

EXHIBIT 1

PLAINTIFFS’ RESPONSE TO DEFENDANTS’ “REVISED” INJUNCTION

The first two columns set out Defendants’ description of Plaintiffs’ Proposed Permanent Injunction terms and their response from Exhibit 1 to the Declaration of Tonia Ouellette Klausner submitted with their opposition. The third column includes Plaintiffs’ response to Defendants’ revision.

DEFENDANTS’ DESCRIPTION OF PLAINTIFFS’ PROPOSAL	DEFENDANTS’ RESPONSE	PLAINTIFFS’ RESPONSE
<p>II.A(a) Definition of “Lime Wire”</p> <p>“Lime Wire” means Lime Group LLC, Lime Wire LLC, and Mark Gorton, and each of them, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations, parents, subsidiaries, affiliates, successors, assigns, and all those persons in active concert or participation with each or any of them who receive actual notice of this Permanent Injunction.</p>	<p>Definition of “Lime Wire” should be limited to Defendants and entities identified in Federal Rule of Civil Procedure 65(d)(2).</p> <p>“Lime Wire” means Defendants and Defendants’ officers, agents, servants, employees, and attorneys; and other persons who are in active concert or participation with any Defendant.</p>	<p>Plaintiffs’ definition is consistent with the requirements of Federal Rule of Civil Procedure 65(d)(2). In fact, Plaintiffs’ proposed language is <i>more</i> specific than Lime Wire’s, because it details those persons who are “in active concert or participation with any Defendant.” Plaintiffs’ definition further requires actual notice to the persons affected. By specifying who is affected and requiring notice, Plaintiffs’ definition is consistent with the specificity requirements of Rule 65. Defendants’ vague “revision,” which would only lead to disputes about who is or is not covered, is not faithful to the Rule.</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.A(f) Definition of “Copyrighted Works”</p> <p>“Copyrighted Works” means all copyrighted works (or portions thereof), whether now in existence or later created, in which any Plaintiff (including its parents, subsidiaries, affiliates, or distributed labels) owns or controls an exclusive right under Section 106 of the United States Copyright Act (17 U.S.C. § 106), or under state or common law.</p>	<p>“Copyrighted Works” should be limited to the thirty works.</p> <p>“Copyrighted Works” means the copyrighted works (or portions thereof) whose infringement was adjudicated in the Court’s May 11, 2010 Order (amended May 25, 2010).</p> <p>If the Court were at some point to require additional works to be encompassed within the scope of the injunction (such as after trial of any additional works), Plaintiffs would be required to identify all such works, as least by title and artist, and to prove that they themselves own the works before the works could properly fall within the scope of the injunction.</p>	<p>Although a limited subset of 30 works was chosen for purposes of establishing ownership and direct infringement at summary judgment, the basic liability issue was whether Lime Wire intended to induce infringement of <i>all</i> of Plaintiffs’ works. The Court has adjudicated that Lime Wire intended to do just that, and that Lime Wire’s plan succeeded on a massive scale. Order at 27-29. The Court has the full power to enter a permanent injunction as to all of Plaintiffs’ works given that this was the basis for the Court’s Order and that a significant threat of widespread infringement remains.</p> <p>As explained in Plaintiffs’ Opening Brief at 18-21 and again in the Reply, the onerous notice requirement Defendants argue for should not be imposed here, nor has it been required in recent massive infringement cases based on secondary liability. <i>See</i> Klaus Decl., Ex. 1 at 3 (<i>Usenet</i> definition of Copyrighted Works); <i>Id.</i>, Ex. 2 at 15-16 (<i>Fung</i> injunction’s limited requirements for notice). Notice is imposed where knowledge is based on imputation. But when <i>intent</i> to induce infringement has been proven—as it has here—notice requirements are not required and impose an unnecessary burden on the victim of massive infringement to solve a problem of the Defendants’ creation.</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.A.(b) Definition of “Lime Wire System and Software” “LimeWire System and Software” means:</p> <p>(i) Any and all versions of the software program that Lime Wire has distributed under the names “LimeWire,” “LimeWire BASIC,” “LimeWire Extended PRO” or “LimeWire PRO” or any other program of comparable functionality regardless of the trade name under which Lime Wire has distributed;</p> <p>(i) The computer hardware and servers operated by or on behalf of Lime Wire;</p> <p>(ii) The limewire.com and limewire.org websites operated by or on behalf of Lime Wire; and</p> <p>(iii) And any other technological system operated by or on behalf of Lime Wire, and any conduct by or on behalf of Lime Wire enabling users to connect to and use computer networks to reproduce and distribute unauthorized copies of digital files.</p>	<p>Definition should be revised to:</p> <p>“LimeWire System and Software” means any and all versions of the software program that Lime Wire has distributed under the names “LimeWire,” “LimeWire BASIC,” “LimeWire Extended PRO” or “LimeWire PRO” or any other program of comparable functionality distributed by Lime Wire regardless of the trade name. Notwithstanding the foregoing or any other provisions herein, Lime Wire is not enjoined or otherwise restrained in any manner from continuing to distribute LimeWire Software with a hash filter turned on, until such time as Lime Wire has developed and is prepared to distribute a new version of the LimeWire Software implementing acoustic filtering.</p>	<p>Lime Wire’s revised definition would permit LimeWire to continue to distribute software with the same ineffective hash-based filter (developed in 2006) that the Court cited as evidence of Lime Wire’s intent to induce infringement. Order at 38; Pavley Decl. ¶ 5. Lime Wire itself does not trust this filter to protect its own content from the Lime Wire Store. Lime Wire says that the new version sets the filtering default to “on,” but filtering still remains optional with the user. And the filtering that will reach a user with the switch turned “on” is essentially meaningless, as Lime Wire has designed the filter to capture only the 30 works as to which Plaintiffs proved ownership and infringement on summary judgment. The filter ignores the 3,000-plus works identified in the complaint, the more than 3,000 others that Plaintiffs identified in January 2008, and every work Plaintiffs have released since. Moreover, the filter is ineffective—Plaintiffs successfully downloaded 24 of the 30 recordings the filter supposedly protects. Song Reply Decl. ¶¶ 8-9.</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.A.(e) Definition of “Comparable System”; “Comparable Software”; “Comparable System and Software”</p> <p>(i) any system or software that is substantially comparable to the LimeWire System and Software, including but not limited to FrostWire, Acquisition, BearFlix, Cabos, Gnucleus/GnucDNA, Gtk-gnutella, KCeasy, MP3 Rocket, Phex, Poisoned, Shareaza, Symella, BitTorrent, uTorrent, Vuze/Azureus, BitComet, Transmission, Deluge, BitLord, KTorrent, eDonkey, eMule, aMule, MLDonkey, xMule, Ares Galaxy, MP2P, Manolito, isoHunt, or Piratebay, as those systems or software existed before or as of the date of this Permanent Injunction; and/or</p> <p>(ii) website, server, system, or software that has as a material purpose or a material use the unauthorized reproduction, distribution, communication to the public (whether by transmitting or making available), public performance, or other exploitation of any copyrighted files or works.</p>	<p>This provision should be deleted from the proposed injunction, as it would necessarily encompass systems and software beyond Defendants' control and is vague and overbroad.</p>	<p>Plaintiffs' proposed injunction does not require Lime Wire to “control” Comparable Systems and/or Software. It requires Lime Wire to implement a filter that would prevent a LimeWire user from uploading or downloading content to and from Comparable Systems and/or Software. It also prohibits Lime Wire from enabling, facilitating or assisting any LimeWire user from using Comparable Systems and/or Software to infringe Plaintiffs' works, and from displaying Lime Wire source code through any Comparable System and Software. <i>See</i> Sections II.A.(j); II.B.2.(b)-(d).</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.A(g) Definition of “Users”</p> <p>“Users” means any person or entity who or which uses the LimeWire System and Software, or any Comparable System and Software.</p>	<p>Definition should be revised to:</p> <p>“Users” means any person or entity who or which uses the LimeWire System and Software.</p>	<p><i>See Response, supra, regarding Section II.A.(e)(i).</i></p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.A.(j) Definition of “Copyright Filter”</p> <p>“Copyright Filter” means a robust and secure means to exhaustively prevent Users of the LimeWire System and Software from using the LimeWire System and Software, and Users of any Comparable System and Software from using such Comparable System and Software, as applicable, to copy, reproduce, download, distribute, communicate to the public (whether by transmitting or making available), upload, link to, transmit, publicly perform, or otherwise exploit any unauthorized or unlicensed audio or audio- visual Copyrighted Works. Any such Copyright Filter must include the ability to filter both by text (i.e. artist and song title) and by the use of Fingerprinting Technology, as defined below.</p>	<p>The definition of “Copyright Filter” should not include any requirement that it can “exhaustively prevent” infringing conduct. That requirement was rejected in <i>Grokster</i> as infeasible.</p> <p>As a practical matter, the filter can only affect upload and download, and should therefore be limited to those functions.</p> <p>“Copyright Filter” means a robust and secure means to reasonably filter from the files Users may download using the LimeWire System and Software any unauthorized or unlicensed Copyrighted Works.</p>	<p>The implementation of the “Copyright Filter” in the injunction is subject to the condition that Lime Wire use only “technologically possible means to immediately cease and desist the current infringement.” Lime Wire’s feasibility concerns are covered by the injunction. <i>See</i> Section II.B.3.</p>
<p>II.B.2 Enjoined Conduct</p> <p>Plaintiffs’ proposed injunction would enjoin LimeWire from “infringing in any manner any copyright in any and all Copyrighted Works” including:</p> <p>(a) copying, reproducing, downloading, distributing (which hereinafter shall include</p>	<p>Provision (a) relates solely to direct infringement by Defendants. Defendants have not been accused, much less found liable for, direct copyright infringement. The provision should be struck.</p> <p>Provisions (b), (b)(i) and (b)(ii) should be revised to:</p>	<p>Provisions (b), (b)(i) and (b)(ii) simply state the obvious fact that Lime Wire itself cannot directly infringe Plaintiffs’ copyrights through copying, reproducing, distributing, and publicly performing them. It is troubling, to say the least, that Lime Wire would even seek permission to engage in such conduct.</p>

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<p>without limitation making a sound recording or work available for distribution by placing it in a computer file or folder that is accessible by others for downloading), communicating to the public, uploading, linking to, transmitting, publicly performing, or otherwise exploiting in any manner any of the Copyrighted Works; and</p> <p>(b) directly or indirectly enabling, facilitating, permitting, assisting, soliciting, encouraging or inducing any User to use the LimeWire System and Software or other Comparable System and/or Software</p> <p style="padding-left: 40px;">(i) to copy, reproduce, download, distribute, communicate to the public, upload, link to, transmit, publicly perform, or otherwise exploit in any manner any of the Copyrighted Works, or</p> <p style="padding-left: 40px;">(ii) to make available any of the Copyrighted Works for copying, reproduction, downloading, distributing, and communicating to the public, uploading, linking to, transmitting, public performance, or any other exploitation.</p> <p>(c) directly or indirectly operating or assisting in or supporting the operation of any computer server or website or distributing any software in any way related to the LimeWire System and Software, or any other Comparable System and Software that enables, facilitates, permits, assists, solicits, encourages, or induces the copying, reproduction, downloading, distributing, uploading, linking to, transmitting, public performance, or other exploitation of any of the Copyrighted Works.</p>	<p>(a) Encouraging or inducing any User to use the LimeWire System and Software . . .</p> <p>(i) to download or upload any of the Copyrighted Works without authorization;</p> <p>(ii) to make available any of the Copyrighted Works for unauthorized download.</p> <p>Provision (c) is overbroad and vague, and well beyond conduct for which Defendants were found liable. It should be struck.</p>	<p>Provision (c) is not vague or ambiguous, but clearly provides that Lime Wire cannot assist or support the operation of any other software or service that enables users to directly infringe Plaintiffs' copyrighted works.</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.B.5.(a) Ban on Distribution and Sales</p> <p>Plaintiffs' proposed injunction would require Defendants to cease all distribution and sales of the LimeWire software within fourteen days.</p> <p>Lime Wire must file a report on its progress with the Court within 14 days of the entry of this Permanent Injunction. The required report must:</p> <p style="padding-left: 40px;">(a) certify that distribution, sales and advertising has stopped.</p>	<p>There should be no ban on distribution for the numerous reasons discussed in Defendants' brief.</p> <p>Lime Wire shall file with the Court within 60 days a report on its progress in developing a more robust filter.</p>	<p>As noted, <i>supra</i>, Lime Wire's insistence on the continued distribution of its software has resulted in the widespread dissemination of more versions with a completely ineffective filtering system: the filtering still remains optional with the user; Lime Wire has designed the filter to capture only the 30 works as to which Plaintiffs proved ownership and infringement on summary judgment; the filter ignores the 3,000-plus works identified in the complaint, the more than 3,000 others that Plaintiffs identified in January 2008, and every work Plaintiffs have released since. Even this limited filtering effort does not work: Plaintiffs still have been able to download 24 of the 30 works Defendants' filter supposedly protects. Moreover, the filtering system Lime Wire insists it should be permitted to distribute is one that Lime Wire itself does not trust to filter its own content from the Lime Wire Store. Distribution must stop.</p>

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<p>II.B.2.(d); II.B.5.(a) Advertising</p> <p>Plaintiff's proposed injunction would require Defendants to cease all advertising within fourteen days</p> <p>Lime Wire is further ordered to immediately cease and desist from displaying, or permitting to be displayed any advertising in, through or by means of the LimeWire Software.</p>	<p>There should be no ban on advertising for the reasons discussed in Defendants' brief.</p>	<p>These sections of the injunction simply prohibit Lime Wire from profiting off its illegal service. If Lime Wire can devise a lawful service at some point in the future, the Court can revisit the issue of advertising.</p>

DEFENDANTS' DESCRIPTION OF PLAINTIFFS' PROPOSAL	DEFENDANTS' RESPONSE	PLAINTIFFS' RESPONSE
<p>II.B.3 Requirements Regarding Legacy Users</p> <p>Plaintiffs' proposed injunction would require Defendants to "use all technologically possible means" to cause Legacy Users of the Lime Wire software to cease infringement and to prevent and inhibit future infringement, including by</p> <p>(a) disabling the searching, downloading, uploading, file trading and/or file distribution functionality, and/or all functionality, of the Legacy Software;</p> <p>(b) establishing default settings in the Legacy Software that block the sharing of unauthorized media files;</p> <p style="text-align: center;">* * *</p> <p>(d) including a Copyright Filter in the Legacy Software, including (to the extent necessary to comply with this Paragraph) creating a new version of the LimeWire System and Software that incorporates a Copyright Filter ("New Version").</p>	<p>Defendants do not have the ability to disable searching, downloading, uploading, file trading and/or file distribution functionality from Legacy Software; to establish default settings in Legacy Software to block the sharing of media files; or to install a Copyright Filter in all Legacy Software. These provisions should therefore be removed.</p>	<p>This statement is unsupported by the evidence and contradicts Lime Wire's expert's own testimony. <i>See</i> Gribble Decl. ¶¶ 74-79. Lime Wire does in fact have the ability to affect the functionality of Legacy Software. Horowitz Reply Decl. ¶¶ 4-11. Further, Lime Wire <i>can</i> establish default settings to block the sharing of media files. Mark Gorton testified at length before a congressional committee that Lime Wire could do just that: block the sharing of files with certain extensions by default. LeMoine Decl., Ex. 8 at 1, 10.</p>

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<p>II.B.3.(e) Prior Approval by Plaintiffs</p> <p>Plaintiffs' proposed injunction would require that before Defendants could release any new version of the LimeWire software, they would be required to submit it to the Plaintiffs for examination and prior approval</p>	<p>The injunction should not contain any provision granting Plaintiffs prior review and approval of Defendants' technology. That would extend Plaintiffs' rights far beyond their legally-granted copyright monopoly and improperly burden development of technology with noninfringing uses. Plaintiffs are free to contend that Defendants' conduct does not comply with the terms of an injunction, but may not dictate in advance how Defendants must develop technology to meet the terms of an injunction.</p>	<p>Plaintiffs cannot simply take Lime Wire's word as to the efficacy of its filtering technology. For example, although Lime Wire claims that its current filtering system is effective, just within the last week Plaintiffs again downloaded 24 of the 30 of these recordings, notwithstanding Lime Wire's supposedly "new and improved" filter. Song Reply Decl. ¶¶ 8-9. Accordingly, Plaintiffs must be able to examine the software to analyze its filtering effectiveness and approve it prior to its rollout.</p>

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<p>II.B.4.(b) Notice</p> <p>Plaintiff's proposed injunction would require Defendants to provide notice of an injunction to all Users.</p> <p>Lime Wire shall give notice of this Permanent Injunction . . . (b) to all Users of the LimeWire System and Software, through any available means of communicating with Users.</p> <p>(ii) sending [a message] to any User who connects to the LimeWire System and Software.</p>	<p>Defendants do not know the identities of all Users. Nor is it technologically possible to send a message to all Users who connect to the LimeWire Software and System. These provisions should be struck.</p>	<p>Lime Wire is capable of sending out and displaying messages to its user base to comply with the notice provisions of Section II.B.4.(b). Horowitz Reply Decl. ¶ 4-11.</p>