

Today's web sites present a host of interesting questions involving not only direct infringement but also contributory infringement. Linking is an example. A simple link to another's web site is probably not actionable. However one court has held that posting URL or Website addresses known to contain infringing materials could result in contributory infringement. Intellectual Reserve, Inc. v. Utah Lighthouse Ministry, Inc. 1999 U.S. Dist. LEXIS 19103 (D. Utah Dec. 6, 1999). See also RIAA v. Napster (N.D.Cal filed Dec. 7, 1999) (suit based on contributory infringement based on search tool that locates MP3 music files in the Internet. Defendant alleged to be contributory infringer). What about taking a portion of another web-site as a link to the site – such as using photographs from another site as the link? A recent case found it permissible to reproduce the photographs from another site as long as the photos were used to link to the site. See Kelly v. Arriba Soft Corp. , 1999 U.S. Dist. LEXIS 19304 (C.D. Cal. Dec. 15, 1999). This decision is extremely troubling to the copyright bar, and may not be followed.

Aggregation of information from a third party site is also the subject of litigation. Under unfair competition, copyright infringement and "hot news" theories, eBay is challenging the activities of aggregating auction information and offering it on another site. See eBay v. Bidder's Edge (N.D.Cal, filed Dec. 10, 1999).

Liability is also raised by deep-linking, the practice of linking to a particular portion of a third party web site, not to the home page. See Ticketmaster v. Ticket.com (C.D. Cal, filed July 23, 1999) and Ticketmaster v. Microsoft Corp. No. 97-3055 DDP (C.D. Cal filed 4.27.97) Both cases alleged that providing a direct link to ticket purchasing information for events, by-passing the introductory web page with advertising and endorsement information constituted unfair competition.

Framing, the practice of putting third party content on another site with host site has also been the subject of litigation, usually successful. The practice creates the impression that the host has created content which it hasn't, or that it has a relationship with the framed site, when it does not. See, e.g. Hard Rock Café Int'l v. Morton, 1999 U.S. Dist LEXIS 13760 (S.D. N. Y. Sept. 9, 1999) (company could neither frame nor link to Hard Rock Café site when the sale of merchandise outside its licensed area violated license agreement).

Finally, providing means to receive television or cable broadcasts over the internet has also been the subject of litigation. See _____ v. iCraveTV.com

(Toronto tv station that took broadcast signals and streamed the video onto its site enjoined; web site shut down). **VI. MORE INTERESTING QUESTIONS – VICARIOUS AND CONTRIBUTORY INFRINGEMENT, LINKING, FRAMING, TRESPASS**

Today's web sites present a host of interesting questions involving not only direct infringement but also vicarious and contributory infringement. Linking is an example. A simple link to another's web site is probably not actionable. However one court has held that posting URL or Website addresses known to contain infringing materials could result in contributory infringement. Intellectual Reserve, Inc. v. Utah Lighthouse Ministry, Inc. 1999 U.S. Dist. LEXIS 19103 (D. Utah Dec. 6, 1999). See also RIAA v. Napster (N.D.Cal filed Dec. 7, 1999) (suit based on contributory infringement based on search tool that locates MP3 music files in the Internet. Defendant alleged to be contributory infringer, discussed below.) What about taking a portion of another web-site as a link to the site – such as using photographs from another site as the link? A recent case found it permissible to reproduce the photographs from another site as long as the photos were used to link to the site. See Kelly v. Arriba Soft Corp. , 77 F. Supp. 2d 1999 U.S. Dist. LEXIS 19304 (C.D. Cal. Dec. 15, 1999). This decision is extremely troubling to the copyright bar, and may not be followed.

Aggregation of information from a third party site is also the subject of litigation. Under unfair competition, copyright infringement and "hot news" theories, eBay is challenging the activities of aggregating auction information and offering it on another site. See eBay v. Bidder's Edge (N.D.Cal, filed Dec. 10, 1999). Trespass, breaking and entering, formed part of the basis of the preliminary injunction entered in that case. Thus copyright liability was not as central to the granting of relief.

Reputational and commercial interests are protected by theories other than copyright as well. Liability is also raised by deep-linking, the practice of linking to a particular portion of a third party web site, not to the home page. See Ticketmaster v. Ticket.com (C.D. Cal, filed July 23, 1999) and Ticketmaster v. Microsoft Corp. No. 97-3055 DDP (C.D. Cal filed 4.27.97) Both cases alleged that providing a direct link to ticket purchasing information for events, by-passing the introductory web page with advertising and endorsement information constituted unfair competition.

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