

technologies and constitute a valuable advance in technology for those seeking to provide universal access to public domain material. Kahle Decl. at ¶ 13.

76. In a peer-to-peer file 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, such as the Prelinger films. Kahle Decl. at ¶ 14.

77. Peer-to-peer file sharing technologies also can function as a “public Akamai.” As a file is downloaded and shared within a peer-to-peer file-sharing network, it spreads to locations around the world, thus offering the same sort of global network infrastructure offered by companies like Akamai. Because this global redundancy is a natural outgrowth of peer-to-peer networks, however, this feature is provided at no cost to the originating library or archive. Kahle Decl. at ¶ 15.

78. Peer-to-peer file sharing technologies also offer a solution to the perverse incentives that arise from the “popularity penalty” discussed above. In a peer-to-peer network, the more popular a work is, the more users will be sharing it. This, in turn, will lower the bandwidth costs to the originating library because the content will be accessible from other members of the peer-to-peer community. These benefits arise organically, without the need for any central administration or expense on the part of the archive or library. Kahle Decl. at ¶ 16.

79. There is a striking elegance to the fact that in a peer-to-peer file-sharing network, the costs of providing access to public domain resources is borne by the community of users themselves. Archives and libraries can thus devote a greater share of

their resources to digitizing and preserving public domain works, rather than to expenses associated with access and distribution. Kahle Decl. at ¶ 17.

80. The Prelinger films are well-suited to distribution through peer-to-peer networks. Those who download the Prelinger films from archive.org are entitled to redistribute those files, and the Archive welcomes their redistribution on peer-to-peer networks, including the LimeWire community of users. Kahle Decl. at ¶ 18.

81. The Internet Archive currently hosts about 947,472 books and music, software, and video items. Approximately 10 terabytes of data are downloaded from the Internet Archive each day. This is the equivalent of 2 million MP3 songs being downloaded each day. Kahle Decl. at ¶ 19.

82. Prelinger Archives has assembled a collection of over 60,000 “ephemeral” (advertising, educational, industrial, documentary, and amateur) films produced between 1903 and 1990. Approximately 60% of this material is in the public domain; Prelinger Archives owns rights to approximately 5%; and the remainder, currently under copyright, is available for on-site reference use only. Prelinger Archives are known in the industry for both breadth of imagery and high image quality, and for their exclusive coverage of many aspects of American cultural and social history. Declaration of Richard Prelinger (“Prelinger Decl.”) at ¶ 5.

83. Prelinger Archives is a commercial, for profit venture. The market for their stock images and sounds is wide and continues to broaden as the number of media outlets increases. They license footage to motion picture producers both in and out of Hollywood; broadcast and cable television networks and production companies; software developers and publishers; educational media producers; corporate video producers for

both in-house and external use; to advertising agencies for commercials, print advertisements and presentations; to concert promoters and theatrical promoters for use in conjunction with their events and productions; to government agencies at every level; to artists and nonprofit organizations for a wide variety of projects; and clients in many other market areas. Prelinger Decl. at ¶ 6.

84. Historically, collectors or custodians of public domain materials have exercised a high degree of physical and contractual control over the material in their possession. This custom has caused problems because it leads to a monopoly and exclusivity of imagery, which does not serve the interests of research, education, and free expression. Though Prelinger Archives shared this controlling perspective out of concern for widespread unauthorized copying when Prelinger Archives began in business, we quickly found this to be shortsighted. Prelinger Decl. at ¶ 7.

85. In 1987, Prelinger Archives partnered with The Voyager Company, a pioneer publisher of videodiscs and CD-ROMs, to publish two one-hour anthologies of key ephemeral films from our collection. Though the first two compilations sold only some 20,000 copies, they proved influential in building Prelinger Archives' reputation as a source for unique and evocative historical imagery within the production community, and, though Prelinger Archives had not anticipated that they would so function, ended up serving as excellent "demo reels" of their holdings, bringing them new business (as well as national publicity on every major television network). Prelinger Decl. at ¶ 8.

86. In 1994, Prelinger Archives began production on an expanded anthology of 12 CD-ROMs, 10 of which were published, that contained a substantial number of historical films from their collection together with contextual material. This anthology

also brought them a good deal of press attention and new business. Prelinger Archives did not prohibit users of this second anthology from copying the movies and using them for their own purposes. Prelinger Decl. at ¶ 9.

87. Prelinger Archives' experience with these digital anthologies convinced them that widespread distribution of its films, along with the resultant publicity, built our "brand" in the area of archival footage. Their willingness to distribute freely in digital format also served to differentiate them from the growing pool of other companies specializing in this area. Prelinger Decl. at ¶ 10.

88. As a result of their early experiences with digital distribution, Prelinger Archives in 2001 started the process of arranging to have many of their most popular public domain films digitized and made available through the Internet Archive. As of today, close to 2,000 such films are available through the Internet Archive, and by the end of this year that number will be over 2,500. In an effort to maximize the commercial value of this wide distribution, further reuse and redistribution of the digitized films (whether by the community of peer-to-peer software users or otherwise) has been left unrestricted. Prelinger Decl. at ¶ 11.

89. Prelinger Archives' partnership with the Internet Archive has addressed many business issues for them in a promising way. Prelinger Decl. at ¶ 12.

90. First, by building the largest publicly available archival film collection on the Web, Prelinger Archives has accomplished an enviable goal – the capability of providing demo reels to anyone, anywhere, at no cost to it. When a prospective client requests a copy of a given film or image, it is usually already available online for free. This means that their active involvement with the transaction begins after the choice has

been made, and they do not have to pass through the laborious research stage. Prelinger Decl. at ¶ 13.

91. Second, free distribution through the Internet Archive, and from there, further redistribution through other sources, has increased brand visibility for Prelinger Archives. Prelinger Decl. at ¶ 14.

92. Third, since the images in the Internet Archive are freely downloadable, they can be used more readily than images in other collections. In the stock image business, ubiquity equals sales. From Prelinger Archives' perspective, frequent use of their images increases the frequency of demand for them. And, indeed, this has been borne out in practice. Since 2002, Prelinger Archives has seen a steady and sometimes dramatic increase in income from stock footage sales. Prelinger Archives is much more financially secure than it was prior to beginning its efforts with Internet Archive. Prelinger Decl. at ¶ 15.

93. Fourth, Prelinger Archives can now refer worthy but financially-challenged users to the website, where they can get material for free without Prelinger Archives having to incur any costs. Prelinger Archives still gains from the publicity it generates for it, and the visibility of the images these users use ultimately benefits Prelinger Archives. Their materials are also used for educational purposes at all levels of education, from home schooling to universities. Prelinger Decl. at ¶ 16.

94. Peer-to-peer networks represent a very exciting opportunity, as they will propagate images even more widely without increasing Prelinger Archives' costs. Prelinger Archives believes that widespread, unrestricted digital distribution of our films brings important commercial benefits. Prelinger Archives welcomes further