

V. COPYRIGHTS/DMCA

A. CASE LAW

1. U.S. Courts of Appeal

- a. *MGE UPS Systems Inc. v. GE Consumer and Industrial Inc.*
80 BNA's PTCJ 433

The U.S. Court of Appeals for the Fifth Circuit ruled on July 29, 2010 that anticircumvention provision of Digital Millennium Copyright Act, 17 U.S.C. § 120(a)(1)(A), prohibits only those forms of "access" that would violate or impinge on protections Copyright Act otherwise affords to copyright owners, and "circumvented" technological measure therefore must protect copyrighted material against infringement of right that Copyright Act protects, not from mere use or viewing; in present case, defendants did not violate anticircumvention provision by bypassing external hardware security key, or "dongle," in using plaintiff's copyrighted software programs for servicing uninterruptible power supply machines. As reported at 80 BNA's PTCJ 764, on September 29, 2010, the Court issued a modified opinion.

- b. *MDY Industries LLC v. Blizzard Entertainment Inc.*
81 BNA's PTCJ 251

The U.S. Court of Appeals for the Ninth Circuit held on December 14, 2010 that Congress, in enacting the Digital Millennium Copyright Act in 17 U.S.C. § 1201(a)(2), gave digital content owners a new legal protection against technologies that circumvent access controls protecting their digital property.

2. U.S. District Courts

- a. *Viacom International Inc. v. YouTube Inc.*
80 BNA's PTCJ 289

The U.S. District Court for the Southern District of New York ruled on June 22, 2010 that under the safe harbor provision of the Digital Millennium Copyright Act, an online service provider has a duty to take down infringing content when it has "knowledge of specific and identifiable infringements of particular individual items," in a case in which copyright owners have tried to hold the popular website YouTube liable for infringing videos posted by users.

- b. *Design Furnishings Inc. v. Zen Path LLC*
81 BNA's PTCJ 293

The U.S. District Court for the Eastern District of California ruled on December 23, 2010 that a company selling furniture online was entitled to a preliminary injunction barring a competing company from sending DMCA takedown notices.

**c. *EchoStar Satellite LLC v. ViewTech Inc.*
81 BNA's PTCJ 864**

The U.S. District Court for the Southern District of California on April 20, 2011 awarded \$214.9 million against maker of satellite TV descramblers.

**d. *Wolk v. Kodak Imaging Network Inc.*
81 BNA's PTCJ 680**

The U.S. District Court for the Southern District of New York ruled on March 17, 2011 that photobucket storage website had no duty to police site, uploads for infringing works.

**e. *Peermusic III Ltd. v. LiveUniverse Inc.*
98 USPQ2d 1273**

The U.S. District Court for the Central District of California on May 13, 2010 granted plaintiff a preliminary injunction requiring defendants to remove plaintiffs' unlicensed copyrighted song lyrics from defendants' websites, since plaintiffs are likely to succeed on merits of their claim, since plaintiffs assert that defendants' use of lyrics deprives plaintiffs of ability to ensure accuracy of lyrics and control quality of their presentation, and since balance of harms favors plaintiffs, and public interest favors issuance of injunction.

**f. *Arista Records LLC v. Lime Group LLC*
98 USPQ2d 1088 and 1094**

The U.S. District Court for the Southern District of New York ruled on March 10 and 11, 2011, respectively, 2011 that for purposes of calculating statutory damages under 17 U.S.C. § 504(c), Copyright Act treats infringers who are jointly and severally liable in same way as statute treats individually liable infringers; plaintiffs in present case, who have demonstrated that defendants are secondarily liable for infringement of plaintiffs' copyrighted works through operation of peer-to-peer file-sharing system, are limited to single statutory damage award from defendants per work infringed, regardless of how many individual users of system directly infringed that particular work. The court also ruled that defendants who have been found secondarily liable for infringement of plaintiffs' copyrighted works through operation of peer-to-peer file-sharing system, and who are seeking to preclude plaintiffs from recovering statutory damages awards with respect to 1,355 infringed sound records, will not be granted judgment on pleadings on ground that plaintiffs have already obtained judgment against individual direct infringer as to each of those recordings.