated because it is a printout from a CD that was produced by defendants in discovery. ( <i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 47.)
	<i>Hearsay</i>	Exhibit 163 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). (Berlin Tr. 12:2-12:8; <i>see</i> Attach. C.) Berlin's statements were made within the scope of his employment.
165	<i>Authenticity</i>	Lime Wire LLC cites Exhibit 165 in its Memorandum of Law in Support of Defendants' Response in Opposition to Plaintiffs' Motion

Exhibit	Objection	Plaintiffs' Response to Objection
		for Partial Summary Judgment at 37 and so have waived their objection to this Exhibit. In any event, Exhibit 165 is authenticated by the testimony of Samuel Berlin. (See Berlin Tr. 58:11-58:25, 62:19-63:06, 66:07-66:20, 68:10-68:25, 73:09-73:23, 75:18-76:08, 79:16-80:05, 82:05-82:17, 84:06-84:20, 85:18-86:07, 86:13-87:05.) See Fed. R. Evid. 901(b)(1). Many of these documents are further authenticated because they are printouts from a CD that was produced by defendants in discovery. (See <i>supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 48.) To the extent Exhibit 165 consists of printouts from the Lime Wire Forums webpage, it is authenticated by the Forrest 07/18/08 Decl. at 21-22, which specifies the URL of the webpage and the date the printouts were made. Finally, these printouts are authenticated by their appearance and distinctive characteristics. See Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 165 is not hearsay because it is not being offered for its truth but to show that "Only a Hobo" made these statements on the LimeWire Forums. See Fed. R. Evid. 801(c).
167	<i>Authenticity</i>	Berlin authenticated the documents contained in Exhibit 167. (See Berlin Tr. 89:7-89:22, 91:3-91:24, 91:25-92:25, 93:2-93:15, 87:9-88:4.) See Fed. R. Evid. 901(b)(1). These documents are further authenticated because they are printouts from a CD that was produced by defendants in discovery. (See <i>supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 49.)
	<i>Hearsay</i>	Exhibit 167 is not hearsay because it is not being offered for its truth but to show that Aaron Walkhouse made these statements on the LimeWire Forums. See Fed. R. Evid. 801(c).
168	<i>Authenticity</i>	Berlin authenticated the documents contained in Exhibit 168. (See Berlin Tr. 96:13-97:4, 98:3-98:18.) See Fed. R. Evid. 901(b)(1). These documents are further authenticated because they are printouts from a CD that was produced by defendants in discovery. (See <i>supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 50.)
	<i>Hearsay</i>	Exhibit 168 is not hearsay because it is not being offered for its truth but to show that these statements were made on the LimeWire Forums. See Fed. R. Evid. 801(c).
169	<i>Authenticity</i>	Exhibit 169 is a printout from the Gnutella Forums website. It is authenticated by the Forrest 07/18/08 Decl. at 22, which specifies the URL of the webpage and the date the printout was made. This printout is further authenticated by its appearance and distinctive characteristics. See Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 169 is not hearsay because it is not being offered for its truth but to illustrate that the Gnutella Forums webpage is an internet discussion forum and to demonstrate that the following statement is made on this webpage: "Copyright © 2007 Gnutelliums LLC." See



Exhibit	Objection	Plaintiffs' Response to Objection
		Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 169 is relevant because the Gnutella Forums were utilized to assist LimeWire users in infringing copyright.
170	<i>Authenticity</i>	<i>(See supra Ex. 169 authenticity response.)</i>
	<i>Hearsay</i>	Exhibit 170 is not hearsay because it is not being offered for its truth but to demonstrate there is a forum ("LimeWire (Cross-platform)") dedicated to the discussion of the LimeWire client within the Gnutella Forums. Further, Exhibit 170 illustrates the forum's appearance. <i>See</i> Fed. R. Evid. 801(c). <i>(See also supra Ex. 26 hearsay response.)</i>
	<i>Relevance</i>	<i>(See supra Ex. 169 relevance response.)</i>
171	<i>Authenticity</i>	Exhibit 171 is authenticated because it is a printout from a CD that was produced by defendants in discovery. <i>(See supra Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 51.)</i>
	<i>Hearsay</i>	Exhibit 171 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Berlin's statements were made within the scope of his employment.
174	<i>Authenticity</i>	Exhibit 174 is authenticated by the testimony of Adam Fisk. <i>(See Fisk Tr. 138:5-139:15.) See</i> Fed. R. Evid. 901(b)(1). Exhibit 174 is further authenticated because it was produced by defendants in discovery. <i>(See Forrest 11/07/08 Decl. ¶ 52.)</i>
	<i>Hearsay</i>	Exhibit 174 is not hearsay because it is not being offered for its truth but to (1) with respect to Pls. 07/18/08 SOF ¶ 285, illustrate Lime Wire LLC's trademarked logo's appearance on the LimeWire client section of the Gnutella Forums webpage; (2) with respect to Pls. 07/18/08 SOF ¶ 305, demonstrate that Fisk was aware of a LimeWire user sharing thousands of mp3's and that he asserted that Lime Wire LLC intended to modify LimeWire to accommodate such sharing; and (3) with respect to Pls. 07/18/08 SOF ¶ 321, show that he used the "Beatles" in his posts as an example of a search term a LimeWire user might use. Further, Lime Wire LLC, which produced this exhibit in discovery, had knowledge of these facts. <i>See</i> Fed. R. Evid. 801(c). Finally, Exhibit 174 is not hearsay because the statements are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Fisk's posts in the Gnutella Forums were made within the scope of his employment. <i>(See Attach. C.)</i>
175		<i>N.B.:</i> Lime Wire LLC cites Exhibit 175 in its 9/26/08 Memorandum of Law in Support of Defendants' Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment at 37 and so has waived any objection to this document.
	<i>Authenticity</i>	Exhibit 175 is authenticated by the testimony of Christopher Rohrs. <i>(See Rohrs Tr. 115:17-116:7.) See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 175 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Rohrs identified himself

Exhibit	Objection	Plaintiffs' Response to Objection
		<p>on the Gnutella Forums website as "crohrs - LimeWire Developer" (see Attach. C) and responded to LimeWire user technical questions and concerns including announcing new versions of LimeWire. His statements were made within the scope of his employment.</p> <p><i>Relevance</i> (See <i>supra</i> Ex. 169 relevance response.)</p>
176	<i>Authenticity</i>	Exhibit 176 is a printout from a CD containing Gnutella Forums files that was produced in discovery by Gnutelliums LLC, a third party that is represented by defendants' counsel and which has no interest in this litigation or no interest adverse to those of defendants. (See Forrest 11/07/08 Decl. ¶ 53.).
	<i>Hearsay</i>	Exhibit 176 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson was listed as a "Super Moderator" on the Gnutella Forums website. See Fed. R. Evid. 801(c).
	<i>Relevance</i>	(See <i>supra</i> Ex. 169 relevance response.)
177	<i>Authenticity</i>	Plaintiffs substitute Exhibit 482 for Exhibit 177. Further, Exhibit 482 is authenticated by the Forrest 11/07/08 Decl. ¶ 54.
	<i>Hearsay</i>	Exhibit 177 is not hearsay because it is not being offered for its truth but to show that the moderators provided technical assistance to LimeWire users and each other in finding copyrighted works. See Fed. R. Evid. 801(c).
	<i>Relevance</i>	(See <i>supra</i> Ex. 169 relevance response.)
178	<i>Authenticity</i>	Exhibit 178 consists of printouts from the Gnutella Forums website. These documents are authenticated by the Forrest 07/18/08 Decl. at 23-24, which specifies the URL of the webpages and the dates the printouts were made. These printouts are further authenticated by their appearance and distinctive characteristics. See Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 178 is not hearsay because it is not being offered for its truth but to show that a Gnutella Forums moderator, TruStar Warrior, made statements on the forum assisting and encouraging LimeWire users' copyright infringement. See Fed. R. Evid. 801(c).
179	<i>Authenticity</i>	Exhibit 179 is authenticated by the testimony of Adam Fisk. (See Fisk Tr. 125:10-126:11.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 179 is not hearsay because it is not being offered for its truth but to show that Fisk wrote on the Gnutella Forums webpage that "I and the rest of the LimeWire team wish TruStarWarrior all the best in his future endeavors" and that "we will also be giving TruStarWarrior a free version of LimeWire Pro", and that Bildson responded "Agreed! We owe a lot to TruStarWarrior." See Fed. R. Evid. 801(c). Exhibit 179 is also not hearsay because the statements of Fisk and Bildson are admissions of a party opponent. See Fed. R. Evid. 801(d)(2)(D). (See Attach. C.)
184	<i>Hearsay;</i> <i>Hearsay</i>	Exhibit 184 is not hearsay because it is an admission by a party opponent. See Fed. R. Evid. 801(d)(2)(D). Kathryn Catillaz (Business

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
	<i>within Hearsay</i>	Developer and formerly responsible for customer support) and Christine Nicponski (Technical Support Representative) were both employees of Lime Wire LLC at the time they sent the e-mails contained in Exhibit 184 which relate to matters within the scope of their employment.
<b>187</b>	<i>Authenticity</i>	Exhibit 187 is authenticated by the testimony of Greg Bildson. ( <i>See</i> Bildson Tr. 792:20-793:14.) <i>See</i> Fed. R. Evid. 901(b)(1). It is further authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 55.)
	<i>Hearsay</i>	Exhibit 187 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson responded to a user who stated that LimeWire is “[s]o much like Napster that I don’t even miss it anymore” without mentioning copyright infringement. <i>See</i> Fed. R. Evid. 801(c). Further, Bildson’s statements are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>189</b>	<i>Authenticity</i>	Exhibit 189 is authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 07/18/08 Decl. at 25.)
	<i>Hearsay</i>	Exhibit 189 is not hearsay because it is not being offered for its truth but to demonstrate that a LimeWire user wrote that she was “trying to share about 30gig of music” and was having trouble, and that Fisk responded “[w]e definitely encourage all sharing”. <i>See</i> Fed. R. Evid. 801(c). Further, Fisk’s statements, made within the scope of his employment, are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>190</b>	<i>Authenticity</i>	Exhibit 190 is authenticated by the testimony of Greg Bildson. ( <i>See</i> Bildson Tr. 429:5-435:9.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 190 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson, in response to a Napster user searching for “Dixie Chicks” videos stated, “I’m sharing some good stuff on Gnutella . . . I’m partial to limewire.” <i>See</i> Fed. R. Evid. 801(c). Moreover, Exhibit 190 illustrates Bildson’s knowledge of, and failure to discourage, a user’s copyright infringement using LimeWire. Further, Bildson’s statements, made within the scope of his employment, are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
<b>192</b>	<i>Authenticity</i>	Exhibit 192 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 6:4-6:16; 7:17-7:19.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 192 is not hearsay because it is not being offered for its truth but to demonstrate that Berlin made this statement on the Gnutella Forums website and as evidence of his motives and state of mind. <i>See</i> Fed. R. Evid. 801(c).
<b>193</b>	<i>Hearsay</i>	Exhibit 193 is not hearsay because it is not being offered for its truth but to demonstrate that an employee of Lime Wire LLC’s public

Exhibit	Objection	Plaintiffs' Response to Objection
		relations firm wrote, "LW approved these quotes to be used in media pitches" and to show how Lime Wire LLC's views about the RIAA were perceived by its business partners. <i>See</i> Fed. R. Evid. 801(c). Further, Exhibit 193 is an admission by a party opponent because the e-mail was within the scope of the agency relationship between AFA and Lime Wire LLC. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
194	<i>Hearsay</i>	Exhibit 194 is not hearsay because it is not being offered for its truth but to show (1) that this document entitled, "Talking Points for Greg Bildson", contained these statements about copyright law, the RIAA, and Napster, and (2) that Lime Wire LLC's public relations firm understood and believed that these were Lime Wire LLC and Bildson's views. <i>See</i> Fed. R. Evid. 801(c).
196	<i>Authenticity</i>	Exhibit 196 is authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 56.)
	<i>Hearsay</i>	Exhibit 196 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge that Bildson was quoted as having made these statements in this article. <i>See</i> Fed. R. Evid. 801(c).
197	<i>Authenticity</i>	Exhibit 197 is authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶57.)
	<i>Hearsay</i>	Exhibit 197 is not hearsay because it is not being offered for its truth but to show that Lime Wire LLC, which produced this exhibit in discovery, had knowledge that Lime Wire LLC and Bildson were quoted as having made statements expressing hostility towards legitimate digital music distribution channels. Moreover, Lime Wire LLC kept a file entitled "KNOWLEDGE OF INFRINGEMENT" containing articles describing LimeWire as a software utilized for infringement. The folder and its contents illustrate Lime Wire LLC's knowledge and awareness that the LimeWire client was used for direct copyright infringement. <i>See</i> Fed. R. Evid. 801(c).
198	<i>Hearsay</i>	Exhibit 198 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge (1) that its file-sharing software was perceived as illegal and (2) that Bildson was quoted as having made statements expressing hostility towards legitimate digital music distribution channels. <i>See</i> Fed. R. Evid. 801(c).
201	<i>Authenticity</i>	Exhibit 201 is authenticated by the testimony of Mark Gorton. ( <i>See</i> Gorton Tr. 475:14-476:11.) <i>See</i> Fed. R. Evid. 901(b)(1). This printout from <i>The New York Times</i> webpage is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). ( <i>See also supra</i> Ex. 96 authenticity response.)
	<i>Hearsay</i>	Exhibit 201 is not hearsay because it is not being offered for its truth but to demonstrate that Gorton was quoted as saying that LimeWire

Exhibit	Objection	Plaintiffs' Response to Objection
		would continue to exist regardless of the Supreme Court's decision in <i>Grokster</i> . See Fed. R. Evid. 801(c).
202	<i>Authenticity</i>	Exhibit 202 is authenticated because it was produced by defendants in discovery. (See Forrest 11/07/08 Decl. ¶ 58.)
	<i>Hearsay</i>	Exhibit 202 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which has produced this exhibit in discovery, had knowledge that Gorton expressed hostility toward copyright protection. See Fed. R. Evid. 801(c).
203	<i>Hearsay</i>	In their Motion to Strike, Defendants do not identify Exhibit 203 in their list of objections (see Defs. Mot. to Strike Br. at 1-10). However, in the body of their brief Defendants assert that Exhibit 203 is an example of a communication that is not a party admission (Defs. Mot. to Strike Br. at 12). By failing to include Exhibit 203 in their list of objections, defendants have waived their objection. Even if they have not waived their objection, Exhibit 203 is not hearsay because it is not being offered for its truth but to (1) with respect to Pls. 07/18/08 SOF ¶¶ 320 & 323, illustrate Fisks' belief that peer-to-peer clients are designed to maximize copyright infringement; (2) with respect to Pls. 07/18/08 SOF ¶¶ 391, show Fisks' belief that LimeWire was designed and developed with reference to Kazaa; and (3) with respect to Pls. 07/18/08 SOF ¶¶ 403, demonstrate Fisk's knowledge and belief that LimeWire "makes all its money off of infringing content". See Fed. R. Evid. 801(c).
205	<i>Authenticity</i>	Exhibit 205 is authenticated by the testimony of Greg Bildson. (See Bildson Tr. 789:19-790:8.) See Fed. R. Evid. 901(b)(1). Exhibit 205 is further authenticated because it was produced by defendants in discovery. (See Forrest 11/07/08 Decl. ¶ 59.)
	<i>Hearsay</i>	Exhibit 205 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements using terms associated with copyrighted content while testing and designing LimeWire. Bildson responded to a query regarding "alien ant farm (Audio)" on the Gnutella Forums webpage. See Fed. R. Evid. 801(c).
206	<i>Authenticity</i>	Defendants do not object to the authenticity of Exhibit 313, which, like Exhibits 206-210, is a printout from the Yahoo! Groups Gnutella Developer Forum webpage. Further, defendants' counsel has authenticated identical printouts from this webpage by attaching them to the Baker 09/26/08 Decl. as Exhibits 59-61. (See also <i>infra</i> Ex. 207 authenticity response.) Also, Exhibit 206 is authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 75:3-75:19.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 206 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements

Exhibit	Objection	Plaintiffs' Response to Objection
		using terms associated with copyrighted content while testing and designing LimeWire. Rohrs stated in a post on the Gnutella Developer Forum webpage that "[i]n the above example, 'mozart' and 'beatles' would be treated as normal keyword." See Fed. R. Evid. 801(c).
207	<i>Authenticity</i>	Defendants' counsel has authenticated Exhibit 207 by attaching it as Defendants' Exhibit 60 to the Baker 09/26/08 Decl. Further, Exhibit 207 is authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 76:11-76:23.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 207 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements using terms associated with copyrighted content while testing and designing LimeWire. Rohrs stated in a post on the Gnutella Developer Forum webpage that "[t]he query for 'beatles with year=1960-1962' will be forwarded needlessly to some connections because the 'year' field is ignored when hashing." See Fed. R. Evid. 801(c).
208	<i>Authenticity</i>	Defendants' counsel has authenticated Exhibit 208 by attaching it as Defendants' Exhibit 61 to the Baker 09/26/08 Decl. Further, Exhibit 208 is authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 78:25-79:14.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 208 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements using terms associated with copyrighted content while testing and designing LimeWire. Rohrs stated in a post on the Gnutella Developer Forum webpage that "[q]uery hits certainly are prime candidates for compression since they have lots of redundancy --especially with full XML metadata. (Consider 100 audio results for 'Beatles'.)". See Fed. R. Evid. 801(c).
209	<i>Authenticity</i>	Defendants' counsel has authenticated Exhibit 209 by attaching it as Defendants' Exhibit 59 to the Baker 09/26/08 Decl. (See also <i>supra</i> Ex. 207 authenticity response.) Exhibit 209 is also authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 81:10-82:7.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 209 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements using terms associated with copyrighted content while testing and designing LimeWire. Lime Wire LLC engineer Sumeet Thadani made statements illustrating a search for "Rolling Stones" and describing potential results of the query as "Paint it black", "Heart of Stone", "Hearts for Sale", and "Its Only Rock and Roll". See Fed. R. Evid. 801(c).
210	<i>Authenticity</i>	Defendants do not object to the authenticity of Exhibit 313, which, like Exhibits 206-210, is a printout from the Yahoo! Groups Gnutella Developer Forum webpage. Further, defendants' counsel has

Exhibit	Objection	Plaintiffs' Response to Objection
		authenticated identical printouts from this webpage by attaching them to the Baker 09/26/08 Decl. as Exhibits 59-61. ( <i>See also supra</i> Exs. 206, 207-209 authenticity responses.). Further, Exhibit 210 is authenticated by the Forrest 07/18/08 Decl. at 27, which specifies the URL of the webpage and the date the printouts were made. <i>See</i> Fed. R. Evid. 901(1). Also, Exhibit 210 is authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 210 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC employees made statements using terms associated with copyrighted content while testing and designing LimeWire. Thadani stated on the Gnutella Developer Forum webpage that "for example if a file is annotated as title='Paint it black' and Artist='Rolling stones', then the words paint, it, black, rolling and stones all get hashed into the query route table." <i>See</i> Fed. R. Evid. 801(c).
211	<i>Authenticity</i>	The copy of the CD Cover "I do not want what I haven't got" from the artist Sinéad O'Connor is authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). In addition, plaintiffs are submitting the CD for the Court's convenience. ( <i>See</i> Ex. 487) The Certificates of Registration from the Register of Copyrights are self-authenticated. <i>See</i> Fed. R. Evid. 902(1).
	<i>Hearsay</i>	The copy of the CD Cover is not hearsay because it is not a statement. <i>See</i> Fed. R. Evid. 801(a). The Certificates of Registration from the Register of Copyrights are admissible under the public records exception to the hearsay rule. <i>See</i> Fed. R. Evid. 803(8).
213	<i>Authenticity</i>	Exhibit 213 is authenticated because it was produced by defendants in discovery. ( <i>See</i> 11/07/08 Forrest Decl. ¶ 60.)
	<i>Hearsay</i>	Exhibit 213 is not hearsay because it is not being offered for its truth but to demonstrate that Bildson was quoted as touting the music-related features of the LimeWire software and that Lime Wire LLC, which produced this exhibit in discovery, had knowledge the article's contents. <i>See</i> Fed. R. Evid. 801(c).
217	<i>Authenticity</i>	Exhibit 217 is authenticated by the testimony of Jesse Rubenfeld. ( <i>See</i> Rubenfeld Tr. 22:21-22:23.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 217 is not hearsay because a screenshot -- a picture of the software program's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).
223	<i>Authenticity</i>	Exhibit 223 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 330:8-331:2.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 223 is further authenticated by the Minarovich 11/07/08 Decl. ¶ 7.
	<i>Hearsay</i>	Exhibit 223 is not hearsay because a screenshot -- a picture of the software program's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>224</b>	<i>Authenticity</i>	Exhibit 224 is authenticated by the Forrest 07/18/08 Decl. at 29, which specifies the URL of the webpage and the date the printout was made. This printout is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 224 is not hearsay because it is not being offered for its truth but to demonstrate that Aaron Walkhouse provided instructions on how to obtain the hostiles.txt file on the Gnutella Forums webpage. <i>See</i> Fed. R. Evid. 801(c).
<b>225</b>	<i>Authenticity</i>	Exhibit 225 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 145:12-146:3.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 225 is not hearsay because it is not being offered for its truth but to (1) demonstrate that Lime Wire LLC was aware of and discussed the hostiles.txt file on this webpage, and (2) illustrate Lime Wire LLC's intent to inhibit anti-piracy efforts through the implementation of IP blocklists. Further, the statements of Berlin, made within the scope of his employment, are not hearsay because they are admissions of a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
	<i>Relevance</i>	Exhibit 225 is probative of Lime Wire LLC's intent to inhibit anti-piracy efforts through attempts to configure LimeWire to implement IP Blocklists. Further, this screenshot contains information showing that Lime Wire configured the LimeWire software to implement the hostiles.txt file.
<b>228</b>	<i>Authenticity</i>	Exhibit 228 is authenticated by the Forrest 07/18/08 Decl. at 29-30, which specifies the URL of the webpage and the date the printout was made. This printout is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 228 is not hearsay because it is not being offered for its truth but to (1) demonstrate that forum moderators on the Gnutella Forums webpage made statements encouraging LimeWire users to use Peer Guardian, and (2) illustrate the forum's use as a means to inhibit anti-piracy efforts. <i>See</i> Fed. R. Evid. 801(c).
<b>229</b>	<i>Authenticity</i>	Exhibit 229 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 129:12-131:20.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 229 is not hearsay because it is not being offered for its truth but to illustrate that this SIMPP file contained settings for filtersettings.hostileIps. <i>See</i> Fed. R. Evid. 801(c). Further, the exhibit provides evidence of Lime Wire LLC's intent to inhibit anti-piracy efforts through implementation of an IP blocklist.
<b>230</b>	<i>Authenticity</i>	Exhibit 230 is authenticated by the testimony of Samuel Berlin. ( <i>See</i> Berlin Tr. 155:8-155:19.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 223 is further authenticated by the Minarovich 11/07/08 Decl. ¶ 8.
	<i>Hearsay</i>	Exhibit 230 is not hearsay because a screenshot -- a picture of the



Exhibit	Objection	Plaintiffs' Response to Objection
		software program's on-screen display -- is akin to a photograph, and not a "statement" within the definition of Fed. R. Evid. 801(a).
231	<i>Authenticity</i>	Exhibit 231 is authenticated by the Forrest 07/18/08 Decl. at 30, which specifies the URL of the webpage and the date the printout was made. This printout is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any explanation why Exhibit 231 is not authentic. Moreover, Fisk himself has attached another printout from his blog as Exhibit 1 to the Fisk 09/10/08 Decl.
	<i>Hearsay</i>	Exhibit 231 is not hearsay because it offered not for its truth but to demonstrate that Fisk made these statement on his blog and as evidence of his state of mind. <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 231 is probative of the fact that the blog post authored by Fisk reflects a preference for a centralized network over LimeWire's distributed network.
232		Lime Wire LLC cites Exhibit 232 on page 23 of its 9/26/08 Memorandum of Law in Support of Defendants' Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment. Accordingly, defendants have waived any objections to this document.
	<i>Authenticity</i>	Exhibit 232 is authenticated by the testimony of Greg Bildson. ( <i>See</i> Bildson Tr. 581:13-582:12.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 232 is not hearsay because it is not being offered for its truth but to show that Cho stated in an e-mail to Bildson and Gorton that "it will be important to develop the [LimeWire] software to give it at least Napster's functionality." <i>See</i> Fed. R. Evid. 801(c). Further, the exhibit is evidence of Lime Wire LLC's intent to achieve Napster's functionality for the LimeWire client while avoiding the ability to control or monitor the network in a centralized fashion. Exhibit 232 is also not hearsay because Cho's statements, made within the scope of his employment, are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
240	<i>Authenticity</i>	Exhibit 240 is authenticated by the testimony of Christopher Rohrs. ( <i>See</i> Rohrs Tr. 126:22-127:13.) <i>See</i> Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 240 is not hearsay because it is not being offered for its truth but to demonstrate (1) with respect to Pls. 07/18/08 SOF ¶ 394, that Rohrs used the term "supernode" interchangeably with Ultrapeer and (2) with respect to Pls. 07/18/08 SOF ¶ 399, that Rohrs compared LimeWire's functionality to that of Morpheus. <i>See</i> Fed. R. Evid. 801(c).
241	<i>Authenticity</i>	Exhibit 241, like Exhibits 207-209 which defendants' counsel has authenticated, is a printout from the Yahoo! Groups Gnutella Developer Forum webpage. It is authenticated by the Forrest 07/18/08 Decl. at 31, which specifies the URL of the webpage and the date the

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
		printouts were made. <i>See</i> Fed. R. Evid. 901(1). Exhibit 241 is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4).
	<i>Hearsay</i>	Exhibit 241 is not hearsay because it is not being offered for its truth but to show that Fisk made these statements regarding the release of the LimeWire software and used the term "supernode." <i>See</i> Fed. R. Evid. 801(c). Exhibit 241 is also not hearsay because Fisk's statements, made within the scope of his employment, are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>242</b>	<i>Hearsay</i>	Exhibit 242 is not hearsay because it is not being offered for its truth but to demonstrate (1) that Fisk and Vincent Falco made these statements, and (2) that Fisk compared the functionality of LimeWire to Kazaa. Moreover, Fisk's statements, made within the scope of his employment, are not hearsay because they are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>247</b>	<i>Authenticity</i>	Exhibit 247 is authenticated by the testimony of Christopher Rohrs. ( <i>See</i> Rohrs Tr. 129:9-130:10.) <i>See</i> Fed. R. Evid. 901(b)(1). It is further authenticated because it is a printout from a CD that has been produced pursuant to subpoena by the non-party Christopher Rohrs who has no interest in this litigation or no interest adverse to those of defendants. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 61.; Letter of Wendy Seltzer to Jeffrey B. Korn of March 14, 2007, Exhibit 483).
	<i>Hearsay</i>	Exhibit 247 is not hearsay because it is not being offered for its truth but to demonstrate that Rohrs compared LimeWire's functionality to that of Morpheus -- "[i]f you mouse over the file, metadata appears in a tooltip, a la Morpheus." <i>See</i> Fed. R. Evid. 801(c). Further, Exhibit 247 is also not hearsay because Rohrs' statement, made within the scope of his employment, is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>249</b>	<i>Hearsay</i>	Exhibit 249 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Fisk's statement that he "checked out Morpheus's supposed 'anonymity' feature" relates to a matter within the scope of his employment.
<b>250</b>	<i>Hearsay</i>	Exhibit 250 is not hearsay because it is not being offered for its truth but to demonstrate that Fisk made the statements. Further, the exhibit is evidence of Fisk's knowledge and belief that Lime Wire LLC's "business[es] were entirely built off infringement". <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 250 is relevant as probative that Fisk authored an email that reflects a belief that the business of p2p companies to be "entirely built off of infringement".
<b>253</b>	<i>Hearsay</i>	Exhibit 253 is not hearsay because it is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Rohrs' e-mail was within

Exhibit	Objection	Plaintiffs' Response to Objection
		the scope of his employment. (See Attach. C.) The e-mail outlines Lime Wire LLC's advertising potential and asks the recipient of the e-mail if "there [is] any possibility that DoubleClick might be interested in this kind of thing".
254	<i>Authenticity</i>	Exhibit 254 is authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 170:8-170:20.) See Fed. R. Evid. 901(b)(1).
	<i>Hearsay</i>	Exhibit 254 is not hearsay because it is an admission by a party opponent. See Fed. R. Evid. 801(d)(2)(D). The e-mail, in which Rohrs defended Lime Wire LLC's decision to make "short term cash" by advertising, contains statements related to matters within the scope of his employment. (See Attach. C.)
255	<i>Authenticity</i>	Exhibit 255 is authenticated by the testimony of Christopher Rohrs. (See Rohrs Tr. 111:16-112:4.) See Fed. R. Evid. 901(b)(1). It is further authenticated because it was produced in discovery pursuant to a subpoena by Rohrs, who has no interest in this litigation or no interest adverse to those of defendants. (See Forrest 11/07/08 Decl. ¶ 62.)
	<i>Hearsay</i>	Exhibit 255 is not hearsay because it is an admission by a party opponent. See Fed. R. Evid. 801(d)(2)(D). Rohrs' e-mail to Fisk requesting assistance with "spyware damage control on gnutellaforums", is a matter within the scope of his employment. (See Attach. C.)
257	<i>Hearsay</i>	Exhibit 257 is not hearsay because it is an admission by a party opponent. See Fed. R. Evid. 801(d)(2)(D). Rohrs' Gnutella Forum posts regarding LimeWire PRO and Lime Wire LLC's revenues were made within the scope of his employment. (See Attach. C.)
260	<i>Authenticity</i>	Exhibit 260 is authenticated because it was produced by defendants in discovery. (See Forrest 07/18/08 Decl. at 33.)
	<i>Hearsay</i>	Exhibit 260 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had knowledge of this media article and of the fact that Bildson was quoted as having made these statements. See Fed. R. Evid. 801(c). Further, the exhibit is evidence of Lime Wire LLC's intent to promote file sharing on the Gnutella network.
261	<i>Authenticity</i>	Plaintiffs hereby substitute Exhibit 261 with a copy of the Gnutella Network Good Citizen Tips (Ex. 484) that was produced in discovery by defendants and is therefore authenticated. (See Forrest 11/07/08 Decl. ¶ 63.)
	<i>Hearsay</i>	Exhibit 261 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC, which produced this exhibit in discovery, had possession and knowledge of "Gnutella Network Good Citizen Tips" that encourage file-sharing. See Fed. R. Evid. 801(c). Further, the exhibit is evidence of Lime Wire LLC's intent to

Exhibit	Objection	Plaintiffs' Response to Objection
		promote file sharing on the Gnutella network.
264	<i>Hearsay</i>	Exhibit 264 is not hearsay because it is not being offered for its truth but to demonstrate that Fisk made the statements. Further, the exhibit is evidence of Fisk's knowledge and belief that Gnutella client developers were tempted by money and are "almost entirely devoted to infringement". <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 264 is as probative of Fisk's knowledge and belief that, "the focus of the p2p applications has simply not lived up to those goals of creating a generalized platform" because "[t]he money was always too tempting".
281	<i>Hearsay</i>	Exhibit 281 is not hearsay because the statements of Bildson are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Bildson's statements that "LimeWire has considered filtering as an option in the past and has rejected it" and that "Lime Wire will not support anything that implies or enables filtering of any kind" relate to matters within the scope of his employment.
286	<i>Authenticity; multiple exhibits in one</i>	Exhibit 286 is authenticated because these were produced in discovery by defendants or by SNOCAP, Inc., a third party without an interest in this litigation, in response to a subpoena. ( <i>See</i> Forrest 07/18/08 Decl. at 36.)
	<i>Hearsay; [Discussions with SNOCAP]</i>	Bildson's statements made in communications with SNOCAP employees (SNO 000242-243; SNO 000229-230; SNO 000226-227; LW DE 1222359-360, LW DE 1220600) are not hearsay because they are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). Similarly, Rubenfeld's statements (LW DE 485903-906; LW DE 1241818-820) and Gorton's response (LW DE 1241818) are admissions by a party opponent. <i>Id.</i> The statements of SNOCAP employees in e-mails sent to Lime Wire LLC employees (SNO 000242-243; SNO 000229-230; SNO 000226-227; LW DE 1222359-360, LW DE 1220600) are not hearsay because they are not offered for their truth but to (1) show Lime Wire LLC had knowledge that filtering companies provide services for copyrighted works, and (2) demonstrate that Lime Wire LLC had discussions with SNOCAP. <i>See</i> Fed. R. Evid. 801(c). Further, the "Filtering ToDo List" (LW 000746) is also not hearsay because it is not being offered for the truth but to show that this list was prepared and that Lime Wire LLC, which produced this document in discovery, knew it was prepared.
	<i>Hearsay; [Discussions with Audible Magic]</i>	Bildson's statements (LW DE 486683; LW DE 260585-588; LW DE 1770732-735; LW DE 1770749-751) and Catillaz's statements (LW DE 486685) are admissions by party opponents. <i>See</i> Fed. R. Evid. 801(d)(2)(D). The statements of employees of Audible Magic contained in Exhibit 286 (LW DE 260585-588; LW DE 1770732-735; LW DE 1770749-751) are not hearsay because they are not offered for their truth but to (1) show Lime Wire LLC had knowledge that

Exhibit	Objection	Plaintiffs' Response to Objection
		filtering companies provide services for copyrighted works, and (2) demonstrate that Lime Wire LLC had discussions with Audible Magic. <i>See Fed. R. Evid. 801(c).</i>
	<i>Hearsay</i> <i>[Discussions with Altnet]</i>	Bildson's e-mail concerning Altnet (LW DE 247011) is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Further, the statements in Altnet's press release (LW DE 246687-688), which was produced by defendants during discovery, are not offered for their truth but to show Lime Wire LLC had knowledge that Altnet provides services for copyrighted works. <i>See Fed. R. Evid. 801(c).</i>
	<i>Hearsay</i> <i>[Discussions with Bay TSP]</i>	Leland Woo's statements (LW DE 246689-690) are not hearsay because they are not offered for their truth but to (1) show Lime Wire LLC had knowledge that filtering companies provide services for copyrighted works, and (2) demonstrate that Lime Wire LLC had discussions with Bay TSP. <i>See Fed. R. Evid. 801(c).</i>
	<i>Hearsay</i> <i>[Discussions with Magix]</i>	Bildson's communications with Magix (LW DE 1935408-419) are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Further, Markus Gunn's statements (LW DE 1935408-419) are not hearsay because they are not offered for their truth but to (1) show Lime Wire LLC had knowledge that filtering companies provide services for copyrighted works, and (2) demonstrate that Lime Wire LLC had discussions with Magix. <i>See Fed. R. Evid. 801(c).</i>
	<i>Hearsay</i> <i>[Discussions with Media Sentry]</i>	Catillaz's communications with MediaSentry (LW DE 2317738-743) are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Further, James Toledano's statements (LW DE 2317738-743) are not hearsay because they are not offered for their truth but to (1) show Lime Wire LLC had knowledge that filtering companies provide services for copyrighted works, and (2) demonstrate that Lime Wire LLC had discussions with Media Sentry. <i>See Fed. R. Evid. 801(c).</i>
287	<i>Hearsay</i>	Exhibit 287, the Talmon Marco affidavit, is admissible and not hearsay because Marco would testify to these facts contained in his affidavit at trial. Accordingly, Marco's affidavit is not hearsay. Further, Marco was deposed in this case and confirmed the statements made in his affidavit. ( <i>See, e.g., Marco Tr. 209:6-213:25.</i> )
	<i>Relevance</i>	Exhibit 287 is relevant because it is probative of the fact that other P2P file sharing applications have implemented technology to effectively filter unauthorized works.
288	<i>Hearsay</i>	The affidavit of Benjamin Sorensen is admissible and not hearsay because Sorensen would testify to these facts at trial.
	<i>Relevance</i>	<i>(See supra Ex. 287 relevance response.)</i>
296	<i>Authenticity</i>	The documents in Exhibit 296 are authenticated because they were produced in discovery by defendants. ( <i>See Forrest 07/18/08 Decl. at 37; Forrest 11/07/08 Decl. ¶ 64.</i> )
	<i>Hearsay</i>	These e-mails from LimeWire users sent to Lime Wire LLC

Exhibit	Objection	Plaintiffs' Response to Objection
		(feedback@limewire.com, webmaster@limewire.com, media@limewire.com) are not hearsay because they are not offered for their truth but to establish that Lime Wire LLC had notice and knowledge of e-mails from users indicating the use of LimeWire for copyright infringement. <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	The documents in Exhibit 296 are probative of Lime Wire LLC's notice and knowledge of e-mails indicating that LimeWire used the client for copyright infringement.
297	<i>Hearsay</i>	Exhibit 297 is not hearsay because it is not being offered for its truth but to establish that Lime Wire LLC had notice and knowledge of e-mails from users indicating the use of LimeWire for copyright infringement. <i>See</i> Fed. R. Evid. 801(c).
298	<i>Hearsay</i>	Exhibit 298 is not hearsay because it is not being offered for its truth but to demonstrate that Lime Wire LLC had notice and knowledge of e-mails from users indicating the use of LimeWire for copyright infringement. <i>See</i> Fed. R. Evid. 801(c).
299	<i>Authenticity</i>	Exhibit 299 is authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 65.)
	<i>Hearsay</i>	Exhibit 299 is not hearsay because the testimonials from the Lime Wire LLC website are not offered for their truth but to show (1) with respect to Pls. 07/18/08 SOF ¶ 533, that Lime Wire LLC, which produced this exhibit in discovery, collected such testimonials and posted them on its website, and (2) with respect to Pls. 07/18/08 SOF ¶ 603, that Lime Wire LLC's own webpage was marked with the words "Copyright 2004 Lime Wire LLC. All rights reserved." <i>See</i> Fed. R. Evid. 801(c).
300	<i>Authenticity</i>	Exhibit 300 is authenticated because it was produced by defendants in discovery. ( <i>See</i> Forrest 11/07/08 Decl. ¶ 66.) The document Bates-stamped LW DE 1152020 is also authenticated by the testimony of Adam Harris. ( <i>See</i> Harris Tr. 152:4-153:25.)
	<i>Hearsay</i>	Exhibit 300 is not hearsay because the testimonials contained therein are not offered for their truth but to show that Lime Wire LLC, which produced this exhibit in discovery, had knowledge of and collected such testimonials. <i>See</i> Fed. R. Evid. 801(c).
304	<i>Hearsay</i>	Exhibit 304 is not hearsay because the statements contained therein are not offered for their truth but to show (1) that they were made and (2) that Lime Wire LLC had knowledge that users were asking for support in connection with downloading music. The statements of Kahn in his e-mails are admissions by a party opponent because they relate to matters within the scope of his employment. <i>See</i> Fed R. Evid. 801(d)(2)(D). ( <i>See</i> Attach. C.)
305	<i>Hearsay</i>	( <i>See supra</i> Ex. 304 hearsay response.)
306	<i>Hearsay</i>	( <i>See supra</i> Ex. 304 hearsay response.)

<b>Exhibit</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>307</b>	<i>Hearsay</i>	( <i>See supra</i> Ex. 304 hearsay response.)
<b>308</b>	<i>Hearsay</i>	( <i>See supra</i> Ex. 304 hearsay response.)
<b>309</b>	<i>Authenticity</i>	Exhibit 309 is authenticated by the Forrest 07/18/08 Decl. at 38, which specifies the URL of the webpage and the date the printouts were made. <i>See</i> Fed. R. Evid. 901(1). Exhibit 309 is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any reason that Exhibit 309 is not authentic.
	<i>Hearsay</i>	Exhibit 309 is not hearsay because it is not being offered for its truth but to show that this statement was made.
<b>313</b>	<i>Hearsay</i>	Exhibit 313 is not hearsay because it is not being offered for its truth but to show that Rohrs stated on the Yahoo! Groups Gnutella Developer Forum webpage that "assuming that there aren't too many proper names (e.g., 'Britney') relative to the number of really obscure words (e.g., 'wormwood'), an estimate of 20,000 keywords seems reasonable". <i>See</i> Fed. R. Evid. 801(c). Further, Rohrs' statement is an admission by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D).
<b>315</b>	<i>Authenticity</i>	Exhibit 315 is authenticated by the Forrest 07/18/08 Decl. at 39, which specifies the URL of the webpage and the date the printout was made. <i>See</i> Fed. R. Evid. 901(1). Exhibit 315 is further authenticated by its appearance and distinctive characteristics. <i>See</i> Fed. R. Evid. 901(4). Defendants do not offer any reason that Exhibit 315 is not authentic.
	<i>Hearsay</i>	Exhibit 315 is not hearsay because it is not being offered for its truth but to show that a prominent legal authority made public statements encouraging the design of decentralized peer-to-peer clients in order to avoid legal liability. <i>See</i> Fed. R. Evid. 801(c).
	<i>Relevance</i>	Exhibit 315 is relevant because Fred von Lohmann, StreamCast's former counsel (Lime Wire LLC's current counsel, Baker, represented StreamCast in the <i>Grokster</i> litigation) and an attorney for the Electronic Frontier Foundation (amici here), authored a prominent legal "primer" encouraging P2P developers to create "plausible deniability" of the infringement on their networks by "choos[ing] an architecture that will convince a judge that . . . monitoring and control is impossible."