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TELECOMMUNICATIONS AND TECHNOLOGY LITIGATION PRACTICE GROUP JANUARY 2004 TELECOM AND TECHNOLOGY LITIGATION UPDATE

COURT QUASHES SUBPOENA SEEKING IDENTITIES OF PEER-TO-PEER FILE TRADERS

Recording Industry Association of America, Inc. v. Verizon Internet Services, Inc., 351 F.3d 1229
(D.C. Cir, Dec. 19, 2003)

The District of Columbia Circuit has quashed a subpoena seeking the identities of persons engaged in peer-to-peer ("P2P") music sharing. The court held that the Digital Millennium Copyright Act's ("DMCA's") subpoena power is only valid when the allegedly infringing material is located on an Internet Service Provider's ("ISP's") system, not on a personal computer.

After recording companies successfully obtained an injunction preventing the Napster program from being used to share music files, millions of people switched to P2P music sharing. Unlike Napster, which relied upon a centralized communication architecture to identify music files for downloading, P2P systems allow an internet user to directly search the music files of another user; no website is involved.

In recent months, the Recording Industry Association of America ("RIAA") has cracked down on P2P music sharing, filing several hundred lawsuits against individual computer users accused of sharing copyrighted music through P2P networks. The RIAA subpoenaed Verizon under the DMCA to obtain the identities of individuals believed to be engaged in copyright infringement. When Verizon refused to provide the requested information, the RIAA filed a motion to compel production.

The district court rejected Verizon's arguments and ordered the production. However, the D.C. Circuit reversed. The court held that the DMCA's subpoena power extended only to an ISP that stored infringing material on its server, not to an ISP that acted only as a conduit for data transferred between two internet users. The court noted that, at the time Congress enacted the DMCA, there was no awareness that P2P technology could be developed in the future. However, the court held it was inappropriate to rewrite the DMCA in order to make it fit new and unforeseen internet architecture.

Comments: In response to the D.C. Circuit's opinion, the RIAA filed 532 lawsuits on January 21, 2004, against P2P music sharers, identifying them as "John Doe" in each complaint. RIAA intends to use the discovery process to obtain the identity of each John Doe.

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