

## Music group aims to charge Internet users



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A group representing Canada's songwriters will ask the Supreme Court of Canada to force Internet service providers to pay them royalties for the millions of digital music files downloaded each year by Canadians.

The case has broad ramifications for the Internet industry in Canada, legal experts say.

"This is the big case for the Internet. This will set the position on how we are going to treat Internet service providers, whether they are going to be seen as people who are responsible in some way for content that goes through their services," said Mark Perry, a professor of law and a professor of computer science at the University of Western Ontario in London, Ont.

If successful, the legal pleadings of the Society of Composers, Authors, and Music Publishers of Canada (SOCAN) could open the door to other rights holders -- groups as diverse as software publishers or Hollywood movie distributors -- who could use SOCAN's precedent to force Internet service providers (ISPs) to collect royalties for their members.

Although those groups are prompted to seek new sources of revenue because of what they say are illegal downloads of copyrighted content, SOCAN is asking ISPs to pay a blanket annual royalty regardless of whether the ISP is transmitting legal or illegally downloaded music.

"This is a huge case for Canada and the Internet and whether we're part of the global Internet community or on the outside looking in," said Jay Thomson, president of the Ottawa-based Canadian Association of Internet Providers (CAIP). "Consumers could very well see an increase in their Internet costs and they could see a slowdown in the transmission speed of their Internet communications."

CAIP is one of the parties to the case. Its main opponent, SOCAN, and many other parties to the case declined to comment before the court hears the matter.

Legal experts say the Supreme Court has been looking for a case like the one involving SOCAN and the ISPs because they will be able to clarify several key issues involving Internet use in Canada by ruling on a narrow technical question involving some technology ISPs use to speed up performance of their networks.

For example, legal experts say the justices of the Supreme Court will be aware that what they say on the technical issue at hand will apply to the broader issue of the responsibility ISPs have for any content that passes through their systems. That could affect the liability ISPs have for some kinds of objectionable content such as pornography, hate propaganda or computer viruses.

"We've always taken the position that we are the conduits of other people's content. We simply provide the network over which other people communicate with each other," Mr. Thomson said. "It's the people who are doing the communicating who should be responsible for that content."

### The questions for the court

The Supreme Court will also be asked to adjudicate on a jurisdictional issue, specifically whether Canadian law ought to apply to organizations which operate Web servers physically located outside the country but which deliver content to Canadians.

There is some case law already in Canada that supports the idea that business activities aimed at or used by significant numbers of Canadians ought to be subject to Canadian law even if the organization behind those activities is located outside the country.

"This case is terrifically significant," said Richard Owens, executive director of the Centre for Innovation Law and Policy at the University of Toronto. "From an Internet law point-of-view, it'll have effects around the world. Legal academics have been waiting for [this] for a long time. The Supreme Court is finally stepping in and giving us some guidance for the digital age."

So far, SOCAN has had partial success in convincing a Canadian court of the justice of its cause. SOCAN had originally asked the Copyright Board of Canada to impose a royalty on Canadian ISPs but the Copyright Board ruled that ISPs ought to be granted an exemption from paying royalties because they were, like telephone companies, simply a carrier or transmitter of the music files. SOCAN appealed that decision to the Federal Court of Canada and, there, found some success.

The Federal Court agreed with the Copyright Board that ISPs were indeed carriers or transmitters of content except when ISPs engaged in caching content to speed up the performance of their systems. Caching (pronounced cash-ing) is a common procedure used by ISPs in which copies of popular Web pages are stored on a computer close to a group of end users. When an end user in Toronto, for example, requests the home page of search site Google, the Google search page is retrieved from a computer in Toronto rather than from Google's main computers in California.

The Federal Court held that the act of creating a cache of content means that ISPs are moving from their role as carrier to a role in which they actively decide what kind of content will exist on their systems. And that means, under Canadian copyright law, they should be responsible for that content.

The ISPs disagreed with that interpretation of the Federal Court and were granted leave to appeal that ruling to the Supreme Court. Lawyers for SOCAN, the Canadian Association of Internet Providers, and a host of interested parties, such as the Canadian Cable

Television Association, the Canadian Recording Industry Association, and several ISPs will argue their case Wednesday. A ruling on the matter is typically made months after oral arguments are presented.

SOCAN is proposing that ISPs pay a royalty of 25 cents per subscriber per year as well as 10 per cent of any gross profit ISPs make through the sale of advertising.

"The tariffs are actually quite large," Mr. Perry said.

If adopted at that rate, SOCAN could receive several million dollars a year.

In 2002, SOCAN received a total of \$32 million in royalties paid by Canadian radio stations which play music written by SOCAN's members.

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