

In re Charter Communications, Inc.

393 F.3d 771 (8th Cir. 2005)

Authored by Amy R. Gray

Charter Communications ("Charter") appealed the decision of the district court, alleging that the Digital Millennium Copyright Act ("DCMA"), specifically 17 U.S.C. § 512(h), does not permit copyright owners and their representatives to obtain and serve subpoenas on internet service provider's ("ISP's") subscribers who are alleged to be transmitting copyrighted works via the internet using peer-to-peer or ("P2P") file-sharing computer programs.

The Recording Industry Association of America ("RIAA") requested the clerk of the district court to issue subpoenas under § 512(h) to Charter in its capacity as an ISP, requiring Charter to turn over the identities of persons believed to be engaging in unlawful copyright infringement. Charter filed a motion to quash the subpoenas on several grounds, however, the district court denied the motion and ordered Charter to turn over the subpoenaed names and addresses of its subscribers to the RIAA.

On appeal, Charter argued the district court erred in enforcing the subpoenas because among other things, § 512(h) applies only to ISPs engaged in storing copyrighted material and not to ISPs such as Charter, engaged solely as a conduit for the transmission of information by others. Charter further argued that § 512(h) only authorized copyright owners to obtain and serve a subpoena on an ISP if the ISP is notified in accordance with the provisions of § 512(c)(3)(A). The notification provision of § 512(c)(3)(A) is found within one of the four safe harbors created by the statute to protect ISPs from liability for copyright infringement under certain conditions. Charter argued that the safe harbor provision implicated in this case is § 512(a), which limits the liability of an ISP when it merely acts as a conduit for infringing material without storing, caching, or providing links to copyrighted material.

Based on the analysis of the statute, Charter alleged that § 512(h) does not allow a copyright owner to request a subpoena for an ISP which merely acts as a conduit for data transferred between two internet users. It avers the text and structure of the DMCA require the ISP to be able to both locate and remove the allegedly infringing material before a subpoena can be issued against it. Because Charter acted solely as a conduit for the transmission of material by others (its subscribers using the P2P file sharing software to exchange files stored on their personal computers), Charter contends the subpoena was not properly issued.

The U.S. Court of Appeals for the Eight Circuit held § 512(h) did not authorize the subpoenas issued in this case. The court reasoned that because Charter's function was limited to acting as a conduit for the allegedly copyright protected material, § 512(h) did provide authorization for the issued subpoenas.

Accordingly, the court of appeals vacated the district court's issuance of various subpoenas for personal information about Charter's subscribers and the case was remanded.