Wesley Lewis in Bloomberg Law: Record Labels say RCN Enabled 'Massive' Copyright Infringement

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Haynes Boone Associate Wesley Lewis talked with *Bloomberg Law* about a coalition of major record labels that sued Internet service provider RCN in a federal court in New Jersey for "knowingly enabling its customers' massive online copyright infringement of sound recordings."

Here is an excerpt:

The labels say they engaged the copyright enforcement company Rightscorp to track Internet-based copyright infringement. Rightscorp allegedly notified RCN that its users were stealing music through the file-sharing program BitTorrent and gave RCN the alleged infringers' IP addresses. But RCN "consistently turned a blind eye" to the infringement, the labels say.

Rightscorp discovered over 36,000 RCN subscribers who committed repeat infringement, including nearly 1,000 subscribers who "engaged in infringement at least 1,000 times," the labels say.

"By ignoring the repeat infringement notifications and refusing to take action against repeat infringers, and instead providing those customers with ongoing Internet service, Defendants made a deliberate decision to contribute to known copyright infringement," the complaint says.

The labels also say RCN isn't immune from the claims based on the safe harbor provision of the DMCA [Digital Millennium Copyright Act]. Its purported policy to address repeat infringers is "a sham," which makes it ineligible for ISP immunity from copyright claims, the record labels say.

The decisive question won't be the amount of serial infringement found, but whether the response of RCN satisfied its legal requirement under DMCA, Wesley Lewis, an intellectual property attorney at Haynes Boone, said. The law's language says ISP policy must include "termination in appropriate circumstances" of repeat infringers.

"I don't think the law has established a bright line rule on what constitutes a repeat infringer, or when an ISP would have to terminate an infringer," Lewis said.

To read the full article, click here. (Subscription required.)

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