

user is shown a page in which the “copyright infringement” question is asked. If the potential user does not agree to not use Lime Wire for copyright infringement, he or she will not be allowed to download the software. Berlin Decl. at ¶ 26.

II. Noninfringing Uses of LimeWire

61. It is the aim of Project Gutenberg to make information, books, and other materials available free of charge to the general public in a general form that the vast majority of computers, programs, and people can easily read, use, quote, and search. This is an important difference from the various other eBook projects around the world, which use markup languages that limit users to certain reading and searching programs. Declaration of Gregory Newby (“Newby Decl.”) at ¶ 4.

62. Today, Project Gutenberg has coordinated the efforts of thousands of volunteers worldwide. These volunteers enter public domain works into computers, format these works as simple eBooks so that they can be used by the widest variety of computers, including the new “Palm Powered” PDAs, and make these eBooks available to the general public over the Internet through various servers located around the world on every continent. These are all operated by volunteers on their own time and expense. Newby Decl. at ¶ 5.

63. Since its inception in 1971, Project Gutenberg has made over 5,600 eBooks available. It is expected that number will grow to over 6,000 by the end of 2002. The vast majority of these are works in the public domain, and Project Gutenberg licenses the remainder from the copyright owners for Project Gutenberg distribution as eBooks. Newby Decl. at ¶ 6.

64. Because most Project Gutenberg eBooks are public domain works, those who download them are entitled to do anything they like with them. One can quote from them, abridge them, or create new works based on them. One can re-post them on their site, print them, distribute them, and convert them to other formats. In fact, because the original goal of Project Gutenberg was to make information and literature available to the general public at a cost truly “too cheap to meter,” redistribution of eBooks is encouraged. Although it may be expensive and cumbersome to collect thousands of public domain works in paper formats, Project Gutenberg hopes to reduce those costs so every person with a computer can have free, convenient access to a vast library of public domain works. The average new computer today costs under \$700, and 100 gigabyte drives are between \$100 and \$200 depending the brand and place of purchase. With gigabytes approaching \$1 each, that means the entire Project Gutenberg collection wouldn’t cost even \$10 to store, and perhaps another \$10 to make backups on a CD writer. By the end of 2002, a person should be able to put 5,000 Project Gutenberg eBooks on one of these new computers by using up just \$10 of your drive space. Newby Decl. at ¶ 8.

65. With zero labor and material costs, P2P file-sharing technologies promise to be the ultimate public resources for widespread dissemination of public domain and authorized eBooks. Numerous authorized and public domain Project Gutenberg eBooks are made available on Morpheus, Kazaa, Gnutella, Grokster, and similar software products. This sharing is a great advantage to both Project Gutenberg and the public since the public domain eBooks can be disseminated without adding any additional costs to the Project or to the public. Project Gutenberg welcomes this widespread sharing of

public domain eBooks using these software products, since they assist it in meeting its objectives, while providing a tremendous public benefit by spreading knowledge and culture to those who might not have access to the public domain eBooks through more traditional means. Newby Decl. at ¶ 12.

66. The Archive is a 501(c)(3) public nonprofit that was founded to build an “Internet library” with the purpose of offering permanent access for researchers, historians, and scholars to historical collections that exist in digital format. The Archive currently maintains the largest collection of text in the world, and these collections are publicly available through the Internet. Physically located in the Presidio of San Francisco, California, the Archive receives data and financial donations from a multitude of resources, including libraries, educational institutions, and private companies. Declaration of Brewster Kahle (“Kahle Decl.”) at ¶ 4.

67. While the importance of the public domain is widely recognized, providing universal public access to this vast cultural resource has, as a practical matter, been difficult. Publishers have been unwilling to keep public domain works in publication, which means that only a small fraction of the books published in the United States before 1910 are available for purchase from any publisher worldwide. The same is true for many of the films of the silent era. Libraries and archives, for their part, have been hampered by limited geographic reach and the costs of acquisition, preservation, and storage of physical materials. Kahle Decl. at ¶ 5.

68. By harnessing digital technology, however, it has become possible to make the full range of public domain information and knowledge freely and universally

available. Recognizing this, governments, libraries, and private corporations around the world have embarked on projects to digitize public domain works. Kahle Decl. at ¶ 6.

69. One of the primary aims of the Archive is to harness the unique power of the Internet to make our cultural heritage freely accessible to all. For example, the Archive has digitized almost 2,000 important public domain archival films from the collection of the Prelinger Archives. These films are now available at no charge for download on the Internet at <http://www.archive.org/movies> Kahle Decl. at ¶ 7.

70. During late 2001, the Prelinger films were downloaded from archive.org over one hundred thousand times. In contrast, during the entirety of the year 2000 only 2,000 or so of the Prelinger Archives' collection of 48,000 films were accessed by the public through purchases of stock footage. During that same year, only 200 physical visits to the archives occurred. The popularity of the Prelinger films on archive.org continue unabated. To date, Prelinger films have been downloaded from archive.org over ten million times, including almost a quarter-million times in June 2008 alone. Kahle Decl. at ¶ 8.

71. Digital archiving and distribution of public domain films is particularly valuable at a time when digital technologies are putting new tools of expression into the hands of an unprecedented number of people. For example, for the last several years, every Apple computer has come bundled with iMovie software that permits individuals to manipulate and edit video footage, including the Prelinger films offered by the Archive. Kahle Decl. at ¶ 9.

72. Unfortunately, while the Internet today has great promise as a low-cost, global distribution mechanism, it still leaves much to be desired for digital libraries like

the Archive. Much of the media on the Internet is delivered from centralized servers that either permit individuals to make a copy of a file via download or to access the file in near real-time via streaming. Each approach requires that the Archive bear the costs associated with data storage and bandwidth. Kahle Decl. at ¶ 10.

73. With respect to bandwidth costs, in particular, there is the additional cost penalty that comes with popularity. Where a central server is used, the more popular a work is, the more bandwidth expense will be associated with making it available. To take one example, when network traffic to the Archive servers exceeded the bandwidth anticipated, the result was a very large “overage” bill from the Archives’ Internet service provider. This creates perverse incentives, as libraries and archives who would otherwise be eager to make available the most popular public domain works may find themselves hampered by the “popularity penalty.” Kahle Decl. at ¶ 11.

74. Centralized server solutions have other limitations, as well. For example, efforts to make information globally available from a central server often face the realities of network congestion and capacity limits on transnational telecommunication conduits. As a result, it is far more effective to distribute copies of files to a global network of servers, maximizing the chances that a requesting party will be able to access a work from a local server. Companies like Akamai Technologies provide this service to the corporate sector, but at a high cost that cannot be supported by free archives. Kahle Decl. at ¶ 12.

75. Peer-to-peer file sharing technologies, like those offered by the LimeWire software, overcome many of the limitations of centralized download and streaming