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ISPs protected from liability

Canada's Federal Court of Appeal recently issued a decision saying intermediaries are generally not liable in respect of unauthorized music made available on the Internet.

SOCAN v. Canadian Association of Internet Providers, (May 1, 2002), was an application for judicial review of an Oct. 27, 1999, decision of the Copyright Board (Tariff 22), which considered an application by the Society of Composers, Authors, and Music Publishers of Canada (SOCAN) to seek tariffs from certain Internet intermediaries.

Subject to two limited exceptions, the Federal Court of Appeal dismissed the application, affirming that Internet service providers (ISPs) in Canada are generally not



Bits and Bytes

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challenge the conclusion that the typical activities of ISPs and operators of host servers do not constitute communication by telecommunication as defined in the Copyright Act, and thus do not give rise to liability to pay a royalty.

The board said the services and equipment ISPs normally supply, to allow subscribers access to music, bring them within an exemption in paragraph 2.4(1)(b) of the Copyright Act. It states "a person whose only act in respect of the communication of a work or other subject matter to the public

that they were posting, another form of copyright infringement.

Of course, if Internet intermediaries either collaborate with content providers, or themselves post music, they would lose the protection of paragraph 2.4(1)(b).

However, one important exception to this general finding concerns the operation of "cache servers." These are servers operated by ISPs that temporarily store material requested by end users from a remote host server. Material requested from a host server may be automatically cached on an intermediate server, so that if it is requested again (whether by the same user or a different user), such material will be delivered from the cache rather than the original host server.

The decision is important necessary for another person

servers was found to be not
"necessary"