

# **ATTACHMENT A**

**Response to Defendants’ Evidentiary Objections to Plaintiffs’ 9/26/08 Exhibits**

<b>Ex.</b>	<b>Objection</b>	<b>Plaintiffs’ Response to Objection</b>
<b>327</b>	<i>Authenticity</i>	Ex. 327 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 7 and Pls. 9/26/08 (LW) Add’l SOF ¶ 11) is authenticated by the Forrest declaration at 3 (“Forrest 9/26/08 Decl.”). <sup>1</sup>
	<i>Hearsay</i>	Plaintiffs submitted Ex. 327 in response to defendants’ statements regarding ultrapeers “limited ability to monitor or control the behavior of peers in Gnutella”. (Defs. 7/18/08 SoF ¶ 7 (quoting Gribble 7/17/08 Decl. ¶ 30).) Ex. 327 is not offered for the truth of its contents but to confirm the relevant statement in the declaration of Michael King, President of Abacast, Inc., submitted by defendants (King 7/15/08 Decl. ¶ 1), illustrating that the Abacast website stated that Abacast is “better than pure peer-to-peer” and that “the Abacast server continually monitors the network, and changes the distributed streaming hierarchy as necessary to optimize user connections”. Fed. R. Evid. 801. ( <i>See supra</i> n.1.) Thus, Ex. 327, one of several citations to admissible evidence in Pls. 9/26/08 (LW) Resp. ¶ 7, supports the fact that centralized search is more efficient and performs better than distributed search using ultrapeers. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 7.)
<b>329</b>	<i>Authenticity</i>	Ex. 329 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶¶ 28, 60, 154) is authenticated by the Forrest 9/26/08 Decl. at 3. ( <i>See supra</i> n.1.) Ex. 329 is further authenticated by the declaration of Siobhain Minarovich ¶ 2 (“Minarovich 12/05/08 Decl.”).
	<i>Hearsay</i>	Ex. 329 is submitted in response to defendants’ citation to the Gribble and Berlin declarations. (Defs. 7/18/08 SoF ¶ 28 (citing Gribble 7/17/08 Decl. ¶ 66); Defs. 7/18/08 SoF ¶¶ 60, 154 (citing Berlin 7/17/08 Decl. ¶ 26).) Gribble concedes that LimeWire versions prior to 4.18.3 did not have a dialog box asking the user to agree not to commit copyright infringement and also states: “however, it also used to be the case that the LimeWire LLC web site would prompt the user with a similar dialog box before allowing the user to download the LimeWire client software.”

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<sup>1</sup> *See* Pls. 12/05/08 Mot. to Strike/Exclude Opp’n Br. at 3-8 (authenticity) & 8-11 (hearsay); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (noting that a nonmoving party need not “produce evidence in a form that would be admissible at trial in order to avoid summary judgment”); *Celestino v. Club*, No. 97 CV 3943, 2002 WL 484685, at \*27 (E.D.N.Y. Feb. 19, 2002) (“[C]ourts routinely consider . . . documents in deciding summary judgment motions despite the fact that the form of these documents might be hearsay in nature.”); *Am. Ref-Fuel Co. of Niagara, LP v. Gensimore Trucking, Inc.*, No. 02-CV-814C, 2007 WL 2743449, at \*3 n.3 (W.D.N.Y. Sept. 18, 2007) (“[I]n determining whether genuine issues of fact exist for trial, the court has the discretion to consider unauthenticated or otherwise objectionable evidence where it is apparent that the party may be able to authenticate and establish the admissibility of those documents at trial.”).

Ex.	Objection	Plaintiffs' Response to Objection
		(Gribble 7/17/2008 Decl. ¶ 66 n.5.) Berlin states “[b]efore a user could download LimeWire version 4.16, the user had to agree that he or she would not use the software to commit copyright infringement. The user is shown a page in which the ‘copyright infringement’ question is asked.” (Berlin 7/17/08 Decl. ¶ 26.) Accordingly, Ex. 329 is not offered for the truth of its contents, but to illustrate that no intent page was presented upon downloading LimeWire from download.com. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 28, 60, 154; <i>supra</i> n.1.) Moreover, the fact that no intent page was presented is confirmed by the Minarovich Declaration. (See Minarovich 12/05/08 Decl. ¶ 2.)
<b>330</b>	<i>Authenticity</i>	Ex. 330 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶¶ 28, 60, 154) is authenticated by the Forrest 9/26/08 Decl. at 3. (See <i>supra</i> n.1.) Ex. 330 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 3.
	<i>Hearsay</i>	Like Ex. 329, Ex. 330 is submitted in response to defendants’ citation to the Gribble and Berlin declarations. (Defs. 7/18/08 SoF ¶ 28 (citing Gribble 7/17/08 Decl. ¶ 66); Defs. 7/18/08 SoF ¶¶ 60, 154 (citing Berlin 7/17/08 Decl. ¶ 26).) It is not offered for the truth of its contents, but to illustrate that no intent page was presented upon downloading LimeWire from Gnutelliums.com. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶¶ 28, 60, 154; <i>supra</i> n.1.) Moreover, the fact that no intent page was presented is confirmed by the Minarovich Declaration. (Minarovich 12/05/08 Decl. ¶ 3.)
<b>331</b>	<i>Inadmissible settlement offer, Fed R. Evid. 408.</i>	Ex. 331 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 51 and Pls. 9/26/08 Add’l SOF ¶¶ 31, 32) is the same document as Ex. 265. Like Ex. 265, Ex. 331 is <i>not</i> an inadmissible settlement offer. Plaintiffs respectfully refer the Court to plaintiffs’ brief in opposition to defendants’ 9/26/08 motion with respect to settlement. (See Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp’n Br. at 11-24), which is herein incorporated by reference.
<b>332</b>	<i>Authenticity</i>	Ex. 332 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 61) is authenticated by the Forrest 9/26/08 Decl. at 4. (See <i>supra</i> n.1.) Moreover, Ex. 332 is the website referenced by defendants’ counsel Susan Cates in her declaration submitted in support of defendants’ motions for summary judgment. (See Cates 7/17/08 Decl. ¶ 11.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 332 to respond to defendants’ statement regarding Project Gutenberg and the availability of books and other information. (See Defs. 7/18/08 SoF ¶ 61 (citing Newby 8/27/02 Decl. ¶ 4).) In order to respond to defendants’ statement about the Project Gutenberg website, it is necessary to cite to a printout from the website. Ex. 332 is not offered for the truth of its contents, but to show that the Project Gutenberg website states “[a] grand total of over 100,000 titles are available at Project Gutenberg Partners, Affiliates and Resources.” Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 61; <i>supra</i> n.1.)

Ex.	Objection	Plaintiffs' Response to Objection
		Moreover, the fact that books can be downloaded for free from the Project Gutenberg webpage is confirmed by defendants themselves. ( <i>See</i> Cates 7/17/08 Decl. ¶ 11.) Further, defendants' counsel relies upon the same webpage, <a href="http://www.gutenberg.org/wiki/Main_Page">www.gutenberg.org/wiki/Main_Page</a> , to support the Cates Declaration. ( <i>Id.</i> )
333	<i>Authenticity</i>	Ex. 333 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 71) is authenticated by the Forrest 9/26/08 Decl. at 4. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 333 in response to defendants' statement that "every Apple computer has come bundled with iMovie software that permits individuals to manipulate and edit video footage". (Defs. 7/18/08 SoF ¶ 71 (quoting Kahle 7/17/08 Decl. ¶ 9).) Ex. 333 is not offered for the truth of its contents, but to demonstrate that the Apple website itself advertises built-in sharing functionality. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 71; <i>supra</i> n.1.)
334	<i>Authenticity</i>	Ex. 334 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 72) is authenticated by the Forrest 9/26/08 Decl. at 4. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 334 in response to defendants' statement that distribution over centralized servers "requires that the Archive bear the costs associated with data storage and bandwidth". (Defs. 7/18/08 SoF ¶ 72 (quoting Kahle 7/17/08 Decl. ¶ 10).) Ex. 334 is not offered for the truth of its contents, but to show that Brewster Kahle (Co-Founder and Board Member of Internet Archive) was quoted as saying "You need third-party archiving . . . because people don't archive themselves very well". Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 72; <i>supra</i> n.1.)
335	<i>Authenticity</i>	Ex. 335 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 76) is authenticated by the Forrest 9/26/08 Decl. at 4. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 335 in response to defendants' statement that "[i]n a peer-to-peer sharing network, bandwidth and storage costs are shouldered by the community of users rather than the Archive. This is especially crucial where large multimedia files are concerned". (Defs. 7/18/08 SoF ¶ 76 (quoting Kahle 7/17/08 Decl. ¶ 14).) Ex. 335 is not offered for the truth of its contents, but to show that Brewster Kahle (Co-Founder and Board Member of Internet Archive) was quoted as saying that the Internet Archive "offered [for music] free unlimited storage and bandwidth, forever"; a statement which is at odds with Kahle's declaration ( <i>see</i> Kahle 7/17/08 Decl. ¶ 14). Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 76; <i>supra</i> n.1.)
336	<i>Authenticity</i>	Ex. 336 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 76) is authenticated by the Forrest 9/26/08 Decl. at 4-5. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 336 in response to defendants' statement that

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		<p>“[i]n a peer-to-peer sharing network, bandwidth and storage costs are shouldered by the community of users rather than the Archive. This is especially crucial where large multimedia files are concerned.” (Defs. 7/18/08 SoF ¶ 76 (quoting Kahle 7/17/08 Decl. ¶ 14).) Ex. 336 is not offered for the truth of its contents, but to rebut defendants’ statement by showing that the news article reported the “published” price for Internet Archive server space as “less than \$2” per gigabyte. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 76; <i>supra</i> n.1.)</p>
337	Authenticity	<p>Ex. 337 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 130) is authenticated by the Forrest 9/26/08 Decl. at 5. (See <i>supra</i> n.1.)</p>
	Hearsay	<p>Plaintiffs submitted Ex. 337 in response to defendants’ citation to a 2004 article stating “[s]ome content owners are using P2P to distribute their products”. (Defs. 7/18/08 SoF ¶ 130.) Ex. 337 is not offered for the truth of its contents, but to show that (1) in 2004, it was announced that Lindows changed its name to Linspire; and (2) the article cited was published in 2004 and is thus insufficient support of Defs. 7/18/08 SoF ¶ 130 because the statement is in the present tense. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 130; <i>supra</i> n.1.)</p>
338	Hearsay	<p>Plaintiffs refer to Ex. 338 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 96) in response to defendants’ citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 96 (citing Cates 7/17/08 Decl. ¶ 11).) In her declaration, Cates states that the Project Gutenberg website indicated <i>The Adventures of Huckleberry Finn</i>, <i>The Adventures of Tom Sawyer</i>, and <i>The Prince and the Pauper</i> were “not copyrighted in the United States”. (Cates 7/17/08 Decl. ¶ 11.) Cates says she downloaded the books from LimeWire. (<i>Id.</i>) Ex. 338 is a print-out from a CD-ROM provided by <i>defendants themselves</i> and containing the files that defendants’ counsel Cates states in her declaration that <i>she</i> downloaded. (A copy of the CD-ROM is submitted herewith as Ex. 496.) Ex. 338 is not offered for the truth of its contents but to show that the first page of each of the e-books downloaded by Cates prominently features the words “Copyright notice”. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 96; <i>supra</i> n.1.)</p>
339	Authenticity	<p>Ex. 339 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 96) is authenticated by the Forrest 9/26/08 Decl. at 5. (See <i>supra</i> n.1.) Moreover, Ex. 339 is a printout from the website of the University of Virginia Library. The University of Virginia is a corporation that “shall be at all times subject to the control of the General Assembly”. See VA Code Ann. § 23-69 (West 2008). Ex. 339 is therefore a printout from a government website and is self-authenticating. Fed. R. Evid. 902(5).<sup>2</sup></p>

<sup>2</sup> See Pls. 12/05/08 Mot. to Strike/Exclude Opp’n Br. at 7.

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	<i>Hearsay</i>	In response to defendants' statement about the availability of Mark Twain books (Defs. 7/18/08 SoF ¶ 96 (citing Cates 7/17/08 Decl. ¶ 11)), plaintiffs accessed the etext.virginia.edu website and printed out Ex. 339. Ex. 339 is not offered for the truth of its contents, but to demonstrate that the Conditions of Use of the website of the University of Virginia Library state "[i]t is not in our interest or that of our users to have uncontrolled subsets of our holdings available elsewhere on the Internet. We make corrections, add tags, add images, etc. on a continual basis, and we want the most current text to be the only one generally available to all Internet users". Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 96; <i>supra</i> n.1.)
<b>340</b>	<i>Authenticity</i>	Ex. 340 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 96) is authenticated by the Forrest 9/26/08 Decl. at 5. ( <i>See supra</i> n.1.) Ex. 340 is further authenticated by the declaration of Elizabeth Cuneo ¶ 2 ("Cuneo 12/05/08 Decl.").
	<i>Hearsay</i>	In response to defendants' statement about the availability of Mark Twain books (Defs. 7/18/08 SoF ¶ 96 (citing Cates 7/17/08 Decl. ¶ 11)), Plaintiffs accessed the Project Gutenberg website and printed out Ex. 340. Ex. 340 is not offered for the truth of its contents, but to show that several Mark Twain books are freely available from the Project Gutenberg website. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 96; <i>supra</i> n.1.) Moreover, this fact is further confirmed by defendants' counsel Cates herself ( <i>see</i> Cates 7/17/08 Decl. at ¶ 11), as well as Cravath legal assistant, Elizabeth Cuneo, ( <i>see</i> Cuneo 12/05/08 Decl. ¶ 2).
<b>341</b>	<i>Authenticity</i>	Ex. 341 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 96) is authenticated by the Forrest 9/26/08 Decl. at 6. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 341 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 96 (citing Cates 7/17/08 Decl. ¶ 11).) Cates states that the Project Gutenberg website indicated several Mark Twain books were "not copyrighted in the United States". (Cates 7/17/08 Decl. ¶ 11.) Cates downloaded the books using LimeWire ( <i>id.</i> ), and produced to plaintiffs the CD-ROM containing the files that <i>she</i> downloaded. (As noted, a copy of that CD-ROM is submitted herewith as Ex. 496.) The last e-book on the CD-ROM contains a cover illustration by Gary Overacre from the 1993 Gramercy edition of <i>Mark Twain: Four Complete Novels</i> with the original title obscured. Ex. 341 is not offered for the truth of its contents, but to show that a copyright symbol appeared on Gary Overacre's website containing the cover illustration from the 1993 Gramercy addition of <i>Mark Twain: Four Complete Novels</i> . Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 96; <i>supra</i> n.1.)
<b>342 &amp;</b>	<i>Authenticity/ Hearsay</i>	Plaintiffs withdraw Exs. 342 and 343, not on authenticity or hearsay grounds, but because plaintiffs no longer contest that the sound recording

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343		Cates ultimately downloaded is likely the sound recording offered by Internet Archive that she sought to download. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 97.) Plaintiffs' response shows, <i>inter alia</i> , that defendants' statement is immaterial and irrelevant to show LimeWire's noninfringing uses. ( <i>Id.</i> )
344	<i>Hearsay</i>	Plaintiffs submitted Ex. 344 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 99) to respond to defendants' statement regarding <i>their</i> search and download of two songs by Tea Leaf Green. (Defs. 7/18/08 SoF ¶ 99 (citing Cates 7/17/08 Decl. ¶ 16).) In her declaration, Cates states that she downloaded two recordings from Tea Leaf Green's March 3, 2005 concert, "Gasaholic" and "Garden III", from the archive.org website. (Cates 7/17/08 Decl. ¶ 16.) Further, Cates stated that she "did not see anything on the website limiting the transfer of these songs" and downloaded both concert recordings using LimeWire. ( <i>Id.</i> ) Ex. 344 is not offered for the truth of its contents, but to show that the CD-ROM, provided by <i>defendants themselves</i> as Cates' downloads, lists the song "Gasaholic" as a recording of 13 minutes and 7 seconds and the song "Garden III" as a recording of 4 minutes and 33 seconds. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 99; <i>supra</i> n.1.) Moreover, defendants are objecting to their <i>own</i> evidence -- evidence that they provided and on which they rely. Further, the duration of these songs is also confirmed by the Cuneo Declaration. ( <i>See</i> Cuneo 12/05/08 Decl. ¶ 3.)
345	<i>Authenticity</i>	Ex. 345 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 99) is authenticated by the Forrest 9/26/08 Decl. at 7 and the Cuneo 12/05/08 Decl. ¶ 4. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Like Ex. 344, Ex. 345 is submitted in response to defendants' statement regarding <i>their</i> search and download of two songs by Tea Leaf Green. (Defs. 7/18/08 SoF ¶ 99 (citing Cates 7/17/08 Decl. ¶ 16).) Ex. 345 is not offered for the truth of its contents, but to show that (1) the Internet Archive website does not list a March 3, 2005 concert, only a March 5, 2005 concert; and (2) that the songs on the Internet Archive, described by Cates in her declaration, are listed as having a different duration than the files she downloaded using LimeWire: "Gasaholic" (12 minutes 23 seconds); "The Garden (Part III)" (5 minutes 6 seconds). Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 99; <i>supra</i> n.1.) Moreover, the duration of these songs is further confirmed by the Cuneo Declaration. (Cuneo 12/05/08 Decl. ¶ 4.)
346	<i>Authenticity</i>	Ex. 346 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 103) is authenticated by the Forrest 9/26/08 Decl. at 7. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 346 in response to defendants' statement that Nine Inch Nails offered their "Ghosts" album "unrestricted over the Internet". (Defs. 7/18/08 SoF ¶ 103.) Ex. 346 is not offered for the truth

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		of its contents, <i>i.e.</i> , that the pricing information on the website of the Nine Inch Nails is correct, but to illustrate that Nine Inch Nails listed the pricing information for the "Ghosts" album "over the Internet". Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 103; <i>supra</i> n.1.) Moreover, Ex. 346 shows that the article cited by defendants ( <i>see</i> Baker 7/17/08 Decl., Ex. 6) in support of Defs. 7/18/08 SoF ¶ 103 does <i>not</i> support defendants' statement. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 103.)
347	<i>Authenticity</i>	Ex. 347 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 107) is authenticated by the Forrest 9/26/08 Decl. at 7-8. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 347 in response to defendants' statement regarding the Internet Archive and the access provided to authorized recordings by Hank Williams III, Maroon5 and the Grateful Dead. (Defs. 7/18/08 SoF ¶ 107 (quoting Kahle 7/17/08 Decl. ¶ 20).) Ex. 347 is not offered for the truth of its contents, but to show that songs downloaded by defendants via LimeWire are available for download directly from the Internet Archive website. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 107; <i>supra</i> n.1.)
348	<i>Authenticity</i>	Ex. 348 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 110) is authenticated by the Forrest 9/26/08 Decl. at 8. ( <i>See supra</i> n.1.) The Lafferty 7/16/08 Decl. ¶ 8, relied upon by defendants (Defs. 7/18/08 SoF ¶ 110), referred to this website (www.skype.com).
	<i>Hearsay</i>	Plaintiffs submitted Ex. 348 in response to defendants' statement regarding Skype's use of P2P technology. (Defs. 7/18/08 SoF ¶ 110 (quoting Lafferty 7/16/08 Decl. ¶ 8).) Ex. 348 is not offered for the truth of its contents, but to demonstrate that (1) Skype itself does not state that it utilizes or creates a use for the LimeWire software; and (2) that Skype is available via skype.com and that its download does not require the purchase or installation of LimeWire. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 110; <i>supra</i> n.1.)
349	<i>Authenticity</i>	Ex. 349 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 111) is authenticated by the Forrest 9/26/08 Decl. at 8. ( <i>See supra</i> n.1.) The Lafferty 7/16/08 Decl. ¶ 9, relied upon by defendants (Defs. 7/18/08 SoF ¶ 111), referred to this website (www.gridnetworks.com).
	<i>Hearsay</i>	Plaintiffs submitted Ex. 349 in response to defendants' statement regarding GridNetworks' employment of grid networking technology. (Defs. 7/18/08 SoF ¶ 111 (quoting Lafferty 7/16/08 Decl. ¶ 9).) Ex. 349 is not offered for the truth of its contents, but to demonstrate that (1) GridNetworks itself does not state Gridcasting utilizes the LimeWire software; and (2) that GridNetworks is available via gridnetworks.com and that its download does not require the purchase or installation of LimeWire. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 111; <i>supra</i> n.1.)



Ex.	Objection	Plaintiffs' Response to Objection
350	<i>Authenticity</i>	Ex. 350 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 112) is authenticated by the Forrest 9/26/08 Decl. at 8. ( <i>See supra</i> n.1.) The Lafferty 7/16/08 Decl. ¶ 14, relied upon by defendants (Defs. 7/18/08 SoF ¶ 112), referred to this website (www.joost.com).
	<i>Hearsay</i>	Plaintiffs submitted Ex. 350 in response to defendants' statement regarding Joost's use of P2P technology. (Defs. 7/18/08 SoF ¶ 112 (quoting Lafferty 7/16/08 Decl. ¶ 14).) Ex. 350 is not offered for the truth of its contents, but to demonstrate that Joost describes their product as delivering "high-quality TV content from well-known TV brands", not as file-sharing application. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 112; <i>supra</i> n.1.)
351	<i>Authenticity</i>	Ex. 351 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 112) is authenticated by the Forrest 9/26/08 Decl. at 8-9. ( <i>See supra</i> n.1.) Moreover, the Lafferty 7/16/08 Decl. ¶ 14, relied upon by defendants (Defs. 7/18/08 SoF ¶ 112), referred to this website (www.joost.com).
	<i>Hearsay</i>	Like Ex. 350, Ex. 351 was submitted in response to defendants' statements regarding Joost's use of P2P technology. (Defs. 7/18/08 SoF ¶ 112 (quoting Lafferty 7/16/08 Decl. ¶ 14).) Ex. 351 is not offered for the truth of its contents, but to demonstrate that Joost is available via its website and that its download does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 112; <i>supra</i> n.1.)
352	<i>Authenticity</i>	Ex. 352 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 113) is authenticated by the Forrest 9/26/08 Decl. at 9. ( <i>See supra</i> n.1.) Moreover, defendants' counsel himself authenticates printouts from the New York Times website in <i>his</i> declaration. ( <i>See</i> Baker 7/17/08 Decl. ¶ 11, Ex. 9.) Accordingly, defendants' objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 352 in response to defendants' statement describing Pando Networks' software. (Defs. 7/18/08 SoF ¶ 113 (quoting Lafferty 7/16/08 Decl. ¶ 15).) Ex. 352 is not offered for the truth of its contents, but to demonstrate that press accounts describe Pando as a way to send large attachments via e-mail not as a file-sharing service like LimeWire. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 113; <i>supra</i> n.1.)
353	<i>Authenticity</i>	Ex. 353 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 113) is authenticated by the Forrest 9/26/08 Decl. at 9. ( <i>See supra</i> n.1.) Moreover, the Lafferty 7/16/08 Decl. ¶ 15, relied upon by defendants ( <i>see</i> Defs. 7/18/08 SoF ¶ 113), referred to this website (www.pando.com).
	<i>Hearsay</i>	Like Ex. 352, Ex. 353 was submitted in response to defendants' statement describing Pando Networks' software. (Defs. 7/18/08 SoF

Ex.	Objection	Plaintiffs' Response to Objection
		¶ 113 (quoting Lafferty 7/16/08 Decl. ¶ 15.) Ex. 353 is not offered for the truth of its contents, but to demonstrate that Pando is available via its website and that its download does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 113; <i>supra</i> n.1.)
354	<i>Authenticity</i>	Ex. 354 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 116) is authenticated by the Forrest 9/26/08 Decl. at 9. (See <i>supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 354 in response to defendants' statement regarding the release of several "previously unavailable tracks from recording artist Kevin Martin and the HiWatts over P2P networks. (Defs. 7/18/08 SoF ¶ 116 (quoting Lafferty 7/16/08 Decl. ¶ 18).) Ex. 354 is not offered for the truth of its contents, but to demonstrate that the release is reported to have been made in 2003 -- five years ago. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 116; <i>supra</i> n.1.)
355	<i>Authenticity</i>	Ex. 355 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 117) is authenticated by the Forrest 9/26/08 Decl. at 9. (See <i>supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 355 in response to defendants' statements regarding the distribution of three tracks from Lake Trout's first album. (Defs. 7/18/08 SoF ¶ 117 (quoting Lafferty 7/16/08 Decl. ¶ 19).) Ex. 355 is not offered for the truth of its contents, but to demonstrate it was reported that Lake Trout is not "new" as it is reported to have been a group since 1994 and released their first album in 1997 -- three years before LimeWire was even launched, and thus, could not constitute a non-infringing use of LimeWire. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 117; <i>supra</i> n.1.) To the extent there is any ambiguity, plaintiffs hereby amend Pls. 9/26/08 (LW) Resp. ¶ 117 to state: "Even were this statement material, it has been reported that Lake Trout has been around since 1994 and released their first album in 1997, three years before LimeWire was even launched."
356	<i>Authenticity</i>	Ex. 356 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 118) is authenticated by the Forrest 9/26/08 Decl. at 9-10. (See <i>supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 356 in response to defendants' statement regarding the release of "footage from 'Starting Over,' a daytime television program, into the file-sharing community for promotional purposes". (Defs. 7/18/08 SoF ¶ 118 (quoting Lafferty 7/16/08 Decl. ¶ 20).) Ex. 356 is not offered for the truth of its contents, but to demonstrate it was reported that Starting Over was cancelled in 2006. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 118; <i>supra</i> n.1.) To the extent there is any ambiguity, plaintiffs hereby amend Pls. 9/26/08 (LW) Resp. to state: "Even if the statement were material, the events it describes must have happened several years ago since it was reported that Starting Over was cancelled in 2006."

<b>Ex.</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>357</b>	<i>Authenticity</i>	Ex. 357 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 119) is authenticated by the Forrest 9/26/08 Decl. at 10. ( <i>See supra</i> n.1.) Defendants refer to this website (www.jungroup.com). ( <i>See</i> Defs. 7/18/08 SoF ¶ 119 (quoting Lafferty 7/16/08 Decl. ¶ 21).) Further, defendants' counsel authenticates a printout from the Jun Group website in his <i>own</i> declaration. ( <i>See</i> Baker 7/17/08 Decl. ¶ 13, Ex. 11.) Accordingly, defendants' objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 357 in response to defendants' statement regarding the P2P distribution of "The Scene" by Jun Group. (Def. 7/18/08 SoF ¶ 119 (quoting Lafferty 7/16/08 Decl. ¶ 21).) Defendants state that "[e]ach of the first three episodes has been downloaded 1 to 2 million times". ( <i>Id.</i> (quoting Lafferty 7/16/08 Decl. ¶ 21).) Ex. 357 is not offered for the truth of its contents, but to demonstrate that the Jun Group website itself states that each episode of "The Scene" was downloaded over 250,000 times, not the 1 to 2 million times asserted by defendants. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 119; <i>supra</i> n.1.)
<b>358</b>	<i>Authenticity</i>	Ex. 358 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 125) is authenticated by the Forrest 9/26/08 Decl. at 10. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 358 in response to defendants' statements regarding the free distribution of Sananda Maitreya's music over P2P (including TrustyFiles and RazorPop). (Def. 7/18/08 SoF ¶ 125 (quoting Freedman 7/15/08 Decl. ¶ 2).) Ex. 358 is not offered for the truth of its contents, <i>i.e.</i> , that the pricing information on the sanandamaitreya.com website is correct, but to demonstrate that the website lists songs for 0.99 €. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 125; <i>supra</i> n.1.)
<b>359</b>	<i>Authenticity</i>	Ex. 359 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 125) is authenticated by the Forrest 9/26/08 Decl. at 10. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Like Ex. 358, Ex. 359 was submitted in response to defendants' statements regarding the free distribution of Sananda Maitreya's music over P2P (including TrustyFiles and RazorPop). (Def. 7/18/08 SoF ¶ 125 (quoting Freedman 7/15/08 Decl. ¶ 2).) Ex. 359 is not offered for the truth of its contents, but to demonstrate that the press releases on the sanandamaitreya.com website have not mentioned TrustyFiles or RazorPop since 2004. Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 125; <i>supra</i> n.1.)
<b>360</b>	<i>Authenticity</i>	Ex. 360 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 128-29) is authenticated by the Forrest 9/26/08 Decl. at 10. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 360 in response to defendants' statements regarding Raketu Communications' use of P2P technology. (Def. 7/18/08 SoF ¶¶ 128-29 (quoting Parker 7/09/08 Decl. ¶ 2-3).) Ex. 360 is

Ex.	Objection	Plaintiffs' Response to Objection
		not offered for the truth of any statement on the raketu.com website but to demonstrate that Raketu's own website does not mention or indicate that the P2P technology underlying Raketu is LimeWire or is related to LimeWire. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶¶ 128-29; <i>supra</i> n.1.)
361	<i>Authenticity</i>	Ex. 361 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 130) is authenticated by the Forrest 9/26/08 Decl. at 10. ( <i>See supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 361 in response to defendants' citation to a 2004 article stating "[s]ome content owners are using P2P to distribute their products". (Defs. 7/18/08 SoF ¶ 130.) Ex. 361 is not offered for the truth of its contents, but to show that (1) Linspire announced the launch of its own non-P2P software delivery system in 2007; and (2) the article cited by defendants is insufficient support for Defs. 7/18/08 SoF ¶ 130 because it is outdated (the statement made in the present tense was published in 2004). Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 130; <i>supra</i> n.1.) To the extent there is any ambiguity, plaintiffs hereby amend Pls. 9/26/08 Resp. ¶ 130 to state: "Indeed, in 2007, Lindows . . . announced the launch of its own non-P2P software delivery system."
362	<i>Authenticity</i>	Ex. 362 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 131) is authenticated by the Forrest 9/26/08 Decl. at 10-11. ( <i>See supra</i> n.1.) Defendants' counsel <i>himself</i> authenticates a printout from the winzip.com website in his declaration. ( <i>See</i> Baker 7/17/08 Decl. ¶ 14, Ex. 12.) Accordingly, defendants' authenticity objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 362 in response to defendants' statement: "An example of software freely distributed. Printout from the Internet that can be found at: www.winzip.com/elicense.htm." (Defs. 7/18/08 SoF ¶ 131 (citing Baker 7/17/08 Decl., Ex. 12).) Ex. 362 is the website referred to by defendants themselves and is submitted simply to respond to defendants. Further, Ex. 362 is not offered for the truth of its contents, but to show that Winzip software is available via its website and that it does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 131; <i>supra</i> n.1.)
363	<i>Authenticity</i>	Ex. 363 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 132) is authenticated by the Forrest 9/26/08 Decl. at 11. ( <i>See supra</i> n.1.) Defendants' counsel <i>himself</i> authenticates a printout from the openoffice.org website in his declaration. ( <i>See</i> Baker 7/17/08 Decl. ¶ 15, Ex. 13.) Accordingly, defendants' objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 363 in response to defendants' statement: "Another example of software being freely distributed. Printout from the Internet that can be found at the following site:

Ex.	Objection	Plaintiffs' Response to Objection
		http://distribution.openoffice.org/p2p/magnet.html.” (Defs. 7/18/08 SoF ¶ 132 (citing Baker 7/17/08 Decl. Ex. 13).) Ex. 363 is the website referred to by defendants themselves and it (and other download websites) was submitted simply to respond to defendants. Further, Ex. 363 is not offered for the truth of its contents, but to show that Open Office software is available via multiple websites and that it does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 132; <i>supra</i> n.1.)
<b>364</b>	<i>Authenticity</i>	Ex. 364 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 140-41) is authenticated by the Forrest 9/26/08 Decl. at 11. (See <i>supra</i> n.1.) Ex. 364 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 5.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 364 in response to defendants' statements that the “U.S. Army has used Gnutella to distribute a video game”. (Defs. 7/18/08 SoF ¶ 140-41.) Ex. 364 is not offered for the truth of its contents, but to show that the America's Army game is available via the americasarmy.com website and that it does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶¶ 140-41; <i>supra</i> n.1.) This is further confirmed by the Cuneo Declaration. (See Cuneo 12/05/08 Decl. ¶ 5.)
<b>365</b>	<i>Authenticity</i>	Ex. 365 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 143) is authenticated by the Forrest 9/26/08 Decl. at 11. (See <i>supra</i> n.1.) Ex. 365 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 6. Defendants' counsel authenticates a printout from the berkleeshares.com website in his own declaration. (See Baker 7/17/08 Decl. ¶ 24, Ex. 22.) Accordingly, defendants' objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 365 in response to defendants' statement that the “Berklee College of Music is using P2P to share its music lessons to the public”. (Defs. 7/18/08 SoF ¶ 143 (citing Baker 7/17/08 Decl., Ex. 21).) Ex. 365 is not offered for the truth of its contents, but to show that “Berklee Shares” lessons are available via the berkleeshares.com website and that it does not require the purchase or installation of LimeWire. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 143; <i>supra</i> n.1.) This is further confirmed by the Cuneo Declaration. (See Cuneo 12/05/08 Decl. ¶ 6.)
<b>366</b> <b>367</b> <b>368</b>	<i>Authenticity</i>	Exs. 366, 367 and 368 (which are cited to in Pls. 9/26/08 (LW) Resp. ¶ 146) are authenticated by the Forrest 9/26/08 Decl. at 11-12. (See <i>supra</i> n.1.) Defendants' counsel <i>himself</i> authenticates a printout from the outragedmoderates.org website in his declaration. (See Baker 7/17/08 Decl. ¶ 26, Ex. 24.) Accordingly, defendants' objection is baseless and disingenuous.
	<i>Hearsay</i>	Plaintiffs submitted Exs. 366-368 in response to defendants' statement that “[n]umerous government documents are accessible over P2P

Ex.	Objection	Plaintiffs' Response to Objection
		<p>networks. Printout from the Internet can be found at the following site: <a href="http://www.outragedmoderates.org/HowtoUseP2PNetworks.html">http://www.outragedmoderates.org/HowtoUseP2PNetworks.html</a>.” (Defs. 7/18/08 SoF ¶ 146 (citing Baker 7/17/08 Decl., Ex. 24).) In order to respond to defendants’ statement, it is necessary to cite to the same website as defendants did. Further, Exs. 366, 367 and 368 are not offered for the truth of their contents, but to demonstrate that</p> <p>(1) outragedmoderates.org purports to be a non-commercial website;</p> <p>(2) outragedmoderates.org website links to government documents without requiring the purchase or installation of LimeWire; and</p> <p>(3) statements regarding the download of BitTorrent files and LimeWire configuration were made on the outragedmoderates.org website, respectively. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 146; <i>supra</i> n.1.)</p>
369	<i>Authenticity</i>	<p>Ex. 369 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 155) is authenticated by the Forrest 9/26/08 Decl. at 12. (See <i>supra</i> n.1.) Ex. 369 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 7. Also, Ex. 369 is a printout of the same website upon which Cates <i>herself</i> relies. (See Cates 7/17/08 Decl. ¶ 6.)</p>
	<i>Hearsay</i>	<p>Plaintiffs submitted Ex. 369 in response to defendants’ citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 155 (quoting Cates 7/17/08 Decl. ¶ 6).) Cates states that “the website [nin.com] did not provide any restrictions on transferring the album” and that she downloaded a track from the album “The Slip” using LimeWire. (Cates 7/17/08 Decl. ¶ 6.) Ex. 369 is not offered for the truth of its contents but to demonstrate that the nin.com website states that the band, nine inch nails, is “giving away the new nine inch nails album . . . exclusively via nin.com” and that “the slip is licensed under a creative commons attribution non-commercial share alike license”. Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 155; <i>supra</i> n.1.)</p>
370	<i>Authenticity</i>	<p>Ex. 370 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 155) is authenticated by the Forrest 9/26/08 Decl. at 12. (See <i>supra</i> n.1.) Ex. 370 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 7.</p>
	<i>Hearsay</i>	<p>Plaintiffs submitted Ex. 370 in response to defendants’ citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 155 (quoting Cates 7/17/08 Decl. ¶ 6).) Cates states that “the website [nin.com] did not provide any restrictions on transferring the album” and that she downloaded a track from the album “The Slip” using LimeWire. (Cates 7/17/08 Decl. ¶ 6.) As noted above, Ex. 369 is offered to demonstrate that, <i>inter alia</i>, “the slip is licensed under a creative commons attribution non-commercial share alike license”. (See Pls. 9/26/08 (LW) Resp. ¶ 155.) Similarly, Ex. 370 is not offered for the truth of its contents but to demonstrate that the creative commons website stated that “[f]or any reuse or distribution, you must make clear to others the license terms of this work. The best</p>

Ex.	Objection	Plaintiffs' Response to Objection
		way to do this is with a link to this web page". Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 155; <i>supra</i> n.1.) Cates does not contend that such a link is associated with the file as it is found on LimeWire. (See Cates 7/17/08 Decl. ¶ 6.)
371	<i>Authenticity</i>	Ex. 371 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 155) is authenticated by the Forrest 9/26/08 Decl. at 12. (See <i>supra</i> n.1.) Ex. 371 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 4.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 371 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 155 (quoting Cates 7/17/08 Decl. ¶ 6).) As noted, Cates stated that she downloaded a track from the album "The Slip" using LimeWire. (Cates 7/17/08 Decl. ¶ 6.) Ex. 371 is not offered for the truth of its contents, but to show that the Nine Inch Nails music files are available and shareable on the nin.com website, without having to purchase or install the LimeWire software. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 155; <i>supra</i> n.1.) Moreover, the fact that music files are available via the nin.com website is confirmed by defendants themselves. (Cates 7/17/08 Decl. ¶ 6.) This is also confirmed by the Minarovich Declaration. (See Minarovich 12/05/08 Decl. ¶ 4.)
372	<i>Authenticity</i>	Ex. 372 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 156) is authenticated by the Forrest 9/26/08 Decl. at 13. (See <i>supra</i> n.1.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 372 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 156 (quoting Cates 7/17/08 Decl. ¶ 8).) Cates states that she did "not see any restriction on www.nugs.net regarding the downloading or transferring" of the October 25, 2000 live concert recording of "Ride Me High" by Widespread Panic and that she downloaded the recording using LimeWire. (Cates 7/17/08 Decl. ¶ 8.) Ex. 372 is not offered for the truth of its contents, but to demonstrate that the Widespread Panic website stated "we will not authorize the use of impersonal and anonymous Internet P2P software to share our recordings (e.g., Kazaa, Limewire, eDonkey)". Fed. R. Evid. 801(c). (See Pls. 9/26/08 (LW) Resp. ¶ 156; <i>supra</i> n.1.)
373	<i>Authenticity</i>	Ex. 373 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 156) is authenticated by the Forrest 9/26/08 Decl. at 13. (See <i>supra</i> n.1.) Ex. 373 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 5. Moreover, defendants' own declarant, Susan Cates, stated that she accessed the website nugs.net and was able to download "Ride Me High". (See Cates 7/17/08 Decl. ¶ 8.)
	<i>Hearsay</i>	Like Ex. 372, Ex. 373 was submitted in response to the Cates declaration. (See Defs. 7/18/08 SoF ¶ 156 (quoting Cates 7/17/08 Decl. ¶ 8).) Cates acknowledged that she downloaded the October 25, 2000 concert

Ex.	Objection	Plaintiffs' Response to Objection
		recording of "Ride Me High" from www.nugs.net. (Cates 7/17/08 Decl. ¶ 8.) Ex. 373 is not offered for the truth of its contents, but to demonstrate that "Ride Me High" is available for download on the nugs.net website without having to purchase or install the LimeWire software. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 156; <i>supra</i> n.1.) Moreover, and as noted, defendants <i>themselves</i> have confirmed that "Ride Me High" is available from www.nugs.net. (Cates 7/17/08 Decl. ¶ 8.) This is also confirmed by the Minarovich Declaration. (See Minarovich 12/05/08 Decl. ¶ 5.)
374	<i>Authenticity</i>	Ex. 374 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 157) is authenticated by the Forrest 9/26/08 Decl. at 13. (See <i>supra</i> n.1.) Ex. 374 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 6. Moreover, defendants' own declarant, Susan Cates, accessed the website vidablue.net and downloaded "Most Events Aren't Planned". (See Cates 7/17/08 Decl. ¶ 17.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 374 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 157 (quoting Cates 7/17/08 Decl. ¶ 17).) Cates states that she "went to www.vidablue.net" and did not "see anything on the website restricting the transfer of" a July 9, 2002 concert recording of "Most Events Aren't Planned" by Vida Blue. (Cates 7/17/08 Decl. ¶ 17.) Cates downloaded one copy of the song from vidablue.net and used LimeWire to download a copy. ( <i>Id.</i> ) Ex. 374 is not offered for the truth of its contents, but to show that "Most Events Aren't Planned" is available for download on the vidablue.net website without having to purchase or install the LimeWire software. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 157; <i>supra</i> n.1.) Also, defendants <i>themselves</i> confirmed that "Most Events Aren't Planned" is available for download on vidablue.net. (Cates 7/17/08 Decl. ¶ 17.) This is also confirmed by the Minarovich Declaration. (See Minarovich 12/05/08 Decl. ¶ 6.)
375	<i>Authenticity</i>	Ex. 375 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 157) is authenticated by the Forrest 9/26/08 Decl. at 13. (See <i>supra</i> n.1.) Ex. 375 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 7.
	<i>Hearsay</i>	Like Ex. 374, Ex. 375 was submitted in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 157 (quoting Cates 7/17/08 Decl. ¶ 17).) Ex. 375 is offered to show that "Most Events Aren't Planned", the song mentioned in Cates 7/17/08 Decl. ¶ 17, is available for download on the nugs.net website via the Vida Blue links. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 157; <i>supra</i> n.1.) Moreover, this is confirmed by Minarovich. (See Minarovich 12/05/08 Decl. ¶ 7.)
376	<i>Authenticity</i>	Ex. 376 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 158) is authenticated by the Forrest 9/26/08 Decl. at 13. (See <i>supra</i> n.1.)



Ex.	Objection	Plaintiffs' Response to Objection
		Ex. 376 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 8. Moreover, defendants' own declarant, Susan Cates, accessed the website jamendo.com and was able to download songs, including "Breathe", "Listen", and "Struttin'". (See Cates 7/17/08 Decl. ¶ 9.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 376 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 158 (quoting Cates 7/17/08 Decl. ¶ 9).) Cates states that she downloaded four songs from jamendo.com, including "Breathe", "Listen" and "Struttin'", and "did not see any restrictions on the transfer of songs" on the website. (Cates 7/17/08 Decl. ¶ 9.) Cates then downloaded the songs using LimeWire. ( <i>Id.</i> ) Ex. 376 is not offered for the truth of its contents, but to show that "Breathe", "Listen" and "Struttin'" are available for download on the jamendo.com website without having to purchase or install LimeWire. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 158; <i>supra</i> n.1.) Moreover, defendants <i>themselves</i> confirmed that "Breathe", "Listen" and "Struttin'" are available for download on jamendo.com. (See Cates 7/17/08 Decl. ¶ 9.) This is also confirmed by the Cuneo Declaration. (See Cuneo 12/05/08 Decl. ¶ 8.)
<b>377</b>	<i>Authenticity</i>	Ex. 377 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 158) is authenticated by the Forrest 9/26/08 Decl. at 13-14. (See <i>supra</i> n.1.) Ex. 377 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 9.
	<i>Hearsay</i>	Like Ex. 376, Ex. 377 was submitted in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 158 (quoting Cates 7/17/08 Decl. ¶ 9).) Ex. 377 is not offered for the truth of its contents, but to show that the album available for download from jamendo.com is also accessible from many other websites. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 158; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. (See Cuneo 12/05/08 Decl. ¶ 9.)
<b>378</b>	<i>Authenticity</i>	Ex. 378 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 159) is authenticated by the Forrest 9/26/08 Decl. at 14. (See <i>supra</i> n.1.) Further, defendants' own declarant, Susan Cates, accessed the website converse.com and was able to download the song "My Drive Thru". (See Cates 7/17/08 Decl. ¶ 10.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 378 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 159 (quoting Cates 7/17/08 Decl. ¶ 10).) Cates stated that she downloaded the song "My Drive Thru" by Santogold, Julian Casablanca, and NERD from converse.com and that "I did not see any restrictions on the transfer of the song" on the website. (Cates 7/17/08 Decl. ¶ 10.) Cates then downloaded the song using LimeWire. ( <i>Id.</i> ) In order to respond to Cates' statement regarding restrictions on transfer of the song, it is necessary to cite to the website she used. Further, Ex. 378 is not offered for the truth of its contents, but to demonstrate that the converse.com website states: "You may

Ex.	Objection	Plaintiffs' Response to Objection
		download or copy the Contents and other downloadable materials displayed on the Site for your personal use only. No right, title or interest in any downloaded materials or software is transferred to you as a result of, any such downloading or copying. You may not reproduce (except as noted above), publish, transmit, distribute, display, modify, create derivative works from, sell or participate in any sale of, or exploit in any way, in whole or in part, any of the Contents, the Site, or any related software.” Fed. R. Evid. 801(c). ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 159; <i>supra</i> n.1.)
<b>379</b> <b>380</b> <b>381</b> <b>382</b>	<i>Authenticity</i>	Exs. 379-82 (which are cited to in Pls. 9/26/08 (LW) Resp. ¶ 160) are authenticated by the Forrest 9/26/08 Decl. at 14-15. ( <i>See supra</i> n.1.) Exs. 379-82 are further authenticated by the Cuneo 12/05/08 Decl. ¶¶ 10-13.
	<i>Hearsay</i>	Plaintiffs submitted Exs. 379-82 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 160 (quoting Cates 7/17/08 Decl. ¶ 12).) Cates stated that she downloaded several songs and a book from www.magnetmix.com using LimeWire. (Cates 7/17/08 Decl. ¶ 12.) Exs. 379, 380, 381 and 382 are not offered for the truth of their contents, but to show that the songs Cates mentioned in her declaration ( <i>see</i> Defs. 7/18/08 SoF ¶ 160 (quoting Cates 7/17/08 Decl. ¶ 12)) are available for download elsewhere on the Internet without purchasing or installing the LimeWire software. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 160; <i>supra</i> n.1.) Moreover, this is further confirmed by Cuneo. (Cuneo 12/05/08 Decl. ¶¶ 10-13.) Further, Ex. 382 is also offered in response to defendants' own citation. (Defs. 7/18/08 SoF ¶ 160 (quoting Cates 7/17/08 Decl. ¶ 12).) Cates relies on gutenber.org to indicate the copyright status of several books. (Cates 7/17/08 Decl. ¶ 11.) Ex. 382 is not offered for the truth, but to show that gutenber.org lists “Down and Out in the Magic Kingdom” as copyrighted. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 160; <i>supra</i> n.1.)
<b>383</b>	<i>Authenticity</i>	Ex. 383 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 165) is authenticated by the Forrest 9/26/08 Decl. at 15. ( <i>See supra</i> n.1.) Ex. 383 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 14.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 383 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 165 (quoting Cates 7/17/08 Decl. ¶ 3).) Cates states that she downloaded Martin Luther King Jr.'s speech “I have a Dream” in MP3 format using LimeWire. (Cates 7/17/08 Decl. ¶ 3.) Ex. 383 is not offered for the truth of its contents, but to show that Martin Luther King Jr.'s “I Have a Dream” speech is widely available for download on the Internet without purchasing or installing the LimeWire software. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 165; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. (Cuneo 12/05/08 Decl. ¶ 14.)

Ex.	Objection	Plaintiffs' Response to Objection
384	<i>Authenticity</i>	Ex. 384 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 166) is authenticated by the Forrest 9/26/08 Decl. at 15. ( <i>See supra</i> n.1.) Ex. 384 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 15.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 384 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 166 (quoting Cates 7/17/08 Decl. ¶ 4).) Cates states that she downloaded the United States Declaration of Independence in Adobe format using LimeWire. (Cates 7/17/08 Decl. ¶ 4.) Ex. 384 is not offered for the truth of its contents, but to show that the Declaration of Independence is widely available for download on the Internet without purchasing or installing LimeWire. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 166; <i>supra</i> n.1.) This is further confirmed by the Cuneo Declaration. (Cuneo 12/05/08 Decl. ¶ 15.)
385	<i>Authenticity</i>	Ex. 385 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 167) is authenticated by the Forrest 9/26/08 Decl. at 15-16. ( <i>See supra</i> n.1.) Ex. 385 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 16. Moreover, defendants' objection to the authenticity of a printout of the U.S. Constitution from the U.S. Government Printing Office's website at <a href="http://www.gpoaccess.gov/constitution/index.html">www.gpoaccess.gov/constitution/index.html</a> is untenable. Printouts from a government website are self-authenticating. Fed. R. Evid. 902(5). ( <i>See</i> Pls. 12/05/08 Mot. to Strike/Exclude Opp'n Br. at 7.)
	<i>Hearsay</i>	Plaintiffs submitted Ex. 385 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 167 (quoting Cates 7/17/08 Decl. ¶ 5).) Cates states that she downloaded the Preamble to the United States Constitution in word format using LimeWire. (Cates 7/17/08 Decl. ¶ 5.) Ex. 385 is not offered for the truth of its contents, but to show that the U.S. Constitution is widely available on the Internet, without purchasing or installing LimeWire. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 167; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. ( <i>See</i> Cuneo 12/05/08 Decl. ¶ 16.)
386	<i>Hearsay</i>	Plaintiffs submitted Ex. 386 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 168) in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 168 (quoting Cates 7/17/08 Decl. ¶ 7).) Cates states that she downloaded several Shakespeare plays, including <i>Hamlet</i> , <i>Twelfth Night</i> , <i>Antony and Cleopatra</i> , <i>Love's Labour's Lost</i> , <i>Macbeth</i> , <i>All's Well That Ends Well</i> , and <i>Richard III</i> , using LimeWire. (Cates 7/17/08 Decl. ¶ 7.) Ex. 386 is a print-out from that CD-ROM provided by <i>defendants themselves</i> and containing the files that defendants' counsel Cates states in her declaration that <i>she</i> downloaded. (As noted, a copy of that CD-ROM is submitted herewith as Ex. 496.) Ex. 386 is not offered for the truth of its contents, but to show that the first page of <i>Hamlet</i> and <i>Macbeth</i> , downloaded by defendants' counsel <i>herself</i> , prominently features the words "Copyright notice". Fed. R. Evid. 801(c). ( <i>See</i> Pls.

Ex.	Objection	Plaintiffs' Response to Objection
		9/26/08 (LW) Resp. ¶ 168; <i>supra</i> n.1.)
387	<i>Authenticity</i>	Ex. 387 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 168) is authenticated by the Forrest 9/26/08 Decl. at 16. ( <i>See supra</i> n.1.) Ex. 387 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 17.
	<i>Hearsay</i>	Like Ex. 386, plaintiffs submitted Ex. 387 in response to defendants' citation to the Cates declaration. (Defs. 7/18/08 SoF ¶ 168 (quoting Cates 7/17/08 Decl. ¶ 7).) Ex. 387 is not offered for the truth of its contents, but to show that the plays mentioned by Cates (Cates 7/17/08 Decl. ¶ 7) are widely available on the Internet, without purchasing or installing the LimeWire software. Fed. R. Evid. 801. ( <i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 168; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. ( <i>See</i> Cuneo 12/05/08 Decl. ¶ 17.)
391	<i>Inadmissible settlement offer, Fed R. Evid. 408.</i>	Ex. 391 (which is cited to in Pls. 9/26/08 (LW) Add'l SOF ¶ 31) consists of two documents: (1) the document "Plan for LimeWire/ Conversion Process" (LW DE 0965807-08) (the same document as Ex. 266); (2) the document "Plan for LimeWire Conversion Process", dated the same day and showing only minor differences with Ex. 266. Like Ex. 266, both documents contained in Ex. 391 are admissible. Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 11-24, which is herein incorporated by reference.
428 429 431 441 442 443 444	<i>Pre-August 2003 document, therefore irrelevant.</i>	Defendants' objections are baseless. Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 3-11, which is herein incorporated by reference.
448	<i>Pre-August 2003 document, therefore irrelevant.</i>	Ex. 448 (which is cited to in Pls. 9/26/08 (Gorton) Add'l SOF ¶ 659) is dated December 12, 2003. It is therefore not a "Pre-August 2003 document". Accordingly, defendants' objections are baseless. Further, plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 3-11, which is herein incorporated by reference.
453 456	<i>Pre-August 2003 document, therefore irrelevant.</i>	Defendants' objections are baseless. Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 3-11, which is herein incorporated by reference.
458	<i>Inadmissible settlement offer, Fed R. Evid. 408.</i>	Defendants' objection is baseless. Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 11-24, which is herein incorporated by reference.

<b>Ex.</b>	<b>Objection</b>	<b>Plaintiffs' Response to Objection</b>
<b>459</b>	<i>Privileged. Under the terms of the Stipulation and Protective Order dated March 8, 2007 in this case, Defendants have requested that this document be returned on grounds of privilege and removed from the record.</i>	Plaintiffs disagree that Ex. 459 is privileged, but since the exhibit is immaterial to plaintiffs' motion for partial summary judgment or their opposition to defendants' motions, plaintiffs hereby withdraw it.
<b>460</b>	<i>Discussion of inadmissible settlement offer, Fed. R. Evid. 408.</i>	Defendants' objection is baseless. Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/ <i>Grokster</i> Opp'n Br. at 11-24, which is herein incorporated by reference.