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The Lawyer Who Sued CBS For Piracy Explains His Thinking

Michael Zeller argues why CBS deserves trouble for leading users to piracy

BY ERIQ GARDNER MAY 6, 2011 11:30AM





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The topic of piracy engenders much passion these days. There are those who argue until their throats are hoarse that copyright laws need to be firm and punishing, just as others shout on mountaintops that copyright holders have gone too far. What about those who supply megaphones to both camps?

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Earlier in the week, we reported about [a lawsuit](#) against **CBS Interactive** for playing a role in the rise of the P2P era by distributing file-sharing software on subsidiary **CNET**. The headline character in this dispute is **Alki David**, an eccentric billionaire and [Hollywood bit player](#), who seems to have spearheaded the legal effort as part of [a revenge campaign](#). But just as intriguing in our eyes is the attorney, **Michael Zeller**, who agreed to take the case and has some fairly provocative views on the subject of copyright.

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Zeller won't like the idea that we deem his viewpoint to be "provocative." We talked to him on the phone after the news of the lawsuit broke. He shrugged off our suggestion that he's dancing on a tightrope for this case and blanched at the notion that the case could set precedent. "I hope not," he says.

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Zeller is a partner at **Quinn Emanuel Urquhart & Sullivan**, which was named last year as the top intellectual property firm in the United States by *IP Law & Business* magazine. Zeller has a top-notch client list, including **Google, eBay, IBM, Disney,** and **Mattel**. He's been on both sides of copyright battles, for both plaintiffs and defendants, and as such, there have been times when he's argued for expanding copyright infringement liability and times when he's argued otherwise.

As we pointed out in our original story about the lawsuit, Zeller once represented **Time Warner** in defense of a lawsuit a decade ago for knowingly disseminating P2P client, **Gnutella**. Now, he's going against CBS for, among other things, knowingly disseminating P2P client **LimeWire**.

In short, he's a lawyer's lawyer.

As one might expect, Zeller is very careful about keeping some sort of ideological consistency. Lest someone track down some prior brief he's written that espouses some contradictory viewpoint, Zeller needs to be on his toes. Plus, he's got to keep his clients happy. Google might not like a judgment that places more legal responsibilities on Internet Service Providers. (He'll never publicly admit that these things influence his job.)

Zeller believes that to a degree, ISPs should have fairly wide birth when it comes to their liability.

“Creating and disseminating technology used for copyright infringement is not enough,” he says. “Even if CNET created LimeWire and made it available and knew what everyone was doing, that wouldn't be enough.”

We're sure that Hollywood studios would disagree with that statement. But everyone who believes copyright holders are going too far (many of whom are [attacking his latest lawsuit as silly](#)) will say, “Right on!”

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But then again, Zeller posits a theory that goes beyond any we've heard from the most zealous copyright holders. He says that where CBS crossed the line was in the way it was *guiding* users to infringe. For instance, the **complaint** mentions the praising review that a CNET author gave LimeWire, likening it to a **post-Napster clone**. "The instruction factor was most important here," says Zeller.

Sounds like Zeller is tracking close to saying that speech itself can be an inducement towards infringement, in a similar way that the U.S. government **once tried to shut down** a magazine from printing the secrets of the H-Bomb for fear it would be educational to terrorists. Does this mean that we, at *THR*, are liable for copyright infringement if we publish stories that offer some cursory **road maps** to how users can get pirated content?

In Zeller's view, the difference was that CNET was directly and knowingly profiting from its guidance, and he expects discovery in the case to be focused on the relationship between CBS Interactive and a company like LimeWire. The "partnership" aspect between an ISP and an institutional user/sponsor/whatever of the software platform is just one of the intriguing bits in this lawsuit.

So too is the fact that the complaint didn't actually list any copyrighted material that was allegedly infringed. The lawsuit details *who* was damaged, including Alki David (as a film producer) and a bunch of rap artists, but unlike so many other lawsuits, this one doesn't show *what* was stolen.

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This was intentional on Zeller’s part. He says it’s not a requirement to list out infringements in complaints and expresses some fatigue at the “time consuming” chore of having to always amend complaints whenever new copyrighted material turns up during the course of proceedings as having been infringed. It’s much simpler to just leave it out. It’ll reveal itself later. That way, the ground beneath his feet doesn’t shift.

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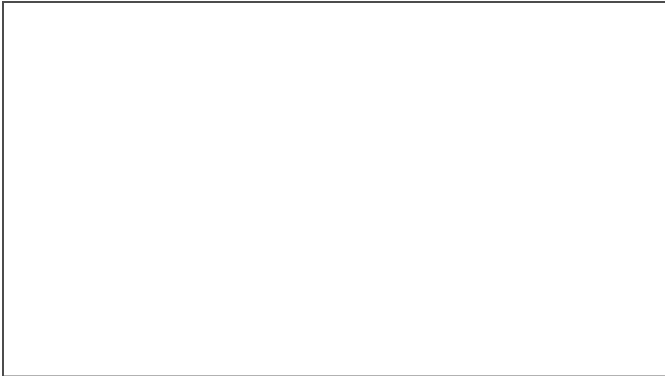
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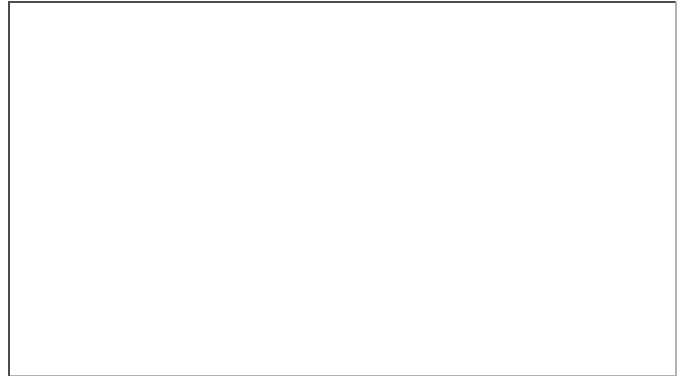
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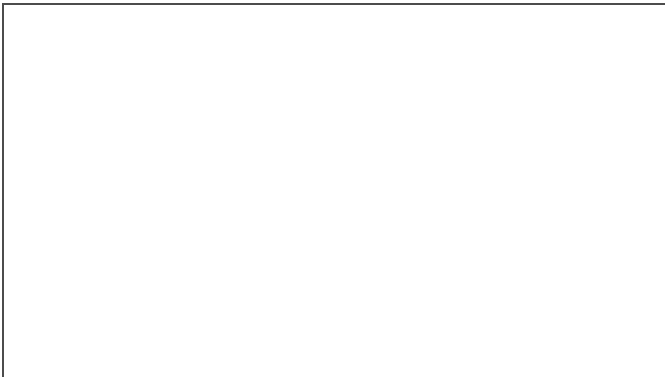
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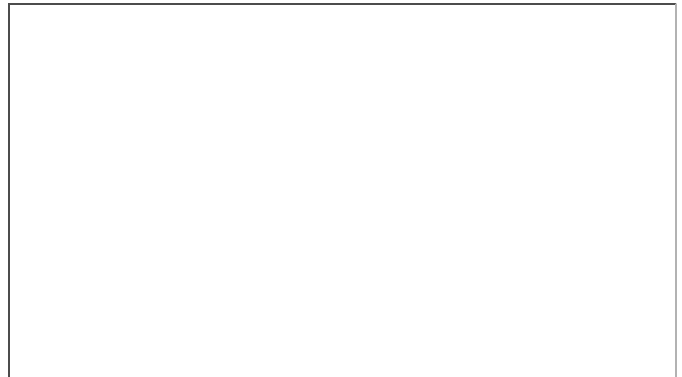
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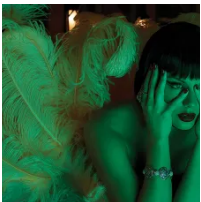
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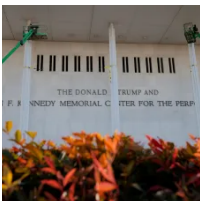
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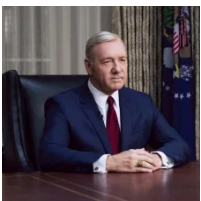
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