

Court Accepts Verizon Position, Rejects Recording Industry Subpoenas

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Washington, DC-Wiley Rein & Fielding's Appellate, Litigation and Copyright Practices scored a significant victory for Verizon Internet Services Inc. today when the U.S. Court of Appeals for the District of Columbia Circuit held that the Recording Industry Association of America (RIAA) had no authority under the Digital Millennium Copyright Act (DMCA) to obtain subpoenas compelling Verizon and other Internet service providers to disclose the names and other information about subscribers alleged by RIAA to be infringing its members' copyrights using peer-to-peer file sharing software.

The subpoenas were issued as part of RIAA's ongoing campaign to sue individuals engaged in uploading their sound recordings using peer-to-peer applications. Verizon had refused to disclose the names of its subscribers, arguing that the subpoenas could not properly be issued when an Internet service provider was acting merely as a conduit for the communications of others. The district court had agreed with RIAA and upheld the subpoenas.

The Court of Appeals sided with Verizon, agreeing that the DMCA does not authorize a subpoena when a service provider is not storing material on its system or network, but is acting as a mere conduit. "In sum, we agree with Verizon that [the DMCA] does not by its terms authorize the subpoenas issued here," Chief Judge Douglas Ginsburg wrote. The Court further noted that "not only is the statute clear," but the legislative history confirms that Congress was not even contemplating the circumstances at issue here-alleged infringement taking place over a peer-to-peer Internet application-when it enacted the DMCA.

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According to Andrew G. McBride, the WRF Communications, Litigation and Appellate partner who argued the case on behalf of Verizon, "We believe the D.C. Circuit has correctly interpreted the statute in a manner that gives it effect where Congress desired but avoids turning the DMCA into a blunt investigative instrument that applies to all private communications over the Internet." Bruce G. Joseph, the leader of WRF's Copyright Practice representing Verizon, added: "Having been at the table with RIAA when the terms of the DMCA were negotiated, we are pleased to see that the D.C. Circuit has interpreted the statute as it was intended-not as a sword to reach any and all Internet communications but as a tool to be used in limited circumstances." WRF associate Kathryn Comerford Todd assisted on the appeal.