

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,

Plaintiffs/Counterclaim Defendants,

v.

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

Defendants.

ECF CASE

06 CV. 5936 (GEL)

**DEFENDANTS' REPLY IN FURTHER SUPPORT OF
DEFENDANTS' OBJECTIONS TO PLAINTIFFS'
EXHIBITS FILED AS PART OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
AND DEFENDANTS' MOTION TO STRIKE**

Of counsel:

Lauren E. Handler
SDNY (LEH 6908)
PORZIO, BROMBERG &
NEWMAN, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, NJ 07962-1997
(973) 538-5146 (Facsimile)
(973) 889-4326 (Telephone)
lehandler@pbn.com

Charles S. Baker (CB1365)
Joseph D. Cohen (JC3017)
Susan K. Hellinger (SH8148)
PORTER & HEDGES, LLP
1000 Main Street, 36th Floor
Houston, Texas 77002-6336
(713) 226-6000 (Telephone)
(713) 228-1331 (Facsimile)
cbaker@porterhedges.com
jcohen@porterhedges.com
shellinger@porterhedges.com

INTRODUCTION

Once again, Plaintiffs' desperation to cure their evidentiary shortfalls radiates through their Opposition. Although Plaintiffs offer last minute declarations and creative wordplay, Plaintiffs still fail to cure the evidentiary ills that plague their evidence. As set forth below, Defendants' objections should be sustained.

ARGUMENT

I. PLAINTIFFS' PRELIMINARY STATEMENT GROSSLY MISSTATES DEFENDANTS' ACTIONS.

What appears to be a never-ending theme in addressing their prevalent evidentiary shortcomings, Plaintiffs chide Defendants, accusing them of "using any tactic to keep the facts from the Court." (Pls. Opp'n at 2.)¹ This bald, inflammatory assertion could not be further from the truth; Defendants only seek to hold Plaintiffs to the requirements set forth in both the Federal Rules of Civil Procedure and Federal Rules of Evidence—requirements familiar to every first year law student. Plaintiffs' complete disregard for the Federal Rules, not dreamed-up ulterior motives, necessitated Defendants' challenges to Plaintiffs' inadequate proffers.

Furthermore, Plaintiffs contend that the withdrawing of previous objections somehow illustrates that Defendants' objections lack legal basis. However, Plaintiffs' responses to Defendants' evidentiary objections belie this point. After Defendants fatally challenged Plaintiffs' summary judgment and opposition evidence, Plaintiffs scrambled to provide proper evidentiary foundations for their exhibits. (*see, e.g.* Pls.' Opp'n to Defs.' 9/26/2008 Mot. to Strike (containing fifty-five pages of argument in response to Defendants' objections).) This is further evident from yet another improper, twenty-page attachment to Plaintiffs' Response,²

¹ For ease of reference, all cites to "Pls. Opp'n" refer to Plaintiffs' Opposition to Defendants 11/7/2008 Objections.

² Plaintiffs' Response to Defendants' 9/26/2008 Motion to Strike included thirty-nine pages of "attachments" containing individual response to Defendants' objections. Defendants, in order to avoid Plaintiffs gaining an unfair

which references newly drafted declarations not previously attached to Plaintiffs' Opposition to Defendants' Summary Judgment. (Pls. Opp'n, Attachment A.) If Plaintiffs' contention had any merit, Plaintiffs would not have needed an extra seventy-six pages to respond individually to each of Defendants' objections. Contrary to Plaintiffs' contention, the withdrawal of certain objections after Plaintiffs finally provided the required foundations simply underscores the merit of Defendants' remaining objections.

II. ONCE AGAIN, PLAINTIFFS FAIL TO AUTHENTICATE A MAJORITY OF THEIR EXHIBITS.³

Given the newly submitted declarations of Cueno and Minarovich, the sole remaining authenticity issue is the inadequacy of Katherine Forrest's 9/26/2008 Declaration ("Forrest Declaration"). Federal Rule of Evidence 901(b) sets forth several methods for identification, with the first being "*Testimony of witness with knowledge.*" FED. R. EVID. 901(b)(1). The burden of showing authenticity is on Plaintiffs, not Defendants. *D & N Prop. Mgmt. & Dev. Corp. v. The Copeland Cos.*, 56 Fed. App'x. 545, 546 (2d Cir. Jan. 28, 2003) (citing *United States v. Almonte*, 956 F.2d 27, 29–30 (2d Cir. 1992) (per curiam)). While Plaintiffs trumpet that authentication is not a particularly high hurdle; surprisingly, Plaintiffs still fail to meet it.

Plaintiffs offer no evidence that Forrest possesses the knowledge necessary to authenticate the remaining exhibits; instead, they simply conclude, "Ms. Forrest has sufficient

advantage, attached two charts in direct response to Plaintiffs' attachments. (*See* Defs.' Reply in Further Supp. of Its 9/26/2008 Mot. to Strike, Attachments A & B.) As Plaintiffs have again flaunted this Court's Rules with their Attachment A, Defendants respectfully request this Court strike Plaintiffs' Attachment A pursuant to Rule 2(D) of This Court's Individual Practices. As with their Reply in Support of the 9/26/2008 Motion to Strike, Defendants simply attach a chart in direct response to Plaintiffs' Attachment A to minimize, if possible, any prejudice. However, as Defendants' attachments are merely responsive to Plaintiffs' improper attachments, Defendants are not opposed to the Court striking both parties' "attachments."

³ Plaintiffs have once again attached last minute declarations to cure some of their authenticity deficiencies. Accordingly, Defendants withdraw their authenticity objections to Exhibits 329, 330, 371, 373, 374, and 375 (authenticated by the newly offered Declaration of Siobhain Minarovich) and Exhibits 340, 364, 365, 369, 370, 376, 377, 379, 380, 381, 382, 383, 384, 385, and 387 (authenticated by the newly offered declaration of Elizabeth Cueno).

knowledge.” (Pls. Opp’n at 5.) Plaintiffs’ bald conclusion is undercut by Forrest’s own Declaration. For example, referring to Exhibit 352, Katherine Forrest states, “at my direction and under my supervision [this exhibit] was printed on August 25, 2008.” (*See also* Ex. 352 attached to 9/26/2008 Forrest Decl. (stating that the exhibit was printed on August 25, 2008).) However, the first page of the exhibit shows “**August 26, 2008**” as the date for that webpage. Furthermore, the third page of the exhibit shows “**September 4, 2008**” as the date for that webpage. Thus, unless Plaintiffs’ counsel somehow had early access to this information, Forrest’s testimony is completely incorrect regarding the date of printing, further underscoring Forrest’s failure to properly supervise the printings of these exhibits. Accordingly, Forrest does not have the requisite knowledge to authenticate this or any other remaining exhibit, and Plaintiffs offer no evidence that they can properly authenticate these exhibits at trial.⁴

In apparent recognition of their failing argument on Forrest’s knowledge, Plaintiffs make the unsupported assertion that Defendants “waived” objections to Exhibits 362, 363, 365, and 366–68. The sole case cited by Plaintiffs for this proposition is readily distinguishable. In *Capobianco v. City of New York*, the court held that an opponent of evidence, who previously tendered the *same* evidence, waived authenticity objections to *that* evidence. 422 F.3d 47, 55 (2d Cir. 2005). This is hardly the case at hand. None of the web addresses offered as exhibits by Plaintiffs is offered by the Defendants. Accordingly, there has been no waiver.

Finally, Plaintiffs concede that Exhibits 345, 347, and 348 are from the “Internet Archive” website. (Pls. Opp’n at 7). Neither Forrest nor Cueno can “authenticate the search

⁴ Moreover, the cases cited by Plaintiffs require more than just “supervision.” *See Jarritos, Inc. v. Los Jarritos*, No. C 05-02380, 2007 WL 1302506, at *10 (N.D. Cal. May 2, 2007) (plaintiff’s counsel, by explaining that “he personally typed [the web address] into his Web browser, accessed Defendant’s website and printed the page[,] . . . has demonstrated that he has personal knowledge of the exhibit and is an affiant through whom the exhibit could be admitted into evidence”) (as quoted in Pls.’ Opp’n at 5). Notably, when Plaintiffs know who can properly authenticate a document, they do not hesitate to offer supplemental declarations, such as the declarations of Cueno and Minarovich. Thus, it is clear that for the remaining exhibits, Plaintiffs do not know who printed them; accordingly, Plaintiffs would not be able to offer a witness to authenticate these exhibits at trial.

results from *www.archive.org* [Internet Archive] because such evidence may only be authenticated by a knowledgeable employee of the website.” *Audi AG v. Shokan Coachworks, Inc.*, No. 1:07-CV-00173 (NPM/DRH), 2008 WL 4911730, at *23 (N.D.N.Y. November 13, 2008); *see also Chamilia, LLC v. Pandora Jewelry, LLC*, No. 04-CV-6017, 2007 WL 2781246, at *6 n. 4 (S.D.N.Y. Sept.24,2007) (finding such evidence inadmissible under Federal Rule of Evidence 901); *Novak v. Tucows, Inc.*, No. 06-CV-1909, 2007 WL 922306, at *5 (E.D.N.Y. March 26, 2007) (noting such evidence is not authenticated and inadmissible hearsay); *see also, e.g., St. Luke's Cataract & Laser Inst. v. Sanderson*, No. 8:06-CV-223, 2006 WL 1320242 (M.D. Fla. May 12, 2006) (finding same); *Telewizja Polska USA, Inc. v. Echostar Satellite Corp.*, No. 02-CV-3293, 2004 WL 2367740 (N.D. Ill. Oct.15, 2004) (finding same). Thus, Exhibits 345, 347, and 348 are inadmissible and must be stricken.

For the reasons discussed above, Exhibits 327, 333–37, 339, 341, 345–63, 366–68, 372, 378, and 383 are not properly authenticated, and the Court should strike this inadmissible evidence.⁵

III. ONCE AGAIN, PLAINTIFFS INUNDATE THE SUMMARY JUDGMENT RECORD WITH INADMISSIBLE HEARSAY.

A. PLAINTIFFS’ WORDPLAY FAILS TO MAKE THEIR HEARSAY-RIDDEN EXHIBITS ANY LESS OBJECTIONABLE.

As with their Response to Defendants’ 9/26/2008 Motion to Strike, Plaintiffs again contend that their exhibits are not offered for their truth but to “demonstrate” or “show” that certain statements are made. Once again, Plaintiffs’ use of their exhibits belies their contention. For example, Plaintiffs offer Exhibit 332 to prove that “Project Gutenberg texts are widely

⁵ While Plaintiffs discuss authentication by a document’s distinctive characteristics (Fed. R. Evid. 901(b)(4)), Plaintiffs fail to cite this Rule or even address this subject matter in their individual responses to Defendants’ Objections. (*See* Pls.’ Opp’n, Attachment A at all responses to Defs.’ authenticity objections.) As Plaintiffs fail to denote to which exhibits this rule would apply, Plaintiffs have not properly addressed this issue; thus, it should be deemed waived.

available through Project Gutenberg’s webpage, ‘Project Gutenberg Partners, Affiliates and Resources.’” (See Pls. 9/26/08 (LW) Resp. ¶ 61.) To prove this matter, Plaintiffs quote the website as stating “a grand total of over 100,000 titles are available . . .” Plaintiffs offer this statement for the truth of the matter asserted—that texts are available through the website. If Plaintiffs wanted “to show” that certain texts were available through the website, they could, and should, have included a declaration of someone with knowledge to prove this point. Instead, Plaintiffs chose to offer the above out-of-court statement for its truth, which renders it inadmissible hearsay.

As a further example of Plaintiffs’ wordplay, Plaintiffs claim they offer Exhibit 354 only to demonstrate “what was reported.” (See Pls. Opp’n, Attachment A at Ex. 354.) However, once again, Plaintiffs use of the exhibit contradicts this claim. In their Response to Defendants’ 56.1 Statement, Plaintiffs stated “the release mentioned in the statement took place in 2003” (See Pls. 9/26/08 (LW) Resp. ¶ 116.) Plaintiffs’ statement is not an attempt to “demonstrate” what was reported in Exhibit 354; rather, it is an affirmative, factual statement relying on the truth of Exhibit 354’s contents—that the release occurred in 2003. Plaintiffs’ reliance on this out-of-court statement to prove the alleged release date is classic, inadmissible hearsay.

In yet another example of Plaintiffs’ twisted interpretation of the hearsay rule, Plaintiffs contend they offer Exhibit 357 “to demonstrate that the Jun Group website itself states that each episode of ‘The Scene’ was downloaded over 250,000 times.” (See Attachment A, Pls.’ Individual Resp. to Ex. 357.) This statement is offered to refute Defendants’ 56.1 Statement regarding the amount of times “the Scene” was downloaded. There can be no doubt that Plaintiffs offer Exhibit 357 for its truth—the number of times certain episodes have been

downloaded. As with Exhibit 354, Plaintiffs' wordplay does not cure the hearsay problem. Accordingly, Exhibit 357 is inadmissible hearsay.

Much like the examples discussed above, Plaintiffs offer Exhibits 327, 329, 330, 333–37, 339, 340, 344–45, 347, 350, 355, 356, 359, 361, 366, 368, 369, 370, 378, and 382 for their truth, which renders them inadmissible hearsay.⁶

B. THE COURT SHOULD NOT CONSIDER PLAINTIFFS' INADMISSIBLE HEARSAY.

This Court has recognized the well settled principle that the non-moving party cannot rely on inadmissible hearsay in opposing a motion for summary judgment absent a showing that admissible evidence will be available at trial. *A-1 Pinerio v. Pension Benefit Guar. Corp.*, 318 F.Supp.2d 67, 109 (S.D.N.Y. 2003) (Lynch, J.) (citing *AD/SAT, Division of Skylight, Inc. v. Associated Press*, 181 F.3d 216, 236 (2d Cir.1999); see also *Burlington Coat Factory Warehouse Corp. v. Esprit De Corp.*, 769 F.2d 919, 924 (2d Cir.1985) (noting that a party cannot rely on inadmissible hearsay in opposing a motion for summary judgment). Contrary to Plaintiffs' contention, the proponent of the inadmissible hearsay must make a showing that such evidence would be admissible at trial. *Brink v. Union Carbide Corp.*, 210 F.3d 354, 2000 WL 426166, at *2 (2d Cir. Apr. 18, 2000). In fact, the court in *Celestino v. Club*, the case on which Plaintiffs' almost exclusively rely for their untenable proposition, recognized that "a party opposing a motion for summary judgment may not rely on inadmissible hearsay 'absent a showing that admissible evidence will be available at trial.'" No. 97 CV 3943, 2002 WL 484685, at *27 (E.D.N.Y. Feb. 19, 2002) (citing *Burlington Coat Factory*, 769 F.2d at 924)).

⁶ Plaintiffs baldly assert that their exhibits are nonhearsay because they are offered to rebut or "clarify" Defendants' 56.1 statements. Apparently, under Plaintiffs' warped interpretation, the hearsay rule should not apply to rebuttal evidence. Notably, Plaintiffs offer no support for this position, and Defendants have found no authority to support such an untenable position.

Thus, Plaintiffs' contention that the Court can consider *all* inadmissible evidence is wrong. As shown above, Plaintiffs had the burden to show that their exhibits either could be reduced to admissible form or that other admissible evidence could be offered to prove the same alleged facts; showings that Plaintiffs fail to make. Accordingly, Plaintiffs' inadmissible, hearsay ridden exhibits are not competent summary judgment evidence, and they should be stricken from the record.

IV. PRE-2003, PRE-GROKSTER, AND SETTLEMENT EVIDENCE IS INADMISSIBLE.

To avoid burdening the Court with a rehash of Defendants' argument on these topics, Defendants respectfully refer the Court to their 9/26/2008 Settlement, Pre-August 2003, and Pre-*Grokster* Objections and Defendants' 11/25/2008 Reply in Support Thereof, which are both incorporated herein by reference. For the reasons set forth in those papers, Exhibits 331, 391, 458, and 460 are inadmissible evidence of settlement offers. (*See* Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 1–5; Defs.' 11/25/2008 Reply in Support Thereof at 2–5, 7–10.) Exhibits 428, 429, 431, 441–44, 448, 453, and 456 are either Pre-2003 or Pre-*Grokster* documents, which are inadmissible.⁷ (*See* Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 5–7; Defs.' 11/25/2008 Reply in Support Thereof at 5–10.)

⁷ While Exhibit 448 is labeled a Pre-August 2003, it is clear from the objection that this is a Pre-*Grokster* objection. Plaintiffs are not prejudiced by this mislabeling as they only responded with a stock answer of "Plaintiffs respectfully refer the Court to Pls. 11/07/08 Pre-2003/*Grokster* Opp'n Br. at 3-11, which is herein incorporated by reference." As Plaintiffs' Opposition addresses both Pre-August 2003 and Pre-*Grokster* objections, there can be no prejudice.

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading was filed by means of the Court's ECF system on the 19th day of December, 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.

Katherine B. Forrest
Teena-Ann V. Sankoorikal
Cravath, Swaine & Moore, LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
(212) 474-3700 (fax)

Karyn A. Temple
Recording Industry Association of America
1025 F Street, NW, 10th Floor
Washington, DC 20004
(202) 775-0101
(202) 775-7253 (fax)

/s/
Charles S. Baker

Reply to Plaintiff’s Response to Defendants’ Evidentiary Objections to Plaintiffs’ 9/26/08 Exhibits

Ex.	Objection	Plaintiffs’ Response to Objection	Defendants’ Reply
327	<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.”). ⁸	As explained in Defendants’ opening motion and further discussed in Defendants’ Reply above, Forrest does not have the requisite personal knowledge to authenticate this exhibit. Notably, when Plaintiffs can offer someone with personal knowledge, they do, which further underscores the merits of Defendants’ authenticity objection. (<i>See, e.g., infra</i> Resp. to Exs. 329 (Plaintiffs offered a last minute declaration of Siobhain Minarovich to establish personal knowledge) & 340 (Plaintiffs offered a last minute declaration of Elizabeth Cueno to establish personal knowledge).)

⁸ 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	Defendants' Reply
	<i>Hearsay</i>	Plaintiff's 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, resident 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 Tact that centralized search is more efficient and performs better than distributed search using ultrapeers. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 7.)	Exhibit 327 is offered to prove that "centralized search is more efficient and performs better than distributed search using ultrapeers," (<i>See</i> Pls.' 9/26/08 (LW) Resp. ¶ 7), which is the truth of the matter asserted in Exhibit 327. (<i>See</i> Ex. 327 (stating the alleged benefits of centralized networks over P2P networks).) Thus, Exhibit 327 is inadmissible hearsay.
329	<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.").	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich.
	<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. ¶ 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	Exhibit 329 is offered for its truth—that the steps shown are <i>all</i> the steps necessary to download LimeWire. Plaintiffs clearly offer Exhibit 329 to prove that all the steps stated on the website are the only steps that a potential downloader must take. (<i>See</i> Pls.' 9/26/08 (LW) Resp. ¶ 28, 60, 154.) Thus, this is clearly inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		<p>LimeWire LLC web site would prompt the user with a similar dialog box before allowing the user to download the LimeWire client software.” (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.).</p>	
330	<i>Authenticity</i>	<p>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.</p>	<p>WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich .</p>
	<i>Hearsay</i>	<p>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.)</p>	<p>See <i>supra</i> Reply to Ex. 329. Exhibit 330 is offered for the same purpose as Exhibit 329; accordingly, Exhibit 330 is also inadmissible hearsay.</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
331	<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.	As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 1-5; Defs.' 11/25/2008 Reply in Support Thereof at 2-5, 7-10 (both of which are herein incorporated by reference).)
332	<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 <i>Cates</i> 7/17/08 Decl. ¶ 11.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
	<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.) Moreover, the fact that books can be downloaded for free from the Project Gutenberg webpage is confirmed by defendants themselves. (See <i>Cates</i> 7/17/08 Decl. ¶ 11.) Further, defendants' counsel relies upon the same webpage, www.gutenberg.org/wiki/Main_Page , to support the Cates Declaration. (<i>Id.</i>)	Plaintiffs offer Exhibit 332 to prove that "Project Gutenberg texts are widely available through Project Gutenberg's webpage. 'Project Gutenberg Partners, Affiliates and Resources.'" (See Pls. 9/26/08 (LW) Resp. ¶ 61.) To prove this matter, Plaintiffs quote the website as stating "a grand total of over 100,000 titles are available . . ." Clearly, Plaintiffs are offering the statement to prove the truth of the matter asserted—that the texts are available through the website. Had Plaintiffs wanted "to show" that the texts were available they could have attached declarations of a person with knowledge of that fact. Instead, they chose to offer a statement about titles being available for its truth; thus, it is inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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>See supra</i> Reply to Ex. 327.
	<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". (Def. 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.)	Plaintiffs' explanation is a sham. Plaintiffs' response to Defendants' statement of facts mentions nothing about advertising of the functionality; rather, Plaintiffs offer Exhibit 333 to prove "Apple's iMovie contains built in sharing functionality . . ." (<i>See</i> Pls.' 9/26/08 (LW) Resp. ¶ 71.) Plaintiffs concede that the exhibit states that Apple iMovie contains "built in sharing functionality." Clearly this exhibit is offered for the truth of that statement; accordingly, it is inadmissible hearsay.
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>See supra</i> Reply to Ex. 327.
	<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". (Def. 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.)	The matter asserted here is that the author claims Kahle made certain statements. Plaintiffs offer Exhibit 334 to prove the truth of the author's assertions that Kahle made certain statements, which is akin to saying, "he said, that Kahle said." Offering an author's alleged quotes of another declarant creates a multitude of hearsay issues. Accordingly, this exhibit is inadmissible hearsay.
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>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.)	<i>See supra</i> Reply to Ex. 334. Plaintiffs are again offering an assertion by the author of the article. This is classic double hearsay, which makes Exhibit 335 inadmissible.
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>See supra</i> Reply to Ex. 327.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 336 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." (Def. 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). (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶76; <i>supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 334. Again, Plaintiffs offer an author's quotes of a third-party declarant. The author's quote is clearly hearsay. As explained for Exhibits 334 and 335, the alleged quote by the third-party declarant is also hearsay as it is an out-of-court statement for which the author claims to be true. As with Exhibits 334 and 335, this is clearly inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
337	<i>Authenticity</i>	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. (<i>See supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 327.
	<i>Hearsay</i>	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). (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 130; <i>supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 334. Exhibit 337 is a press release that contains quotes by several declarants. Plaintiffs offer one of the quotes contained in Exhibit 337 to prove its truth—that Lindows changed its name. This is the same hearsay problem present in Exhibits 334–36. Accordingly, Exhibit 337 is inadmissible.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
338	<i>Hearsay</i>	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. (Def's. 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). (<i>See</i> Pls. 9/26/08 (LW) Resp. 96; <i>supra</i> n.1.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
339	<i>Authenticity</i>	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. (<i>See 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". <i>See</i> 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). ⁹	<i>See supra</i> Reply to Ex. 327. Moreover, Plaintiffs fail to show that the document contained herein is a self-authenticating government document, such as an FTC or FCC report. As Plaintiffs fail to meet their burden, this exhibit is inadmissible.

⁹ *See* Pls. 12/05/08 Mot. to Strike/Exclude Opp'n Br. at 7.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.)	Plaintiffs offer Exhibit 339 to prove the terms and conditions for using the e-books on the website. (<i>See</i> Pls.' 9/26/08 (LW) Resp. ¶ 96.) As Exhibit 339 lays out the terms and conditions and as Plaintiffs offer the exhibit to prove that these are in fact the terms and conditions, Exhibit 339 is clearly offered for the truth of its contents. Thus, it is inadmissible hearsay.
340	<i>Authenticity</i>	Ex. 340 (which is cited to in Pls. 9/26/08 (LW) Resp. 1f 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.").	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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).	Exhibit 340 is offered for the truth of its contents—that certain Mark Twain books are in fact available for download from Project Gutenberg. Once again Plaintiffs try to remove the exhibit from the purview of hearsay by claiming it is only offered "to show that several Mark Twain books are freely available." However, that is exactly what the out-of-court statements in Exhibit 340 assert. Thus, Exhibit 340 is offered for the truth of the matter asserted, which makes it inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
341	<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>See supra</i> Reply to Ex. 327.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 341 in response to defendants' citation to the Cates declaration. (Defs. 7/18108 SoF ¶ 96 (citing Cates 7117/08 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
342 & 343	<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 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>)	Exhibits WITHDRAWN by Plaintiffs.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
344	<i>Hearsay</i>	<p>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. (Def. 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.)</p>	<p>First, Defendants are not objecting to their own evidence, which was the Declaration of Susan Cates. Defendants object to Plaintiffs' printouts of a CD submitted with that Declaration. Second, the printouts are clearly offered for the truth of their contents—the run length of <i>Garden III</i> and <i>Gasaholic</i>. Plaintiffs clearly offer Exhibit 344 for its truth, which makes it inadmissible hearsay.</p>
345	<i>Authenticity</i>	<p>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.)</p>	<p>Printouts from the Internet Archive must be authenticated by employees of that website. Neither Forrest nor Cuneo qualify; thus, the exhibit is unauthenticated.</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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. (See 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.)	Exhibit 345 is offered to prove that the concert took place on March 5, 2005 as opposed to March 3, 2005. Plaintiffs are clearly offering this exhibit for its truth—the date of the concert. Exhibit 345 is further offered to prove the runtimes for <i>Gasaholic</i> and <i>Garden III</i> . Clearly, Exhibit 345 is offered for the truth of its contents; accordingly, it is inadmissible.
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. (See <i>supra</i> n.1.)	See <i>supra</i> Reply to Ex. 327.
	<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 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). (See Pls. 9/26/08 (LW) Resp. ¶ 103; <i>supra</i> n.1.) Moreover, Ex. 346 shows that the article cited by defendants (See Baker 7/17/08 Decl., Ex. 6) in support of Defs. 7/18/08 SoF ¶ 103 does <i>not</i> support defendants' statement. (See Pls. 9/26/08 (LW) Resp. ¶ 103.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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>See supra</i> Reply to Ex. 327.
	<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.)	Exhibit 347 is offered for the truth of its contents. For example, Plaintiffs offer the Hank Williams webpage to prove that certain songs from the August 16, 2005 Metro concert are available for download. This is the statement made on the website, which Plaintiffs now offer for its truth. Thus, it is classic hearsay.
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>See supra</i> Reply to Ex. 327. While Defendants do not dispute that "www.skype.com" exists, the mere existence of the website does not authenticate Exhibit 348. The Lafferty Declaration does not reference the web address offered by Plaintiffs—www.skype.com/getconnected/. Thus, neither the Lafferty Declaration nor any declaration offered by Plaintiffs provides the testimony of someone with knowledge that Exhibit 348 is what it purports to be—a printout of www.skype.com/getconnected/. Accordingly, this document is not properly authenticated.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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>See supra</i> Reply to Ex. 327. While Defendants do not dispute that "www.gridnetworks.com" exists, the mere existence of the website does not authenticate Exhibit 349. The Lafferty Declaration does not reference the web address offered by Plaintiffs—www.gridnetworks.com/download. Thus, Neither the Lafferty Declaration nor any declaration offered by Plaintiffs provides the testimony of someone with knowledge that Exhibit 349 is what it purports to be—a printout of www.gridnetworks.com/download. Accordingly, this document is not properly authenticated.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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>See supra</i> Reply to Ex. 327. While Defendants do not dispute that "www.joost.com" exists, the mere existence of the website does not authenticate Exhibit 350. The Lafferty Declaration does not reference the web address offered by Plaintiffs—www.joost.com/support/faq/Content-related-questions.html. Thus, neither the Lafferty Declaration nor any declaration offered by Plaintiffs provides the testimony of someone with knowledge that Exhibit 350 is what it purports to be—a printout of www.joost.com/support/faq/Content-related-questions.html. Accordingly, this document is not properly authenticated.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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). (See Pls. 9/26/08 (LW) Resp. ¶ 112; <i>supra</i> n.1.)	In Plaintiffs' 9/26/08 (LW) Response, Plaintiffs state that "Joost is not a file-sharing application like LimeWire." (Pls.' 9/26/08 (LW) Resp. ¶ 112.) Plaintiffs offer Exhibit 350 for the truth of its contents—that Joost delivers high-quality TV content and is not a file-sharing application. As Exhibit 350 contains statements regarding its content and Plaintiffs offer Exhibit 350 for the truth of those statements, Exhibit 350 is clearly inadmissible hearsay.
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. (See <i>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>See supra</i> Reply to Ex. 327. While Defendants do not dispute that "www.skype.com" exists, the mere existence of the website does not authenticate Exhibit 351. The Lafferty Declaration does not reference the web address offered by Plaintiffs—www.joost.com/download. Thus, neither the Lafferty Declaration nor any declaration offered by Plaintiffs provides the testimony of someone with knowledge that Exhibit 351 is what it purports to be—a printout of www.joost.com/download. Accordingly, this document is not properly authenticated.
	<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. (See Pls. 9/26/08 (LW) Resp. ¶ 112; <i>supra</i> n. 1.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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 Baker</i> 7/17/08 Decl. ¶ 11, Ex. 9.) Accordingly, defendants' objection is baseless and disingenuous.	<i>See supra</i> Reply to Ex. 327. For Exhibit 352, Katherine Forrest, Plaintiffs' counsel, clearly states that "at my direction and under my supervision [this exhibit] was printed on August 25, 2008." (<i>See also</i> Ex. 352 (clearly stating that the exhibit was printed on August 25, 2008).) However, the first page of the exhibit shows "August 26, 2008" as the date. Furthermore, the third page of the exhibit shows "September 4, 2008" as the date. Thus, unless Plaintiffs' counsel had early access to this information, Forrest's testimony is completely false regarding the date of printing, which further underscores that Forrest does not have the requisite knowledge to authenticate this exhibit.
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
353	Authenticity	Ex. 353 (which is cited to in Pls. 9/26/08 (LW) Resp. ¶ 3) 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>See supra</i> Reply to Ex. 327. While Defendants do not dispute that “www.pando.com” exists, the mere existence of the website does not authenticate Exhibit 353. The Lafferty Declaration does not reference the web addresses offered by Plaintiffs—www.pando.com/what or www.pando.com/install-pando. Thus, neither the Lafferty Declaration nor any declaration offered by Plaintiffs provides the testimony of someone with knowledge that Exhibit 353 is what it purports to be—printouts of www.pando.com/what or www.pando.com/install-pando. Accordingly, this document is not properly authenticated.
	Hearsay	Like Ex. 352, Ex. 353 was submitted in response to defendants' statement describing Pando Networks' software. (Defs. 7/18/08 SoF ¶ 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. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 113; <i>supra</i> n.1.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
354	Authenticity	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. (<i>See supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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 Hi Watts 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.)	Plaintiffs use of Exhibit 354 in its 9/26/08 (LW) Response belies its current argument. Plaintiffs stated "the release mentioned in the statement took place in 2003" (See Pls.' 9/26/08 (LW) Resp. ¶ 116.) Plaintiffs are not attempting to "demonstrate" what was reported but made an affirmative, factual statement relying on the truth of Exhibit 354's contents—that the release occurred in 2003. Plaintiffs' reliance on an out-of-court statement for its truth is classic, inadmissible hearsay.
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.)	See <i>supra</i> Reply to Ex. 327.
	<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 <i>before</i> LimeWire was even launched."	Plaintiffs again improperly attempt to amend its response statement, which further underscores that Exhibit 355 is inadmissible hearsay. Exhibit 355 is clearly offered to prove the truth of its contents—the length of time that Lake Trout has existed. Moreover, Plaintiffs attempt to amend its response statement does not cure the hearsay problem. It is clear the purpose for which Plaintiffs offer Exhibit 355, and creative wordplay cannot cure that deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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. (<i>See supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 327.
	<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). (<i>See</i> 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."	<i>See supra</i> Reply to Ex. 355. Plaintiffs clearly offer Exhibit 356 to prove when "Starting Over" was cancelled. Thus, the exhibit is inadmissible hearsay.
357	<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 Sol ¶ 119 (quoting Lafferty 7/16/08 Decl. ¶ 21).) Further, defendants' counsel authenticates a printout from the Jun Group website in his own declaration. (<i>See</i> Baker 7/17/08 Decl. ¶ 13, Ex. 11.) Accordingly, defendants' objection is baseless and disingenuous.	<i>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<i>Hearsay</i>	Plaintiffs submitted Ex. 357 in response to defendants' statement regarding the P2P distribution of "The Scene" by Jun Group. (Defs. 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.)	Exhibit 357 is offered to prove its truth—the number of times certain episodes have been downloaded. As with Exhibit 355, Plaintiffs wordplay does not cure the hearsay problem. Plaintiffs accuse Defendants' statement of being inaccurate, and then offer Exhibit 357 to prove that inaccuracy. (<i>See</i> Pls. 9/26/08 (LW) Resp. 119.) Accordingly, Exhibit 357 is inadmissible hearsay.
358	<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>See supra</i> Reply to Ex. 327.
	<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). (Defs. 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
359	<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>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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). (Defs. 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.)	In Plaintiffs' 9/26/08 (LW) Response, Plaintiffs offer Exhibit 358 for two propositions: (1) it was last updated on August 6, 2008 and (2) it does not mention TrustyFiles or RazorPop. When a website was last updated is clearly an out-of-court statement offered for its truth. Thus, Exhibit 359 is offered for its truth, which makes it inadmissible hearsay.
360	<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>See supra</i> Reply to Ex. 327.
	<i>Hearsay</i>	Plaintiffs submitted Ex. 360 in response to defendants' statements regarding Raketu Communications' use of P2P technology. (Defs. 7/18/08 SoF ¶¶ 128-29 (quoting Parker 7/09/08 Decl. ¶ 2-3).) Ex. 360 is 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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 Sol, ¶ 130.) Ex. 361 is not offered [or 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). (See 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."	Plaintiffs offer Exhibit 361 to prove that Lindows "launched its own non-P2P software delivery system." (See Pls.' 9/26/08 (LW) Resp. 130.) This is the matter asserted in Exhibit 361, and Plaintiffs clearly offer it for its truth. Plaintiffs now attempt to change their reasoning for offering Exhibit 361, which further underscores that Exhibit 361 as originally offered is inadmissible hearsay.
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. (See <i>supra</i> n.1.) Defendants' counsel <i>himself</i> authenticates a printout from the winzip.com website in his declaration. (See Baker 7/17/08 Decl. ¶ 14, Ex. 12.) Accordingly, defendants' authenticity objection is baseless and disingenuous.	See <i>supra</i> Reply to Ex. 327. Again, the offering of a particular web address does not authenticate another web address. The Baker Declaration refers to www.winzip.com/elicense.htm not http://www.winzip.com/prod_down.htm—the web address purportedly printed out in Exhibit 362.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.comlicense.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 obits 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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 himself 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>See supra</i> Reply to Ex. 327. Conveniently, Plaintiffs fail to mention that Exhibit 363 purportedly contains printouts from http://www.download.com/OpenOffice-org-Windows-/3000-2064_4-10263109.html and http://www.filehippo.com/download_openoffice/ . Neither of these web addresses is mentioned in the Baker Declaration. Furthermore, the exhibit purportedly contains printouts from http://downlaod.openoffice.org/index.html , which the Baker Declaration does not mention.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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: 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. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 132; <i>supra</i> n. 1.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
364	<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. (<i>See supra</i> n.1.) Ex. 364 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 5.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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.7118108 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. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶¶ 140-41; <i>supra</i> n.1.) This is further confirmed by the Cuneo Declaration. (<i>See</i> Cuneo 12/05/08 Decl. ¶ 5.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
365	<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. (<i>See 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. (<i>See Baker</i> 7/17/08 Decl. ¶ 24, Ex. 22.) Accordingly, defendants' objection is baseless and disingenuous.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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. (<i>See Pls.</i> 9/26/08 (LW) Resp. ¶ 143; <i>supra</i> n.1.) This is further confirmed by the Cuneo Declaration. (<i>See Cuneo</i> 12/05/08 Decl. ¶ 6.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
366 367 368	<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. (<i>See supra</i> n. 1.) Defendants' counsel <i>himself</i> authenticates a printout from the outragedmoderates.org website in his declaration. (<i>See Baker</i> 7/17/08 Decl. 26, Ex. 24.) Accordingly, defendants' objection is baseless and disingenuous.	<i>See supra</i> Reply to Ex. 327. The web address authenticated by the Baker Declaration is www.outragedmoderates.org/HowtoUseP2PNetworks.html. Exhibits 366 and 367 are alleged printouts of www.outragedmoderates.org/aboutus.html and outragedmoderates.org/GovernmentDocumentLibrary.html, respectively. Thus, Baker's Declaration does not and cannot authenticate Plaintiffs' exhibits.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<i>Hearsay</i>	Plaintiffs submitted Exs. 366-368 in response to defendants' statement that "[n]umerous government documents are accessible over P2P networks. Printout from the Internet can be found at the following site: http://www.outragedmoderates.org/liowtoLJsel'2PNetworks.html ." (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 (1) outragedmoderates.org purports to be a non-commercial website; (2) outragedmoderates.org website links to government documents Without requiring the purchase or installation of LimeWire; and (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.)	Exhibit 366 is offered for its truth—that the website raises money by accepting donations. Plaintiffs offer Exhibit 366 to prove that the website in “noncommercial.” (See Pls.’ 9/26/08 (LW) Resp. ¶ 146.) Accordingly, Exhibit 366 is inadmissible hearsay. WITHDRAWN as to Exhibit 367. Exhibit 368 is offered for its truth—that LimeWire is not as efficient for the purpose stated on the website. Plaintiffs use this fact to refute Defendants’ 56.1 Statement, so clearly it is offered for its truth. Thus, Exhibit 368 is inadmissible hearsay.
369	<i>Authenticity</i>	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 herself relies. (See Cates 7/17/08 Decl. ¶ 6.)	WITHDRAWN. Plaintiffs’ response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<i>Hearsay</i>	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	While attempting to refute Defendants’ Rule 56.1 Statement, Plaintiffs cite to Exhibit 369 to prove that the distribution of the album is exclusive to <i>nin.com</i> and that there is a “share alike license.” (See Pls.’ 9/26/08 (LW) Resp. ¶ 155.) Clearly, Plaintiffs offer these statements from the website for their truth. Accordingly, Exhibit 369 is inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		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.)	
370	<i>Authenticity</i>	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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<i>Hearsay</i>	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 "[for any reuse or distribution, you must make clear to others the license terms of this work. The best 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.)	Like Exhibit 369, Exhibit 370 is offered for the truth of its contents. Plaintiffs attempt to use this exhibit to refute Defendants' Rule 56.1 Statement, more specifically, to refute that the Nine-Inch-Nails album was free to distribute. This is clear from direct website quotes offered by the Plaintiffs. Accordingly, this is inadmissible hearsay.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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. (<i>See supra</i> n. 1.) Ex. 371 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 4.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich.
	<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. (<i>See</i> 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. (<i>See</i> Minarovich 12/05/08 Decl. ¶ 4.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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. (<i>See supra</i> n. 1.)	<i>See supra</i> Reply to Ex. 327.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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.)	Plaintiffs attempt to use Exhibit 372 to "dispute the assertion that <i>Ride Me High</i> is 'freely available'" To support their allegation, Plaintiffs offer a direct quote from the website regarding download authorization. Clearly, this statement is offered for its truth, that the band restricted certain types of downloads. Thus, Exhibit 372 is inadmissible hearsay.
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 nubs.net and was able to download "Ride Me High". (See Cates 7/17/08 Decl. ¶ 8.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich.
	<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 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)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		<p>Resp. ¶ 156; <i>supra</i> n.1.) Moreover, and as noted, defendants themselves 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.)</p>	
374	<i>Authenticity</i>	<p>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.)</p>	<p>WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich.</p>
	<i>Hearsay</i>	<p>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 themselves 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.)</p>	<p>WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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. (<i>See supra</i> n. 1.) Ex. 375 is further authenticated by the Minarovich 12/05/08 Decl. ¶ 7.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Siobhain Minarovich.
	<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. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 157; <i>supra</i> n.1.) Moreover, this is confirmed by Minarovich. (<i>See</i> Minarovich 12/05/08 Decl. ¶ 7.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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. (<i>See supra</i> n.1.) Ex. 376 is further authenticated by the Cuneo 12/05/08 Decl.11 8. Moreover, defendants' own declarant, Susan Cates, accessed the website jamendo.com and was able to download songs, including "Breathe", "Listen", and "Struttin". (<i>See</i> Cates 7/17/08 Decl. ¶ 9.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		download on the jamendo.com website Without having to purchase or install LimeWire. Fed. R. Evid. 801. (<i>See</i> Pls. 9/26/08 (LW) Resp. 158; <i>supra</i> n.1.) Moreover, defendants themselves confirmed that “Breathe”, “Listen” and “Struttin” are available for download on jamendo.com. (<i>See</i> Cates 7/17/08 Decl. ¶ 9.) This is also confirmed by the Cuneo Declaration. (<i>See</i> Cuneo 12/05/08 Decl. ¶ 8.)	
377	<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. (<i>See supra</i> n.1.) Ex. 377 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 9.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶ 158; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. (<i>See</i> Cuneo 12/05/08 Decl. ¶ 9.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
378	<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. (<i>See 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”. (<i>See</i> Cates 7/17/08 Decl. ¶ 10.)	<i>See supra</i> Reply to Ex. 327. Cates never states that she accessed the web addresses listed in Exhibit 378; thus, her declaration cannot authenticate Exhibit 378.
	<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 Santo old, Julian Casablanca, and NERD from	Plaintiffs offer Exhibit 378 to refute Defendants' Rule 56.1 Statement that “My Drive Thru” is freely available, without restriction. (<i>See</i> Pls. 9/26/08 (LW) Resp. ¶159.) To prove this, Plaintiffs 'offer a statement from the website regarding distribution of the song. Clearly,

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		<p>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 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.)</p>	<p>Plaintiffs offer this statement for its truth, which makes Exhibit 378 inadmissible hearsay.</p>
<p>379 380 382 381</p>	<p><i>Authenticity</i></p>	<p>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.</p>	<p>WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<i>Hearsay</i>	<p>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.)</p>	<p>WITHDRAWN AS TO EXHIBITS 379, 380, and 381. Plaintiffs' response cures their previous evidentiary deficiency. However, Exhibit 382 is offered for the truth of its contents—that the work is copyrights. Unlike Plaintiffs' other assertions of copyright, Plaintiffs attempt to prove that the work is copyrighted by using a statement on the Project Gutenberg website not by showing the actual copyright seal or notice from the work. Thus, the truth of the statement is at issue, which makes Exhibit 382 hearsay.</p>
383	<i>Authenticity</i>	<p>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.</p>	<p>Printouts from the Internet Archive must be authenticated by employees of that cite. Neither Forrest nor Cueno qualify; thus, the exhibit is unauthenticated.</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<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 content, 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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.	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cuneo.
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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 www.gpoaccess.gov/constitution/index.html 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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.
	<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.)	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.
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	WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		<p><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). (See Pls. 9/26/08 (LW) Resp. ¶ 168; <i>supra</i> n.1.)</p>	
387	<i>Authenticity</i>	<p>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. (See <i>supra</i> n. 1.) Ex. 387 is further authenticated by the Cuneo 12/05/08 Decl. ¶ 17.</p>	<p>WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency by providing the declaration of a person with knowledge, Elizabeth Cueno.</p>
	<i>Hearsay</i>	<p>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 7117108 Decl. ¶ 7) are widely available on the Internet, without purchasing or installing the Lime Wire software. Fed. R. Evid. 801. (See Pls. 9/26/08 (LW) Resp. ¶ 168; <i>supra</i> n.1.) This is also confirmed by the Cuneo Declaration. (See Cuneo 12/05/08 Decl. ¶ 17.)</p>	<p>WITHDRAWN. Plaintiffs' response cures their previous evidentiary deficiency.</p>
391	<i>Inadmissible settlement offer, Fed. R. Evid. 408</i>	<p>Ex. 391 (which is cited to in Pls. 9/26/08 (LW) Add'l SOF ¶ 31) consists settlement of two documents: (1) the document "Plan for Lime Wire/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-</p>	<p>As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre-<i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 1–5; Defs.' 11/25/2008 Reply in Support Thereof at 2–5, 7–10 (both of which are herein incorporated by reference).)</p>

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
		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.	As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 5-7; Defs.' 11/25/2008 Reply in Support Thereof at 5-10 (both of which are 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.	While labeled a Pre-August 2003, it is clear from the objection that this is a Pre- <i>Grokster</i> objection. Plaintiffs are not prejudiced by this mislabeling as they only responded with a stock answer of "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." As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 5-7; Defs.' 11/25/2008 Reply in Support Thereof at 5-10 (both of which are 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.	As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 5-7; Defs.' 11/25/2008 Reply in Support Thereof at 5-10 (both of which are herein incorporated by reference).)

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
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.	As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement and Pre-August 2003 Objections at 1-5; Defs.' 11/25/2008 Reply in Support Thereof at 2-5, 7-10 (both of which are herein incorporated by reference).)
459	<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.	Exhibit WITHDRAWN by Plaintiff.
460	<i>Discussion of inadmissible settlement offer, Fed. R.</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.	As fully explained in Defendants' 9/26/2008 Settlement, Pre-August 2003, and Pre- <i>Grokster</i> Objections and Defendants' 11/25/2008 Reply in Support Thereof, Plaintiffs are wrong. (See Defs.' 9/26/2008 Settlement

Ex.	Objection	Plaintiffs' Response to Objection	Defendants' Reply
	<i>Evid. 408</i>		and Pre-August 2003 Objections at 1–5; Defs.' 11/25/2008 Reply in Support Thereof at 2–5, 7–10 (both of which are herein incorporated by reference.)