In a case involving the infringing download and distribution of plaintiff's film through peer-to-peer BitTorrent networks, the US Court of Appeals for the Ninth Circuit affirmed a district court's dismissal of plaintiff's infringement claim under the Copyright Act, holding that the bare allegation that the defendant was the registrant of an Internet Protocol (IP) address associated with infringing downloads was insufficient to state a claim for direct or contributory infringement.


Cobbler Nevada traced infringing downloads of its copyrighted film, *The Cobbler*, to the IP address of an adult foster care home. During its investigation of the downloads, Cobbler learned that the foster home's internet service provided through its IP address is available to both residents and visitors. Yet Cobbler filed suit against the foster home's operator, Thomas Gonzales, as the listed registrant of the IP address.

The district court dismissed Cobbler's claims, holding that Gonzales's status as a registered subscriber of an infringing IP address did not alone create a reasonable inference that he was also the infringer, since multiple devices and individuals were able to connect via the single IP address. The district court also rejected Cobbler's claims of contributory infringement because there were no allegations of intentional encouragement or inducement of infringement.

On appeal, in holding that the district court properly dismissed Cobbler’s claim of direct copyright infringement, the Ninth Circuit affirmed that simply establishing an account for an IP address does not mean the subscriber is even accessing the internet. The Court stated that it recognized Cobbler's challenge in naming the correct defendant, but this did not change Cobbler's burden to plead facts that created a reasonable inference that Gonzales was the infringer. The Court further noted that this outcome should not come as a surprise to Cobbler, since Cobbler acknowledged that its independent investigation did not identify a specific party likely to be the infringer.

As to Cobbler’s claim of contributory infringement, the court observed that the claim was improperly premised on a “bare allegation” that Gonzales failed to police his internet service. The Court then outlined its jurisprudence on the issue of contributory infringement through its decisions in the *Sony* and *Grokster* cases, and explained that in the absence of evidence of intent, it could not find liability for contributory infringement based only on the failure to prevent infringement if the device at issue was otherwise capable of “substantial noninfringing uses.”

On the first prong of the test, the Court found that Cobbler’s complaint did not show that Gonzales actively encouraged or induced infringement through intentional acts. For the second prong, the court held that providing internet access does not equate to distribution of a product or service that is “not capable of substantial... or commercially significant noninfringing uses.” Thus, the court refused to impose a precedent that creates an affirmative duty for internet subscribers to actively monitor their internet service for infringement.
Finally, the Ninth Circuit found that the district court did not abuse its discretion by awarding attorneys’ fees for Gonzales, noting that Cobbler’s decision to name Gonzales in the complaint even after concluding that he was not a regular occupant of the foster home residence or a likely infringer was unreasonable and therefore justified the imposition of the fees. Thus, the copyright infringement complaint was dismissed and the fee award upheld.

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