

EXHIBIT A

Platzer, Luke C

From: TSchoenberg@fbm.com
Sent: Tuesday, November 22, 2011 9:36 PM
To: Pozza, Duane; RThompson@fbm.com; ALeibnitz@fbm.com
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: RE: Hotfile - source code

Duane –Given that Dr. Cromarty’s report and opinions were not based on reviewing or analyzing Hotfile’s source code, and in light of the fact that you get to depose Mr. Titov, this appears to be a pretextual attempt to obtain what the Court has already said you are not entitled to discover. The reference to takedown and blocking data is especially puzzling – how does that give rise to “necessity” for the production of source code? Furthermore, it is not procedurally proper to proceed without an actual document request pending. Thus, we are not going to accede to plaintiffs demand for source code, which we view as both substantively and procedurally improper.

Regards,
Tony

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From: Pozza, Duane [mailto:DPozza@jenner.com]
Sent: Tuesday, November 22, 2011 11:42 AM
To: Schoenberg, Tony (28) x4963; Thompson, Rod (27) x4445; Leibnitz, Andrew (21) x4932
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: RE: Hotfile - source code

Tony,
Dr. Cromarty relied on specific representations by Titov on how Hotfile functions (and specifically, on how filtering on Hotfile functions), which is based on how Hotfile is coded. See paragraph 128, for example. Dr. Cromarty also makes assumptions about the architecture and operations of Hotfile in stating his opinions about the usefulness of digital fingerprinting techniques. See paragraphs 125 to 131, for example. And, as I noted in my email below, the fact that a substantial portion of takedown and blocking data is missing means that it is necessary to examine the underlying code on these issues.

As for the procedural point, we know of no authority that would foreclose us from moving again on a request based on new evidence. Here, the Court has explicitly anticipated that the source code could become discoverable later in litigation. If your position is that we should re-serve the request and wait 30 days for you to respond, we simply disagree with that, and don’t think any court is going to make us go through such procedural hoops, particularly at this late stage of discovery. Thus, please let us know today if defendants will produce all or some source code. If we do not

hear otherwise today (and I would be happy to hear otherwise), we will assume – consistent with the position that defendants have taken since day one of this litigation – that the answer is “no.”

Thanks,
Duane

From: TSchoenberg@fbm.com [mailto:TSchoenberg@fbm.com]
Sent: Monday, November 21, 2011 11:09 AM
To: Pozza, Duane; RThompson@fbm.com; ALeibnitz@fbm.com
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: RE: Hotfile - source code

Duane – Can you provide any authority in the federal or local rules that would permit you to “renew” a prior request after the court denied a motion to compel a response? I’m not aware of any such authority. Also, can you explain what in Cromarty’s report or in footnote 2 of the Court’s Order on source makes you believe you have a basis to request it again? Dr. Cromarty’s report did not rely on or even discuss Hotfile source code. Footnote 2 in the Court’s Order said that source code “may become necessary if, say, Hotfile argues that it cannot implement some infringement-stopping mechanism because of the way it *coded* some operation or function.” Dr. Cromarty’s report did not discuss the way Hotfile *coded* any operation or function. And regarding Mr. Titov, you have already deposed him once and will depose him again in a few weeks.

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From: Pozza, Duane [mailto:DPozza@jenner.com]
Sent: Sunday, November 20, 2011 7:49 PM
To: Schoenberg, Tony (28) x4963; Thompson, Rod (27) x4445; Leibnitz, Andrew (21) x4932
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: Re: Hotfile - source code

We are renewing our document request for source code on which we already moved, and, in the alternative, Hotfile's source code related to the blocking or removal of files.

-Duane

From: TSchoenberg@fbm.com [mailto:TSchoenberg@fbm.com]
Sent: Sunday, November 20, 2011 08:34 PM
To: Pozza, Duane; RThompson@fbm.com <RThompson@fbm.com>; ALeibnitz@fbm.com <ALeibnitz@fbm.com>
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: RE: Hotfile - source code

Duane – Putting aside the fact that you are demanding on a Sunday afternoon a meet and confer on Monday, there is no pending document request. Without that, we don't know we are meeting and conferring about or what it is exactly that plaintiffs are requesting.

From: Pozza, Duane [mailto:DPozza@jenner.com]
Sent: Sunday, November 20, 2011 2:45 PM
To: Thompson, Rod (27) x4445; Leibnitz, Andrew (21) x4932; Schoenberg, Tony (28) x4963
Cc: Fabrizio, Steven B; Platzer, Luke C
Subject: Hotfile - source code

Rod et al,

As you know, the Court left open the possibility of obtaining source code if it becomes “necessary” in the case. In light of that, we expect to promptly renew our motion for source code, requesting a minimum all source code related to Hotfile’s file-blocking. The reasons will include, among others, Mr. Cromarty’s conclusion that Hotfile is unable to effectively implement mechanism to control infringement, including based on his understanding of the function of Hotfile in conversations with Mr. Titov (the scenario the Court specifically cited in footnote 2 of its Order on the first motion to compel); a year’s worth of missing data from the dmcanotice table and five months worth of missing “deletedate” data from the latest uploads table; and the lack of complete evidence in the data regarding Hotfile’s content file blocking practices. I assume you will continue to object to production of Hotfile source code, consistent with your position since the beginning of this case. However, please let us know by the end of the day tomorrow if your position has changed. I am available to meet and confer in the late afternoon your time, after my call with Tony.

Regards,
Duane

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