PUBLICATION

Second Circuit: Copyright Infringement of Pre-1972 Sound Recordings Covered by DMCA Safe Harbor

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Superheros donning black robes save website operators from liability for users' copyright infringement of sound recordings fixed prior to 1972.

The Second Circuit Court of Appeals ruled today that the safe harbors provided by the Digital Millennium Copyright Act (DMCA) protect qualifying website operators from liability from such pre-1972 recordings, even though they are not covered by federal copyright law. This decision overrules a finding by the District Court for the Southern District of New York that section 501(a) of the Copyright Act "defines" the term "infringement of copyright" used in section 512(c) to define the scope of the DMCA safe harbor provision for qualifying website operators as limiting the safe harbor to materials infringed under federal copyright laws.

The Second Circuit disagrees, saying Section 501(a) does not provide an exclusive definition of "infringement of copyright" and given that the purpose of the DMCA "was to make economically feasible the provision of valuable Internet services while expanding protections of the interests of copyright owners through the new notice-and-takedown provision. To construe § 512(c) as leaving [website operators] subject to liability under state copyright laws for postings by users of infringements of which the [website operators] were unaware would defeat the very purpose Congress sought to achieve in passing the statute." *Capital Records, LLC, et al., v. Vimeo, LLC*, Docket No. 14-1048/1049/1067/1068S, page 29, (CA 2 Argued Nov. 6, 2015, Decided June 16, 2016).

TIP: Like the idea of having the protection of the DMCA Safe Harbor? Review section 17 USC 512 to learn about the requirements needed to qualify for the safe harbor, including a copyright policy that informs users who infringe copyrights that they will be blocked, a designated agent and understanding the notice and takedown procedure for allegedly infringing material.