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IP Versus IP

By [Susan Kuchinskas](#)

June 25, 2004

SANTA CLARA, CALIF. -- Intellectual property issues are ubiquitous on the Internet. When intellectual property meets Internet protocol, experts say, there are more questions than answers.

Peer-to-peer networks, in which computing devices interact with each other and exchange information independent of a central server, are the most widespread example of how computing is moving to the "edge" of the network. And P2P is also the poster child for copyright infringement, due to its widespread use in swapping music and video files.

But as all sorts of IP spreads across the Net, it causes confusion about the law -- and lawsuits to figure it out. The entertainment industry's answer, the Inducing Infringement of Copyrights Act of 2004 (ICCA), introduced in the U.S. Senate on Tuesday, could stifle innovation and victimize companies as well as individuals, experts claimed.

Attorneys discussed the issues during Supernova, a conference about how decentralization -- when everything and everyone becomes networked -- is changing business and society.

ICCA is an attempt by the entertainment industry to plug holes in the Digital Millennium Copyright Act, which was written before the rise of P2P, said Sarah Deutsch, associate general counsel for Verizon Communications. When the DMCA law took effect in 1996, it required ISPs to remove material that infringed copyright from servers. "But as P2P developed, they became unhappy with the deal," she said.

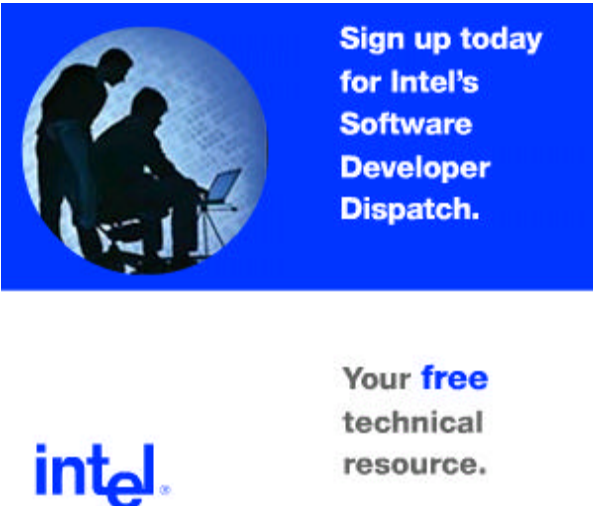
Verizon fought the Recording Industry Association of America's demands to provide the names and addresses of subscribers who were suspected of illegal file sharing. The case is going to the U.S. Supreme Court. Meanwhile, Deutsch said, the RIAA began filing around 500 John Doe subpoenas a month to identify subscribers who were infringing copyright.

ICCA is the RIAA's next step, but it goes too far, Deutsch said. "The purpose of the bill was supposedly to go after P2P, but it's an extra blunt instrument." The law makes companies that build a technology that might induce people to perform illegal activities liable for those activities. She said it could apply to Apple for offering the iPod MP3 player. "You have a device that can hold 10,000 songs," she said, "and they know you're not going to spend \$10,000 on music, so they could bring a charge of inducing. Or Verizon could be charged because they provide broadband, which can be used for illegal downloading. They can go after any product or service they think might lead to copyright infringement down the line."

Wendy Seltzer, an attorney for the Electronic Frontier Foundation, said Congress' approach to the problems of IP protection on the Internet has been to keep adding another layer of people who can be liable for violating copyright or another layer of protections for copyrighted works without a lot of thought to the unintended consequences.

Under ICCA, she said, "A new class of people who have been designing technologies suddenly find themselves facing millions of dollars of court costs because someone claims they are inducing infringement by providing the tools for it."

Meanwhile, she said, Hollywood wants to put out high-definition digital content without the



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expense of including protections, so it lobbied the FCC to add digital broadcast content protection, or "[broadcast flags](#)," to digital television signals. Broadcasters can embed signals or "flags" in programming that prevent redistribution. Television and other device manufacturers must incorporate technology to read the flags.

"So the FCC plans to make HDTV more restrictive than the current television signal," she said. The law "lets Hollywood design all of our consumer electronics products." Seltzer said the broadcast flag requirement keeps entrepreneurs and hobbyists from devising new kinds of personal digital video recorders, and would keep consumers from enjoying options such as digitizing a TV show on the computer. The law takes effect in July 2005. Seltzer's advice was to get your HDTV PVR before then.

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