

CJ341 Class Notes

Copyright & the Internet

**CJ341 – Cyberlaw & Cybercrime
Lecture #14**

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Topics

- Piracy
- Copyright Issues
- Recording Devices
- Distribution
- Industry Responses
- Sampling & Remixing


Piracy

- Unauthorized copying of
 - ❑ Software
 - ❑ Music
 - ❑ Video
- Economic consequences
 - ❑ British Phonographic Industry
 - ✓ ~\$2B lost sales in period 2003-2006
 - ❑ Int'l Federation of Phonographic Industry
 - ✓ 2,000 lawsuits against *uploaders* in 10 countries




Piracy and the 'Net

- Napster, MP3, Gnutella, Wrapster. . . .
 - ❑ Trading copies of music
 - ❑ Most without permission – copyright violations
 - ❑ Lawsuits against companies & individuals
 - ❑ Gnutella, Wrapster extending trades to other files
- Problems
 - ❑ Bandwidth saturation – many colleges
 - ❑ Legal liability if problem ignored
 - ❑ RIAA (Recording Industry Association America) suing colleges



Music Piracy Significant Economic Problem

- 2005 overall: 147% growth in *legal* downloads
- 2006.01 report
 - ❑ Illegal downloads via P2P (peer-to-peer) networks estimated 250M songs / week
 - ❑ Legal downloads growing
 - ✓ Christmas 2005: 9.5M tracks
 - ✓ Xmas +1: 20M tracks
- 2006 predictions:
 - ❑ 750M-1B legal downloads
 - ❑ vs 13B illegal downloads



Video Piracy (1)

- Pirate TV downloads worldwide
 - ❑ UK #1
 - ❑ Australia #2
 - ❑ US #3
- Viewers use recorders to tape shows digitally, then upload to 'Net
- Monty Python clips available illegally on 'Net (!!) at <http://www.youtube.com>
 - ❑ THE HORROR! THE HORROR!
- MPAA (Motion Picture Assoc America)
 - ❑ Closed down many P2Ps
 - ❑ Countless lawsuits against individuals



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Video Piracy (2)

➤ 2005-08: Prosecution of Missouri man (Curtis Salisbury)

- ❑ Uploading taped copy of movies
- ❑ New law banning such copying
- ❑ Tried to profit financially
- ❑ Charged with conspiracy, copyright infringement, and two violations of the law banning camcorders in theaters

➤ MPAA estimates 90% of pirated movies on 'Net taped illegally in theaters

➤ Distributed via P2P networks



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The Arguments for Piracy

1. Everyone's doing it
2. We won't get caught
3. It's the company's fault: they should charge less
4. But I need it and I don't want to pay for it
5. It doesn't hurt anyone
6. It only hurts a company – I wouldn't steal from an individual
7. No software/music/movie should be copyrighted – it should always be free



See http://www.mekabay.com/ethics/seven_reasons.htm
or http://www.mekabay.com/ethics/seven_reasons.pdf

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Legal Issues

- Creation of unauthorized copies
- Distribution of copies to others
- Revenue loss – compensatory damages
- Legal responsibility for distribution channels



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Legal Responsibility

➤ Considerations for assessing responsibility

- ❑ Fairness issues
 - ✓ Knowledge
 - Foreseeability
 - ✓ Control
 - ✓ Benefit Derived
 - Financial
- ❑ Economic
 - ✓ Costs borne by society
 - ✓ Benefits to society
 - ✓ Cost-benefit



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Recording Devices



Sony Corp. v. Universal City Studios 1984

- Movie industry sued VCR manufacturer
 - ❑ Claimed Sony responsible for unauthorized reproductions made by consumers
- Supreme Court ruled in favor of defendant
 - ❑ Time Shifting at home = fair use
 - ❑ Sony not liable: Copyright Act does not expressly render liability for another's infringement
 - ❑ Sale of equipment not contributory infringement
- Limitations: does *not* imply that *all* use is permissible fair use

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Digital Video Recorders

- DVRs (e.g., TiVo) – profitable entertainment opportunities
- Fair use questioned (applicability of Sony case?)
 - ❑ TV without commercials (concern for commercial TV)
 - ❑ Sharing programs over Internet
 - ✓ ReplayTV
 - Recorded commercials as well as program
 - No sending of programs outside home
 - ✓ TiVo To Go
 - Program transfer to other devices
 - FCC approval – personal use or registered list
 - ✓ Slingbox: Transfer of live TV signal to other devices
 - ❑ Space-Shifting: analogy to time-shifting



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Audio Recording Devices

- Audio recording in *the old days* before digital tools
 - ❑ Fair-use traditionally assumed
 - ✓ Inferior quality of original copies
 - ✓ Fair-use equitable balance may have likely okayed copying for personal use
 - ❑ Historically no significant worry about distribution – *chain-taping* gave terrible quality
- Digital audio recording formats (DARs) changed landscape
 - ❑ CDs, iPods, phones, Internet...
 - ❑ Identical copies possible
 - ❑ Large-scale copying easy
 - ❑ Distribution a cinch



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Audio Home Recording Act (AHRA)

- 2% royalty by sellers and importers of digital audio recording devices
 - ❑ Paid to Copyright office
 - ❑ Distributed to artists, publishers, etc.
- Requires integration of Serial Copy Management System (SCMS)
 - ❑ Creates copy limitations
- Closes door on debate about home use audio recording device liability
- Applies to devices that have *principal* purpose of copying *sound and music*
 - ❑ Computer manufacturers not required to pay
 - ❑ Defines digital audio recording media
 - ❑ Does not include media used to make copies of computer programs
 - ❑ But CD-ROMs & DVDs used for both. . . .

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MP3 and Portable Music

- MP3 format = *MPEG Audio Layer 3*
 - ❑ MPEG: Moving Picture Experts Group
 - ❑ Common digital audio encoding and compression format
 - ❑ Capable of reproducing quality of original uncompressed sound
 - ❑ Compresses traditional file to 5-10% of original size
- Software: iTunes, Windows Media Player
- Hardware: iPods
- Major concern: Unlawful duplication & distribution via peer-to-peer (P2P) networks



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Liability (1)

- Traditional offline world
 - ❑ Suitable targets for bringing lawsuits
 - ❑ E.g., significant distribution hubs
- Online
 - ❑ Decentralized Internet changes situation
 - ❑ E.g., 1 individual with Internet access can make copies and distribute millions of copies worldwide
 - ❑ Effort aided by Online Service Providers (OSPs)
 - ✓ (aka Internet Service Providers, ISPs)

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Liability (2)

- Contributory Liability
 - ❑ You are responsible when you know others' use of your facilities is for unlawful activities
 - ✓ Knowledge (reasonable)
 - ✓ Purpose or control
 - ❑ Reasonably know something unlawful is taking place
- Vicarious Liability
 - ❑ When you are liable for the actions of another, even though you might *not* be directly responsible for the wrongdoing
 - ✓ E.g., individuals who potentially profit from wrongdoing



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Religious Technology Ctr v. Netcom 1995 (1)

- RTC owns copyrights to certain *Church of Scientology* works by founder L. Ron Hubbard
 - ❑ Critic posted portions of works on a Usenet group (BBS)
 - ❑ Managed through Netcom's servers
- Netcom did not monitor content
 - ❑ Refused to bar critic from the system when asked by RTC
 - ❑ RTC sued Netcom for copyright infringement



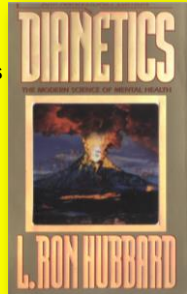
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Religious Technology Ctr v. Netcom 1995 (2)

- Court concluded
 - ❑ RTC raised genuine question whether Netcom knew critic was infringing rights and whether Netcom participated in infringement
 - ❑ Found direct and vicarious infringement claims fail
- Bottom line:
 - ❑ ISPs not directly and absolutely liable for customers' copyright infringements



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Peer-to-Peer (P2P) Networks

- P2P file-sharing
 - ❑ Materials transmitted directly from one user to another
 - ❑ Ability to search hard drive of another, locate file, and transmit file
 - ❑ Wide sharing of digital materials (e.g., photos, music, videos)
- Napster dispute
 - ❑ Napster users could download tracks
 - ❑ Real-time index
 - ❑ Napster itself did not directly copy or transmit copyrighted files



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Entertainment Industry Response

- Facing new technologies developed by pirates
 - ❑ BitTorrent, eDonkey
 - ❑ FreeNet, Tor – The Onion Router (anonymized services)
- Offering of online subscriber services
 - ❑ E.g., Rhapsody, MusicNow, iTunes
 - ❑ E.g., MovieLink
- Filtering technologies – block music xfers
- Technical Protection / Security Measures
 - ❑ Digital watermarking – embedded codes
- Lobbying Congress for new legislation
- Individual lawsuits



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A&M Records v. Napster 2001

- Napster allowed users to make, access, transfer MP3 music files stored on individual computer hard drives
 - ❑ Napster claimed fair use
- Court of Appeals found
 - ❑ A&M would likely succeed in claim of contributory infringement claim and vicarious liability
 - ❑ Contributory Liability
 - ✓ Notice
 - ✓ Ability to block suppliers of infringing material
 - ❑ Vicarious Liability
 - ✓ Right to control
 - ✓ Financial benefit
- ❑ Audio Home Recording Act *does not cover downloading MP3 files*



See <http://tinyurl.com/rvkwt>



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P2P Evolved

- 2001: Lesson from Napster
 - ❑ P2P relying on operator servers and control require policing to avoid facilitation of infringement
- 2002: Kazaa
 - ❑ Located outside USA
 - ❑ Jurisdiction and international litigation considerations



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Metro-Goldwyn-Mayer Studios Inc v. Grokster Ltd

- 2003: Grokster & Streamcast sued by MGM
 - ❑ Entertainment industry losses significant
 - ❑ Demanded injunction & damages
- District court ruled *in favor of defendants*
 - ❑ MGM could not prove liability
 - ❑ Even if all allegations true
- MGM *appealed* decision to Ninth Circuit Court of Appeals
 - ❑ *Affirmed* lower court's ruling
 - ❑ Found no requisite knowledge of P2P infringement (that services would be used to do so)
 - ❑ Applied precedent from Sony case (1984)
 - ❑ Services were capable of being used in non-infringing ways



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MGM v. Grokster 2005

- MGM appealed judgments in favor of Grokster to Supreme Court
- SCOTUS concluded that:
 - ❑ Record contained evidence of purpose to cause copyright violation
 - ❑ Substantial evidence in MGM's favor
 - ❑ Summary judgment in favor of Grokster erroneous
 - ❑ Reversed lower courts & ruled in favor of MGM

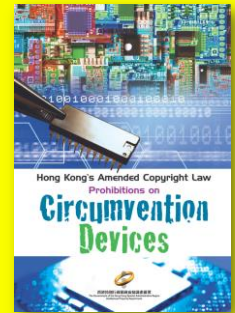


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DMCA

- DMCA: Digital Millennium Copyright Act
 - ❑ 1998
 - ❑ 17 USC §101 *et al.*
- Outlines
 - ❑ Anti-circumvention provisions
 - ❑ Anti-trafficking provisions
- Provides exceptions, including
 - ❑ Fair use
 - ❑ Freedom of speech
 - ❑ Interoperability



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ISPs & DMCA (1)

- Illegal to defeat measures for copyright control
- Forbids selling/distributing measures to defeat copy-controls
- Forbids removal of copyright information
- Protects ISPs against claims of infringement under some circumstances (see next slide)



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ISPs & DMCA (2)

- Incorporates changes into section 512 of Copyright Act that affect ISP liability
- Shields ISP if performing merely technical routing functions
- Notice and Take-Down
 - ❑ If ISP knows of infringing material, must work to remove
 - ❑ If sufficient notice, can remove without liability to subscriber
- Safe harbor applies for links
 - ❑ Similar burden on ISP for liability shield benefit

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Criticisms of the DMCA

- Reduction of fair-use freedoms?
 - ❑ What if document has copy-controls to prevent data extraction (e.g., PDF with security)?
 - ❑ Would typing out quotations be violation of DMCA?
- Invasions of privacy?
 - ❑ ISPs must reveal names of users suspected of violating law
 - ❑ Provides channel for copyright holders to access information without a warrant?

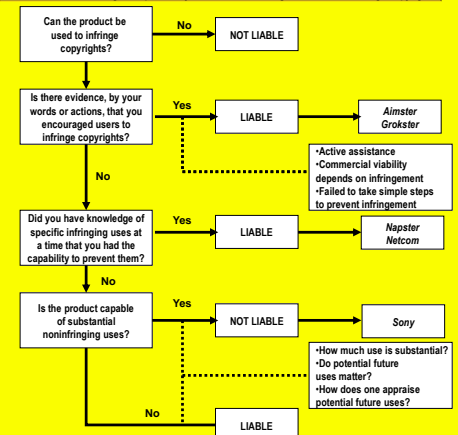
Document Security	
The document's Security Method is used to restrict or remove security restrictions set the Security Method.	
Security Method:	No Security
Can be Opened by: All versions of Acrobat.	
Document Restrictions Summary	
Printing:	Allowed
Changing the Document:	Allowed
Document Assembly:	Allowed
Content Copying or Extraction:	Allowed
Content Extraction for Accessibility:	Allowed
Commenting:	Allowed
Filling of form fields:	Allowed
Signing:	Allowed
Creation of Template Pages:	Allowed

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Liability

EXHIBIT 9.5 Flowchart to Address Legal Responsibility When New Technologies Are Used to Infringe Copyright



Burgunder p 324

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Digital Sampling and Remixing



- Sampling Defined
 - ❑ Re-using snippets or portions of sound recordings
 - ❑ E.g., Puff Daddy – *I'll be Missing You*
 - ✓ 1997 #1 hit single written by Sauce Money (rapper from Brooklyn)
 - ✓ Based on 1983 *Every Breath You Take* song from 1983 Song of the Year written by Sting and performed by The Police (*Synchronicity* album)
 - ❑ Puff Daddy asked for and received permission to use sample in performance
- Examples of Remixing
 - ❑ Britney Spears – *My Prerogative* (Bobby Brown)



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Campbell v. Acuff-Rose Music

Original (with musicians in ties): <http://www.youtube.com/watch?v=E4ufftABB0&NR=1>
 Spoof by 2 Live Crew (censored version): http://www.youtube.com/watch?v=65GQ70Rf_8Y

- “Pretty Woman”
 - ❑ 1964: Roy Orbison “Pretty Woman” Song
 - ✓ Assigned rights to Acuff-Rose, Inc.
 - ❑ 1989: 2 Live Crew “Oh, Pretty Woman” parody
 - ✓ Copied opening riff & lyrics
 - ✓ Informed Acuff-Rose of use, explained would credit with ownership & pay fee for use
- Acuff-Rose
 - ❑ Refused to grant permission for use
 - ❑ Sued 2 Live Crew for copyright infringement
- District Court
 - ❑ Granted summary judgment in favor of 2LC
 - ❑ Acuff-Rose appealed decision
- Appeals Court
 - ❑ Reversed District Court decision
 - ❑ Found no fair use
 - ❑ 2 Live Crew appealed decision (MORE ON NEXT SLIDE)



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Campbell v. Acuff Rose (2)



- SCOTUS 1994 concluded Court of Appeals erred
- Found 2 Live Crew use fair use through parody
 - ❑ Purpose and character
 - ✓ Goal of copyright generally furthered by transformative works
 - ❑ Fair use extends to parody under Section 107, like comment and criticism
 - ✓ 2 Live Crew’s song reasonably could be perceived as commenting or criticizing original
 - ✓ Taste does not matter to fair use
 - ❑ Commercial nature of the use not dispositive
 - ❑ No more than necessary was taken from original
- Significant victory for parodists
- Illustrates flexibility of fair-use doctrine

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Digital Sampling and Remixing Issues (1)



- Audio Sampling and remixing
 - Probably unlawful copyright infringement without permission
 - Case-by-case determination
 - ❑ Facts specific to a case guide
 - Acuff-Rose suggests
 - ❑ Parody probably okay depending on
 - ✓ amount of snippets
 - ✓ Importance of snippets
 - Mash-ups
 - ❑ Not parody, but arguably
 - ✓ Highly-creative
 - ✓ Transformative



See takedown of Hitler Parodies parodied by EFF <http://www.youtube.com/watch?v=PzUoWkbNLe8>

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Digital Sampling and Remixing Issues (2)



- Other Intellectual Property Issues
 - ❑ State statutes protecting personal rights
 - ✓ Right of Publicity
 - Right to profit from own distinctive personal attributes
 - ❑ To sample or remix, may also need permission of:
 - ✓ vocalist, artist, in addition to licensing copyrights to underlying composition and sound recording

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Digital Sampling and Remixing Issues (3)

- “They Say That I Stole This”
- *Girl Talk* master sampler
- NPR’s *On the Media* 2010-12-26:
 - Twenty years ago a series of lawsuits criminalized the hip-hop sampling of artists like *Shocklee* and *Public Enemy*. And yet, two decades later, artists like *Girl Talk* have found success breaking those same sampling laws. OTM producer *Jamie York* talks to *Girl Talk*, *Shocklee* and *Duke Law* professor *James Boyle* about two decades of sampling - on both sides of the law.
- Stream: <http://www.onthemedi.org/transcripts/2010/12/24/04>
- Download mp3: <http://audio.wnyc.org/otm/otm122410d.mp3>



Gregg Gillis aka Girl Talk

Origin of photograph unknown. Found using Google Images at <http://clubnotes.amblogs.com/files/2010/11/girl-talk.jpg> No contact information given for asking permission to use image. Decided to take a chance and use it anyway because it's a GREAT PICTURE and because it seems unlikely that Gregg Gillis or anyone else will mind very much and sue me for copyright infringement because I amused my students. Let's hope I'm right and that I am not offending any students or other viewers by this blatant unauthorized use of an image.

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