

redistribution of the Prelinger films made available at Internet Archive by individuals using peer-to-peer software. Many of the Prelinger films are available on peer-to-peer networks. Prelinger Decl. at ¶ 17.

95. By voluntarily “hosting” Prelinger Archives’ films and making them available to the millions of others in the peer-to-peer community, the users of these peer-to-peer software products are amplifying the availability of the Prelinger films, extending their reach beyond that of Internet Archive alone. To the extent this is done without imposing any additional costs on Prelinger Archives, whether in the form of hosting or bandwidth charges, this is great for it. Prelinger Decl. at ¶ 18.

96. On July 16, 2008, a search was conducted using LimeWire in All Types of files for “Mark Twain.” The search found several Mark Twain books that were downloaded using Microsoft Reader or as text files, including The Adventures of Tom Sawyer, The American Claimant, The Adventures of Huckleberry Finn, A Double Barreled Detective, Captain Stormfield’s Visit to Heaven, Is Shakespeare dead, On the Decay of Lying, Man that Corrupted Hadleyburg, A Dog’s Tale, The Prince and the Pauper, Tom Sawyer Abroad, and The Stolen White Elephant. Declaration of Susan E. Cates (“Cates Decl.”) at ¶ 11.

97. On July 17, 2008, LimeWire was utilized to conduct a search on www.archive.org/index.php for “String Cheese Incident 2001-31.” The link for the December 31, 2001 concert was located, and thereafter the song “Magic Carpet Ride” from that concert was downloaded. Cates Decl. at ¶ 14.

98. On July 17, 2008, a search was conducted on www.archive.org/index.php for “String Cheese Incident 2002.” The June 22, 2002 Bonnaroo Music Festival was

located and the song “Kashmir” was downloaded. On July 15, 2008, LimeWire was utilized to search for Audio files for artist String Cheese Incident. The search found “Kashmir” which was downloaded. Cates Decl. at ¶ 15.

99. On July 17, 2008, a search was conducted on www.archive.org/index.php for “Tea Leaf Green 2005.” Tea Leaf Green’s March 3, 2005 concert was located and the songs “Garden III” and “Gasaholic” were downloaded. On July 15, 2008, LimeWire was utilized to search for Audio files by artist Tea Leaf Green. The search found “Garden III” and “Gasaholic” from the March 3, 2005 concert, which were downloaded. Cates Decl. at ¶ 16.

100. Some up-and-coming musicians who do not have a large record label promoting their work rely on P2P technology to create a buzz. Subscription Internet copy of Chris Nelson, *Upstart Labels See File Sharing as Ally, Not Foe*, N.Y. Times, Sept. 22, 2003, at C1. Declaration of Charles S. Baker (“Baker Decl.”) at Exh. 3.

101. Established artists are also using P2P technology. Katie Dean, *Winwood: Roll With P2P, Baby*, Wired Magazine, July 9, 2004, which can also be found at: <http://www.wired.com/entertainment/music/news/2004/07/64128>. Baker Decl. at Exh. 4.

102. Some well-known bands are encouraging their fans to share recordings of their live shows. Subscription Internet copy of Neil Strauss, *File-Sharing Battle Leaves Musicians Caught in the Middle*, N.Y. Times, Sept. 14, 2003, at A1. Baker Decl. at Exh. 5.

103. Other artists are releasing their content unrestricted over the Internet. *Nine Inch Nails Surprise Fans by Web-Releasing New “Ghosts” Album*, Rollingstone.com, March, 3, 2008, which can be found at:

<http://www.rollingstone.com/rockdaily/index.php/2008/03/03/nine-inch-nails-surprise-fans-by-web-releasing-new-ghosts-album/>. Baker Decl. at Exh. 6.

104. Even EMI's new president of its digital unit finds this "fascinating." Greg Sandoval, *Will Former Google Exec Help Save the Music Industry?*, CNET News.com, April 2, 2008, which can be found at: http://news.cnet.com/8301-10784_3-9909513-7.html?tag=b. Baker Decl. Exh. 7.

105. A survey of artists and musicians concluded that the Internet made it possible to make more money than they were to say that it had made it harder to protect their work from piracy. PEW Internet and American Life Project, *Artists, Musicians and the Internet*, Dec. 5, 2005, which can be found at: http://www.pewinternet.org/pdfs/PIP_Artists.Musicians_Report.pdf. Baker Decl. at Exh. 8.

106. Discussing the same surveys, Subscription Internet copy of Tom Zeller, Jr., *Pew File-Sharing Survey Gives a Voice to Artists*, N.Y. Times, Dec. 6, 2004, at E1. (Baker Decl. Exh. 9).

107. The Internet Archive provides access to authorized recordings of over 50,000 live performances by more than 3000 artists such as Hank Williams III, Maroon5, the Grateful Dead, and Vanessa Carlton. Kahle Decl. at ¶ 20.

108. Beginning in August, 2003, LW began offering a service called MagnetMix. MagnetMix is a web-based portal that allows content owners, such as musicians, software programmers, etc., to freely distribute their works over the Internet, including the Gnutella network. This service distributes independent works using web-based "magnet links," which offer a direct link to content over the Gnutella network.

Since the implementation of this feature, hundreds of artists and other content owners have submitted their content for distribution. LW has also entered into agreements with several independent record labels representing hundreds of independent artists so as to allow their content to be distributed over MagnetMix. Declaration of Gregory L. Bildson (“Bildson Decl.”) at ¶ 10.

109. LimeWire’s software allows users to locate and download myriad computer files directly from another user of the same communications protocols. This particular distributed computing technology, which requires no central website servers, has enormous commercial potential. The ability to make content available without a web server improves the ability to locate a larger selection of content at a lower cost than otherwise. It allows for more efficient content distribution and maintenance of a larger inventory of available content files than centralized distribution architectures can support. Rather than placing all bandwidth cost on the original distributor, with P2P technology the distribution cost is spread among millions of Internet users. Spreading distribution costs gives content owners far more flexibility in making their works available to the public. P2P has empowered not only content providers, but also has spawned many new business applications that utilize the distributing computing technology similar to that which forms the core of the Lime Wire software. Declaration of Martin C. Lafferty (“Lafferty Decl.”) at ¶ 6.

110. Skype is the first Internet telephony technology to use P2P distributed computing. P2P telephony utilizes decentralized networking technology to significantly increase call completion rates compared with more costly, centralized voice-over-IP technologies. Skype allows for free calls to other Skype users, paid calls to land and

cellular telephones, file transferring, and instant messaging. Skype relies on P2P technology not only for completing phone calls, but also for distributing its telephony software by bundling its application with popular P2P software. Lafferty Decl. at ¶ 8.

111. GridCasting from GridNetworks is an Internet Television Delivery Service that enables content owners and rights holders (television networks, online video outlets, cable operators, video portals, community organizations, etc.) to deliver broadcast-quality programming to broadband Internet users for display on either their personal computers or televisions. The GridCasting platform was explicitly designed to enable the secure delivery of commercial content from known sources, utilizing a “one-to-many” delivery control model that is well understood by conventional broadcasters. In order to meet the required performance, reliability, scale, and cost requirements for this emerging market, GridCasting employs many advanced networking principles derived from grid computing and grid networking technology. Lafferty Decl. at ¶ 9.

112. Joost is an online video platform, delivering high-quality, full screen, professionally-produced video content to users on a free (advertising supported) basis using P2P technology. Distributing high quality video requires significant bandwidth, and by utilizing P2P technology to harness the combined bandwidth of its users, Joost has developed an efficient and scalable distribution model, which enables content producers and advertisers to reach new audiences, and gives consumers access to a range of professionally-produced video content that they cannot find on traditional television. Joost distributes its video files in encrypted fragments, so that no video file resides in its entirety on any user’s computer, and this, combined with Joost’s ability to control users’ access to content on a territory-by-territory basis, has made Joost an attractive and