

1 KENDALL BRILL & KLIEGER LLP
 Richard B. Kendall (90072)
 2 *rkendall@kbbfirm.com*
 Laura W. Brill (195889)
 3 *lbrill@kbbfirm.com*
 Richard M. Simon (240530)
 4 *rsimon@kbbfirm.com*
 Cassie D. Palmer (268383)
 5 *cpalmer@kbbfirm.com*
 10100 Santa Monica Blvd., Suite 1725
 6 Los Angeles, California 90067
 Telephone: 310.556.2700
 7 Facsimile: 310.556.2705

8 Attorneys for CBS Interactive, Inc.
 (f/k/a/ CNET Networks, Inc.)
 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 ALKIVIADES DAVID, SUGAR HILL
 MUSIC, SOLID PRODUCTIONS,
 14 STEVEN BATIZ, TONY BELL,
 DETRON BENDROSS, DERRICK
 15 BRAXTON, REGINALD BROOKS,
 ELIJAH BROWN, HORACE BROWN,
 16 OSCAR BROWN, LUTHER
 CAMPBELL, JONATHAN
 17 CARLTON, SOLOMON CONNER,
 DAYQUAN DAVIS, DOUGLAS
 18 DAVIS, KAREEM DAVIS, SOLAMIN
 DAVIS, EMMANUEL RAMONE
 19 DEANDA, DREW CARTER,
 NACOLBIE EDWARDS, VANCITO
 20 EDWARDS JOHN FLETCHER,
 WILLIAM FINCH, ISAAC
 21 FREEMAN, JR., DARRYL GIBSON,
 JALIL HUTCHINS, EMANON
 22 JOHNSON, KEITH JONES, ORAN
 "JUICE" JONES, TARSHA JONES,
 23 NAILAH LAMEES, DANA
 MCCIEESE, BARRY MOODY, JEFF
 24 REDD, QUAME RILEY, ANTHONY
 ROBINSON, NICHOLAS SANCHEZ,
 25 JONATHAN SHINHOSTER,
 DIAMOND SMITH, REMINISCE
 26 SMITH, GERALD SPENCE, CHRIS
 STOKES, IRENE STOKES, JUANITA
 27 STOKES, WILLIAM TENNYSON
 AND THE TENNYSON ESTATE,
 28 CARL THOMAS. JEFF THOMKINS.

Case No. CV11-9437 DSF (JCx)

**DEFENDANT CBS INTERACTIVE,
 INC.'S ANSWER TO FIRST
 AMENDED COMPLAINT FOR (1)
 INDUCEMENT OF COPYRIGHT
 INFRINGEMENT**

JURY TRIAL DEMANDED

1 RONDELL TURNER, RICKY
2 WALTERS, KEVIN WILLIAMS,
3 YOLANDA WHITAKE, JOSEPH
4 WILLIAMS, RAHEEM WILLIAMS,
5 CASE WOODWARD, ATTRELL
6 AND JARRETT CORDES,
7 MITCHELL GRAHAM,

8 Plaintiffs,

9 v.

10 CBS INTERACTIVE INC., CNET
11 NETWORKS, INC.,

12 Defendants.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant CBS
2 Interactive, Inc. (f/k/a/ CNET Networks, Inc.) (“Defendant”) hereby answers the
3 First Amended Complaint (“FAC”) of plaintiffs (“Plaintiffs”). Defendant denies all
4 factual allegations set forth in the FAC unless expressly admitted.

5 Any admission herein is limited to the express language of the response, and
6 shall not be deemed an implied admission of additional facts. Defendant
7 affirmatively asserts that Plaintiffs should be denied all of the relief they request.

8 **RESPONSE TO “SUMMARY OF THE ACTION”**

9 1. In answering Paragraph 1 of the FAC, Defendant states that Paragraph 1
10 contains legal arguments and conclusions that require no response. To the extent a
11 response is required, Defendant denies the allegations in Paragraph 1 of the FAC.

12 2. In answering Paragraph 2 of the FAC, Defendant states that Paragraph
13 2 contains legal arguments and conclusions that require no response. To the extent a
14 response is required, as to allegations concerning its own purported conduct,
15 Defendant denies the allegations in Paragraph 2 of the FAC, and as to allegations
16 concerning third parties, Defendant lacks knowledge or information sufficient to
17 form a belief about the truth of the allegations, and denies these allegations on that
18 basis.

19 3. In answering Paragraph 3 of the FAC, Defendant states that Paragraph
20 3 contains legal arguments and conclusions that require no response. To the extent a
21 response is required, Defendant denies the allegations in Paragraph 3 of the FAC,
22 except admits that it published editorial reviews of various software programs,
23 including some P2P software programs, in the form of articles, videos, and other
24 media on the websites cnet.com and Download.com.

25 4. In answering Paragraph 4 of the FAC, Defendant states that Paragraph 4
26 contains legal arguments and conclusions that require no response. To the extent a
27 response is required, Defendant denies the allegations in Paragraph 4 of the FAC.

28

1 5. In answering Paragraph 5 of the FAC, Defendant states that Paragraph 5
2 contains legal arguments and conclusions that require no response. To the extent a
3 response is required, Defendant admits that both it and its parent CBS support the
4 protection of intellectual property rights. Defendant denies the allegations in Paragraph
5 5 of the FAC relating to Plaintiff Alkiviades David on the basis that David has
6 dismissed his claims against Defendant with prejudice, except that Defendant admits
7 that CBS Broadcasting Inc. and CBS Studios Inc. (which are subsidiaries of
8 Defendant's parent), among other networks and copyright owners, sued FilmOn.com,
9 Inc., a company owned by David that was engaged in the unauthorized streaming of
10 their copyrighted programming; that the Court in that case rejected FilmOn.com's
11 claim that Section 111 of the Copyright Act provided a defense to its unauthorized
12 activities; and that the Court entered a stipulated consent judgment and permanent
13 injunction against David and FilmOn.com, restraining and enjoining them from
14 violating the exclusive rights of the networks/copyright holders under the Copyright
15 Act. Defendant denies the remaining allegations in Paragraph 5 of the FAC.

16 6. In answering Paragraph 6 of the FAC, Defendant admits that Shelby
17 Bonnie was CNET's co-founder, former CEO, and a member of the board of
18 directors from 1993 to 2006. Defendant lacks sufficient knowledge or information
19 regarding the truth or falsity of the allegations and statements regarding Edgar
20 Bronfman Jr. and Mr. Bonnie outside of his capacities at CNET, and denies these
21 allegations on that basis. Defendant states that Paragraph 6 contains legal arguments
22 and conclusions that require no response. To the extent a response is required,
23 Defendant denies the remaining allegations in Paragraph 6 of the FAC.

24 7. In answering Paragraph 7 of the FAC, Defendant admits that it
25 removed from its website links to LimeWire software following a 2010 court
26 decision holding LimeWire liable for copyright infringement. Defendant states that
27 Paragraph 7, including Footnote 1, contains legal arguments and conclusions that
28

1 require no response. To the extent a response is required, Defendant denies the
2 remaining allegations in Paragraph 7 of the FAC.

3 8. In answering Paragraph 8 of the FAC, Defendant states that Paragraph
4 8 contains legal argument and conclusions for which no response is required. To the
5 extent a response is required, Defendant denies the allegations in Paragraph 8 of the
6 FAC.

7 9. In answering Paragraph 9 of the FAC, Defendant states that Paragraph
8 9 contains legal argument and conclusions for which no response is required. To the
9 extent a response is required, as to allegations concerning its own purported
10 conduct, Defendant denies the allegations in Paragraph 9 of the FAC, and as to
11 allegations concerning third parties, Defendant lacks knowledge or information
12 sufficient to form a belief about the truth of the allegations, and denies these
13 allegations on that basis.

14 10. In answering Paragraph 10 of the FAC, Defendant states that Paragraph
15 10 contains legal argument and conclusions for which no response is required. To
16 the extent a response is required, Defendant denies the allegations concerning its
17 own purported conduct, except that Defendant admits that an article entitled “You
18 Don’t Need Napster to Keep the Music Playing” was published on the CNET
19 website on July 6, 2001, but states that the article is the best evidence of its contents,
20 and denies Plaintiffs’ characterizations of the contents of the article.

21 11. In answering Paragraph 11 of the FAC, Defendant states that Paragraph
22 11 contains legal arguments and conclusions that require no response. To the extent
23 a response is required, Defendant denies the allegations in Paragraph 11 of the FAC.

24 12. In answering Paragraph 12 of the FAC, Defendant states that Paragraph
25 12 contains legal arguments and conclusions that require no response. To the extent
26 a response is required, Defendant denies the allegations in Paragraph 12 of the FAC.

27
28

1 13. In answering Paragraph 13 of the FAC, Defendant states that Paragraph
2 13 contains legal arguments and conclusions that require no response. To the extent
3 a response is required, Defendant denies the allegations in Paragraph 13 of the FAC.

4 14. In answering Paragraph 14 of the FAC, Defendant states that Paragraph
5 14 contains legal arguments and conclusions that require no response. To the extent
6 a response is required, as to the allegations in the first sentence of Paragraph 14,
7 Defendant lacks knowledge or information sufficient to form a belief about the truth
8 of the allegations, and denies these allegations on that basis. Defendant denies the
9 remaining allegations in Paragraph 14 of the FAC.

10 **RESPONSE TO JURISDICTION AND VENUE**

11 15. Paragraph 15 of the FAC contains legal argument and conclusions for
12 which no response is required. Defendant admits that the Court has subject matter
13 jurisdiction over the claims asserted in the FAC.

14 16. Paragraph 16 of the FAC contains legal argument and conclusions for
15 which no response is required. Defendant admits that the Court has personal
16 jurisdiction over it. Defendant denies the remaining allegations of Paragraph 16
17 beginning with the word “and” on page 13, line 23.

18 17. Paragraph 17 of the FAC contains legal argument and conclusions for
19 which no response is required. Defendant admits that venue in this judicial district
20 is proper.

21 **RESPONSE TO “PARTIES”**

22 **Response to “Plaintiffs”**

23 18. Defendant lacks knowledge or information sufficient to form a belief
24 about the truth of the allegations of Paragraph 18 of the FAC, and denies them on
25 that basis.

26 19. Defendant lacks knowledge or information sufficient to form a belief
27 about the truth of the allegations of Paragraph 19 of the FAC, and denies them on
28

1 that basis. Defendant further states that Alkiviades David has dismissed his claims
2 against Defendant with prejudice, and is no longer a party to this lawsuit.

3 20. Defendant lacks knowledge or information sufficient to form a belief
4 about the truth of the allegations of Paragraph 20 of the FAC, and denies them on
5 that basis.

6 21. Defendant lacks knowledge or information sufficient to form a belief
7 about the truth of the allegations of Paragraph 21 of the FAC, and denies them on
8 that basis.

9 22. Defendant lacks knowledge or information sufficient to form a belief
10 about the truth of the allegations of Paragraph 22 of the FAC, and denies them on
11 that basis.

12 23. Defendant lacks knowledge or information sufficient to form a belief
13 about the truth of the allegations of Paragraph 23 of the FAC, and denies them on
14 that basis.

15 24. Defendant lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations of Paragraph 24 of the FAC, and denies them on
17 that basis.

18 25. Defendant lacks knowledge or information sufficient to form a belief
19 about the truth of the allegations of Paragraph 25 of the FAC, and denies them on
20 that basis.

21 26. Defendant lacks knowledge or information sufficient to form a belief
22 about the truth of the allegations of Paragraph 26 of the FAC, and denies them on
23 that basis.

24 27. Defendant lacks knowledge or information sufficient to form a belief
25 about the truth of the allegations of Paragraph 27 of the FAC, and denies them on
26 that basis.

27
28

1 28. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 28 of the FAC, and denies them on
3 that basis.

4 29. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 29 of the FAC, and denies them on
6 that basis.

7 30. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 30 of the FAC, and denies them on
9 that basis.

10 31. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 31 of the FAC, and denies them on
12 that basis.

13 32. Defendant lacks knowledge or information sufficient to form a belief
14 about the truth of the allegations of Paragraph 32 of the FAC, and denies them on
15 that basis.

16 33. Defendant lacks knowledge or information sufficient to form a belief
17 about the truth of the allegations of Paragraph 33 of the FAC, and denies them on
18 that basis.

19 34. Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations of Paragraph 34 of the FAC, and denies them on
21 that basis.

22 35. Defendant lacks knowledge or information sufficient to form a belief
23 about the truth of the allegations of Paragraph 35 of the FAC, and denies them on
24 that basis.

25 36. Defendant lacks knowledge or information sufficient to form a belief
26 about the truth of the allegations of Paragraph 36 of the FAC, and denies them on
27 that basis.

28

1 37. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 37 of the FAC, and denies them on
3 that basis.

4 38. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 38 of the FAC, and denies them on
6 that basis.

7 39. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 39 of the FAC, and denies them on
9 that basis.

10 40. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 40 of the FAC, and denies them on
12 that basis.

13 41. Defendant lacks knowledge or information sufficient to form a belief
14 about the truth of the allegations of Paragraph 41 of the FAC, and denies them on
15 that basis.

16 42. Defendant lacks knowledge or information sufficient to form a belief
17 about the truth of the allegations of Paragraph 42 of the FAC, and denies them on
18 that basis.

19 43. Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations of Paragraph 43 of the FAC, and denies them on
21 that basis.

22 44. Defendant lacks knowledge or information sufficient to form a belief
23 about the truth of the allegations of Paragraph 44 of the FAC, and denies them on
24 that basis.

25 45. Defendant lacks knowledge or information sufficient to form a belief
26 about the truth of the allegations of Paragraph 45 of the FAC, and denies them on
27 that basis.

28

1 46. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 46 of the FAC, and denies them on
3 that basis.

4 47. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 47 of the FAC, and denies them on
6 that basis.

7 48. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 48 of the FAC, and denies them on
9 that basis.

10 49. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 49 of the FAC, and denies them on
12 that basis.

13 50. Defendant lacks knowledge or information sufficient to form a belief
14 about the truth of the allegations of Paragraph 50 of the FAC, and denies them on
15 that basis.

16 51. Defendant lacks knowledge or information sufficient to form a belief
17 about the truth of the allegations of Paragraph 51 of the FAC, and denies them on
18 that basis.

19 52. Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations of Paragraph 52 of the FAC, and denies them on
21 that basis.

22 53. Defendant lacks knowledge or information sufficient to form a belief
23 about the truth of the allegations of Paragraph 53 of the FAC, and denies them on
24 that basis.

25 54. Defendant lacks knowledge or information sufficient to form a belief
26 about the truth of the allegations of Paragraph 54 of the FAC, and denies them on
27 that basis.

28

1 55. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 55 of the FAC, and denies them on
3 that basis.

4 56. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 56 of the FAC, and denies them on
6 that basis.

7 57. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 57 of the FAC, and denies them on
9 that basis.

10 58. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 58 of the FAC, and denies them on
12 that basis.

13 59. Defendant lacks knowledge or information sufficient to form a belief
14 about the truth of the allegations of Paragraph 59 of the FAC, and denies them on
15 that basis.

16 60. Defendant lacks knowledge or information sufficient to form a belief
17 about the truth of the allegations of Paragraph 60 of the FAC, and denies them on
18 that basis.

19 61. Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations of Paragraph 61 of the FAC, and denies them on
21 that basis.

22 62. Defendant lacks knowledge or information sufficient to form a belief
23 about the truth of the allegations of Paragraph 62 of the FAC, and denies them on
24 that basis.

25 63. Defendant lacks knowledge or information sufficient to form a belief
26 about the truth of the allegations of Paragraph 63 of the FAC, and denies them on
27 that basis.

28

1 64. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 64 of the FAC, and denies them on
3 that basis.

4 65. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 65 of the FAC, and denies them on
6 that basis.

7 66. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 66 of the FAC, and denies them on
9 that basis.

10 67. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 67 of the FAC, and denies them on
12 that basis.

13 68. Paragraph 68 of the FAC includes no allegations, and accordingly no
14 response is required to the allegations of Paragraph 68.

15 69. Defendant lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations of Paragraph 69 of the FAC, and denies them on
17 that basis.

18 70. Defendant lacks knowledge or information sufficient to form a belief
19 about the truth of the allegations of Paragraph 70 of the FAC, and denies them on
20 that basis.

21 71. Defendant lacks knowledge or information sufficient to form a belief
22 about the truth of the allegations of Paragraph 71 of the FAC, and denies them on
23 that basis.

24 **Response to “Defendants”**

25 72. Defendant admits the allegations in Paragraph 72 of the FAC.

26 73. Defendant denies the allegations in Paragraph 73 of the FAC.

27 Defendant further states that no corporate entity exists under the name CNET

28

1 Networks, Inc. and that CNET Networks, Inc. is now known as CBS Interactive,
2 Inc.

3 74. Defendant denies the allegations in Paragraph 74 of the FAC.

4 **RESPONSE TO “FACTS”**

5 **Response to “P2P File Sharing Systems”**

6 75. Defendant admits the allegations in Paragraph 75 of the FAC as to
7 some P2P clients and admits that the identified services are commonly referred to as
8 providing P2P networks. Defendant lacks knowledge or information sufficient to
9 form a belief about the truth of the allegations of Paragraph 75 to the extent it
10 encompasses all such networks, and denies these allegations on that basis.

11 76. Defendant admits the allegations in the first two sentences of Paragraph
12 76 of the FAC as to some P2P clients. Defendant lacks knowledge or information
13 sufficient to form a belief about the truth of the remaining allegations of Paragraph
14 76 of the FAC, and denies these allegations on that basis.

15 77. Defendant lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations of Paragraph 77 of the FAC, and denies these
17 allegations on that basis.

18 78. In answering Paragraph 78 of the FAC, as to allegations concerning
19 third parties, Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations in Paragraph 78 of the FAC, and denies these
21 allegations on that basis. As to allegations concerning its own purported conduct,
22 Defendant denies the allegations in Paragraph 78 of the FAC.

23 **Response to “LimeWire and the Gnutella Network”**

24 79. Defendant lacks knowledge or information sufficient to form a belief
25 about the truth of the allegations of Paragraph 79 of the FAC, and denies these
26 allegations on that basis.

27
28

1 80. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations of Paragraph 80 of the FAC, and denies these
3 allegations on that basis.

4 81. Defendant lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations of Paragraph 81 of the FAC, and denies these
6 allegations on that basis.

7 82. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations of Paragraph 82 of the FAC, and denies these
9 allegations on that basis.

10 83. Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations of Paragraph 83 of the FAC, and denies these
12 allegations on that basis.

13 84. In answering Paragraph 84 of the FAC, Defendant admits that Judge
14 Kimba Wood of the United States District Court for the Southern District of New
15 York entered an injunction against LimeWire, and that the quoted portions of Judge
16 Wood’s order are accurate; Defendant states, however, that the order is the best
17 evidence of its contents, and denies Plaintiffs’ characterizations of the contents.
18 Defendant lacks knowledge or information sufficient to form a belief about the truth
19 of the remaining allegations of Paragraph 84 of the FAC, and denies these
20 allegations on that basis.

21 85. In answering Paragraph 85 of the FAC, Defendant states that Paragraph
22 85 contains legal arguments and conclusions that require no response. To the extent
23 a response is required, Defendant denies that it ever hosted LimeWire software or
24 other Gnutella applications on its website. Defendant admits that following a 2010
25 court decision holding LimeWire liable for copyright infringement, Defendant
26 ended its website’s capacity to display links to external sources of LimeWire
27 software. Defendant also admits that an article entitled “Judge slaps Lime Wire
28 with permanent injunction” was published on the CNET website on October 26,

1 2010, but states that the article is the best evidence of its contents, and denies
2 Plaintiffs' characterizations of its contents. Defendant denies the remaining
3 allegations in Paragraph 85 of the FAC.

4 86. In answering Paragraph 86 of the FAC, Defendant states that
5 Paragraph 86 contains legal arguments and conclusions that require no response. To
6 the extent a response is required, Defendant admits that Download.com is capable of
7 displaying a link to the software program Phex and that the publisher describes the
8 program as follows: "You can search for, download, and share all types of file
9 formats It is compatible with LimeWire, BearShare, Morpheus, and all other
10 P2P Gnutella clients." As to the allegations concerning third parties, Defendant
11 lacks knowledge or information sufficient to form a belief about the truth of the
12 allegations in Paragraph 86 of the FAC, and denies these allegations on that basis.
13 As to the allegations concerning its own purported conduct, Defendant denies the
14 allegations in Paragraph 86 of the FAC.

15 87-98. The FAC includes no paragraphs numbered 87-98, and therefore no
16 responsive pleading is required as to any such allegations.

17 **Response to "BitComet and the BitTorrent Network(s)"**

18 99. Defendant lacks knowledge or information sufficient to form a belief
19 about the truth of the allegations of Paragraph 99 of the FAC, and denies these
20 allegations on that basis.

21 100. Defendant lacks knowledge or information sufficient to form a belief
22 about the truth of the allegations of Paragraph 100 of the FAC, and denies these
23 allegations on that basis.

24 101. In answering Paragraph 101 of the FAC, Defendant states that
25 Paragraph 101 contains legal argument and conclusions for which no response is
26 required. To the extent a response is required, Defendant admits that its website has
27 included the capacity to display links to µTorrent, Frostwire and BitTorrent software
28 that is maintained on external websites that are not affiliated with Defendant. As to

1 the allegation in Paragraph 101 concerning the number of downloads of μ Torrent in
2 October 2011, Defendant lacks knowledge or information sufficient to form a belief
3 about the truth of the allegation insofar as it relates to downloads from websites not
4 affiliated with Defendant, and denies the allegations on that basis; insofar as the
5 allegation relates to downloads from website(s) affiliated with defendant, Defendant
6 denies the allegation. Defendant lacks knowledge or information sufficient to form
7 a belief about the truth of the allegations concerning what appeared during
8 Plaintiffs' October 5, 2011 search on Defendant's website, and denies those
9 allegations on that basis. Defendant denies the remaining allegations in Paragraph
10 101 of the FAC.

11 102. In answering Paragraph 102 of the FAC, Defendant states that
12 Paragraph 102 contains legal argument and conclusions for which no response is
13 required. To the extent a response is required, Defendant admits that an article
14 entitled "A New Hope for BitTorrent?" was published on the CNET website on
15 January 5, 2005, but states that the article is the best evidence of its contents and
16 denies Plaintiffs' characterizations of the contents. Defendant admits that a news
17 article discussing BitTorrent software was published on the CNET website on June
18 18, 2007, but states that the article is the best evidence of its contents and denies
19 Plaintiffs' characterizations of the contents. Defendant denies the remaining
20 allegations in Paragraph 102 of the FAC.

21 103. Defendant states that Paragraph 103 contains legal argument and
22 conclusions for which no response is required. To the extent a response is required,
23 Defendant states that any Publisher's Description of BitComet is the best evidence
24 of what such document says and denies Plaintiffs characterization of any such
25 document. Defendant further states that Defendant lacks knowledge or information
26 sufficient to form a belief about the truth of the remaining allegations of Paragraph
27 103 of the FAC, and denies these allegations on that basis.

28

1 104. In answering Paragraph 104 of the FAC, Defendant states that
2 Paragraph 104 contains legal argument and conclusions for which no response is
3 required. To the extent a response is required, Defendant admits that its website has
4 included the capacity to display links to external and unaffiliated sources of various
5 types of BitTorrent software, including “Offsystem – Anonymous Torrent
6 Download.” Defendant admits that the publisher of Offsystem provides certain
7 information about its software, including a screenshot showing the software’s user
8 interface, but Defendant denies that it is responsible for such description. Defendant
9 admits that ZDNet.com, a website that CNET acquired in 2000, contains an article
10 about Offsystem, published on December 20, 2008, but states that the article is the
11 best evidence of its contents and denies Plaintiffs’ characterizations of the contents.
12 Defendant admits that users may post reviews of software on Download.com, but
13 lacks knowledge or information regarding the specific review mentioned in
14 Paragraph 104 of the FAC and denies that it is responsible for user reviews posted
15 on its website. Defendant denies the remaining allegations in of Paragraph 104 of
16 the FAC.

17 **Response to “Defendants’ Participation In and Profiteering From**
18 **Infringement”**

19 105. Defendant admits that Download.com is one of the websites owned and
20 operated by Defendant, and that it is one of the world’s largest comprehensive
21 software directory and rating services, providing reviews, ratings, and download
22 links for a vast range of third-party software, but to the extent the allegations in
23 Paragraph 105 could be interpreted to suggest that P2P programs or applications are
24 hosted on Defendant’s servers, as opposed to being available on unaffiliated and
25 external third-party websites, Defendant denies the allegations in Paragraph 105 of
26 the FAC.

27 106. Defendant denies that the statement described on lines 23-24 of page 29
28 is an advertisement. Defendant denies that the allegations of Paragraph 106 contain

1 a complete description of Upload.com. Defendant admits the remaining allegations
2 in Paragraph 106 of the FAC.

3 107. Defendant denies that P2P software is placed on Defendant's website.
4 Defendant admits the remaining allegations in Paragraph 107 of the FAC.

5 108. Defendant denies the first sentence in Paragraph 108 of the FAC. With
6 respect to the second sentence in Paragraph 108, Defendant admits that publishers may
7 categorize their program and fill out an explanation of their program's features and
8 purpose, but Defendant denies that all publishes do so, or that they are required to do
9 so. Defendant admits that it may permit or not permit a program to be listed on
10 Download.com after reviewing a publisher's application and that it may decide where a
11 program should be listed on Download.com's website. Defendant denies the
12 remaining allegations in Paragraph 108 of the FAC.

13 109. In answering Paragraph 109 of the FAC, Defendant states that
14 Paragraph 109 contains legal argument and conclusions for which no response is
15 required. To the extent a response is required, Defendant admits that it has the
16 ability to refuse to list or to remove a publisher's software. Defendant denies the
17 remaining allegations in Paragraph 109 of the FAC.

18 110. In answering Paragraph 110 of the FAC, Defendant admits that
19 software publishers formerly had the option of using a free, basic, or premium
20 listing package on Download.com, the latter two of which required a monthly
21 subscription fee, although this option has been discontinued. Defendant denies the
22 second sentence of Paragraph 110 to the extent it purports to describe Defendant's
23 current business. Defendant admits footnote 2 to Paragraph 110 of the FAC.
24 Defendant denies the allegations of the third sentence of Paragraph 110 of the FAC
25 (beginning with the word "Second . . .") with respect to P2P software but admits the
26 allegations in this sentence as to some non-P2P software. With respect to the fourth
27 sentence in Paragraph 110 of the FAC, Defendant denies that advertisements for its
28 other websites on Download.com have any material effect on traffic or generate

1 material income for its other websites. Defendant denies the allegations in the fifth
2 sentence of Paragraph 110 of the FAC with respect to P2P software but admits the
3 allegations in this sentence as to some non-P2P software. Defendant denies the
4 remaining allegations in Paragraph 110 of the FAC.

5 111. Defendant admits the allegations in Paragraph 111 of the FAC, but
6 denies that it allows P2P software publishers to participate in the Pay-per-Download
7 program.

8 112. Defendant denies the allegations in the first sentence of Paragraph 112
9 of the FAC to the extent that they state or suggest that P2P software is available
10 through the Pay-per-Download program. Defendant further denies that P2P
11 software resides on Defendant's website. As to allegations in Paragraph 112 of the
12 FAC concerning third parties, Defendant lacks knowledge or information sufficient
13 to form a belief about the truth of the allegations, and denies these allegations on
14 that basis. Defendant denies the remaining allegations in Paragraph 112 of the FAC.

15 113. Defendant denies the allegations in Paragraph 113 of the FAC.

16 114. In answering Paragraph 114 of the FAC, Defendant admits that it has
17 an Advertising Acceptance Policy and that the language quoted in Paragraph 114
18 appears in the Policy. Defendant denies the remaining allegations in Paragraph 114
19 of the FAC.

20 115. Defendant denies the allegations in Paragraph 115 of the FAC.

21 116. Defendant denies the allegations in Paragraph 116 of the FAC.

22 117. In answering Paragraph 117 of the FAC, Defendant states that
23 Paragraph 117 contains legal argument and conclusions for which no response is
24 required. To the extent a response is required, Defendant denies the allegations in
25 Paragraph 117 of the FAC.

26 118. In answering Paragraph 118 of the FAC, Defendant admits that it offers
27 a free service called the "Button Partner Program," whereby participants place a
28 button on their homepage that directs users to the participant's product detail page

1 on Download.com. Defendant admits that the language quoted in Paragraph 118 at
2 one time appeared on the Button Partner Program information page. Defendant
3 denies the remaining allegations in Paragraph 118 of the FAC.

4 119. In answering Paragraph 119 of the FAC, Defendant states that
5 Paragraph 119 contains legal argument and conclusions for which no response is
6 required. To the extent a response is required, Defendant denies the allegations in
7 Paragraph 119 of the FAC.

8 120. In answering Paragraph 120 of the FAC, Defendant states that
9 Paragraph 120 contains legal argument and conclusions for which no response is
10 required. To the extent a response is required, Defendant denies the allegations in
11 Paragraph 120 of the FAC.

12 121. In answering Paragraph 121 of the FAC, Defendant states that
13 Paragraph 121 contains legal argument and conclusions for which no response is
14 required. To the extent a response is required, Defendant denies the allegations in
15 Paragraph 121 of the FAC.

16 122. In answering Paragraph 122 of the FAC, Defendant admits that its
17 editors reviewed a variety of P2P software programs and that these reviews
18 discussed the various aspects of the programs. Defendant denies that these reviews
19 constituted promotion or advertisement of the featured programs. Defendant denies
20 the remaining allegations in Paragraph 122 of the FAC.

21 123. In answering Paragraph 123 of the FAC, Defendant admits that it
22 posted a CNET editor's review of the Windows version of LimeWire on February
23 12, 2009; that the language quoted in Paragraph 123 appears in that review; and that
24 the editor rated the software four-and-a-half stars out of five. Defendant denies the
25 remaining allegations in Paragraph 123 of the FAC.

26 124. In answering Paragraph 124 of the FAC, Defendant admits that it
27 includes the following CNET editors' note for all P2P software: "You will be taken
28 to a third-party site to complete your download. Using P2P and file-sharing

1 software to distribute copyrighted material without authorization is illegal in the
2 United States and many other countries. CBS Interactive does not encourage or
3 condone the illegal duplication or distribution of copyrighted content.” Defendant
4 admits that the language quoted in Paragraph 124 regarding BitComet appeared in a
5 CNET editor’s review of BitComet and that the editor rated the software three-and-
6 a-half stars out of five. Defendant denies the remaining allegations in Paragraph
7 124 of the FAC.

8 125. Defendant has not located the user comments referenced in Paragraph
9 125 in its files and archives and on that basis lacks knowledge or information
10 sufficient to form a belief about the truth of the allegations of Paragraph 125 of the
11 FAC, and denies these allegations on that basis. Defendant further denies that it is
12 responsible for user reviews posted on its website. Defendant moreover denies that
13 the alleged user comments, if accurately described in Paragraph 125 of the FAC,
14 demonstrate or exhibit the matters alleged and the characterizations ascribed to such
15 purported statements. Defendant denies the remaining allegations in Paragraph 125
16 of the FAC.

17 126. In answering Paragraph 126 of the FAC, Defendant admits that its
18 editors tested the software they reviewed, but denies they infringed copyrights to do
19 so. Defendant denies the remaining allegations in Paragraph 126 of the FAC.

20 127. In answering Paragraph 127 of the FAC, Defendant admits that it
21 posted a “First Look” video on Download.com that reviewed LimeWire 5 and
22 demonstrated its features, and states that video is the best evidence of its contents, and
23 denies Plaintiffs’ characterizations of the video. Defendant denies that in the “First
24 Look” video a CNET reviewer entered “Nine Inch Nails” into the LimeWire search
25 screen and then demonstrated the results; on the contrary, the video shows that the
26 CNET reviewer entered “nine inch nails ghosts,” which refers to an album by Nine
27 Inch Nails, entitled *Ghosts I-IV*, which famously was released under a Creative
28 Commons license to promote free sharing of the music. Defendant admits that its

1 editor reviewed LimeWire “Classic” for Mac, and states that the review is the best
2 evidence of its contents and denies Plaintiffs’ characterizations of the review.
3 Defendant denies that searching for but not downloading a song constitutes
4 copyright infringement. Defendant denies the remaining allegations in Paragraph
5 127 of the FAC.

6 128. Paragraph 128 of the FAC contains legal argument and conclusions for
7 which no response is required. To the extent a response is required, Defendant
8 admits that CNET editor Seth Rosenblatt appeared in a “First Look” video for
9 FrostWire, and states that the video is the best evidence of its contents and denies
10 Plaintiffs’ characterizations of the video. Defendant denies the remaining
11 allegations in Paragraph 128 of the FAC.

12 129. In answering Paragraph 129 of the FAC, Defendant admits that CNET
13 editors reviewed the software program MP3 Rocket on November 7, 2008, and
14 states that the review is the best evidence of its contents and denies Plaintiffs’
15 characterizations of the review. Defendant denies the remaining allegations in
16 Paragraph 129 of the FAC.

17 130. In answering Paragraph 130 of the FAC, Defendant admits that a
18 CNET editor reviewed the software program LuckyWire on November 11, 2009,
19 and states that the review is the best evidence of its contents and denies Plaintiffs’
20 characterizations of the review. Defendant denies the remaining allegations in
21 Paragraph 130 of the FAC.

22 131. In answering Paragraph 131 of the FAC, Defendant admits a CNET
23 editor reviewed the software program ZapShares on November 24, 2009, and states
24 that the review is the best evidence of its contents and denies Plaintiffs’
25 characterizations of the review. Defendant denies the remaining allegations in
26 Paragraph 131 of the FAC.

27 132. Paragraph 132 of the FAC contains legal argument and conclusions for
28 which no response is required. To the extent a response is required, Defendant has

1 not located the alleged November 28, 2001 LimeWire review in its files and
2 archives and on that basis lacks knowledge or information sufficient to form a belief
3 about the truth of the allegations in the second sentence of Paragraph 132 of the
4 FAC, and denies these allegations on that basis. Defendant has not located the
5 alleged September 24, 2002 KaZaa review in its files and archives and on that basis
6 lacks knowledge or information sufficient to form a belief about the truth of the
7 allegations of the third and fourth sentences of Paragraph 132 of the FAC, and
8 denies these allegations on that basis.

9 133. Defendant admits that it posted articles that noted the differences
10 between various file-sharing applications but denies the remaining allegations in the
11 first sentence of Paragraph 133 of the FAC. Defendant has not located the alleged
12 December 12, 2001 AudioGalaxy review in its files and archives, and on that basis
13 lacks knowledge or information sufficient to form a belief about the truth of the
14 allegations in Paragraph 133 of the FAC, and denies these allegations on that basis.
15 Defendant denies the remaining allegations in Paragraph 133 of the FAC.

16 134. Paragraph 134 of the FAC contains legal argument and conclusions for
17 which no response is required. To the extent a response is required, Defendant
18 denies the allegations in Paragraph 134 of the FAC.

19 135. In answering Paragraph 135 of the FAC, Defendant denies having
20 published newsletters and articles that recommended P2P programs for copyright
21 infringement and states that the newsletters and articles are the best evidence of their
22 contents and denies Plaintiffs' characterization of these materials. Defendant has
23 not located the "File Sharing Smackdown" newsletter described in Paragraph 135 of
24 the FAC in its files and archives, and on that basis lacks knowledge or information
25 sufficient to form a belief about the truth of the allegations regarding that newsletter,
26 and denies those allegations on that basis. Defendant denies the remaining
27 allegations in Paragraph 135 of the FAC.

28

1 136. Defendant has not located the “File Sharing Smackdown” newsletter
2 described in Paragraph 136 of the FAC in its files and archives, and on that basis
3 lacks knowledge or information sufficient to form a belief about the truth of the
4 allegations regarding that newsletter, and denies those allegations on that basis.
5 Defendant denies the remaining allegations in Paragraph 136 of the FAC.

6 137. Defendant lacks knowledge or information sufficient to form a belief
7 about the truth of the allegations of Paragraph 137 of the FAC relating to user
8 behavior and comments, and denies these allegations on that basis. Defendant denies
9 the remaining allegations of Paragraph 137 of the FAC. 138.

10 138. In answering Paragraph 138 of the FAC, Defendant states that
11 Paragraph 138 contains legal argument and conclusions for which no response is
12 required. To the extent a response is required, Defendant has not located the alleged
13 ZDNet article purportedly described in Paragraph 138 of the FAC in its files and
14 archives, and on that basis lacks knowledge or information sufficient to form a
15 belief about the truth of the allegations regarding that article, and denies those
16 allegations on that basis. Defendant lacks knowledge or information sufficient to
17 form a belief about the truth of the allegations of Paragraph 138 relating to “another
18 ZDNet article,” and denies these allegations on that basis. Defendant denies the
19 remaining allegations in Paragraph 138 of the FAC.

20 139. In answering Paragraph 139 of the FAC, Defendant states that
21 Paragraph 139 contains legal argument and conclusions for which no response is
22 required. To the extent a response is required, Defendant has not located the alleged
23 August 5, 2000 Gnutella review in its files and archives, and on that basis lacks
24 knowledge or information sufficient to form a belief about the truth of the
25 allegations regarding that review, and denies those allegations on that basis.
26 Defendant denies the remaining allegations in Paragraph 139 of the FAC.

27 140. In answering Paragraph 140 of the FAC, Defendant states that
28 Paragraph 140 contains legal argument and conclusions for which no response is

1 required. To the extent a response is required, Defendant has not located the alleged
2 Gnutella guides and tips purportedly described in Paragraph 140 of the FAC in its
3 files and archives, and on that basis lacks knowledge or information sufficient to
4 form a belief about the truth of the allegations regarding that review, and denies
5 those allegations on that basis. Defendant denies the remaining allegations in
6 Paragraph 140 of the FAC.

7 141. In answering Paragraph 141 of the FAC, Defendant states that
8 Paragraph 141 contains legal argument and conclusions for which no response is
9 required. To the extent a response is required, Defendant has not located the alleged
10 “Find an Alternative to Napster” guide described in Paragraph 141 of the FAC in its
11 files and archives, and on that basis lacks knowledge or information sufficient to
12 form a belief about the truth of the allegations regarding that guide, and denies those
13 allegations on that basis. Defendant denies the remaining allegations in Paragraph
14 141 of the FAC.

15 142. In answering Paragraph 142 of the FAC, Defendant states that
16 Paragraph 142 contains legal argument and conclusions for which no response is
17 required. To the extent a response is required, Defendant admits its review of
18 LimeWire contained the phrase “post-Napster clone” but denies that this was a
19 recommendation. Defendant denies the remaining allegations in Paragraph 142 of
20 the FAC.

21 143. In answering Paragraph 143 of the FAC, Defendant has not located the
22 alleged “how-to guide for Morpheus” described in Paragraph 143 of the FAC in its
23 files and archives, and on that basis lacks knowledge or information sufficient to
24 form a belief about the truth of the allegations regarding that guide, and denies those
25 allegations on that basis. Defendant denies the remaining allegations in Paragraph
26 143 of the FAC.

27 144. In answering Paragraph 144 of the FAC, Defendant states that
28 Paragraph 144 contains legal argument and conclusions for which no response is

1 required. To the extent a response is required, Defendant has not located the alleged
2 “guide to Scour Exchange” described in Paragraph 144 of the FAC in its files and
3 archives, and on that basis lacks knowledge or information sufficient to form a
4 belief about the truth of the allegations regarding that guide, and denies those
5 allegations on that basis. Defendant denies the remaining allegations in Paragraph
6 144 of the FAC.

7 145. In answering Paragraph 145 of the FAC, Defendant states that
8 Paragraph 145 contains legal argument and conclusions for which no response is
9 required. To the extent a response is required, Defendant has not located the alleged
10 February 1, 2002 “File Sharing Smackdown, part *deux*” newsletter described in
11 Paragraph 145 of the FAC in its files and archives, and on that basis lacks
12 knowledge or information sufficient to form a belief about the truth of the
13 allegations regarding that newsletter, and denies those allegations on that basis.

14 146. In answering Paragraph 146 of the FAC, Defendant denies the first
15 sentence of Paragraph 146. Defendant lacks knowledge or information sufficient to
16 form a belief about the truth of the allegations in the second sentence of Paragraph
17 146 of the FAC relating to an unspecified “interview discussing Limewire,” and
18 denies these allegations, on that basis. With respect to the third sentence of
19 Paragraph 146 of the FAC, Defendant admits that in a February 21, 2010 video a
20 CNET editor announced the top 5 download for the week and said, “What a surprise
21 . . . LimeWire,” but denies that this was an admission that LimeWire was intended
22 for copyright infringement and states that video is the best evidence of its contents,
23 and denies Plaintiffs’ characterizations of the video. Defendant denies the remaining
24 allegations in Paragraph 146 of the FAC.

25 147. Defendant denies the allegations in Paragraph 147 of the FAC, except
26 admits that its website was capable of displaying a link to download FrostWire from
27 an unaffiliated external server after an injunction was entered against LimeWire.

28 148. Defendant lacks knowledge or information sufficient to form a belief

1 about the truth of the allegations of Paragraph 148 of the FAC relating to user
2 comments, and denies these allegations on that basis. Defendant denies the
3 remaining allegations in Paragraph 148 of the FAC.

4 149. In answering Paragraph 149 of the FAC, Defendant states that
5 Paragraph 149 contains legal argument and conclusions for which no response is
6 required. To the extent a response is required, Defendant denies the allegations in
7 Paragraph 149 of the FAC.

8 **RESPONSE TO COUNT 1**

9 **INDUCEMENT OF COPYRIGHT INFRINGEMENT**

10 150. Defendant realleges and incorporates by reference its responses to
11 Paragraphs 1 through 149 as if set forth herein in full.

12 151. Defendant denies the allegations in Paragraph 151 of the FAC.

13 152. Defendant denies the allegations in Paragraph 152 of the FAC.

14 153. Defendant denies the allegations in Paragraph 153 of the FAC.

15 154. Defendant denies the allegations in Paragraph 154 of the FAC.

16 155. Defendant denies the allegations in Paragraph 155 of the FAC.

17 156. Defendant denies the allegations in Paragraph 156 of the FAC.

18 157. Defendant denies the allegations in Paragraph 157 of the FAC.

19 **RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF**

20 Defendant denies that Plaintiffs are entitled to any of the relief requested.

21 **AFFIRMATIVE DEFENSES**

22 Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendant
23 further pleads the following separate and additional defenses. By pleading these
24 defenses, Defendant does not in any way agree or concede that it has the burden of
25 proof or persuasion on any of these issues. Defendant reserves the right to assert
26 such additional affirmative defenses as discovery indicates are proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim Upon Which Relief May Be Granted)

1. The FAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Comparative Fault)

2. The FAC is barred, in whole or in part, based on the doctrine of comparative fault.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

3. The FAC is barred, in whole or in part, based on Plaintiffs’ failure to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. The FAC is barred, in whole or in part, based on principles of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Failure To Join An Indispensable Party)

5. The FAC is barred, in whole or in part, based on a failure to join necessary or indispensable parties.

SIXTH AFFIRMATIVE DEFENSE

(Fair Use)

6. The FAC is barred, in whole or in part, by the doctrine of fair use.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

7. The FAC is barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

8. The FAC is barred, in whole or in part, by the statute of limitations, to the extent Plaintiffs’ claim is predicated on acts of copyright infringement occurring

1 outside of the statutory period(s) set forth in the Copyright Act, including without
2 limitation 17 U.S.C. § 507(b).

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Lack Of Standing)**

5 9. The FAC is barred, in whole or in part, based on a lack of standing.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Nonjoinder Of Parties)**

8 10. The FAC is barred, in whole or in part, based on nonjoinder of parties.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 11. The FAC is barred, in whole or in part, by the doctrine of unclean
12 hands.

13 **TWELFTH AFFIRMATIVE DEFENSE**

14 **(Waiver)**

15 12. The FAC is barred, in whole or in part, by the doctrine of waiver.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 **(First Amendment)**

18 13. The FAC is barred, in whole or in part, because application of the
19 Copyright Act to impose liability in this case would violate the First Amendment to
20 the United States Constitution.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 **(Due Process/Vagueness)**

23 14. The FAC is barred, in whole or in part, because application of the
24 Copyright Act to impose liability in this case would violate the Due Process clause
25 and vagueness doctrine of the United States Constitution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

15. The FAC is barred, in whole or in part, for lack of subject matter jurisdiction to the extent Plaintiffs lack valid registrations of copyrights alleged in the FAC.

SIXTEENTH AFFIRMATIVE DEFENSE

(Copyright Abandonment)

16. The FAC is barred, in whole or in part, to the extent Plaintiffs have forfeited or abandoned copyright or failed to comply with necessary formalities.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Innocent Infringers)

17. The FAC is barred, in whole or in part, to the extent any persons, based on whose behavior Plaintiffs seek to hold Defendant liable, are innocent infringers.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Notice)

18. The FAC is barred, in whole or in part, based on Plaintiffs' failure to provide Defendant with notice that Plaintiffs' works were available on P2P services available through Defendant's websites.

NINETEENTH AFFIRMATIVE DEFENSE

(Supervening Events)

19. The FAC is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was caused by intervening or supervening events over which Defendant had and has no control.

TWENTIETH AFFIRMATIVE DEFENSE

(Responsibility of Third Parties)

20. The FAC is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was the fault and responsibility of third parties over

1 whom Defendant had and has no control, and for whose actions Defendant had and
2 has no responsibility.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 **(No Proximate Cause)**

5 21. The FAC is barred, in whole or in part, on the grounds that any alleged
6 acts or omissions by Defendant were not the proximate cause of any injury or loss
7 allegedly suffered Plaintiff.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Consent)**

10 22. The FAC is barred, in whole or in part, based on principles of
11 Plaintiffs' consent.

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 **(P2P Services Not Adjudicated as Infringing)**

14 23. The FAC is barred, in whole or in part, to the extent that Plaintiffs seek
15 to hold Defendant liable based on any person's use of P2P services that have not
16 been adjudicated as infringing.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 **(Nonexistent Entity)**

19 24. The FAC is barred, in whole or in part, on the basis that CNET
20 Networks, Inc. is not a legal entity capable of being sued.

21 WHEREFORE, Defendant prays for relief as follows:

- 22 1. That the FAC be dismissed, with prejudice and in its entirety;
- 23 2. That Plaintiffs take nothing by this action and that judgment be entered
24 against Plaintiffs and in favor of Defendant;
- 25 3. That Defendant be awarded its and costs incurred in defending this
26 action;
- 27 4. That Defendant be granted such other and further relief as the Court
28 may deem just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 13, 2012

KENDALL BRILL & KLIEGER LLP

By: /s/ Laura W. Brill
Laura W. Brill
Attorneys for CBS Interactive, Inc. and
CNET Networks Inc.