

PEER-TO-PEER FILE SHARING AND SECONDARY LIABILITY IN COPYRIGHT LAW

Edited by ALAIN STROWEL



Peer-to-Peer File Sharing and Secondary Liability in Copyright Law

Edited by

Alain Strowel

Professor, Facultés Universitaires Saint-Louis, Brussels and University of Liège, Avocat, Belgium

Edward Elgar

Cheltenham, UK . Northampton, MA, USA

© Alain Strowel 2009

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

Published by Edward Elgar Publishing Limited The Lypiatts 15 Lansdown Road Cheltenham Glos GL50 2JA UK

Edward Elgar Publishing, Inc. William Pratt House 9 Dewey Court Northampton Massachusetts 01060 USA

A catalogue record for this book is available from the British Library

Library of Congress Control Number: 2009922756



ISBN 978 1 84720 562 9

Typeset by Cambrian Typesetters, Camberley, Surrey Printed and bound in Great Britain by the MPG Books Group

Contributors

Graeme W. Austin is the J. Byron McCormick Professor of Law at the University of Arizona. He holds a J.S.D. and LL.M. from Columbia University and is a graduate of Victoria University of Wellington. Born in New Zealand, where he practiced commercial law and was a senior lecturer at the University of Auckland, his work focuses on cross-border intellectual property issues. He recently served as advisor to the American Law Institute Project on Intellectual Property, Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes, and is co-author of International Intellectual Property: Law and Policy (2nd ed.). He also teaches regularly as a visiting professor at the University of Melbourne, Australia.

Robert Clark is an Associate Professor of Law at the School of Law, University College Dublin. Since 1992, he has been the Irish national representative in the European Commission Copyright Experts Group and is a member of the Irish government's Internet Advisory Board and the Patent Office Users Council. He is the founder and chair of the Irish ALAI group (1996). Since 1999, Robert has been employed as a consultant to the leading Irish law firm Arthur Cox where he specialises in intellectual property and information technology law. He is the co-author (with Shane Smyth) of Intellectual Property Law in Ireland, now in its second edition, and is the author of Irish Copyright and Design Law, both of which are currently published by Tottel.

Graeme B. Dinwoodie is Professor of Law, Associate Dean, and Director of the Program in Intellectual Property Law at Chicago-Kent College of Law. He also holds a Chair in Intellectual Property Law at Queen Mary College, University of London. Professor Dinwoodie has authored numerous articles on intellectual property law. He holds a First Class Honours LL.B. degree from the University of Glasgow, an LL.M. from Harvard Law School, where he was a John F. Kennedy Scholar, and a J.S.D. from Columbia Law School, where he was a Burton Fellow. He was elected to membership in the American Law Institute in 2003.

Allen N. Dixon is a lawyer who has represented the intellectual property interests of the technology and traditional content industries in various

capacities for more than 20 years. He has served in General Counsel and Assistant General Counsel positions in Asia, the US and Europe. As European counsel and partner at Covington & Burling, he was the senior legal advocate of the business software sector on intellectual property matters in Europe in the late 1990s, acting as counsel to the Business Software Alliance and individual software companies. From 2000 to 2005 he was General Counsel and Executive Director of the international recording industry association IFPI. Since 2005, he has been the principal and managing director of International Intellectual Property & Technology Consulting.

Jane C. Ginsburg is the Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia University School of Law, and Co-Director of its Kernochan Center for Law, Media and the Arts. With Professor Sam Ricketson, she is the co-author of International Copyright and Neighbouring Rights: The Berne Convention and Beyond (Oxford University Press, 2006). Other books include Foundations of Intellectual Property (Foundation Press, 2004) with Professor Robert P. Merges, and Intellectual Property Stories (Foundation Press, 2005) with Professor Rochelle Dreyfuss. With Professor Dreyfuss and Professor François Dessemontet, she is also a co-reporter for the American Law Institute Project on Intellectual Property: Principles Governing Jurisdiction, Choice of Law and Judgments in Transnational Disputes.

Vicky Hanley is a UK associate in the Brussels office of Covington & Burling LLP. Her practice involves legislative advocacy and advising on policy-making and legislative processes. Miss Hanley has recently advised leading multinational companies on regulatory issues in areas including intellectual property and telecommunications, including the current review of the electronic communications regulatory framework. She is also an Edmund Davies Scholar of The Honourable Society of Gray's Inn (2002) and a member of the European Bar Group. Recent publications include 'Last-ditch attempt to improve the EU patent system' in the *Journal of Intellectual Property Law & Practice* (September 2007), which she coauthored with Alain Strowel.

Alexander Peukert is Associate Professor of Civil Law, Commercial Law and Intellectual Property Law at the Johann-Wolfgang-Goethe University Frankfurt/Main, Cluster of Excellence 'The Formation of Normative Orders'. He graduated in law (1998) and earned his doctorate in law (1999) from the University of Freiburg. After his second state examination (2001), he worked at a law firm in Berlin, specializing in IP and media law. From 2002 to 2008, he was a senior research fellow at the Max Planck Institute for

Intellectual Property, Competition and Tax Law in Munich. In 2008, he obtained his postdoctoral lecture qualification from the University of Munich.

Jerome H. Reichman is the Bunyan S. Womble Professor of Law at Duke Law School. He has written and lectured widely on the diverse aspects of intellectual property law, including comparative and international intellectual property, and the connection between intellectual property and international trade laws. In collaboration with Keith Maskus, he recently published International Public Goods and Transfer of Technology Under a Globalized Intellectual Property Regime (Cambridge Press, 2005). He is a consultant to numerous intergovernmental and nongovernmental organizations, a member of the Board of Editors for the Journal of International Economic Law, and also of the Scientific Advisory Board of il Diritto di Autore (Rome).

Pamela Samuelson is the Richard M. Sherman '74 Distinguished Professor of Law and Information at the University of California at Berkeley, a Director of the Berkeley Center for Law & Technology and an advisor to the Samuelson High Technology Law & Public Policy Clinic at Boalt Hall. She is a Fellow of the Association for Computing Machinery (ACM), a Contributing Editor of *Communications of the ACM*, a past Fellow of the John D. & Catherine T. MacArthur Foundation, and an Honorary Professor of the University of Amsterdam.

Michael Schlesinger is Of Counsel to Greenberg Traurig. His practice focuses on intellectual property with an emphasis in international copyright law and trademark law. Mr Schlesinger represents the International Intellectual Property Alliance (IIPA) in worldwide copyright legislation and enforcement reform efforts, as well as government affairs and trade-related aspects of intellectual property rights. His regional focus is on Asia, the Middle East and Africa. He works with governments on implementing emerging standards of IP protection, as well as compliance with international intellectual property and trade agreements.

Alain Strowel is a professor at the Saint-Louis University in Brussels, the University of Liège and the Catholic University of Brussels-Leuven, where he teaches copyright, design law and media law. A member of the Brussels Bar since 1988, he graduated in law (1983) and obtained a Ph. D. in law (1992) from the University of Louvain-la-Neuve. Prior to joining the US firm Covington & Burling in 2001, where he concentrates on the IP issues in relation to IT, he worked in the Brussels IP section of the Dutch firm NautaDutilh. He has authored numerous articles and several books, including *Droit d'auteur*

et copyright (LGDJ and Bruylant, 1993) and Droit d'auteur et numérique: logiciels, bases de données, multimédia (Bruylant, 2001) with Estelle Derclaye. He has also edited various books including Of Authors and Origins (Clarendon Press, 1994) with Brad Sherman, and Droit d'auteur et liberté d'expression (Larcier, 2006) with Fr. Tulkens.

Table of cases

- A&M Records, Inc. v Napster, 239 F.3d 1004 (9th Cir. 2001) 6, 16, 31, 58, 62, 63, 66, 112–13, 114, 208, 255, 258, 259–61, 263, 264–5, 283
- A&M Records, Inc. v Napster, 284 F.3d 1091 (2002) **208, 209, 211**
- A&M Records, Inc. v Napster, 114 F. Supp. 2d 896, aff'd 239 F.3d 22, 245, 259
- A&M Records, Inc. v Abdallah, 948 F. Supp. 1449 (C.D. Cal. 1996) 245
- A&M Records, Inc. v Napster 2000 WL 573136, at *3 (N.D. Cal. 2000) **259–60, 267**
- Abkco Music & Records Inc. v Music Collection International Ltd, [1995] RPC 657 132
- Adelaide Corporation v APRA (1920) 40 CLR 481, approved in Moorhouse (1975) 133 CLR 1 and Cooper (2005) IPR 409 17, 210, 212
- Aimster Copyright Litigation, 334 F.3d 643 (2d. Cir. 2003) 39, 40, 255, 258, 261, 264–5, 268, 283
- Anton Pillar KG v Manufacturing Processes Ltd, [1976] Ch 55 (CA); [1976] 1 All ER 779; [1976] 2 WLR 162 120
- Arsenal Football Club plc v Elite Sports [2003] FSR 26 215 Ashworth Hospital Authority v

- MGN Ltd [2002] I WLR 2003 215
- Asia Media Inc. et al v Yang, No. 2002KAHAP77 (Suwon D. Court, Seongnam Branch, First Civ. Dep't. 9 July 2002) 25–7
- AT&T Corp. v City of Portland, 216 F33d 871 (9th Cir. 1999) 153
- Atari Games Corp. v Nintendo of Am., Inc., 975 F.2d 832 (Fed. Cir. 1993) 275, 276
- Atherton v DPP [2006] 2 ILRM 153 220
- Atlantic v Anderson (S.D. Tex. 2008) 66
- Atlantic v Brennan, Civil No. 3:07cv232 (JBA) (13 February 2008, D. Conn) **67**
- Australian Tape Manufacturers
 Association Ltd v
 Commonwealth of Australia
 (1993) 176 CLR 480 (High Court
 Aus.) 122
- Bahleida v Santa (2003) 233 (4th) 382 **203**
- Baker v Selden, 101 US 99 (1880) 275–7
- Baker-Bauman v Walker, 2007 WL 1026436 137
- Bidzerk LLC v Smith, 2007 WL 3119445 (D.S.C.) 88
- BMG Canada Inc. v John Doe, 2004 FC 488 (Canada Fed. Ct. 31

- March 04), reversed and aff'd in part, 2000 FCA 193 (Canada Ct. App. 19 May 2005) **20, 55**
- BMG Canada Inc. v John Doe (2005) 252 DLR (4th) 726 214, 216, 217
- BMG Records v Heise Zeitschriften Verlag, OLG München, 29 U 2887/05, 28 July 2005 (21 O 3220/05 Landgericht München I) 106–7
- Bonito Boats, Inc. v Thunder Craft Boats, Inc., 489 US 141 (1989) 273
- Boosey & Hawkes Music Publishers, Ltd v Walt Disney Co, 145 F 3d 481 (2nd Cir, 1998) 133
- British Leyland Motor Co. v Armstrong Patents [1986] 1 All ER 850 (HL) (UK) 297
- Bruvik v EMI Norsk SA [2005] ECDR 331 (Norway) 204
- Bulova Watch Co v Steele, 194 F 2d 567 (5th Cir, 1952) 139
- BUMA/STEMRA v Kazaa BV, No. C02/186HR (Netherlands S. Ct. 19 December 2003) [2004] EDCR 183 25, 41, 111, 119–20, 121–2, 209
- Bunt v Tilley, [2006] EWHC 407 QB; [2007] ECDR 320 **205–6**, **224**, **227**
- Campbell v Acuff-Rose Music, Inc., 510 US 569 (1994) **85, 263**
- Canadian Association of Internet Providers v Society of Composers and Music Publishers of Canada (SOCAN), Copyright Board of Canada (1999) 1 CPR (4th) 417: Federal Court of Appeal, (2002) 215 DLR (4th) 118 200

- Canadian Association of Internet Providers v Society of Composers and Music Publishers of Canada (SOCAN), Supreme Court of Canada, (2004) 240 DLR (4th) 193 201–3, 211
- Canon Kabushiki Kaisha v Green Cartridge Co., [1997] AC 728 (PC) 297
- Capitol v Thomas (D.Minn. Deluth 2007), Civil File No. 06 1497 (MJD/RLE) 67–8
- Carlton Film Distributors Ltd v MGN Ltd [2002] FSR 47 215
- CBS Inc. v Ames Records and Tapes [1982] Ch 91 210
- CBS Songs Ltd v Amstrad Consumer Electronics plc., [1988] 1 AC 1013 (H.L.) 17, 18, 122, 126, 210, 211
- CCH Canadian Ltd. v Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13 55, 173, 203
- Chamberlain Group, Inc v. Skylink Techs., Inc., 381 F.3d 1178 (Fed. Cir. 2004) 167, 230, 251, 255, 256, 257, 269–74, 275, 276, 283
- CHC Software Care v Hopkins and Wood [1993] FSR 241 215
- Church of Spiritual Technology v Dataweb B.V., Rb (The Hague, 9 June 1999, Court of Appeal, The Hague, 4 September 2003) [2004] ECDR 258 99, 199, 215
- Cineplay Records Co Ltd v Hong Kong Broadband Network Ltd [2006] 1 HKLRD 255 217
- CNIL, 24 October 2005 **219** Cogley v RTE [2005] 2 ICRH 529 **215**

- Columbia Pictures Industries Inc. v Frankl (2004) 36 CPR (4th) 342 210
- Columbia Pictures Industries Inc. v Gaudreault [2006] FCA 29 210
- Cooper v Universal Music Australia Pty. Ltd., [2006] FCAFC 187 (Fed. Ct. Full Court Appeal, 18 December 2006) 22, 23, 53–4, 59–60, 68, 125, 128–30
- Copiepresse v Google Inc., Trib. 1st Instance Brussels, 13 Febr. 2007 [2007] ECDR 5 78–9, 87
- CoStar Group, Inc. v LoopNet, Inc., 373 F.3d 544 (4th Cir. 2004) **240-41**
- Cubby v Compuserve 776 F Supp 135 (1991) **205, 235**
- Curb v MCA Records Inc, 898 F Supp 586 (MD Tenn, 1995) 136
- DVD Copy Control Ass'n v McLaughlin, No. CV 786804, 2000 WL 48512 (Cal. Super. Ct. 21 January 2000) 104–5
- Eldred v Ashcroft, 123 S.Ct. 769
- Elektra Entertainment Group Inc. et al v Barker, Case No. 7:05-cv-07340-KMK (S.D.N.Y.) (Opinion and Order, 31 March 2008) 65–6
- Elektra Records Co. v Gem Electronic Distributors, Inc., 360 F. Supp. 821 (E.D.N.Y. 1973) 111–12
- Ellison v Robertson, 189 F. Supp.2d 1051 (C.D. Cal. 2002) Rev'd in part 357 F. 3d 1072 (9th Cir. 2004) **22**
- EMI Records (Ireland) Ltd and

- Others v Eircom Ltd and BT Communications Ireland Ltd [2006] ECDR 40 217, 219
- Expediters International of Washington Inc v Direct Line Cargo Management Services Inc, 995 F Supp 468 at 477 (DNJ, 1998) 136
- EzPeer Global Digital Technology Co., Ltd., 2002 Zhen Zi No. 10786 and No. 4559 (Shih-Lin (Taiwan) Dist. Ct. (30 June 2005)) **27, 61**
- F Hoffmann-LaRoche, Ltd v Empagran SA 417 F 3d 1267 (DC Cir, 2005) 144, 145
- Falcon v Famous Players Film Co [1926] 2 KB 474 **17, 126**
- Feist Publ'ns, Inc. v Rural Tel. Serv. Co., 499 US 340 (1991) **80**
- Ferris v Frohman, 223 US 424 (1912) 134
- Futuredontics, Inc. v Applied Anagramics, Inc., 45 U.SP.G.2d (BNA) 2005, 1998 US Dist. LEXIS 2265 (C.D. Cal. 1998) 81
- General Association of Professional Journalists of Belgium v. Central Station (Brussels Court of First Instance, 16 October 1996; Brussels Court of Appeals, 28 October 1997) 82
- Go East Entertainment Co. Ltd. v Beijing Alibaba Information and Technology Co. Ltd., Civ. No (2007) 02627 Er Zhong Min Chu Zi (Beijing No. 2 Intermediate People's Court, 24 Apr. 2007) 23, 97
- Godfrey v Demon Internet, [2001] QB 201 205

- Gold Label Entertainment Ltd. v
 Beijing Baidu Network
 Information Scien-tech Co., Ltd.,
 Civ. No. (2005) 7965 Yi Zhong
 Min Chu Zi (Beijing No. 1
 Intermediate People's Court, 17
 November 2006) 23, 96–7
- Gormley v EMI [1999] 1 ICRM 154 199
- Haughey v Moriarty [1999] 3 IR 1 **215**
- Heinz Wattie's Ltd v Spantech Property (2005) 67 IPR 666 210
- Hi Bit Software GmbH v AOL Bertelsmann Online GmbH, [2001] ECDR 375 207, 212
- HKSAR v Chan Nai-Ming, FACC 0003/2007, 18 May 2007 **56**
- Hotaling v Church of Jesus Christ of the Latter-Day Saints, 118 F.3d 199 (4th Cir. 1997) 64–5
- IFPI Belgium v Beckers, A.R.K. No. 99/594/C (Antwerp Court, 21 December 1999) confirmed by Antwerp Court of Appeal 21 June 2001 RG 99/23830 23, 92
- IFPI Danmark v. Tele2 A/S, Case No. FI-15124/2006 (Copenhagen City Ct., 25 October 2006) 31
- IFPI v Belgacom Skynet, Court of Appeals, Brussels, 13 February 2001 reversing Court of Commerce, Brussels, 2 November 1999 99–101
- IFPI v T. Olsson, unreported, no. B 1009-99 (Göta, Court of Appeals 1999) (Swe.), unreported, no. B 824-99, (Tingsrätt Skövde 1999) (Swed.), unreported, no. B 413-00, Stockholm Supreme Court 2000) 89-91

- Imax Corp. v Showmax Inc., 2000 A.C.W.S.J. LEXIS 47376 (Fed. Ct. Jan. 18, 2000) (Can.) **81**
- In re Yang and Yang, Docket 2003 No. 4296 (Seoul D. Ct., Crim. Ct. No. 5, 12 January 2005) **26**
- In the Koursk, [1924] All ER Rep 168 18
- Infabrics Ltd v Jaytex Shirt Co [1978] FSR 451 223
- Intellectual Reserve Inc. v Utah Lighthouse Ministry Inc., 75 F. Sapp. 2d 1290 (D. Utah 1999) 89, 90
- Itar-Tass Russian News Agency v Russian Kurier Inc, 153 F 3d 82 (2nd Cir, 1998) 135
- JASRAC v MMO Japan (Tokyo District Court, 29 January 2003), H17.3.31, Tokyo Dist. Ct. No. 16 Ne 446 57
- Jones v University of Warwick [2003] 3 All ER 760 220
- Kalem Co. v. HarperBrothers, 222 U.S. (S. Ct. 1911) 36, 243
- Kazaa v Buma/Stemra, No. 1370/01 (Amsterdam Ct. of Appeal, 28 March 2002) 24–5, 37
- Kazaa v Buma/Stemra, No. KG 01/2264 OdC (Amsterdam Ct. of Justice, 29 November 2001) 24–5
- Kelly v Arriba Soft Corp. 77 F. Supp. 2d 1116 (C.D. Cal. 1999) 79, 84–7, 102
- Kelly v Arriba Soft Corp. 280 F 3d 934 (9th Cir, 2002), withdrawn 9th Cir 3 July 2003 **86**
- Kelly v Arriba Soft Corp. 336 F 3d 811 (9th Cir, 2003) **86, 209**
- Kennedy v Ireland [1987] IR 587 215, 220

- KODA v Lauritzen and Egeberg [2002] ECDR 25 (Denmark) 204, 208–9
- KODA, NCB, Dansk Artist Forbund, Dansk Musiker Forbund & IFPI Denmark, Case Nos. V.L. B-1943-99 and V.L. B-2089-99 (High Ct. of Justice, Western Div., 20 April 2001) 23, 74, 91-2
- Korean Assn. of Phonogram
 Producers v Soribada Co. Inc.,
 Case No. 2002 Kahab 77, Suwon
 Dist. Ct., 9 July 2002), aff'd
 Seongwan [sp] Branch Ct. (Feb.
 14, 2003), aff'd in part, Seoul
 High Court (12 June 2005), Case
 No. 2003 11a2 1140 (Soribada I)
 58–9
- Korean Assn. of Phonogram
 Producers v Soribada Inc.,
 Docket No. 2004 Ka Hap 3491
 (Seoul D. Ct., Civ. Ct. No. 50, 29
 August 2005) 26, 41, 58
 Koubareli v Volotas and Forthnet SA
- [2003] ECDR 19 **207** Krog (2006) 22 CLSR 73 **204** Kuro Fashion Now Ltd., 92 Suit No.
- 2146 (Taipei (Taiwan) Dist. Ct.) 27–8
- Landgericht München I, 7 October 2004, 7 O 18165/03 **82**
- Lexmark Int'l, Inc. v Static Control Components, Inc., 253 F. Supp. 2d 943 (E.D. Ky. 2003) 270, 276
- Lexmark Int'l, Inc. v Static Control Components, Inc., 387 F.3d 522 (6th Cir. 2004) **256**, **269–71**
- London-Sire v Does, Case No. 04cv12434-NG (D. Mass 2008) 66, 67

- Los Angeles News Service v Reuters Television International, Ltd, 149 F 3d 987 (9th Cir, 2005) 136
- Luck's Music Library, Inc v Gonzales 407 F 3d 1262 (DC Cir, 2005) 145
- MAI Systems Corp. v Peak Computer, Inc., 991 F.2d 511 (9th Cir. 1993) 237
- Mars UK v Technowledge Ltd., [2000] FSR 138 (Ch) (UK) 297
- McBee v Delica, 417 F 3d 107 (2005) **139**
- Metro-Goldwyn-Mayer Studios Inc. v Grokster, Ltd., 259 F. Supp. 2d (C.D. Cal 2003) aff'd 380 F.3d 1154, 1164 (9th Cir. 2004) 35–6, 113, 114, 115, 116–17, 118–19, 120, 121–2, 133–4, 135, 137, 140, 141, 143–4, 146, 147, 153, 177, 179–80, 182, 204, 209,
- 262–3, 265–6, 283 MGM Studios, Inc. v Grokster Ltd., 125 S. Ct. 2764 (2005) 1, 2, 6, 15–16, 31, 33, 38, 40, 41, 62, 63–4, 110–11, 114, 118, 125, 141, 142, 152, 166, 177, 180, 182, 193, 194, 208, 244, 246, 255–6, 257, 258, 260, 261–2, 266, 268
- Microsoft v AT&T Corp., 127 S Ct 1746 (2007) 138
- Mitsui & Co. Ltd v Nexen
 Petroleum UK Ltd [2005] EWHC
 625 (Ch) 215
- Monsanto Co. v McFarling, 363 F.3d 1331 (Fed. Cir. 2004) **276**
- Montres Rolex v Ricardo, I ZR 304/01 (Germany Supreme Civil Ct (BGH), 11 March 2004) 30
- Moorhouse v University of New South Wales (1975) 133 CLR 1 210

- Motown Records Co. v Theresa DePietro, Civ. No. 04-CV-2246 (16 February 2007) 66
- Musak Corp. v Composers, Authors and Publishers Assoc. (Canada), [1953] 2.SCR, 182 84
- New York Times Co. v Tasini 533 US 483, 488 (2001) 47, 65
- News Datacom Ltd v Lyons [1994] 1 ILRM 450 199
- Nippon Columbia Co. Ltd et al. v Yugen Kaisha Nippon MMO 2002 (Wa) Case No. 4249 (Tokyo District Court, 29th Civil Division, interlocutory judgement 29 January 2003, damages decision 17 December 2003) 25
- Nominet UK v Diverse Internet (2004) 63 IPR 543 (Western Australia) **204**
- Norwich Pharmacal v Customs and Excise Commissioners [1974] AC 13 215–17, 219, 223
- Online Policy Group v Diebold, Inc., 337 F. Supp. 2d 1195 (N.D. Cal., 2004) 240
- Pearce v Ove Arup Partnership Ltd [2000] Ch 403 133
- Perathoner v S. Joseph Société Free [2003] ECDR 76 199, 207, 215
- Perfect 10, Inc v Amazon.com, Inc., 508 F. 3d 1146 (9th Cir. 16 May 2007) 16, 22–3, 67, 87, 96, 103
- Perfect 10, Inc v CCBill LLC, 481 F.3d 751 (9th Cir. 2007) 16, 239
- Perfect 10, Inc v Google Inc., 416 F Supp 2d 828 (CD Cal, 3006) 103
- Perfect 10, Inc v Visa International Service Ass'n, No. 05-15170 (9th Cir. 3 Jul. 2007) 16

- Performing Right Society Ltd. v Mitchell and Booker, Ltd, [1924] KB 762 18
- Pharmacal v Customs and Excise Commissioners, [1974] AC 13 214–15
- Phonefile v Startsiden (Oslo District Court, Norway, 29 October 2003) 97–8
- Playboy Enterprises, Inc v Frena, 839 F. Supp. 1552 (M.D.Fla. 1993) 47, 237
- Playboy-Fotos, Landgericht München I, 7 October 2004, 7 O 18165/03 **82**
- Polydor Ltd v Brown, No. HC 05C02035, [2005] EWCH 3191 (Ch) (UK High Ct. Chancery Division, 18 November 2005) 20
- Princeton Univ. Press v Mich.

 Document Serv., 99 F.3d 1381,
 1391 (6th Cir. 1996), cert. denied,
 520 US 1156 (1997) 296
- Productores de Musica de Espana Promusicae de Espana Sau Case C – 275/06; Summarised at [2007] ECDR 390 **221**
- Prosperetti [2007] Ent. L.R. 280 218, 227
- Public Performance of Musical Works, Copyright Board of Canada, 27 October 1999 83–4
- Public Prosecutor v Olssen [2001] EDCR 303 209
- Publishing Corp. v Columbia Artists Management, Inc., 443 F.2d (2d Cir. 1971) 15
- Quality King Distributors Inc v L'Anza Research International Inc, 523 US 135(1998) 125

- RCA Corp. v. John Fairfax and Sons Ltd., [1981] 1 NSWLR 251 (Australia) 40
- RCA Records v A-Fast Systems, Inc., 594 F. Supp. 335 (SDNY 1984) 111
- Recording Indus. Ass'n of Am. v Verizon Internet Servs., Inc., 351 F.3d 1229 (D.C. Cir. 2003) 239
- Reform Party of Canada v Western Union Insurance Co. (1998) 3 CPR (4th) 289 **203**
- Religious Tech. Ctr. (RTC) v Netcom On-Line Commc'n Servs., Inc., 907 F. Supp. 1361 (N.D. Cal. 1995) 16, 232, 236, 237-8, 260, 276, 277
- SABAM v SA Scarlet, No. 04/8975 A of the General Roll (D. Ct. Brussels 28 June 2007) [2007] ECDR 320 32, 70, 226
- SAIF v Google France and Google Inc., TGI Paris, 20 May 2008 103–4
- Schöner Wetten, BGH 1 April 2004 - 1 ZR 317/01 and BGH 18 October 2007 - 1ZHR 102/05 107
- SCPP v Anthony G., No. 0504090091 (Tribunal de Grande Instance de Paris, 8 December 2005) **20**
- Sega Enters. Ltd v Accolade, Inc., 977 F.2d 1510 (9th Cir. 1993) 274, 275
- Shapiro, Bernstein & Co. v H.L. Green Co., 316 F.2d (2d Cir. 1963) 15
- Sheldon v Metro-Goldwyn Pictures Corp, 106 F 2d 45 (2nd Cir, 1939), affirmed on other grounds: 309 US 390 (1940) 131, 136

- Shetland Times Ltd v Jonathan Wills and Another, 1997 SLT 669 (24 October 1996) 77, 82
- Sinchon Music Co. Ltd. v Yang, Docket No. 2003 Na 21140 (Seoul High Ct., Civ. Ct. No. 4, 12 January 2005) **26**
- Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers, 2004 SCC 45, [2004] 2 SCR 427 83-4
- Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984) 6, 15, 112, 113–14, 115–18, 119, 120, 121, 122, 135, 140–41, 142, 143, 211, 212, 236, 242–6, 259, 261, 263, 275
- Star-Kist Foods, Inc v PJ Rhodes & Co, 769 F 2d 1393 (9th Cir, 1985) 139
- Steele v Bulova Watch Co, 344 US 280 (1952) 139
- Stichting BREIN v KPN, No. 276747/KG ZA 06-1417 (Hague Ct., 5 January 2007) 29, 30
- Stichting BREIN v Leaseweb BV, No. 369220/KG ZA 07-850 AB/MV (D. Ct. Amsterdam, Civ. Sector, 21 June 2007) 29, 30, 38
- Stichting BREIN v Techno Design Internet Programming BV, [2006] ECDR 21 (Ct. App. Amsterdam, 5th Civ. Div., 15 June 2006) reversing Techno design 'Internet Programming' BV v BREIN, No. 85489/HA ZA 02-992 (D. Ct. Haarlem, 12 May 2004) 24, 93–4, 210, 220, 222, 224
- Storage Tech. Corp. v Custom Hardware Eng'g & Consulting,

- Inc., 421 F.3d 1307 (Fed. Cir. 2005) 257, 269, 274, 277, 283
- Stratton Oakmont v Prodigy Services Co. (1995) 23 Media L.Rep. 1794, 1995 WL 323710 205, 235
- Subafilms, Ltd. v MGM-Pathe Communications Co., 24 F.3d 1088 (9th Cir.) (en banc), cert. denied, 513 US 1001 (1994) 54, 134–5, 136, 145
- Supreme Court of Canada, Electric Despatch Co. of Toronto v Bell Telephone (1981) 20 SCR 83 202
- TDC v IFPI, No. 40/2005 (Denmark S. Ct., 10 February 2006) 30
- Thumbnails bei Google, LG Erfurt, 15 March 2007 – 3 O 1108/05, MMR 2007 Heft 6 393 87
- Ticketmaster Corp. v Tickets.com, Inc., 54 USP.Q.2d (BNA) 1344 (C.D, Cal.2000) 80
- TONO v Bruvik, Civil Case No. 2004/822 (S. Ct. Norway, 27 January 2005) 18–19, 22, 90, 92–3
- Totalise plc v Motley Fool Ltd and Interactive Investor [2001] EWCA Civ 1897 217
- Twentieth Century Music Corp. v Aiken, 422 US 151 (1975) 116
- UMG Recordings, Inc v MP3.com, Inc., 92F. Supp.2d 349 (S.D.N.Y. 2000) **63**
- Union of French Journalists v. SDV Plurimedia (Strasbourg Court of Grand Instance, 3 February 1998) 82
- United Dictionary Co v C Merriam Co, 208 US 260 (1908) 134

- United States v Am. Library Ass'n, 539 US 194 (2003) 279
- United States v Shaffer, 472 UF.3d 1219 (10th Cir. 2007) **68**
- Universal City Studios, Inc. v Mulligan [1999] 3 IR 392
- Universal City Studios, Inc. v Reimerdes, 111 F Supp. 2d 294, 325 (S.D.N.Y. 2000), 82 F. Supp. 3d 211 (S.D.N.Y. 2000) 105–6, 234, 251, 252, 257, 269–70, 271, 272
- Universal City Studios, Inc. v Corley, 273 F.3d 429 (2d Cir. 2001) 234, 251, 252, 257
- Universal Music Australia Pty Ltd v Cooper (2005) 150 FCR 81, 65 IPR 289 94–6, 99, 126, 208, 211, 220, 227
- Universal Music Australia Pty Ltd v Sharman Licence Holdings Ltd (2005) 220 ALR I [Kazaa] 124, 126, 127–8, 143–4, 147
- Universal Music Australia Pty Ltd v Sharman License Holdings Ltd, [2005] FCA 1242 (5 September 2005) 6, 22, 28–9, 31, 38, 40, 41, 52, 111, 117, 119–21, 212–13, 214
- Universal Music GmbH v Rac, No. 308 O 273/07 (Hamburg D. Ct. Civ. Div. No. 8, 24 April 2007) 30
- University of New South Wales v Moorhouse, (1975) 133 CLR I 17, 127
- Vanity Fair Mills, Inc v T Eaton Co, 234 F 2d 633 (2nd Cir, 1956) 139
- Vault v Quaid Software, 874 F. 2d 255 (5th Cir. 1988) 112, 245

- Vermaat v Boncrest (No 2) [2002] FSR 21 223
- Viacom International Inc. v YouTube Inc., Civ. Action No. 07 CV 2103 (S.D.N.Y. filed 13 Mar. 2007) 16, 240
- Voda v Cordis Corporation, 476 F.3d 887 (Fed. Cir. 2007) 137–8
- WEA International Inc v Hanimex Corporation Ltd., (1987) 10 IPR 349, 17 FCR 274 122, 204
- Wells Fargo v Wells Fargo Express Co, 556 F 2d 406 (9th Cir, 1977) 139
- Woolworths Ltd v Olson (2004) 63 IPR 258 (New South Wales) 203
- Zeran v America Online, 129 F.3d 327 (4th Cir. 1997) 236

Contents

_		
	st of contributors ble of cases	vi x
	Introduction: peer-to-peer file sharing and secondary liability in copyright law Alain Strowel	1
1	Liability of users and third parties for copyright infringements on the Internet: overview of international developments Allen N. Dixon	12
2	Legal issues in peer-to-peer file sharing, focusing on the making available right Michael Schlesinger	43
3	Secondary liability for copyright infringement with regard to hyperlinks Alain Strowel and Vicky Hanley	71
4	Copyright control v compensation: the prospects for exclusive rights after <i>Grokster</i> and <i>Kazaa</i> Jane C. Ginsburg	110
5	Global networks and domestic laws: some private international law issues arising from Australian and US liability theories Graeme W. Austin	124
6	A bipolar copyright system for the digital network environment Alexander Peukert	148
7	Sharing out online liability: sharing files, sharing risks and targeting ISPs Robert Clark	196
8	A reverse notice and takedown regime to enable public interest uses of technically protected copyrighted works Jerome H. Reichman, Graeme B. Dinwoodie and Pamela Samuelson	229
Index		305