

EXHIBIT “1”

BEBBATES = LW DE 1263224
ENDBATES = LW DE 1263227
BATESATTCH =
CUSTODIAN = Catilaz, Kathryn
DOCTYPE :
AUTHOR :
TO : Adam Fisk <adamfisk@gmail.com>; Serguei Osokine <Serguei.Osokine@efi.com>
FROM : Serguei Osokine <osokin@osokin.com>
CC : David Barrett <d Barrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho Llst <pho@onehouse.com>
BCC :
SUBJECT :
TITLE :
CREATEDATE = 00/00/0000
DATERCVD = 00/00/0000
DATESENT = 00/00/0000
DOEXT = htm
OCRPATH :
OCR :

RE: Pho: Slate: Prof. Tim Wu on YouTube
From: Serguei Osokine <osokin@osokin.com>
Sent: Saturday, October 28, 2006 1:52 AM
To: Adam Fisk <adamfisk@gmail.com>; Serguei Osokine <Serguei.Osokine@efi.com>
Cc: David Barrett <d Barrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho Llst <pho@onehouse.com>
Subject: RE: Pho: Slate: Prof. Tim Wu on YouTube

On Friday, October 27, 2006 Adam Fisk wrote:
> Why is Mark going on and on about YouTube? Because he thinks it
> crosses a line beyond which tolerance for infringement is overall
> detrimental (maybe not how he would put it =). I disagree with him
> there, but I do think the p2p companies generally cross that line.
> Sure, it's the users sharing the infringing material, but the
> programs are designed to maximize that infringement.

Not sure about Mark, but in P2P, there is no line. Whatever you call the line is actually determined by the latest position of the rights owners - the same people who killed Napster because they did not understand what Gnutella was, and then resurrected Napster when Gnutella, eDonkey, and Kazaa were in full swing, and now are fighting these networks instead of trying to use their potential.

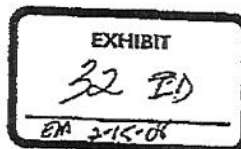
I'm sorry, but I cannot seriously consider any lines drawn by these people as something worthy of respect. They have no clue where they are drawing them, and where these lines will be tomorrow. One simply cannot plan a coherent technology development policy on the basis of such arbitrary restrictions. Especially when these "lines" are artificial and self-destructive even for the content owners - they'd be probably better off without any lines, accepting the file-sharing landscape as a given. It is not going away any time soon, so they might as well figure out how to monetize it instead.

And what you call "designed to maximize that infringement", I'd rather call "decent user interface". It is not like someone is sitting and thinking how to maximize infringement, really. User interface programmers tend to think in terms of user satisfaction, and if the programs end up being convenient for something, it simply means that this is what the users want. If I'd work for RIAA, I'd actually think about how it could satisfy these needs, too - not how to alienate the maximum possible number of music listeners in the shortest possible time.

But as you can probably guess, I do not work for RIAA...

Best wishes -
S.Osokine.

February 12, 2008 11:07 pm



Page 1

28 Oct 2006.

—Original Message—

From: Adam Fisk [mailto:adamfisk@gmail.com]
Sent: Friday, October 27, 2006 8:48 PM
To: Serguei Oskine
Cc: David Barrett; Mark Cuban; Fred von Lohmann; Pho List
Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

Hi Serguei- We should certainly have that beer one of these days. You ever make it to New York?

Hopefully they will see the
> wisdom of licensing sooner or later, but it does not mean that
> in the meantime writing P2P code should be illegal.

I'm certainly not saying that. Heck, I'd be a wanted man!

Writing code
> should never be illegal, in my opinion. Just as writing equations,
> writing poetry, making films, or making speeches. It is up to the
> society how to deal with the content that is created this way. Even
> though First Amendment does not formally apply, on the average the
> societies that permit free innovation tend to be significantly better
> off than the ones that don't.

I agree with the spirit of what you're saying. I do think there have to be limits, though, and I think copyright infringement is one of the cases where there should be limits. Why is Mark going on and on about YouTube? Because he thinks it crosses a line beyond which tolerance for infringement is overall detrimental (maybe not how he would put it =). I disagree with him there, but I do think the p2p companies generally cross that line. Sure, it's the users sharing the infringing material, but the programs are designed to maximize that infringement.

Sure. But their money was safe enough to invest into Skype
> development and get some positive ROI, which would be impossible
> in the US. Remember how the Skype founders refused to even set
> the foot on the American soil while talking to eBay? Think you
> guys could create Skype yourself at LimeWire, if only you'd have
> this idea earlier, and would work harder and smarter on Gnutella?
> Think again.

I disagree with you there. I remember a lunch conversation at LimeWire just after Skype was released. I've kicked myself for years for not saying "hey, we should do the same thing." If we had decided to do that, I see absolutely no reason we could not have done so. We had zero legal costs and had more than enough cash and skills to make it happen.

What I'm saying, I guess, is that there would be no
> Skype without Kazaa. Whereas if you'd have your say, you'd shut down
> Kazaa for what you'd call its "devotion to infringement" years ago,
> and we'd have no Skype as a result.

That might be true. I think they could have just written Skype off the bat, but, granted, Kazaa was largely an R&D project that made Skype possible. I think we've all done the R&D, and we can make a lot more possible.

We really should have that beer sometime.

-Adam

On 10/27/06, Serguei Osokine <Serguei.Osokine@efi.com> wrote:

>

> On Friday, October 27, 2006 Adam Fisk wrote:

> > Do you think any technology should be illegal?

>

> What I'm thinking about nuclear and nano technology and its
> proliferation is an irrelevant question in this context - though
> I'll gladly talk to you about this over beer some day :-)

>

> But this is not a nuclear technology. Not by a long shot.

>

> > Did you consider Napster a legal service, for example?

>

> Back then, you mean? I did not care. Actually I do not care
> even now. I learned about Napster just about when I learned about
> Gnutella, and since the latter clearly could not be shut down by
> any means, the former was of interest for me only as an IQ test
> for the labels - would they be able to figure out that keeping it
> around would be better for them than shutting it down or not? They
> did not pass the test, of course. Legality of Napster was something
> to be decided between Napster and record labels - I had no opinion
> about that, because in my view, the file-sharing technology cannot be
> legal or illegal by itself.

>

> If the labels license the content, then it all becomes legal.
> The labels did not license the content - and Napster was shut down.
> The technology stays the same, which means that the legality of it
> is something determined by the actions of record labels, and not
> by the technology itself. How could I know whether Napster was legal
> or not, before the labels made their move and the courts had their
> say? So at the time I did not even think about it - how could I
> predict what the labels would do?

>

> Ditto for distributed networks - it is up to the content owners
> to make them legal by licensing, or illegal by refusing to license.
> How would I know what will they do? Hopefully they will see the
> wisdom of licensing sooner or later, but it does not mean that
> in the meantime writing P2P code should be illegal. Writing code
> should never be illegal, in my opinion. Just as writing equations,
> writing poetry, making films, or making speeches. It is up to the
> society how to deal with the content that is created this way. Even
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> this idea earlier, and would work harder and smarter on Gnutella?
> Think again.

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> > Every other major p2p company was based in the US, and I don't
> > think Kazaa was ultimately the biggest financial success.

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> I'm not sure. Until you said that, I had an impression that
> Kazaa was the company (or at least the network) that made more money

> than anyone else, but you may be right, of course. The point here is
> not how much money did they make, but whether they could leverage
> this money and their knowledge of Kazaa network - which they clearly
> could and did. What I'm saying, I guess, is that there would be no
> Skype without Kazaa. Whereas if you'd have your say, you'd shut down
> Kazaa for what you'd call its "devotion to infringement" years ago,
> and we'd have no Skype as a result.

>
>> There's so much room to innovate with p2p outside of infringement
>> that it's mind boggling there hasn't been more.

>
> Any idea how to make it in a profitable way? ;-)

>
> Best wishes -
> S.Osokine.
> 27 Oct 2006.

>
> —Original Message—

> From: Adam Fisk [mailto:adamfisk@gmail.com]
> Sent: Friday, October 27, 2006 7:19 PM
> To: Serguei Osokine
> Cc: David Barrett; Mark Cuban; Fred von Lohmann; Pho L1et
> Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

>
> I don't see any line a company should not cross in your worldview. Do you
> think any technology should be illegal? I'm all for free innovation, but
> laws exist for reasons. Guns have gun control, software has copyrights,
> patents etc etc. Did you consider Napster a legal service, for example?

>
> I don't buy the offshore thing for a second, by the way. Kazaa made more
> money early on because it was a better program. Period. It took us about
> a
> year at LimeWire to catch up to them, with help from people like you. I
> think we ultimately surpassed them on pretty much all levels, but they
> beat
> us for awhile. Every other major p2p company was based in the US, and I
> don't think Kazaa was ultimately the biggest financial success.

>
> I agree the underlying technology for LimeWire and Skype are similar. The
> point is that one makes all of its money off of infringing content while
> the
> other does not. You think that's all great in the spirit of
> innovation. I
> think they should be as innovative with their businesses as they are with
> their technology, like Skype. You say they make money from the same
> source,
> I guess the technology. I think that's ridiculous. There's so much room
> to
> innovate with p2p outside of infringement that it's mind boggling there
> hasn't been more. One of the reasons there hasn't been more is that
> everyone's been writing code to share mp3s.

>
> I also have no reason to think Kazaa spent any less money on legal
> expenses
> than anyone else. They certainly spent more than we did at LimeWire.

>
> -Adam

>
>
> On 10/27/06, Serguei Osokine <Serguei.Osokine@efl.com> wrote:
> On Friday, October 27, 2006 Adam Fisk wrote:

>> Skype has made more money than all the other p2p companies combined
>> (educated guess, and I'm not talking about the eBay sale), and its
>> unequivocally non-infringing.

>
> Skype itself - yes. But its technology is a direct offspring
> of the Kazaa network technology. I wouldn't even be surprised to
> find the shared code.

>
> And the reason Skype could be created at all was that first,
> the Kazaa team had money to perfect and play with the file-sharing
> technology (I don't like the work "infringing", since it is not their
> fault that their users are infringing - it is the fault of the content
> owners, who failed to license content to these users). This money
> came from the activity that you frown upon, by the way.

>
> And second, this money was offshore, so it could be applied to
> the future (Skype) R&D and did not have to go into the legal expenses
> at once. Sure, both these conditions - starting from the mature P2P
> technology and funding - also had to be applied to the reasonable
> future development idea (VoIP), but that is expected. No one makes
> money creating useless things. As usual, selecting the right idea
> is partly (or even mostly) luck.

>
> So I wouldn't say that Skype was any exception. They just
> applied their technology to the right idea - partly because they
> could afford this, being offshore and all. I'll grant you that the
> decision to move into VoIP was a smart one. But Skype money comes
> from exactly the same source as LimeWire or Morpheus money (heck,
> at some point what later became Skype and Morpheus were one network).
> In a certain sense, Skype and LimeWire are mirror images.

>
>> Just as the entertainment industry never adapted well to the new
>> technology, I don't think the p2p companies ever adapted well to
>> the new technology (the technology they were creating!). Except
>> Skype.

>
> They did not exactly adapt. They had an idea that made sense
> and means to pursue it. If other companies did not have such an idea
> or did not have means, in my book it does not mean that they are less
> worthy of protection in what they are doing. Even if they have had
> bad business sense and missed some opportunities, it is not a good
> enough reason to say that they should not be protected legally.

>
> The freedom to innovate should not be awarded only to those who
> make good business calls. It is a universal right. To have a healthy
> innovation ecosystem, you should have multiple P2P companies, most
> of which would be doing the same thing over and over again (just like
> multiple Internet pet food stores in the nineties), some will do some
> novel things, even fewer will make novel things that make sense, and
> just a few - will create some revolutionary new technology like Skype.

>
> If you'll start crushing companies that - in your view - are
> not innovating, pretty soon you won't have any P2P companies at all.
> Incidentally, this is more or less what is happening in the US now.
> Elimination is done for the other reasons, but the net effect is the
> same. I do not think it is a coincidence that the most interesting
> novel derivative of P2P technology - Skype - was created by someone
> who was relatively free from this pressure.

>
> They could have failed to create anything new, of course - many
> offshore companies did. But the dice fell their way, while *all* P2P
> companies of the richest country in the world were out of luck. Do you
> really think it is a coincidence?

>
> Best wishes -

> S.Osokine.
> 27 Oct 2008.

> -----Original Message-----

> From: Adam Fisk [mailto:adamfisk@gmail.com]
> Sent: Friday, October 27, 2008 12:45 PM
> To: Serguei Osokine
> Cc: David Barrett; Mark Cuban; Fred von Lohmann; Pho List
> Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

> Well, that's not exactly true for me. Almost true - but with
> one small, though important, twist. I always believed in the wide
> potential of this technology without giving any special thought as
> to whether it would be infringing or not.

> I think that's where our difference lies. I don't see massive
> infringement
> as an interesting "potential of this technology". Its certainly the most
> prevalent use of the technology, and I think that's too bad. I happen to
> think there's a far larger business opportunity in non-infringing uses
> than
> in infringing ones. Look at the balance sheets of the p2p
> companies. None
> of them made much money in the scheme of things, with one exception --
> Skype.
> Skype has made more money than all the other p2p companies combined
> (educated
> guess, and I'm not talking about the eBay sale), and its unequivocally
> non-infringing.

> I'm not defending the entertainment industry here, but I don't think it's
> accurate to paint the p2p companies as the poor victims of the
> entertainment
> industry heavyweights. Just as the entertainment industry never adapted
> well

> to the new technology, I don't think the p2p companies ever adapted well
> to
> the new technology (the technology they were creating!). Except Skype.

> To me, the squabbles with the entertainment industry have always been a
> huge
> distraction to realizing where we can go with the p2p knowledge we
> have. I
> mean that from a business model perspective, from a technology
> perspective,
> from a legal perspective, and from a cultural perspective. We can do
> better.

> -Adam

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<CR>

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sgt: Any idea how to make it in a profitable way? :-)

sgt:

sgt: Best wishes -

sgt: S.Osokine.

sgt: 27 Oct 2006.

sgt:

sgt:

sgt: -----Original Message-----

sgt: From: Adam Fisk [CA HANE="mailto:adamfisk@gmail.com">mailto:adamfisk@gmail.com</>

sgt: Sent: Friday, October 27, 2006 7:18 PM

sgt: To: Serguei Osokine

sgt: Cc: David Berrett; Mark Cuban; Fred von Lohmann; Pho List

sgt: Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

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sgt: I don't see any line a company should not cross in your worldview.

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sgt: patents etc etc.

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sgt:

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novel things, even fewer will make novel things that make sense, and
just a few - will create some revolutionary new technology like Skype.
If you'll start crushing companies that - in your view - are
not innovating, pretty soon you won't have any P2P companies at all.
Incidentally, this is more or less what is happening in the US now.
Elimination is done for the other reasons, but the net effect is the
same. I do not think it is a coincidence that the most interesting
novel derivative of P2P technology - Skype - was created by someone
who was relatively free from this pressure.
They could have failed to create anything new, of course - many
offshore companies did. But the dice fell their way, while 'all' P2P
companies of the richest country in the world were out of luck. Do you
really think it is a coincidence?
Best wishes
S. Cockins
27 Oct 2006

-----Original Message-----
From: Adam Fisk [mailto:adamfisk@gmail.com] (mailto:adamfisk@gmail.com) (mailto:adamfisk@gmail.com)
Sent: Friday, October 27, 2006 12:45 PM
To: Susquel Cockins
Cc: David Barrett; Mark Cuban; Fred von Lohmann; Pho List
Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

Well, that's not exactly true for me. Almost true - but with
one small, though important, twist. I always believed in the
potential of this technology without giving any special thought as
to whether it would be infringing or not.
I think that's where our difference lies. I don't see massive
infringement
as an interesting potential of this technology. Its certainly the most
prevalent use of the technology, and I think that's too bad. I happen to
think there's a far larger business opportunity in non-infringing use
than
in infringing ones. Look at the balance sheets of the p2p
companies. None
of them made much money in the scheme of things, with one exception -
Skype.
Skype has made more money than all the other p2p companies combined
(educated
guess, and I'm not talking about the eBay sale), and its unequivocally
non-infringing.
I'm not defending the entertainment industry here, but I don't think it's
accurate to paint the p2p companies as the poor victims of the
entertainment
industry heavyweights. Just as the entertainment industry never adapted
well
to the new technology, I don't think the p2p companies ever adapted well
to
the new technology (the technology they were creating!). Except Skype.

To me, the squabbles with the entertainment industry have always been a
distraction to realizing where we can go with the p2p knowledge we
have. I
mean that from a business model perspective, from a technology
perspective,
from a legal perspective, and from a cultural perspective. We can do
better.

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