



February 20, 2024

VIA EMAIL

gina.durham@us.dlapiper.com

Re: *Interplanetary File System, Jetbrains*

Dear Gina Durham,

We represent Mike Damm and write in response to your correspondence suggesting that Mr. Damm's operation of an Interplanetary File System (IPFS) gateway renders him legally responsible for the alleged availability of JetBrains software keys.

That suggestion is baseless. As Mr. Damm has explained, an IPFS gateway is a conduit similar to VPNs, internet access services, or Tor nodes. He is no more liable for material available from elsewhere on the internet using this conduit than ISPs, VPN providers, or Tor hosts are. The gateway offers a means for the public to retrieve files through the IPFS protocol by sending the gateway an IPFS hash, which the gateway then looks up in a distributed database that records which other internet locations are offering the file corresponding to that hash. It then requests the file from one or more of these other locations and transmits the file to the requestor.

Your confusion seems to stem in part from the way the IPFS protocol resolves the hash that you provide into a URL that includes the domain name for the gateway server. Mr. Damm is not presenting the complained-of link to the public; the link is only generated when a user provides the hash that identifies the file they wish to retrieve. This step is analogous to providing a domain name to an ISP's DNS server in order to obtain the IP address corresponding to that domain, after which the user's machine instructs the ISP to automatically retrieve the file at the given location.

You allege that Mr. Damm's gateway violates Section 1201 of the Digital Millennium Copyright Act, but that Act makes clear that liability does not attach to a general-purpose conduit for information. *First*, a conduit does not fall into any of the three categories of trafficking under that Section: its primary purpose is not circumvention, it has extensive other uses, and it is not marketed for circumvention. *See* 17 U.S.C. 1201(a)(2), (b). *Second*, Congress has expressly recognized the need to protect conduits from legal risk given their crucial role in supporting the basic functioning of the internet. In Section 512(a) of the DMCA, Congress singled out conduits to receive the highest level of safe harbor protection, recognizing that the ability to dispose of copyright claims at an early stage of litigation was crucial to the operation of these services. It would be absurd to suggest that Congress granted conduits special immunity for copyright claims based on third party

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activity but then, in the same statute, made them liable for pseudo-copyright Section 1201 claims.

Mr. Damm expressly reserves all rights and defenses in connection with this matter, including, without limitation, the right to dispute whether the software keys at issue constitute a circumvention technology or part thereof within the meaning of Section 1201. However, we hope that you will consider this matter closed and refrain from targeting the operators of IPFS gateways or other conduits for information in the future.

Sincerely,



Kit Walsh
Director of Access-to-Knowledge Legal
Projects
ELECTRONIC FRONTIER
FOUNDATION