

133. iMesh uses P2P technology to distribute licensed musical content. Printouts from pages of the iMesh Internet website that can be found at <http://www.imesh.com/>. Baker Decl. at Exh. 14).

134. QTrax professes to be the “world’s first free and legal P2P music download network.” Printouts from the pages of the Qtrax Internet website that can be found at <http://www.qtrax.com/>. Baker Decl. at Exh. 15.

135. **REDACTED**

136. The Labels are using P2P to market their content. Article entitled *BigChampagne Is Watching You*, Wired Magazine, Issue 11.10, Oct. 2003, which can be found at: http://www.wired.com/wired/archive/11.10/fileshare_pr.html. Baker Decl. at Exh. 6.

137. **REDACTED**

138. **REDACTED**

139. Viacom has allowed some of its TV shows to be freely traded over P2P neetworks. Printout from the Internet that can be found at: <http://opinion.latimes.com/bitplayer/2008/06/promoting-new-t.html>. Baker Decl. at Exh. 17.

140. The U.S. Army has used Gnutella to distribute a video game. Subscription Internet copy of Seth Schiesel, *On Maneuvers With The Army's Game Squad*, N.Y. Times, Feb. 17, 2005, at G1. Baker Decl. at Exh. 18.

141. The U.S. Army has used Gnutella to distribute a video game. Aliya Sternstein, *Gnutella Wants You*, Forbes Magazine, Nov. 10, 2003, which can also be found at: http://www.forbes.com/forbes/2003/1110/077sidebar_print.html. Baker Decl. at Exh. 19.

142. The armed forces are utilizing P2P technology on the battlefield. Paul Rubens, *Army Tactics Are The Business*, Financial Times, Nov. 26, 2003, which can also be found at: <http://groove.net/pdf/armytactics.pdf>. Baker Decl. at Exh. 20.

143. The Berklee College of Music is using P2P to share its music lessons to the public. Katie Dean, *Teaching Music Traders A Lesson*, Wired News, Nov. 12, 2003, which can also be found at: <http://www.wired.com/entertainment/music/news/2003/11/61173>. Baker Decl. at Exh. 21.

144. This has helped Berklee College. Printout from the Internet that can be found at the following site: <http://berkleeshares.com/press/pressrelease2>. Baker Decl. at Exh. 22.

145. P2P networks are being utilized to express political views. Kim Zetter, *Downloading for Democracy*, Wired News, Jul. 19, 2004, which can also be found at: <http://www.wired.com/politics/law/news/2004/07/64237>. Baker Decl. at Exh. 23.

146. Numerous government documents are accessible over P2P networks. Printout from the Internet that can be found at the following site: <http://www.outragedmoderates.org/HowtoUseP2PNetworks.html>. Baker Decl. at Exh. 24.

147. Supreme Court oral arguments are available on P2P networks. Printout from the Internet that can be found at the following site: <http://www.cbsnews.com/stories/2003/08/06/tech/main567017.shtml>. Baker Decl. at Exh. 25.

148. Oral argument from the *Sony* case is available here. Printout from the Internet that can be found at the following site: http://www.oyez.org/cases/1980-1989/1982/1982_81_1687/. Baker Decl. at Exh. 26.

149. People in China are unable to freely access Internet. *New Technology May Foil PRC Attempts At Censorship Efforts*, The China Post, Mar. 12, 2003, which can also be found at: <http://chinapost.com.tw/print/35737.htm>. Baker Decl. at Exh. 27.

150. Discussing Freenet-China, a Mandarin language version of a widely used P2P network that the Chinese government censors. Heather Green, *The Underground Internet*, Business Week, Sept. 15, 2003, at 80, which can also be found at: http://www.businessweek.com/print/magazine/content/03_37/b3849089_mz063.htm?chan=mz. Baker Decl. at Exh. 28.

151. The Tiananmen Papers have appeared on P2P networks in China. Subscription Internet copy of Jennifer Lee, *Grass-Roots War Heats Up Against Government Web Blocks*, Chicago Tribune, Oct. 14, 2002, at 4. Baker Decl. at Exh. 29.

152. One of the top P2P networks in China is “Six/Four System.” Jim Rapoza, *Six/Four: The Internet Under Cover*, Eweek from ZDWire, Mar. 6, 2003, which can also

be found at: <http://www.eweek.com/c/a/Past-Reviews/SixFour-The-Internet-Under-Cover>. Baker Decl. at Exh. 30.

153. 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.

154. 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 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.

155. On July 14, 2008, a search using LimeWire was conducted for the track “Nin – the slip” in All Types of files. The search found track six, “Head Down,” from The Slip, and it was downloaded. Cates Decl. at ¶ 6.

156. Using LimeWire, the live version of the track “Ride Me High,” a track that appears to be freely available, was located and downloaded. Cates Decl. at ¶ 8.

157. On July 15, 2008, the track “Most Events Aren’t Planned” from the July 9, 2002 concert of Vida Blue, a track that appears to be freely available, was located and downloaded using LimeWire. Cates Decl. at ¶ 17.

158. On July 15, 2008, a search was conducted using LimeWire for the artist Tryad. The freely-available tracks “Breathe,” “Listen,” and “Struttin’” were downloaded. Cates Decl. at ¶ 9.

159. On July 15, 2008, LimeWire was used to conduct a search for the track “My Drive Thru,” a freely-available song. The search found “My Drive Thru” and it was downloaded. Cates Decl. at ¶ 10.

160. On July 16, 2008, Susan Cates, an attorney at the Porter & Hedges law firm went to www.magnetmix.com. There was a section of the page about Alfie Zappacosta. In that section, there was a link titled “Download the MP3 ‘Start Again’ from the album Saint Something.” She clicked on the link and LimeWire popped up with the “Start Again” song downloading on LimeWire itself. She then went to page 3 of the audio downloads and clicked on “Download ‘The Only One’ in a section on American Analogue Set. Similarly, the song downloaded in LimeWire. She also clicked on “Download the MP3 ‘Fight Song’ from the album the Two Conversations in a section on The Appleseed Cast and that song downloaded in LimeWire. She also clicked on the Literature icon and then on the link to “Download ‘Down and Out in the Magic Kingdom.’” The book downloaded in LimeWire in pdf format. Cates Decl. at ¶ 12.

161. BuyDRM was incorporated in 2001. BuyDRM provides a digital rights platform called KeyOS to its customers, which allows BuyDRM’s customers to market, monetize and monitor their services using peer-to-peer technology. Declaration of Christopher Levy (“Levy Decl.”) at ¶ 1.

162. For instance, Brand Asset Digital f/k/a P2P Engineering (“Brand Asset Digital”), a customer of BuyDRM, markets its digital media products by using KeyOS to seed or peer digital media content into peer-to-peer networks. A user opens the content sent by Brand Digital Asset over a P2P network (such as a free song) and receives marketing content via KeyOS along with the free content. Levy Decl. at ¶ 2.

163. Ellusionist, another customer of BuyDRM, uses KeyOS to monetize its products by utilizing P2P technology. Ellusionist delivers pay-per-view content to magicians worldwide and when new users discover Ellusionist's content in P2P networks, they are able to purchase it and become customers. Another BuyDRM customer, QTrax, uses KeyOS to enable customers to discover, download, and listen to free music using the Gnuetella network. KeyOS allows QTrax to monetize their offering by bundling advertising with the music. Levy Decl. at ¶ 3.

164. At one point in time, the U.S. Army allowed MagnetMix to distribute a promotional video game it had made. It is still available on MagnetMix. Bildson Decl. at ¶ 11.

165. On July 13, 2008, Ms. Cates conducted a search on LimeWire for "King – I have a Dream" in All Types of files. The search found Martin Luther King Jr.'s speech "I have a Dream" in mp3 format. She was then able to download Dr. King's speech. Cates Decl. at ¶ 3.

166. On July 14, 2008, Ms. Cates conducted a search on LimeWire for "declaration of independence" in All Types of files. The search found the United States Declaration of Independence in Adobe format. She was able to download the document. Cates Decl. at ¶ 4.

167. On July 14, 2008, Ms. Cates conducted a search on LimeWire for "US Constitution" in All Types of files. The search found the Preamble to the United States Constitution in word format. She was able to download the document. Cates Decl. at ¶ 5.

168. On July 14, 2008, Ms. Cates conducted a search on LimeWire for “shakespeare” in Documents. The search found several Shakespeare plays that she was able to download utilizing Microsoft Reader. Specifically, she downloaded the following plays: Hamlet, Twelfth Night, Antony and Cleopatra, Love’s Labour’s Lost, Macbeth, All’s Well That Ends Well, and Richard III. Cates Decl. at ¶ 7.

169. Amicus Brief filed by Creative Commons in the *Grokster* case. Baker Decl. Exh. 32.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading was filed by means of the Court's ECF system on the 18th day of July, 2008. Accordingly, it is assumed that all counsel of record received notice of this filing from the ECF system. Lead counsel, listed below, will also receive a courtesy copy via Federal Express.

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