

EXHIBIT “2”

BEBBATES = LW DE 1263181
ENDBATES = LW DE 1263185
BATESATCH =
CUSTODIAN = Catillaz, Kathryn
DOCTYPE :
AUTHOR :
TO : Adam Fisk <adamfisk@gmail.com>
FROM : Serguei Osokine <Serguei.Osokine@efi.com>
CC : David Barrett <dbarrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho List <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 <Serguei.Osokine@efi.com>
Sent: Friday, October 27, 2006 12:42 PM
To: Adam Fisk <adamfisk@gmail.com>
Cc: David Barrett <dbarrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho List <pho@onehouse.com>
Subject: RE: Pho: Slate: Prof. Tim Wu on YouTube
On Friday, October 27, 2006 Adam Fisk wrote:
> We've both been around p2p for some time, and I think we've
> both always believed in the lofty goals for p2p's non-infringing
> potential.

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 figured that once the technology exists, the interested parties would sort out how to use it in such a way that no one's interests would be harmed. That's why I'm here on this list. In order to promote collective solutions that would pay the content owners and allow the technology development at the same time.

Unfortunately the rights owners happened to be significantly less considerate towards interests of other groups. As a matter of fact, even towards their own interests, too. Their behaviour was downright self-destructive, and instead of giving more money to the creators, they effectively robbed them of potential P2P income, while also making a moon landscape out of P2P technology development.

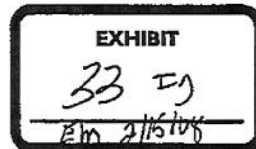
But I don't see how this all is the fault of the P2P developer companies and why should they suffer for the irrational stubbornness of rights holders.

> The money was always too tempting.

Well, yeah, I'd rather work on the wider spectrum of goals for P2P technology, too - but this is a long-term research, and it does require money. As do the shareholders and investors. It is kind of natural that P2P companies followed the path of maximizing their income. That's what the businesses do, you know.

> ...I do not support the vast majority of p2p companies out there
> because they're almost entirely devoted to infringement.

Again, that's what the businesses do. They maximize their



income. What did you expect them to do? Deliberately pursue the projects that promise less money? Right. We both know companies that tried to do that - and where are these companies now? Besides, speaking for myself, in 2001 I had no idea that five years later the content owners would still act as if they can stop P2P, and keep rejecting the idea of collective licensing.

If they would only act rationally and in their own interests, the same P2P companies would not be "devoted to infringement", because they would be doing something that would be clearly and unambiguously legal (not that it is clearly illegal now, mind you). I guess all the P2P companies had more or less the same hope: that somehow it will all work out in the end. No one in his right mind would leave that kind of money on the table. Nope - this did not happen. But how do these same folks suddenly become devoted to infringement monsters only because the licensing structure that they hoped for did not fall in place? Come on.

As a matter of fact, the only reason why what they are doing can possibly be called "devoted to infringement" is that the Supreme Court has chickened out of establishing the clear guidelines, as it is its duty, and left this whole situation in limbo. As a result, instead of enjoying the collective licensing that would be built on the firm Betamax foundation, the whole sector of computer industry and research must feel like an underground resistance movement.

That would be the same sector that consumes most of Internet broadband bandwidth, by the way. And drives several multibillion-dollar industries. Maybe we should import some Dutch guest migrant judges. They appear to have a better grasp on what is good for a society as a whole.

To summarize, I think that your bitterness towards the P2P industry that largely concentrated on being "devoted to infringement" is a bit misplaced. A simple collective licensing deal could make the activity in question non-infringing at once, and then there would be plenty of money for everyone - including you and me to pursue other, more interesting P2P application areas. Today this money is simply not generated, and what little that is generated, goes to the lawyers at once.

Look at what happened when Kazaa decided "screw the US laws", and used the creative money-hiding practices to protect its income. Instead of trying to play by the rules and be nice - as LimeWire and Morpheus did. That's when we got Skype. Who knows what else could we have by now, if only we'd have these guest migrant Dutch judges? Is the US-Dutch border open, or we are building a fence there, too?

Thank you -
S.Osokine.
27 Oct 2006.

—Original Message—
From: Adam Fisk [mailto:adamfisk@gmail.com]
Sent: Friday, October 27, 2006 10:31 AM
To: Serguei Osokine
Cc: David Barrett; Mark Cuban; Fred von Lohmann; Pho List
Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

Hi Serguei- You understood me precisely. We've both been around p2p for some time, and I think we've both always believed in the lofty goals for p2p's non-infringing potential. I don't put the p2p applications in the same category as the PC, though. As far as the underlying technology goes,

I agree they're the same. The work we did on search on Gnutella should certainly never die, and it lives up to those goals. That's where p2p and the PC meet. But the focus of the p2p applications has simply not lived up to those goals of creating a generalized platform, like the PC, that programmers can innovate on top of. Gnutella approaches it, but in practice it simply is not that platform. The money was always too tempting.

I believe passionately in p2p and believe it has a bright future, but I do not support the vast majority of p2p companies out there because they're almost entirely devoted to infringement.

-Adam

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

>
> On Friday, October 27, 2006 Adam Fisk wrote:
>> As far as most P2P companies go, I personally do not think they
>> should be protected because I don't support tools devoted to
>> infringement.

>
> Huh?.. Perhaps I misunderstood what you were saying?

>
> Do you mean that the purpose of the tool development should
> change its fate depending on whether its inventors were nice folks
> or not? Who gives a damn whether personal computer was invented by
> marijuana-smoking Berkeley hippies, or red-tied pillars of society
> from IBM? Are you saying that we as a society should refuse a
> technology if it was invented by people whose goals we don't like?
> Maybe NASA should stop using Soyuz launchers, because they were
> invented by a bunch of commies hell-bent on the world domination?

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

>
> -----Original Message-----
> From: Adam Fisk [mailto:adamfisk@gmail.com]
> Sent: Friday, October 27, 2006 9:28 AM
> To: David Barrett
> Cc: Mark Cuban; Fred von Lohmann; Pho List
> Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

>
> Hi David- The only precedents I know of on the safe harbors come from
> Google, eBay, and Napster. I don't know the specifics about the Google
> and
> eBay cases (and likely many other similar companies), but my understanding
> is that they've successfully used the safe harbors repeatedly.
>
> I've read the Napster ruling in detail and have spoken at length with both
> Wendy Seltzer and Fred von Lohmann about it, both of whom were kind enough
> to take the time to discuss it. What invaluable resources we have in
> them,
> huh? Wendy or Fred or anyone else please feel free to correct me if I get
> any of this wrong.
>
> First off, Napster clearly had "red flag" knowledge of infringement
> because
> the entire system was just obviously devoted to infringing content. So,
> they would not have qualified for the safe harbors in any scenario, I
> don't
> think. Second, though, Napster *never filed an agent with the copyright
> office*. That meant they could not qualify for either 512(c) or

EXHIBIT “3”

!- Preserved E-Print Email -->
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<TITLE>RE: Pho: Slate: Prof. Tim Mu on Youtube</TITLE>
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<tr><td width="100%">From: /</td><td>Serguei Oskine <mailto:osokine@osokine.com></td></tr>
<tr><td width="100%">Sent: /</td><td>Saturday, October 28, 2006 12:17 PM</td></tr>
<tr><td valign="top" width="100%">To: /</td><td>Adam Fisk <mailto:adamfisk@gmail.com>; griffin@onehouse.com</td></tr>
<tr><td valign="top" width="100%">Cc: /</td><td>Serguei Oskine <mailto:Serguei.Oskine@ell.com>; David Barrett <mailto:dbarrett@quintar.com></td></tr>
<tr><td valign="top" width="100%">Subject: /</td><td>RE: Pho: Slate: Prof. Tim Mu on Youtube</td></tr>
</table> <hr color="#800000" size="2" noshade></hr>

!- Converted from text/plain format -->

<P>On Saturday, October 28, 2006 Adam Fisk wrote:

<P>...it's shocking to me that some of the core p2p technologies are

<P>still not integrated with the Internet as a whole. Multi-source

<P>downloading, for example, should be enabled by default on both the

<P>client and server side on every computer on the planet...

<P>

<P>Believe it or not, this is more or less why the port 6347 was

<P>reserved for Gnutella together with its normal 6346 port in 2000.

<P>That's what its name "Gnutella" stands for - "Gnutella router".

<P>http://www.grouter.net/gnutella/finitmsg.htm#fig1

<P>

<P>- the idea was to run the Gnutella node transparently on every machine

<P>maybe even as a part of the OS, and use port 6347 as the access point

<P>for the local connection to reach the Gnutella functionality through a

<P>simple Gnutella 0.5 protocol with an original 0.56 or similar Gnutella

<P>client, regardless of the future protocol changes. Originally that was

<P>intended to add the flow control to Gnutella, but of course things like

<P>multi-source downloads would be also added to the router as soon as

<P>they would become available, and the support of pure HTTP for the

<P>browser use would be only a matter of time.

<P>

<P>That is, the router would run in the background, route all the

<P>Gnutella traffic, assemble the multi-source downloads into a continuous

<P>byte stream, and then you'd just issue HTTP GET on port 6347 and get

<P>this file as if from the local Web Server. And UI developers would no

<P>longer have to learn the obscure and esoteric details of Gnutella

<P>protocol, but rather could concentrate on the UI itself. Just as AJAX

<P>programmers do not have to know TCP internals today.

<P>

<P>This is more or less like the web interface that the current

<P>file-sharing systems have (i.e. eDonkey and such), but instead not

<P>only for initiating searches or monitoring the client, but to actually

<P>access the whole database of content from, say, a Web server as if all

<P>the content would be stored locally and indexed by the local search

<P>engine (today I'd say "like Google desktop search", but it did not

<P>exist back then).

<P>

<P>I have two problems with the p2p companies:

<P>1) Their business were entirely built off of infringement.

<P>2) Their business models sucked.

<P>

<P>I still like the idea above, and it sounds like you do, too.

<P>Which surprises me to no end, given your stance on infringing and

<P>on the P2P companies' business models. Because first, if this thing

<P>is placed in the OS, it becomes the most powerful infringing tool in

<P>history - if it is done right, Kazaa and eDonkeys of this world

<P>can pack and go home, and RIAA can safely drop all its lawyers in

<P>a pool, because they won't be needed anymore. There's no competition

<P>or fight against a distributed network with a billion nodes or so.

<P>Everyone in the world becomes a file-sharer without even knowing it.

<P>There's no one to sue. I thought that you did not like infringement.

<P>

<P>Second, this thing will also nuke whatever business models

<P>that the file-sharing companies have. When do you show an ad if the

<P>search and download code are inside the OS? And you cannot even sell

<P>this as an option, because you want everyone to have it, and selling

<P>introduces way too much product distribution friction. You could try

<P>bundling Gator with it, but that also will result in a consumer

<P>backlash and will reduce its usage. No, you gotta make it as quiet

<P>and inobtrusive as possible - and this means zero money stream for

<P>whoever writes it. So I'm not surprised that P2P companies did not

<P>implement it. Given that their business models already sucked, how

<P>can you suggest that they should have committed collective suicide

<P>by doing this seamless OS integration?

<P>

<P>Maybe I misunderstood something in your words? Your position

<P>seems to be kinda contradictory - this example of OS integration that

<P>you'd like to see implemented seems to contradict both your statements

<P>about P2P companies. Doing this would seem to only exacerbate both

<P>problems that you already had with them. What am I missing?

<P>

<P>Best wishes -

<P>S.Oskine.

<P>28 Oct 2006.

<P>

<P>-----Original Message-----

<P>From: Adam Fisk [mailto:adamfisk@gmail.com]
mailto:adamfisk@gmail.com

<P>Sent: Saturday, October 28, 2006 9:57 AM

<P>To: griffin@onehouse.com

<P>Cc: Serguei Oskine; David Barrett; Mark Cuban; Fred von Lohmann; Pho

<P>List

EXHIBIT
35 FD
BMA 2/15/08

CONFIDENTIAL
LW DE 1263217

BEGBATES = LW DE 1263217
ENDBATES = LW DE 1263218
BATESATTCH =
CUSTODIAN = Catillaz, Kathryn
DOCTYPE :
AUTHOR :
TO : Adam Fisk <adamfisk@gmail.com>; griffin@onehouse.com
FROM : Serguei Osokine <osokin@osokin.com>
CC : Serguei Osokine <Serguei.Osokine@efi.com>; David Barrett <d Barrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho List <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 12:47 PM
To: Adam Fisk <adamfisk@gmail.com>; griffin@onehouse.com
Cc: Serguei Osokine <Serguei.Osokine@efi.com>; David Barrett <d Barrett@quinthar.com>; Mark Cuban <Mark.Cuban@dallasmavs.com>; Fred von Lohmann <pho@vonlohmann.com>; Pho List <pho@onehouse.com>
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<http://www.grouter.net/gnutella/finitmsg.htm#Fig1>

- the idea was to run the Gnutella node transparently on every machine (maybe even as a part of the OS), and use port 6347 as the access point for the local connection to reach the Gnutella functionality through a simple Gnutella 0.6 protocol with an original 0.56 or similar Gnutella client, regardless of the future protocol changes. Originally that was intended to add the flow control to Gnutella, but of course things like multi-source downloads would be also added to the router as soon as they would become available, and the support of pure HTTP for the browser use would be only a matter of time.

That is, the router would run in the background, route all the Gnutella traffic, assemble the multi-source downloads into a continuous byte stream, and then you's just issue HTTP GET on port 6347 and get this file as if from the local Web Server. And UI developers would no longer have to learn the obscure and esoteric details of Gnutella protocol, but rather could concentrate on the UI itself. Just as AJAX programmers do not have to know TCP Internals today.

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- > I have two problems with the p2p companies:
- >
- > 1) Their business were entirely built off of infringement.
- > ...
- > 2) Their business models sucked.

I still like the idea above, and it sounds like you do, too. Which surprises me to no end, given your stance on infringing and on the P2P companies' business models. Because first, if this thingie is placed in the OS, it becomes the most powerful infringing tool in history - if it is done right, Kazaas and eDonkeys of this world can pack and go home, and RIAA can safely drown all its lawyers in a pool, because they won't be needed anymore. There's no competition or fight against a distributed network with a billion nodes or so. Everyone in the world becomes a file-sharer without even knowing it. There's no one to sue. I thought that you did not like infringement?

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Maybe I misunderstood something in your words? Your position seems to be kinda contradictory - this example of OS integration that you'd like to see implemented seems to contradict both your statements about P2P companies. Doing this would seem to only exacerbate both problems that you already had with them. What am I missing?

Best wishes -
S.Osokine.
28 Oct 2006.

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Sent: Saturday, October 28, 2006 9:57 AM
To: griffin@onehouse.com
Cc: Serguei Osokine; David Barrett; Mark Cuban; Fred von Lohmann; Pho List
Subject: Re: Pho: Slate: Prof. Tim Wu on YouTube

- >
- > Any technology should be legal; All technologies can be monetized.

That's a scary statement, Jim. Monetization is just not the end game here. Otherwise we'd all be rejoicing as China adds coal power plant after coal power plant to fuel our economic triumph. The choices we make matter and have consequences, and the most profitable path is simply not always the best path. In the case of the p2p companies, they (we) took both a worse path and an unprofitable path. Hard to champion that cause.

- > When technology introduces risk, we should monetize that risk, not seek to
- > eliminate that risk, and this is most especially true as regards
- > technology that

> enables speech, art, knowledge and creativity.

Sure, we took risks in the face of copyrights. Guess what? They were bad risks. Those risks did not pay off, with almost every p2p company now gone with with not a single one of them having been a strong financial success.

Again, I believe in the power of p2p technology to contribute in all the areas you mention. I would otherwise not be a p2p developer. I just think the p2p companies followed the obvious path to making whatever money they could, which wasn't much in the scheme of things. I think they should have taken more risk, not less, and attempted to use the technology in less obvious and more profitable ways.

For example, it's shocking to me that some of the core p2p technologies are still not integrated with the Internet as a whole. Multisource downloading, for example, should be enabled by default on both the client and server side on every computer on the planet, and every web site should take advantage of that infrastructure. The technology has been there for over 4 years now, and yet that shift is unlikely to happen any time soon. That simple change would give us a far more robust and powerful Internet than the one we know today. Instead, we're sitting in court with the jokers from the RIAA.

Finally, when did I ever say I was against monetization? In fact, one of my core critiques of the p2p companies is that *they didn't monetize their technology enough*. I have two problems with the p2p companies:

1) Their business were entirely built off of infringement. I don't see this as an overall beneficial development, and I think we could have done far more with the technology.

2) Their business models sucked. For the number of users the file sharing apps had, it's ridiculous how little money they made. Even regardless of the number of users, it's ridiculous how little money they made.

I think there were and are far better businesses out there for p2p on all levels, as Skype has shown.

-Adam

IMAGELNK
VOLID

= LW DE 1263217
= PRODB