

SCOUR DRAWS BIG-NAME LAWYERS TO COPYRIGHT SUIT



Evan Hansen, CNET News.com
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Top lawyers have stepped to the aid of Scour, a Napster-like file-swapping service that also stands at the center of a major entertainment industry lawsuit over alleged copyright violations.

Scour said today that trial lawyer Fred Bartlit of the Chicago firm Bartlit Beck Herman Palenchar & Scott LLP will head its legal team, assisted by Harvard Law School professor Arthur Miller and intellectual property rights author Peter Toren.

Bartlit is considered one of the nation's top trial lawyers, while Miller is a noted cyberlaw expert. Toren, head of the intellectual property practice at New York's Brown & Wood, is former lead prosecutor for the Computer Crime and Intellectual Property Section of the Justice Department.

Scour chief executive Dan Rodrigues said the selection followed a nationwide search that included law firms based in Los Angeles with close ties to the entertainment industry. But he said many of those firms faced conflicts with other clients, precluding them from taking the case.

"We had the opportunity to select from the highest-caliber trial attorneys in the country," Rodrigues said. "This is an extremely important case."

Scour is one of several companies developing so-called peer-to-peer technology that lets people search and retrieve files directly from one another's personal computers. The technology has been hailed as a revolutionary development for the Internet, much as Web browsers were five years ago. It also has been vilified by the entertainment industry, which fears peer-to-peer technology could make piracy of almost any digital work unstoppable.

So far, at least two companies that have introduced peer-to-peer networks have been hit with lawsuits from the entertainment industry.

Scour was sued July 20 by the Recording Industry Association of America (RIAA), the Motion Picture Association of America and the National Music Publishers Association. The suit alleges that a service run by the company, Scour Exchange, contributes to copyright infringement by letting people trade music, video and other files.

The case holds strong parallels to a suit brought by the RIAA against file-swapping service Napster, which a federal judge ordered to temporarily shut down because of rampant piracy last month. That ruling is on appeal.

Attorney Charles Sims, whose firm, Proskauer Rose, is on the legal team representing the plaintiffs in the Scour suit, said the pedigree of Scour's lawyers will have little impact on the case. He said the case will be decided on the law, which he believes clearly supports the entertainment industry's claims.

"Any sense that the public has that who the lawyer is in this case will make a difference is quite mistaken," he said, adding that Napster's star attorney, David Boies, is on the defensive in that case. Boies was the lead attorney for the government in the Justice Department's antitrust case against Microsoft and is widely credited with the trial victory that led to a court-ordered breakup of the company. The decision is on appeal.

Bartlit did not return calls seeking comment.

Rodrigues said there are some similarities between the Scour and Napster cases, but he stressed that Scour has taken a different approach from Napster. He said the company consulted from the beginning with intellectual property experts to ensure that its network complied with the Digital Millennium Copyright Act (DMCA), the federal law governing online copyright liability for Internet service providers (ISPs).

He said Scour worked with Los Angeles attorney David Nimmer of the law firm Irell & Manella to create policies to meet the restrictions laid out in the DMCA. For example, the company has adopted procedures for removing links to copyrighted material upon notice and for removing repeat copyright offenders from the service.

Nimmer was among the attorneys unable to take the Scour case because of conflicts with entertainment industry clients represented by his firm, Rodrigues said.

Whether the DMCA applies to the Scour technology could be a source of debate, as the DMCA does not specifically address peer-to-peer networks. Napster's attorneys argued earlier this year that the service is protected by ISP "safe harbor" provisions in the DMCA, which prevent copyright holders from collecting damages for contributory infringement if the ISP provides notice and takedown procedures such as those Scour implemented. That argument was rejected on the grounds that Napster is not an ISP.

For his part, Rodrigues calls Scour Exchange an Internet search technology and says it is covered by the DMCA.

"When we set out to build our service, we worked closely with copyright experts to create a system that is completely legal," he said. "We believe we operate a legal service."