

EXHIBIT “1”

LimeWire Arista RIAA Deposition Recap

February 16, 2008

So I finished my grueling 6 hour deposition an hour or so ago. Present at the deposition were Greg Bildson of LimeWire, Charles Baker (my and LimeWire's counsel), the RIAA counsel, RIAA special advisor, Kelly Truelove, the counsel for Arista et al from Cravath, the stenographer, and the videographer. I would have liked to have released and distributed the video of the deposition on LittleShoot, Gnutella, and my web servers as a clear demonstration of non-infringing uses, but it looks like it will not be publicly released for the time being.

I fear my testimony damaged LimeWire's case in large part due to various discussions with Mark Cuban, Jim Griffin, Serguei Osokine and others on the Pho list. Here's a little excerpt I wrote on 10/27/06:

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.

The Cravath lawyer highlighted this and several similar comments as indicating I think LimeWire is completely devoted to distributing infringing content. They successfully pinned me down on this point with precise "yes" and "no" questions, as in "do you have any reason to think you did not write that statement." I don't think LimeWire actively sought to make money from infringing content. I think LimeWire was in large part a victim of its historical time, a time when the Internet was still a baby and when users were not savvy about producing and distributing their own works. As a result, the vast majority of digital content available at the time was copyrighted, but only because that's what the users had. YouTube was not possible then because you didn't have a threshold of the population who would be comfortable uploading videos to servers and because bandwidth wasn't cheap enough.

That said, LimeWire is primarily used for distributing infringing material, but it's clearly the users distributing that material outside of the intents of the LimeWire creators, myself included. When I started working at LimeWire, we were building the Lime Peer Server and planning how Gnutella would be used to search for everything from apartment listings to cars. Despite our best efforts, those plans never came to fruition. My primary critique of LimeWire and of other p2p applications is that they didn't think as creatively as they could have about other uses of the technology, with the exception of Skype. The conversation on Pho was in the aftermath of the YouTube sale when the potential for distributing non-infringing content was obvious. I think we could have seen that sooner at LimeWire and could have more actively pursued a p2p-enabled YouTube using DMCA protections, but that's easy to say in retrospect.

My comments on pho were somewhat taken out of context. The Cravath lawyer succeeded in what apparently is the oldest trick in the book: put you to sleep with hours of mind-numbing questioning about the details of query routing hashes and long-forgotten forum posts before slipping in the key potentially incriminating questions just when they think your brain has turned to complete mush. By the time they got to the questions on Pho, I couldn't remember my name let alone articulately clarify my thoughts on a forum thread from over a year ago. This prevented me from continually pointing out that the Pho forum threads were focused on the details of YouTube's protections under the DMCA safe harbors and how they could apply to p2p.

Here's another snippet from Pho they highlighted. I believe I wrote this in response to one of Jim Griffin's comments:

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.

The key issue is that, while LimeWire clearly makes money from users' infringement, they never intended that to be the case. It's the content that's infringing, not LimeWire. I simply wished we thought bigger — thought beyond the existing uses of the technology, along the lines of what Skype was able to do. That's not to say it would have been easy, however, and that's not to say LimeWire's liable because they did not more vigorously pursue more creative paths.

As I emphasized continually in the deposition, we were always creating a generalized tool for media distribution. It was a tool for dynamically searching millions of computers for any type of content. We worked with universities around the world, particularly the Stanford Peers Group, on creating the most efficient algorithms for distributed search. Our competitors included Google and Yahoo as much as they did Kazaa, a point the Cravath lawyer failed to fully appreciate or take seriously, even though I could not have been more serious.

If you're giving a deposition any time soon, my advice is to continually stay on your toes and to watch out for the ol' put you to sleep with the most boring questions you can possibly imagine trick. It's a trap.

Hopefully in the long run the First Amendment will matter more than making sure the record industry has plenty of cash to pay the most expensive lawyers in the business to help line their pockets.

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