The effect of recent rulings and subpoenas on the use of p2p networks
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Abstract
There have been many pronouncements made in the press recently about the demise of p2p (peer to peer) networks. Following the US Supreme Court judgment of June 2005 against Morpheus and Grokster, there have been reports of other network operators, e.g. MetaMachine (for the e-donkey network), leaving the scene.

It has been suggested by Sam Yagan, the President of MetaMachine, that the reason for this situation is a lack of funds for litigation. In Grokster, the US Supreme Court’s judgment was based on the notion of inducement of copyright infringement. However, the RIAA (Recording Industry Association of America) has sent a number of cease and desist letters to p2p network operators even though there is an arguable case that they are not ‘inducing’ copyright infringement.

Whilst the US Supreme Court’s judgment may have been aimed at those operators who are actively profiting from making non authorised copies of works, the judgment could nonetheless affect the use of networks for non infringing uses. However, it could be suggested that the effect of such a judgment could have been much worse, and judicial questioning before the Grokster judgment would suggest that the Justices were aware of such scenarios.

Nonetheless, the effects of the Grokster judgment should not be distanced from the actions of the RIAA in taking subpoenas out against individual file sharers. These are typically aimed against those who share large numbers of copyrighted files. However, the issuing of these subpoenas may also interfere with the sharing on non-infringing files. If this is to continue unabated, the effect of the Grokster judgment could become much more profound – there could be, in effect, a two pronged ‘attack’ upon the ability to share non-infringing files on p2p networks.

The paper suggests, therefore, that there is a need for US courts to more explicitly acknowledge the interrelationship between a) the Grokster ruling, and b) the issuing of subpoenas to individuals for copyright infringement. Failure to do so could undermine some of the principles underlying the Grokster judgment.