

A & M Records v. Napster

239 F.3d 1004 (9th Cir. 2001)

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Napster facilitated the transmission of MP3 files, which are a digital format for the storage of audio recordings, between and among its users through a process commonly called peer-to-peer file sharing. Napster allowed its users to list available MP3 music files for copying by other Napster users, to search for available MP3 files stored on other users' computers, & to transfer exact copies of the contents of other users' MP3 files from one computer to another via the Internet. Corporations engaged in the commercial recording, distribution, and sale of copyrighted music and sound recordings, such as A&M, Geffen, Interscope, and Sony Music ("A&M"), brought a complaint against Napster. A&M alleged that Napster violated federal copyright law through both contributory and vicarious infringement. The United States Ninth Circuit Court of Appeals ("Court") held that Napster was both a contributory and vicarious infringer and that Napster did not have a fair use defense.

Contributory liability requires the secondary infringer to "know or have reason to know" of the direct infringement and to materially contribute to the infringing activity. The court interpreted the knowledge requirement as not merely that the Napster system allowed an infringing use, but that Napster had actual notice of the infringement and then failed to remove the offending material. The Court concluded that Napster knew or had reason to know of its users' infringement of plaintiffs' copyrights, that Napster failed to remove the material, and that Napster materially contributed to the infringing activity by providing the site and facilities for direct infringement.

Vicarious liability extends to cases in which a defendant has the right and ability to supervise the infringing activity and also has a direct financial interest in such activities. The Court held that Napster was vicariously liable as they failed to exercise their right and ability to prevent the exchange of copyrighted material. Further, Napster had a direct financial interest in the downloading activities since their revenue was dependent on user increase.

Napster contended that since its users did not directly infringe on A&M's copyrights, but participated in fair use of the material, they were not liable. Factors considered in a court's fair use determination are purpose, character, nature, amount, and effect of the use. The Court rejected Napster's fair use defense, stating that downloading MP3 files was not transformative; the use was commercial; the works were not fact-based; Napster users engaged in "wholesale copying"; and free downloading harmed A&M because it reduced CD sales. Further, the Court held that downloading through Napster raised barriers for others to enter the market (i.e. copyright holders could not attempt to charge for the same downloads).

Finally, the Court's injunction required that A&M provide notice to Napster of copyrighted works and files on the Napster system before Napster had a duty to disable access to the offending content.

The future of peer-to-peer file sharing as a result of this case is that the use of a centralized system, where the provider retains some control over the direct infringers by supplying the software, search engine, file indexes, servers, and means of establishing a connection between users computers, is a violation of contributory

and vicarious infringement, in the absence of the provider policing the system. A more decentralized system, where the provider does not have the ability to control and police the infringing activity, will not possess the requisite level of control required for either contributory or vicarious infringement. (See *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.* (9th Cir. 2004).