

Broadcast flag fight continues, peer-to-peer under fire

ALA v. FCC is a case in the U.S. Court of Appeals for the D.C. Circuit in which libraries and other public interest and consumer groups have successfully challenged the Federal Communications Commission (FCC). On May 9, 2005, the court ruled in our favor, striking down the FCC's "broadcast flag" rule governing digital television content.

Last year the FCC issued broadcast flag copyright protection rules that were to go into effect in July 2005. The order required that all digital electronic devices, such as television sets and personal computers, include code (known as the "broadcast flag") that accompanies DTV signals to prevent redistribution of the digital content over the Internet. The FCC ruling marked another step toward giving content providers extensive control over what users can do with electronic content.

The appeals court heard oral arguments in the case in February. On March 15, the court issued an order directing the library organizations to file affidavits by March 29 to answer questions about the standing of the organizations to bring the suit. The court noted that though the FCC had not challenged the standing of our groups, the Motion Picture Association of America had done so, and the court needed additional information in order to resolve the issue.

On March 29, ALA filed affidavits from a number of individuals, including librarians at Vanderbilt University, North Carolina State University, University of California-Los Angeles, and American University, and an ALA member who teaches at the American University. In each instance they explained and illustrated how the broadcast flag would hamper their use of broadcast materials for teaching and scholarship.

On May 6, 2005, the Court of Appeals issued a unanimous decision striking down the

FCC's rule. The court relied in large part on a declaration filed by Peggy Hoon, scholarly communication librarian at North Carolina State University (NCSU), who explained the adverse impact that the broadcast flag would have on distance education activities at NCSU. Almost immediately after the court's decision was issued, the entertainment industry began promoting the introduction of legislation to overturn the court's decision. ALA continues to work with congressional staff to educate them on the issues.

MGM Studios, Inc. v. Grokster, Ltd.

On June 27, 2005, the U.S. Supreme Court held in *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.* that the distributors of peer-to-peer (P2P) file-sharing software could be liable for copyright infringements committed with their software. The court, in a unanimous ruling, declared that distributors of P2P systems may be held liable if they actively induce copyright infringement by users of those P2P systems.

Importantly, the court strongly reaffirmed its earlier ruling in *Sony Corp of America v. Universal City Studios*, which held that technologies could not be outlawed if they were capable of substantial noninfringing uses. The Supreme Court acknowledged the positive uses of P2P technology, stating that "[g]iven these benefits in security, cost, and efficiency, peer-to-peer networks are employed to store and distribute electronic files by universities, government agencies, corporation, and libraries...." The library associations, through their coalition, Library Copyright Alliance, welcomed this balanced decision that supports the interests of libraries, while addressing issues of widespread copyright infringement. By focusing on conduct that induces infringement, rather than on the distribution of technology, the decision ensures the continued availability of new and evolving digital technologies to libraries and their patrons. ✍

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