

# US Vicarious Liability of Parents for Copyright Infringement by Minors: Review and Reform

Hamed Najafi\*

*Private Law, Tarbiat Modares University, Tehran, Iran*

**Abstract:** Vicarious liability is one of the types of responsibilities arising from the acts of others. In US law, there are general rules that, if the persons under the control, commit copyright infringement and a financial benefit reach to the person with the right of control, the latter will have a vicarious liability. Undoubtedly, minors are one of the most obvious examples of people under control, which is often done by their parents. Moreover, in the current era, it is very likely that many infringements are committed by minors, especially in the Internet environment. Therefore, parents are generally subject to vicarious copyright liability arising from the infringing acts minors. the probability of vicarious liability of Parents for chides copyright infringement, has been given under general rule of this type of liability, while the nature of the relationship between parents and children and the basis of parents' responsibility for the fault of their children, Requires some differences in this regard.

**Keywords:** Vicarious, Infringement, Copyright, Minors, Control, Parental Statutes.

## 1. INTRODUCTION

Corrective justice requires compensation for damages caused by copyright infringement. The principle of personal civil responsibility also requires compensation by copyright infringer itself. However, the existence of certain considerations, such as the motivation to exercise care and control over some individuals, such as minors, has led to the identification of vicarious liability in various legal systems. In addition, greater protection from copyright holders in US law has led to the imposition of parental responsibility for minor's copyright infringement. In principle, the of Vicarious liability simply requires that one profits from direct infringement while declining to exercise a right to stop or limit it<sup>1</sup>. the particular type of relationship between parents and her childs, does not permit the fulfillment of these two conditions, since the condition of control is usually achieved if practical daily supervision of the indirect infringer on direct infringer's behavior. Liability could exist only if the parties' paths "cross[ed] on a daily basis, and the character of this intersection must be such that the party against whom liability is sought is in a position to control the personnel and activities responsible for the direct infringement<sup>2</sup>. n addition, it does not seem in practice that parents gain financial benefit from their children's

violations. Nonetheless, all fifty states of United States, has approved parental responsibility laws. every state has some sort of parental responsibility law that holds parents or legal guardians responsible for property damage, personal injury, theft, shoplifting, and/or vandalism resulting from intentional or willful acts of their un-emancipated children<sup>3</sup>. Since these laws are general, it is possible to say that they encompass the cases of copyright infringements by minors. However, because many states do not hold parents liable for the copyright violations of their children; in veiw of some commentators "[c]opyright infringement cases levied against parents for something their child did are rare. It is legally very uncertain and untested<sup>4</sup>." but it seems that theoretically there are no legal barrier to application of these laws to copyright infringements.

The legislative purposes of civil parental liability statutes are typically "to compensate innocent victims for willful [sic] or malicious juvenile misconduct and to oblige parents to control their children to prevent intentional harm to others<sup>5</sup>.

This research will show that, in addition to the above, there are other foundations that could affect the subject. The fundamental question is that by virtue of expansion of the parental liability statutes, is it possible to impose a vicarious and strict liability on parents for

\*Address correspondence to this author at the Private Law, Tarbiat Modares University, Tehran, Iran; E-mail: nhamed64@gmail.com

<sup>1</sup>Grokster, 125 S Ct at 2776 (citing Shapiro, Bernstein & Co, 316 F2d at 307).

<sup>2</sup>Banff Ltd v Limited, Inc 869 F Supp 1103, 1105 (SDNY 1994)see also: Alfred C Yen Thirrd Party Copyright After Grokster, Minnesota Law Review 91, 2006,p201

<sup>3</sup>Parental Responsibility Laws In All 50 States, Posted by on February 19, 2018 Available at: <https://www.mwl-law.com/wp-content/uploads/2018/02/PARENTAL-RESPONSIBILITY-LAWS-CHART.pdf>

<sup>4</sup>Ted Bridis, Record Industry Sues Music File Swappers, ASSOCIATED PRESS, Sept 8, 2003, available at 2003 WL 63459852.(California, for example, does not hold parents "explicitly liable for copyright infringement by minor children")

<sup>5</sup>Amy L Tomaszewski ,From Columbine to Kazaa: Parental Liability in a New World, University of Illinois law review 2005(2),p57

children's copyright infringement, which often occurs on the Internet?

## 2. PARENTAL VICARIOUS LIABILITY FOR THE ACTS OF MINORS IN AMERICAN COMMON LAW

The parental vicarious responsibility for the children's acts in US, Has passed very Ups and downs; US courts initially did not consider parents liable for the damages caused by minors and constituted a kind of immunity for parents, since At common law a parent was not liable for torts committed by his child by reason of the relationship of the parent and child<sup>6</sup>. But the goal of compensation In civil liability, made lawmakers and courts to recognizes the principle of parental responsibility for the children's acts<sup>7</sup>. For example In *Gissen v. Goodwill*,<sup>8</sup> the Florida Supreme Court for the first time considered the circumstances under which the parents of minors could be held legally responsible for torts committed by their children.

### 2.1 Parental Immunity under Common Law Immunity Rule

at common law, mere Parental relationship does not lead to parental responsibility<sup>9</sup>, because Children are considered separate legal individuals, susceptible of suit in their own right<sup>10</sup>; at common law, all family members, including children and adults, were personally liable. Several courts have expressed this rule, including Supreme Court of North Carolina, Court of Civil Appeals of Texas, Supreme Court of Florida, Supreme Court of Wisconsin, St. Louis Court of Appeals, Missouri. For example, according to The Missouri Court of Appeals judgment in *National Dairy Prod. Corp. v. Fresch*, responsibility of parents for the behavior of their children is based on their fault, not just their relationship with the children. This court held that "parents who permitted a reckless 13-year-old boy to play with a shotgun would be liable to plaintiff who was

shot by him. There was evidence that the boy had, prior to the day when he shot plaintiff, pointed the gun at her in the presence of his father. In that case we announced the rule as follows: " No one can doubt that, if the father knows his indiscreet minor son of tender years is using a firearm in such careless and negligent manner as to endanger the safety of others about him, it is his duty to interpose the parental authority to prevent injury to such persons as may, within the range of reasonable probability, be exposed to injury there from<sup>11</sup>." Therefore, according to the common law Principles, the mere existence of such a relationship don't affirmed parental responsibility for the children's copyright infringement too<sup>12</sup>. A parent is not liable for his child's copyright infringement solely because of the parent-child relationship. A child is a separate legal individual liable for his own copyright infringement in the same manner and to the same extent as an adult<sup>13</sup>. Thus, the financial losses inflicted by children due to their lack of assets and income, often remained without compensation<sup>14</sup>. while, children inevitably are, physically, emotionally and financially, dependent on their parents<sup>15</sup> and lacking assets and income to compensate the victims. Therefore, although, mere parent child relationship, cannot result in imposition of liability on parents, but under certain circumstances, it is possible to impose this responsibility; "harsh denial of compensation has been ameliorated through decisional and statutory law holding parents legally responsible, under certain circumstances, for the torts of their children<sup>16</sup>."

### 2.2. Exceptions to the Principle in Respect of Damage Caused by Children

With regard to the barriers that parents' immunity created to compensating damages caused by children to third parties, four general criteria have been developed to impose responsibilities on parents due to child misconduct; these four criteria Have been created upon two Basic rules; vicarious responsibility and direct responsibility (personal). In vicarious responsibility, the establishment of "agency relationship" is Necessary independent of any fault of the parents.<sup>17</sup> But in the direct or personal responsibility, the fault, negligence

<sup>6</sup>Rhonda V Magee Andrews, The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Vitims' Voices in the Debate over Expanded Parental Liability, 75 Temp L Rev ,2002,p388

<sup>7</sup>Kimberly Lionel King, Torts - Liability of Parents for Negligent Supervision of Their Minor Children - Snow v Nelson, 12 Fla St U L Rev 935 (1985),p939

<sup>8</sup>*Gissen v Goodwill* 80 So 2d 701 (Fla 1955) See: ibid, p941

<sup>9</sup>Rhonda V Magee Andrews, The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Vitims' Voices in the Debate over Expanded Parental Liability, 75 Temp L Rev ,2002,p388,see: See *Gissen v Goodwill*, 80 So 2d 701, 703 (Fla 1955); *Bankert v Threshermen's Mut Ins Co*, 329 NW2d 150, 152 (Wis 1983), *White v Page*, 61 Ohio L Abs 698, 105 NE2d 652(Ohio App 1950), *Joan Morgridge, When Does Parental Liability End?: Holding Parents Liable for the Acts of Their Adult Children*, 22 Loy U Chi L J 335 (1990),p336

<sup>10</sup>Dan Dobbs B ,Robert E Keeton ,David G Owen ,W Page Keeton, Prosser and Keeton on the Law of Torts (Hornbooks), West Group; 5th Packag , 1984, § 123, p 913

<sup>11</sup>*National Dairy Prod Corp v Fresch*, 393 SW2d 48, 53 (Mo Ct App 1965)

<sup>12</sup>Janelle A Weber, don't drink don't smoke don't download parent's' liability for the children's file sharing,Florida Law Review, Vol 57, 2005p1169

<sup>13</sup>Ibid

<sup>14</sup>Prosser and keeton,opcit,p913

<sup>15</sup> See: Jo Bridgeman, Accountability, Support or Relationship - Conceptions of Parental Responsibility, 58 N Ir Legal Q (2007),p307

<sup>16</sup> Kimberly Lionel King,opcit,p939

<sup>17</sup>See, eg, *Trahan v Smith*, 239 SW 345 (Tex Civ App 1922)

supervision, or their participation in the entry of harm, is an essential element of the formation of responsibility. Parental fault is also found on the basis of "consent to", "parent failure to exercise their duty to control the conduct of their children" and "dangerous instrumentalities.". Therefore, four criteria for agency, fault, negligence, and dangerous cooperation are exceptions to the principle of parental immunity in this area<sup>18</sup>. Parents who participate in their children's tortious acts through their consent to, direction, or ratification of the acts are held directly liable as joint tortfeasors.

The supreme Court of the State of Florida has articulated these four criteria in the Gissen goodwill case; the court, while recognizing the principle of immunity, stated that there were four exceptions in this regard: 1- Where he entrusts his child with an instrumentality which, because of the lack of age, judgment, or experience of the child, may become a source of danger to others. 2- Where a child, in the commission of a tortious act, is occupying the relationship of a servant or agent of its parents. 3- Where the parent knows of his child's wrongdoing and consents to it, directs or sanctions it. 4- Where he fails to exercise parental control over his minor child, although he knows or in the exercise of due care should have known that injury to another is probable consequence<sup>19</sup>.

The supreme Court of the State of North Carolina is also in the Grindstaff v. Wattscase, while rejecting the responsibility of the parents, for mere relationship with their Childs, state that their responsibility for the harmful behavior of the child is subject to the proof of one of the four cases mentioned above<sup>20</sup>. Appellate Division of the Supreme Court of the State of New York, has also mentioned this issue in numerous cases<sup>21</sup>. The Supreme Court of Pennsylvania<sup>22</sup>, the appellate court of California<sup>23</sup> and the supreme court of California<sup>24</sup> have also considered the aforementioned items as condition for imposing vicarious responsibility on parents.

Therefore, in US law, the primary principle is that parents are not responsible for the behavior of their children unless they have been found guilty of any kind fault or a relationship of agency between them and the child. The case of the fault or negligence of the parents or their participation in the damage is beyond the scope of the vicarious liability, since in such a situation, the responsibility of the parents, is personal and direct, and is not vicarious; the parents as joint offenders, along with the children, In return for the injured person, would be held liable jointly and severally for all damages incurred. However, the amount of damages imposed on parents in the case of vicarious liability under parental liability statutes, is generally limited to a fixed amount<sup>25</sup> that may be far less than actual damage. Therefore, generally, according to common law principles, only the "agency relationship", could lead to the establishment of the vicarious responsibility.

### 2.3. The Agency in Common Law: Concept and Scope

in spite of the existence of agency in most legal systems, it is difficult to provide a single definition of it<sup>26</sup>. The agency in the restatement (second) of agency, has been defined as follow: "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests or otherwise consents so to act<sup>27</sup>."

The existence of control is an essential requirement for the concept and nature of agency. In common law, this legal entity has a very wide area and, by definition, is not limited to a specific type of relationship. Thus, it includes all acts, whether legal or non-legal (physical), in other words, nonlegal acts can also be the subject of agency<sup>28</sup>. Thus, it involves the relationship between the employee and the employer, the hiring hirer and so on. In the US Courts, there are cases where the car driver has been considered as the agent of car owner and, in the case of an accident, the owner has been

<sup>18</sup>See: L Wayne Scott, Liability of Parents for Conduct of Their Child Under Section 3301 of the Texas Family Code: Defining the Requisite Standards of 'Culpability', 20 St Mary's LJ, 1988, p71

<sup>19</sup>See: *Gissen*, 80 So 2d at 703

<sup>20</sup>*Grindstaff v Watts* 119 SE2d 784 (1961)

<sup>21</sup>*Steinberg v Cauchois*, 249 AppDiv 518, 293 NYS 147; *Pfenning v AGRI BUS BROKERAGE CORP*, 124 AD 2d 1013 - NY: Appellate Div, 4th Dept 1 Weeks v Sabo, 281 AD 2d 413 - NY: Appellate Div, 2nd Dept 2001

<sup>22</sup>*Condel v Savo*, 350 Pa 350, 39 A2d 51, 52, 155 ALR 81

<sup>23</sup>*Ellis v D'Angelo*, 116 Cal App2d 310, 253 P2d 675, 679

<sup>24</sup>*Buelke v Levenstadt*, 190 Cal 684, 689, 214 P 42, 44

<sup>25</sup>For example If a child in Texas maliciously causes property damage, the parent with the duty of control over the child is liable for up to \$25 ,000 per wrongful act Additionally, with personal injury, the Texas statute states that imputed liability is further limited to medical, dental, and hospital expenses incurred by the injured personsee: Brank, Eve M; Kucera, Stephanie Carsten; and Hays, Stephanie A, "Parental Responsibility Statutes: An Organization and Policy Implications", *Journal of Law and Family Studies* ,2005,pp19-25

<sup>26</sup>Dalley J ,Paula. »A Theory of Agency Law«, *72 U Pitt L Rev* 495 ,2011 p495

<sup>27</sup>RESTATEMENT (SECOND) OF AGENCY § 1 (1) (1958)

<sup>28</sup>See: Sheldon W Halpern ,Copyright Law: Protection of Original Expression, Carolina Academic Press Law Casebook Series, 2017, p551

held vicariously liable<sup>29</sup>. Major examples of vicarious liability are subject to the general title of the employee (servant) and the employer (master)<sup>30</sup>. Some scholars have limited the vicarious liability rule only to these cases and have considered other instances of vicarious liability, exceptional<sup>31</sup>. A master is a principal who employs an agent [a worker, who may or may not be an agent] to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service<sup>32</sup>.

According to the above, servants are subject to the rules of agency. Consequently, until the definition of the agent is not specified, the concept of the servant could not be fully understood. Based on the restatement (second) of agency, "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests or otherwise consents so to act<sup>33</sup>." By virtue of this definition, which encompasses a wide range, the condition for the fulfillment of the agency is the consent of the parties to act on behalf of the principle and under his control. Therefore, because the physical behavior of the servant is subject to the right of control of the employer and is beneficial for employer, servant is considered as an employer's agent. On this basis, if the servant makes a wrong in the subject matter of the agency and course of agency, under some circumstances, his employer, would be vicariously liable<sup>34</sup>. This relationship may be created between the parent and the child, but the mere parental relationship in common law, does not entail any responsibility for the parent, since it is logically impossible to considered children as their parent's agents. Therefore, the parental relationship does not imply the agency relationship between them and upon the mere existence of such a relationship, parents don't incur liability for the torts of their children.

However, if, in accordance with the above definition of the agency, the child is, for any reason, a agent of his or her parents, the parents would be held liable in the event of damage by the child. Where the child

employed by his or her parents and works in the course of an employment relationship, the parents would be responsible for the torts of their child, based on the general rule of *Respondeat superior* (Latin: "let the master answer"; plural: *Respondeat superior*). According to some state courts, the imposition of responsibility on parents in this situation is not due to the existence of a parental relationship, but on the basis of a agency relationship between them<sup>35</sup>. In *Grimes v. Hettinger* case, Court of Appeals of Kentucky, where a father ordered his child to supervise another child who was present at the pool, has identified the father, referring to the principles of agency, responsible for the child's fault<sup>36</sup>.

### 3. CONDITIONS OF VICARIOUS COPYRIGHT LIABILITY

Under the federal court case law, the finding of a vicarious copyright infringement are subject to two conditions: (1) the right and ability to control and supervise the direct infringer's behavior; and (2) to obtain "direct financial benefit from the infringement"<sup>37</sup>. In the vicarious copyright infringement, finding of agency relationship isn't necessary and such a liability, is not limited to the master- servant relationship, and may imposed on any person who has the right to control and supervise the conduct of Another<sup>38</sup>. Generally speaking, the establishment of vicarious responsibility depends on establishing a relationship between two persons; the existence of a relationship that, enables one to control and supervise the behavior of the other party. For example, the relationship between the employee and the employer, the relationship between the landlord and the tenant, the relationship between the employer and the independent contractor, etc. In all these cases, there is the right to control and supervise another behavior. While vicarious responsibility generally rests on the principles of agency and *Respondeat Superior* rule, but in accordance with the judicial procedure of US courts, in copyright infringement, it is not necessary to prove the actual or apparent agency<sup>39</sup>. Accordingly,

<sup>29</sup>See eg: *Soblusky v Egan* (1959) 103 CLR 215

<sup>30</sup>Steven N Bulloch, *Fraud Liability Under Agency Principles: A New Approach*, 27 *Wm & Mary L Rev*, 1986, p302

<sup>31</sup>P S Atiyah, *Vicarious Liability in the Law of Torts* (London, Butterworths, 1967), p3

<sup>32</sup>RESTATEMENT (SECOND) OF AGENCY § 2(1) (1958)

<sup>33</sup>*Ibid*, § 1(1)

<sup>34</sup>Steven N Bulloch, *opcit*, p303

<sup>35</sup>*Teagarden v McLaughlin*, 86 Ind 476 (1882); *Hower v Ulrich*, 156 Pa 410, 27 *Atl* 37 (1893); *Trahan v Smith*, 239 S W 345 (Tex Civ App 1922)

<sup>36</sup>*Grimes v Hettinger*, 566 SW2d 769 (Ky Ct App 1978)

<sup>37</sup>*See Shapiro, Bernstein & Co v HL Green Co*, 316 F2d 304, 307 (2d Cir 1963); *Fonovisa, Inc v Cherry Auction, Inc*, 76 F3d 259 (9th Cir 1996), *UMG Recordings v Sinnott*, 300 F Supp 2d 993, 1001

<sup>38</sup>Craig A Grossman, *From Sony to Grokster: The Failure of the Copyright Doctrines of Contributory Infringement and Vicarious Liability to Resolve the War Between Content and Destructive Technologies*, 53 *BUFF L REV*, 2005, p147

<sup>39</sup>*See: AT&T v Winback& Conserve Program, Inc*, 42 F3d 1421, 1439-40 (3d Cir 1994), *Religious Tech Center v Netcom On-Line Comm*, 907 F Supp 1361 -

where the restaurant owner leases a musical group for performing music in his restaurant, and the music group commits copyright infringement, the courts, in imposing a vicarious liability on the owner of the restaurant, for his right and ability to control the activities of the music group, Have not doubted<sup>40</sup>. Consequently, in spite of cases such as the relationship between the employee and the employer which can be the source of the vicarious liability, in copyright case, the control of one another and the acquisition of the financial benefit resulting from the direct infringement, may also lead to the imposing vicarious liability<sup>41</sup>. The imposition of such a liability on those who have the right and ability to control and supervise another's conduct, creates the incentive for them to exercise control over their subordinates' behaviors, and hence the exclusive rights of the owners of literary and artistic works, are also guaranteed.

#### 4. ASSESSMENT OF THE CONDITIONS

As was stated above, the condition for establishment of vicarious liability is the existence of a agency relationship between the parties. agency between the parties implies the existence of principle control over the agent, because control is part of the nature of the agency. but in *Shapiro, Bernstein & Co. v. H.L. Green Co* and *Fonovisa, Inc. v. Cherry Auction, Inc*, the Second and ninth Circuit Court of Appeals, contrary to the principles of the common law in this regard, without founding any agency relationship and, subject to the condition of control and supervision, and the acquisition of financial benefit, have been established the vicarious copyright infringement<sup>42</sup>. in such lawsuits that minors using file sharing service for copyright infringement, it should be proof that: (1) the parent could have controlled or stopped the child's behavior but failed to do so; (2) the parent knew the child was doing something illegal but still gave the child access to the means to do so, such as paying for the internet account; and (3) the parent received a financial benefit from the child's illicit activity, such as not having to spend money on compact discs<sup>43</sup>.

The basic question is: How does the condition of both parents and children get in place in the relationship between parents and children?

#### 4.1. Control and Monitoring

Parental responsibility for child offenders is one of the common practice in common law, whereby the parents of children who committing torts are subject to compensation<sup>44</sup>. In accordance with US case law, the condition for imposing responsibility on parents and, in general, supervisors, is to establish the right and ability to control over the person whom is under the guardianship, including the child<sup>45</sup>. There are two main criteria in this area: actual control and legal control. The famous observation is that actual control is a condition of vicarious responsibility<sup>46</sup> and the mere existence of the legal right to control, will not lead to the imposing the vicarious responsibility<sup>47</sup>. however It seems difficult to found the control requirement in the case of copyright infringement by child, because the control criterion in US copyright infringement cases, has defined to the right to daily control of direct infringer's conduct<sup>48</sup>. However, in spite of the legal right to supervise the behavior of their children, parents do not have an actual day-to-day supervision over them. additionally, copyright infringement by children is generally occurred using computers connected to the Internet. This also makes it difficult to meet the actual control requirement, because parents usually do not know how to use the computer and the Internet. For example, *Durwood Pickle*, a man sued by the RIAA for his grandchildren's illegal use of his computer, expressed his frustration: "Some of my grandkids got in there I didn't do it, and I don't feel like I'm responsible I'm not a computer-type person. They come in and get on the computer. How do I get out of this? Dadgum it, got to get a lawyer on this"<sup>49</sup>.

However, it is obvious that supervisors have legally right to monitor the behavior of their children, but this, has importance in order to establish the practical

Dist Court, ND California

<sup>40</sup>See *EG:Warner Bros, Inc v Lobster Pot, Inc*, 582 F Supp 478, 482 (ND Ohio 1984)

<sup>41</sup>*Gershwin Publ'g Corp v Columbia Artists Mgmt, Inc*, 443 F2d 1159, 1162 (2d Cir 1971); see also *Pinkham v Sara Lee Corp*, 983 F2d 824, 834 (8th Cir 1992)

<sup>42</sup>*Shapiro, Bernstein & Co v HL Green Co*, 316 F2d 304 (2d Cir 1963), *Fonovisa, Inc v Cherry Auction, Inc*, 76 F3d 259 (9th Cir 1996) *Gershwin Publishing Corp v Columbia Artists Man, Inc*, 443 F 2d 1159 - Court of Appeals, 2n

<sup>43</sup>*Alex Veiga, It Could Be Hard to Sue Parents for Song Swaps*, SEATTLE POST-INTELL, Sept 13, 2003, available at [http://seattlepinwsources.com/business/139406\\_download13html](http://seattlepinwsources.com/business/139406_download13html)

<sup>44</sup>Thurman ,Tammy, »Parental Responsibility Laws: Are They the Answer to Juvenile Delinquency?«, 5 JL & FAM STUD, 2003,p99

<sup>45</sup>Karen Horowitz, Copyright Liability for Those Who Provide the Means of Infringement: In light of the RIAA lawsuits, who is at risk for the infringing acts of others?, 4 Shidler J L Com & Tech, 2008, 6,At<http://www.wlctjournal.washington.edu/Vol4/a08Horowitz.html>, , no6

<sup>46</sup>Goldstein, opcit, § 6:22

<sup>47</sup>Charles S Wright, Actual Versus Legal Control Reading Vicarious Liabilip for Copyright Infringement into the Digital Millennium CopyrightAct of 1998,75 WASH L REV 1005, 1012 (2000)

<sup>48</sup>Alfred Yen , »Third Party Copyright After Grokster«, *Minnesota Law Review* 91, 2006 pp200-20

<sup>49</sup>see: Ted Bridis, opcit, see also: Amy L Tomaszewski,opcit,p593

control on the behavior of children<sup>50</sup>. That is, the responsibility of the parents is true if the condition of actual control is established. For example, where the supervisor haven't computer knowledge and the computer is only used by the child, it would seem difficult to establish the control condition in this situation. Perhaps this is why some courts have considered the legal control standard to be sufficient. However, other courts, regardless of the existence of legal control, also consider actual and practical control<sup>51</sup>. Therefore, if mere legal control be the standard, the supervisor will in any case have a vicarious. But if practical and actual control is also be a condition, the court will only hold the supervisor vicariously liable when he or she, find the supervisor's practical control over the child's behavior. Of course, in this regard, undoubtedly, the supervisor's skills to the computer, the time and place, and the manner in which the direct infringement and other relevant considerations are made in determining the control standard for imposing vicarious responsibility on the child's parents. Accordingly, as much of the computer skill and knowledge of the supervisor increases, and thus he uses more of it, the probability of finding the control criterion also increases, since in practice it is proved that he has the ability to effectively control the child's infringing behavior. Accordingly, in *Elektra Entertainment Group, Inc. v. Santangelo* case, imposing vicarious liability on supervisor that haven't knowledge of the Internet and couldn't distinguish Kazaa from kazoo, for copyright infringement committed by his child on internet, without his knowledge or authorization, but using an account belonging to him, was challenged<sup>52</sup>. Contrary to this view, some scholars believe that it isn't difficult for claimant to demonstrate the right of supervise and control the childs on parent, since the parents have the right to decide on the education, entertainment and civility of the child and can prevent them from engaging in copyright infringement activities.( file sharing)) and if they do not obey, they would punish them. these commentators, suppose that the mere natural parental relationship, would affirm the right of control, and since often file sharing occur in house, where parents have domination and control on children, it enables parents to monitor the behavior of children, which this monitoring in the case of using internet by child, may

be done in different ways. Parents can, for example, warn the legal consequences of file sharing to the child through a conversation with him and prevent him from the sharing of files, or for blocking the sharing networks, filter the Internet, or accompany them when they are online, or To monitor the child's use of the Internet, install monitoring programs on the computer<sup>53</sup>. Additionally, parental confessions to control other child's activities, such as watching TV or examining homework, confirm the claim that monitoring has been possible<sup>54</sup>.

This view cannot be accepted because the mere existence of a parent child relationship does not prove the possibility of daily practical monitoring of the child's behavior. Some courts have held that legal authority alone is not sufficient to establish the control element of vicarious copyright liability, particularly where the exercise of that authority is impracticable. In *Adobe Systems Inc. v. Canus Productions, Inc.*, a California district court found that Fonovisa rested on an inference of a practical ability to control ongoing infringing activity, and that a larger-scale trade show with minimal infringing activity did not demonstrate the level of actual control necessary to impart vicarious liability<sup>55</sup>.

Moreover, Professor Paul Goldstein believes that the control required for vicarious liability is "the practical, rather than the strictly legal, ability to control the activities of the direct infringer<sup>56</sup>. Even in the *Napster* case,<sup>57</sup> the court set the previous admitted attempting of Napster to block infringing users, as a basis for emphasizing on practical feasibility of control and monitoring user's behavior by Napster<sup>58</sup>. Here, plaintiffs have demonstrated that Napster retains the right to control access to its system. Napster has an express reservation of rights policy, stating on its website that it expressly reserves the "right to refuse service and terminate accounts in [its] discretion, including, but not limited to, if Napster believes that user conduct violates applicable law . . . or for any reason in Napster's sole discretion, with or without

<sup>50</sup>Chris Conley, Memorandum: Parental Liability for Copyright Infringement by Minor Children, Electronic Frontier Foundation, Nov 1, 2005, At:[http://www.eff.org/IP/P2P/Parent\\_Liability\\_Nov\\_2005pdf](http://www.eff.org/IP/P2P/Parent_Liability_Nov_2005pdf), pp1-10

<sup>51</sup>See:Wright , opcit, ,pp 1005-1012

<sup>52</sup>US District Court: Southern District of New York

<sup>53</sup>Weber, opcit,pp1175-76

<sup>54</sup>Ibid,pp1176-77

<sup>55</sup>Adobe Systems Inc v Canus Productions, Inc173 FSupp2d 1044 (CDCal 2001) See also Artists Music, Inc v Reed Publishing (USA), Inc, 1994 WL 191643 (SDNY 1994)

<sup>56</sup>Paul Goldstein, GOLDSTEIN ON COPYRIGHT § 6:22 (Aspen 2005)

<sup>57</sup>A&M Records, Inc v Napster, Inc 114 F Supp 2d 896 (ND Cal 2000), aff'd in part, rev'd in part on other grounds, 239 F3d 1004 (9th Cir 2001)

<sup>58</sup>Ibid at 1023 (The ability to block infringers' access to a particular environment for any reason whatsoever is evidence of the right and ability to supervise)

cause<sup>59</sup>." In Napster case, "Napster had the right and **ability** to police its system and failed to exercise that right to prevent the exchange of copyrighted material<sup>60</sup>. But, In the case of parental vicarious file sharing liability, where parents do not have any computer knowledge, (**inability**) they certainly cannot have previous efforts, and therefore, they cannot be assumed to be equal to the Napster case. Just like Fonovisa Case in which the U.S. Court of Appeals for the Ninth Circuit, found the swap meet operator vicariously liable since its right and ability to supervise was both contractually permissible and physically feasible<sup>61</sup>. However some commentators in supporting that "A plaintiff would have no difficulty establishing that a parent had the right to supervise his child", argue that "Any difficulties a parent might experience in monitoring a child's Internet use would pale in comparison to Napster's problems in policing the activities of hundreds of thousands of anonymous users on its service. Furthermore, any admission by the parent that he had monitored the child's other activities, such as television viewing or homework, would support the contention that supervision was feasible<sup>62</sup>". But this analogy seems not to be correct because in the Napster case, Napster is designer and owner of a file sharing service which is under the absolute technical domination of itself and the Probable difficulties of it to control the users, could be solved by more Effort and expense. But in the case of parental liability, the parents May not be literate and accordingly, technically cannot monitoring the children computer use or filtering it and so on. In this situation, unlike Napster, parents even by more Effort and expense can't overcome the difficulties. Monitoring a minor on the internet is particularly difficult if the parent is technologically challenged<sup>63</sup>. The same argument can be made in comparing the situation of "landlord-tenant" cases and the "dance hall" cases<sup>64</sup> with paranal child relationship.

Also, the totally different nature of Napster as a commercial company which has legal-commercial relationship with its users, and parents as leader of family unit who have noncommercial and non-material relationship with children in addition to other relationships, which demand its special considerations. Families are the basic, foundational social units in all

human communities around the world and most intimate social environment<sup>65</sup>. They are the places where we begin the vital processes of socializing our children, and teaching them — in partnership with countless others in the community — how to survive and thrive in the world<sup>66</sup>. Parents share major long-term decisions on issues such as: medical matters, religious matters, cultural matters, education, living arrangements. Parents are obligated to provide children with financial support. Given the importance of this issue, even some states' support laws impose an obligation on parents to provide financial assistance to their adult children<sup>67</sup>. Several courts have justified college educational awards with the argument that the promotion of higher education is beneficial both to the young adult and to the state<sup>68</sup>. These obligations take a lot of time from parents and therefore practically and compulsorily, their monitoring on child's behavior will reduce. Accordingly, It is not true that the Napster and parent's situation considered to be the same in respect to assessing the right and ability to supervise requirement.

Moreover, parents don't acquire any financial benefit from underlying infringement by children. Professor Paul Goldstone<sup>69</sup> believes that if the condition of obtaining financial benefits is not met, proving the condition of monitoring and control becomes difficult because despite the separation of these two conditions from each other, they are interconnected and their independence is not perfect. Courts are required, in order to establishing the vicarious liability, to consider all aspects of the relationship between direct and vicarious infringer<sup>70</sup>. Therefore, it would seem impossible to prove the condition of supervision and control, as it is claimed by some, due to lack of financial gain from parents.

In addition, a clever child who was intent on trading files could certainly circumvent these measures. A child could swap files while the parent was occupied or at work, hide the files in an alternate hard drive, or even override the filtering software<sup>71</sup>. As if in fall 2003 Jeffrey

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Fonovisa, Inc v Cherry Auction, Inc 76 F3d 259 (9th Cir 1996)

<sup>62</sup> Janelle A Weber, opcit, pp1175-1176

<sup>63</sup> AMY L Tomaszewski, opcit, p596

<sup>64</sup> Fonovisa, 76 F3d 259, 262, 37 USPQ2d 1590, 1592-93; See Polygram, 855 F Supp at 1324, 32 USPQ2d at 1487

<sup>65</sup> John DeFrain, Gail Brand, Jeanette Friesen, Dianne Swanson, *Creating a Strong Family Why Are Families So Important?* Available at <http://extensionpublicationsunledu/assets/pdf/g1890pdf>

<sup>66</sup> Ibid

<sup>67</sup> See: Marvin M Moore, Parents' Support Obligations To Their Adult Children, *Akron Law Review*, Vol 19:2, pp183-196

<sup>68</sup> seeibid ,p186

<sup>69</sup> Paul Goldstei, Goldstein on Copyright, Aspen Publishers; 3 edition, 2005, p822

<sup>70</sup> William F Patry, Patry on Copyright, Thomson/West, vol 6, § 21:66 (2010)

<sup>71</sup> See Nik Bonopartis, Tech Advances Raise Internet Risks, *POUGHKEEPSIE JOURNAL*, Feb 6, 2004, at 1A (noting that children may learn how to bypass a filter from their friends); Zitz, Filtering Software, supra note 85 (noting that a

Parson, Despite the Internet content software program in his computer, unleashed the Blaster worm onto the internet. Internet content software program would not have prevented him from writing the code that created the Blaster worm<sup>72</sup>. Some commentators state that "In such cases, a court would be unlikely to absolve a parent of liability for any of these reasons<sup>73</sup>." If accepted that vicarious liability is strict and absolute one, and that have no connection with the fault, it is unlikely that the court absolve a parent of liability for any of these reasons because the reasons merely indicate that the parents are not guilty of any fault, while vicarious liability is not subject to the fault<sup>74</sup>. If a person has the ability to prevent the infringement from taking place in the first place—whether that person is a dancehall operator, a department store, a racetrack, or a trade show—the law will incentivize him to do so by holding him strictly liable for the infringements of those under his control, even if the direct infringers were actually acting against his specific orders or standing policies in committing the infringement<sup>75</sup> a parental duty to control a child's behavior does not arise unless the parent knows or is recklessly unaware of the child's propensity to commit tortious acts<sup>76</sup>.

In addition, parents are often unaware of the occurrence of violations by children. Therefore, it does not seem fair to ignore their ability and practical ability to control children's copyright infringement. Although vicarious liability is not subject to a fault, but this is justifiable only where the indirect infringer of copyright, benefited from underlying infringement Financially. In cases where there is no financial benefit for indirect liable, such as case of parent child relationship, It looks equi to apply a lenient fault test to establish the control on direct infringer's behavior.

Furthermore, the application of the criterion of practical control is also consistent with the standard set out in Section 316 of the Restatement (Second)

of Torts, since, Under that section, [a] parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent(a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control<sup>77</sup>. The Illinois Appellate Court upon this basis in *Cooper v. Meyer*<sup>78</sup>, where a son, out of the parent's presence, "flew into a rage and willfully [sic] and maliciously attacked the plaintiff by striking her with his hands, found that the child's parent "had no opportunity to directly control the conduct of the minor child at the time of the tort" and thus fell outside the boundaries for parental liability under the Restatement<sup>79</sup>.

The accuracy of this view is especially recognized when, in consonant with some authors<sup>80</sup>, vicarious liability considered as a tool for punishing indirect infringers that illegally benefits from direct violations of another.

Standard set out in Section 316 of the Restatement(Second) could be interpreted narrowly and broadly<sup>81</sup>. Certainly, bases upon the Narrow interpretation which Used by the Illinois Court and some commentators construes it as a "sympathetic

view toward the parents of violent children<sup>82</sup>", don't exist general duty of control on parents, since such duty under *Section* 316, does not arise except after proving the knowledge and ability of practical control of the parents, Even if the child's previous behavior hints at a propensity for misbehavior<sup>83</sup>. Even on the basis of the broad interpretation of this section, the imposition of general duty of control on parents, cannot be inferred, since Under the broad interpretation, a parent must have knowledge of her child's potential to create harm before liability can be established and Once the plaintiff shows that the young tortfeasor demonstrated a propensity for misbehavior in the past—even once—the victim has opportunity for recovery. The parent then

---

determined child may override the filtering software or use a friend's computer that does not contain the software)( Quoted by Janelle A Weber,opcit,p1176, note 89)

<sup>72</sup>See AMY L TOMASZEWSKI,opcit, pp596-597.

<sup>73</sup>Janelle A Weber,opcit,p1176

<sup>74</sup>See: Seymour D Thompson,Commentaries on the law of negligence in all relations, including a complete revision of the author's previous works on the same subject, Indianapolis, Bowen-Merrill Co, 2d Ed,1901-1914, § 309,p494 see also: Famous Music Corp v Bay State Harness Horse Racing & Breeding Ass'n, Inc, 554 F2d 1213 (1st Cir 1977) in which the court found horse track liable for playing of infringing music by independent contractor music provider, despite direct instructions from horse track management not to play any of plaintiff's compositions)

<sup>75</sup>Craig A Grossman, The Evolutionary Drift of Viarious Liability and Contributory Infringement: From Intersititial Gap Filler to Arbiter of the Content Wars, 58 SMU L Rev 357 (2005),p367

<sup>76</sup>Michael A Axel, Statutory Vicarious Parental Liability: Review and Reform, 32 Cas W Res L Rev 559 (1982),p560

<sup>77</sup>RESTATEMENT (SECOND) OF TORTS § 316 cmt c (1965)

<sup>78</sup>*Cooper v Meyer* 365 NE2d 201 (Ill App Ct 1977)

<sup>79</sup>Ibid at 203

<sup>80</sup>Paul Goldstein,opcit, §82,note1,p8:18:7

<sup>81</sup>See: Andrew C Gratz, Symposium Comment, Increasing the Price of Parenthood: When Should Parents Be Held Civilly Liable for the Torts of Their Children?, 39 HOUS L REV 169 (2002),pp 180–90

<sup>82</sup>Ibid,p185

<sup>83</sup>See:AMY L TOMASZEWSKI,opcit,p578



has a duty to warn the victim or affirmatively control the child's behavior<sup>84</sup>.

The view of those<sup>85</sup> who consider the mere parental relationship as a basis for supporting the parent's affirmative duty of control and thus suppose the establish of vicarious liability is easy, could not be Justified<sup>86</sup>. The arguments put forward in *Gissen v. Goodwill and Snow v. Nelson* cases, also proves this claim. Under the Florida Supreme Court's opinion in *Gissen v. Goodwill*, "liability may be incurred through negligent supervision, when parents fail in their duty to "exercise parental control over [a] child although. . . [they know] or in the exercise of due care should have known that injury to another is a probable consequence [of such failure]"<sup>87</sup>.

At common law and under *Section 316* of the *Restatement (Second)*, although "man's home is his castle"<sup>88</sup>, but The absolute duty of monitoring children's behavior, for example through discussion with child and forbid the child from engaging in the infringing activity, is not imposed on him.

#### 4.2. Financial Benefit

The other condition for the fulfillment of vicarious responsibility is to obtain financial benefit from direct infringement. According to the Court of Appeals, 9th Circuit decision in *Ellison v. Robertson*, establishment of financial benefit requirement is subject to the finding of causal relationship between infringing activity and financial benefit<sup>89</sup>. Where such a relationship is not

established, the vicarious liability would not formed. accordingly, where a collegiate group displayed a copyrighted film in its college, since, the university, didn't acquire any financial benefit from displaying the film, didn't held vicariously liable<sup>90</sup>. Financial benefit in the copyright infringement, can be acquire from underlying infringement, directly or indirectly<sup>91</sup>. In the *Davis v. E.I.DuPont De Nemours & Co*, the Southern District Court of New York, increasing in TV sponsor revenue raised by copyright infringement, considered as financial benefit to founding the vicarious copyright liability<sup>92</sup>. In the *Fonovisa, Inc. v. Cherry Auction, Inc*, the 9th Circuit, Court of Appeals, also recognized the indirect increase of the financial revenue of the swap market operator, to impose a vicarious liability on him, due to a copyright infringement by market vendors<sup>93</sup>.

In any event, it would seem necessary to increase the financial interest of the plaintiff in the case of vicarious copyright litigation. Accordingly, if the occurrence of an indirect violation does not lead to any increase in interest for the reader, then no liability will be fulfilled. For example, accordingly, if direct infringement, do not lead to any increase in profits for defendant, then no vicarious liability will be fulfilled. For example, in *Freemont v Aeolian Co*, the court finding no liability where the defendant received no profits from performances other than hall rental fees<sup>94</sup>. The question is whether there is possibility of establishing financial benefit standard as to parents in the case of child copyright infringement?

Child copyright infringement, seems to have no benefit to their parents, and if there are any benefit in this regard, it would be for the child alone. For example, when a child shares or downloads copyrighted music in his room and through a computer connected to the Internet, this may only be done for entertainment, and even he does not receive any financial benefit. However, some believe that the financial benefit of the parents in such a situation, is due to non-payment to the purchase of his child's favorite music<sup>95</sup>. This analysis does not seem to be

<sup>84</sup> See: Andrew C Gratz, opcit, pp180-190

<sup>85</sup> See: Janelle A Weber, opcit, pp1175-1176

<sup>86</sup> It seems responsibility arising under the application of Article 316, isn't vicarious and Does not conform with specific meaning of vicarious copyright liability, because It seems that section 316, seeks to establish and define the legal duty of parents to control the conduct of their children Breaking this task is nothing but a negligence, while, the vicarious liability in its specic meaning, is liability without fault or negligence this is because of under negligent supervision theory, parents incur joint and several liability for their own negligence in failing to exercise their duty to control the conduct of their child: in *Bankert v Threshermen's Mut Ins Co*, 329 NW2d 150, 153 (Wis 1983) Court stated that Negligent supervision may result from "failure to exercise ordinary care in allowing the instrumentality to be in the hands of a child," or from failure to give proper instruction or to warn of the hazards associated with its use For more detailed discussion in this respect see: Rhonda V Magee, *The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims' Voices in the Debate Over Expanded Parental Liability*, *Temple Law Review*, Vol 75, No 3, 2002, pp389-395 also some commentators argues that " If the reason for vicarious liability is that the employer should be held liable because she committed some fault (such as failing to supervise, foster a proper environment or select appropriately) then liability is not vicarious but rather a particular application of the fault regime See: JW Neyers, *A Theory of Vicarious Liability*, *Alberta Law Review*, 43(2), 2005, p294

<sup>87</sup> *Gissen v Goodwill*, 80 So 2d 701, 705 (Fla 1955) At:703

<sup>88</sup> See *Minnesota v Carter*, 525 US 83, 99-100 (1998) (Kennedy, J, concurring) (discussing the historical origins of this axiom in the context of the Fourth Amendment)( Quoted by Janelle A Weber, opcit, p1175, note 83)

<sup>89</sup> *2 Ellison v Robertson*, 357 F3d 1072, 1079 (9th Cir 2004)

<sup>90</sup> *Roy Export Establishment Co v Trustees of Columbia University*, 344 FSupp 1350 (SDNY 1972)

<sup>91</sup> See Mark Batholomew and John Tehranian, *The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law*, 21 *Berkeley Tech LJ*, 2006, pp 1174-77

<sup>92</sup> *Davis v EIDuPont De Nemours & Co*, 240 F Supp 612 (SDNY 1965)

<sup>93</sup> *Fonovisa, Inc v Cherry Auction, Inc*, 76 F 3d 259 - Court of Appeals, 9th Circuit 1996

<sup>94</sup> *Freemont v Aeolian Co*, 254 F 592, 593 (SD NY 1918)

<sup>95</sup> Mark Zuckerman & Devon Bush, *Memorandum: Parental Liability for Copyright Infringement by Child*, *Electronic Frontier Foundation*, Oct 24, 2003

accept because parents usually does not buy all the music for its child, and maybe exist music that the child downloaded without permission and while would never be bought by her parents<sup>96</sup>. Therefore, it is difficult to establishing the financial benefit requirement in the context of the responsibility of parents. In other words, copyright infringement by children which often occur in internet, do not have any direct or indirect benefits for their parents and do not increase their income. Therefore, imposition of responsibility on parents also would face with problem in this regard. Even those commentators who find it possible to meet the control standard in the case of vicarious parental liability, have made it doubtful whether parents would benefit from copyright infringement by children<sup>97</sup>.

## 5. EVALUATION AND REVIEW

Considering strict nature of vicarious liability, it is likely that Parents' incentives to control the behavior of their children would decrease, since parents will have the incentive to monitor the behavior of the children if the responsibility of them, be based on the fault or negligence. In the case of restrict responsibility, since parents are, in any case, responsible for portion of the damages, there is no incentive to exercise more supervision over the behavior of the children. even Some commentators, consider parents' liability for child's copyright infringement, as ineffective, inefficient, and legally vague tool<sup>98</sup>. Because, for example, it is unclear how much parental care and control can relieve them from bearing responsibility. Moreover, the specific conditions of the Internet environment, which the probability of control in it is differ from other medias and palaces, adds to this ambiguity. In addition, controlling and limiting the activity of children in the Internet space, may be inconsistent with the principle of freedom of expression contained in the first amendment of the US Constitution, since the first amendment of the US constitution prohibits the government from adopting acts that restrict people's freedom of expression<sup>99</sup>. These uncertainties have led some commentators

propose the removing any strict liability, including parental vicarious responsibility, for the copyright infringement by children in the Internet<sup>100</sup>. Because imposition of liability in such a situation is justified only on when considering its basis that is, encouraging parents to take better control of children and reduce the child's mistakes, be done. imposition of vicarious parental responsibility, does not provide any of these bases, and therefore, will be inefficient and ineffective<sup>101</sup>. Moreover, the realization of corrective justice by imposing parental responsibility on parents is also uncertain, since the parent's financial solvency is not always decisive in order to compensate for the loss.

## 6. STATES PARENTAL LIABILITY STATUTES

The difficulties of holding parents liable for the torts of their minor children under the common law led to the passage of state parental responsibility statutes<sup>102</sup>. "Dissatisfaction with the common law rule, which often leaves the injured party with a worthless action against an insolvent minor, has been frequently manifested by circumvention by the courts of the rule through dubiously founded agency relationships, and at times through strained application of the "foresee ability" rule in order to find that some negligent act on the parent's part is the proximate cause of the injury. It seems that as a result of this apparent judicially expressed dissatisfaction, which in reality is an expression of the thoughts of modern society, and as a result of the increased incidents of juvenile vandalism, a large number of states, particularly in very recent years, have enacted parental liability statutes<sup>103</sup>." Subsequent to imposition of control duty on parents by section, 316 of the restatement (second) of torts, the various States of the United States, referring to this section, passed the laws on the liability of parents for damages caused by children<sup>104</sup>. Among these, the states of New Jersey, Georgia,<sup>105</sup> Louisiana<sup>106</sup> and Hawaii have, as the case may be, the most severe type of parental liability, with the imposition of parental responsibility for deliberate and negligently wrongs, or without setting a Maximum

<sup>96</sup>Horowitz, opcit, p13

<sup>97</sup>weber, opcit, p1177

<sup>98</sup>Brooks Suzukamo, Music Industry Lawsuits Creating Confusion, ST PAUL PIONEER PRESS, Sept 13, 2003, at 1A, Alex Veiga, It Could Be Hard to Sue Parents for Song Swaps, SEATTLE POST-INTELL, Sept 13, 2003, available at: [http://seattlepinwsources.com/business/139406\\_download13html](http://seattlepinwsources.com/business/139406_download13html); Leslie

<sup>99</sup>of course, The Supreme Court in 1979, held that the rights of children differ from those of adults: We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing See: Bellotti v Baird, 443 US 622, 634 (1979)

<sup>100</sup>Tomaszewski L. Amy, »From Columbine to Kazaa: Parental Liability in a New World«, Vol2005, No2, U Ill L Rev ,2005, pp597-598

<sup>101</sup>See: Ibid

<sup>102</sup>Michael A Axel, opcit, p559

<sup>103</sup>General Insurance Company of America v Faulkner, 130 SE 2d 645 - NC: Supreme Court of North Carolina, at 648

<sup>104</sup>Gratz, opcit, p190

<sup>105</sup>OCGA 51-2-2 (2010) (Every person shall be liable for torts committed by his wife, his child, or his servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily)

<sup>106</sup>LSA-C C Art 2318: (The father and the mother are responsible for the damage occasioned by their minor child...)

amount of responsibility<sup>107</sup>. Basically, these statutes are general and can involve any kind of property, including intellectual property<sup>108</sup>. State laws, with imposition of a strict responsibility on parents, provided tools to ensure that the losers can at least compensate for the some damage they incurred<sup>109</sup>. though, according to section 301 of the copyright law on the federal Preemption, there are concerns about the possibility of exercising vicarious parental liability statutes to copyright infringement by children, but some authors, by analyzing the debate, have confirmed it<sup>110</sup>. In contrast, "Law and internet experts such as Jonathan Zittrain and Fred von Lohmann assured parents that, in general, they could not be held responsible for "any unauthorized swapping of songs online by their underage children." The problem, they observed, is that although minors can be sued for copyright infringement, the child's lack of assets and income would hinder a plaintiff's ability to recover. And, because many states do not hold parents liable for the copyright violations of their children, "[c]opyright infringement cases levied against parents for something their child did are rare . . . . It is legally very uncertain and untested." Other commentators, attempting to apply current parent liability laws, found them ineffective where a child shares music over the internet because it is too difficult to pin down responsibility short of strict or vicarious liability—as with parental liability for the violent acts of children<sup>111</sup>."

Acknowledging the Consistency of such a responsibility with common law principles, some commentators, consider it to be compliant to social welfare too. According to this view, imposing vicarious copyright liability on parents, would create a greater incentive to them for monitoring the child's behavior and thus, children's copyright infringement will be reduced, especially in the Internet<sup>112</sup>.

In this regard, some commentators, have supported the development of parental responsibility in various ways in order to establishing the corrective justice;<sup>113</sup>

others recommend tightening up the current rules,<sup>114</sup> and others, have determined that passing new criminal rules in this respect is Sui<sup>115</sup>.

therefore, in spite of the general rule in the US legal system, under which in the case of establishing the control of one person over another, with acquisition of financial benefit for the observer, the vicarious liability of observer is realized, various US states have passed statutes under which, Parents, according to the terms of these statutes, could be held responsible for compensating damages caused by their children.

## 7. FOUNDATIONS OF STATE PARENTAL LIABILITY STATUS

The two central purposes of the statutory duty are (1) to provide more reliable sources of compensation to tort victims by spreading losses among a greater number of individuals and their insurers, and (2) to deter tortious juvenile acts by encouraging modification of parental behavior toward the taking of "precautionary action." These statutes are advantageous to plaintiffs to the extent that they obviate the difficulties associated with establishing a legal duty of control under the common law<sup>116</sup>.

### 7.1. Least Cost Prevention and Deterrence Rational

Some commentators, designing an analogy between the status of master- servant, and the injured third party, and the parent- child, and injured third party, argues that one of the foundations of parental responsibility is considered to be the Least Cost Prevention<sup>117</sup>. The aim of least cost prevention is to determine on which party to impose liability so as to minimize overall costs<sup>118</sup>. In master-servant pattern, party that termed as "least cost preventor," is usually the master. the master usually knows more about the business and its attendant risks than do either the servant or the third party. As among all three parties, therefore, the master usually can best take precautionary measures against the servant's tortious activities. Similarly, as between the parent, child, and injured third party, the parent usually can best take precautions against the child's tortious behavior<sup>119</sup>.

<sup>107</sup>Magee Andrews, opcit, p401

<sup>108</sup>See eg 2011 Louisiana Laws Civil Code CC 2318 — Acts of a minor: ( The father and the mother are responsible for the damage occasioned by their minor child, who resides with them or who has been placed by them under the care of other persons, reserving to them recourse against those persons...) (Except as provided in section 2 of this chapter, a parent is liable ... or damage to property if: (1) the parent has custody of the child;and (2) the child is living with the parent)

<sup>109</sup>See: L Wayne Scott, opcit,pp77 and 87-91

<sup>110</sup>Weber, opcit,p1193

<sup>111</sup>See: Amy L Tomaszewski,opcit,pp593-594

<sup>112</sup>Ibid,p 1194

<sup>113</sup>Magee Andrews, opcit, p 442

<sup>114</sup>Gratz, opcit,pp199-200

<sup>115</sup>Christine T Greenwood, Holding Parents Crimi edunally Responsible for the Delinquent Acts of Their Children: Reasoned Response or "Knee-Jerk Reaction"? ,23 J CONTEMP L,1997,pp436-37

<sup>116</sup>Kimberly Lionel King,opcit,p940

<sup>117</sup>Michael A Axel,opcit,p561

<sup>118</sup>James, *Vicarious Liability*, 28 TUL L REv 161, 163 (1954),p163 ( quoted by ibid)

<sup>119</sup>See: Michael A Axel,opcit,p561

Master- servant relationship and parent child relationship also have a basic difference that requires different considerations. While a most important rationales of vicarious liability in enterprise setting<sup>120</sup> and parental liability statutes,<sup>121</sup> is the compensation to injured parties. This occur by shifting the liability for the loss to the employer who presumed solvent, since master is who active in commercial field with optimal income and thus hid pockets is deeper than servants. As Robert Flannigan argues: "Generally speaking, an employer will be richer ... than the workers he employs, whether they are servants or independent contractors"<sup>122</sup>. Business principals frequently incur civil liability for the wrongs of their agents<sup>123</sup>. Bau in parental case, don't exist such a presumption since may be the parents also insolvent along with her children. for example, where parents are servant with low income, unlike a master, solvency of them is dubious. Therefore, it cannot be said with certainty that vicarious parental liability, will lead to compensation for the loss suffered by victims. Even in the case of master-servant has been said that if the concern is "effective compensation" as opposed merely to "possible compensation," the government, in most cases, has deeper pockets than any employer<sup>124</sup>.

Albeit under parental responsibility statutes, also, full compensation cannot be obtained since recoverable damages are limited in these statutes<sup>125</sup>.

## 7.2. Application of the Rule to The Vicarious Copyright Parental Liability in syber space Infringements

Rational of imposition of liability on master is that usually hi knows more about the business and its attendant risks than do either the servant or the third party. It is unlikely that this rational exists in the case of copyright infringement by child in internet. When a child downloads infringing musics behind the closed doors of his room, how can one claim that his parents know

more about internet, download or risks of them than owner of music or child. Here, at least where parents do not have computer knowledge, this claim cannot be accepted and, accordingly, imposes a vicarious responsibility on parents. Since in these cases, parents don't have any computer knowledge, thus have not superior knowledge of the child and the child's propensities. In addition, the frequency of illegal downloading and sharing of music on the Internet in the current era, by adults and childs, is so high that it's obvious to everyone, including music owners, that this vulnerability exists, and therefore the owners of the works cannot be supposed ignorant of it.

Also, in this case, the application of this theory, will not result in motivating parents to take precautionary measures because the assumption of Least cost prevention theory is that the master can exercise a right of control over the servant Without an exercisable right of control, precautionary measures will not be encouraged because absent such a right, the master cannot be certain that precautionary measures will not be vitiated by the servant's deviations from the assigned duties. On the other words, the inability to exercise practical control over the behavior of children by parents would frustrate the deterrent effect of applying this theory in in the parent child setting.

Additionally, the nature of the parent- child relationship, has a fundamental difference with the master- servant relationship since servant is financially dependent on the master, which results in the absolute obedience from servant. In other words, Disobedience of servant from master due to the fear of servant from issues such as dismissal ... is almost Unlikely. Employers can often take measures to influence employee behavior through discipline at work or through the ultimate penalty of dismissal<sup>126</sup>.

Hierarchy and delegation are so pervasive in modern business relationships that a staggering number of legal disputes directly or indirectly involve rules of vicarious liability<sup>127</sup>. but the parent -child relationship a combination of financial and non-financial issues that may result in Disobedience of childs from parents in some cases, since punishment of the child's Disobedience from parents, because of the emotional relationship between them, as case of master- servant relationship, is not hard and decisive. Hence, the

<sup>120</sup>See: Rex B Stratton III, Joint Adventure or Joint Enterprise—Two Theories of Vicarious Liability, 30 Mont L Rev (1968),p83, Alan O Sykes, The Economics of Vicarious Liability, 93 Yale LJ 1231 (1984),p1240<sup>120</sup>ibid,p1231, George L Priest, The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law, 14 J Legal Study, 1985,p463, JW NEYERS in his work, lays out the central features of the doctrine of vicarious liability and examines why the leading rationales (such as control, compensation, deterrence, loss-spreading, enterprise liability and mixed policy) fail to explain or account for its doctrinal rulessee: JW Neyers, opcit,pp292-300

<sup>121</sup>See: Michael A Axel,opcit,pp574-579

<sup>122</sup>Robert Flannigan, "Enterprise Control: The Servant-Independent Contractor Distinction" (1987) 37 UTLJ 25,p28

<sup>123</sup>JW Neyers,opcit,p293 see also: PS Atiyah, Vicarious Liability in the Law of Torts (London: Butterworths, 1967,p22

<sup>124</sup>see: Michael A Axel,opcit,p575

<sup>125</sup>JW Neyers,opcit,p295

<sup>126</sup>Alan O Sykes,opcit,p1231

<sup>127</sup>Corley v Lewless 227 Ga 745, 182 SE2d 766 (1971)

comparison of these two relationships does not seem to be correct, and therefore exercisability of right of control from parents compare with master- servant relationship, strongly challenged. As Georgia court has been said the control a parent has over his child is not absolute, and that no amount of effort on the part of the parent will guarantee a good result<sup>128</sup>.

### 7.3. Enterprise Liability and loss Spreading Rationale

Another leading explanation of vicarious liability is that of loss-spreading, namely that in fixing liability on the employer, the burden of the injury will be spread out among his customers and insurers<sup>129</sup>. In the business setting, the master can spread the loss by allocating it between multiple owners, obtaining insurance, increasing the price of its product, or obtaining lower factor input costs<sup>130</sup>. The same rational has been asserted<sup>131</sup> to parent-child setting while it seems that for some reasons, this assertion wouldn't justified. Although, two rational- Enterprise liability and loss spreading, separately has mentioned as economic rationales of vicarious liability<sup>132</sup>, but since the basic criterion for both is commercial activity of master, it could be said that loss spreading occur when there is a Enterprise with commercial context<sup>133</sup>. Where parents do not benefit from a child's copyright infringement, notion of Enterprise don't exist, therefore loss spreading would not occur<sup>134</sup>. "Enterprise liability" means that losses should be borne by the doer<sup>135</sup>. The basic philosophy of such legislation is that loss from these accidents is a cost of the enterprises that entail them, and should be borne by the enterprises or their beneficiaries<sup>136</sup>. Since parents don't engage in

commercial activity in family realm, accordingly don't have any income which upon it insure liability<sup>137</sup> arising out of children's act<sup>138</sup>. Also, even common law individualism principles,<sup>139</sup> couldn't deny that children are dependent to parents financially. In other words, pocket of parents and their Childs are same. Thus, when parents are forced to pay for damages caused by them, it couldn't be said that, loss has been spreader between multiple units. Furthermore, parents due to not having costumer,<sup>140</sup> could not thereupon, spread losses by increasing the price of its product, or obtaining lower factor input costs.

### 7.4. Other Bases: Analytical Review

With respect to foundations of vicarious parental or restrict liability of parents, commentators, legislators and courts, have recognized some other rationales for such a liability. compensating tort victims; 2) controlling child vandalism; 3) preventing personal injury and 4) providing relief beyond common law remedies, are rationales which whom has been stated by commentators.

stated purposes can be either general, highly specific, or multifaceted, under legislations statements. for example, under The Georgia statute, the purpose is "to provide for the public welfare and aid in the control of juvenile delinquency, *not* to provide restorative compensation to victims of injurious or tortious conduct by children."

According to The Mississippi parental responsibility statute the purpose of the act is to "authorize recovery from parents in situations where they are not otherwise liable *and to limit the amount of recovery.*" And the Nevada statute has been passed to hold parents liable for their minors' willful misconduct, while limiting that liability.

In some acts such as NewYork parental responsibility act, purposes of parental responsibility statute are multiple. decreasing vandalism against

<sup>128</sup>JW Neyers,opcit,p296 and note 49 and accompanied text

<sup>129</sup>Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE LJ,pp543-544

<sup>130</sup>Michael A Axel,opcit,pp563-564

<sup>131</sup>See:ibid,pp561-563, JW Neyers, opcit,pp296-298

<sup>132</sup>Guido Calabresi says that: " A statement of this kind is generally followed by an additional one which implies that the enterprise can pass the loss on to the consumers in price rises, and that therefore enter prise liability is really a form of "risk spreading" ( see: Guido Calabresi,opcit,pp500-501, see also: William O Douglas ,Vicarious Liability and Administration of Risk, 38 Yale Law Journal (1929),p586

<sup>133</sup>unlikethid, some says that " Although tort liability may be imposed on a minor child, shock reduction loss spreading reallocates the loss resulting from a child's tort from the victim to the child's parents, often spreading the costs between two parents instead of imposing costs on one child" (see: Michael A Axel,opcit,p563)

<sup>134</sup>see: Calabresi, Guido,opcit,p500,see also: Social Insurance and Tort Liability: The Problem of Alternative Remedies, 27 NYUL Rev 537 (1952),p538

<sup>135</sup>Fowler Vincent Harper, Fleming James, The law of torts,vol 2, Little, Brown, 1956,p731

<sup>136</sup>in Becker v Interstate Properties, the court said "liability insurance... viewed as a normal cost of doing business in the construction industry" ( see: Becker v Interstate Properties, 569 F 2d 1203 - Court of Appeals, 3rd Circuit 1977,at: 1208), even some opinions, beyond the paent child cases, has challenged the loss-spreading assumption with vicarious liability mechanism See: Hollis v

Vabu Pty Ltd (2001), 207 CLR 21, [2001]HCA 44, at paras 115-17, Guido Calabresi,opcit,pp551-553

<sup>137</sup>Parents don't have economic relations which enables them to spread losses This fact couold be inferred from Morris who states" [A]ll that can be said is that entrepreneurs probably bear part of it themselves, they spread part of it to their employees, creditors, suppliers and customers, and the members of each of these groups spread it ... to those with whom they have important economic relations" ( see: CR Morris , ' Enterprise Liability and the Actuarial Process — The Insignificance of Foresight ' ( 1961 ) 70 Yale Law Journal 554, 586 )

<sup>138</sup>See more: See Stone, Liability for Damage Caused by Minors: A Comparative Study, 5 ALA L REV 1, 6 (1952)

<sup>139</sup>Just as case in which employer of a domestic servant is vicariously liable for her employee's torts even though this cannot be spread through a customer base and regardless of insurance (JW NEYERS,opcit,p297)

<sup>140</sup>NY GEN OBLIG LAW § 3-112 (McKinney Supp 1981)

public property, creation of meaningful recourse for injured parties, compelling parents to supervise their children more closely and develop the child's respect for the property of others<sup>141</sup>, are which described as purposes of NewYork parental responsibility statute.

Many courts, also Along with legislators, have seen the parental responsibility statutes as a tool for deterrence for juvenile delinquency.

As stated, expressly by some legislators, compensation isn't the primary basis of the statutes. Liability limiting also show that this rational isn't a primary purpose in this respect. As seen abobe, some statutes such as Mississippi and Nevada parental responsibility statutes, in fact hasn't been shown rationales behind the statutes but they simply stated the explicit words of the statutes as purpose. Therefore, it couldn't be said that authorize recovery from parents... or holding parents liable for their minors' willful misconduct, are purposes behind the Mississippi and Nevada parental responsibility statutes.

Therefore, it seems the view that identify multiple purposes these statutes, to be more correct. As some legislators have pointed out, the purpose is "to provide for the public welfare and aid in the control of juvenile delinquency". As John V. O'Connor has been said " Many states have currently passed parental liability statutes that find their origin, not in the common law, but in the legislatures' attempts to curb the rising rate of juvenile delinquency and the resulting increase in property damage<sup>142</sup> .

These statutes have been seen as policy tools which could manage some part of law purposes. Therefore, basic rationales of these statutes areprovided for the public welfare by compelling parents to supervise their children more closely for decreasing vandalism against public property and develop the child's respect for the property of others. infect, The prime motivating force behind the legislatures passing these parental liability statutes is the belief that juvenile delinquency is the result of laxness on the part of the parents and that the parents will take a more active role in raising their children if they know they can be found liable for the torts of their offspring<sup>143</sup> .

Finally, as has been deduce from Connecticut's 1955 statute, it could be said that "The primary purpose was to curb juvenile delinquency, particularly vandalism, by using the law as an economic club to force parents to act more responsibly in their child rearing practices<sup>144</sup>".

## 8. GENERAL CONSIDERATIONS

According to the general rule in common law, parents are not responsible for the wrongs of their children based on mere parental relationship. Except in exceptional cases, liability is based on the fault. in the cases which fault of parents established under their consent, confirmation, they are responsible for their own fault. at common law there are no vicarious or strict liability for parents but with regard to the offenses committed by children at the community, the United States passed laws for the vicarious parental liability. The study of the various foundations of this kind of responsibility at f doctrine, Judicial Decisions, and legislating level shows that these rules have essentially been attempted to comply with the common law rules and the requirements of social and economic interests. Features such as limiting the maximum amount of compensation, the custody and control of parents on the children, demonstrate the exceptional nature of these laws and their coherency to the principles of common law rules. On the other hand, the motivational and deterrent aspect of these laws indicates the importance of these rules to their role in regulating parent's behavior in order to preserve the ownership of individuals and promote social welfare. Therefore, in interpreting and developing the parental responsibility, consideration to these bases is also required. Particularly in the area of vicarious copyright infringement by children who are subject to certain limitations in federal court proceedings and these restrictions face serious challenges in the Internet and digital context.

## 9. ANALYZING THE SUBJECT WITH RESPECT TO INTERNET AND DIGITAL ENVIRONMENT

Copyright infringement by children, often occur in the Internet and digital environment; children using the Internet to unauthorizedly download music and videos or share copyrighted music and videos. The imposition

<sup>141</sup> John V O'Connor, Torts: The COinstitutional Validity of Parental Liability,55 (3) Marquette Law Review, 1972,p586

<sup>142</sup>Ibid,p586-587

<sup>143</sup>See: Gilbert Geis & Arnold Binder, Sins of Their Children: Parental Responsibility for Juvenile Delinquency, 5 Notre Dame JL Ethics & Pub Pol'y

303 (1991),p316, see also: Emogene C Wilhelm, Note, *Vicarious Parental Liability In Connecticut: Is It Effective?* 7 University of Bridgeport Law Review 99 (1986),p111

<sup>144</sup>See: Michael A Axel,opcit,p575

of responsibility on children for copyright infringement, does not provide copyright holders with proper compensation because children do not have financial resources to compensate for the damage.

The key question is that whether could by expanding vicarious liability embodied in parental liability statutes, held parents liable for copyright damages caused by their children while they have not any fault? In other words, is it possible to impose a vicarious liability on parents for children's copyright infringement?

In the foregoing, it was found that the two main conditions for the vicarious liability of copyright infringement- the possibility and ability to control the direct infringement and the acquisition of financial benefit from copyright infringement, in the case of relationship between parents and children who using the Internet, infringe the and copyright, is not established. So, relying on the failure to meet these two conditions, it can be answered negatively to the above question. From other perspectives, there is the possibility of responding negatively to this question, especially by relying on the various grounds for statutory parental responsibility.

One of the foundations for these statutes is the fight against child vandalism<sup>145</sup>, while downloading or music and video file sharing by children cannot be interpreted in the vandalism context. fighting with vandalism is the main objective of the laws that only deals with damage to property committed by children<sup>146</sup>, With a expand interpretation, it is possible to develop the word of "property" to involve intellectual property, including copyrights, but whether downloading or sharing music and movies through the Internet by children can be considered as an example of vandalism.

Vandalism in the word means Willful or ignorant destruction of public or private property, esp. of artistic, architectural, or literary treasures., which is done only with purpose of destruction<sup>147</sup>. It should now be seen whether the unauthorized downloading or sharing of literary and artistic works by children is Hostilely and aimed at destruction of other's property?

Obviously, in most cases, these acts are carried out by children, not for the purpose of another's property

destruction, but for the sake of pleasure and for reasons such as lack of knowledge of copyright, financial and cultural poverty, and so on. The results of some studies have shown that even among adults, the culture of respect for intellectual rights has not yet been established and, in many cases, copyright infringement occur due to the lack of knowledge to the intellectual property rights. This is so to some extent that in a test, when put a music on a website and stipulated that it should not be downloaded without the permission of the right holder, after downloading without the permission of the work by a person, the participants in the test, was asked whether the right holder, deserves to receive compensation or not, in response, although 59 percent said they deserved, 31 percent didn't him entitled to compensation and 10 percent did not respond<sup>148</sup>.

Therefore, in such a situation, copyright infringement by children, could not be considered as one instances of vandalism, and thereupon incentivizing parents to control the children in this regard, would be discarded. since maybe parents also haven't the knowledge of copyright or haven't the belief to protect it. In other words, it seems that downloading and sharing music and videos in the Internet and digital media, seems legal and legitimate from the point of view of children and even their parents.

Regarding the purpose of compensation, the imposition of vicarious liability e on parents in the case of copyright infringement by children by means of Internet and digital environment, could not provide such a goal because a child may download or share dozens of movies and music illegally. Obviously, even with the limitation of maximum amount of compensation, the amount of damages would still be great due to the vast number of infringements, in which case, the parents' ability to compensate is also highly skeptical and it could not be said that the parents essentially have ability to compensate for such damage.

Parents, in addition to the duty of supervising on children, have other obligations to the family and its members, which performing these, may Seriously challenge the duty of monitoring on children.<sup>149</sup>

For example, imposing the task of control on poor parents who are forced to spend many hours for hob

<sup>145</sup>Note, *The Iowa Parental Responsibility Act*, 55 Iowa L REV 1037, 1970, p1037

<sup>146</sup>See Black's Law Dictionary, 8th ed (St Paul, Minn: West Group, 2007, p4818

<sup>147</sup>See *ibid*, p280

<sup>148</sup>See: Jason Emiliós Dimitris, Comment, Comment, Parental Responsibility Statutes and the Programs that Must Accompany Them, 27 Stetson Law Review, 1997, p685

<sup>149</sup>See: *ibid*, p675

outside their home for a livelihood, does not seem logical, since imposing this task equals with losing the parent's job<sup>150</sup>.

It seems that, the assumption embodied in parental liability statutes, which bases on parents have ability to influence the children's behavior,<sup>151</sup> could not be extended to the case in which children commit copyright infringement in the Internet and digital environment. Because this assumption seems to be about the traditional and physical environment, which is likely to assume such influence and power for parents, but in the digital and Internet environment, indeed, assuming such an influence and power, seems too hard.

Therefore, it could be concluded that the imposition of vicarious parental liability for copyright infringement by children, especially committed in digital and Internet environment, is not consistent with the goals and grounds for state parental liability statutes and would lead to undesirable consequences.

## 10. CONSEQUENCES OF IMPOSING STRICT VICARIOUS PARENTAL LIABILITY IN COPYRIGHT INFRINGEMENT CASES

As stated, the underlying principles of parental liability statutes are a combination of different bases, most notably preventing child offenses by motivating parents to take care of them more in order to promote social welfare and protect the property of individuals. In the court opinions, the prevention of the occurrence of offence by the children is mentioned as the most important goal in these statutes. It seems that, imposition of strict and vicarious liability on parents for copyright infringements by children in the Internet and digital media, not only is not compatible with these goals, but also conflicts with other areas, including family law issues.

### 10.1. Strict and Vicarious Liability and Deterrence

One of the main grounds for imposing vicarious and strict responsibility on parents, is to motivate parents to control and care more of their children in order to prevent them from committing an offense.<sup>152</sup> Conflict

here is formed, because such an incentive, would only be formed in the parents, that if they would be sure that they will succeed in preventing violations if they have more control and care, otherwise they would not encourage.<sup>153</sup> In addition, the parent's power and the ability to control the children, is also a prerequisite for motivation with respect to its subject. Where parents do not essentially have such a power, and even assuming application of reasonable control over children, they could not be able to prevent them, speaking about motivation would be Nonsense.

It seems that the case of the occurrence of copyright infringement by children in the Internet and digital environment, is the It is one of these instances. On the other hand, we know that parent's authority and domination over children, are not complete and absolute and therefore, it cannot be expected that parents, even assuming control over the behavior of children in this environment, can truly prevent copyright infringements. In this case, parents prefer to afford limited damages embodied in parental liability statutes, instead of bearing costs of control the children on the internet<sup>154</sup>.

Of course, if the parents are poor, there will be no deterrence and not even limited damages. That is, copyright infringement will occur without any hindrance, and due to the poverty of the parents, the right holder would be deprived from those limited damages also<sup>155</sup>.

### 10.2. Strict and Vicarious Liability and Protection of Personal and Public Property

Another major goals of parental liability statutes, is the protection from personal and public property and No harm to others.<sup>156</sup> It would seem that, imposition of vicarious liability on parents, also not compatible with this basis. As stated above, the imposition of vicarious parental liability, takes the incentive to take control over children from the parent, so it may increase child's copyright infringement. This is true in either case, whether in the case of solvent parent or poor one. With the difference that in the case of a solvent parents, the right holder, would benefit from limited

<sup>150</sup>See Naomi R Cahn, Pragmatic Questions About Parental Liability Statutes, 1996 WIS L REV 399,p410

<sup>151</sup>See: Comment, *Parental Liability for a Child's Tortious Acts*, 81 DICK L REv755, (1977),p762

<sup>152</sup>As Prescott and Kundin have noted: " It has not been conclusively shown that these acts encourage greater parental supervision of children, thereby reducing the number of juvenile crimes..."see: Prescott &Kundin, *Toward a*

*Model Parental Liability Act*, 20 CAL WL REV 187, (1984),p216

<sup>153</sup>In this case, the possibility of full compensation for the loss suffered will be ruled out

<sup>154</sup>Obviously, due to the poverty of the parents, to get insurance policy by them, is also ruled out, and consequently, here, loss distribution could not be the basis of liability

<sup>155</sup>Comment, *Parental Liability for a Child's Tortious Acts*, 81 DICK L REV 755, 760 (1977),p762

<sup>156</sup>for example: g, HAWAII REV STAT § 577-3 (1976); see Rathburn v Kaio, 23 Hawaii 541, 544(1916)



compensation,<sup>157</sup> but in the case of parental poverty, even, he would be deprived from this limited compensation. Therefore, the strict and vicarious liability of parents for the infringement of copyright by children, could not provide the goal of protecting from property. This Disadvantage is so important because copyright, unlike physical assets, has public welfare characteristics<sup>158</sup> and damage to it, in any case would impact the Society This, in turn, can lead to a decrease in the level of public welfare, since copyright as one of the main examples of the intellectual property rights system, plays a major role in promoting social welfare<sup>159</sup>.

### 10.3. Vicarious Liability and Conflict with the Goals of Family Law

The family is the most important social unit that plays a vital role in the lives of human societies. In all human systems, guardianship of the family unit is considered as one of the main elements of community protection. Children are born and raised in this environment, and it is obvious that parents as the head of the family pyramid and its management have a fundamental function in this unit. The duty of raising children in the family is on the parents. In addition to their financial responsibilities towards their children, they are bound to doing non-financial tasks and, in general, should provide appropriate conditions for the development of children in the family. Other legal tasks assigned to parents should be in line with these general responsibilities, in order not to endanger parents. The vicarious and strict responsibility of parents for copyright infringement by children, is to impose a duty that challenges parents to fulfill their other obligations to their families and children. For example, the imposition of vicarious liability on poor parents who are forced to spend many hours outside the home to provide Alimony of family, is not fair, since, with the assumption of paying damages personally or through the receipt of an insurance policy, they Will face serious challenges in fulfilling their other duties to the family.

### 10.4. Vicarious Liability and Conflicts with Social Support Programs

There are social support programs to improve the welfare of families and establish proper relationships between parents and children, which done this, in the form of holding different Educational Courses for parents and families<sup>160</sup>. Enjoying from benefits of such courses, requires attendance in these types of programs. Such a programs for parents, could play an important role in empowering parents to exercise more control on children and increase their skills to it Participation in these classes is possible if parents have the necessary incentive and conditions are available to them. It seems that the imposition of a vicarious parental responsibility would eliminate the incentive for parents to attend such programs, because when parents know that even if they participate in such programs, if their children commit copyright infringement, they will be held responsible, they would prefer not to be present in these programs, especially among poor parents, whose priority is to make money for livelihood for their families and children. In addition, imposing this kind of responsibility on parents, increases pressure on them and forces parents to work more in an out-of-home environment, which limits their chance of being present in social programs. The poor parents endure a lot of economic, social and psychological pressures, which limits the ability to control their children.<sup>161</sup>

Therefore, it can be said that the vicarious responsibility of parents is inconsistent with the goals and foundations of social support programs, while they must be consistent with and complement it. Parental responsibility will be effective when combined with these social programs.<sup>162</sup>

## 11. SOLUTIONS AND RECOMMENDATIONS

Given all of the above, parental liability for copyright infringement by children which are commonly found on the Internet and in the digital environment, should be bases on criterion which with adhering to the principles

<sup>157</sup>Anthony ,Mason, Public-Interest Objectives and the Law of Copyright , 9 J.L & Inf Sci 7 (1998) ,Jain, Dheeraj, Copyright and Public Interest (April 9, 2016) Available at SSRN: <https://ssrn.com/abstract=2761412>

<sup>158</sup>See: Christopher Buccafusco, Jonathan Masur, Intellectual Property Law and the Promotion of Welfare, University of Chicago Public Law & Legal Theory Paper Series, No 607 (2017), Okediji, Ruth Gana (1999) "Copyright and Public Welfare in Global Perspective," *Indiana Journal of Global Legal Studies*: Vol 7: Iss 1,

<sup>159</sup>K Seitzinger Hepburn, Families as Primary Partners in their Child's Development and school readiness, The Annie E Casey Foundation,2004

<sup>160</sup>Howard Davidson, *No Consequences — Re-examining Parental Responsibility Laws*, 7 STAN L & POL'Y REV 23, 23 ,1996,p24

<sup>161</sup>See: Jason Emiliios Dimitris,opcit,p656( he states that Properly written parental responsibility statutes can be efficient and effective tools to lower juvenile crime, as long as they are used in conjunction with social support programs...)

<sup>162</sup>It is worth noting that, although contributory liability is also established upon the fault element, but finding contributory liability, in addition to the fault, is subject to substantiality of assistance and omission would not be in line with this element( *Material Contribution to the Direct Infringement* see: *Livnat v Lavi*, No 96 CIV 4967 (RWS), 1998 WL 43221, at \*3 (SDNY Feb 2, 1993))

of common law, is consistent with the goals of parental liability and does not challenge other social goals. According to the principles of common law which responsibility is not found without fault, the criterion of the parent's fault could be the most efficient way to impose responsibility on them.<sup>163</sup> Undoubtedly, even the strongest emphasis on individualism and the principles of liberalism cannot undermine the role and status of the family unit and the link that exists between members of this unit although, parents could not exercise full control on child's behavior, but the primary assumption is that parents have the power and the ability to exercise supervision and control in their family and its member, especially their children<sup>164</sup>. This assumption, assumes another presumption which is, whenever Someone else is injured as a result of the behavior of the child, it is assumed that the parents did not use their powers to control the child's behavior or They did not try to do this (parent's fault).<sup>165</sup> But, contrary to the assumption contained in the parental liability statutes, which could not be prove Contrary of it, when parents can prove that they have tried their to control the child's behavior and prevent him from committing an tort, they should be Acquitted from responsibility.<sup>166</sup> In this context, parents' duty to try to control the child's behavior, would be judged upon a subjective and objective test, that is, That is, the personal status of the parents, is taken into account (subjective test) in the general context of the matter (objective test). since parents and families have different levels of literacy, financial and spiritual capabilities, and this difference would make difference in their status, in order to establish their fault. For

example, poor parents are faced with challenges in controlling the behavior of children, which these challenges, may not exist for solvent parents. In the area of copyright infringement, especially in the Internet and digital environment, parents' challenges are critical to control children's behavior, and it is clear that the proposed test can be of great help. Despite the fact that it is impossible to take full control on child's behavior by parents, there is no doubt that as much as parents try to control children's behavior, children's wrongs would reduce. The results of some scientific research also prove this claim<sup>167</sup>. Therefore, if parents have the incentive to more control over their children, they can reduce the copyright infringement by the controlling them in the Internet and digital environment. This incentive would create for parents if they Ensure that They would be absolved from responsibility if they would try to control the behavior of the children. Parental efforts in this respect, could be include participation in social support programs, purchasing and installing child control programs on the Internet, advising children on respect for others' intellectual rights, attempting to identify copyright and related rights, and so on. These efforts, not only, would reduce children's copyright infringement, but also promote the culture of respect for intellectual rights<sup>168</sup> at the family level, which could ultimately lead to an increase in social welfare in the case of parent's fault, since their fault is found upon subjective and objective test, it is assured that the owners of the works benefit from a fair compensation and that, in this case, the responsibility of the parents will be fair. Because the poverty and richness of parents, play a role in assessing their fault, so their fault would find if having adequate financial resources. In this case, it would seem fair to condemn parents to compensate more than the amount that has come under most parental liability statutes. This amount may not be less than the legal damage prescribed in the copyright law. Under section 504 of the Copyright Act, in the case of seeking statutory damages by claimant, the court will order at least \$ 750 for per infringed work and may increase it to \$ 30,000

<sup>163</sup>See: S Randall Humm, Comment, *Criminalizing Poor Parenting Skills as a Means to Contain Violence by and Against Children*, 139 U PA L REV 1123 (1991), p 1135 (citing *State v Hamilton*, 501 A2d 778, 779 (Del 1985), in which the court stated that in Delaware "statutes and the case law imposing liability presume the obvious, that in our culture, the parent of a child, with whom that child resides, has authority and control over the child") one commentator argue that: "parents can and do affect the behavior of their children A breach of the parental duty is established according to the actions or characteristics of the child The fact presumed is the parent's influence, or lack thereof, and the fact to be proven is the child's behavior or condition While the connection between the two is not always uniform, the presumption of the relationship is rational"(see: Jason Emilios Dimitris, *opcit*,p673)

<sup>164</sup>Naomi R Cahn, *Pragmatic Questions About Parental Liability Statutes*, WIS L REV 399, 1996, p 415

<sup>165</sup>this approach in consistent with states such as california CMD statutes under which The only parents who will be prosecuted are those who are unwilling to control their children...( See, eg, *Williams v Garcetti*, 853 P2d 507, 514 (Cal 1993) (stating that "a parent who makes reasonable efforts to control a child but is not actually able to do so does not breach the duty of control")

<sup>166</sup>Kentucky's CDM statute also offers a way for parents to escape liability if they make an attempt to control their child The commentary by the Kentucky Crime Commission suggests that "there must be a prior judicial finding of neglect, dependency or delinquency of the child" for a parent to be found liable( see: KY REV STAT ANN § 530060 (Banks-Baldwin 1997), cited by : Jason Emilios Dimitris,*opcit*,p667)

<sup>167</sup>see eg: Machteld Hoeve *et al*, *The Relationship Between Parenting and Delinquency: A Meta-analysis*, 37 J Abnorm Child Psychol,2009,pp749-755, see also: Gilbert Geis, Arnold Binder,*opcit*,pp315-321

<sup>168</sup>the purpose of the New York parental responsibility act, NY GEN OBLIG LAW § 3-112 (McKinney Supp 1981), has been variously described by the legislature to be to decrease vandalism against public property, to create a meaningful recourse for injured parties, to compel parents to supervise their children more closely and develop the child's respect for the property of others, see New York Legislative Annual (1977), at 178-79; New York Legislative Annual (1979), at 107

per item. Also, if the "intentional" infringement of the copyright is proven, the court will have the authority to increase the amount to \$ 150,000 per work<sup>169</sup>.

This test, while do not have the vicarious and strict responsibility deficiencies, in combining the basics and objectives of the parental responsibility for the child's behavior and the foundations of copyright, is successful.

## 12. CONCLUSION

The vicarious responsibility, means, the responsibility upon the mere parent-child relationship, not only is incompatible with the standards of copyright infringement liability in the court decisions, but also is not consistent with the general principles of liability in common law. Parent- child relationship has characteristics that do not allow full monitoring and control over the behavior of children, and in addition, parents do not profit from copyright infringement by children, which often occur in the Internet and digital environment. The expansion of strict responsibility against the parents, is also contrary to the principles and objectives of the parental liability statutes, while it is inconsistent with other principles, including the foundations of family law and social support programs. however, the protection of private and public rights, requires the parents to play a more role in controlling the behavior of their children, since studies show that parental efforts in this area will be fundamentally effective exercising the recommended standard for control of behavior of children, especially in the internet environment, makes parents an incentive to control the behavior of children, while at the same time, the owners of the rights will be sure of a desirable source to compensate for their losses. This criterion, in coordination with social support programs and the fundamentals of family law, could ultimately lead to the development of social welfare by reducing copyright violations and increasing compensation for the copyright holders.

## ACKNOWLEDGEMENT

I wish to thank my wife, Mahrou Madani, who has stood by me through all my travails, my absences, my fits of pique and impatience. She gave me support and helped me. She was always with me throughout the writing of this article.

<sup>169</sup>17 USC § 504 under which Plaintiffs who can show willful infringement may be entitled to damages up to \$150,000 per work (17 USC § 504(c)(2))

## REFERENCES

- 2 Ellison v. Robertson, 357 F.3d 1072, 1079 (9th Cir. 2004).
- A&M Records, Inc. v. Napster, Inc 114 F. Supp. 2d 896 (N.D. Cal. 2000), aff'd in part, rev'd in part on other grounds, 239 F.3d 1004 (9th Cir. 2001).
- Adobe Systems Inc. v. Canus Productions, Inc173 F.Supp.2d 1044 (C.D.Cal. 2001).
- Alan O. Sykes, The Economics of Vicarious Liability, 93 Yale L.J. 1231 (1984),p.1240  
<https://doi.org/10.2307/796257>
- Alex Veiga, It Could Be Hard to Sue Parents for Song Swaps, SEATTLE POST-INTELL., Sept. 13, 2003, available at [http://seattlepi.nwsource.com/business/139406\\_download13.html](http://seattlepi.nwsource.com/business/139406_download13.html).
- Alfred C Yen Third Party Copyright After Grokster, Minnesota Law Review 91, 2006,p.201.
- Amy L. Tomaszewski ,From Columbine to Kazaa: Parental Liability in a New World, University of Illinois law review 2005(2),p.579.
- Andrew C. Gratz, Symposium Comment, Increasing the Price of Parenthood: When Should Parents Be Held Civilly Liable for the Torts of Their Children?, 39 HOUS. L. REV. 169 (2002),pp. 180–90.
- Anthony, Mason, Public-Interest Objectives and the Law of Copyright, 9 J.L. & Inf. Sci. 7 (1998, Jain, Dheeraj, Copyright and Public Interest (April 9, 2016). Available at SSRN: <https://ssrn.com/abstract=2761412>.
- Artists Music, Inc. v. Reed Publishing (USA), Inc., 1994 WL 191643 (S.D.N.Y. 1994).
- AT&T v. Winback& Conserve Program, Inc., 42 F.3d 1421, 1439-40 (3d Cir. 1994), Religious Tech. Center v. Netcom On-Line Comm., 907 F. Supp. 1361 - Dist. Court, ND California.
- Banff Ltd. v Limited, Inc 869 F. Supp. 1103, 1105 (S.D.N.Y. 1994).
- Black's Law Dictionary, 8th ed. (St. Paul, Minn.: West Group, 2007,p.4818.
- Brank, Eve M.; Kucera, Stephanie Carsten; and Hays, Stephanie A.,"Parental Responsibility Statutes: An Organization and Policy Implications",ournal of Law and Family Studies ,2005,pp.19-25.
- Brooks Suzukamo, Music Industry Lawsuits Creating Confusion, ST. PAUL PIONEER PRESS, Sept. 13, 2003, at 1A, Alex Veiga, It Could Be Hard to Sue Parents for Song Swaps, SEATTLE POST-INTELL., Sept. 13, 2003, available at: [http://seattlepi.nwsource.com/business/139406\\_download13.html](http://seattlepi.nwsource.com/business/139406_download13.html); Leslie.
- Buelke v. Levenstadt, 190 Cal. 684, 689, 214 P. 42, 44.
- Charles S. Wright, Actual Versus Legal Control Reading Vicarious Liabilip for Copyright Infringement into the Digital Millennium CopyrightAct of 1998,75 WASH. L. REV. 1005, 1012 (2000).
- Chris Conley, Memorandum: Parental Liability for Copyright Infringement by Minor Children, Electronic Frontier Foundation, Nov. 1, 2005, At:[http://www.eff.org/IP/P2P/Parent\\_Liability\\_Nov\\_2005.pdf](http://www.eff.org/IP/P2P/Parent_Liability_Nov_2005.pdf) , pp.1-10
- Christine T. Greenwood, Holding Parents Crimi edunally Responsible for the Delinquent Acts of Their Children: Reasoned Response or "Knee-Jerk Reaction"?,23 J. CONTEMP. L.,1997.,pp.436–37.
- Christopher Buccafusco, Jonathan Masur, Intellectual Property Law and the Promotion of Welfare, University of Chicago Public Law & Legal Theory Paper Series, No. 607 (2017).,
- Condel v. Savo, 350 Pa. 350, 39 A.2d 51, 52, 155 A.L.R. 81
- Cooper v. Meyer 365 N.E.2d 201 (Ill. App. Ct. 1977).  
[https://doi.org/10.1016/0361-3682\(77\)90012-5](https://doi.org/10.1016/0361-3682(77)90012-5)
- Craig A. Grossman, From Sony to Grokster: The Failure of the Copyright Doctrines of Contributory Infringement and

- Vicarious Liability to Resolve the War Between Content and Destructive Technologies, 53 BUFF. L. REV. 2005,p.147.
- Craig A. Grossman, The Evolutionary Drift of Vicarious Liability and Contributory Infringement: From Intersitial Gap Filler to Arbitrator of the Content Wars, 58 S.M.U. L. Rev. 357 (2005),p.367.
- Dalley J. Paula., »A Theory of Agency Law«, 72 U. Pitt. L. Rev. 495 ,2011. p.495  
<https://doi.org/10.5195/lawreview.2011.164>
- Dan Dobbs B. „Robert E. Keeton,„David G. Owen,„W. Page Keeton, Prosser and Keeton on the Law of Torts (Hornbooks), West Group; 5th Packag ,1984, § 123, p. 913.
- Davis v. E.I.DuPont De Nemours & Co., 240 F. Supp. 612 (S.D.N.Y. 1965).
- Ellis v. D'Angelo, 116 Cal. App.2d 310, 253 P.2d 675, 679.
- Emogene C. Wilhelm, Note, Vicarious Parental Liability In Connecticut: Is It Effective? 7 University of Bridgeport Law Review 99 (1986),p.111.
- Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259 (9th Cir. 1996), UMG Recordings v. Sinnott, 300 F. Supp. 2d 993, 1001.
- Fowler Vincent Harper, Fleming James, The law of torts,vol 2, Little, Brown, 1956,p.731.
- Freemont v Aeolian Co, 254 F 592, 593 (SD NY 1918).
- George L. Priest, The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law, 14 J. Legal Study., 1985,p.463,  
<https://doi.org/10.1086/467783>
- Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1162 (2d Cir. 1971);
- Gilbert Geis & Arnold Binder, Sins of Their Children: Parental Responsibility for Juvenile Delinquency, 5 Notre Dame J.L. Ethics & Pub. Pol'y 303 (1991),p.316,
- Gissen v. Goodwill 80 So. 2d 701 (Fla. 1955). See: ibid, p.941.
- Grimes v. Hettinger, 566 S.W.2d 769 (Ky. Ct. App. 1978).
- Grindstaff v. Watts 119 S.E.2d 784 (1961).
- Grokster, 125 S. Ct. at 2776 (citing Shapiro, Bernstein & Co, 316 F.2d at 307).
- Guido Calabresi, Some Thoughts on Risk Distribution and the Law of torts, (1961). Faculty Scholarship Series. 1979.  
<https://doi.org/10.2307/794261>
- Howard Davidson, No Consequences — Re-examining Parental Responsibility Laws, 7 STAN. L. & POL'Y REV. 23, 23 ,1996.
- James, Vicarious Liability, 28 TUL. L. REV. 161, 163 (1954)Janelle A. Weber, don't drink don't smoke don't download parent's liability for the children's file sharing,Florida Law Review, Vol. 57, 2005.p.1169.
- Jason Emilios Dimitris, Comment, Comment, Parental Responsibility Statutes and the Programs that Must Accompany Them,27 Stetson Law Review,1997,p.685.
- Jo Bridgeman, Accountability, Support or Relationship - Conceptions of Parental Responsibility, 58 N. Ir. Legal Q. (2007),p.307.
- Joan Morgridge, When Does Parental Liability End?: Holding Parents Liable for the Acts of Their Adult Children, 22 Loy. U. Chi. L. J. 335 (1990),p.336.
- John DeFrain, Gail Brand, Jeanette Friesen, Dianne Swanson,Creating a Strong Family Why Are Families So Important? Available at <http://extensionpublications.unl.edu/assets/pdf/g1890.pdf>
- John V. O'Connor, Torts: The Constitutional Validity of Parental Liability,55 (3) Marquette Law Review, 1972,p.586.
- JW Neyers, A Theory of Vicarious Liability, Alberta Law Review, 43(2),2005,p.294.
- K Seitzinger Hepburn, Families as Primary Partners in their Child's Development and school readiness, The Annie E. Casey Foundation,2004.
- Karen Horowitz, Copyright Liability for Those Who Provide the Means of Infringement: In light of the RIAA lawsuits, who is at risk for the infringing acts of others?, 4 Shidler J. L. Com. & Tech., 2008, 6, at<http://www.lctjournal.washington.edu/Vol4/a08Horowitz.html>, no.6.
- Kimberly Lionel King, Torts - Liability of Parents for Negligent Supervision of Their Minor Children - Snow v. Nelson, 12 Fla. St. U. L. Rev. 935 (1985),p.939.
- L. Wayne Scott, Liability of Parents for Conduct of Their Child Under Section 33.01 of the Texas Family Code: Defining the Requisite Standards of 'Culpability', 20 St. Mary's L.J.,1988,p.71.
- Machteld Hoeve *et al*, The Relationship Between Parenting and Delinquency: A Meta-analysis, 37 J Abnorm Child Psychol,2009,pp.749-755,  
<https://doi.org/10.1007/s10802-009-9310-8>
- Mark Batholomew and John Tehranian, The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law, 21 Berkeley Tech. L.J. ,2006,pp. 1174-77.
- Mark Zuckerman & Devon Bush, Memorandum: Parental Liability for Copyright Infringement by Child, Electronic Frontier Foundation, Oct. 24, 2003.
- Marvin M. Moore, Parents' Support Obligations To Their Adult Children, Akron Law Review , Vol. 19:2,pp.183-196.
- Michael A. Axel, Statutory Vicarious Parental Liability: Review and Reform, 32 Cas. W. Res. L. Rev. 559 (1982),p.560.
- Naomi R. Cahn, Pragmatic Questions About Parental Liability Statutes, 1996 WIS. L. REV. 399,p.410.
- National Dairy Prod. Corp. v. Fresch, 393 S.W.2d 48, 53 (Mo. Ct. App. 1965).
- Okediji, Ruth Gana (1999) "Copyright and Public Welfare in Global Perspective," Indiana Journal of Global Legal Studies: Vol. 7: Iss. 1,
- P S Atiyah, Vicarious Liability in the Law of Torts (London, Butterworths, 1967),p.3.
- Parental Responsibility Laws In All 50 States, Posted by on February 19, 2018. Available at: <https://www.mwl-law.com/wp-content/uploads/2018/02/PARENTAL-RESPONSIBILITY-LAWS-CHART.pdf>
- Paul Goldstei,Goldstein on Copyright, Aspen Publishers; 3 edition,2005,p.8.2.2.
- Pinkham v. Sara Lee Corp., 983 F.2d 824, 834 (8th Cir. 1992).
- Prescott &Kundin, Toward a Model Parental Liability Act, 20 CAL. W.L. REV. 187, (1984),p216.
- Restatement (Second) of Agency § 1 (1) (1958).
- Restatement (Second) of Torts § 316 cmt. c (1965).
- Rex B. Stratton III, Joint Adventure or Joint Enterprise—Two Theories of Vicarious Liability, 30 Mont. L. Rev. (1968)..p.83,
- Rhonda V. Magee Andrews, The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims' Voices in the Debate over Expanded Parental Liability, 75 Temp. L. Rev ,2002,p.388.
- Rhonda V. Magee Andrews, The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims' Voices in the Debate over Expanded Parental Liability, 75 Temp. L. Rev ,2002,p.388.,
- Rhonda V. Magee, The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims' Voices in the Debate Over Expanded Parental Liability, Temple Law Review, Vol. 75, No. 3, 2002,pp.389-395.
- Robert Flannigan, "Enterprise Control: The Servant-Independent Contractor Distinction" (1987) 37 U.T.L.J. 25,p.28.  
<https://doi.org/10.2307/825661>

- S. Randall Humm, Comment, Criminalizing Poor Parenting Skills as a Means to Contain Violence by and Against Children, 139 U. PA. L. REV. 1123 (1991), p. 1135  
<https://doi.org/10.2307/3312384>
- Seymour D. Thompson, Commentaries on the law of negligence in all relations, including a complete revision of the author's previous works on the same subject, Indianapolis, Bowen-Merrill Co., 2d Ed, 1901-1914, § 309, p.494.
- Shapiro, Bernstein & Co. v. H.L. Green Co., 316 F.2d 304, 307 (2d Cir. 1963)
- Sheldon W. Halpern, Copyright Law: Protection of Original Expression, Carolina Academic Press Law Casebook Series, 2017, p.551.
- Soblusky v Egan (1959) 103 CLR 215.  
<https://doi.org/10.3406/crai.1959.11047>
- Steinberg v. Cauchois, 249 App.Div. 518, 293 N.Y.S. 147; Pfenning v. AGRI BUS. BROKERAGE CORP., 124 AD 2d 1013 - NY: Appellate Div., 4th Dept. 1 Weeks v. Sabo, 281 AD 2d 413 - NY: Appellate Div., 2nd Dept. 2001.
- Steven N. Bulloch, Fraud Liability Under Agency Principles: A New Approach, 27 Wm. & Mary L. Rev., 1986, p.302.
- Stone, Liability for Damage Caused by Minors: A Comparative Study, 5 ALA. L. REV. 1, 6 (1952).
- Teagarden v. McLaughlin, 86 Ind. 476 (1882); Hower v. Ulrich, 156 Pa. 410, 27 Atl. 37 (1893); Trahan v. Smith, 239 S. W. 345 (Tex. Civ. App. 1922).
- Ted Bridis, Record Industry Sues Music File Swappers, ASSOCIATED PRESS, Sept. 8, 2003, available at 2003 WL 63459852., (California, for example, does not hold parents "explicitly liable for copyright infringement by minor children.").
- Thurman ,Tammy, »Parental Responsibility Laws: Are They the Answer to Juvenile Delinquency?«, 5 J.L. & FAM. STUD, 2003., p.99.
- Tomaszewski L ,Amy., »From Columbine to Kazaa: Parental Liability in a New World«, Vol.2005, No.2, U. Ill. L. Rev. ,2005., pp.597-598.
- Trahan v. Smith, 239 S.W. 345 (Tex. Civ. App. 1922).  
<https://doi.org/10.1177/0040571X2200503017>
- Warner Bros., Inc. v. Lobster Pot, Inc., 582 F. Supp. 478, 482 (N.D. Ohio 1984).
- William F Patry , Patry on Copyright, Thomson/West, vol 6, § 21:66 (2010).
- William O. Douglas ,Vicarious Liability and Administration of Risk, 38 Yale Law Journal (1929).  
<https://doi.org/10.2307/789704>

---

Received on 20-05-2025

Accepted on 27-06-2025

Published on 22-07-2025

<https://doi.org/10.6000/2817-2302.2025.04.05>

© 2025 Hamed Najafi.

This is an open-access article licensed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the work is properly cited.