EXHIBIT 8

LimeWire sliced by RIAA, liable for massive infringement

By Nate Anderson | Last updated 21 days ago

LimeWire has been tied up in court over copyright infringement claims for years, but LimeWire, CEO Mark Gorton, and the Lime Group are all feeling especially sour today—the recording industry has won a major victory in federal court.

Judge Kimba Wood has just granted summary judgment against LimeWire, agreeing with the labels that the peer-to-peer company was liable for inducing copyright infringement. Turns out that asking LimeWire downloaders to check a box marked "I will not use LimeWire for copyright infringement" before proceeding doesn't count as "meaningful efforts to mitigate infringement."

Secondary liability

Did LimeWire's users infringe copyrights? With a vengeance—and even the most ardent RIAA-hater knows it. But just to make the point, labels hired Dr. Richard Waterman, a statistics professor at Penn's Wharton School.

Waterman looked at a random sample of 1,800 LimeWire files and concluded that 93 percent were copyrighted and unlikely to be licensed for download through LimeWire. "Dr. Waterman next logged the number of times LimeWire users sought to download each of the files in the sample," wrote Judge Wood in her ruling. "Based on these results, Dr. Waterman estimated that 98.8 percent of the files requested for download through LimeWire are copyright protected or highly likely copyright protected, and thus not authorized for free distribution."

So the real question before the judge was about LimeWire's role, if any, in all this downloading. Had it "induced" people to infringe?

Wood said yes, citing numerous internal LimeWire documents showing a knowledge of all the infringement taking place through LimeWire's software and little done to stop it.

"For example, a draft of a LW Offering Memorandum, created in 2001, states that LimeWire 'allows people to exchange copyrighted mp3 files,'" she wrote. "A September 2002 statement of LW's goals acknowledges that: 'Currently, the most common use of the Gnutella Network is the sharing of music files, many of them copyrighted.' Other LW documents state that 'the only information being shared on peer networks are media files,' a category composed primarily of copyrighted digital recordings."

In addition, LimeWire employees maintained an internal file called "Knowledge of Infringement." The program's built-in genre categories, like Classic Rock, "relate specifically to popular music and inevitably guide users to copyrighted recordings."

Finally, "In addition to ensuring that users can obtain unauthorized copies of recordings through LimeWire, LW has actively assisted LimeWire users in committing infringement. The record reveals several online communications between LW employees and LimeWire users that plainly relate to unauthorized sharing of digital recordings through LimeWire."

Not lifting a finger

With this knowledge of infringement, LimeWire still might have been okay if it had taken steps to mitigate the problem. But "the evidence reveals that LW has not implemented in a meaningful way any of the technological barriers and design choices that are available to diminish infringement through file-sharing programs, such as hash-based filtering, acoustic fingerprinting, filtering based on other digital metadata, and aggressive user education."

The company did roll out its own hash-based filter in 2006, but the default setting was "off." When LimeWire opened its own digital music store, it also employed filtering to "prevent LimeWire users from sharing digital recordings purchased from the LimeWire online store"—but not from sharing anything else.

In Wood's view, this all adds up to a business model knowingly built on copyright infringement, and it continued with no attempt to address the massive problem.

As the main LimeWire owner, Wood also held CEO Mark Gorton personally liable for the same set of claims. No penalties have yet been handed down, but a status conference on June 1 will lay out the schedule for moving forward. (A few issues remain unresolved by the ruling, as Wood decided that the facts were unclear.)

The RIAA asked for an injunction against LimeWire and a host of damages in its complaint, and a spokesperson tells Ars that those issues will likely be discussed on June 1.

Winners and losers

In 2008, a coalition including the EFF, Public Knowledge, the Consumer Electronics Association, and others filed an *amicus* brief with the court. The document didn't take sides in the case, but it did warn that some music industry arguments could gut the key rulings from Sony's Betamax case and the much more recent *MGM v. Grokster* case.

"Relying on certain of Plaintiffs' arguments would replace the limiting principles set out in those cases with broad, ill-defined substitutes that would chill innovation in multi-use technologies, to the detriment of at least three constituencies," said the brief. "First, the technology industry would be denied the opportunity to develop and market technologies that form an increasingly important segment of the global economy. Second, consumers would be denied the legitimate, non-infringing benefits that multi-use technologies offer. And third, copyright owners who are eager to take advantage of opportunities made possible by these new technologies would be stymied...

"Regardless of the outcome in this case, the legal standards the Court enunciates will be persuasive precedent in future cases."

What the drafters didn't know at the time was that the Anti-Counterfeiting Trade Agreement (ACTA) would also try to export secondary liability around the world, though without the same judicial precedents (like *Sony* and *Grokster*) that shape it here in the US. We may see more judges around the world wrestling with issues like contributory and vicarious infringement in the next decades if ACTA passes, making verdicts like this one possible in more places.

That may be scary for software and device makers who create multi-use tools, but it's music to ears of the recording industry, which celebrated this decision.

"LimeWire is one of the largest remaining commercial peer-to-peer services," said the RIAA's Mitch Bainwol. "Unlike other P2P services that negotiated licenses, imposed filters or otherwise chose to discontinue their illegal conduct following the Supreme Court's decision in the Grokster case, LimeWire instead thumbed its nose at the law and creators. The court's decision is an important milestone in the creative community's fight to reclaim the Internet as a platform for legitimate commerce. By finding LimeWire's CEO personally liable, in addition to his company, the court has sent a clear signal to those who think they can devise and profit from a piracy scheme that will escape accountability."

LimeWire issued a brief statement of its own: "LimeWire strongly opposes the Court's recent decision. LimeWire remains committed to developing innovative products and services for the end-user and to working with the entire music industry, including the major labels, to achieve this mission. We look forward to our June 1 meeting with Judge Wood."