

It wasn't me, it was my flatmate! - a defence to copyright infringement?

You may have heard that the US Supreme Court recently refused to hear the appeal of a college student who was ordered to pay \$675K in damages for illegally downloading and redistributing thousands of songs through BitTorrent.

It is seemingly another one of a very large number of cases in the US in which copyright owners are going after individuals for copyright infringement for the illegal downloading of films and music via BitTorrent. However, a recent decision in New York has thrown into doubt the validity of identifying the individual responsible for an alleged infringement through discovering their IP address.

What happened?

The owners of a large number of porn films were seeking to sue a whole host of users who they allege had been illegally downloading their porn films. The owners had obtained the IP addresses of a number of users from their use of the file-sharing protocol, BitTorrent, in downloading the porn films.

To find out the actual identities of the users, the owners asked the Court to force the ISPs to reveal the names and addresses of each of the subscribers to which the IP addresses related.

The users went on the attack and won.

The judge, rightly in our view, agreed with the users that just because an IP address is in one person's name, it does not mean that that person was the one who illegally downloaded the porn.

As the judge said, an IP address does not necessarily identify a person and so you can't be sure that the person who pays for a service has necessarily infringed copyright.

For example, in an office or at home, where there is a WiFi connection, only one IP address will be allocated to that wireless connection. This means that every user of each device (computer, iPad, iPhone etc) connected to that WiFi connection will use the same IP address. Even a random passerby accessing the WiFi network would be using the same IP address. This decision makes a lot of sense to us. If it holds up, copyright owners will need to be a whole lot more savvy about how they identify and pursue copyright infringers and, perhaps, we've seen the end of the mass "John Doe" litigation.

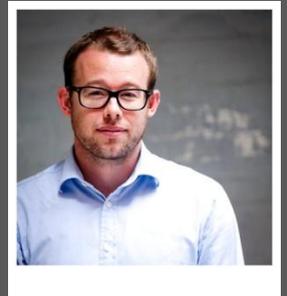
Questions? Give us a call.

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