Gnutella network regardless of whether the other users are running the LimeWire software application or some other Gnutella-based application, such as FrostWire. Berlin Decl. at ¶ 8.

45. There are a number of ways a user can locate other computers on the Gnutella network. The initial search for another computer connected to the Gnutella network is known as "bootstrapping," because the computer must locate another computer without first knowing the location of that computer; effectively "pulling" itself onto the Gnutella network "by the bootstraps." Berlin Decl. at ¶ 10.

46. LimeWire can "bootstrap" in two ways; by "entering an IP address," or by contacting a "hostcache." Berlin Decl. at ¶ 11.

47. First, a LimeWire user can connect to the Gnutella network by typing in the IP address of another computer connected to the Gnutella network. The user obtains the IP address by "plain old" word of mouth (talking to another network user) or by using an Internet search engine such as http:///www.Google.com, which finds websites listing IP addresses of connected computers. Berlin Decl. at ¶ 12.

48. Second, LimeWire can contact a computer known as a "hostcache" to obtain a list of IP addresses of other computers active on the Gnutella network. A hostcache is a computer that keeps a running list of the IP addresses of Gnutella "client" computers which have contacted it recently and are, presumably, "active" on the Gnutella network. A number of computers on the Internet serve as hostcaches for the Gnutella network. Hostcaches generally do not receive or store any information regarding the content being transferred or shared by the computers that contact it. The Gnutella client contacts the hostcache computer, which sends the Gnutella client a list of "active" IP

addresses, while at the same time logging the Gnutella client's IP address, adding it to the hostcache's list of "active" IP addresses. The next Gnutella client contacting the hostcache will thus receive a list of IP addresses similar to the previous Gnutella client, plus possibly the IP address of the previous client. In this way, the hostcache keeps the list of IP addresses as current as possible. Berlin Decl. at ¶ 13.

49. Once LimeWire obtains at least one IP address for a "possibly active" computer on the Gnutella network, it contacts the computer or computers until it locates a computer that is linked to the global Gnutella network. Berlin Decl. at ¶ 44.

50. After the initial "bootstrap," LimeWire keeps its own list of "active" IP addresses and can rely on its own list of IP addresses to connect to the network during subsequent connection attempts. Berlin Decl. at ¶ 15.

51. In order to operate the peer-to-peer functionality of LimeWire, users are not required to identify themselves with any "user name" or other unique word or code. The Gnutella network does not require or support a user-specific account or unique name. Thus, it is not currently possible to identify a Gnutella user with a unique screen name, user name, or account identifier. LimeWire also does not utilize such identifiers as a requirement for using the peer-to-peer functionality of LimeWire. Berlin Decl. at ¶ 16.

52. The only identifying information required for connecting to the Gnutella network is an IP address, which enables other computers to locate and interact with each other while connected to the Internet. An IP address is not an effective method of identifying an individual user because IP addresses for LimeWire users typically change each time the user logs onto the Internet. LW does not maintain any log of the IP addresses of users who connect to the Gnutella network. Berlin Decl. at ¶ 17.

53. A LimeWire user who chooses to search the Gnutella network, must enter a search term or terms (a "search string") into the LimeWire software's search screen on the user's computer. The LimeWire software then begins transmitting the search request to a computer known as an "ultrapeer" which is directly connected to another ultrapeer, which in turn pass along the search request to other computers or "leafs," which themselves pass along the request to other computers. LimeWire also searches a file's "metadata" – information that is not part of the file's content, but contains information about the file's content, such as author, file formatting, date of original creation, or the like. Like a giant game of "Telephone," the search request propagates through the Gnutella network to other computers connected to the ultrapeer. The use of ultrapeers is not unique to LimeWire, several other Gnutella applications could select users on high-performance computers to serve as "ultrapeers" as well. In this role, the high-performance computer provides indexing services for a number of lesser-performing computers, thereby improving the efficiency of searches in the network. The LimeWire software selects ultrapeers by employing its own internal algorithms – LW plays no role in promoting or demoting computers to or from ultrapeer status. At no time does any search request from a Gnutella client (including any edition of LimeWire) pass through any computer owned or controlled by LW. Berlin Decl. at ¶ 18.

54. LimeWire allows users to search and download files from other computers on the Gnutella network. To obtain a file from a search result, a user of LimeWire must select a file from the search result. Selecting a file from the search results establishes a direct connection between the searching user's computer and the computer on which the desired file is located (the "host computer"). Berlin Decl. at ¶ 19.

55. Because the Gnutella network is self-organizing, LW has no involvement whatsoever in a LimeWire user's use of the peer-to-peer functions of the application. For users who choose to utilize the peer-to-peer functionality of LimeWire, all processes necessary to carry out that function are performed by computers or entities other than LW. LW does not maintain any indexes of files on the Gnutella network, does not process search results to or from a user, and does not monitor searches or displays of search results. LimeWire does not report any information on the content of searches to any LW computer server. LW's servers do not participate in identifying locations or titles of user files, do not participate in requesting those files for transfer, do not participate in the transfer of files from one user to another, do not control or monitor transfer of files, and do not control or monitor management or use of files. LW's servers receive no information regarding any particular files being transferred among users. Berlin Decl. at ¶ 20.

56. The LimeWire product is widely available from third parties and on various peer-to-peer networks (the LimeWire software places "install" files in a user's shared folder, thus making it widely available), and on the Internet at large sites such as CNET's Download.com. Because the product has already been widely distributed, LW cannot stop a particular person or computer from obtaining a copy of the LimeWire product and cannot disable the peer-to-peer functionality of any particular installed program. Berlin Decl. at ¶ 21.

57. Once a user has installed LimeWire, LW has no effective control over a user's sharing of files on the Gnutella network. Users must elect to run the software, and determine what (if any) files they wish to place in their "shared folder" on their hard

drive. Users decide whether to use the software to connect to the Gnutella network, a public, decentralized network not affiliated with or in any way controlled by LW. LW cannot control what users decide to search for, find, make available, or download over the Gnutella network. Because the Gnutella network does not require or accept unique usernames or other identifiers, LW has no control over LimeWire users' access to the Gnutella network. Berlin Decl. at ¶ 23.

58. If LW ceased to operate, its servers became inoperative (as has happened on occasion owing to technical malfunctions or maintenance), or if all network connections to LW servers were severed, the searching, indexing, transferring, downloading, managing, display, and play functions of LimeWire would continue unaffected. Indeed, there currently exists a number of users of former, outdated versions the LimeWire software product who have chosen not to upgrade to newer LimeWire versions, but nevertheless have joined together and continue to operate a peer-to-peer user network using LimeWire software. That these networks are able to continue to operate without LW's involvement demonstrates that LW has extremely limited ability to control the users' use of the peer-to-peer function of the product. Berlin Decl. at ¶ 24.

59. LW has never condoned the use of its software for copyright infringement. LW has always sought to warn its users to not use the software for copyright infringement. For example, LW maintains several pages on its website dedicated to informing users and potential users that it is illegal to use LimeWire to download copyrighted files without permission. Berlin Decl. at ¶ 25.

60. Before 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