

Technology Law and Electronic Media Update: April 7, 2004

Kodak sues Sony for Infringing 10 Patents relevant to Digital Cameras. March 10, 2004.

Apparently, Kodak already has patent licenses with several of the other digital camera electronics manufacturers but Sony was a hold-out. Most intriguing is a patented invention that facilitates rapid indexing and editing of images on the camera by use of smaller index images, a near ubiquitous digital camera functionality. (See U.S. Pat. No. 6,542,192).

Comment: Stay tuned: Kodak also holds what appears to be a patent over camera phones, although that patent is not at issue in this suit.

F.C.C. Rules that Pulver.com's Voice Over IP Service is Exempt from Telecommunication Provider Regulations. February 19, 2004.

Putting meat on the bones of its earlier pronouncements, the F.C.C. states that: "[W]e declare pulver.com's (Pulver) Free World Dialup (FWD) offering to be an unregulated information service subject to the Commission's jurisdiction. In so doing, we remove any regulatory uncertainty that has surrounded Internet applications such as FWD. We formalize the Commission's policy of non-regulation to ensure that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels."

Comment: This ruling raises the stakes for telecommunications providers who are planning to fight with VOIP rather than embrace it.

Cable Music Channel Offers P.C. Downloads Through Cable TV Plant. April 3, 2004. Cable network Music Choice, (owned by Comcast, Time Warner Cable, Cox and Adelphia - along with Sony, EMI Music, Warner Music Group, Microsoft and Motorola) has launched a song download service to customer P.C.s based on Roxio/Napster's music delivery platform.

Comment: This development was expected. The development of this kind of conduit supports the music industry contention that the F.C.C. regulations requiring free and clear digital audio from digital television audio channels actually damages the prospects for new media delivery formats.

Canadian Court Rules that Use of Peer to Peer Service Is Not Copyright Infringement. April 1, 2004.

The Canadian court, in a case similar to the RIAA's case against Verizon seeking the identity of particular downloaders, reasoned that under Canadian copyright law, "[t]he mere fact of placing a copy on a shared directory in a computer where that copy can be accessed via a P2P service does not amount to distribution. Before it constitutes distribution, there must be a positive act by the owner of the shared directory, such as sending out the copies or advertising that they are available for copying."

Comment: This decision was made under Canadian copyright law and is opposite the conclusion of courts in the U.S. finding direct infringement by use of peer to peer. The reasoning appears to gloss over the fact that the "owner" has to install the software and identify the shared directory and that the software does the advertising.



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Time-Warner Acquires Substantial Stake in Content-Guard, Becomes Co-owner with Microsoft. April 4, 2004. Time-Warner has acquired most of Xerox's stock in Content-Guard, a digital copyright protection technology company also owned by Microsoft. Its technology is rooted in research from Xerox PARC and its XML proposal for DRM has been adopted by an international standards body.

Comment: Now that a major content producer and player software platform will control Content-Guard, it may find itself at the front of the DRM race. This development may be a shoring up of position opposite Sony and Intertrust, the latter having sued Microsoft for patent infringement.

Apple Computer Holds Pending Patent Over iPod User Interface. March 25, 2004. The U.S. P.T.O. published a pending patent application, (U.S. App. No. 20040055446), filed in October, 2002, which claims: "A method of assisting user interaction with a multimedia asset player by way of a hierarchically ordered user interface ..." e.g. displaying a list of artists, where selecting one takes you to a list of the artist's albums and then songs on the album.

Comment: Having learned from their lawsuit with Microsoft that copyright law is thin protection for user interfaces, Apple is attempting to acquire stronger medicine for the iPod.

Patent Infringed by Microsoft Preliminarily Found Invalid. March 8, 2004. The Eolas patent over browser plug-ins, (U.S. Pat. No. 6,616,701) which a jury found Microsoft to infringe, was subject to a special petition to the U.S. P.T.O. commissioner for a reexamination. The preliminary finding was that prior art likely rendered the patent invalid. If upheld on further examination, the infringement damages of \$521 Million will be vacated.

Comment: This preliminary ruling, while not surprising, has chilled investment in Eolas and may mark the beginning of the end.

FTC Questions Innovation Market Anti-Trust Theory, Easing Acquisitions of R&D. January 13, 2004. In the old news worth repeating department, the FTC closed its investigation of Genzyme's acquisition of Novazyme, whose focus was developing a competitive enzyme-replacement treatment for Pompe disease. The FTC, quoting its Chairman, said that it "... has been cautious in using innovation market analysis..." because 'economic theory and empirical investigations have not established a general causal relationship between innovation and competition.' Rather, a 'careful, intense factual investigation is necessary' to 'distinguish between pro-competitive and anticompetitive combinations of innovation efforts.'

Comment: It will be interesting to see how this plays out for nanotechnology. It opens the door for concentrations of critical I.P. by large corporations, when they acquire venture backed start-ups seeking a liquid exit or enter into other mergers and acquisitions.

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