

Perfect 10 v. Visa: The Future of Contributory Copyright Infringement

I. Introduction

In 1984, the United States Supreme Court noted that “[f]rom its beginning, the law of copyright has developed in response to significant changes in technology.”¹ In fact, it was the invention of a new technology—the printing press—that necessitated copyright protection in the first place.² Advances in technology, particularly on the Internet, have led to new methods of copyright infringement hardly imaginable two decades ago,³ and these new methods of infringement threaten copyright holders “as never before.”⁴ Consequently, as technology leads to new methods of infringement, copyright owners seek new methods of protecting their property interests.

In an age of global technology, it is often impractical, if not impossible, for copyright owners to successfully pursue direct infringers.⁵ A website hosted in Bangkok can be found online just as easily as one hosted in Boston.⁶ Both jurisdictional and practical concerns have led copyright holders to seek methods of protection with greater efficiency than simply filing suit against those directly involved in copyright infringement.⁷

Copyright owners have found some avail in a recent line of cases that have held parties other than direct infringers liable under theories of contributory copyright infringement and vicarious copyright infringement.⁸ While there has

1. Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 430 (1984).

2. *Id.*

3. Kevin Michael Lemley, Comment, *Protecting Consumers from Themselves: Alleviating the Market Inequalities Created by Online Copyright Infringement in the Entertainment Industry*, 13 ALB. L.J. SCI. & TECH. 613, 639 (2003) (noting that the Internet has “provided infringers with new methods of infringement”).

4. Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 928-29 (2005).

5. Benjamin H. Glatstein, Comment, *Tertiary Copyright Liability*, 71 U. CHI. L. REV. 1605, 1626 (2004) (“[N]ew technologies that mask the identity of direct infringers may make recovery and deterrence against direct infringers impossible, or at least extremely difficult and costly. In the arena of digital copyright infringement, many users are judgment-proof, effectively limiting the ability of standard copyright law to deter their behavior.” (footnote omitted)).

6. *Id.* (“[M]any infringers will respond to the jurisdictional limitations of U.S. courts by moving their infringing activity—or just enough of their infringing activity to avoid liability—overseas.”).

7. *Id.* (“The specter of judgment-proof direct infringers and jurisdictionally immune secondary infringers militates in favor of tertiary liability.”).

8. Mohsen Manesh, *The Immorality of Theft, the Amorality of Infringement*, 2006 STAN. TECH. L. REV. 5, ¶ 19 (2006) (“*Napster* litigation appeared to be a significant success for