Hi Gina,

Though I realize that things are very busy there this week, we believe that it would be mutually beneficial to examine some of the ways that Ning and WidgetLaboratory interact, so that we can continue to promote the growth of both of our organizations. Many of these issues are somewhat time sensitive.

To wit:

1) The sharing of information information, in advance of any network changes by Ning;
2) The manner of reference by Ning staff to WidgetLaboratory or our products;
3) The removal of any further "finger pointing" for technical issues between our support staff;

We're fairly certain that you are aware of our membership size and product distribution. You must therefore realize that the actions of Ning in cooperating with WidgetLaboratory have a direct effect on most of your major network customers, because they utilize WidgetLaboratory products in a significant way. Likewise, your major Ning clients are all reliant upon WidgetLaboratory at this point for advice and support, since they utilize our products to build their networks.

We have remained true to our word from December of 2007 when we pledged to be a benevolent and positive influence on the Ning community. With our explosive growth and penetration into your network, we believe this to be true now more than ever. Every client of ours is given a sales pitch on the benefit of building their platform on Ning. We believe that WidgetLaboratory has contributed significantly to the growth and popularity of Ning over any other platform.

While we do not ask for any favors (as usual), we do ask that Ning give us normal and "reasonable" technical support that is standard industry practice, so that you do not adversely effect your OWN customer base. Almost all of the issues that have arisen from Ning's infrastructure changes and difficulties have resulted in your customers coming to WidgetLaboratory for assistance. When this occurs, we have always attempted to be diplomatic and ask for the patience of the end-user.

On the other hand, we have received very little in the way of constructive assistance from Ning, and we have been put on "fools errands" by your staff again and again (like chasing down static images that are not even utilized). On Thursday, when Ning completely changed your entire framework (dojo) *without any advanced warning whatsoever*, it completely broke most of our product-line. We asked for help and received no response. *What was the benefit there?* We were then left holding the bag to answer to Ning clients as to why Ning broke their WidgetLaboratory products?

We are pretty certain that you have very little personal concern or regard for WidgetLaboratory. Why should you? Perhaps you should be concerned, however, that your present method of leaving us out of the loop, having customer support staff remove our products from customer sites without permission, and blaming us for any and all Ning-caused problems, is counter-productive. *This behavior leaves us with no choice but to explain the true facts to your own customers as to what is really the cause of their "issues".*

How would that help our mutual interests?

We appreciate your anticipated cooperation.

Thank you,
Spence

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Spencer,

I think we should get on the phone this week. Given Jay Parikh and our whole team's efforts to ensure that you guys are up and successful on Ning, I am continually disappointed how you read something negative and conspiratorial into everything we do.

Jay has been on the phone with Mick over the course of the past few weeks to ensure that we can minimize the impact of changes that we have – and will continue to make – to the Ning Platform on Widget Laboratory. Moreover, our goal is to ensure that your products perform at scale while staying within our terms of service, terms of service that are designed to ensure the Ning Platform is healthy and available for everyone. That's it. We don't want to see you fail. We just want to see you succeed in a way that scales.

If we tell you that something won't work or scale, it is not because we want to compete with you. If we need to research an unintended consequence of your code on the performance or registrations on a network, it is not because we want to see the network remove your feature. We have to investigate and address issues we see with your products and code to the extent they impact performance or put strain on the system. That's the reality of technology and is in no way personal.

Our only goal is to have you build your products in such a way that doesn't slow down the networks running your products or takedown the Ning Platform with what you're doing. Both of those would result in us needing to shutdown WidgetLaboratory products and that's has never been our first choice of options. Hopefully, you know this after 8 months of working with us.

If you don't trust us on this, then I sincerely recommend exploring something other than a 3rd party developer business. It will be the case with any platform on which you work.

It's in both of our interests to make each other successful. Time and time again it feels like you are trying to threaten us into something that is never exactly clear. This is maddening when we're investing time and effort from our end into figuring how we can be successful together.

I think we need to determine once and for all if you want to work with us or continue to treat us like the opposing side in a court case. If you view us as the enemy, this is not going to work. However, if there's a way for us to work together where we can make each other mutually successful without all of these strange misperceptions of personal and conspiracy issues, then I think that we'll both win.

If that's not possible, then it's probably better for both of us to know this sooner rather than later and make the right decisions with respect to our mutual investments in each other's success.

Gina

Gina,

Yes, I think we should get on the phone, that would likely help quite a bit.

Your reply has nothing to do with my letter.

This is not about conspiracy, this is not about you competing with us or hoping we fail, and it's not about my threatening or taking anything personal.

This is about the fact that WidgetLaboratory has more than 1700 networks and one million members who utilize our products and RELY upon us to deliver consistent performance. When Ning does not give us the tools and support to make that happen, then both of our companies suffer. Nothing else is relevant.

You should check your facts as well. Jay has never been on the phone with Mick, EVER. I'm attaching all of the correspondence that was sent and received in the last two days. Please note the last email from Jay where he (after you notified him this evening) apologizes to Mick for never getting back to him about our SOS request for help because he "lost the email in his spam filter". Considering the fact that we are the only Network that provides any real products to your customers on the Ning "platform", do you really think we are being unreasonable to believe that Ning might keep us notified before you decide to pull the plug on using Dojo in the header of every page? Is it unreasonable to think that you might think about notifying us ahead of time about your plans to do so? Is it unreasonable that Ning KNEW it had broken our products but failed to get back to us with any promised solution or patch more than two days later? Can you name any other "platform" that would do such things to its 3rd party developers?

All your other 3rd party comments are red-herrings and irrelevant. Go back and read your own voluminous quotes from Tech-Crunch, et al, where you make the bold statement that Ning should be the platform of choice for 3rd party developers. How many are there right now on Ning? It is WidgetLaboratory and a couple of "script" writers. That is it. Why do you think that might be? We think it is because you are making claims about your level of support and encouragement that don't jibe in any way with the facts. Ning has no useable support or documentation system for 3rd party developers and we are the only ones that have figured out how to make your "platform" work. Everyone else thinks that it is futile. Even with this hurdle, we don't ever ASK you for help unless it is CRITICAL to your clients because NING broke something. When we do, there is no support. It is like shouting into a well.

WidgetLaboratory has something that Ning can use, and you know it. We have captured the hearts and pocketbooks of your own best clients. We have a "schtick", a story, and products that wouldn't work if they were brought forward by Ning with your VC overlords. We have the ability to bring attention to Ning in ways that you are unable or unwilling, and we have proven that again and again.

Instead of messing around with all this "fluff", my suggestion is that you and I have a private conversation about how Ning and WidgetLaboratory can start working together as a team instead of this incredibly stupid tug of war that was created at your end, not ours. We're prepared to stand up to public scrutiny for every event that has taken place thus-far. We do not see how the facts as they exist today would portray Ning in such a favorable light given how far they digress from your own public statements.

We offer you a truce and an opportunity to get Ning to a new level rather than any more gamesmanship. You had our respect from day one. Now we ask you to take us seriously as well.

We await the favor of your reply.

Spence

On Aug 3, 2008, at 1:54 AM, Gina Bianchini wrote:

> Spencer,
>
> I'm still happy to do a call but the threats and the blame – even the snipe below of the "instead of this incredibly stupid tug of war that was created at your end, not ours"- have got to stop. If you can't do that, then let's not even bother trying to repair this relationship.
>
> However, if you are willing to stop with this current train of attempted negotiation – rambling emails, blame, threats, and more blame – and we can have a constructive conversation around the specific things we need to do to make each other successful, then we've got a shot of turning this situation around and moving to a healthy dynamic that works for both of us. That's certainly my goal and I'll come into this conversation with nothing but an eye towards a much more successful future.
>
> I hope you choose the constructive path, but that's your call at this point.
>
> Gina

I'll let you have the last word...

YES, I am willing and able. You have my assurance.

Let's get to work.

Please contact me at your convenience and we can move forward.

Spence

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Spencer,

One thing I want to be clear on ahead of our call. We totally should have announced the Dojo change to you and all developers working on the platform. I take full responsibility for our team not doing that and we will do so going forward.

We still won't be perfect and can't make the promise that we won't make mistakes, but they will continue to be innocent mistakes and we'll learn from them. I will personally make sure we turn around with future releases that we know will have an impact.

Looking forward to our call,
Gina

Hey Spencer,

I appreciated you taking the time last night to speak. I had a few things to follow up on and wanted to get back to you on them today:

Referring to WidgetLaboratory as WidgetLaboratory on Network Creators
Done. This shouldn't be an issue any longer.

Sending people to WidgetLaboratory for help
I spoke to my team and this is going to be harder than either of us would like. Many times WL issues show up as something totally unrelated to the widget. For example, in the incident last night WL widgets were taking entire networks down in IE. For the first few hours, we had no idea it was related to WL. Network Creators were coming to us first because the issue impacted the whole network and we had to investigate.

With an increasing number of issues as well as OpenSocial developers coming onboard shortly, we are going to be very explicit on Network Creators and in our Help Center that to troubleshoot issues Network Creators should remove any third party widgets they might have on their networks. This is in no way a knock on WidgetLaboratory or anyone else. It's simply the best way for us quickly pinpoint whether the issues are on our side or somewhere else. Then, when we determine the issue is related to a third party widget, we will funnel requests/issues to the specific third party widget provider, in this case you.

We are also going to be clearer and more proactive on Network Creators and in the Help Center educating people that Ning and third party developers are two different things. We have to formalize this. We're going to post something on Network Creators today or tomorrow. Again, this isn't a knock on WidgetLaboratory. This is about how we interact with both the current third party developers and the coming OpenSocial developers.

I also want to make sure that we're on the same page with respect to when we need to take applications offline. If any 3rd party application running on our infrastructure is taking down networks or otherwise unduly straining the platform, we may have to take action ahead of you guys making changes and resolving the issue. As I committed last night, we'll do everything we can to give you a heads up, but because we've stayed out of your code and can only pinpoint an issue is coming from you, we won't be able to tell you what to change to fix something and we won't keep apps or widgets active that are breaking networks or overloading the platform. We wish we could, but we can't.

Asking for Username, Password, and PIN
Don't do this, even on your own network. I understand that you're looking to save time and effort on troubleshooting and I can appreciate that. But people voluntarily give phishers their passwords too and it's still against our Terms of Service. If we have evidence other than our conversation last night that you are asking for username, password, and pin of other Network Creators on WidgetLaboratory, we will be put in the unfortunate situation of shutting down your network and widgets. We don't want to do this. In fact, we'd like very much to work more closely together but we can only do so if everything you guys are doing is within the Terms of Service.

There's a slight chance tomorrow that I am going to be out of commission and unavailable for a call. Alternatively, can we schedule time on Tuesday late in the day to continue the conversation? I'm really looking forward to having these clear lines in place so that our conversations going forward have the strong foundation that's hopefully now in place. I'll have Lisa follow up.

Thanks,
Gina

From: Evil Genius <evilgenius@widgetlaboratory.com>
Subject: **Follow up response from Spencer Forman**
Date: August 7, 2008 6:53:50 PM CDT
To: gina@ning.com
Bcc: Evil Genius <evilgenius@widgetlaboratory.com>, Mick <mick@widgetlaboratory.com>

Hey Spencer,

I appreciated you taking the time last night to speak. I had a few things to follow up on and wanted to get back to you on them today:

Referring to WidgetLaboratory as WidgetLaboratory on Network Creators
Done. This shouldn't be an issue any longer.

OK, thanks!

Sending people to WidgetLaboratory for help
I spoke to my team and this is going to be harder than either of us would like. Many times WL issues show up as something totally unrelated to the widget. For example, in the incident last night WL widgets were taking entire networks down in IE. For the first few hours, we had no idea it was related to WL. Network Creators were coming to us first because the issue impacted the whole network and we had to investigate.

With an increasing number of issues as well as OpenSocial developers coming onboard shortly, we are going to be very explicit on Network Creators and in our HelpCenter that to troubleshoot issues Network Creators should remove any third party widgets they might have on their networks. This is in no way a knock on WidgetLaboratory or anyone else. It's simply the best way for us quickly pinpoint whether the issues are on our side or somewhere else. Then, when we determine the issue is related to a third party widget, we will funnel requests/issues to the specific third party widget provider, in this case you.

OK

*We are also going to be clearer and more proactive on Network Creators and in the Help Center educating people that Ning and third party developers are two different things. We have to formalize this. We're going to post something on Network Creators today or tomorrow. Again, this isn't a knock on WidgetLaboratory. This is about how we interact with **both the current third party developers and the coming OpenSocial developers.***

OK

I also want to make sure that we're on the same page with respect to when we need to take applications offline. If any 3rd party application running on our infrastructure is taking down networks or otherwise unduly straining the platform, we may have to take action ahead of you guys making changes and resolving the issue. As I committed last night, we'll do everything we can to give you a heads up, but because we've stayed out of your code and can only pinpoint an issue is coming from you, we won't be able to tell you what to change to fix something and we won't keep apps or widgets active that are breaking networks or overloading the platform. We wish we could, but we can't.

Not sure where there is any issue here? When Jay finally decided to Call Mick (at 3 or 4am) Mick resolved the issue in about two minutes. Simple. Why is that not possible with WidgetLaboratory in the future? We are not an ordinary "developer" or an Open Social developer, we have over a million people and 2000 networks using our products. If something is not working and it effects more than one or two people it is fairly likely that with one quick page, IM, or phone call we can solve the problem for you and save your entire team the trouble of wasting hours chasing ghosts. Mick and Jay exchanged private IM information last night, so now the incident of last night should **not likely occur again.**

Asking for Username, Password, and PIN
Don't do this, even on your own network. I understand that you're looking to save time and effort on troubleshooting and I can appreciate that. But people voluntarily give phishers their passwords too and it's still against our Terms of Service. If we have evidence other than our conversation last night that you are asking for username, password, and pin of other Network Creators on WidgetLaboratory, we will be put in the unfortunate situation of shutting down your network and widgets. We don't want to do this. In fact, we'd like very much to work more closely together but we can only do so if everything you guys are doing is within the Terms of Service.

I studied your TOS (the curse of an attorney). We are not phishing in any sense of the word (http://en.wikipedia.org/wiki/Phishing), and we are not breaking your TOS. We are merely asking our paying customers for their login information to diagnose and troubleshoot problems with their licensed and purchased products. I agreed last night to avoid publicly requesting that info on NC board out of common-sense, but I ask you to consider very carefully what you are asking of us, and to also consider "why" after we broke the ice that you are now making allusion to "shutting down our network and widgets". We have every right in the law, in your own TOS, and in common sense to ask our paying customers for access to their sites (by their own voluntary agreement to provide the same) in order to diagnose and solve problems as they may arise. This is common industry practice. In fact, most 3rd party software providers (take Userplane for example) REQUIRE that a customer provide FULL ACCESS to a private network and server in order to even deliver or support the product.

WidgetLaboratory is not an ordinary Ning "network" in the sense that your other customers are networks on Ning. We sell products and people pay us to support those products, including requests to go into their own sites and fix things for them. We just happen to believe that it is better to lead by "example" as to how easy and cool it is to build a company on NING as a platform.. even if you are building and distributing software for other Ning networks. Would it not look a bit silly for us to be on our own custom-built site claiming how great NING is... but not "using" Ning for our own company?

I welcome you to please point out any particular part of your TOS that states that we are in violation by asking our paying customers to voluntarily give us access to their site for the specific purpose of diagnosing and remedying problems with software that they obtained from us. I further invite you to reconsider that this is a most impractical and unreasonable request. Lastly, I ask you in the spirit of "true" cooperation (as we discussed at length last night) to reconsider whether your making continuing allusion to "shutting us down" is even necessary at this point? I'm certain that there would be no point in me reminding you that we can equally put this entire debate out for public consumption, should Ning decide to act in violation of its' own published TOS and against all common sense and beneficial interest.

There's a slight chance tomorrow that I am going to be out of commission and unavailable for a call. Alternatively, can we schedule time on Tuesday late in the day to continue the conversation? I'm really looking forward to having these clear lines in place so that our conversations going forward have the strong foundation that's hopefully now in place. I'll have Lisa follow up.

I meant what I said yesterday. WidgetLaboratory is 100 percent committed to being an asset to Ning, a supporting "team player" and an entity that you can utilize to further grow and promote your platform. We will bow when you say bow, jump when you say jump. But please do not believe that we do this because we "have to". We do it because we "want" to. You already have our respect and yesterday you obtained my promises. Please don't make me think that you were not sincere in your own promises. I look forward to more productive conversation about how we can go forward towards a positive future with Ning. Please contact me whenever it is convenient.

Thanks,
Spence

Spencer,

From here, I'll let Jay and Mick work through the technical issues that come up. I'll also have Bob Ghoorah, our General Counsel, follow up on the TOS.

Lastly, for the business conversations, I'm going to give this to Jason Rosenthal, our new SVP of Business Development, who starts on September 15th. He will be the right one to take these forward.

Best,
Gina

Dear Spencer,

I am writing to inform you that your network (widgetlaboratory.ning.com) and third party applications have been removed for violations of our Terms of Service. Please direct all correspondence regarding this matter to my attention. Thank you.

Bob Ghoorah
General Counsel
Ning, Inc.

Hi Bob,

Now that Ning has "flexed it's muscles" and focused everyone's attention:

Please enumerate specifically any and all "violations" of your Terms of Service.

Our legal counsel has extensively reviewed your documentation and can find no such violations.

Please be advised that we consider your means and method of takedown to be both provocative, tortious, and demonstrative of bad-faith.

At this time we formally request that you immediately restore all WidgetLaboratory service as well as service to all of the private networks held by Mick Balaban and myself, none of which were involved in any WidgetLaboratory business affairs.

After you restore all Network Service, we look forward to discussing an amicable discussion and resolution of this matter that does not cause any further harm to Ning in the court of public opinion.

One need only read the Network Creator's forum to gauge your customer's feelings as to this morning's actions.

It would be a shame if this matter were to have to go any further than it has.

Dear Spencer,

Your Networks and applications were removed because they were unduly degrading the performance of the Ning Platform. After repeated discussions with you and your team as well as repeated attempts on Ning's part to resolve these issues with you, we have taken the extraordinary step of terminating your Ning account and Networks as we are entitled to do under our Terms of Service. As you know, use of the Ning Platform is a privilege, not a right and we must take action to preserve the integrity of our service for the hundreds of thousands of Networks that rely on Ning every day.

We do not intend to debate our decision with you and are confident in our legal position to take this action.

Bob

Dear Bob,

Thank you for your reply. It is not our intention to debate with you either, as there is nothing to debate.

Please be advised that we have a meticulous record, both technical and otherwise, of each and every communication with Ning and all of it's employees.

Your undocumented response below is not in keeping with a company acting in Good Faith. Neither were the means or the method utilized this morning.

We have an impeccable eight month record of providing nearly "instant" response to any and all Ning requests for technical support for all of our products.

Please, therefore, provide "any" specific details as to the "unduly degrading" of your Network, as you must surely realize that this information will become relevant in the event that Ning does not reconsider its position.

At this time there are still options open that would allow for a graceful resolution of this matter without any further damages to our mutual customers.

We request, once again, that you consider exploring any or all of these options as would provide Ning with a way to solve their "issues" if any with WidgetLaboratory, without resorting to a method that is ultimately more damaging to our mutual customers and Ning's reputation than anything it could possibly hope to gain from eliminating WidgetLaboratory.

We are also confident in our legal position that your actions were actionable. The only question now is whether you wish to mitigate the damages. It does not seem prudent for a start-up company such as Ning to be squandering precious venture capital, human resources, and good will on litigation with such an "esoteric" position as the one you have outlined below.

Spencer

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Dear Spencer,

Your description of the facts is both skewed and plainly false.

Over the past few months, WidgetLaboratory's applications have caused multiple and significant technical degradations to the Ning Platform. In point of fact, your code has broken numerous times and has negatively affected a large number of Networks in addition to the Ning Platform. This is a consistent pattern among your applications. Your team has neither the expertise nor the capacity to implement effective technical solutions to these recurring problems. In many cases, it has taken WidgetLaboratory weeks to fix the broken code and only after repeated attempts by Ning's engineering team to assist. Indeed, the Ning team recently worked until 4 a.m. with WidgetLaboratory to fix one of your applications that broke all WidgetLaboratory-enabled Networks and prevented these Networks from loading the Microsoft Internet Explorer browser. Our Terms of Service clearly state that you agree not to "develop, invoke, or utilize any code to disrupt, diminish the quality of, interfere with the performance of, or impair the functionality of the Ning Platform or any Network".

Last night, Ning contacted Mick Balaban to discuss the most recent technical problems with WidgetLaboratory and the technical strain that your applications were causing to both the Ning Platform and thousands of Networks on the Ning Platform. The response we received from WidgetLaboratory was neither amicable nor constructive. In fact, WidgetLaboratory did nothing to try to mitigate any damage that your applications were causing to the Ning Platform and to thousands of Networks on the Ning Platform. This lack of response coupled with the continued risk and degradation that your applications were causing to both the Ning Platform and thousands of Networks forced us to take the extraordinary step to shut down your Network. Ning has no responsibility or liability of any kind for providing development, operation, support or maintenance of any code you upload to the Ning Platform. You are solely responsible for ensuring that your code and products are compatible with the Ning Platform. We simply can't have third party products on our Platform that adversely impact the stability of the Ning Platform or otherwise negatively affect our Member's ability to use the Ning Platform.

We had no other choice than to shut you down in order to protect the integrity of the Ning Platform. Again, our Terms of Service clearly state that "Ning has the right (at its sole discretion) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Ning Platform or any Network, or remove and discard any Code or Content within any Network, without notice and for any reason".

At this point, our decision has been made and I do not believe that further dialog between our companies is warranted, especially in light of your references to litigation and your false and misleading statements on the WidgetLaboratory blog.

Bob

Hi Bob,

I suggest you review your facts and more importantly, be sure to get a copy of all emails and phone logs between Ning and our company. Your references to the qualifications of our staff are rather amusing and absurd considering Ning's bloated staff worked on their own till 3am with no solution... and then in TWO MINUTES following a call to Mick the problem was solved. If anything, you should consider whether to hire WidgetLaboratory to help Ning with your technical issues.

More importantly, we wish to afford you another opportunity to reconsider your decision to penalize and cause ongoing damages to your own customers and ours. Your course of action at this point, in the face of factual information that is contrary to your position, with full knowledge that you are causing serious and irrevocable harm to our mutual customers, and with the knowledge that you are knowingly and wrongfully attempting to damage our business and business reputation, is reckless and without any logical basis given our continued willingness and ability to comply with all network needs.

Our suggestion is that Ning immediately restore all customer products and our site, sit down with us at the table, and negotiate a long-term resolution of this matter that will afford a happy-ending to this terrible situation that Ning has brought upon itself and all of it's customers. Your lack of willingness to even discuss this matter, on any TECHNICAL grounds, is prima-facie evidence of bad faith given our documented record of working with everyone at your company from Jay to Diego to David Sklar.

We will stand behind each and every statement we have made in public and back it with documentation. Can you say the same about Ning?

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