

The LimeWire Decision: Can Legal Precedent Keep Up With the Internet Age?

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The latest copyright infringement decision has emerged against LimeWire, the immensely popular file-sharing client. Judge Kimba Wood of the U.S. District Court for the Southern District of New York found LimeWire was liable for unfair competition, inducing copyright infringement, and copyright infringement itself. The decision held that LimeWire users committed a "substantial amount of copyright infringement," and that LimeWire "has not taken meaningful steps to mitigate infringement."

The LimeWire decision breaks new ground in the battle against file-sharing networks. Distinguished from previous cases, Judge Wood held that LimeWire was primarily liable for committing copyright infringement. In the past, file-sharing networks were not held liable for illegal activities of its users. Although some prior decisions resulted in liability for inducing copyright infringement, none resulted in the file-sharing network being held liable for engaging in copyright infringement itself. This resultant "primary" copyright liability is a much graver offense than inducing users to commit copyright infringement. Furthermore, Judge Wood also held Mark Gorton, founder of LimeWire, personally liable for copyright infringement.

The LimeWire decision sets a clear tone that if file-sharing networks are established to encourage and facilitate illegal acts, the creators and enablers of the networks will be held accountable. Judge Wood found that because LimeWire failed to implement a copyrighted-material filtering mechanism, it suggested that LimeWire was aware of, and encouraged the sharing of copyrighted material. Therefore, LimeWire "assisted users in committing infringement."

Soon after Judge Wood issued his decision, the Recording Industry Association of America (RIAA) requested a permanent injunction against LimeWire, which would shut it down until the ongoing copyright infringement was eliminated. The RIAA brief states:

"the rampant illegal conduct that LimeWire intentionally induced ... will continue uninterrupted day after day unless and until the Court issues an injunction to rein in this massive infringing operation."

If granted, the permanent injunction would also prevent LimeWire from advertising its services, allowing its client to be downloaded, and collecting advertising revenue obtained. LimeWire has yet to respond to the request for injunction. The RIAA's request reasoned that irreparable harm stems from the fact that LimeWire's liability likely exceeds the value of their assets. Given that the statutory damages may rise to up to \$150,000 per work, per infringer, the RIAA's request may be well suited. Once LimeWire responds to the request, the RIAA has two weeks to respond to the filing, however, Judge Wood may rule anytime after LimeWire's response has been submitted.

LimeWire has responded unofficially to the RIAA's request for permanent injunction in an optimistic tone. A

LimeWire representative stated that the permanent injunction may “hold back the creation of new digital music technologies.” It is likely that Judge Wood will grant a permanent injunction; however, likely not to the extent requested by the RIAA. Similar injunction remedies have been granted in other online infringement cases: *Grokster*, *Usenet.com*, and *Fung*. In each of those cases, an injunction was promptly issued after the summary judgment motion was decided.

The decision may be fatal to LimeWire. Most importantly, the yet to be determined damage award could make any hope of continued operation futile, as LimeWire may be liable for hundreds of millions of dollars worth of copyright infringement. Hypothetically, LimeWire could continue operating if they addressed the ongoing infringement. One possible course of action would be to implement a filtering system that would distinguish between searches directed at obtaining copyright-infringing material, and allowing other searches aimed at legitimate content to proceed. However, many of the current LimeWire users may abandon the service if their filtration system was used.

LimeWire has already made attempts to become a licensed music distributor, similar to Napster. If LimeWire could keep a mere fraction of its approximately 50 million monthly users, such a venture could lead to a very profitable business model. However, as the vast majority of the content downloaded from LimeWire (RIAA estimates it at 93%) is copyrighted, it may be unreasonable to expect that user base to convert seamlessly into legal music purchasers.

Despite the ultimate fate of LimeWire, the file-sharing problem will continue. The LimeWire decision may result in a drastic restructuring of the file-sharing networks, but it is likely that copyrighted material will continue to be downloaded at a relentless pace. However, the new precedent that results in liability for the enabler, rather than the user, may slow the growth of new file-sharing technology. For file-sharing clients having a structure similar to that of LimeWire, the decision will most certainly result in defeat. The RIAA will likely pursue such file-sharing networks, and use the precedent as negotiation leverage.

The legacy of LimeWire is tremendous, as nearly 200 million users downloaded the client since its inception. The vast majority of these users are accustomed to downloading their music for free. If LimeWire ceases operation, it is unlikely that these users will begin utilizing the available legal channels. Since Napster, digital music has been available for illegal download by the masses. Changing the expectations of this generation may be the biggest challenge facing the recording industry. In the past, when one file-sharing service was shut down, another quickly filled the void. However, the LimeWire decision has now clearly stated that enabling users to download known copyrighted material is inducing infringement, and results in liability.

Already, there are many alternative channels available for users to obtain copyrighted content, without payment. A few of the LimeWire replacements include Freenet, Frostwire, and uTorrent. This “next generation” of peer-to-peer servers supposedly provides additional privacy, and prevents tracking of the download streams to individual users. Nonetheless, although the latest technology may provide additional protection to the end-user, accordingly to the logic in the LimeWire decision, the creators and operators of the file-sharing clients could be held liable for copyright infringement.

Endless litigation may not regain loyalty of the downloading generation. Nonetheless, the LimeWire decision cuts closer to the epicenter of illegal music distribution by holding creators of file-sharing networks responsible. The owners of the next generation of file-sharing networks are now mindful that they can be held accountable for enabling users to access copyrighted material illegally.