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MusicCity Networks, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

METRO-GOLDWYN-MAYER STUDIOS INC., et al.,

Plaintiffs,

vs

GROKSTER, LTD., et al.,

Defendants

Case No. 01-08541 SVW (PJWx)

MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANTS STREAMCAST NETWORKS, INC. (FORMERLY KNOWN AS MUSICCITY.COM, INC.) AND MUSICCITY NETWORKS, INC. IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT; DECLARATIONS OF DARRELL SMITH, WILLIAM CLAY SHIRKY, ANDREW P. BRIDGES, GREGORY

NEWBY, M. TALLY GEORGE, SEAN L. MAYERS, JOHN PERRY BARLOW, BREWSTER KAHLE, RICHARD PRELINGER, STEVE W. GRIFFIN AND RICHARD NESSARY IN SUPPORT OF MOTION

[Notice of Motion and Motion, and Statement of Uncontroverted Facts and Conclusions of Law, filed concurrently herewith]

Date: February 25, 2002
Time: 1:30 p.m.
Ctrm: 6 (Spring Street)
Hon. Stephen V. Wilson

I, William Clay Shirky, hereby declare:

My name is William Clay Shirky. I reside in Brooklyn, New York

2. My current position is Adjunct Assistant Professor at NYU's (New York University's) graduate Interactive Telecommunications Program, where I lecture on the social and technological effects of network design. I am a co-author of a recent research report and a recent book on peer-to-peer technology, both published by O'Reilly Press, and have spoken widely on peer-to-peer at industry and policy organizations such as PC Forum, the Aspen Internet Policy Project, the Markle Foundation, the Practicing Law Institute, and the U.S. Navy. I have written about peer-to-peer in a variety of outlets, such as *Business 2.0*, *O'Reilly Network*, *Harvard Business Review*, *Wall Street Journal*, and *New York Times*. I have also worked as a consultant on peer-to-peer issues for Red Hat Software, Nokia, and Intel

3. Prior to my appointment at NYU, I was Partner for Technology Strategy at the Accelerator Group, an early stage investment fund located in New York City, and Assistant Professor of New Media in both the undergraduate and graduate media programs at Hunter College. From 1995-1997, I was Vice-President of Technology, Eastern Region for CKS Group and Chief Technology Officer of SiteSpecific (acquired by CKS). I have written regularly about the social and economic effects of Internet technology since 1993, when I began writing books about the Internet for Ziff-Davis press.

4 Morpheus, a software program that allows users to make files available from their personal computers over the Internet, creates a self-organizing network among its users. That network is arranged so that each user can use their PC both to host files (i.e. to make files available to other users) and to access files hosted by other users as well Because every computer in the system can perform the same functions, this is called a "peer-to-peer" architecture. As one would expect from a system where all computers are peers, the Morpheus software makes

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unable to offer their footage to the world at large, even when that footage might be of considerable interest. By using the Morpheus software as a distribution platform, the impediments and costs to distribution of such material disappear.

12. In addition to sharing files that document events, Morpheus allows artists and creators working with digital media an easy-to-use and low-cost outlet for their own creative works Although the ability of an individual to create or edit audio, video, and other multimedia files on the average home PC is improving dramatically every year (Apple, for example, now ships both audio and video editing software free of charge with every Macintosh computer), the infrastructure for distributing this PC-created content has not kept pace with the creative tools Consequently, much of the content remains trapped on the creator's PC. By allowing multimedia creators to host files on the same PCs where they create them, the Morpheus software significantly lowers the barriers to disseminating their work

13. The Morpheus software is also able to store "meta-data" information with files shared by Morpheus users. For example, this might include information regarding the author or title of a file, in addition to its file name This provides users a simple method for annotating content with meta-data. On the Web, it is very difficult to associate the contents of the file (the data) with information about the file (the meta-data) As an example, the data contained in this document—the advantages and possible uses of the Morpheus software- is different from the meta-data—which might include the author's contact information, the date the document was created, its length, file format, and so on. By linking the meta-data with the file itself, the Morpheus software makes it easy for users to annotate files they host, from simple things like noting authorship or creation date of a certain file, to allowing for the creation of new categories of searchable information, appended to the "Description" section of file meta-data

14. The meta-data capabilities of the Morpheus software could permit users to become not just hosts of content, but critics and guides as well. For example, because meta-data is supplied and can be altered by Morpheus users, a user who wanted to offer an assessment of the quality of various files could create their own ratings category. For example, I could give files I hosted a "ShirkyRating," from 1 to 10. By associating such a rating with files that I like or dislike, I create meta-data that other users can search for. This annotation would be linked to any files I labeled, and the instructions for using such a rating system could be sent independent of the file itself, either in Morpheus's chat area, or via email and other media.

5. Such annotations, in fact, need not be restricted to simple meta-data. Instead, annotations could be stored in separate files, then associated to the original files by way of meta-data associated with the files. Michael Hart of Project Gutenberg has spent over 30 years making public domain texts available in every conceivable electronic medium. Several of these texts are dense philosophical, scientific, literary or religious texts (Hume, Kant, the Human Genome, the Bible) that can be difficult to grasp without some interpretation. Individuals and organizations could add exegesis and explanatory text to these works and make them available through Morpheus, naming and describing them so as to point to their explanatory character, without needing to secure or maintain Web hosting for these annotation files.

16. Collaborative groups can also use the Morpheus software as a low-cost, simple method for sharing documents. In essence, it can be used as an easy-to-configure Web server. Because the Morpheus software uses standard Internet protocols such as HTTP (Hypertext Transfer Protocol, the foundation of the Web) to share files, a user running the Morpheus software can make files available to small groups by emailing a friend or co-worker standard Web links to files that

Morpheus makes accessible from their PCs. Because Morpheus uses HTTP, the recipient of such links could then access the file using any Web browser.

17. In this way, groups of musicians collaborating on creating or editing digital music can share links to files; programmers working collaboratively on a software project can share code; families separated by geographic distance can share photos and videos. By using the Morpheus software to host the content, and by sending one another simple Web links rather than whole files, distributed groups of users save on the time and resources necessary for hosting the files remotely; avoid managing two separate sets of files (critical when the file version matters, as with software code); and avoid sending large email attachments the recipient may not need, or whose size may exceed the limits of their email provider.

8 Finally, though the Morpheus software's focus on efficient use of existing resources makes it particularly valuable for individuals and small organizations, the ability to locate multiple redundant copies of files makes it potentially useful as deeper infrastructure as well. By being able to locate identical copies of files within the network of Morpheus users, and by being able to dynamically re-configure the network based on which PCs are currently connected and which are operating as "super-nodes," the Morpheus software provides much of the advantage of content-caching services such as Akamai, which aim to make network use more efficient by placing the content a user may want closer to them (e.g. all the images on the Yahoo homepage might be cached by Akamai servers in locations around the world, so that Yahoo users would access these files from local, less congested servers).

19. While not designed to be deployed as a content caching system, the Morpheus software harnesses the resources of the PCs connected to the system so efficiently that it has achieved many of the benefits of caching and self-configuration at a fraction of the initial investment and ongoing cost of Akamai.

20. Many additional uses for the Morpheus software can be imagined. Just as the Web was not envisioned by the pioneers of the Internet, and eBay was not envisioned by the early pioneers of the Web, doubtless some innovative uses that cannot be imagined now will also arise. As an important innovation in networking technology, the Morpheus software gives PC users a new and valuable tool fit for many potential uses

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed in Brooklyn, New York on January 17, 2002.

William Clay Shirky