28. When the user launches the software for the first time, the LimeWire client presents the user with a series of configuration screens, culminating in a dialog box asking the user to agree not to commit copyright infringement. The user is unable to begin using the LimeWire client software until the user has agreed not to commit copyright infringement. Gribble Decl. at ¶ 66.

29. File-sharing activity begins when a user initiates a search for a file. To initiate a search, the user types a search string into the "search" box on the LimeWire user interface. The search string consists of a string of words to describe the file that the user wants to find on the Gnutella network. For example, a user might type in the word "Shakespeare" to try to find documents that contain the works of William Shakespeare. In addition to containing a list of general words to match, a user of LimeWire may also generate searches for files that have specific attributes (or "metadata"), such as a search for a text document with a particular title, or an audio file from a particular artist. The LimeWire user interface allows a user to indicate what type of file to search for, and for each file type (such as text, audio, and video), the user interface contains a list of attributes that can be searched against. Gribble Decl. at ¶ 68.

30. The sending and receiving of query and query hit messages in connection with searching the Gnutella network is a fundamental element of the Gnutella network protocol and is part of the inherent functioning of the Gnutella network. No interaction with LW servers is required for these messages to be exchanged between Gnutella peers. None of the query or query hit messages generated as a result of searches conducted by voluntarily-participating Gnutella peers (including LimeWire peers) are reported or

relayed to LW servers. LW has no ability to monitor or control the content of these messages. Gribble Decl. at ¶ 70.

31. Each query hit message that flows back to a LimeWire peer contains the file name of a candidate matching file, the IP address of the hosting peer, and other metadata. If the LimeWire user initiates a download of a candidate matching file, LimeWire uses this IP address to create a temporary Internet connection directly between the LimeWire peer and the hosting peer (*i.e.*, the peer hosting the file to be downloaded). LimeWire uses this temporary Internet connection to transfer the file from the hosting peer to the LimeWire peer. This transfer is accomplished using "HTTP," the standard WorldWide Web file transfer protocol. Gribble Decl. at ¶ 71.

32. No interaction with the LW servers is required in order for a user of LimeWire to carry out the file sharing operations described above. In LimeWire's default configuration, no information relating to file searches or transfers between Gnutella peers will flow to any servers operated by LW. As a consequence, LW has no ability to monitor or control file downloads performed by LimeWire peers in their default configuration. Gribble Decl. at ¶ 72.

33. The LimeWire client software, like all Gnutella clients, must make a number of engineering decisions about how it interacts with the Gnutella network. For example, the LimeWire client must decide how many ultrapeers to connect to, and it must tune a parameter that affects how accurately an ultrapeer can determine whether a particular leaf is likely to have files that match a query. The Limewire source code contains many parameter settings for these and other engineering issues. Gribble Decl. at ¶ 74.

34. LimeWire clients have the ability to receive "viral messages" through the Gnutella network itself. A viral message contains new parameter settings that LimeWire clients should adopt. To protect against malicious parties from forging harmful viral messages, each viral message is cryptographically signed, ensuring that only LW (or its authorized parties) are able to create viral messages that LimeWire clients will accept. Thus, to change parameters on its clients, LW can inject a signed viral message into the network, and eventually all active LimeWire clients will learn of and adopt the parameter changes specified within the message. Gribble Decl. at ¶ 76.

35. There are many kinds of parameter changes that can be set in a viral message. Broadly speaking, viral messages can affect: (i) Gnutella network parameters that affect performance and reliability; (ii) filter settings, including lists of "blacklisted" peers that are known to behave in a hostile manner; (iii) some operational aspects of the client software, such as a list of IPs that are permitted to crawl the network and gather statistics about the number of connections each peer maintains; and, (iv) user interface elements such as pictures or URLs that are displayed to users at various times. Gribble Decl. at ¶ 77.

36. Viral messages give LW a limited ability to affect how its deployed clients interact with the Gnutella network. This mechanism does not give LW the ability to monitor or control the activities of its users. Instead, it gives LW the ability to tune various performance and operational aspects of client interactions with the network. Gribble Decl. at ¶ 78.

37. From time to time, a new version of the LimeWire client software becomes available. The LimeWire client contains an "in-network update" mechanism; a

viral message can notify a client that a software update is available, and the client can find and download a copy of the software update using the Gnutella network itself. Using these two mechanisms (a viral message with an update notification and the "in-network" transfer of the update using the Gnutella network itself), LW can cause a new version of the client software to be pushed out to user's hosts quickly and efficiently. Gribble Decl. at ¶ 80.

38. The LimeWire client is capable of discovering and downloading a software update automatically. However, once the update has been downloaded, the user is notified of the update and given the opportunity to approve or reject the installation of the update. Thus, LW does not have the ability to force an update installation on its users; the user has complete control over whether updates are installed. The fact that the LimeWire client downloads the update automatically serves as a performance optimization, but the downloaded update is only installed with the consent of the user. Gribble Decl. at ¶ 81.

39. LW does not operate any services that are necessary for a LimeWire client to interact with the Gnutella network, assuming that the LimeWire client has made it past its initial post-installation "bootstrap." Gribble Decl. at ¶¶ 93-95.

40. The LimeWire software application is a tool that allows users to connect and communicate with other people over the Gnutella network. The Gnutella network is "self-organizing," in that users communicate with each other without assistance from any central server or network, including LW. LW does not operate any computers, software programs or services or perform any function to support the function of the Gnutella network. Declaration of Sam Berlin ("Berlin Decl.") at ¶ 4.

41. LimeWire is a peer-to-peer software application that allows users to connect with others on the Gnutella network to exchange all sorts of digital files. It is content agnostic which means that the file–sharing capabilities of LimeWire do not favor one form of file over another. There are several other Gnutella-based software programs that interact with LimeWire to form the Gnutella network, including FrostWire, Morpheus) and Shareaza. These programs independently join together to form a network of millions of interconnected but independently-owned and controlled computers which comprise the Gnutella network. LimeWire is designed to interact with other computers on the user-created Gnutella network. Berlin Decl. at ¶ 5.

42. LimeWire is distributed in two versions: a free version called Basic and a paid-for version called Pro. Basic and Pro essentially operate in the same fashion except that the Pro version includes a few minor enhancements that allow users the ability to locate files easier and download files more quickly. Pro users also have access to technical support. Berlin Decl. at ¶ 6.

43. If a person wishes to download LimeWire, it can obtain it from several sources. First, a person can download the software directly from LW's website (in fact, this is the only location to purchase a Pro version). Second, one can download it from certain websites over the Internet such as Download.com, which offers for downloading hundreds of software applications typically free of charge. A third source would be other locations over the Internet, such as oldversion.com. Also, in the past, LW has distributed certain versions via CD-ROM. Berlin Decl. at ¶ 7.

44. LimeWire users may search for and share any kind of computer file (including text, images, audio, video, and software files) with any other user of the