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THE FEDERAL COURTS have over the past two years struggled to understand why Grokster, KaZaA, and related Internet entities should be held accountable for their role in online music piracy. On Monday, and in no uncertain terms, the music industry answered the question: if the courts refuse to hold Internet intermediaries adequately accountable, copyright holders will have no choice but to file suit against the individuals who use those intermediaries to infringe.

Courts have been reluctant to impose liability on Grokster and its ilk for the simple reason that these entities do not directly commit the alleged bad acts. Just as a steak knife can be used both to facilitate the consumption of a good meal and to separate a businessman from his wallet, Grokster and KaZaA have both legal and illegal applications. Why hold providers of tools and services responsible, and perhaps inadvertently interfere with legitimate activity, when it is the individual users who have final say over whether steak knives and peer-to-peer technology are used for good or ill?

That logic has appeal, but it inevitably leads to the events of Monday morning: 261 lawsuits filed against specific individuals randomly chosen from among the millions who have engaged in the unauthorized distribution of copyrighted music online.

The better approach from a public policy perspective would be for the law to immunize these individuals from liability and facilitate instead meaningful litigation between the bigger parties. Such an approach would bring before the court those entities best positioned to articulate the complicated tradeoffs inherent in applying copyright law to the Internet. That is, KaZaA and the music industry can both afford to hire fancy lawyers who can in turn lay bare central issues; and litigation between these two behemoths is sure to at the same time attract the helpful attention of public advocacy organizations like the Electronic Frontier Foundation who can further ensure that the public interest is represented in court. Individual defendants, by contrast, lack the resources necessary to put up this good fight, and they face enormous pressure to preserve their bank accounts by quickly and quietly settling.

Moreover, lawsuits against individuals have a disquieting randomness to them, and that should give the legal system serious pause. To hold accountable only a handful of the individuals who swapped songs without permission — to extract steep damages from those unlucky few while leaving millions of equally culpable peers untouched — smacks of unequal justice. Admittedly, sometimes judicial inequality is a necessary evil; where intermediaries can effectively be held accountable, it is not.

In short, let KaZaA and Grokster profit from their technology and then face the repercussions. And let the college student, whose offense is something between an arrogant disregard for existing law and a praiseworthy enthusiasm for the technologic future to come, walk free.

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