



**December 21, 2011**

## **NINTH CIRCUIT AFFIRMS COPYRIGHT SAFE HARBOR FOR INFRINGING WEBSITES**

***(UMG Recordings, Inc. v. Veoh Networks, Inc.)***

**U.S. Court of Appeals for the Ninth Circuit**

U.S. Court of Appeals for the Ninth Circuit yesterday affirmed a district court decision that provides unwarranted immunity to website operators who tolerate and profit from copyright infringement. The decision was a setback for the Washington Legal Foundation, which filed a brief in the case, *UMG Recordings, Inc. v. Veoh Networks, Inc.*, urging reversal of the district court's decision. The litigation arose from a website operated by Veoh Networks, Inc. (Veoh) that generates significant advertising revenue (and profits) at the expense of copyright holders, including UMG Recordings, Inc. and other Universal Music Group companies (UMG).

“This is an unfortunate decision that likely will have nationwide implications for copyright holders, recording artists, and content producers,” said WLF Senior Litigator Cory Andrews after reading the court's opinion. “The rule of law announced by the district court and affirmed by the appeals court effectively holds that website owners can simply bury their head in the sand, ignore many objective indicia of rampant copyright infringement, and still enjoy complete immunity for any monetary damages—all the while continuing to profit from copyrighted works.”

The specific issue before the appeals court was whether Veoh qualifies for a safe harbor created by the Digital Millennium Copyright Act of 1998 (DMCA). The district court had held that Veoh's enterprise falls within the DMCA safe harbor, which entitles Veoh to absolute immunity from monetary damages resulting from its facilitation of copyright piracy. WLF disagreed and argued in its brief that Congress enacted the DMCA to bolster copyright protection and to provide carefully sculpted safe harbors for Internet service providers who, unlike Veoh, have no knowledge or awareness of infringing content passing through their services and no stake in it. In other words, Congress never intended to provide broad immunity for websites built on profit from piracy.

Specifically, WLF's brief argued that the district court incorrectly applied the DMCA's knowledge standard in concluding that Veoh did not have actual knowledge of

infringing activity and was unaware of “red flags” signaling infringement on its website. WLF also argued that the district court erroneously concluded that Veoh lacked the “right and ability to control” the infringing activity on its website even though Veoh retained the right and ability to cancel user accounts at its discretion and had available filtering software capable of identifying infringing works.

WLF’s brief was drafted with the *pro bono* assistance of Clifford Sloan, Mary Rasenberger, and Christopher Clark with the Washington D.C. office of Skadden, Arps, Slate, Meagher, & Flom LLP.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. Among other things, WLF works to protect the rights of property owners, including owners of intellectual property.

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For further information, contact WLF Senior Litigator Cory Andrews, (202) 588-0302. A copy of WLF’s brief is posted on its web site, [www.wlf.org](http://www.wlf.org).