

Supreme Court Considering Internet Cases

The U.S. Supreme Court will have a chance to dramatically shape the way that many people use and get on the Internet. Scheduled recently for argument are *MGM Studios Inc. v. Grokster Ltd. and StreamCast Networks Inc.*, which could decide whether peer-to-peer downloading of songs and movies violates copyright, and *National Cable & Telecommunications Association v. Brand X Internet Services*, a struggle to determine which regulatory regime should govern cable Internet services.

The cases have brought together odd bedfellows - in *Grokster*, the Christian Coalition is siding with Hollywood moguls - and will bring to the court lectern an interesting assortment of powerhouse lawyers, all but one of them a former high court law clerk.

The *Grokster* case has gotten the most attention, with entertainers and creative artists - including a certified class of 27,000 songwriters and music publishers - casting it as a life-or-death struggle over theft of their means of livelihood.

Peer-to-peer downloading, which enables computer users to download files from other computers rather than from a central source, has led to the theft of copies of 85 million songs and 400,000 movies a day, said Mark Corallo, a former Justice Department spokesman who is working for entertainment industry groups in the case. The industry says it has lost billions in revenues.

The 9th U.S. Circuit Court of Appeals last August acknowledged that a "vast majority" of the downloads violate copyright law, but because there are also "substantial noninfringing uses," *Grokster* and *StreamCast* should not be held liable unless it could be shown that they knew about the infringement. The ruling was based on the Supreme Court's 1984 case *Sony Corp. v. Universal City Studios Inc.* - a similar entertainment industry challenge to new technology - which held that makers of VCRs weren't liable for violating the copyright of movie studios so long as the technology was capable of "substantial" legal uses.

In *Grokster*, the 9th Circuit said that, as with VCRs, the software has legal uses, including downloading music by artists who don't object to file sharing.

But *Grokster* and its allies say the entertainment industry in fact is asking the court to overturn *Sony*, which it is unlikely to do, partly because it does not reverse its own rulings lightly and partly because *Sony* has worked.

Instead of ruining the movie industry by allowing VCRs to be used for playing movies, the *Sony* decision fostered a lucrative new market for Hollywood through videotapes and now DVDs.

The second case argued is devoid of the entertainment industry dazzle of *Grokster*, but could have substantial impact as well. More than 18 million homes use cable lines for Internet access.

The cable industry is challenging another 9th Circuit ruling, this one from 2003, that said cable modem service should be classified as a "telecommunications service," which, as with phone lines, would mean that cable companies would have to provide other providers with access to their lines.

The ruling overturned an earlier Federal Communications Commission determination that the cable industry preferred: that cable modems are an "information service" akin to dial-up Internet service, subject to little regulation.

Internet services including Brand X and Earthlink, joined by access advocates including the Center for Digital Democracy, claim that the cable industry will stifle access if it is able to defeat "telecommunications service" status. They argue that cable consumers should be able to choose their own Internet service provider rather than be forced to use the cable company as the Internet provider.

"Without regulations treating cable modem service as a common carrier telecommunications service, cable companies can leverage ownership of the physical infrastructure into control of citizens' access to and use of the Internet," said a brief on behalf of the American Civil Liberties Union and the Brennan Center for Justice. "This threatens free speech and privacy."

Broad Impact Seen In Calling-Card Ruling

AT&T Corp.'s request to waive unpaid fees accrued through prepaid calling-card services has been denied by the Federal Communications Commission, a decision that could cost the company millions of dollars and trigger more litigation in the telecommunications industry.

At the crux of the ruling is the FCC's ongoing struggle to form a distinction between "information services" and "telecommunication services" - definitions that have been blurred by emerging Internet technologies. The FCC order set a clear standard, ruling that "enhanced" telephone calling cards are no different from regular calling cards.

When customers use AT&T's "enhanced" calling cards, they must listen to a prerecorded advertisement before placing a phone call. The company's 2003 petition argued that this card provided an "information service," which is exempt from Universal Service Fund charges.

The FCC recently rejected two proposals within a petition that AT&T filed in May 2003, according to Mark Wigfield, a spokesman for the FCC Wireline Competition Bureau. The FCC order, WC Docket nos. 03-133 and 05-68, which was released on Feb. 23, holds the company accountable for \$340 million in unpaid bills owed to local telephone carriers that transferred calls for AT&T's calling card.

The order also charges AT&T \$160 million for unpaid contributions to the Universal Service Fund, a federal program that collects mandatory contributions from companies providing "telecommunications services."

When it filed the 2003 petition, AT&T had hoped to avoid paying charges on calls placed and received within the same state, the intrastate fees levied by local carriers.

Internet Law Tested in Yahoo Case

If Yahoo Inc. prevails at the 9th U.S. Circuit Court of Appeals, it'll be a squeaker.

Recently, the Sunnyvale, Calif.-based Internet portal company asked an en banc panel to protect it from a French court's judgment that eventually could mean millions of dollars in fines. Two anti-racism groups obtained the judgment in 2000 because Yahoo users were selling and discussing Nazi memorabilia, which is against French law.

Although the French groups have not tried to collect on the judgment - and say they won't as long as Yahoo abides by French law - Yahoo went to U.S. court to obtain pre-emptive relief.

Yahoo wants U.S. federal courts to assert personal jurisdiction over the French groups to prevent them from ever trying to collect the fines.

Yahoo had won before U.S. District Judge Jeremy Fogel of San Jose, Calif., but his decision was reversed by a three-judge 9th Circuit panel.

Verizon Invests \$321,000 to Better Serve Pittsburgh Area

Verizon customers in the Turtle Creek area near Pittsburgh soon will have improved communications as the result of a \$321,000 investment the company has made in its local call-switching center. Verizon is installing new equipment, including advanced power systems that enable the company to provide critical telecommunications services in the event of a commercial power disruption.

This equipment also allows Verizon to more efficiently monitor power systems and diagnose potential network power problems, thus increasing reliability in the Verizon network, and will support advanced telecommunications technologies. The company expects to complete the project by the end of April.

In addition to this investment, Verizon continues build its new fiber-to-the-premises network in portions of Pennsylvania and 13 other states. Verizon is currently rolling out its FiOS Internet service in a number of Pennsylvania communities.

Verizon has invested more than \$8 billion in its telecommunications network across the commonwealth over the last 10 years.