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INTELLECTUAL PROPERTY  patent & trademark

Can Your Wireless Router Get You In Trouble?

COPYRIGHT OWNERS MONITOR ILLEGAL DOWNLOADS, PURSUE DIGITAL MEDIA PIRATES

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With the rise in popularity of wireless routers and networks, some Internet subscribers may unwittingly be exposing themselves to the threat of litigation when a third party illegally downloads copyrighted material on the subscriber's unsecured network.

It has become common practice for copyright owners of digital media, such as music and movies, to bring mass lawsuits against Internet subscribers having Internet Protocol (IP) addresses associated with illegally downloaded material. The copyright owners then use the threat of litigation in an attempt to get the Internet subscribers to pay a settlement amount

(which may be several thousand dollars) or else be subject to being named in the lawsuits. Internet subscribers are often willing to settle when threatened with such a lawsuit, even when they did not download the copyrighted material, instead of incurring the expense and embarrassment of litigation, particularly when the downloaded material is of questionable nature.

Given the threat for abuse, courts are increasingly requiring more evidence than mere ownership of an unsecured network to successfully sue a person for copyright infringement.

Actively Policing

Copyright owners are actively monitoring for illegal downloads. There are several groups that police illegal downloads, including the Recording Industry Association of America and the Motion Picture Association of America. These two groups constantly monitor downloads and websites for copyright violation, with a particular emphasis on colleges and universities.



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Unsecured Networks

Wireless networks have risen in popularity over the past few years and, along with them, a host of new security issues. Wireless networks may be secured, either requiring a password or otherwise limiting access, or unsecured. Unsecured wireless networks allow the possibility that a person, other than the subscriber, may use the unsecured network to access the Internet without permission.

Should the person accessing the unsecured network violate a copyright, such as by illegally downloading a movie or music, that download will be traced back to the subscriber of the IP address, or in other words, the owner of the unsecured network. The typical procedure for these cases is for the

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holder of the copyright to bring action against individuals associated with IP addresses that shared the copyrighted work. The copyright holder then serves third-party subpoenas on the Internet Service Providers (ISPs) that assigned the IP addresses to discover the name of the defendant associated with each IP address. *Malibu Media LLC v. John Does 1-14*, 2012 WL 6115653 (N.D. Ind. Dec. 10, 2012). The copyright owner then brings suit against the network owner, even though the network owner him/herself may have done nothing wrong.

Higher Standard

Internet subscribers are often willing to settle when threatened with such a lawsuit, even when they did not download the copyrighted material, instead of incurring the expense and embarrassment of litigation, particularly when the downloaded material is of an objectionable nature. Because of the potential for abuse in such situations, courts are taking increasing care to distinguish between subscribers and infringers.

For example, a plaintiff cannot establish liability merely by showing that the defendant is the subscriber of the IP address used to commit the infringing activity, due to the potential for abuse in these types of cases. In *re BitTorrent Adult Film Copyright Infringement Cases*, 2012 WL 1570765, at *3 (E.D.N.Y. May 1, 2012).

Instead, courts have begun to require that a plaintiff provide a more definite statement at the pleadings stage, setting forth the factual basis

for its allegation that a defendant used the IP address in question to infringe the plaintiff's copyright (including showing a nexus between the accused infringer and the IP address and that the defendant was using that IP address at that particular time). *AF Holdings LLC v. Rogers*, 2013 WL 358292, at *3 (S.D. Cal. Jan. 29, 2013). This can be distinguished from

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prior cases involving local area (hard wired) network connections or where the computer itself was unsecured, where it was almost certain that the end user was a particular individual. *Cf. Arista Records LLC v. Does 1-16*, 2009 WL 414060 (N.D.N.Y. Feb.18, 2009) aff'd 604 F.3d 110 (2d Cir.2010) and *Warner Bros. Records Inc. et al. v. Jeremy Walker*, 704 F. Supp. 2d 460 (WD. Penn. Mar. 31, 2010).

Thus, an Internet subscriber may be able to successfully defend a lawsuit for copyright infringement when he did not himself do the illegal downloading by showing that his wireless network was unsecured.

Discovery Benefit

A party who has actually conducted illegal downloads will most likely be identified in discovery. The factual burden is fairly high: according to one court, the plaintiff must presumably go to "every desktop, laptop, smart-phone, and tablet in the subscriber's residence, and perhaps any residence of any neighbor, houseguest or other sharing his Internet access... [and] might require still more discovery, including interrogatories, document requests and even depositions." *Pacific Century International Ltd. v. Does*, 2011 WL 5117424, at *2 (N.D.Cal. Oct.27, 2011) (internal citations omitted). Nonetheless, if the illegal download occurred on the IP address of the Internet subscriber's computer, discovery will show it.

Lessons Learned

Hosting an unsecured wireless network may expose an Internet subscriber to the threat of litigation if a third party illegally downloads copyrighted material on their unsecured network. Although an innocent Internet subscriber may use the fact that the wireless network is unsecured as a defense to such a lawsuit, the Internet subscriber will still incur the cost of defending the lawsuit.

Additionally, if the Internet subscriber did, in fact, download the copyrighted material, the fact that the wireless network is unsecured will likely not avoid liability. Therefore, maintaining a secure wireless network is the best way to avoid the cost, embarrassment and aggravation of a lawsuit for copyright infringement due to illegally downloaded material. ■