

Intellectual Property Issues I: Digital Music, Interconnectivity and Trespass

Chapter 4
Cases 4.1 through 4.5
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Second Edition



Case 4.1 – The Napster Case

Overview and Study Questions



Case 4.1 – The Napster Case

- Overview
- Every college student is familiar with Napster and the phenomenon of digital music. This case provides a wonderful opportunity to discuss myriad issues about file-sharing and its conflict with traditional copyright law.



Case 4.1 – Study Questions

- Briefly explain Napster's technology and the company's business model.
- What are the moral and legal issues in this case?
- Is Napster guilty of contributory and vicarious copyright infringement (as alleged)?



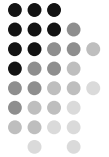
Case 4.1 – Study Questions



- Do you side with Napster or with the Recording Industry Association of America? What are the intelligible (vs. emotional) reasons for your decision?

Case 4.2 – Ditto.com

Overview and Study Questions



Case 4.2 – Study Questions



- Is Ditto.com guilty of copyright infringement or are these reproductions an example of fair use?
- Are the artists or owners of the images being treated fairly when their work is copied without their permission?

Case 4.2 – Study Questions



- In making his decision Judge Taylor opined that "the broad transformative purpose of the use weighs more heavily than the inevitable flaws in the early stages of development." Do you concur with his opinion?

Case 4.3 – Ticketmaster vs. Microsoft

Overview and Study Questions



Case 4.3 – Ticketmaster vs. Microsoft



- Overview
 - This case is about the increasingly important topic of linking and deep linking in cyberspace. It concerns whether or not companies have a right to set the terms of linking to their sites. The problem is that if linking is too constrained it will harm the openness and interconnectedness of web sites on the Internet.

Case 4.3 – Study Questions



- Explain the conflict between these two companies. How do you assess Ticketmaster's complaint?
- Should a company have the right to hyperlink in any way it sees fit in cyberspace?
- Is this a case of infringement?

Case 4.4 – Metatags and Search Engine Baiting

Overview and Study Questions



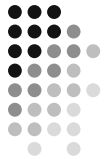
Case 4.4 – Study Questions



- Briefly explicate the technology of meta tags. How do they work and what purpose do they serve?
- In your estimation, has this company done anything wrong? Is its use of meta tags in this way manipulative or deceptive?
- What would be a responsible "meta tag" policy for a company?

Case 4.5 – Spiders at the Auction

Overview and Study Questions



Case 4.5 – Spiders at the Auction



- Overview
 - This is an intriguing case about trespass on the Web -- do robots seeking to aggregate data constitute a form of trespass when their activities are unwelcome (at the web site of companies like eBay)?

Case 4.5 – Study Questions



- One of eBay's lawyers has claimed that the company has every right to exclude spiders or robots since "a robot is just there to steal." Do you agree with this analysis?

Case 4.5 – Study Questions



- Should eBay have the right to determine what constitutes unauthorized use of its data even though that data is publicly available? If so, does this have the effect of creating a de facto copyright in factual data (auction information) that is not eligible for a copyright?

Case 4.5 – Study Questions



- What would be an acceptable policy for unwelcome activity such as spam or bots? Should companies allow such activities for the greater good of the Net?