Credit card firms not on hook for piracy

Processing payments for pirated goods does not constitute copyright infringement, an appeals court says.

By Dawn C. Chmielewski, Times Staff Writer
July 4, 2007

Credit card companies that process payments for Internet pirates aren't liable for copyright infringement, a federal appeals court ruled Tuesday.

The U.S. 9th Circuit Court of Appeals in San Francisco decided that a San Jose judge was right in dismissing a lawsuit brought by a Beverly Hills-based publisher against Visa International, MasterCard Inc. and other financial companies.

The 2-1 decision found that Perfect 10 Inc., a publisher of adult magazines and websites, failed to prove that credit card providers were liable because they played no role in helping people find or download the infringing images.

The decision dealt a setback to Perfect 10's efforts to cripple websites that sell access to its erotic photographs without permission. The company said it would request a new hearing by a larger panel of appeals court judges.

A majority of the three-panels panel found it a stretch that third parties could be liable for copyright infringement.

If credit card companies were found to contribute to infringement, so might computer makers, software companies and even utility companies.

"The electric companies should be liable far faster than Visa and MasterCard," said Andrew P. Bridges, the San Francisco attorney who represented Visa and MasterCard. "Hey, it takes electrons to fire up computer servers to actually engage in the infringement."

Perfect 10 has been tackling some outsize opponents in its campaign to prevent the wholesale redistribution of what it described in court filings as "tasteful copyrighted images of the world's most beautiful natural models."

It won a temporary injunction last year barring Google Inc. from displaying tiny versions of images owned by Perfect 10 that other sites had improperly posted. But the appeals court in May undid the injunction and cleared the search giant to resume the practice. Perfect 10 also named Amazon.com Inc. as a defendant because its A9 search engine points to Google's search results.

Perfect 10 sued credit card companies in hopes of removing the financial incentive for piracy, said Daniel Cooper, Perfect 10's general counsel.

He said the credit card companies were in a "unique position" to do something about copyright infringement because their rules require member banks to investigate merchants suspected of participating in illegal activity.

"We just feel that victims of massive intellectual property theft have been dealt a horrible blow, and that banks and payments processors have been given a green light to knowingly profit from the massive theft of intellectual and potentially even tangible property," Perfect 10 President Norm Zada said.

In a dissenting opinion, Judge Alex Kozinski agreed with Perfect 10's argument. He wrote that the credit card companies "knowledgeably provide a financial bridge between buyers and sellers of pirated works, enabling them to consummate infringing transactions while making a profit on every sale."

The other two appeals court judges, Stephen Reinhardt and Milan D. Smith Jr., said that although credit card companies could withhold payment, they lacked the tools to prevent the offending websites from reproducing, altering and distributing infringing copies of Perfect 10's photos.
In a case like this, where there are many potential infringers, Perfect 10 named some of the most deep-pocketed participants as defendants. But intellectual property lawyers said courts were trying to draw clear lines between infringers and the companies that support online commerce and advertising.

"When your involvement in a transaction is relatively peripheral, your legal duties aren't necessarily obvious," said Neil J. Rosini, an intellectual property lawyer in New York who was not involved in the case. "Even here only 2 out of 3 judges agreed that credit cards are on the right side of the line."

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