

# CREMADES & CALVO-SOTELO

## ABOGADOS

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### **INTERSECTION OF COPYRIGHT LAW AND P2P TECHNOLOGIES**

Copyright law involves any form of representation, films, books, software...anything. Digital technology and specially peer-to-peer (p2p) tools, have turned normal users into commercial players, where anyone with a computer can make copies and distribute them to anyone<sup>1</sup>. This obviously creates problems for copyright, and even more nowadays where digital files cannot be policed in the traditional way for analog devices<sup>2</sup>.

It is interesting to note that most peer-to-peer technologies are used with legal purposes and it cannot be regarded as prohibited per-se. In fact it is the technology connected with other factors such as the wrong use of this system what makes p2p file-sharing illegal.

#### **1. END USERS**

The recent generation of consumers of digital technologies are sometimes called digital natives<sup>3</sup>. These new consumers can not meet law, because they think that the material they find surfing in the web is free for everyone, and even being aware of what they do is illegal, they justify themselves saying that anyone do the same thing, but it is obvious that those people that share files with no authorization by the owner are considered direct infringers.

In fact, direct liability is found without the need to prove affirmative acts, no control, no knowledge, no intent<sup>4</sup>, nothing. The only requirement is the proof that the user has

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1 William Couch; Peer-to-Peer File-Sharing Networks: Security Risks, pp 3

2 Matthew Harrop; SOMETHING FOR NOTHING: COPYRIGHT, ISP LIABILITY AND P2P FILE SHARING, pp 4

3 [www.techopedia.com](http://www.techopedia.com), digital native

4 Fred von Lohmann; What Peer-to-Peer Developers Need to Know about Copyright Law (VI. Lessons and guidelines for P2P developers)

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infringed one exclusive right of the copyright owner in section 106 of the EEUU copyright act 1976<sup>5</sup>. The only possible defence for a user in case of a complaint against him is the fair use<sup>6</sup> (the safe harbors<sup>7</sup> are only available for internet service providers). The requirements for the fair use defence are quite strict and despite having been expanded in the 80' in the Betamax case to cover time-shifting, I am quite sure that most courts nowadays are interpreting this defence more cautiously than ever before. We only need to look to cases such as Napster (where the defendants tried to rely on a fair use defence for all of its users) and the more recent case of the Tenebaum Boston student. The problem of trying to apply the Betamax case to p2p technologies, is that the fair use was granted once the users bought and "paid" for the product. In "all" p2p programs, "all" users get the product for free; maybe this is the reason why courts have not followed very much this ruling in order to protect users against direct infringement.

The problem with direct users of these technologies is that it is quite difficult to go after them. They will always find new ways to protect themselves using new technologies such as the IPREDATOR to mask their IP, or encrypting their computers, making it very hard to stop file sharing and even harder punishing them for their unlawful activities.

## **2. P2P TOOL MAKERS**

When people use services or tools in a way which is not according to the law, they engage in copyright infringements. But the question that I want to answer here is to what extent the providers of these technologies can be also held liable by the infringement committed by its users. The main reason is that, like in many other fields of law, copyright can also reach those people apart from the direct infringers. Maybe they have not committed the wrongdoing but they have encouraged and facilitated the means to make it possible.

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<sup>5</sup> Section 106 Copyright act of 1976

<sup>6</sup> Section 107 Copyright act of 1976

<sup>7</sup> Section 512 DMCA (Digital millennium copyright act)

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There are some good reasons why it is a good idea for copyright holders to sue the company instead of the direct infringers. First, for economic reasons<sup>8</sup> it is much less expensive for the copyright owner to sue the company directly instead of tracking each user and send them all to the Court. Besides, courts are in favour and also justify it since this is a way to shift injury costs to those who are in a position to prevent future injuries<sup>9</sup>. Second, peer-to-peer developers are both more visible and easier to find than direct users. Third, when a company sues a p2p service like Grokster, the impact and the effect will be much more beneficial than going after users. Fourth, some people see this kind of infringement as also reaching the creators of the program, claiming that they should also be responsible even if they are not the ones that harmed the owner of the copyright. For all the reason mentioned and taking into account that many lawsuits (like the Temembau) can reach millions of dollars, I think that copyright owners should “only” be given the possibility of suing the p2p makers.

It is interesting to see that the Copyright Act in the United States does not expressly claim that one person can be held liable or responsible for the infringement of another. The reason is that in the Copyrights Act there are only secondary liability rules for patents and trademarks. In the absence of any real theory for copyright, it has been the courts through case law who has been developing the theories of both contributory and vicarious liability. On the other hand, the Copyright, Design and Patents act<sup>10</sup> in the United Kingdom has clearly expressed secondary infringement in its section 24.

### 2.1 CONTRIBUTORY LIABILITY

Although contributory infringement is not expressly mentioned in the copyright act, there are some courts that have treated S106 (*“the copyright owner has the exclusive right to*

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8 William Landes and Douglas Lichtman; Indirect Liability for Copyright Infringement: An Economic Perspective, pp 397

9 Mark Bartholomew<sup>†</sup> & John Tehranian; THE SECRET LIFE OF LEGAL DOCTRINE: THE DIVERGENT EVOLUTION OF SECONDARY LIABILITY IN TRADEMARK AND COPYRIGHT LAW, PP 1366

10 Copyright, design and patents act 1988, s24

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*make and also to authorize copies*”) as containing the characteristics of this infringement. The definition of what constitutes contributory infringement stems from the *Gershwin Publishing V Columbia Artists Management* case<sup>11</sup>, where the judge stated that “*one who, with knowledge of the infringing activity, induces, causes or materially contribute to the infringing conduct of another, may be held liable as a contributor infringer*”. If we look at this statement, it is clear that knowledge and contribution are the main factors to find a p2p maker contributory liable for the infringement committed by its users.

First, this requirement can be considered as objective and it is satisfied if the tool maker was aware or should have been aware of the infringement. However, in light of the ruling in the *Betamax case*, the requirement of knowledge is no longer important if the p2p maker can prove that its programme has a considerable amount of non-infringing uses. As we will see, this is quite difficult in relation to file sharing technologies.

Second, despite there being some courts (*Apple Computer v Microsoft case*<sup>12</sup>) and most copyright owners asserting that the material contribution needs to be “substantial”, the majority of them has interpreted this requirement as being fulfilled by simply providing the facilities and the site.

## 2.2 VICARIOUS LIABILITY

The concept of vicarious liability stems from the *Shapiro Bernstein and Co v H.L Green Co case*<sup>13</sup>, where the court gave the example of the employer being liable for the acts committed by his employees. Like the owners of concert halls, the proprietors of a 2p2 technology can also be responsible and liable if they had the capacity to supervise or control the activities and had a direct financial benefit<sup>14</sup>. At first sight, it seems reasonable to find

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<sup>11</sup>Gershwin Publishing V Columbia Artists Management, Inc. case

<sup>12</sup> Apple Computer, Inc. v Microsoft Corp. case

<sup>13</sup> Shapiro Bernstein and Co v H.L Green Co case

<sup>14</sup> Christopher Alan Hower, REVIVING FAIR USE: WHY SONY’S EXPANSION OF FAIR USE SPARKED THE FILE-SHARING CRAZE, pp 77

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them also liable since they are forced themselves to control the activities of its users and the immediate result would be less copyright infringement.

First, they need to have the ability to control the users. Although it seems difficult to fulfil, the reality is that some courts have regarded the simply capacity to cancel user accounts as enough to meet this requirement<sup>15</sup>. Second, they should have a financial interest in the activities carried out by the users. Similarly to the requirement of control, this financial benefit is even easier to be fulfilled after the Napster case. The reason I think, is that the “benefit concept” has been expanded by the Ninth Circuit Court to include almost any benefit to the company, such as the capability to attract new users. The main difference with the contributory liability is that under this theory, the person who has the possibility to control and also receives benefits can be held liable even if he is not aware of the infringement committed by the p2p users; something which has been regarded by the Shapiro Court as neither disproportionate nor unfair.

### 2.3 THE BETAMAX DEFENCE FOR CONTRIBUTORY AND VICARIOUS LIABILITY

In 1984, Sony Corporation developed a new technology with the creation of its VCR Betamax videotape recorder. These machines gave consumers a level of control over the television, allowing them to record their favourite TV programs and the possibility of watching them afterwards<sup>16</sup>. Besides, the Betamax allowed people to avoid the commercials using the fast forward function. In this way, the public were given the possibility to record programs without being aware that this brings copyright infringements. The plaintiffs in this case (companies that created programmes for television) sued Sony for contributory and vicarious liability.

The Supreme Court rejected both theories of infringement. The vicarious liability was rejected since Sony was not capable of controlling the activities carried out by the users that bought the VCR. The requirement of control could not be met since the only contact of the

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<sup>15</sup> For example, the Napster case

<sup>16</sup> Christina Ialongo and Leslie A. Stone; How TiVo Changes Our Behavior and Attitudes Towards Television

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manufacturers with the consumers was just during the sale. Besides, it was clearly obvious that Sony had no direct financial interest in the consumer infringing activities.

With regard to contributory liability, it is interesting to see that the Supreme Court decided to look into the patent law instead of contributory liability case law such as the Gershwin Publishing case. The Court, expanding the fair use doctrine also to time-shifting, decided not to find Sony liable because the VCR device was capable of substantial non-infringing uses. The judge used the staple article of commerce<sup>1718</sup> doctrine and made a balance between the right of the copyright owner to protect his interests and the right of others to engage in commerce. Maybe he was scared that the overprotection of copyright holders could make it impossible the development of new technologies.

After using the staples article defence from patent law, the court not only felt no necessity but also refused to clarify what “substantial non-infringing uses” really means. The lack of both a clarification and an analysis of the benefits associated with the legitimate use against the harms of illegitimate use, has been seen by some people as giving technology developers the possibility to permit copyright infringement provided their products contain some uses that do not infringe copyright laws<sup>19</sup>. But as we will see, this reasoning has not been followed in the subsequent cases.

## 2.4 RELEVANT CASES

### NAPSTER CASE

With regard to direct liability, Napster was declared as not guilty since the company did not make or distribute copyrighted works. But they were contributory liable because the central server and both the letters from the RIAA and copyright owners made it possible for them

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17 Mark Bartholomew<sup>†</sup> & John Tehranian THE SECRET LIFE OF LEGAL DOCTRINE: THE DIVERGENT EVOLUTION OF SECONDARY LIABILITY IN TRADEMARK AND COPYRIGHT LAW , pp 1383

18 Sheldon W. Halpern, Craig Allen Nard, Kenneth L. Port; Fundamentals of United States Intellectual Property law: Copyright, Patent, trademark. Pp 163. Staple article of commerce: *“The staple article of commerce doctrine must strike a balance between a copyright holder’s legitimate demand for effective—not merely symbolic—protection of the statutory monopoly, and the rights of others freely to engage in substantially unrelated areas of commerce”*.

19 Times editorial board, What the 1984 Betamax ruling did for us all

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to know the infringing activities of its users. Besides, Napster contributed to the infringement by providing the software and the search tools for the exchange of user files<sup>20</sup>. The Court also found the p2p maker vicariously liable since they could control the activities by blocking the user accounts and had both a direct ongoing relationship with the clients and a financial interest because the activity in the program was regarded as a “draw” for customers<sup>21</sup>.

The immediate consequence of this expansive interpretation of those theories is that it will be much harder for p2p developers to avoid liability. First of all, because once they receive a notice from the copyright owner, the company is forced to take steps<sup>22</sup> (even implementing technological changes) to prevent further infringements if they do not want to face contributory liability. Second of all, the extreme dilution by the court of the requirements of control will make almost any p2p company (and all Internet Service Providers) vicariously liable since most of them have the ability to cancel user accounts.

Napster tried unsuccessfully to rely on the Betamax case to protect themselves from contributory and vicarious liability. The Supreme Court acknowledged that although Napster was capable of substantial non-infringing uses, they had knowledge and could use that knowledge to prevent illegal activities by blocking the accounts<sup>23</sup> (something Sony was not capable of). I don't know to what extent this statement is correct. First, because the Court in the Betamax case asserted that knowledge is no longer a determinant factor for contributory infringement once the product has substantial non-infringing uses. Second, I think that Sony also had the possibility to prevent further infringements by limiting and changing the fast-forward function. The court also restricted the Betamax defence only to contributory cases, (where the defendant has still not received the notice of infringement)

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20 [https://www.law.cornell.edu/copyright/cases/239\\_F3d\\_1004.htm](https://www.law.cornell.edu/copyright/cases/239_F3d_1004.htm); A&M RECORDS, Inc. v. NAPSTER, INC., 239 F.3d 1004 (9th Cir. 2001)

21 Ibid

22 [http://webcache.googleusercontent.com/search?q=cache:OeGA9gwLBtUJ:ftp://ftp.tik.ee.ethz.ch/pub/lehre/inteco/SS03/material/Talk1%2520-%2520P2P/20010227\\_p2p\\_copyright\\_white\\_paper.html+&cd=19&hl=en&ct=clnk&gl=es](http://webcache.googleusercontent.com/search?q=cache:OeGA9gwLBtUJ:ftp://ftp.tik.ee.ethz.ch/pub/lehre/inteco/SS03/material/Talk1%2520-%2520P2P/20010227_p2p_copyright_white_paper.html+&cd=19&hl=en&ct=clnk&gl=es) Fred von Lohmann, Peer-to-Peer File Sharing and Copyright Law after Napster, Indirect Liability and P2P Systems: the Napster Case.

23 Guy Douglas; Copyright and Peer-To-Peer Music File Sharing: The Napster Case and the Argument Against Legislative Reform. Paragraph 17

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making it impossible to use it as a shield against vicarious liability. On the other hand, the defendants also tried to rely on the broad nature of fair use given in the Betamax case but the Court rejected this view asserting that fair use only relates to time-shifting and the users were getting something for free<sup>24</sup> (the Betamax users “paid” for the VCR).

As we can see, the Court has conditioned the non-infringing exception and fair use to very strict requirements; and in my opinion departing from the view of the Judge in the Betamax case. The most important consequence is the overprotection of copyright holders and making it difficult for new technologies to evolve.

### GROKSTER CASE

The Grokster Court relied on both the Betamax and the Napster case to give its judgement. He followed Napster and made an analysis of the knowledge and contribution requirement, trying to ascertain whether Grokster has actual knowledge of the infringements and made the impossible to stop these activities. The judge in this case came with a complete different outcome to that reached in the Napster case, asserting that the decentralized technology made the knowledge requirement completely impossible to met. Grokster was in some way similar to the Betamax case since neither of them had an ongoing relationship with their clients. The VCR vendor’s relationship finished soon after the moment of sale of the product, and the relationship of Grokster with its users ended once they downloaded and installed the p2p program in their computers<sup>25</sup>. With regard to the contribution requirement, the Court also found that this technology made possible for users to continue infringing the law even if Grokster had to close and terminate its operations<sup>26</sup>.

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24 Marshall A. Leaffer; Understanding Copyright Law. Pp 506/507

25 Elizabeth Miles; Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd. and In re Aimster Copyright Litigation: Who Will Decide Sony Doctrine’s Next Step?. Pp 22

26 Berkeley Technology law journal, volume 19, issue I; In re Aimster & MGM, Inc. v. Grokster, Ltd.: Peer to-Peer and the Sony Doctrine.Pp 49



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In relation to the Betamax test, the Court found that the product was completely capable of non-infringing uses<sup>27</sup> and applied the test without taking into account the proportion or percentage of infringing and non-infringing uses.

### AIMSTER CASE

In relation to the contributory infringement and the issue of knowledge, the Court went in my view further than the in the Napster case. Even Aimster was not capable of knowing the kind of activities carried out by its users because the encrypted system they used, the Court asserted that in copyright law, wilful blindness also amounts to knowledge<sup>28</sup>. Not only Aimster had “knowledge” of the infringing activities, but also the tutorials and Club Aimster have encouraged the download of copyrighted songs; clearly inviting users to commit infringement. The Court decided to answer the question of vicarious liability together with the contributory one and decided to find Aimster just liable of contributory infringement.

The owners of the p2p tool tried (similarly to Napster) to rely on the Sony Betamax defence, but the way in which the judge applied the standard, gave Aimster a horrible outcome. Postern J decided to put the burden of proving the non-infringing uses on the defendants instead of the plaintiffs<sup>29</sup>. Besides, he said that if the technology is mainly used for illicit purposes, the Sony shield is no longer available. The reality is that this kind of requirement is not contemplated in the Sony Betamax case, where the Court simply asserted that it needs to be capable of non-infringing uses; even if it is just one.

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27 <https://cyber.harvard.edu/metaschool/fisher/integrity/Links/Cases/sony.html> 464 U.S. 417, 104 S.Ct. 774SONY CORPORATION OF AMERICA, et al., Petitioners v.UNIVERSAL CITY STUDIOS, INC., etc., et al. (B. Unauthorized Time-Shifting)

28 Matthew G. Minder; Peer-to-Peering beyond the Horizon: Can a P2P Network Avoid Liability by Adapting Its Technological Structure, Pp 994

29 Berkeley Technology law journal, volume 19, issue I; In re Aimster & MGM, Inc. v. Grokster, Ltd.: Peer to-Peer and the Sony Doctrine.Pp 42

### **3. INTERNET SERVICE PROVIDERS (ISP)**

As direct connections are expensive and mainly reserved for big corporations and universities, most individuals opt for having an Internet service provider to connect to the internet<sup>30</sup>. Those ISP provide a critical infrastructure support to the internet, allowing a great deal of people to communicate electronically with friends and to upload and download files from the ISP servers. The main problem is that, because copyright law reserve the exclusive right on the owner to reproduce and distribute their works, many ISP may be also held liable by the conduct of the users. On the one hand, there are some people (aware of the difficulty of going after individual users) that are in favour of finding liable the ISP. Not only since they are obviously more visible than the subscribers, but also because the ISP will have more incentives to remove the infringing material because of the fear of being held both directly and secondary liable. On the other hand, some commentators and most courts are reluctant to find ISP liable on the ground that they are just carries of the files shared between users and not responsible of the subscribers' behaviour.

#### **3.1 PRIMARY LIABILITY**

Internet Service Providers can be held directly liable not by the acts of other people but because of its own acts. The reason is that the ISP have the possibility to make copies for its users without the consent of the copyright owner<sup>31</sup>. Direct liability on ISP exists when the copyright holder can prove that he is the owner of that copyright, that it has been copied and that this infringement violates the exclusive rights that he holds<sup>32</sup>.

The most interesting part of direct infringement is that liability arises just by proving that there is a violation of the copyright. This means that intent and knowledge of the infringing

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30 <http://www.nolo.com/legal-encyclopedia/isp-liability-subscriber-acts-29564.html> NOLO law for all, When Is an ISP Liable for the Acts of Its Subscribers?

31 [https://en.wikipedia.org/wiki/Secondary\\_liability](https://en.wikipedia.org/wiki/Secondary_liability) "This situation is not present in the usual ISP situation, as the ISP is always in the position of making copies (without authorization of the rights owner), so it is irrelevant that someone else has infringed the same copyright earlier in time".

32 Taragade Dangngam; Internet Service Provider liability for third-party copyright infringement : A comparative study between US and EU approaches . To what extent should an ISP be held liable for third-party copyright infringement?. Pp 18

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activity of the subscribers is not a requirement to find the ISP liable. The *Gershwin and Frena* case have even gone further asserting that the proprietors of a service provider are found directly guilty if some infringing material is being moved in their servers. Besides, there also exists the possibility of finding the ISP liable even if there are no infringing users.

### Playboy and Netcom cases

This case involved Frena (the owner of a BBS), who discovered in his computer that some photographs of the popular magazine playboy have been uploaded to the server. Frena negated having uploaded those files to the server, that one of his subscribes should have done that. Afterwards, he decided to remove this material as soon as possible from the BBS. Despite having deleted the photographs, the magazine playboy company sued Frena BBS for copyright infringement of 170 photographs. The Court was in my view extremely severe and declared the BBS server directly liable for copyright infringement. The court asserted that the BBS and most ISP make automatic copies, storing and distributing them<sup>33</sup>, and this clearly causes harm to the copyrights of the magazine.

The defence of lack of knowledge and intent provided by Frena was regarded as not enough by the Court<sup>34</sup>. They said that knowledge and intent is not required to find the infringement and also innocent infringers are also liable. In my opinion, this point of view is exaggerated and I now understand why in the Netcom and the following cases, Courts have tried as much as possible to avoid finding ISP as directly liable.

### 3.2 SECONDARY LIABILITY

Internet Service Providers can not only be primarily responsible but also face secondary liability claims. The main reason is that the open nature of internet make the ISP a perfect target for secondary liability and with special regard, contributory liability<sup>35</sup>. The secondary

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33 Timothy Lee Wherry, The Librarian's Guide to Intellectual Property in the Digital Age. Copyright, patents and trademarks, pp 38

34 Ibid

35 Niva Elkin-Koren, Making Technology visible: Liability of Internet Service Providers for peer-to-peer traffic, pp 26-27

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liability for ISP is basically the same applied as to peer-to-peer tool makers; that is to say, it can be divided into contributory and vicarious liability.

Contributory liability exists when the ISP with knowledge, induces or contributes to the infringement committed by the direct user. On the other hand, there will be vicarious liability if the server has the capability to supervise the activity of its subscribers and has also a direct financial interest in that activities. I have to say that most courts are quite reluctant to find ISP vicariously liable and will try to rely on the Landlords theory instead on the dance hall proprietor's theory.

It is interesting to see in the Netcom case that there are three possible ways of finding contributory liable an Internet Service Provider. There are some situations where copyright owners will try to find the service provider responsible by the simple fact that they provide internet. Similarly to the Betamax case, both the ISP and the VCR makers may have some indications to believe that their tools are being used illegally to commit copyright infringement. Both programs can be used for infringing purposes but even if the owners of the tools know that, this is not an enough strong reason to trigger the knowledge requirement and as a result, declare them contributory liable.<sup>36</sup> In other more likely situations, there is the possibility that the ISP has actual knowledge upon receipt of a notification of the owner, the RIAA or whoever is interested in that copyright protection. After receiving the proper and duly notification, the ISP is completely informed<sup>37</sup>. If they continue providing internet, the knowledge and the contribution requirement will be fulfilled and may be accused of contributory liability. The last situation is in my view the one that can give more problems to copyright holders. There exists the possible case where the ISP is notified of a possible infringement, although in the end it might not be<sup>38</sup>. From my point of view, the problem stems from the ruling given by the Court in the Netcom case. The judge surprisingly concluded that the evidence must quite strong in order for the notification to trigger the knowledge requirement. The most immediate consequence of this

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<sup>36</sup> [http://www.internetlibrary.com/topics/contrib\\_copyright.cfm](http://www.internetlibrary.com/topics/contrib_copyright.cfm), Martin Samson, Copyright - Contributory Copyright Infringement - Internet Library of Law and Court Decisions.

<sup>37</sup> <https://torrentfreak.com/riaa-mpaa-copyright-warnings-facts-and-fiction-090328/> Ernesto Van Der Sar, RIAA, MPAA Copyright Warnings: Facts and Fiction

<sup>38</sup> Ibid

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outstanding ruling is that most ISP will not police unsustained infringements on the internet, in the detriment of copyright owners' protection.

### 3.3 SAFE HARBORS DEFENCE

Under the current uncertainty of whether ISP must also be responsible for the behaviour of its users, the Congress of the United States created the safe harbors in order to limit the liability of the ISP. They are incorporated in section 512 of the copyrights act<sup>39</sup> and are mainly divided into direct and indirect liability. With regard to direct liability, the provisions are quite straightforward incorporated in section 512a, which limits or in other words relieves the ISP from paying compensations if they fulfil some requirements. Those requirements range from terminating user accounts (similar to the HADOPI law in France) of repetitive infringers to implement technical measure developed through industry consensus. While this provision presents no problems, the section 412c has more challenging requirements and present more problems to ISP.

Section 412c has three parts which must be complied with by those ISP that store material during long periods, in order to gain the right not to be sued.

The first part requires no knowledge of the infringing material, but in case they become aware of that material, they should cancel the internet to avoid liability and safe the harbour. The second part requires having no direct financial interest when they have the ability to control the activity in the web<sup>40</sup>. The third part, is in my view the only one that is really interesting and will change the current situation. I say only one since if we look to the other two requirements, the provisions say nothing ISP already know and are subject to.

This part says that upon receiving a notification from an agent, they have the obligation to eliminate the material required by the agent (who has already talked and discussed all the matters with the owner). This provision is what most copyright owners want and have been willing to have. As I said before, after the Netcom case, owners were worried since the ISP

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39 17 US Code § 512 Limitations on liability relating to material online

40 <http://www.nolo.com/legal-encyclopedia/isp-liability-subscriber-acts-29564.html> When Is an ISP Liable for the Acts of Its Subscribers?

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may disregard the notices unless they are strong enough to be taken seriously. From now on, ISP will remove the material that the copyright owner has required to remove, even if the infringement is only a suspicious. Although it seems good news for the owners of copyrights and the intellectual property community in general because copyright infringement will be considerably reduced, this also poses a problem for some subscribers that will not be happy if some non-infringing material is removed.

Having said this, the section (c) of the copyright act conflicts in some way with section (m). Even from now on ISP have the duty to investigate after receiving notification, under section (m) they have no real obligation to police infringing activities by themselves. There have been some people arguing that section (i) needs to be interpreted in a broadly manner, but I think that the Congress point of view has more force than all the other opinions together. ISP are more prepared than the copyright owners to police the infringements and if the formers are not required to investigate on its own motion, I am afraid that we could face another Netcom case, where ISP will not investigate until an infringer commit the infringement several times.