

Cite as: 3 Tech. L. Rev. 1 (2006)

P2P Transmission Technologies, Industrial Values and A Comparative Review of Relevant Judgments in the United States of America and Taiwan

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Abstract

The advancement of modern technology has brought about radical changes in Internet utilization techniques. The conventional Internet utilization model, based upon a server-client framework, has been gradually substituted by the peer-to-peer (P2P) framework. The recognition of such a decentralized framework will inevitably involve different transmission techniques. Moreover, judgments rendered by courts in different jurisdictions tend to differ, and therefore call for further methodological analyses and comparisons. This article proposes to review specific judgments, addressing specific cases, such as the Napster Case, the Aimster Case, and the Grokster Case, handed down by the U.S. Courts of Appeal and the U.S. Supreme Court.

In Taiwan, the Shih-Lin District Court granted an acquittal in the ezPeer Case based on the theory of “Objective Imputation of Criminal Liability.” The ezPeer judgment deduced that the construction of the ezPeer platform of the website at issue did not constitute an “intolerable risk in the Criminal Law,” and furthermore, that the owner of the ezPeer website had not established the P2P

mechanism with the intent of infringing others' copyrights. No finding of a communication of criminal intent with the actual copyright infringer (i.e., the user or the registered member of ezPeer) could be established under the doctrine of joint principal offenders. The ezPeer judgment further defined the assistance offered by the website owner to be "neutral" in essence and thus found that the owner had no knowledge of the act carried out by the user and, consequently, could not be said to have had any intent to assist. On the other hand, the guilty judgment arrived at by the Taipei District Court in the Kuro Case was based upon the affirmative findings of a communication of criminal intent and on the partaking of offences between the website owner and its users.

Such disparity in these judgments may be explained by the substantial differences in civil and criminal laws, the technological differences in the methods of transmission involved in the different cases, and the interpretative differences in applying the doctrine of substantial noninfringing uses. It is, therefore, the intention of this article to summarize and review these cases and their respective judgments in order to clarify the issues outlined above to serve as a reference for assigning civil and/or criminal liabilities in future cases involving P2P.

Keywords: substantial noninfringing uses doctrine, P2P, ezPeer, Kuro, Napster, Aimster, Grokster, staple article of commerce doctrine