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Supreme Court Resets Copyright Liability for P2P Providers

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A U.S. Supreme Court ruling on copyright infringement will force peer-to-peer (P2P) providers to re-examine their underlying business models, promotional campaigns and what to do with "free," unregistered content.

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News Analysis

Event

On 27 June 2005, the Supreme Court ruled that P2P software providers could be held liable for copyright infringements committed by the users of their software. In the majority opinion, Justice David Souter wrote, "We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement."

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Analysis

This ruling links the deployment of P2P technology to the underlying business model of the P2P software provider. The court did not specifically rule P2P technologies illegal, but applied a standard for inducement that holds that a developer had to engage in "purposeful, culpable expression and conduct" that led users to infringe copyrights. This last phrase will be pivotal when the case goes back to the lower courts. Technology companies engaged in developing new rich-media products and services will also have to pay close attention to this language.

Given the court's ruling, P2P providers will need to ensure that their underlying business models and promotional campaigns do not induce or encourage copyright violation. One possible path to avoid legal actions could be Snocap's digital registry, which is designed to let rights holders place content they have licensed for online distribution in the database and apply their specific business rules to content that is accessible via P2P services — see "Snocap Sets Out to Tame the Contentious P2P Universe" (<http://www.gartner.com/na/na-0605-0032.asp>). More importantly, P2P providers will have to decide whether unregistered "free" content will be blocked from user's search results. This is crucial, because music labels may take legal action against those P2P providers that allow free unregistered or unidentified material to show up next to licensed content

Legitimate online music services such as iTunes, Napster and eMusic, and other rich-media services, will benefit to some degree by virtue of the fact that an entire class of competitors will have to revamp their offerings.

Recommendations

Technology companies: Closely monitor and support legislative efforts to create protection for consumers using emerging search, sharing and redistribution programs.

Content providers and rights holders: Develop or adopt platforms that enable the tagging of content for transmission across an increasing number of legitimate distribution services. These services may be based on P2P architectures or de-centralized distributing computing systems such as BitTorrent.

Analytical Source: Mike McGuire, Gartner Research

Recommended Reading and Related Research

- "Super Enablers Are Poised to Spark Future Media Titans" (<https://www.gartner.com/rpt/rpt-0405-0027.asp>) — "Super enablers" will provide multidimensional, extensible platforms to connect a myriad of content choices to waiting consumers. **By Allen Weiner**
- "Copyright and Digital Media in a Post-Napster Era" (<https://www.gartner.com/wp/wp-0105-0001.asp>) — Many issues surround the current digital media, the regulatory developments regarding copyright, emerging business models and shifts in consumer attitudes and behavior. **By Mike McGuire**

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