

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.,

ECF CASE

06 CV. 5936 (GEL)

Plaintiffs/Counterclaim Defendants,

v.

LIME GROUP LLC; LIME WIRE LLC; MARK
GORTON; GREG BILDSON, and M.J.G. LIME
WIRE FAMILY LIMITED PARTNERSHIP

Defendants.

**DEFENDANTS' REPLY IN FURTHER SUPPORT OF DEFENDANTS'
OBJECTIONS TO PLAINTIFFS' EXHIBITS AND
DEPOSITION EXCERPTS TO THEIR MOTION FOR PARTIAL
SUMMARY JUDGMENT AND DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' EXHIBITS AND DEPOSITION EXCERPTS**

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INTRODUCTION

Plaintiffs' Opposition to Defendants' Motion to Strike¹ is a voluminous yet futile attempt to cure the evidentiary deficiencies that are prevalent throughout Plaintiffs' Motion for Partial Summary Judgment. For all its volume, Plaintiffs' fifty-five page opposition fails to show that Defendants' objections should be overruled. Defendants' objections should be sustained.

ARGUMENT & AUTHORITIES

I. DEFENDANTS' OBJECTIONS ARE FIRMLY GROUNDED IN LAW, DESPITE PLAINTIFFS' FIFTY-FIVE PAGE ATTEMPT TO SHOW THE CONTRARY.

Plaintiffs boldly contend that Defendants' Motion to Strike is "meritless" in their attempt to misguide the Court away from a very basic principle of law—judgments, summary or otherwise, must be based upon admissible evidence. *See Riisna v. Am. Broad. Cos.*, 219 F. Supp. 2d 568, 571 (S.D.N.Y. 2002); *Bazak Int'l Corp. v. Tarrant Apparel Group*, 378 F. Supp. 2d 377, 391 (S.D.N.Y. 2005). Plaintiffs' dismissive waves at Defendants' evidentiary motions as if they are simply a bother, should be treated in a similar dismissive fashion by the Court, and Defendants' objections should be sustained.²

A. PLAINTIFFS FAILED TO AUTHENTICATE NUMEROUS OF THEIR EXHIBITS.³

One of the basic tenets of Federal Rule of Evidence 901 is that someone with knowledge of the exhibit must authenticate the exhibit. *See FED. R. EVID. 901(1)*. Exhibits 14, 26, 49, 119,

¹ "Defendants' Motion to Strike" refers to Defendants' Objections to Plaintiffs' Exhibits and Deposition Excerpts to Their Motion for Partial Summary Judgment and Defendants' Motion to Strike Plaintiffs' Exhibits and Deposition Excerpts.

² For the Court's convenience, individual replies to Plaintiffs' responses to Defendants' objections to Plaintiffs' exhibits are set forth in Attachment A, and responses to Defendants' objections to Plaintiffs' deposition excerpts are contained in Attachment B.

³ Because Plaintiffs' response cures the authenticity deficiencies to Exhibits 26, 27, 55, 65, 75, 77, 81, 89, 90, 91, 92, 97, 100, 103, 105, 107, 115, 128, 133, 137, 149, 151, 152, 156, 157, 158, 159, 160, 161, 162, 163, 165, 167, 168, 171, 174, 175, 176, 178, 179, 187, 189, 192, 196, 197, 201, 202, 205, 206, 207, 208, 209, 210, 211, 213, 217, 223, 225, 229, 230, 232, 240, 241, 247, 254, 255, 260, 296, 299, and 300, Defendants withdraw their authentication objections to those exhibits.

155, 168, 177, 190, 261, and 286 violate this basic tenet. For example, Plaintiffs attempt to authenticate Exhibit 119 with the testimony of Kathryn Catillaz. However, in her deposition, when presented with Exhibit 119, Catillaz states that she is *not* familiar with that particular webpage. *See* Catillaz Tr. 162:5–6, attached to Forrest Decl. attached to Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment. Obviously, Catillaz does not have the requisite knowledge to authenticate the document. Exhibit 119 is not an isolated incident. Plaintiffs continually cite to testimony where witnesses state “I think,” “It appears,” or “I don’t recall” when reviewing the exhibits and responding to questions regarding their authenticity status. *See* Attachment A at Ex. 49, 14, 190. These equivocal statements show a lack of knowledge, which means that these exhibits have not been properly authenticated. Accordingly, Defendants authenticity objections to Exhibits 14, 26, 49, 119, 155, 168, 177, 190, 261, and 286 should be sustained and these exhibits should be stricken from the summary judgment record.

Plaintiffs also attempt to authenticate printouts of websites by way of their counsel’s declaration. In her declaration, Katherine Forrest states that these web sites were printed “at [her] direction and under [her] supervision” on specific dates. *See Declaration of Katherine B. Forrest*, attached to Plaintiffs’ Memorandum in Support of Motion for Partial Summary Judgment. This is not the proper method to authenticate websites. *See Novak v. Tucow, Inc.*, No. 06-CV-1909 (JFB), 2007 WL 922306, at * 5 (E.D.N.Y. Mar. 26, 2007) (“While plaintiff’s declaration purports to cure his inability to authenticate the documents printed from the internet, he in fact lacks the personal knowledge required to set forth with any certainty that the documents obtained via third-party websites are, in fact, what he proclaims them to be. . . . [plaintiff] proffers neither testimony nor sworn statements attesting to the authenticity of the

contested web page exhibits by any employee of the companies hosting the sites from which plaintiff printed the pages, such exhibits cannot be authenticated as required under the Rules of Evidence.”). Plaintiffs fail to offer testimony or sworn statements attesting to the authenticity of their printouts, and the Forrest Declaration fails to state who printed or even accessed the website. Thus, the printouts of websites contained in Exhibits 35, 50, 66, 96, 169, 170, 224, 228, 231, 309, and 315 are not properly authenticated and should be stricken.

B. PLAINTIFFS’ EXHIBITS ARE INADMISSIBLE UNDER FEDERAL RULE 402.⁴

Plaintiffs continuously offer exhibits that are not probative of any issue related to this case. By way of example, Exhibits 65, 66, and 67 all relate to Napster’s business model. Exhibit 65 is offered to show that Napster shutdown, while Exhibits 66 and 67 are offered to show that Napster reopened. Plaintiffs claim that these exhibits are relevant because they show Lime Wire’s knowledge of those facts. Whether Lime Wire knew Napster shutdown and then reopened, however, is hardly probative of any issues related to the determination of the alleged copyright infringement. *See United States v. Kaplan*, 490 F.3d 110, 121 (2d Cir. 2007) (“(1) [t]he evidence must be probative of the proposition it is being offered to prove, and (2) the proposition to be proved must be one that is of consequence to the determination of the action.”).⁵

Exhibits 55, 64, 65, 66, 67, 89, 100, 129, 130, 151, 152, 155, 177, 231, 250, and 264 are either not probative of the proposition they are offered to prove or are inconsequential to the determination of this action; thus, the Court should sustain Defendants’ objections under FED. R.

⁴ Because Plaintiffs’ response cures the relevancy foundational deficiencies to Exhibits 42, 43, 91, 147, 169, 170, 175, 176, 287, 288, 296, Defendants withdraw their relevancy objections to those exhibits.

⁵ Plaintiffs also claim evidence is relevant even though they do not use it to support their partial summary judgment. Exhibits 129 and 130 are cited in paragraph 225 of Plaintiffs’ 7/18/2008 Statement of Facts. However, this paragraph is never relied upon by Plaintiffs in their summary judgment motion, which underscores the irrelevance of these exhibits to the determination of their motion and this case.

EVID. 402. *See, e.g.*, Attachment A at Ex. 155 (discussing control of access to Lime Wire forums, which are not accused of infringing); Ex. 231 (discussing Fisk's personal preference for centralized or decentralized networks almost two years after Fisk left Lime Wire's employ).

C. PLAINTIFFS' EXHIBITS ARE LITTERED WITH HEARSAY.⁶

1. Plaintiffs' Exhibits Are Offered to Prove the Truth of the Matter Asserted.

Plaintiffs claim that 100 of their exhibits are not offered for their truth, but to show only that the statements were made and as circumstantial evidence of Defendants' state of mind. However, based on Plaintiffs' use of the exhibits, it is apparent that a majority of the exhibits are offered to prove the truth of the matter asserted. For example, Exhibits 31 and 297 contains emails from alleged LimeWire users. Plaintiffs claim that they offer these exhibits to show that Lime Wire had knowledge of these statements, but this is belied by the fact that Plaintiffs use the exhibits to prove alleged facts. *See, e.g.*, Pls. 07/18/08 SOF ¶ 532 ("Several of the user emails indicating infringing use of LimeWire included listings of the users' files found in their shared directories . . . each of which listed several pages of songs available for sharing."). Plaintiffs clearly offer Exhibit 31 and 297 to prove that the files listed are ones shared by users; therefore, Exhibits 31 and 297 are inadmissible hearsay.

Plaintiffs also try to subvert the hearsay requirements by using words such as "to demonstrate." For example, Plaintiffs contend that Exhibit 201 is not offered for its truth but "to demonstrate" that Gorton made certain statements. Exhibit 201 is a New York Times article wherein the author allegedly quotes Gorton, but Gorton did not recall making those statements.

⁶ Because Plaintiffs' response cures the hearsay evidentiary problems to Exhibits 13, 15, 63, 69, 83, 84, 85, 87, 90, 103, 105, 107, 110, 114, 115, 119, 122, 129, 130, 133, 149, 157, 165, 174, 175, 192, 211, 225, 232, 240, 241, 247, 249, 255, 257, 260, 281, 286, 299, 300, 304, 305, 306, 307, 308, 313, and 315, Defendants withdraw their hearsay objections to those exhibits.

See Gorton Tr. 475:14-476:11. The only proof of Gorton's quotes is the author's out of court assertions, which Plaintiffs offer to prove that Gorton uttered those statements.

Another example is Exhibit 35, where again Plaintiffs contend the exhibit is only offered "to demonstrate" that LimeWire was available for download. However, Plaintiffs' Statement of Facts shows Plaintiffs' true intent in offering this exhibit, which was to prove the number of times LimeWire was downloaded from *download.com*. Pls. 07/18/08 SOF ¶ 95 ("As of July 12, 2008 the LimeWire client has been downloaded from *download.com* alone 152,452,975 times."). Clearly, Plaintiffs are not merely "demonstrating" but are offering to prove the truth of the matters asserted in Exhibits 201 and 35; thus these exhibits are inadmissible hearsay. *See also*, e.g., Attachment A at Ex. 43 (Plaintiffs contending exhibit offered only to show that LimeWire was downloaded but citing a specific percentage stated in the exhibit, which shows that Plaintiffs offered Exhibit 43 to prove that "17.7% of U.S. internet users have installed LimeWire's software.").

Furthermore, implied assertions can also be hearsay. *United States v. Dukagjini*, 326 F.3d 45, 56–57 (2d Cir. 2003). For example, Exhibit 189 is a post on a forum from an alleged LimeWire user. Plaintiffs offer this exhibit under the subtitle "Lime Wire Has Not Discouraged or Has Turned a 'Blind Eye' To Infringement Using LimeWire." *See* Pls. 07/18/08 SOF ¶ 303. Plaintiffs' rely on the user's implied assertion that the "30gig" of music are infringing files and that Fisk encouraged sharing of the infringing files. This implied assertion is offered for its truth; thus, Exhibit 189 is inadmissible hearsay. *See also* Attachment A at Ex. 187, 189, 190, and 194.

Much like the examples discussed above, Exhibits 43, 44, 49, 55, 65, 66, 75, 77, 89, 91, 92, 96, 100, 128, 147, 151, 158, 167, 168, 169, 170, 176, 177, 178, 179, 187, 189, 193, 194, 196,

197, 198, 201, 202, 203, 205, 206, 207, 208, 209, 210, 213, 229, 231, 242, 250, 261, 264, 296, 297, 298, and 309 are also offered for their truth and thus constitute inadmissible hearsay. *See* Attachment A for individual responses.

2. Not Every Statement Uttered by a Lime Wire Employee is a Party Admission.

Vicarious admissions are only admissible if the following foundation is established: “(1) the existence of the agency relationship, (2) that the statement was made during the course of the relationship, and (3) that it relates to a matter within the scope of the agency.” *Pappas v. Middle Earth Condo. Ass’n*, 963 F.2d 534, 537 (2d Cir. 1992). Several of Plaintiffs’ exhibits contain statements made by current LimeWire employees that were not made during the course of their employment with LimeWire and/or that do not relate to a matter within the scope of their agency. *See e.g.*, Attachment A at Ex. 14 (Rohrs, a Lime Wire employee, stating that the post was made under his personal account) and Ex. 254 (Rohrs testified that this e-mail was a personal communication, *see* Rohrs Tr. 170:17–18.).

Plaintiffs also misinterpret the standard for adoptive admissions. A party only adopts a statement if it has manifested an adoption or belief in the truth of the statement. FED. R. EVID 801(d)(2)(B). Plaintiffs erroneously state that the act of forwarding a statement via e-mail amounts to an adoptive admission. Even if an employee incorporates a statement into an e-mail, that employee must still approve of the content before it becomes an adoptive admission. *See* Fed. R. Evid. 801(d)(2)(B); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 454 F. Supp. 2d 966, 973 (C.D. Cal. 2006) (“To the extent other content is incorporated into these emails, and to the extent the StreamCast agent expresses approval thereof, the incorporated content is admissible as vicarious adoptions.”). Plaintiffs have offered no proof that any of the statements

they claim are adoptive admissions have been approved by their sender. Thus, they remain inadmissible hearsay.

Plaintiffs' Exhibits 14, 33, 39, 42, 128, 163, 171, 179, 184, 190, 193, 242, 253, and 254 are not party admissions and should be excluded as hearsay.

3. Plaintiffs' Screenshot Exhibits Are Hearsay.

Using faulty logic, Plaintiffs concoct a grasping and wholly unsupported argument that screenshots are akin to photographs and thus are not statements within the meaning of Rule 801. Under Plaintiffs' rationale, one could subvert the hearsay rule by taking screenshots of documents and webpages on a computer screen and then offer those screenshots into evidence, which is exactly what Plaintiffs have done. For example, Plaintiffs offer Exhibit 158, which is a screenshot of a web page, to prove that Lime Wire gave certain access levels to certain types of moderators in a LimeWire forum. The webpage contains several statements by the forum administrator, one of which is the type of access levels available. Because Plaintiffs offer Exhibit 158 to prove that certain access levels are available, there can be no dispute that Plaintiffs offer the exhibit to prove the truth of the matter asserted. *See* Pls. 7/18/2008 Statement of Facts at ¶¶ 70, 325. Thus Exhibit 158, and the other proffered screenshots—Exhibits 26, 27, 50, 159, 160, 161, 162, 217, 223, and 230—should be ruled inadmissible hearsay.

4. Exhibits 82 and 102 Are Not Excepted From Hearsay as Business Records.

Plaintiffs attempt unsuccessfully to use the testimony of Jill T. Randell, a Google employee, to lay the foundation for Google's business record. Randell never states that Exhibits 82 or 102 are "records kept in the regular course of business," nor does Randell state whether the record was "made at or near the time by, or from information transmitted, by a person with knowledge." *See* FED. R. EVID. 803(6). Randell simply states that Exhibits 82 and 102 "are

business records.” *See* Pls. Opp’n, Attachment A at Ex. 82. Such conclusory statements do satisfy the requirements contained in Rule 803(6). Because Plaintiffs failed to lay a proper foundation for Exhibits 82 and 102, they are inadmissible hearsay and must be excluded.

5. Marco and Sorenson’s Affidavits from Grokster Are Inadmissible Hearsay.

Affidavits from another proceeding are clearly hearsay. *See Chamberlain v. Principi*, 247 Fed. Appx. 251, 253–54 (2d Cir. 2007) (finding affidavits from another proceeding inadmissible as hearsay); *see also Santos v. Murdock*, 243 F.3d 681, 683-84 (2d Cir. 2001). While Plaintiffs cite cases that generally discuss the use of affidavits as summary judgment evidence, none of the cases cited by Plaintiffs allows the use of an affidavit from another proceeding. Accordingly, Marco and Sorenson’s Affidavits from the *Grokster* litigation—Exhibits 287 and 288—are inadmissible hearsay and should be excluded.

D. PLAINTIFFS’ DEPOSITION EXCERPTS ARE REPLETE WITH EVIDENTIARY PROBLEMS.⁷

Plaintiffs offer authority to show that the personal knowledge requirement in Rule 602 constitutes a low threshold. However low the threshold may be, Plaintiffs’ deposition excerpts do not meet it. For example, Plaintiffs contend that Sam Berlin, a software engineer for LimeWire, has personal knowledge of LimeWire’s content filtering system, despite Berlin’s testimony that he “believes it is the same as it is now” but that he did not really know. This speculation is inadmissible and belies Plaintiffs’ argument that Berlin had personal knowledge of the content filtering system. *See* Attachment B at Berlin 247:13-247:23; *see, e.g.*, Catillaz 324:07-324:19 (when asked if she knew about a certain percentage of LimeWire users, she said no and stated that she has no way to measure the percentage). Clearly, when a witness states “I believe” or

⁷ Defendants withdraw their “assumes facts not in evidence” objection for Berlin 243:18–24 and “speculation” objection for Harris 108:14–24.

simply says “I don’t know,” the witness lacks personal knowledge on that topic and any answer amounts to speculation.

Plaintiffs also contend that the same low standard of Rule 602 applies to Rule 701 lay opinions. While the standard may be low, again, testimony that a witness “does not know” fails to satisfy the personal knowledge requirement, even for a lay opinion. *See FED. R. EVID. 602.* For example, when asked whether LimeWire’s filter was turned on, Berlin stated, “I don’t know.” *See Attachment B at Berlin 243:18-243:24.* Thus, Berlin lacked the requisite knowledge to opine on the subject, which makes his lay opinion improper. *See FED. R. EVID. 701.*⁸

For the reasons discussed above and in Attachment B, the Court should sustain Defendants’ objections to Plaintiffs’ deposition excerpts.

II. PLAINTIFFS’ FIFTY-FIVE PAGE OPPOSITION SUBVERTS INDIVIDUAL PRACTICE RULE 2(D)’S TWENTY-FIVE PAGE LIMIT; THEREFORE, THE COURT SHOULD STRIKE PLAINTIFFS’ ATTACHMENTS A AND B.

Plaintiffs filed a memorandum that is more than double the Court’s page limit in an attempt to impermissibly gain an unfair advantage over Defendants, while unduly burdening the Court. Rule 2(D) clearly states that “[u]nless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages.” Rule 2(D) of Judge Lynch’s Individual Practices. Plaintiffs have attempted to circumvent the page limit by including thirty-nine (39) pages of attachments to its Opposition. These attachments are not just supporting documents for Plaintiffs’ Opposition; Attachments A and B are “Plaintiffs’ individual responses to defendants’ objections.” Pls. Opp’n at 4. Plaintiffs’ excessive rhetoric is in no doubt due to their hope that volume breeds validity, when in fact, it does not. As a result of

⁸ Plaintiffs’ other responses to Defendants’ objections to Plaintiffs’ deposition excerpts are equally unavailing and are discussed individually in Attachment B.

Plaintiffs' blatant disregard for Rule 2(D), the Court should strike Attachments A and B to Plaintiffs' Opposition.

CONCLUSION

Defendants respectfully request that the Court strike Attachments A and B to Plaintiffs' Opposition, sustain Defendants' objections, grant Defendants' Motion to Strike Plaintiffs' Exhibits and Deposition Excerpts to Their Motion for Partial Summary Judgment, and exclude Plaintiffs' Exhibits objected to herein.

Dated: November 25, 2008.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading was filed by means of the Court's ECF system on the 25th day of November, 2008. Accordingly, it is assumed that all counsel of record received notice of this filing from the ECF system. Lead counsel, listed below, will also receive a courtesy copy via email.

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ATTACHMENT A

ATTACHMENT A

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

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
2	<i>Relevance</i>	LimeWire 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> DRSOF 09/26/08 ¶ 16.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
13	<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.) ⁹ 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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

⁹ 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.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
14	<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).	Rule 901(b)(1) requires a witness with knowledge to state that an exhibit is what it is claimed to be. Rohrs merely states “it appears to be” user comments and that he “probably” wrote it. This hardly satisfies the knowledge requirement of Rule 901.
	<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”.	Although Plaintiffs’ rely on Rohrs’s testimony in a failed attempt to authenticate the document, Plaintiffs fail to cite Rohrs’s comments that this exhibit is a post made under his “personal” username. Rohrs Tr. 118:10-11 (“That is what I use for personal”). Thus if this post was in fact an authentic post by Rohrs, it was not made as an agent of Lime Wire and does not represent Lime Wire’s views, but rather his personal views. Plaintiffs apparently concede that the post is offered for the truth of the matter asserted; thus, it is clearly hearsay.
15	<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. 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_gdf@yahoo.groups.com (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.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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).	Under Plaintiffs' rationale, one could subvert the hearsay rule by taking pictures of documents and then offering the pictures into evidence; this is exactly what Plaintiffs' screenshot is. Plaintiffs' offer Exhibit 26 to prove that LimeWire displays results in a certain way and to prove that certain results were displayed; thus, it is offered for the truth of the matter asserted and is hearsay. <i>See</i> Plaintiffs' 7/18/2008 Statement of Facts at ¶¶ 70, 325.
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).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	(<i>See supra</i> Ex. 26 hearsay response.)	<i>See supra</i> Reply to Exhibit 26.
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).	Exhibit 31 is offered to show that the directories contain shared songs, which is the truth of the matter asserted. Plaintiffs' 7/18/2008 Statement of Facts at ¶¶ 79, 532. Clearly, Exhibit 31 is offered for its truth and not to demonstrate Lime Wire's notice or knowledge.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(d)(2)(D).</i>	Tellingly, Plaintiffs ignore the first set of e-mails between Jessica Dolcourt and Peter Butler. Because neither of these persons was an employee of Lime Wire, these e-mails are not admissions. As a result, there can be no dispute that Exhibit 33 contains hearsay, which is inadmissible. FED. R. EVID. 801, 802. Plaintiffs cite no case law that would allow the Court to sever out the inadmissible portions of this exhibit; accordingly, the entire exhibit is inadmissible. Plaintiffs made a choice to combine these separate exhibits into one exhibit; thus, Plaintiff must abide by their choice.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Forrest 07/18/08 Decl. at 6, which specifies the URL of the webpage and the date the printouts were made. <i>See Fed. R. Evid. 901(1)</i> . 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 Fed. R. Evid. 901(4)</i> . 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 Baker 07/17/08 Decl. ¶¶ 5-32</i> .) Thus, defendants have waived their objection to Exhibit 35.	Offering printouts of websites does not waive Lime Wire's objections. Plaintiffs could have objected to Defendants' exhibits, but failed to do so. Lime Wire's reasoning for lack of authentication is that Forrest declares that these exhibits, which are printouts of web sites, were printed "at [her] direction and under [her] supervision" on specific dates. <i>See Declaration of Katherine B. Forrest, attached to Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment</i> . This is not the proper method to authenticate websites. <i>See Novak v. Tucow, Inc.</i> , No. 06-CV-1909 (JFB), 2007 WL 922306, at * 5 (E.D.N.Y. 2007) ("While plaintiff's declaration purports to cure his inability to authenticate the documents printed from the internet, he in fact lacks the personal knowledge required to set forth with any certainty that the documents obtained via third-party websites are, in fact, what he proclaims them to be. . . . [plaintiff] proffers neither testimony nor sworn statements attesting to the authenticity of the contested web page exhibits by any employee of the companies hosting the sites from which plaintiff printed the pages, such exhibits cannot be authenticated as required under the Rules of Evidence.").

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay</i>	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 Fed. R. Evid. 801(c).</i>	Plaintiffs Statement of Facts states “As of July 12, 2008, the LimeWire client has been downloaded from <i>download.com</i> alone 152,452,975 times.” Plaintiffs’ 7/18/2008 Statement of Facts at ¶ 95. This exhibit is offered for the truth of the matter asserted, that LimeWire has been downloaded from <i>download.com</i> 152,452,975 times, and is inadmissible hearsay.
39	<i>Hearsay</i>	Exhibit 39 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> 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 Attach. C</i>) 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 Fed. R. Evid. 801(c).</i>	While Plaintiffs assert that the answers in the e-mail are within the scope of Harris’ employment, which is belied by the fact that Harris is asking Bildson for permission to respond with these answers. <i>See Ex. 39</i> (stating that these are “possible answers”). Obviously, it was not within the scope of Harris’s employment to make these comments without first receiving Bildson’s permission. Thus, no admission was made by Lime Wire or any other Defendant. Exhibit 39 is also hearsay because it is offered for the truth of the matter asserted—the number of users per month. <i>See Plaintiffs’ 7/18/2008 Statement of Facts at ¶ 89.</i>

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(c).</i></p> <p>Moreover, Exhibit 42 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Jason Pelzer, the lead developer of the Lime Wire store, (<i>see Attach. C</i>), 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.</p> <p>Accordingly, Mr. Pelzer has adopted its contents. <i>See Fed. R. Evid. 801(d)(2)(B).</i></p>	<p>Exhibit 42 is an e-mail from Pelzer to another Lime Wire e-mail address, which contains a verbatim copy of an article. Pelzer make no affirmative statement that could be considered a party admission, nor does he make an affirmative statement expressing approval of the article or manifesting an intent to adopt its contents. <i>See Fed. R. Evid. 801(d)(2)(B); Grokster</i>, 454 F. Supp. 2d at 973 (“To the extent other content is incorporated into these emails, and to the extent the StreamCast agent expresses approval thereof, the incorporated content is admissible as vicarious adoptions.”) Furthermore, the article is offered for its truth as evidenced by Plaintiffs’ 7/18/2008 Statement of Facts ¶ 608. (“Gorton ‘has been preparing for a fight for years’ One source ... noted that there were ‘no internal emails’ and ‘no paper trail.’”)</p>
	<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.	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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”. <i>See</i> Fed. R. Evid. 801(c). Further, Rubenfeld testified in his deposition that he remembered making this statement (Rubenfeld Tr. 290:19-24).	Exhibit 43 is offered for truth of the matter asserted. Under the subtitle “Distribution,” Plaintiffs’ cite the 17.7% statistic reported by Big Champagne. <i>See</i> Plaintiffs’ 7/18/2008 Statement of Facts at ¶92. Obviously, Plaintiffs’ offered this statement for its truth that “17.7% of U.S. internet users have installed LimeWire’s software.” Plaintiffs offer no exception to Rule 801; therefore, Exhibit 43 is inadmissible hearsay.
	<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.	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 LimeWire LLC's CEO, George Searle, made these statements in his November 2007 speech. <i>See Fed. R. Evid. 801(c).</i>	Plaintiffs are using Exhibit 44 to prove the truth of the matter asserted—the distribution and use of the LimeWire software. <i>See Plaintiffs' 7/18/2008 Statement of Facts at ¶93 ("In a November 2007 speech at a P2P Advertising Upfront event, Lime Wire CEO George Searle was quoted as telling the audience that LimeWire "gets about seven million new downloads per month and its users generate a total of five billion searches per month".) It should also be noted that Plaintiffs claim that Searle was quoted, but a close review of Exhibit 44 shows that it was not a direct quote, which is why Plaintiffs do not attempt to claim it is a party admission. Clearly, this is inadmissible hearsay.</i>
49	<i>Authenticity</i>	Exhibit 49 is authenticated by the testimony of Eric German. (German Tr. 347:10-348:5.) <i>See Fed. R. Evid. 901(1).</i>	Rule 901(b)(1) requires a witness with knowledge to state that an exhibit is what it is claimed to be. When asked if the license agreement is for the Kodak Easyshare program, German states, "Yes, I think so." (German Tr. 347:10-348:5.). This hardly satisfies the knowledge requirement of Rule 901.
	<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. <i>See Fed. R. Evid. 801(c). (See Pls. 07/18/08 SOF ¶¶ 115-117.)</i>	Again, Plaintiffs use descriptive words such as "illustrate" in an attempt to show that Exhibit 49 is not offered for its truth. However, as evident from their Statement of Facts, Exhibit 49 is offered in an attempt to prove that Kodak had a restrictive license on the Easyshare file. Pls. 07/18/08 SOF ¶ 116. Clearly, it is offered for its truth; thus, it is inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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. (<i>See also supra</i> Ex. 26 authenticity response.)	<i>See supra</i> Ex. 35 authenticity reply.
	<i>Hearsay</i>	Exhibit 50 is not hearsay. (<i>See supra</i> Ex. 26 hearsay response.)	<i>See supra</i> Ex. 26 hearsay reply. Furthermore, Plaintiffs offer Exhibit 50 for its truth that certain files were available on the Gnutella network. Pls. 07/18/08 SOF ¶ 121 (“Multiple Gnutella users made available identical digital copies of each of plaintiffs’ 30 copyrighted sound recordings listed in Attachment A.”).
55	<i>Authenticity</i>	Exhibit 55 is authenticated by the testimony of Adam Fisk. (Fisk Tr. 161:13-162:23.) <i>See Fed. R. Evid. 901(b)(1).</i> Further, Exhibit 55 is authenticated because it was produced by defendants in discovery. (<i>See</i> Forrest 11/7/08 Decl. ¶ 28.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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. <i>See</i> Fed. R. Evid. 801(c). (<i>See</i> Attach. C.) Further, Fisk confirmed these statements in his deposition. (<i>See</i> Fisk Tr. 162:9-163:2.)	In a section titled “The Overwhelming Use of LimeWire Has Always Been and Is for Media Files, Including Copyrighted Music that Is Unauthorized for Free Distribution on P2P Networks,” Plaintiffs quote Fisk’s statement from Exhibit 55. <i>See</i> Pls. 07/18/08 SOF ¶ 131 (“In 2005, former Lime Wire Senior Software Engineer Adam Fisk stated, ‘I agree with you that piracy has been the primary driver of Bit Torrent’s ‘success’, along with all of the other P2P apps [including LimeWire]. When you’re enabling copyright infringement on a massive scale, you’d have to suck pretty badly not to succeed.’”). As evidenced by the titled section and Plaintiffs’ use of the quote, Exhibit 55 is offered in an attempt to prove that LimeWire’s primary driver is piracy; thus, it is inadmissible hearsay.
	<i>Relevance</i>	Fisk’s statement that “when you’re enabling copyright infringement on 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. (<i>See</i> Fisk Tr. 179:09-19.)	First, Fisk was a former employee at the time that the statement was made. Fisk’s belief as a former Lime Wire employee are irrelevant to the issues of this case. Thus, if Plaintiffs’ hearsay argument is to be believed, Exhibit 55 is irrelevant.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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. <i>See Fed. R. Evid. 801(c)</i> . 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. <i>See Fed. R. Evid. 803(17)</i> .	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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. (<i>See Gribble Tr. 142:24-144:15</i> .) The LimeWire software operates over the Gnutella network. (<i>See Pls. 7/18/08 SOF ¶ 46</i> .) Thus, Exhibit 64 is probative of the fact that the LimeWire software was used for the transfer of audio and video files.	The relevant issue is the number of infringing files that were transferred using the LimeWire software and Defendants' knowledge, if any, of those transfers, not of transfers across the Gnutella network. Mr. Gribble's report is not probative of any of the relevant issues in this case.
65	<i>Authenticity</i>	Exhibit 65 is properly authenticated because it was produced by defendants in discovery. (<i>See Forrest 07/18/08 Decl. at 10</i> .)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See Fed. R. Evid. 801(c); see also In re Napster Copyright Litigation, 479 F.3d 1078, 1082 (9th Cir. 2007)</i> .	Exhibit 65 is offered for its truth. In their statement of facts, Plaintiffs state, "Subsequently, Napster shut down its file sharing service. (Ex. 65 at 61.)" <i>See Pls. 07/18/08 SOF ¶ 147</i> . Clearly, Plaintiffs offered Exhibit 65 to prove that Napster shutdown after the Napster litigation. Thus, Exhibit 65 is inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	As shown above, Exhibit 65 is offered to show that Napster shutdown. Whether Napster shutdown or not is hardly relevant to the issue at hand—whether LimeWire is liable for contributory infringement.
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. <i>See Fed. R. Evid. 901(1).</i> Exhibit 66 is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i> (<i>See also supra</i> Ex. 35 authenticity response.)	Plaintiffs have improperly authenticated Exhibit 66. <i>See supra</i> Ex. 35 authenticity reply.
	<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. <i>See Fed. R. Evid. 801(c).</i>	Exhibit 66 is offered for its truth, that Napster reopened as a for fee service. <i>See Pls. 07/18/08 SOF ¶ 148</i> (“Napster was rebranded as Napster 2.0 and opened as a licensed service through which users could acquire music for a fee.”). Accordingly, Exhibit 66 is inadmissible hearsay.
	<i>Relevance</i>	Exhibit 66 is probative of Lime Wire LLC's knowledge of a report that Napster re-opened as a licensed service.	As is evident from Plaintiffs' Motion for Summary Judgment and their Statement of Facts, Plaintiffs only offer Exhibit 66 to show that Napster reopened as a for fee service. Napster's business model is irrelevant to Defendants' liability.
67	<i>Relevance</i>	Exhibit 67 is probative of Lime Wire LLC's knowledge of a report that Napster re-opened as a licensed service.	<i>See supra</i> Relevance Reply to Exhibit 66.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
69	<i>Hearsay</i>	Exhibit 69 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D)</i> . Steven Cho was the Leader of Business Development at Lime Wire LLC when he made the statements in this e-mail. (<i>See Attach. C.</i>) Cho's statements are related to a matter within the scope of his employment.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
75	<i>Authenticity</i>	Exhibit 75 is authenticated by the testimony of Greg Bildson (Bildson Tr. 543:17-544:13). <i>See Fed. R. Evid. 901(b)(1)</i> . Exhibit 75 is further authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 29.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	Plaintiffs offer Exhibit 75 for its truth, that Lime Wire hoped to capture at least 30% of former Napster users. <i>See Pls. Memorandum in Support of Partial Summary Judgment</i> at 11–12. There is no doubt that Plaintiffs proffer Exhibit 75 in an attempt to prove Lime Wire's business model post-Napster shutdown. Thus, Exhibit 75 is inadmissible hearsay.
77	<i>Authenticity</i>	Exhibit 77 is authenticated by the Gorton 09/26/08 Decl. ¶ 19 and by the testimony of Mark Gorton. (<i>See Gorton Tr. 267:13-268:25.</i>) <i>See Fed. R. Evid. 901(b)(1)</i> . Exhibit 77 is further authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. 30.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i>	As is evident from Plaintiffs’ use of Exhibit 77, it is offered for its truth, that Scott Ward made certain statements. <i>See Pls. 07/18/08 SOF ¶ 158.</i> (“On February 23, 2001, Scott Ward of Widmeyer Communications, a public relations firm, wrote a public-relations campaign proposal to Lime Wire after meeting with Gorton that included the following “Situation Analysis”). Plaintiffs further use Exhibit 77 to show Lime Wire’ business model, which is evident by Plaintiffs’ citation to the “Strategy” section of Ward’s communication. <i>See id.</i> Clearly, Exhibit 77 is inadmissible hearsay.
81	<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.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
82	<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).	Plaintiffs fail to lay the proper foundation for the business record exception. Randell’s testimony that Exhibit 82 “is a business record” is conclusory and fails to meet Rule 803(6)’s requirements. Randell never states that Exhibit 82 is a “record kept in the regular course of business activity” or that the record was “made at or near the time by, or from information transmitted, by a person with knowledge.” <i>See</i> FED R. EVID 803(6). Randells’ testimony fails to lay the proper foundation for the business record exception; thus, Exhibit 82 is inadmissible hearsay.
		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.	

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(c).</i> Further, Bildson’s statements are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D). (See Attach. C.)</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
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 Pls. 07/18/08 SOF ¶ 168.</i>) <i>See Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
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 Fed. R. Evid. 801(c).</i> Further, Bildson’s statement is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D). (See Attach. C.)</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
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.	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
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 Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c)</i> . Further, this is also an admission by a party opponent. <i>See Fed. R. Evid. 801 (d)(2)(D)</i> .	Bildson did not write the article; therefore, the article is not a party admission. Plaintiffs’ relevancy and hearsay arguments are inconsistent. Plaintiffs contend that Exhibit 89 is not offered for its truth but that it is relevant because the article states that LimeWire is perceived as a “clone” of Napster. As Plaintiffs rely on this quote to support relevancy, it is clear that they offer it to prove the truth of the matter asserted. Therefore, Exhibit 89 is either inadmissible hearsay or irrelevant.
	<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[]”.	<i>See supra</i> Hearsay Reply to Exhibit 89.
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> .)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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> .	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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. (Baker 09/26/08 Decl. ¶ 9.) Exhibit 91 is further authenticated by the testimony of J.K. Barret (<i>see</i> Barret Tr. 204:6- 204:20). <i>See</i> Fed. R. Evid. 901(b)(1). 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</i> Forrest 11/07/08 Decl. ¶ 34.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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</i> Fed. R. Evid. 801(c). 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</i> Fed. R. Evid. 803(17). Moreover, defendants have proffered this document as their own Exhibit 7 (<i>see</i> Baker 9/26/08 Decl. ¶ 9), thereby waiving their objections to Exhibit 91.	Plaintiffs' response is inconsistent. They claim that the report is not being offered for its truth but that it is admissible hearsay, which means Plaintiffs do offer Exhibit 91 for its truth. The market report exception requires that the date be reliable and from a reliable source. FED R. EVID 803(6). As evidenced by Cho's e-mail (Ex. 90), the figures are not reliable and Lime Wire was hesitant to rely on them. Thus, Rule 803(6) does not apply, and Exhibit 91 is inadmissible hearsay.
	<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</i> Ex. 91 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
92	<i>Authenticity</i>	Exhibit 92 is properly authenticated because it was produced by defendants in discovery. (<i>See</i> Forrest 11/07/08 Dec!. ¶ 35.) 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 object to their authenticity).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 92 is not hearsay because it is not being offered for its truth but 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).	Exhibit 92 is hearsay because the attachment of the article to the Offering Memorandum constitutes nonverbal conduct of a person, which is a statement under Rule 801. <i>See</i> FED. R. EVID. 801(a). Plaintiffs offer Exhibit 92 to "demonstrate that Lime Wire LLC attached this article" to its Offering Memorandum. Thus, Exhibit 92 is offered to prove the truth of the matter asserted—that Lime Wire attached the article. Exhibit 92 is inadmissible hearsay.
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.)	Plaintiffs have not properly authenticated Exhibit 96. <i>See supra</i> Ex. 35 Authenticity Reply. Furthermore, Plaintiffs fail to address the improper bundling of these five alleged newspaper articles into one exhibit.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. 801(c).</i>	Exhibit 96 is offered for the truth of the matter asserted—that it was “widely reported that Grokster, Morpheus and Kazaa enabled users to copy and transfer copyrighted music files without authorization from copyright owners.” <i>See Pls. 07/18/08 SOF ¶ 183.</i> Accordingly, Exhibit 96 is inadmissible hearsay.
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 Baker 09/26/08 Decl. ¶ 8.</i>) 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 Catillaz Tr. 41:25-43:19.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> Exhibit 97 is also authenticated because it was produced in discovery by defendants. (<i>See Forrest 11/07/08 Decl. ¶ 36.</i>) Moreover, Exhibit 97 is authenticated as a marketing plan of Lime Wire LLC by its appearance, contents and distinctive characteristics. <i>See Fed. R. Evid. 901(b)(4).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
100	<i>Authenticity</i>	Exhibit 100 is further authenticated because it was produced in discovery by defendants. (<i>See Forrest 11/07/08 Decl. 37.</i>)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. 801(c).</i>	The matter being asserted is that Lime Wire or its investors were "happy" with the <i>Grokster</i> legal proceedings. <i>See Pls. 07/18/08 SOF ¶ 197.</i> Plaintiffs offer Exhibit 100 to show that Lime Wire and its investors stated they were happy with the progression of the <i>Grokster</i> proceedings. <i>See id.</i> Thus, Exhibit 100 is clearly offered for its truth, that Gorton's parents stated that they were happy about the <i>Grokster</i> proceedings, which makes Exhibit 100 inadmissible hearsay.
	<i>Relevance</i>	Exhibit 100 is probative of Lime Wire LLC's and its investors' knowledge of the <i>Grokster</i> proceedings.	Knowledge of the <i>Grokster</i> proceedings is not relevant to the issues at hand.
102	<i>Hearsay</i>	Exhibit 102 is the same type of business record as Exhibit 82. (<i>See supra</i> Ex. 82 Hearsay Reply.)	<i>See supra</i> Ex. 82 Hearsay Reply.
103	<i>Authenticity</i>	Exhibit 103 is authenticated by the affidavit of Pravin Sahane. (<i>See</i> Sahane Aff., Ex. 485.) <i>See Fed. R. Evid. 901(b)(1).</i> The documents in Exhibit 103 were produced in discovery by Yahoo! Inc. ("Yahoo") and are therefore authentic.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 103 is admissible as a business record of Yahoo's Search Marketing division ("YSM"). <i>See Fed. R. Evid. 803(6).</i> 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 Fed. R. Evid. 801(d)(2)(D).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 901(4).</i> Defendants do not offer any explanation why Exhibit 105 is "inauthentic". Exhibit 105 is further authenticated by the Forrest 11/07/08 Decl. 38.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i> 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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i> (<i>See also supra</i> Ex. 105 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(c).</i> Further, the statements made in the e-mail exchange 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 Fed. R. Evid. 801(d)(2).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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 Attach. C</i>) made the statement that LimeWire “[s]imilar to the popular Kazaa ... enables the sharing, searching, and downloading of MP3 files”. <i>See Fed. R. Evid. 801(c).</i> Further, Harris’ statements in Exhibit 114 are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
115	<i>Authenticity; no foundation</i>	Exhibit 115 is authenticated by the Minarovich 11/07/08 Decl. ¶ 5.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	The statements of Bildson in the interview with moderator Phil Leigh are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
119	<i>Authenticity</i>	Exhibit 119 is authenticated by the testimony of Kathryn Catillaz. (<i>See Catillaz Tr. 161:15-162:6.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	While Catillaz states she recognizes the exhibit as the Lime Wire website, she states she is not familiar with this particular webpage. <i>See Catillaz Tr. 162:5–6.</i> Thus, Catillaz cannot authenticate this particular webpage.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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 Fed. R. Evid. 801(c).</i> Further, Exhibit 122 contains the same text as Exhibit 121 to which defendants do not object.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
128	<i>Authenticity</i>	Greg Bildson authenticated Exhibit 128 by recognizing his handwriting. (<i>See</i> Bildson Tr. 850:18-850:22.) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i> Further, Bildson's statements are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i>	The statement cannot be an admission as Bildson admits he cannot remember if it was his own thought or something someone else told him. <i>See</i> Bildson Tr. 850:18-850:22 The statement is offered to prove that Lime Wire was attempting to directly compete with Kazaa and other peer-to-peer networks, which is the matter asserted in Exhibit 128. Thus, it is inadmissible hearsay.
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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	This “fact” is irrelevant to any issues in this case. Plaintiffs fail to cite the Statement of Facts paragraph 225 that references Exhibit 129 anywhere in their Memorandum in Support of Motion for Summary Judgment. This further evidences the irrelevance of Exhibit 129.
130	<i>Hearsay</i>	(See <i>supra</i> Ex. 129 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Relevance</i>	(See <i>supra</i> Ex. 129 relevance response.)	<i>See supra</i> Ex. 129 Relevance Reply.
133	<i>Authenticity</i>	Exhibit 133 is authenticated because it was produced in discovery by defendants. (See Forrest 11/07/08 Decl. ¶ 40.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See</i> Fed. R. Evid. 801(c).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See</i> Fed. R. Evid. 801(d)(2). (See Attach. C.)	Exhibit 137 is offered for the truth of the matter asserted, that Lime Wire chose “mp3” as the only file type keyword. <i>See</i> Pls. 07/18/08 SOF ¶ 231. (“On March 20, 2001, when registering LimeWire on CNET’s download.com, Lime Wire chose the keyword ‘mp3.’ It did not choose keywords related to any file types other than ‘mp3.’”). Exhibit 137 is inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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.” <i>See Fed. R. Evid.</i> 801(c).	Exhibit 147 is offered for its truth. Plaintiffs offer Exhibit 147 to prove that Lime Wire was trying to compete in the music distribution business. <i>See Pls. 07/18/08 SOF ¶ 242</i> (Under the subtitle “Lime Wire Positioned and Promoted Itself As a Participant in Music Distribution,” stating “In a January 15,2004 New York Post article, Bildson is quoted as responding to Tower Records representatives who had approached Lime Wire to purchase the record store, stating: ‘We’re trying to put you out of business, why would we want to buy you?’.”). As Plaintiffs offer no other reason or an exception for Exhibit 147, Exhibit 147 is inadmissible hearsay.
	<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.	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
149	<i>Authenticity</i>	Exhibit 149 is properly authenticated because it was produced by defendants in discovery. (<i>See</i> 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. (<i>See</i> Exhibit 486.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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. <i>See Fed. R. Evid. 801(c)</i> . Further, Exhibit 149 is offered to demonstrate that the CD sleeve for the LimeWire software was marked with the statement “O Copyright 2002 Lime Wire LLC”.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
151	<i>Authenticity</i>	Exhibit 151 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 07/18/08 Decl. at 20.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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”. <i>See Fed. R. Evid. 801(c)</i> .	As is evident from Plaintiffs' relevancy response, Plaintiffs are offering Exhibit 151 for its truth, that a large number of LimeWire users infringe. <i>See infra</i> Pls. Relevancy Response.
	<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.	Lime Wire LLC does not state in Exhibit 151 that a large number of the LimeWire users were infringing copyrights. Plaintiffs cite Exhibit 151 under the subtitle, “Lime Wire Positioned and Promoted Itself As a Participant in Music Distribution.” <i>See Pls. 07/18/08 SOF ¶ 248.</i> Exhibit 151 is not probative of this fact.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
152	<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 Fed. R. Evid. 901(1)</i> . Exhibit 152 is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4)</i> . Defendants do not offer any explanation why Exhibit 152 is not authentic.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Relevance</i>	Exhibit 152 is probative of the fact that Lime Wire positioned and promoted itself as a participant in music distribution.	Plaintiffs offer no explanation of how Lime Wire's music blog evidences Lime Wire's intent to position or promote itself as a participant in music distribution. Exhibit 152 is not relevant to the issues in this case.
155	<i>Authenticity</i>	Exhibit 155 is authenticated by the testimony of Samuel Berlin. (<i>See Berlin Tr. 351:19-351:24</i> .) <i>See Fed. R. Evid. 901(b)(1)</i> .	While Berlin testified that he generally recognized Exhibit 155, he was not able to attest to the authenticity of the contents of Exhibit 155. <i>See Berlin Tr. 351:19-351:24</i> (Do you recognize the document that is Exhibit 310? A. In general, yes. Q. What is it? A. According to this, the user banning options for the bulletin.”) Berlin later testified that he did not know what the contents were but could only make a guess. <i>Id.</i> at 352:6-7.
	<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.	Whether Lime Wire could prevent access to the Lime Wire forums is not probative of any issues regarding infringement.
156	<i>Authenticity</i>	Exhibit 156 is authenticated as a printout from the Lime Wire Forums webpage by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4)</i> . It is further authenticated by the Minarovich 11/07/08 Decl. 11 6.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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).	<i>See supra</i> Exhibit 26 Hearsay Reply. Plaintiffs offer Exhibit 155 to prove that certain IP addresses are banned from the Lime Wire forum; thus, Exhibit 155 is offered for its truth.
157	<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).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
158	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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.)	Exhibit 158 is offered for its truth, that Lime Wire gave certain access levels to certain types of moderators. Accordingly, Exhibit 158 is hearsay. <i>See also supra</i> Ex. 26 Hearsay Reply.
159	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay</i>	Exhibit 159 is a screenshot from the LimeWire Forums webpage. It is 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 Fed. R. Evid. 801(c).</i> (<i>See also supra</i> Ex. 26 hearsay response.)	<i>See supra</i> Ex. 26, 158 Hearsay Reply.
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 Berlin Tr. 54:11-55:07.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> 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.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(d)(2)(D).</i> Berlin’s statement that he will grant a moderator administrative privileges within the scope of his employment. (<i>See Berlin Tr. 12:2-12:8; Attach. C.</i>)	<i>See supra</i> Ex. 26, 158 Hearsay Reply. Furthermore, as other administrators were not Lime Wire employees, Plaintiffs have failed to show that Berlin’s statements were made within the scope of his employment. <i>See Berlin Tr. 12:2-12:8.</i> Thus, his statements are not admissions, and Exhibit 160 is inadmissible hearsay.
	<i>Authenticity</i>	Exhibit 161 is authenticated by the testimony of Samuel Berlin. (<i>See Berlin Tr. 33:04-34:03.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> 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.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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).	<i>See supra</i> Ex. 26 Hearsay Reply. Exhibit 161 is offered to prove that Lime Wire could change the moderator's access level, which goes to the matter asserted in Exhibit 161. Thus, Exhibit 161 is inadmissible hearsay.
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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	(<i>See supra</i> Ex. 161 hearsay response.)	<i>See supra</i> Ex. 161 Hearsay Reply.
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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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.	Exhibit 163 also contains comments from a "Lord of the Rings." Those comments are not admissions, and Plaintiffs have not argued that those comments were adoptions. Thus, Exhibit 163 indisputably contains statements by a third party declarant offered to prove their truth, which renders Exhibit 163 inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 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. (<i>See</i> 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.) <i>See</i> 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. (<i>See 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. <i>See</i> Fed. R. Evid. 901(4).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See</i> Fed. R. Evid. 801(c).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
167	<i>Authenticity</i>	Berlin authenticated the documents contained in Exhibit 167. (<i>See</i> Berlin Tr. 89:7-89:22, 91:3-91:24, 91:25-92:25, 93:2-93:15, 87:9-88:4.) <i>See</i> 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. (<i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 49.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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. <i>See Fed. R. Evid. 801(c).</i>	The statements are hearsay as they are offered to prove the truth of the matter asserted. Specifically, Plaintiffs offer Exhibit 167 to prove that Aaron Walkhouse's statements assisted forum participants in copyright infringement. <i>See Pls. 07/18/08 SOF ¶ 275.</i> Clearly, Exhibit 167 is inadmissible hearsay.
168	<i>Authenticity</i>	Berlin authenticated the documents contained in Exhibit 168. (<i>See Berlin Tr. 96:13-97:4, 98:3-98:18.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> These documents are further authenticated because they are printouts from a CD that was produced by defendants in discovery. (<i>See supra</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 50.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See Fed. R. Evid. 801(c).</i>	Again, as with Exhibit 167, Plaintiffs offer Exhibit 168 to prove that Kath, a supermoderator, assisted forum users in infringement. This is inadmissible hearsay as Plaintiffs offer the exhibit for its truth, that the statements assisted users in copyright infringement.
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. <i>See Fed. R. Evid. 901(4).</i>	<i>See supra</i> Exhibit 35 Authenticity Reply.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.” <i>See Fed. R. Evid. 801(c).</i>	Plaintiffs offer Exhibit 169 to prove that Gnutelliums LLC maintains the discussion board. <i>See Pls. 07/18/08 SOF ¶ 280.</i> The only reference to Gnutelliums LLC in Exhibit 169 is “Copyright © 2007 Gnutelliums LLC.” Clearly, Plaintiffs offer this statement to prove its truth, that Gnutelliums LLC maintains the website. Thus, Exhibit 169 is inadmissible hearsay.
	<i>Relevance</i>	Exhibit 169 is relevant because the Gnutella Forums were utilized to assist LimeWire users in infringing copyright.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
170	<i>Authenticity</i>	(<i>See supra</i> Ex. 169 authenticity response.)	<i>See supra</i> Exhibit 35 Authenticity Reply.
	<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 Fed. R. Evid. 801(c). (See also supra</i> Ex. 26 hearsay response.)	Exhibit 170 is offered for its truth, that the Gnutella Forums contains a special Lime Wire forum. <i>See Pls. 07/18/08 SOF ¶ 281.</i> Plaintiffs attempt to show this by providing screenshots of links to the Lime Wire forums. This is inadmissible hearsay. <i>See supra</i> Exhibit 26 Hearsay Reply.
	<i>Relevance</i>	(<i>See supra</i> Ex. 169 relevance response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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</i> Ex. 158 authenticity response; Forrest 11/07/08 Decl. ¶ 51.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 171 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Berlin’s statements were made within the scope of his employment.	First, Plaintiffs offer no explanation that Berlin’s comments were made within the scope of his employment. Second, Exhibit 171 is a post by “Lord of the Rings” not Berlin; thus, the post is inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
174	<i>Authenticity</i>	Exhibit 174 is authenticated by the testimony of Adam Fisk. (<i>See</i> Fisk Tr. 138:5-139:15.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 174 is further authenticated because it was produced by defendants in discovery. (<i>See</i> Forrest 11/07/08 Decl. ¶ 52.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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</i> Attach. C.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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</i> Rohrs Tr. 115:17-116:7.) <i>See</i> Fed. R. Evid. 901(b)(1).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay</i>	Exhibit 175 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D)</i> . Rohrs identified himself on the Gnutella Forums website as “crohrs - LimeWire Developer” (<i>see Attach. C</i>) 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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Relevance</i>	(<i>See supra</i> Ex. 169 relevance response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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. (<i>See</i> Forrest 11/07/08 Decl. ¶ 53.).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See Fed. R. Evid. 801(c)</i> .	The written assertion is that Greg Bildson is a “Super Moderator” on the Gnutella Forums. Plaintiffs offer Exhibit 176 to prove this fact, which makes it inadmissible hearsay.
	<i>Relevance</i>	(<i>See supra</i> Ex. 169 relevance response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
177	<i>Authenticity</i>	Plaintiffs substitute Exhibit 482 for Exhibit 177. Further, Exhibit 482 is authenticated by the Forrest 11/07/08 Decl. ¶ 54.	Plaintiffs claim to substitute Exhibit 482 for Exhibit 177, yet they respond to the Hearsay objections of Exhibit 177. Exhibit 177 is not properly authenticated. <i>See supra</i> Exhibit 35 Authenticity Reply.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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. <i>See Fed. R. Evid. 801(c).</i>	Exhibit 177 is offered for the truth of the moderators' assertions, that their statements provide methods to assist the users in infringing copyrights. <i>See supra Exhibits 167, 168 Hearsay Reply.</i> Thus, Exhibit 177 is inadmissible hearsay.
	<i>Relevance</i>	(<i>See supra Ex. 169 relevance response.</i>)	None of the statements by the moderators are attributed to Lime Wire or its employees. These statements were made by third parties commenting on the many uses of LimeWire, the third party comments are irrelevant to the issue of knowledge or intent by Lime Wire.
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. <i>See Fed. R. Evid. 901(4).</i>	<i>See supra Exhibit 35 Authenticity Reply.</i>
	<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. <i>See Fed. R. Evid. 801(c).</i>	<i>See supra Exhibits 167, 168, 177 Hearsay Replies.</i>
179	<i>Authenticity</i>	Exhibit 179 is authenticated by the testimony of Adam Fisk. (<i>See Fisk Tr. 125:10-126:11.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.” <i>See Fed. R. Evid. 801(c).</i> Exhibit 179 is also not hearsay because the statements of Fisk and Bildson are admissions of a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> (<i>See Attach. C.</i>)	In their Statement of Facts, Plaintiffs quote Fisk, “I would like to take this opportunity to thank TruStarWarrior for his invaluable contributions to this forum over the last seven months. His departure is an immeasurable loss.” <i>See Pls. 07/18/08 SOF ¶ 294.</i> This is clearly a personal statement made by Fisk. Plaintiffs attempt to classify this as an admission by quoting language from Exhibit 179 on which they do not rely, but it is clear that Fisk was speaking personally and not as a LimeWire employee. The statement is offered to prove that Fisk thanked TruStarWarrior; thus, it is inadmissible hearsay.
184	<i>Hearsay; Hearsay within Hearsay</i>	Exhibit 184 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Kathryn Catillaz (Business 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.	Exhibit 184 contains an e-mail from a non-Lime Wire employee, Holly Hutchison. Plaintiffs offer this e-mail for its truth, that there was a claim of illegal downloads occurring on LimeWire and that Lime Wire did not respond to it. This e-mail is hearsay, which was not adopted by Lime Wire. Thus, Exhibit 184 is inadmissible.
187	<i>Authenticity</i>	Exhibit 187 is authenticated by the testimony of Greg Bildson. (<i>See Bildson Tr. 792:20-793:14.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> It is further authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 55.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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).	Exhibit 187 is offered for its truth, that someone stated that LimeWire is “so much like Napster.” The implied assertion is that LimeWire assists in copyright infringement, which is how Plaintiffs offer the e-mail. <i>See</i> Pls. 07/18/08 SOF ¶ 301. Plaintiffs contend that Bildson responded without mentioning copyright infringement; however, such a mention would only be warranted if it was implied that the user was infringing. Thus, based on Plaintiffs’ premise, Exhibit 187 is inadmissible hearsay, as Plaintiffs offer the user’s e-mail for truth of the matter asserted.
189	<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.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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).	This Exhibit is offered under the subtitle “Lime Wire Has Not Discouraged or Has Turned a ‘Blind Eye’ To Infringement Using LimeWire.” <i>See</i> Pls. 07/18/08 SOF ¶ 303. Plaintiffs rely on the implied assertion that the “30gig” music is infringing files and that Fisk encouraged sharing of the infringing files. Again, Plaintiffs’ premise is that the user is sharing infringed files, which is an implied assertion from the user’s post. This implied assertion is offered for its truth; thus, Exhibit 189 constitutes inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
190	<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).	Bildson does not authenticate Exhibit 190. Bildson states that it was not a statement he wrote in response to “Brad” and that he did not recall making these statements. <i>See</i> Bildson Tr. 429:22-431:11. Thus, Exhibit 190 is not properly authenticated.
	<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 discourse, 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.)	Exhibit 190 is not a party admission. Assuming Bildson actually made these statements, they are of a personal nature and not related to his employment. <i>See</i> Ex. 190 (“I’m sharing good stuff.”). Plaintiffs cannot genuinely argue that sharing files was within Bildson’s scope of employment. As with Exhibits 189 and 187, Exhibit 190 is offered to prove an implied assertion, which is inadmissible hearsay.
192	<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).	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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).	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
193	<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 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 Fed. R. Evid. 801(c).</i> 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 Fed. R. Evid. 801(d)(2)(D).</i>	Exhibit 193 is offered for its truth, that Lime Wire approved the statements contained within. <i>See Pls. 07/18/08 SOF ¶ 309.</i> Plaintiffs' have not laid the foundation to show that AFA was an agent of Lime Wire and thus able to speak for Lime Wire. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Exhibit 193 is inadmissible hearsay.
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 Fed. R. Evid. 801(c).</i>	Exhibit 194 is offered for its truth, that the talking points impliedly assert that Lime Wire is hostile toward copyright protections. <i>See Pls. 07/18/08 SOF ¶ 310–12</i> (all under the subtitle "Lime Wire Has Expressed and Communicated Hostility Toward Copyright Protection."). Exhibit 194 is inadmissible hearsay.
196	<i>Authenticity</i>	Exhibit 196 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 56.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	This is another implied assertion for which Plaintiffs offer Exhibit 196 for its truth. <i>See supra</i> Exhibit 194 Hearsay Reply. Accordingly, Exhibit 196 is inadmissible hearsay.
197	<i>Authenticity</i>	Exhibit 197 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶57.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i>	Exhibit 197 is offered for its truth, that LimeWire had direct knowledge of infringement and was hostile to other music distribution channels. <i>See supra</i> Exhibit 194 Hearsay Reply. The articles contain statements that imply hostility for music distribution channels, and this is the assertion for which Plaintiffs offer Exhibit 197. Accordingly, Exhibit 197 is inadmissible hearsay.
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 Fed. R. Evid. 801(c).</i>	<i>See supra</i> Exhibit 197 Hearsay Reply.
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 Fed. R. Evid. 901(b)(1).</i> This printout from <i>The New York Times</i> webpage is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i> (<i>See also supra</i> Ex. 96 authenticity response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 would continue to exist regardless of the Supreme Court's decision in <i>Grokster</i> . <i>See Fed. R. Evid. 801(c)</i> .	Exhibit 201 is offered for its truth, that Gorton made certain statements. Gorton stated in his deposition that he could not remember making those statements to the New York Times; however, the author of the article asserts that Gorton made several statements. Plaintiffs clearly offered the article for the truth of the author's assertions that Gorton made these statements, which makes the article inadmissible hearsay.
202	<i>Authenticity</i>	Exhibit 202 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 58.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See Fed. R. Evid. 801(c)</i> .	<i>See supra</i> Exhibit 201 Hearsay Reply.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
203	<i>Hearsay</i>	In their Motion to Strike, Defendants do not identify Exhibit 203 in their list of objections (<i>see</i> 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". <i>See</i> Fed. R. Evid. 801(c).	Lime Wire has not waived this objection. The omission of Exhibit 203 from the chart was a clerical error. The objection was properly preserved in the body of the objections, where, as Plaintiffs point out, Lime Wire stated that Exhibit 203 was hearsay and not excluded as a party admission. Further, Plaintiffs' claim that Exhibit 203 is not offered for its truth is disingenuous. Under the subtitle "Lime Wire's Business Model and Revenues Depend on Massive Infringing Use of LimeWire," Plaintiffs cite Exhibit 203. <i>See</i> Pls. 07/18/08 SOF ¶ 403. Clearly, Plaintiffs offer Fisk's e-mail for the truth of his statement that Lime Wire "makes all its money off of infringing content." This is classic hearsay.
205	<i>Authenticity</i>	Exhibit 205 is authenticated by the testimony of Greg Bildson. (<i>See</i> Bildson Tr. 789:19-790:8.) <i>See</i> Fed. R. Evid. 901(b)(1). Exhibit 205 is further authenticated because it was produced by defendants in discovery. (<i>See</i> Forrest 11/07/08 Decl. ¶ 59.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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. <i>See</i> Fed. R. Evid. 801(c).	Bildson’s statement does not mention “alien ant farm.” That is found in the “unregistered guest’s” post. Plaintiffs offer this post for its truth, that the user searched for “alien ant farm.” Plaintiffs’ premise is that Lime Wire employees “made statements using terms associated with copyrighted content.” However, the only mention of allegedly copyrighted material is in the unregistered guest’s post. Thus, Plaintiffs’ conclusion relies on the truth of the unregistered e-mail—that the unregistered guest actually searched for “alien ant farm—which makes Exhibit 205 inadmissible hearsay.
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. (<i>See also infra</i> Ex. 207 authenticity response.) Also, Exhibit 206 is authenticated by the testimony of Christopher Rohrs. (<i>See</i> Rohrs Tr. 75:3-75:19.) <i>See</i> Fed. R. Evid. 901(b)(1).	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 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.” <i>See</i> Fed. R. Evid. 801(c).	Plaintiffs offer Exhibit 206 for its truth, that the statements made would ensure that LimeWire could be used to find content. Plaintiffs cite Exhibit 206 under the subtitle “Lime Wire Employees Worked to Ensure LimeWire Could Be Used Effectively to Find Copyrighted and Unauthorized Content.” <i>See</i> Pls. 07/18/08 SOF ¶ 321. Thus, Plaintiffs offered Rohrs’ statement regarding the way “meta-data works” to prove that the statement is true and would allegedly allow LimeWire to be used to find unauthorized content. This statement is clearly hearsay.
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. (<i>See</i> Rohrs Tr. 76:11-76:23.) <i>See</i> Fed. R. Evid. 901(b)(1).	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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.” <i>See</i> Fed. R. Evid. 801(c).	<i>See supra</i> Exhibit 206 Hearsay Reply. The same rationale applies to Exhibit 207.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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. (<i>See</i> Rohrs Tr. 78:25-79:14.) <i>See</i> Fed. R. Evid. 901(b)(1).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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’.)”. <i>See</i> Fed. R. Evid. 801(c).	<i>See supra</i> Exhibit 206 Hearsay Reply. The same rationale applies to Exhibit 208.
209	<i>Authenticity</i>	Defendants' counsel has authenticated Exhibit 209 by attaching it as Defendants' Exhibit 59 to the Baker 09/26/08 Decl. (<i>See also supra</i> Ex. 207 authenticity response.) Exhibit 209 is also authenticated by the testimony of Christopher Rohrs. (<i>See</i> Rohrs Tr. 81:10-82:7.) <i>See</i> Fed. R. Evid. 901(b)(1).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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”. <i>See</i> Fed. R. Evid. 801(c).	<i>See supra</i> Exhibit 206 Hearsay Reply. The same rationale applies to Exhibit 209.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 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 Fed. R. Evid. 901(1).</i> Also, Exhibit 210 is authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	<i>See supra</i> Exhibit 206 Hearsay Reply. The same rationale applies to Exhibit 210.
211	<i>Authenticity</i>	The copy of the CD Cover "I do not want what I haven't got" from the artist Sinead O'Connor is authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i> In addition, plaintiffs are submitting the CD for the Court's convenience. (<i>See Ex. 487</i>) The Certificates of Registration from the Register of Copyrights are self-authenticated. <i>See Fed. R. Evid. 902(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay</i>	The copy of the CD Cover is not hearsay because it is not a statement. <i>See Fed. R. Evid. 801(a).</i> The Certificates of Registration from the Register of Copyrights are admissible under the public records exception to the hearsay rule. <i>See Fed. R. Evid. 803(8).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
213	<i>Authenticity</i>	Exhibit 213 is authenticated because it was produced by defendants in discovery. (<i>See 11/07/08 Forrest Decl. ¶ 60.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	Exhibit 213 is offered for its truth. Plaintiffs offer Exhibit 213 in an attempt to prove that LimeWire was designed with the expectation that its users seek musical content. <i>See Pls. 07/18/08 SOF ¶ 326</i> , under subtitle “LimeWire is Designed with the Expectation that Its Users Seek Musical Content.” The article discusses the musical components of LimeWire’s searching capabilities. <i>See Ex. 216.</i> Clearly, this is inadmissible hearsay.
217	<i>Authenticity</i>	Exhibit 217 is authenticated by the testimony of Jesse Rubenfeld. (<i>See Rubenfeld Tr. 22:21-22:23.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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).	<i>See supra</i> Exhibit 26 Hearsay Reply.
223	<i>Authenticity</i>	Exhibit 223 is authenticated by the testimony of Samuel Berlin. (<i>See Berlin Tr. 330:8-331:2.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> Exhibit 223 is further authenticated by the Minarovitch 11/07/08 Decl. ¶ 7.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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).	<i>See supra</i> Exhibit 26 Hearsay Reply.
224	<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>See supra</i> Exhibit 35 Authenticity Reply.
	<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).	Exhibit 224 is offered for its truth. Plaintiffs cite Exhibit 224 as support for this alleged fact: "The LimeWire Forums supermoderator known as Aaron.Walkhouse maintains the hostiles.txt list." <i>See</i> Pls. 07/18/08 SOF ¶ 358. Exhibit 224 contains statements by Walkhouse on how to obtain the "hostiles.txt" file. These statements are offered for their truth, which makes Exhibit 224 inadmissible hearsay.
225	<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).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
228	<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 Fed. R. Evid. 901(4).</i>	<i>See supra</i> Exhibit 35 Authenticity Reply.
	<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 Fed. R. Evid. 801(c).</i>	Exhibit 228 is inadmissible hearsay. The forum moderator makes an assertion, "We always recommend PeerGuardian." Ex. 228. Plaintiffs' offer Exhibit 228 to prove the assertion that "Forum moderators . . . encouraged LimeWire users to use PeerGuardian." <i>See Pls. 07/18/08 SOF ¶ 363.</i> Thus, Plaintiffs offered the moderator's comments for its truth, that they always recommend PeerGuardian. Exhibit 228 is inadmissible hearsay.
229	<i>Authenticity</i>	Exhibit 229 is authenticated by the testimony of Samuel Berlin. (<i>See Berlin Tr. 129:12-131:20.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	Exhibit 229 is offered for its truth, that the SIMPP file contains settings for filtersettings.hostileIps. Plaintiffs offer this exhibit to prove that the SIMPP file does in fact contain the hostileIps file; thus, Exhibit 229 is offered for its truth. <i>See</i> Pls. 07/18/08 SOF ¶ 365.
230	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 230 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).	<i>See supra</i> Exhibit 26 Hearsay Reply.
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>See supra</i> Exhibit 35 Authenticity Reply.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i>	Exhibit 231 is not offered to show Fisk's state of mind; it is offered for its truth. In stating that Lime Wire wished to avoid centralization because of liability, Plaintiffs cite Fisk's statements regarding the pitfalls of centralization. Clearly, Plaintiffs offer these statements to show that centralization would be more efficient for Lime Wire, which is the truth of the matter asserted. Thus, Exhibit 231 is inadmissible hearsay.
	<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.	This is not relevant to the issues of the case. Whether Fisk prefers centralized or decentralized networks is of no probative value to the question of infringement.
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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Authenticity</i>	Exhibit 232 is authenticated by the testimony of Greg Bildson. (<i>See</i> Bildson Tr. 581:13-582:12.) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i> 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 Fed. R. Evid. 801(d)(2)(D).</i> (<i>See Attach. C.</i>)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
240	<i>Authenticity</i>	Exhibit 240 is authenticated by the testimony of Christopher Rohrs. (<i>See Rohrs Tr. 126:22-127:13.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
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 printouts were made. <i>See Fed. R. Evid. 901(1).</i> Exhibit 241 is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i> 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 Fed. R. Evid. 801(d)(2)(D).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
242	<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 Fed. R. Evid. 801(d)(2)(D).</i>	Plaintiffs fail to lay the proper foundation that “arguing” with Vincent Falco is within Fisk’s scope of employment. <i>See Pls. 07/18/08 SOF ¶ 395.</i> Further, Plaintiffs claim that LimeWire was developed to surpass Kazaa. In an attempt to prove this point, Plaintiffs cite Exhibit 242, where Fisk states that LimeWire returns 100 more results than Kazaa. Plaintiffs offer this statement for its truth, that LimeWire’s searching surpasses Kazaa’s. Clearly, this is inadmissible hearsay.
247	<i>Authenticity</i>	Exhibit 247 is authenticated by the testimony of Christopher Rohrs. (<i>See Rohrs Tr. 129:9-130:10.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> 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 Forrest 11/07/08 Decl. ¶ 61.; Letter of Wendy Seltzer to Jeffrey B. Korn of March 14, 2007, Exhibit 483).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c)</i> . 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 Fed. R. Evid. 801(d)(2)(D)</i> .	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
249	<i>Hearsay</i>	Exhibit 249 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D)</i> . Fisk's statement that he "checked out Morpheus's supposed anonymity' feature" relates to a matter within the scope of his employment.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
250	<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 Fed. R. Evid. 801(c)</i> .	Exhibit 250 is offered for its truth. Plaintiffs cite Fisk's statement in an attempt to prove that Lime Wire's business model revolves around infringement. <i>See Pls. 07/18/08 SOF ¶ 402</i> (under the subtitle, "Lime Wire's Business Model and Revenues Depend on Massive Infringing Use of LimeWire"). Thus, Exhibit 250 is inadmissible hearsay.
	<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".	Fisk's statements on his blog regarding Lime Wire are not probative of any issue in this case, especially as the statements were made over two years after Fisk left Lime Wire.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
253	<i>Hearsay</i>	Exhibit 253 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Rohrs' e-mail was within the scope of his employment. (<i>See Attach. C.</i>) 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".	Exhibit 253 is outside Rohrs's scope of employment; he was a software engineer. The e-mail string is clearly personal communications between Rohrs and Jacqueline.
254	<i>Authenticity</i>	Exhibit 254 is authenticated by the testimony of Christopher Rohrs. (<i>See Rohrs Tr. 170:8-170:20.</i>) <i>See Fed. R. Evid. 901(b)(1).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 254 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> 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. (<i>See Attach. C.</i>)	As evidenced by Rohrs' testimony, this e-mail was a personal communication; thus, it is not an admission. <i>See Rohrs Tr. 170:17-18.</i> As Plaintiffs offer no other reason for its argument that this document is not hearsay. Exhibit 254 is inadmissible hearsay.
255	<i>Authenticity</i>	Exhibit 255 is authenticated by the testimony of Christopher Rohrs. (<i>See Rohrs Tr. 111:16-112:4.</i>) <i>See Fed. R. Evid. 901(b)(1).</i> 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. (<i>See Forrest 11/07/08 Decl. ¶ 62.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	Exhibit 255 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Rohrs' e-mail to Fisk requesting assistance with "spyware damage control on gnutellaforums", is a matter within the scope of his employment. (<i>See Attach. C.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
257	<i>Hearsay</i>	Exhibit 257 is not hearsay because it is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> Rohrs' Gnutella Forum posts regarding LimeWire PRO and Lime Wire LLC's revenues were made within the scope of his employment. (<i>See Attach. C.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
260	<i>Authenticity</i>	Exhibit 260 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 07/18/08 Decl. at 33.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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. <i>See Fed. R. Evid. 801(c).</i> Further, the exhibit is evidence of Lime Wire LLC's intent to promote file sharing on the Gnutella network.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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. (<i>See Forrest 11/07/08 Decl. ¶ 63.</i>)	Again, Plaintiffs responses are inconsistent. They state they are substituting exhibits, but then proceed to respond to the Hearsay Objection of Exhibit 261. Thus, as Plaintiffs concede through lack of argument, Exhibit 261 is not authenticated.
	<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. <i>See Fed. R. Evid. 801(c).</i> Further, the exhibit is evidence of Lime Wire LLC's intent to promote file sharing on the Gnutella network.	Exhibit 261 is offered for its truth, that file-sharing was a "good citizen tip" on the Gnutella Network. <i>See Pls. 07/18/08 SOF ¶ 427 ("LimeWire called LimeWire's features that 'strongly' encourage users to share files "Good Citizen' Features' .").</i> As Plaintiffs offer Exhibit 261 to prove the veracity of this assertion, Exhibit 261 is inadmissible hearsay.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(c).</i>	Fisk's statements are assertions offered for their truth. Fisk states that Gnutella clients are "almost exclusively devoted to infringement." This is clearly an assertion by Fisk offered for its truth, which is inadmissible hearsay.
	<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".	Fisk's statements about the "p2p applications" platforms are irrelevant to the questions of vicarious or inducing copyright infringement at issue in this case. As Exhibit 264 lacks any probative value, it is irrelevant.
281	<i>Hearsay</i>	Exhibit 281 is not hearsay because the statements of Bildson are admissions by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i> 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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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.)	Plaintiffs combine multiple exhibits into one. This exhibit is over seventy-five pages in length, and no one source can properly authenticate the exhibit. Also, as evidenced by Plaintiffs' hearsay responses, there are a myriad of hearsay objections contained in this seventy-five page exhibit. Because the exhibit is potentially confusing and at least partially improperly authenticated, the Court should strike Exhibit 286.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay; [Discussions with SNOCAP]</i>	<p>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.</p>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay: [Discussions with Audible Magic]</i>	Bildson's statements (LW DE 486683; LW DE 260585-588; LW DE 1770732-735; LW DE 1770749-75 1) and Catillaz's statements (LW DE 486685) are admissions by party opponents. <i>See Fed. R. Evid. 801(d)(2)(D)</i> . 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 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> .	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay [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> .	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay [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> .	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<i>Hearsay [Discussions with Magix]</i>	Bildson's communications with Magix (LW DE 1935408-419) are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). 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</i> Fed. R. Evid. 801(c).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay [Discussions with Media Sentry]</i>	Catillaz's communications with MediaSentry (LW DE 2317738-743) are admissions by a party opponent. <i>See</i> Fed. R. Evid. 801(d)(2)(D). 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</i> Fed. R. Evid. 801(c).	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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.</i> , Marco Tr. 209:6-213:25.)	This affidavit is from another case and is clearly hearsay. <i>See Chamberlain v. Principi</i> , 247 Fed. Appx. 251, 253–54 (2d Cir. 2007) (finding affidavits from another proceeding inadmissible as hearsay); <i>see also Santos v. Murdock</i> , 243 F.3d 681, 683-84 (2d Cir. 2001).
	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
288	<i>Hearsay</i>	The affidavit of Benjamin Sorensen is admissible and not hearsay because Sorensen would testify to these facts at trial.	This affidavit is from another case and is clearly hearsay. <i>See Chamberlain v. Principi</i> , 247 Fed. Appx. 251, 253–54 (2d Cir. 2007) (finding affidavits from another proceeding inadmissible as hearsay); <i>see also Santos v. Murdock</i> , 243 F.3d 681, 683–84 (2d Cir. 2001).
	<i>Relevance</i>	(<i>See supra</i> Ex. 287 relevance response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
296	<i>Authenticity</i>	The documents in Exhibit 296 are authenticated because they were produced in discovery by defendants. (<i>See</i> Forrest 07/18/08 Decl. at 37; Forrest 11/07/08 Decl. ¶ 64.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<i>Hearsay</i>	These e-mails from LimeWire users sent to Lime Wire LLC (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).	The e-mails are offered for their truth, that the users were searching for potentially infringing files. <i>See</i> Pls. 07/18/08 SOF ¶ 531. All authors of the e-mails make similar assertions regarding searching for content. Plaintiffs offer these assertions to show that LimeWire users searched for this content. Thus, Exhibit 296 is inadmissible hearsay.
	<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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
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 Fed. R. Evid. 801(c).</i>	Exhibit 297 is offered for its truth, that the files listed are contained in the directories as listed. <i>See Pls. 07/18/08 SOF ¶ 532 ("Several of the user emails indicating infringing use of LimeWire included listings of the users' files found in their shared directories . . . each of which listed several pages of songs available for sharing.").</i> As Plaintiffs offer Exhibit 297 to prove that files listed are ones that the users share, Exhibit 297 is inadmissible hearsay.
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 Fed. R. Evid. 801(c).</i>	<i>See supra</i> Exhibit 297 Hearsay Reply.
299	<i>Authenticity</i>	Exhibit 299 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 65.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
300	<i>Authenticity</i>	Exhibit 300 is authenticated because it was produced by defendants in discovery. (<i>See Forrest 11/07/08 Decl. ¶ 66.</i>) The document Bates- stamped LW DE 1152020 is also authenticated by the testimony of Adam Harris. (<i>See Harris Tr. 152:4-153:25.</i>)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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 Fed R. Evid. 801(d)(2)(D). (See Attach. C.)</i>	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
305	<i>Hearsay</i>	(<i>See supra</i> Ex. 304 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
306	<i>Hearsay</i>	(<i>See supra</i> Ex. 304 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
307	<i>Hearsay</i>	(<i>See supra</i> Ex. 304 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
308	<i>Hearsay</i>	(<i>See supra</i> Ex. 304 hearsay response.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
309	<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 Fed. R. Evid. 901(1).</i> Exhibit 309 is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i> Defendants do not offer any reason that Exhibit 309 is not authentic.	<i>See supra</i> Exhibit 35 Authenticity Reply.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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.	Exhibit 309 is offered for its truth, that Weedshare is no longer available. The statement is “Weedshare has suspended operations.” Ex. 309. Plaintiffs offer the statement to show, “As of July 12, 2008, the Weedshare service is unavailable.” <i>See Pls. 07/18/08 SOF ¶ 557.</i> Clearly, Exhibit 309 is offered for its truth, which makes it inadmissible hearsay.
313	<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 Fed. R. Evid. 801(c).</i> Further, Rohrs’ statement is an admission by a party opponent. <i>See Fed. R. Evid. 801(d)(2)(D).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.
315	<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 Fed. R. Evid. 901(1).</i> Exhibit 315 is further authenticated by its appearance and distinctive characteristics. <i>See Fed. R. Evid. 901(4).</i> Defendants do not offer any reason that Exhibit 315 is not authentic.	<i>See supra</i> Exhibit 35 Authenticity Reply.
	<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 Fed. R. Evid. 801(c).</i>	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

Exhibit	Objection	Plaintiffs' Response to Objection	Reply in Support
	<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."	Exhibit 315 is not probative of any issues in this case. Plaintiffs stretch to find a connection by stating that the author was former counsel to StreamCast and that LimeWire's current counsel was StreamCast's litigation counsel in <i>Grokster</i> . Apparently, Plaintiffs are implying that Exhibit 315 is relevant merely because Lime Wire's counsel may have shared this information with Lime Wire. Plaintiffs logic is flawed, as if this were the case, the confidential communications between the Lime Wire and its counsel would not be relevant to this litigation.

ATTACHMENT B

ATTACHMENT B

Response to Defendants' Evidentiary Objections to Deposition Testimony

Document Page/Line¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Berlin 6:04-9:11	<i>Relevance (“Personal opinions regarding ‘stealing’ are irrelevant to any issues in this Lawsuit.”)</i>	Although the testimony to which defendants object relates to statements made by Berlin in Exhibit 192 (Plaintiffs’ Deposition Ex. 219), defendants do <i>not</i> object to Exhibit 192 on relevance grounds. In any event, defendants’ objections are baseless: Berlin’s testimony is relevant in that it authenticates Exhibit 192. (See Pls. Mot. to Strike Opp’n Br., Attach. A at Ex. 192.) Berlin’s testimony is also relevant because it is probative of the fact that Lime Wire LLC’s Senior Software Developer Berlin (see Attach. C) ¹¹ was of the opinion that copyright infringement is not stealing.	In this excerpt, Berlin never states that copyright infringement is not stealing. Berlin merely states that he does not believe copying copyrighted files is stealing under the definition presented to him by Plaintiffs. <i>See</i> Berlin Tr. 9:10–11. Tellingly, Plaintiffs never ask if Berlin believes copying copyrighted files is stealing; instead, they only ask if it is stealing under this definition. Thus, this testimony does not evidence Berlin’s opinion on copying copyrighted files and is irrelevant. Furthermore, Plaintiffs offers no explanation why Berlin’s opinion would be probative of any facts related to this case. Finally, the entire excerpt is not offered to authenticate Exhibit 192, only a small portion is. <i>See</i> Plaintiffs’ Response to Objections, Attachment A, Exhibit 192 (citing Berlin Tr. 6:4–6:16; 7:17–7:19). This does not make the entire excerpt relevant.

¹⁰ All deposition transcript citations cited herein are contained in Vols. VI or VII unless otherwise noted.

¹¹ Attachment C appended hereto (“Attach. C”) contains the relevant names and titles of the officers, directors, and employees of Lime Wire LLC and their respective periods of employment.

Document Page/Line¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Berlin 26:6-26:17	<i>Speculation</i>	Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Berlin testimony. Nor do plaintiffs cite to Plaintiffs' Deposition Ex. 222 to which this testimony is related.	As these excerpts are attached to Forrest's 7/18/2008 Declaration, they are part of the summary judgment record. Defendants have made valid objections, which the Plaintiffs do not contest. If the objection was invalid, Plaintiffs would have responded as evidenced in Plaintiffs' response to the objection to Catillaz 163:11-163:21. <i>See supra</i> . Thus, the objection should be sustained.
Berlin 217:15-218:9	<i>Speculation</i>	Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Berlin testimony.	As these excerpts are attached to Forrest's 7/18/2008 Declaration, they are part of the summary judgment record. Defendants have made valid objections, which the Plaintiffs do not contest. If the objection was invalid, Plaintiffs would have responded as evidenced in Plaintiffs' response to the objection to Catillaz 163:11-163:21. <i>See supra</i> . Thus, the objection should be sustained.

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Berlin 243:18-243:24	<i>Assumes facts not in evidence; improper opinion question from a lay witness</i>	<p>The fact that the content filter in the LimeWire client is disabled or set “off” by default was introduced into evidence by defendants in the expert report of Prof. Steven Gribble at 25. The deposition testimony objected to here then does not assume facts not in evidence. Berlin is the Senior Software Developer of Lime Wire LLC. (See Attach. C.) He declared that “I have been one of the chief software developers for LimeWire” and that “I am extremely familiar with the design features and functionality of LimeWire and the Gnutella network in general.” (See Berlin 07/17/08 Decl. ¶ 3; <i>see also</i> Berlin 09/26/08 Decl. ¶ 3.) The question “[d]o you know why LimeWire didn’t design the program so that content filtering would not be automatically on?” is proper because it asks for Berlin’s knowledge of these facts. To the extent the question asks for Berlin’s opinion, it is admissible because it asks for an opinion based on Berlin’s perception, is helpful to the determination of Lime Wire LLC’s filtering efforts, and does not require any specialized knowledge. See Fed. R. Evid. 701.</p>	<p>First, Berlin lacks personal knowledge to form an opinion on the subject; he states, “I don’t know if it is or is not.” Berlin Tr. at 243:23–24. Second, Plaintiffs make no showing that the question is designed to elicit testimony that would assist the jury or that the fact finder is unable to draw the same inferences from the underlying data. Without the above showings, Berlin’s lay opinion would be improper. <i>See</i> FED. R. EVID. 701.</p>

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Berlin 247:13-247:23	<i>Speculation</i>	This testimony is not speculation because Berlin, Lime Wire LLC's Senior Software Developer (<i>see</i> Attach. C), has personal knowledge of the content filtering system.	Berlin states, "I believe it is the same as it is now." Berlin Tr. at 247:19–20. When asked if it is "exactly the same," Berlin states that he does not know. <i>Id.</i> at 247:21–23. It is clear that Berlin did not have the knowledge required to answer this question, which caused him to speculate as to the answer. This speculation is inadmissible.
Catillaz 163:11-163:21	<i>Assumes facts not in evidence ("This portion of the transcript assumes that there were actual user testimonials posted in the French version of LimeWire, which Plaintiffs have not proven. ')</i>	Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Catillaz testimony. In addition, the fact that there were user testimonials posted on the French website of Lime Wire LLC is proven by Exhibit 119 (Plaintiffs' Deposition Ex. 55) which was authenticated by the Catillaz testimony (Catillaz (Vol. XII) Tr. 161:15-162:6.) (<i>See</i> Attach. A, at Ex. 119.) Thus, this testimony does not assume facts not in evidence.	Lime Wire has objected to Exhibit 119 as improperly authenticated. <i>See supra</i> Attachment A, Objection Reply to Exhibit 119. Thus, when the Court properly excludes Exhibit 119, this question will impermissibly assume facts not in evidence. Furthermore, the question assumes that someone put "together the testimonials." This fact is neither proven by Exhibit 119 nor otherwise proven by Plaintiffs. Thus, this excerpt is inadmissible. Finally, there is no evidence to prove that the testimonials are actual "user testimonials."

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Catillaz 183:15-183:19	<i>Speculation</i>	<p>Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Catillaz testimony. However, if plaintiffs had cited it, it would be admissible.</p> <p>Catillaz is Lime Wire LLC's Business Developer (<i>see</i> Attach. C) and testified that Lime Wire LLC received customer service inquiries regarding the legality of LimeWire from time to time. (Catillaz Tr. 183:9-183:14.) Catillaz's "reasonable guess" that Lime Wire LLC received dozens of such inquiries is based on personal knowledge of these inquiries and is not speculation.</p>	<p>Catillaz's testimony is clear; her answer was a "guess." Thus, she did not have personal knowledge as required under Rule 602. Despite Catillaz qualifying her answer as "reasonable," it is still a speculative guess, which makes it inadmissible.</p>
Catillaz 324:07-324:19	<i>Improper lay opinion; speculation</i>	<p>Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Catillaz testimony. However, if plaintiffs had cited to it, it would be admissible.</p> <p>Catillaz's testimony relates to Exhibit 61 (Plaintiffs' Deposition Ex. 93) which is a report authored by Catillaz (Catillaz Tr. 322:9-322:14), and lists groups of LimeWire users that "we invented". (Catillaz Tr. 324:11.) Catillaz's opinion as to whether "hardcore pirates [which is one of the LimeWire user groups defined in her report] make up more than 50 percent of the LimeWire user base" is based on her perception and knowledge gained as the author of this report. Her testimony is not one of an "expert", and is thus admissible. <i>See</i> Fed. R. Evid. 701.</p>	<p>When asked if she knows the percentage of LimeWire users that make up the four categories listed in deposition Exhibit 93, Catillaz responds, "No." Catillaz Tr. at 324:3-6. When asked if she can measure them, Catillaz responds, "I have no way of measuring them." <i>Id.</i> at 324:7-12. Catillaz then states, "If I was to offer an opinion. . ." <i>Id.</i> at 324:12-13. Clearly, Catillaz has no personal knowledge or perception on which to base this opinion. Thus, it is inadmissible. FED. R. EVID. 701. Furthermore, her opinion is an inadmissible speculation on what percentage of users fall into particular categories.</p>

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Falco 157:23-158:11	<i>Speculation; assumes facts not in evidence</i>	<p>Falco was the Chief Executive Officer of Free Peers, Inc., a company that “created and distributed ‘BearShare’ which is a P2P application operating on the Gnutella network. (See Ex. 10 (Falco 05/17/07) Decl. ¶ 2); Falco (Vol XII) Tr. 66:8-16, 67:2-6.) Falco testified to what Bildson, Lime Wire’s Chief Technology Officer and Chief Operating Officer (<i>see</i> Attach. C), told him “he [Bildson] thought would be the downside for filtering.” Further, Falco’s testimony is not speculation, but his opinion as to whether “Lime Wire LLC users [would] ... basically switch away from Lime Wire LLC if it filtered” is based on the perception of Gnutella network users’ preferences that Falco gained as CEO of Free Peers, Inc. <i>See</i> Fed. R. Evid. 701. Neither plaintiffs’ question nor Falco’s response assumed facts not in evidence.</p>	<p>The question calls for speculation, and the response contains it. The question calls for Falco to speculate on what “LimeWire users” would do. Falco Tr. at 157:23–25. Falco, as Plaintiffs acknowledge, was CEO of another file-sharing program. Plaintiffs have not shown that Falco gained any knowledge or perception of LimeWire users. Thus, his speculative answers are inadmissible.</p>
Fisk 153:7-154:5	<i>Speculation</i>	<p>Neither plaintiffs’ brief nor Pls. 07/18/08 SOF cites to this portion of the testimony of Adam Fisk.</p>	<p>As these excerpts are attached to Forrest’s 7/18/2008 Declaration, they are part of the summary judgment record. Defendants have made valid objections, which the Plaintiffs do not contest. If the objection was invalid, Plaintiffs would have responded as evidenced in Plaintiffs’ response to the objection to Catillaz 163:11-163:21. <i>See supra.</i> Thus, the objection should be sustained.</p>

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
A. Gorton 101:21-102:9	<i>Speculation</i>	<p>Amy Gorton authored Exhibit 322 (Plaintiffs' Deposition Ex. 213; A. Gorton (Vol. XII) Tr. 99:12-100:10) in which she wrote that “[t]he new features [of the new LimeWire release] include the debut of firewall-to-firewall transfers, a completely new MP3 player, <i>iTunes</i> integration on Windows.” (Ex. 322; emphasis added.) Thus, Gorton has personal knowledge of what iTunes is, and her statement thereto is not speculation.</p>	<p>Ms. Gorton guesses at what the iTunes software is. <i>See</i> A. Gorton Tr. at 101:18–20 (“I believe iTunes is the software that is used to play on iPods.”). iTunes is not used to play on iPods; it is used to play on PCs or Macs. <i>See</i> Pls. 7/18/2008 SOF at 338 (citing Exhibit 216). As Plaintiffs own statement of facts and exhibit show, Ms. Gorton lacks personal knowledge of what iTunes is. Thus, the succeeding questions that are founded on Ms. Gorton’s knowledge of iTunes are inadmissible speculation.</p>
M. Gorton 88:18-88:24	<i>Assumes facts not in evidence; compound question (“This section assumes that infringement could have been reduced or prevented, which Plaintiffs have not proven.”)</i>	<p>Neither plaintiffs’ brief nor Pls. 07/18/08 SOF cites to this portion of the testimony of Mark Gorton. Moreover, Gorton did not answer plaintiffs’ question. Even if plaintiffs had cited to this part of Gorton’s testimony, it would be admissible because the question is straightforward and does not assume facts not in evidence: plaintiffs have proven that Lime Wire LLC had the ability and opportunity to implement an effective filter for copyrighted works. (<i>See</i> Pls. 07/18/08 SOF ¶¶ 493-509.)</p>	<p>Plaintiffs do not dispute that the question was compound and, thus, improper. The Court should disregard this excerpt.</p>

Document Page/Line ¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
M. Gorton 484:2-485:21	<i>Assumes facts not in evidence; speculation (“This portion of the transcript assumes that Lime Wire had to take action to comply with the Grokster ruling, which Plaintiffs have not proven.”)</i>	<p>Defendants' objections are baseless. <i>First</i>, plaintiffs' questions did not imply that Lime Wire LLC had a duty to take action to comply with the <i>Grokster</i> ruling, but simply asked whether Lime Wire LLC had taken any such actions. <i>Second</i>, Mark Gorton himself has declared that “when the Supreme Court specifically stated that a P2P company that tried to reduce infringement by implementing a copyright filter could not be liable for copyright infringement, I had Lime Wire LLC build a copyright filter” which proves that Lime Wire LLC believed that they had to take action following <i>Grokster</i>. (<i>See</i> Gorton 09/26/08 Decl. ¶ 36.) Further, the questions about any possible action Lime Wire took to comply with the Supreme Court's <i>Grokster</i> decision inquired as to Gorton's knowledge, not his speculation. The fact that he has personal knowledge of such actions is also evidenced by the Gorton 09/26/08 Decl. ¶ 36.</p>	<p>It is Plaintiffs' response that is baseless. Plaintiffs' questions implied that Lime Wire had to take action “to comply with the <i>Grokster</i> decision.” M. Gorton Tr. 484:14–17. Plaintiffs have offered no evidence or authority to show that Lime Wire had a duty to comply with the Court's decision. Thus, the question was improper.</p>
M. Gorton 503:17-503:25	<i>Argumentative; speculation</i>	<p>Although plaintiffs cite to the part of Mark Gorton's non-responsive testimony to which defendants object, plaintiffs neither quote from nor rely on this portion. (<i>See</i> Pls. SOF 07/18/08 ¶ 138.)</p>	<p>As these excerpts are attached to Forrest's 7/18/2008 Declaration, they are part of the summary judgment record. Defendants have made valid objections, which the Plaintiffs do not contest. If the objection was invalid, Plaintiffs would have responded as evidenced in Plaintiffs' response to the objection to Catillaz 163:11-163:21. <i>See supra</i>. Thus, the objection should be sustained.</p>

Document Page/Line¹⁰	Objection	Plaintiffs' Response to Objection	Reply in Support
Harris 108:14-108:24	<i>Overbroad, vague, speculation</i>	Adam Harris is Lime Wire LLC's former Business Developer. (<i>See</i> Attach. C.) The question “[t]o the best of your recollection, did you ever write a press release or a blurb about LimeWire that did not start with the statement that LimeWire enables a sharing, searching and downloading of MP3 files” asked for Harris’ knowledge and did not call for speculation. The question is neither vague nor overbroad.	After Plaintiffs asked their initial question, Harris responded with a question to clarify what the Plaintiffs were asking. Harris Tr. 108:14–20. Plaintiffs counsel responded, “That did not start by – with those -- yes, with those specific functionalities of LimeWire.” <i>Id.</i> at 108:21–23. From Harris’s testimony, it is clear the first question was unclear, and Plaintiffs’ second question did nothing to clarify the question. Thus, the question is both vague and overbroad.
Horowitz Report	<i>Authenticity; hearsay; no foundation</i>	<i>See</i> Pls. Mot. to Strike Opp’n Br. at 16-17 and Pls. Expert Opp’n Br. at 24-25.	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency.

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Mercurio 231:18-233:25	<i>Speculation, improper foundation</i>	<p>Dr. Matthew Mercurio is <i>defendants' own</i> expert witness. As an example of “flaws in Dr. Waterman’s Calculations” Dr. Mercurio, in his report, asserted that the file install_easyshare.exe was erroneously labeled “Highly Likely Infringing.” (See Expert Report of Matthew G. Mercurio at 14-15.) In his deposition, plaintiffs showed Dr. Mercurio Exhibit 49 (Plaintiffs’ Deposition Ex. 29), which is a properly authenticated printout from the Kodak EasyShare software download webpage. (See Attach. A at Ex. 49.) After reviewing Exhibit 49, Dr. Mercurio admitted that Exhibit 49 altered his “understanding of whether Mr. German was correct or incorrect in his categorization of the EasyShare.exe file as highly likely infringing” and that contrary to the opinion stated in his report he agreed with German’s categorization. That is not speculation.</p>	<p>First, Exhibit 49 is not properly authenticated. See Attach. A at Ex. 49. Second, Plaintiffs ask Mercurio to speculate on whether users immediately expunge their own copy after downloading; Plaintiffs even invite Mercurio to “hazard a guess.” Mercurio Tr. at 233:3-12. Finally, Plaintiffs ask Mercurio if his understanding was altered “given [the] end license agreement that [was] before [him].” These excerpts clearing call for speculation and should be stricken.</p>
Mercurio 260:15-260:25	<i>Speculation</i>	<p>Although plaintiffs cite to the part of Matthew Mercurio’s testimony to which defendants object, plaintiffs rely and quote only from the part of Mercurio’s testimony to which defendants do not object. (Mercurio Tr. 259:19-260:14; see Pls. SOF 07/18/08 ¶ 344.) Further, defendants’ expert’s statement that copyrighted files are more popular than other files is not speculation.</p>	<p>Plaintiffs’ question calls for speculation. Mercurio was asked, “... you believe that copyrighted files are more popular?” Mercurio Tr. at 260:15-18. Plaintiffs offer no foundation for Mercurio to offer an opinion on the popularity of copyrighted files; thus, asking for his beliefs on such a topic impermissibly calls for speculation.</p>

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D. Nicponski 61:11-61:21	<i>Vague; overbroad</i>	<p>David Nicponski was a Software Engineer at Lime Wire LLC. (See Attach. C.) Nicponski was specifically asked about the significant differences between Napster and LimeWire, to which he answered that “the most significant difference is that Napster ...is not a decentralized system” and that “LimeWire, or rather, Gnutella, is a decentralized system, LimeWire being one of the clients for Gnutella.” Thus, neither the question nor Nicponski’s answer are vague or overbroad. To the extent Nicponski’s testimony is in form of opinion it is an admissible lay opinion. <i>See Fed. R. Evid.</i> 701.</p>	<p>After Plaintiffs asked their initial question, Nicponski responded with a question to clarify what the Plaintiffs were asking. Nicponski Tr. 61:6–10. Plaintiffs counsel responded, “Any differences that you feel are significant.” <i>Id.</i> at 108:21–23. From Nicponski’s testimony, it is clear the first question was unclear, and Plaintiffs’ second question did nothing to clarify the question, which would likely confuse the fact finder and did confuse the witness. Thus, the question is vague. Furthermore, Plaintiffs fail to specify at least the type of differences for which they look, which makes the question overbroad.</p>
D. Nicponski 136:15-136:25	<i>Relevance (“This has to do with his work at BearShare and is therefore irrelevant.”)</i>	<p>Neither plaintiffs’ brief nor Pls. 07/18/08 SOF cites to this portion of the testimony of Dave Nicponski. Further, Nicponski’s testimony with respect to his work at BearShare regarding the Hostiles.txt data file is relevant because it is probative of the fact that this file was used on the Gnutella network (the network both LimeWire and BearShare were on) to block the IP addresses of companies that engaged in antipiracy measures. (<i>See</i> Pls. 07/18/08 SOF ¶¶ 355-357.) Plaintiffs further note that defendants do not object to other Nicponski testimony regarding his work at BearShare (Nicponski (Vol. XIII) Tr. 133:23-136:14.)</p>	<p>Whether another Gnutella network client, such as BearShare, uses a specific file on the network is not probative of any issues to this case. The issue is the alleged infringing acts of Lime Wire not Bearshare. Thus, this excerpt is irrelevant. FED. R. EVID. 402.</p>

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D. Nicponski 138:23-139:2	<i>Speculation</i>	The testimony of former Lime Wire LLC Software Engineer David Nicponski, who was working with the Hostiles.txt file at BearShare (Nicponski Tr. 134:21-135:11), as to whether companies spoofing or spamming the Gnutella network “have made their way onto the Hostiles.txt list” is based on his personal knowledge and is not speculation. To the extent Nicponski’s testimony is in form of opinion, it is an admissible lay opinion. <i>See</i> Fed. R. Evid. 701.	“If they spam the network in a way that was noticeable, then probably.” Nicponski Tr. 138:25–139:2. “If” and “probably” clearly show that Nicponski speculated on this point; his answer was nothing more than a guess—“probably”—based on a hypothetical—“if.” Furthermore, Plaintiffs offer no foundation to show that Nicponski’s testimony was admissible lay opinion. It is simply speculation, which is inadmissible.
D. Nicponski 139:3-139:25	<i>Relevance (“This has to do with his work at BearShare and is therefore irrelevant.”)</i>	Contrary to defendants’ contentions, Nicponski’s testimony with respect to his work at BearShare regarding the Hostiles.txt data file is relevant because it is probative of the fact that this file was used on the Gnutella network (which both LimeWire and BearShare were on) to block the IP addresses of companies that engaged in antipiracy measures. (<i>See</i> Pls. 07/18/08 SOF ¶¶ 355-357.) Defendants do not object to other Nicponski testimony regarding his work at BearShare (Nicponski (Vol. XIII) Tr. 133:23-136:14.)	Whether another Gnutella network client, such as BearShare, uses a specific file on the network is not probative of any issues to this case. The issue is the alleged infringing acts of Lime Wire not Bearshare or the Gnutella network. Thus, this excerpt is irrelevant. FED. R. EVID. 402.
D. Nicponski 142:13-143:25	<i>Speculation; relevance</i>	Defendants’ objections are not disputed.	

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D. Nicponski 161:22-164:25	<i>Relevance (“This is his personal opinion and is irrelevant.”)</i>	<p>Defendants do not object to Exhibit 239 (Plaintiffs' Deposition Ex. 464), the e-mail thread to which Nicponski's testimony relates. At the time he wrote these e-mails discussing software features of the LimeWire client (Ex. 239), Nicponski was employed by Lime Wire LLC as a Software Engineer. (<i>See Attach. C.</i>) This was not simply his personal opinion. Even if it was, Nicponski's testimony is admissible lay opinion. <i>See Fed. R. Evid. 701.</i> It is probative of the fact that Lime Wire LLC refused to implement “a centralized capability for LimeWire to try and deduce the contents of files that are being shared”.</p>	<p>Nicponski's testimony contains his personal, irrelevant opinions. When asked, “What types of content should not be shared, if any?” Nicponski responded, “I have no opinion on that.” Nicponski Tr. at 164:4–6. It is clear that Nicponski was responding to Plaintiffs' questions with his opinion and not with facts. <i>See id.</i> 164:7–25(discussing Nicponski's views on sharing child pornography). While Plaintiffs initiate Nicponski's purging of personal opinions with discussions of Exhibit 239, Nicponski's testimony goes beyond that exhibit. He opines on his views of policing file sharing content, which is irrelevant to this action. Even if Nicponski's opinions were admissible lay opinions, which they are not, they are still irrelevant. <i>See FED. R. EVID. 402.</i></p>

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Randell 34:19-35:22	<i>Speculation; hearsay; no foundation</i>	Google Inc. (“Google”) designated Jill T. Randell to testify on its behalf pursuant to Fed. R. Civ. P. 30(b)(6). Randell’s testimony relates to Exhibit 82 (Plaintiffs’ Deposition Ex. 10), a Google business record. (<i>See</i> Attach. A at Ex. 82.) Randell’s testimony discussing these business records is therefore not hearsay. Further, Randell’s testimony on Google’s behalf as to Google’s business records is not speculation.	Exhibit 82 is inadmissible hearsay. <i>See</i> Attach. A at Ex. 82. Randell clearly testifies based on the contents of Exhibit 82. As the exhibit is inadmissible hearsay, Randell’s reading and testifying to its content is equally hearsay. Furthermore, Randell continually qualifies her answer with the phrase, “it appears.” Her answers are mere guesses at what inadmissible Exhibit 82 shows, which equates to nothing more than speculation. Thus, this excerpt should be excluded.
Rohrs 97:15-98:18	<i>Speculation</i>	Neither plaintiffs’ brief nor Pls. 07/18/08 SOF cites to this portion of Rohrs’ testimony. Regardless, this testimony is admissible. It relates to Exhibit 222 (Plaintiffs’ Deposition Ex. 392), a paper co-authored by Lime Wire’s Software Engineer Rohrs (Rohrs (Vol. XIII) Tr. 94:24-95:14.) touting privacy as a benefit of ultrapeers. Thus, his responding to a question about the nature of that privacy is not speculation but based on his own personal knowledge.	Rohrs is speculating on the things that a user would want to upload anonymously. Rohrs Tr. at 97:23–24. When asked what those “things” are, Rohrs qualifies his answer with “I suppose.” <i>Id.</i> at 98:5, 8. This clearly shows that Rohrs’s answers were mere conjecture and not based on any knowledge, let alone his personal knowledge. Such speculation must not be admitted.

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Rohrs 112:24-113:06	<i>Speculation</i>	Although plaintiffs cited to the part of Rohrs' testimony to which defendants object, plaintiffs rely and quote only from the part of Rohrs' testimony to which defendants do not object. (Rohrs Tr. 111:16-112:23, 113:7-115:05; see Pls. SOF (07/18/08) ¶ 411.) The questions to which defendants object in this portion of Rohrs' testimony relate to Rohrs personal knowledge and do not call for speculation.	Plaintiffs' personal knowledge argument is a nonstarter. When asked about monitoring Gnutella forums regarding specific topics, Rohrs responded, "I don't remember monitoring, but probably." Rohrs Tr. at 112:24–113:3. Clearly, Rohrs speculated as to whether he monitored for these specific topics, which makes his testimony inadmissible.
Rohrs 119:03-119:21	<i>Speculation</i>	Neither plaintiffs' brief nor Pls. 07/18/08 SOF cites to this portion of the Rohrs testimony. Even if plaintiffs had cited to the objected testimony, his testimony of what he meant in a specific phrase of his post in Exhibit 14 (Plaintiffs' Deposition Ex. 398) is based on his personal knowledge and not speculation.	When referring to inadmissible Exhibit 14, Rohrs states that he does not know what he meant or to what he was referring. Rohrs Tr. at 119:12–17. Accordingly, Rohrs could not base his answer on personal knowledge as he could not remember. This amounts to pure speculation, which is inadmissible.

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Rubenfeld 151:13-152:24	<i>Hearsay; lay opinion</i>	<p>Jesse Rubenfeld is Lime Wire LLC's Chief Financial Officer. (<i>See</i> Attach. C.) Rubenfeld's testimony is not hearsay because it is not offered for the truth of the matter asserted, but to demonstrate Rubenfeld's view of the purpose of the "magic string" and the factors leading to its adoption. <i>See</i> Fed. R. Evid. 801(c). This is not speculation as Rubenfeld took part in making deals with the digital distributors that licensed their music to Lime Wire LLC. Further, Rubenfeld's testimony as to his understanding of dealings with business partners that are within his job responsibilities is not opinion testimony. Even if it was, it would be admissible lay opinion testimony. <i>See</i> Fed. R. Evid. 701.</p>	<p>Plaintiffs ask Rubenfeld about the comments made by "content providers." This question clearly seeks to elicit hearsay as Plaintiffs are trying to prove why the "content providers" wanted to prevent downloads. Furthermore, Plaintiffs asked Rubenfeld if he had an understanding of why the partners wanted to prevent downloads. Although Rubenfeld responds "No" to several variations of the question, when asked if he had a "general business understanding," Rubenfeld responded with his opinion. As Rubenfeld previously testified, he lacked personal knowledge as to why the content providers wanted to prevent downloads. Rubenfeld Tr. at 151:13–21. Thus, Rubenfeld's general business understanding was merely speculation on his part without a rational basis, because he could not remember why the content providers wanted to prevent downloads. Thus, this is an inadmissible lay opinion.</p>

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Rubenfeld 251:18-252:13	<i>Hearsay</i>	Rubenfeld's testimony is not hearsay because he testified about his <i>own</i> understanding of the nature of the discussions between Lime Wire LLC and Audible Magic, not about any statement made during these discussions. Rubenfeld's testimony is also not hearsay because it is not offered for the truth of the statements made in these discussions, but to demonstrate that such discussions about implementing a content filtering system were held. <i>See</i> Fed. R. Evid. 801(c).	Rubenfeld admits he has no personal knowledge of the talks between Lime Wire and Audible Magic. Rubenfeld Tr. at 251:18–20. Thus, Rubenfeld's understanding must have come from someone or something else. Either way, Rubenfeld's “understanding” came from an out-of-court statement by a declarant. Rubenfeld’s “understanding” is offered for the truth of the statements, as Plaintiffs seek to prove that Lime Wire and Audible Magic had discussions about filtering. To gain his “understanding,” Rubenfeld must have been told that Lime Wire and Audible Magic had these discussions; thus, the statements informing Rubenfeld are offered for their truth. This makes the statements inadmissible hearsay.
Rubenfeld 254:07-254:23		Defendants do not raise any objection to this testimony nor did they object to it at the deposition, and plaintiffs do not quote from this part of the testimony or rely on it in any way.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
Waterman Report	<i>Authenticity; hearsay; no foundation</i>	<i>See</i> Pls. Mot. to Strike Opp'n Br. at 16-17 and Pls. Expert Opp'n Br. at 24-25.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.