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## Court Says Linking May Constitute Copyright Infringement

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In what appears to be the first decision to examine the issue, a federal judge has held that linking to a Web site may constitute copyright infringement. In [Intellectual Reserve, Inc. v. Utah Lighthouse Ministry, Inc.](#), Utah federal district court judge Tena Campbell ruled that linking to other Web sites which the linking party knows display infringing content - even though there is no affiliation between the linking party's site and the infringing sites - probably subjects the linking party to liability for contributory infringement. The court's decision has raised concerns from those who believe it might force a change in what makes the Web useful, namely the ability to link at will to other Web sites.

In Utah Lighthouse, the defendants, former members of the Mormon church (also known as the Church of Jesus Christ of Latter-Day Saints), published a Web site critical of Mormon doctrine. The defendants' Web site contained, among other things, links to three unaffiliated Web sites that posted content from a copyrighted Mormon instructional handbook. The three Web sites allegedly posted the content without permission. That content has since been removed from those other Web sites.

Beyond causing the infringing content to be removed, however, the Mormon Church also took legal action against the defendants' Web site, which merely linked to those other three Web sites. Through its Intellectual Reserve organization, the Mormon Church sought an injunction prohibiting the defendants from linking to the three allegedly infringing sites. In granting the Mormon church's motion for a preliminary injunction, the court stated that: "defendants have actively encouraged the infringement of plaintiff's copyright." The court gave short-shrift to the defendants' First Amendment argument, stating merely: "the First Amendment does not give

defendants the right to infringe on legally recognized rights under the copyright law." The defendants have appealed their case to the Tenth Circuit.

Although the federal court's failure to address in detail the First Amendment and "fair use" issues is problematic, the court's decision is probably sound on the issue of knowingly linking to infringing content. Courts have long recognized liability for contributory copyright infringement, which prohibits a person from knowingly inducing, causing, or materially contributing to the infringing conduct of another. It seems a logical extension of this established law to prohibit Internet users, through linking or other means, from encouraging the infringement of another's copyrighted material. For example, linking to a "warez" Web site that makes pirated software available for free downloads should give rise to contributory infringement.

Accordingly, Utah Lighthouse appears to be a logical extension of existing law. It does not suggest that the mere act of linking to a Web site, without more, would run afoul of copyright law.

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