

## Exhibit 6b

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National Edition

**SECTION:** FINANCIAL POST: NEWS; Pg. FP4

**LENGTH:** 1228 words

**HEADLINE:** P2P software spurs piracy debate: Great divide: U.S. antipiracy bill pits music companies, movie studios against tech firms

**BYLINE:** Sarah McBride, Dow Jones

**BODY:**

Fighting a losing battle against music and movie pirates, the entertainment industry is trying a fresh tack: seeking new laws that would make it easier to prosecute people who illegally trade songs and films over the Internet.

Copyright holders are stepping up the drive toward new U.S. antipiracy legislation in the wake of a stinging federal appeals-court ruling that would allow creators of Internet file-sharing software to stay in operation, despite piracy by their users. Unless it is overturned by the U.S. Supreme Court, the ruling may make it difficult for the industry to gain satisfaction from the courts when it comes to file-sharing.

With that as a backdrop, movie studios, music companies and other copyright holders believe they need stricter laws that would allow them to sue people who they think encourage copyright violation by creating technologies that enable piracy. U.S. Congress is poised soon to revisit a controversial bill, known as the "Induce Act", that takes direct aim at makers of the peer-to-peer software used in the illicit online trade in copyrighted songs, movies and other material. The bill's high-profile supporters include much of the entertainment industry and Senator Hillary Rodham Clinton.

But companies in a wide range of other industries -- consumer electronics, technology and even financial services -- worry that the "Induce Act" could ensnare them, too. The companies fear they would face liability if their products -- CD and DVD burners, for example -- were used by people making illegal copies of entertainment products. Even manufacturers of components for those products fear they could face lawsuits if the proposed law takes effect. Among the companies that have come out against the bill are Google Inc. and Yahoo Inc.

The upshot is another Hollywood versus Silicon Valley standoff of the kind that has dogged the piracy debate for years. While it is far from clear that the "Induce Act" or any of the other copyright-related bills will become law during this lawmaking session, the debate sets the framework for future intellectual-property deliberations. And it underscores how six years after the passage of the landmark Digital Millennium Copyright Act -- which was supposed to create workable copyright standards for the digital era -- advances in digital distribution continue to leapfrog the law.

Opponents of the law have said there is little point in trying to legislate an evolving field, because in a few months or years the technology is outdated. But change "doesn't mean you shouldn't do something," says Owen Sloane, an entertainment lawyer at Berger Kahn in Los Angeles. "Any legislation in a rapidly developing area is always going to need to be tweaked" later.

A new version of the "Induce Act" is expected to incorporate input from a wide range of groups, including the Consumer Electronics Association, which represents makers of TV sets, DVD players, music systems and game players.

## National Post's Financial Post &amp; FP Investing (Canada) Septembe

The industry group is seeking to narrow the scope of the law by drawing a distinction between electronics companies and peer-to-peer firms. The CEA wants the law to target only those computer programs that exist primarily for "indiscriminate, mass infringing of copyrighted works," and whose commercial viability depends on that infringement.

The U.S. Copyright Office has gone in the opposite direction, seeking a wide scope for the proposed law. Instead of restricting liability to people who distribute computer programs, the Copyright Office wants to extend liability to those who distribute technology, devices and components. It has established guidelines for liability that are intended to gauge how much a product's commercial viability or sales rely on copyright infringement.

Such a wide net is exactly what has technology and electronics makers worried. Users of Apple Computer Inc.'s iPod, for example, might store significant amounts of illegally downloaded music on the device -- which, according to that theory, could make Apple liable.

A trade group called the Consumer Electronics Retailers Coalition, including Apple and also big chains like Best Buy Co. and Circuit City Stores Inc., has come out against the current version of the bill. An Apple spokesman noted Apple is a member of the Consumer Electronics Association, which drafted the narrower version of the bill.

Supporters of a wider "Induce Act" "want to create a broad new spectrum of copyright law," says Sarah Deutsch, associate general counsel for Verizon Communications Inc., which is worried that Internet-access providers such as Verizon also might become liable. "As a result, they are catching every technology firm in their net."

Even companies that have seemingly little to do with online piracy fear they could end up in court fighting nuisance suits.

A pornography Web site operator called Perfect 10 Inc. recently sued companies including Visa International Service Association and MasterCard International Inc., alleging they contributed to copyright infringement by providing financial services to sites that published Perfect 10's material without permission. A U.S. district judge in Northern California threw out the case last month.

In addition to entertainment companies, some artists are calling for tougher laws against piracy. Rick Carnes, president of the Songwriters Guild of America, says, "We need to have a fix on piracy, and the Induce Act is a fix." Noting that some artists have given up their careers or been fired because of declining income that in part stems from piracy, he says, "By the time this gets through the courts, we'll all be in other jobs."

The U.S. presidential campaigns have even taken notice of the piracy debate, although they are not taking clear positions on the "Induce Act." President Bush's campaign says Mr. Bush is not in favor of banning peer-to-peer technology because it has legitimate uses, though he wants to vigorously enforce copyright law. John Kerry's campaign says he also supports copyright law, and a spokesman says that "widespread sharing and downloading of music, movies and software undermines the incentives of individuals and companies to create new content."

The bill has created some unlikely bedfellows. The American Conservative Union, an Alexandria, Va., lobbying organization, has been running advertisements in publications like the Hill and the Weekly Standard showing a movie marquee that calls the bill, "Chilling!" The fine print says the legislation would threaten personal property rights and create a bonanza for trial lawyers, concluding, that "this is one bill that shouldn't play anywhere."

That position puts the group on the same side of the aisle as the Electronic Frontier Foundation, a San Francisco group known for liberal views on copyright, and the peer-to-peer companies themselves.

The Distributed Computing Industry Association, which represents file-sharing organizations, obtained a video-recording of the Senate Judiciary Committee's July hearing on the bill and is encouraging people to use peer-to-peer services to view and share it. The group created a Web site, P2Pcongress.org, that explains how people can file-share their way to a copy of the debate. "Tragically," write the site creators, "the Induce Act is designed to outlaw the very P2P networks that have the collective power to promote learning and democratic participation."

**GRAPHIC:** Black & White Photo: Romeo Gacad, Agence-France Presse; Steamrollers crush nearly two million pirated CDs and DVDs in Manila. The destruction was part of the government's renewed campaign against digital piracy.

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The Internet Newsletter

September 10, 2004

**SECTION:** NEWS; Vol. 2; No. 9; Pg. 6

**LENGTH:** 1952 words

**HEADLINE:** NET NEWS;  
Internet Newsletter

**BODY:**

Feds Cracking Down  
On Cybercrime

Heralding a bold new initiative in its fight against cybercrime, the U.S. Justice Department [DOJ] recently announced that the first wave of Operation Web Snare has successfully resulted in hundreds of arrests and convictions.

The cyber-sweep targeted online economic crimes, including identity theft, fraud, counterfeit software, computer intrusions and other intellectual-property crimes.

According to the DOJ, more than 160 investigations have been opened as part of the initiative, which ran from June through August of this year. Investigators estimated that 150,000 victims sustained losses totaling more than \$215 million from a variety of illegal Internet-related activities.

Incidents of phishing involving the use of bogus e-mails and Web sites resembling those of legitimate organizations to commit identity theft and fraud have risen dramatically in the first half of this year.

"Operation Web Snare shows that America's justice community is seeking to anticipate, out-think and adapt to new trends in Internet crime," said Attorney General John Ashcroft in a statement.

The initiative involved coordination among U.S. Attorneys' offices, the DOJ's Criminal Division, the FBI, the Postal Inspection Service, the Federal Trade Commission and other federal, state, local and foreign law-enforcement agencies.

The DOJ will rely upon the recently approved Identity Theft Penalty Enhancement Act, which mandates stiff prison terms for those who use identity theft to commit other crimes, Ashcroft said.

Among those arrested in the cybercrime sweep are a Romanian computer hacker and five U.S. residents charged with conspiring to steal more than \$10 million in computer equipment from Ingram Micro by hacking into the company's online-order system and placing fraudulent orders for computers and computer equipment.

In another case, six men were charged in California involving denial-of-service attacks for commercial advantage. The indictment and a related complaint allege that the owner of Orbit Communications, a satellite-TV firm, and a business partner hired hackers in Arizona, Louisiana, Ohio, and the United Kingdom to launch continuous computer attacks against the company's online competitors.

"The wide range of investigations reflects law enforcement's commitment to investigating and prosecuting all types of online crimes, from identity theft to computer intrusions, from Internet fraud to intellectual-property crimes," claims Assistant Attorney General Christopher Wray.

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### Britain Fires Civil Servants

#### At 'Ministry of Porn'

The British government terminated and disciplined hundreds of civil servants in an unprecedented crackdown on viewing Internet pornography at work, officials said recently.

Britain's largest daily, The Sun, dubbed the story "Ministry of Porn" and claimed that the staff at the Department of Work and Pensions [DWP] had accessed two million pages of Web porn in the last year. One employee alone accessed 103,000 hardcore images.

The DWP, while not confirming the Sun's report, did admit that it had initiated its own probe into the matter that has resulted in one criminal prosecution and a police investigation in two others.

The crackdown is believed to be the biggest of its kind by a British government agency on employees' Web-surfing habits.

"The DWP takes the misuse of its IT systems very seriously," a DWP spokesperson said. "We regularly scan the computers to determine the presence of offensive or inappropriate material. Disciplinary action has been taken and it may lead to criminal prosecution."

The porn surfing phenomenon has become a costly problem for companies worldwide. Many have invested heavily in elaborate filtering software and devised comprehensive Internet usage guidelines to keep employees from surfing porn sites or downloading free music and movies off the Net on company time.

The British roundup followed a probe into employees' usage of computers and the ministry's data network between July 1, 2003 and March 31, 2004, the DWP spokeswoman said.

The Sun said the probe was sparked when one civil servant was caught viewing Web porn at his desk.

### Federal Judge Rules Suit

#### Is No 'Perfect 10'

A San Jose federal judge has decided that credit card companies cannot be held liable for copyright infringements committed by their customers.

The ruling by U.S. District Judge James Ware in *Perfect 10, Inc. v. Visa International Service Association, et al.*, No. C 04-0371 JW [N.D.CA, Aug. 5, 2004], affirmed a motion to dismiss filed by Visa and similarly situated defendant credit card companies.

Perfect 10, a porn purveyor, had sued several companies involved with payments over the Internet, including Visa and MasterCard, for completing transactions at sites that sold images copyrighted by Perfect 10. The complaint sounded in theories of copyright and trademark infringement, violation of publicity rights, unfair competition, libel and intentional interference with prospective business advantage.

"The ability to process credit cards does not directly assist the allegedly infringing Web sites in copying plaintiff's works," wrote Judge Ware. "Defendants do not provide the means for distributing those works to others, nor do they provide bandwidth or storage space with which to transfer or store the works."

Ware rejected all of the plaintiff's causes of action; however, he gave the plaintiff leave to amend its complaint to plead factual elements with more specificity.

Ware reasoned that it comes down to what degree the credit card companies can control the Internet businesses. It's not enough, the judge wrote, for "the defendants to merely have contributed to the general business of the infringer. To have materially contributed to copyright infringement, 'the ... assistance must bear some direct relationship to the infringing acts.'"

Ware cited the older Napster case, *A&M Records v. Napster*, 239 F.3d 1004, as an example where there was "substantial contributing conduct" because Napster provided an online index of tradable, copyright-protected songs.

### Spike Lee Wins

#### Cyber-squatting Case

The Internet Newsletter September 10, 2004

Movie director Spike Lee has won his cyber-squatting case against a Philippines-based operator who misused the domain name, spikelee.com, to redirect surfers to a pornographic Web site, arbitrators ruled last month.

Lee filed the complaint against Mercedita Kyamko of the Philippines who registered the domain name in 1999, the World Intellectual Property Organization [WIPO] said.

The URL forwards users to a pornographic Web site located at clubhongkong.com, and was registered in "bad faith," according to Canadian lawyer Edward Chiasson, the neutral arbitrator named by WIPO to rule on the dispute.

Lee joins other entertainers, including Madonna, Celine Dion and Eminem who have won cases at the Geneva-based U.N. agency. The domain name is automatically transferred within 10 days unless the loser launches a court case challenging the decision.

#### VeriSign Suit Against ICANN Dismissed

A federal judge recently dismissed an antitrust lawsuit brought by Internet registry firm VeriSign against the Internet Corporation for Assigned Names and Numbers [ICANN], handing VeriSign a second defeat in its dispute over the company's controversial SiteFinder service.

In VeriSign, Inc. v. ICANN, Case No. CV 04-1292 AHM, Judge A. Howard Matz of the U.S. District Court in California ruled that VeriSign cannot allege that the "co-conspirators" named by the company controlled ICANN's board. The court also held that VeriSign cannot allege, based on the ICANN bylaws, that supporting organizations within ICANN's structure, which include VeriSign's competitors, dominate the organization's board.

The court dismissed VeriSign's original complaint on May 18th, but allowed the company to file an amended complaint to strengthen its legal arguments. The company claimed that its competitors that are members of ICANN conspired with the organization's board of directors to block VeriSign to launch new services.

The initial suit, filed earlier this year, alleged that ICANN exceeded its authority and improperly attempted to regulate VeriSign's business in violation of its charter and its agreements with VeriSign. In doing so, VeriSign charged, ICANN has attempted to become the de-facto regulator of the domain-name system, stifling the introduction of new Internet services.

Under an agreement with ICANN, VeriSign has a virtual monopoly over all .com and .net domain names, collecting a small fee for each from a large number of registrars.

At the heart of the dispute is VeriSign's "wild card" SiteFinder service, which redirects all unknown or unregistered .com or .net domain names to the VeriSign Web site. SiteFinder was introduced last fall and subsequently pulled after ICANN issued a cease-and-desist order and competitors filed fair-trade complaints.

"The U.S. federal court's decision serves as another important affirmation of ICANN's multi-stakeholder participatory model and reaffirms the ICANN structure," says John Jeffrey, ICANN's general counsel, in a statement. "ICANN is not subject to capture by any commercial or other interest, including VeriSign," he maintains.

ICANN is an international organization responsible for coordinating Internet Protocol [IP] address space allocation, protocol identifier assignment, generic [gTLD] and country code [ccTLD] top-level domain name system management, and root server system management functions.

#### California Bill Would Extend Privacy Protection To e-Mail

The privacy protection California workers enjoy on the telephone may soon be extended to e-mail. A bill requiring employers to notify employees about monitoring inside or outside the workplace recently passed the state Assembly's Appropriations Committee by a 16-5 vote. Sponsored by state Sen. Debra Bowen, the proposed legislation will soon face a vote by the full Assembly, followed by a final Senate vote.

"Just because your boss owns the computers and pays for the Internet access doesn't mean he should have the right to spy on you without telling you, any more than owning the telephone and paying the phone bill should allow him to eavesdrop on your personal phone conversations without letting you know," Bowen said in a statement. She authored similar e-mail privacy bills in 1999, 2000, and 2001, all of which were vetoed.

The new bill requires employers to provide a one-time written notice disclosing plans to monitor employees electronically and detailing the information to be tracked, whether it is e-mail content or someone's physical location. According to Forrester Research, 43% of large companies employ staff to read e-mail sent by employees.

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"This is a positive development for citizens who may not be aware that the employers are monitoring their activities," says Ray Everett-Church, chief privacy officer at ePrivacy Group, a privacy issues consulting firm. He notes that while it is important for companies to be able to make sure that workers are behaving appropriately, workplace monitoring should be disclosed.

Given the fate of Bowen's three previous attempts to extend privacy protection to the electronic realm, it's not clear that the new bill will fare any better. Nonetheless, Everett-Church believes that notification of monitoring isn't harmful to business interests. "Businesses have very little to fear from this legislation," he says. "If they convince the state Legislature to reject this bill, it sends a bad message to citizens. That message is you should fear your employer."

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CBS MarketWatch

August 16, 2004 Monday

**SECTION:** NEWS & COMMENTARY; INTERNET DAILY

**LENGTH:** 461 words

**HEADLINE:** Internet goes lowercase at Wired News

**BYLINE:** Jackie Cohen, CBS Marketwatch; <mailto:jcohen@marketwatch.com>; Jackie Cohen is a reporter for CBS MarketWatch in San Francisco.

**BODY:**

SAN FRANCISCO (CBS.MW) -- Lose the capital "I." And while you're at it, get rid of the uppercase "W."

So declares Wired News' copy-editing chief in a proclamation on the site's new style policy. "Effective with this sentence, Wired News will no longer capitalize the 'I' in internet," Tony Long writes. "At the same time, Web becomes web and Net becomes net. Why? The simple answer is because there is no earthly reason to capitalize any of these words. Actually, there never was."

Similar pontificating marked the decision in 2000 by Wired magazine's revocation of the hyphen in e-mail when the magazine and the Web site were united. Wired News is now part of Terra Lycos of Spain, and the magazine is owned by Cond Nast Publications.

The decision will again test whether Wired News' has lasting power as a trendsetter in the online world. Many news organizations, including CBS MarketWatch, maintain their style usage policy on the Internet and the Web.

Not in the cards

Credit card companies may have one less thing to worry about online: being held liable for copyright infringements by customers, even when said activity involves a card transaction.

So ruled U.S. District Judge James Ware, freeing Visa, MasterCard and other payment-related defendants from having to take responsibility for sales of images pirated from Perfect 10, an adult entertainment venture in Beverly Hills, Calif.

Perfect 10 had sued the payment processors in an effort to recoup the proceeds from unauthorized sales of Perfect 10's copyrighted material.

"The ability to process credit cards does not directly assist the allegedly infringing Web sites in copying plaintiff's works," Ware said in a ruling handed down last week. "Defendants do not provide the means for distributing those works to others, nor do they provide bandwidth or storage space with which to transfer or store the works."

Internet calls subject to surveillance

Add Internet phone calls to the list of things that were too good to be true for very long. The Federal Communications Commission has decided that Internet-based phone services should be just as accessible as conventional phone calls for wiretapping for national security and law enforcement purposes.



CBS MarketWatch August 16, 2004 Monday

Loss of privacy might not be the only outcome. Under the Communications Assistance for Law Enforcement Act, the costs of surveillance are to be borne by service providers, and those costs could be passed on to consumers.

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# ELECTRONIC COMMERCE & LAW



VOL. 9, NO. 31 PAGES 685-698

**REPORT**

AUGUST 11, 2004

**HIGHLIGHTS****Providing Payment Processing Services Doesn't Trigger Secondary Liability**

Adult entertainment publisher Perfect 10 suffers another legal setback in its ongoing crusade to hold third parties liable for providing support services to Web sites that peddle infringing content. A federal district court in California concludes that Visa and MasterCard are not contributorily or vicariously liable for providing payment processing services to sites that sell bootlegged content. The ruling comes just a few weeks after another federal district court in California ruled that payment processing vendors are immune from secondary liability under the Digital Millennium Copyright Act. **Page 688**

**FCC Approves First Batch of Broadcast Flag Technologies**

The Federal Communications Commission gives its blessing to technologies developed by TiVo, Microsoft, and a dozen other vendors for controlling the downstream copying and distribution of digital TV broadcasts under the "Broadcast Flag" rule. But the agency withholds approval of one Bluetooth-powered technology pending further review. **Page 689**

**NCCUSL Approves Uniform E-Recording Act to Streamline Property Records**

The push for e-government services is about to reach into one of the last bastions of old world bureaucracy—the county recorder's office. The National Conference of Commissioners on Uniform State Laws gives its final approval to a proposed uniform law that drafters hope will streamline real estate transactions by gradually replacing paper-based land recording systems with electronic recording systems. **Page 691**

**Video Game Law That Regulates Violence Against Police Goes Too Far**

A law prohibiting the selling or renting of video games that depict realistic violence against law enforcement officers is not narrowly tailored to serve the government's interest in protecting the psychological welfare of children because it sweeps in games of marginal violence while permitting ultra-violent games that don't feature police, a federal court in Washington rules. The law is also constitutionally vague, the court holds, because it is difficult to determine which games use "realistic" violence against "law enforcement officers." The court turns back an attempt to extend the legal definition of "obscene" to embrace violent acts. **Page 694**

**Broadband Providers Must Comply With U.S. Wiretap Statute, FCC Says**

Broadband service providers should be required to comply with the Communications Assistance for Law Enforcement Act, the Federal Communications Commission concludes in a notice of proposed rulemaking. The proposal applies to a range of broadband Internet access services, including wireline, cable modem, satellite, wireless, powerline, and Voice over Internet Protocol (VoIP) services. But the agency tentatively concludes that peer-to-peer VoIP services are not subject to CALEA. **Page 690**

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**OPEN SOURCE:** A patent study concludes that the Linux kernel doesn't infringe any litigated U.S. software patent, but cautions that several hundred untested patents could present problems. **Page 693**

**COPYRIGHTS:** 321 Studios ceases operations just days after a stipulated order entered in the Southern District of New York bars the software developer from selling its Game X Copy program. **Page 689**

**COMPUTER CRIME:** An Australian resident sought by U.S. prosecutors for online piracy lodges an appeal to block his extradition to the United States. **Page 695**

**PRIVACY:** Canada's Privacy Commissioner issues a clarification on PIPEDA, interpreting the act to apply to all information regardless of when it was collected. **Page 693**

**NETWORK SECURITY:** NIST seeks comment on a proposal to withdraw federal approval of the DES encryption standard for protecting government computers in favor of TDEA encryption. **Page 693**

**E-MAIL MARKETING:** FCC adopts rule prohibiting the sending of commercial messages to wireless phones without prior authorization and calls for the creation of a "wireless domain names list." **Page 690**

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# Lead Report

## Copyrights

### Providing Payment Processing Services Is Insufficient to Confer Secondary Liability

**C**redit card processors are not contributorily liable for alleged copyright infringement that occurs on Web sites that use their services because payment processing does not directly assist the copying or distribution of the protected works, the U.S. District Court for the Northern District of California ruled Aug. 5 in granting defendants' motion to dismiss (*Perfect 10 Inc. v. Visa Int'l Serv. Ass'n*, N.D. Cal., C 04-0371 JW, 8/5/04).

Nor are the vendors vicariously liable, the court concludes, because they exercise no control over the content of the sites to which they provide services.

The ruling comes just weeks after another district court in California ruled that the safe harbor provisions of the Digital Millennium Copyright Act shield payment processing and age-verification service providers from Perfect 10's claims of copyright infringement (*Perfect 10 Inc. v. CCBill LLC*, C.D. Cal., No. CV 02-7624 LGB (SHx), 6/22/04) (9 ECLR 667, 8/4/04).

Perfect 10 is a publisher of adult entertainment, both in print and on the Web. Competing sites frequently plunder Perfect 10's pictures of nude models and hawk them to their own subscribers. Perfect 10 complained to Visa, MasterCard, and related service providers used by the stolen content sites to process payments. Perfect 10 demanded that they terminate providing their services to those sites. When the service providers refused, Perfect 10 sued them for, among other things, copyright infringement. The defendants motioned to dismiss the complaint for failure to state a claim upon which relief may be granted.

**No Evidence of Material Contribution.** Perfect 10's contributory liability claim failed because Perfect 10 could not establish an essential element of the claim: that the defendants "materially contributed" to the infringing activities of the stolen content sites. The court rejected Perfect 10's allegation that Visa and MasterCard materially contributed to the infringement because they provided "essential" services to the stolen content sites.

"There is no reason to believe that the allegedly infringing websites could not continue to infringe and operate effectively if Visa and Mastercard were to terminate their financial services," the court said. After all, the Web sites could use alternative forms of payment, such as other credit card providers or debit cards.

More importantly, though, there is no factual basis to support the allegation that the defendants materially contributed to the *infringing activities*:

The ability to process credit cards does not directly assist the allegedly infringing websites in copying Plaintiff's works. Defendants do not provide the means for distributing those works to others, nor do they provide bandwidth

or storage space with which to transfer or store the works . . . . [T]he websites would be every bit as capable of copying and distributing Plaintiff's copyrighted works regardless of whether they employed Defendants' services.

**Visa Lacks Ability to Control Sites.** Perfect 10's vicarious liability claim fared no better. To prove vicarious liability, Perfect 10 must establish that the defendants had: (1) a direct financial interest in the infringing activities; and (2) the "right and ability to control" those activities. Perfect 10 argued that the defendants indeed possess the ability to control the infringing activities of the stolen content sites because they could threaten to revoke providing their services. Also, Perfect 10 argued, the credit card companies have internal regulations governing the provision of service to high-risk merchants (e.g., requiring member banks to terminate merchants with high "charge back" ratios) that could be used as leverage.

While the court acknowledged that the complaint included facts "that might indicate a financial benefit to Defendants as a result of the draw from the alleged infringing images," it found that the defendants lacked the right and ability to control the infringing activity.


Threatening to rescind services is unlikely to stop the infringement, the court reasoned, because the sites will find work-around solutions—just as Perfect 10 itself did when Visa blacklisted the service and revoked its merchant account. Also, the defendants' internal policies and regulations have no sway over the stolen content sites because the defendants have no contractual right to dictate content, shut down servers, delete infringing material, or prevent its transmission.

**Napster and Fonovisa Distinguished.** The court distinguished the vicarious liability holdings of both *A&M Recordings Inc. v. Napster Inc.*, 114 F. Supp.2d 896 (N.D. Cal. 2000) (5 ECLR 848, 8/16/00) and *Fonovisa Inc. v. Cherry Auction Inc.*, 76 F.3d 259 (9th Cir. 1996). Unlike Napster, which controlled an index of available infringing works, the defendants cannot remove the infringing works from the sites, the court reasoned. And unlike the swap meet owners in *Fonovisa*, the defendants "cannot 'eject' the websites from the Internet."

The court dismissed the copyright infringement claims with leave to amend. Along the way, the court also dismissed Perfect 10's other claims, including trademark infringement, right of publicity, unfair competition, false advertising, libel, and intentional interference with economic relations.

The court set Sept. 6 as the deadline for Perfect 10 to serve an amended complaint.

Mark Jansen of Townsend and Townsend and Crew LLP, San Francisco, represented Visa. Howard King of King, Holmes, Paterno & Berliner LLP, Los Angeles, represented Perfect 10.

 The text of the court's opinion is available at <http://pub.bna.com/eclr/040371-080504.pdf>.

# How to Pick Expert Witnesses Roundtable: Pharma Lawyers Sound Off

AUGUST 2004

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# IPLAW BUSINESS

# Fuzzy Math

Deconstructing damages in four multimillion-dollar verdicts.

Plus: Obeying the Goldscheider rule.

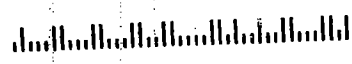


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# OPENING STATEMENTS

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- FIND THE PHONY PATENT
- L.A. LOVES IP
- FAKE FISH SAUCE: A CAPER
- PERKINS COIE GOBBLES BROWN & BAIN

## MOFO GETS ITS GAME ON

**I**n the middle of a workday this June, a group of Morrison & Foerster lawyers convened in a conference room in the firm's San Francisco office and played video games. This wasn't a new kind of firm-mandated recess—the lawyers were looking at a client's video game prototype. Staying on top of the video game industry is a priority for MoFo, which recently formalized a 25-lawyer video game practice group.

The video game industry had \$7 billion in sales last year, and has created more opportunities for firms to expand into the field, where legal issues range from copyright to contract. While many firms have ventured into gaming, MoFo is among the first to have a formal practice area. The firm represents two dozen video game companies, including Atari Corp., Disney Interactive, and Sega Corp., as well as video game publishers.

"Legal issues from video games have often served as an incubator and crystal ball for the development of later intel-



lectual property law," says Neil Smith, a partner at San Francisco's Howard, Rice, Nemerovski, Canady, Falk & Rabkin. Smith, one of the earliest attorneys in the field, represented Sega Enterprises in a 1994 case to stop the operators of an online bulletin board (remember

them?) from sharing Sega games. The ruling was cited in the landmark Napster case in 2000 in the Northern District of California. —Joel Landau

*This article originally appeared in The National Law Journal, a sibling publication.*

RICH LILLASH

## PORN SEEKS PLASTIC

An adult entertainment company goes after MasterCard and Visa.

How do you stop a thief? Take away his credit card. That's what a Beverly Hills adult entertainment company is aiming to do in filing a copyright and trademark suit against Visa International Service Association, MasterCard International Inc., First Data Corp., and two other credit card companies.

Perfect 10 Inc., which publishes an adult magazine and operates an adult Web site, says hundreds of Web sites are selling its copyrighted images and using its trademarked name. While Perfect 10 has sued many of these outfits, its best hope for big damages may be with the credit card companies that process the infringers' transactions.

Perfect 10 claims that since these financial

institutions know about the infringement and financially benefit from it, they are liable for contributory and vicarious copyright and trademark infringement. The company filed suit in San Jose federal court in January. A hearing on the defendant's motion to dismiss was set for early July, as we went to press.

The company argues that the credit card companies have a "special relationship" with the infringing Web sites since they have enhanced requirements for processing the transactions of such high-risk merchants.

Perfect 10's attorney, Howard King, of Los Angeles's King, Holmes, Paterno & Berliner likened the case to the litigation against Napster. King represented Metallica and Dr. Dre in

their suit against the file-sharing site. "Napster wasn't distributing [music] but providing the means to infringe copyrights," he says.

The defendants say that Perfect 10's suit has little merit. Still, they've retained some heavy hitters as defense lawyers. Townsend and Townsend and Crew partner Mark Jansen represents Visa. Andrew Bridges, a partner at Winston & Strawn, represents MasterCard, and Michael Page, a partner at Kecker & Van Nest, represents First Data Corp., Cardservice International Inc., and Humboldt Bank. —Brenda Sandburg

*This story originally appeared in The Recorder, a sibling publication.*