



Secondary Liability in U.S. Copyright Law



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*Secondary Liability
Generally*



Primary Liability

- The owner of the copyright has the exclusive right to do or to authorize:
 - Reproduction
 - Preparation of derivative works
 - Distribution of copies to the public
 - For some types of works: Public performance
 - For some types of works: Public display



Problems



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5. A management company that books musicians who infringe at concerts the company helped organize.



“Vicarious” Infringement

- ⊕ Right and ability to control the infringement
- ⊕ Direct financial interest in the infringement



Liabile?

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Liable?

1. A landlord that leases, for a fixed rate and without any right to supervise the tenant, a building to a tenant who commits infringement there. **NO**
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1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment.



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3. The radio station that broadcasts those advertisements.



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1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment.
2. Advertising agency that places advertisements for infringing records with a radio station.
3. The radio station that broadcasts those advertisements.
4. A bazaar that has a stall that sells infringing recordings.



“Contributory” Infringement

- Knowledge of infringing activity
- Material contribution to the infringing activity



Liabile?

1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment.
2. Advertising agency that places advertisements for infringing records with a radio station.
3. The radio station that broadcasts those advertisements.
4. A bazaar that has a stall that sells infringing recordings.



Liabile?

1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment. **YES**
2. Advertising agency that places advertisements for infringing records with a radio station.
3. The radio station that broadcasts those advertisements.
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Liabile?

1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment. **YES**
2. Advertising agency that places advertisements for infringing records with a radio station. **MAYBE**
3. The radio station that broadcasts those advertisements.
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1. Store that sells blank tapes, and loans pre-recorded tapes and duplication equipment. **YES**
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3. The radio station that broadcasts those advertisements. **MAYBE**
4. A bazaar that has a stall that sells infringing recordings. **YES**



*Secondary Liability for
Internet Service Providers*



RTC v. Netcom (1995)

- ❁ When a person merely sets up equipment that others use to infringe, the person must intend for, or cause, the infringement in some way for the person to be liable.
- ❁ But once the ISP has notice of infringement, it must take the infringing material down or it will be liable for contributory infringement.



Grokster (2005)

- “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 by third parties.”



Safe Harbors for ISP Activities

- Available only for certain activities
 - Transitory communications
 - System caching
 - Hosting
 - Information location tools
- Notice and take-down, and put-back-up
- No monetary damages for
 - Infringement, by customer
 - Take down (or put back up), by ISP
- Injunctions still possible



Emerging International Standards

- Liability, with exceptions
- Knowledge of infringing activity
 - Including constructive knowledge
 - But no obligation to monitor
- Financial benefit
- Inducement
- Business models based on infringement
- Statutory safe harbors



Questions?



Thank you!



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