

[US] Cloud Services Held to Infringe Copyright

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On 14 May 2013, a New York federal court ruled that cloud-based services MP3Tunes.com and Sideload.com (“Websites”) infringed the copyrighted works of record labels and music publishers by allowing users to upload music from third-party websites and transfer the music to storage lockers. The Websites, which have since filed for bankruptcy, boasted a catalog of more than 400,000 recordings by 40,000 artists.

Under the Digital Millennium Copyright Act (“DMCA”), Internet Service Providers (“ISP”) like the Websites are required to remove copyrighted works that are posted without authorization if they receive notice from a copyright holder - but are not required to affirmatively monitor content. The heart of the dispute was over whether the Websites had sufficient notice of the infringing activities by virtue of being aware of a reasonable suspicion of the infringing activities of its users. In cases where an ISP does not have direct knowledge of specific infringing activities, an ISP will be deemed to have sufficient notice if he is subjectively aware of facts that would have made the specific infringement objectively obvious to a reasonable person but consciously avoids further inquiries that a reasonable person would make (“red-flag” knowledge).

The Court concluded that the infringing activities of the Website’s users were “objectively obvious to a reasonable person” because the Websites received emails notifying them of specific and identifiable instances of possible infringement, yet consciously avoided confirming the accuracy of the claims.

The trial now moves on to a determination of damages.

U.S. District Court - Southern District of New York, Capitol records v. mp3tunes, Case 1:07-cv-09931-WHP-FM

http://beckermanlegal.com/Lawyer_Copyright_Internet_Law/capitol_mp3tunes_130514Decision.pdf

