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## Copyright infringement in international trade

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### ABSTRACT

*Intellectual Property is widely needed and it gives uncountable advantages to the creators or inventors over their work. The need for protection of the intellectual property is increasing day by day. The Intellectual Property Rights are given under Article 27 of the Universal Declaration of Human Rights. In this paper, the copyright, its need, advantages and a leading case AandM Records vs. Napster is discussed. It was the landmark case in the history of copyright Law which discussed the idea of rights of copyright holders and remedies against the wrongdoers. The idea of Direct Infringement, Contributory Infringement, and Vicarious Infringement is largely discussed in this paper. In this case, the music industries suffered a great loss due to online software named Napster.*

**Keywords**— Copyright Infringement, Intellectual Property, International trade

### 1. INTRODUCTION

Intellectual Property is widely needed and it gives uncountable advantages to the creators or inventors over their work. The need for protection of the intellectual property is increasing day by day. The Intellectual Property Rights are given under Article 27 of the Universal Declaration of Human Rights. In this paper, the copyright, its need, advantages and a leading case AandM Records vs. Napster is discussed. It was the landmark case in the history of copyright Law which discussed the idea of rights of copyright holders and remedies against the wrongdoers. The idea of Direct Infringement, Contributory Infringement, and Vicarious Infringement is largely discussed in this paper. In this case, the music industries suffered a great loss due to online software named Napster.

### 2. INTELLECTUAL PROPERTY

In the Paris convention, the first time the need and importance for the protection of intellectual property were recognized. After that need for protection of artistic and literary work was put forward in Berne Convention. Both the treaties are managed by the World Intellectual Property Organization (WIPO). Intellectual Property mainly applies to the intangible property such as copyright, patents, and trademarks which is used by a company or a person. Intellectual Property confers rights on individuals, enterprises or other entities the rights to exclude others from using their creations.

### 3. INTELLECTUAL PROPERTY RIGHTS

The holder of the intellectual property is granted with monopoly rights to use the item for a certain period of time. This protection enables people to acquire financial benefits and recognition from their creation and invention. The Intellectual Property Rights are given under Article 27 of the Universal Declaration of Human Rights and it provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. There are two categories of intellectual property:

- (a) Industrial Property
- (b) Copyright

#### 3.1 Copyright

Copyright does not protect the idea itself; it protects the 'expressions' of some ideas. Copyright protects artistic works (photographs, sculptures, drawings, and paintings), original literary (such as poems, novels, and plays), dramatic works, musical or cinematograph films, and sound recordings. In India, Copyright Protection is governed by the Copyright Act, 1957, and Copyright Rules, 1958. In 2012, some substantial amendments were made. In literary work, a computer program is also included and protected through copyright. Usually, in most cases, the term of copyright is for the lifetime of the author plus 60 years thereafter. Through copyright, the creator is given protection for the works created by him and prevents the copying or reproduction of those works without his consent. The creator of a work can prohibit or authorize anyone to:

- Make copies/recordings of the work,

- Reproduce the work in any form, such as print, sound, video, etc.
- Use the work for a public performance, such as a play or a musical work,
- Broadcast the work in various forms,
- Translate the work to other languages

**3.1.2 Copyright in International Trade:** Copyright includes ‘related rights’ as well and hence also referred to as the rights of authors in their literary and artistic works. Considering the case, related rights mainly includes the rights of producers of phonograms, performers, and broadcasting organizations.

It was admitted by the members during the Uruguay Round negotiations, that the protection given to copyright work like literary and artistic work under Berne Convention was sufficiently good. Some obligations related to the copyright and related rights are clarified by the TRIPS Agreement in its provisions. Some of those points are as follows:

- Computer programs were given protection as literary work under Berne Convention was ensured by the TRIPS Agreement and gives provisions as to how databases must be protected under copyright.
- Rental Rights are also embedded under the protection in the TRIPS agreement. The power of prohibition of commercial renting of computer programs and sound recordings lies with the author of such program according to the provisions of TRIPS.
- It is also given in the agreement that unauthorized recording, broadcast, and reproduction can also be prevented by the owner for no less than 50 years. Sound recordings must also be protected against unauthorized reproduction by the producers for a period of 50 years.

#### **4. CASE STUDY: A and M Records, Inc. v. Napster, Inc. [239 F.3d 1004 (2001)]**

##### **4.1 Facts of the case**

A peer-to-peer music file sharing service was started by a 19 years old Northeastern University student Shawn Fanning. This service allowed people to copy and share mp3 tracks with each other. This service was mainly used for sharing copyrighted music. This service was named after fanning’s nickname name that is Napster. Was really easy to operate this service as the users only needed to install free software of Napster and have an internet connection. They needed to demand the file from the Napster System. After that, the software starts searching computers from all over the world which were connected to the Napster system and sends them all the related files and from those results, the users can download the requested file. Napster made it very easy for the users to upload and download any file with a very little effort. This service made Napster very. Operating this software was very easy; it only needed basic computer skills. The Napster claimed that after one year there were more than 20 million accounts of the users of Napster. Users were able to hear the music free of cost and the service was also credible.

##### **4.2 Legal Issues**

Due to this, many music industries suffered a great loss as it released their music even before the official release of their CD’s. As a result of which Napster was sued by a very famous band called Metallica, in 2000.

Further, AandM Records sued Napster along with 18 other record companies. Napster was accused of contributory and vicarious infringement of copyright under the US Digital Millennium Copyright Act (DMCA).

AandM mainly sued Napster for the following three infringements:

- (a) The direct infringement of plaintiff’s copyright was done by the users of the software.
- (b) Napster was responsible for contributory infringement of plaintiff’s copyright.
- (c) He had also done vicarious infringement of plaintiff’s copyright.

These companies sued Napster for copyright infringement as well as facilitating others in infringement. On the contrary Napster said that it is a search engine and only facilitate the people to listen to the sample music before buying the original CD and to prove it he quoted a well-known case known as Sony vs. Universal Studios which is generally known as Betamax case and pointed that Audio Home Recording Act protects users on the ground of Non-Commercial use. In this case, the television shows were recorded to be watched at a later time. However, Napster also held the copies of the files so that the users of his software could get those files easily.

Napster also stated that DMCA also protect Internet Service Providers(ISPs) on the ground of ‘safe harbor’ as the service provided by him was used by his users only to listen to the sample music files before purchasing the CDs of the same. But the district court stated that if Napster was used only to sample music files it would only need to require limited usage of the songs and not the entire song or album giving the capability to users to download the MP3 music files.

Furthermore, it was stated by Napster that due to the launch of this software the music sales were increased but the District Court quashed this contention because Napster did not have any authentic evidence to prove this and on the other hand the plaintiff provided court with a plenty of evidences to prove that the Napster’s software actually caused a huge amount of harm to the sales of music companies.

District court of Northern District of California held Napster liable for the above mentioned three infringements in July of 2000. Hence, Napster appealed to the U.S.A court of appeals for the Ninth Circuit as he was unsatisfied from the decision of District court but the U.S.A court of appeals for the Ninth Circuit upheld the same and held Napster liable for the repeated infringement of plaintiff’s copyright on February 12, 2001, because he was providing this service free of any cost to its users. Further, the court held Napster liable for the “wholesale copying” of music which is not fair use and stated that this software caused a gigantic amount of loss to the music industries and its sales.

In 2001, Napster case was settled and Napster had to pay \$20 million to creators and copyrighters for using their music without their consent and for infringing their copyright over their creations and another \$10 million for future licensing royalties. In 2002, Napster converted its free service to a subscription of \$4.95 per month which earned Napster about \$8 million while his liabilities were over \$100 million. In May 2002 a German Media firm bought Napster in \$85 million

In same year Napster filed for Chapter 11 Bankruptcy and in September 2002 an American Bankruptcy judge forced Napster to liquidate his assets under Chapter 7 of U.S Bankruptcy Laws.

## **5. CONCLUSION**

The result is that Napster is still operating but under a new structure and policy. The Idea of Napster was very innovative but it lacked a legal basis. Now, this service is provided but under a legal statement that this service is only for personal, non-commercial and non-transferable use and the download the song is available only after the purchase of the song. In the end, in this case, the rights of the music creators were respected and protected by all means.

### **5.1 Case Study: Exporting knitting machinery**

A European company S that sells advanced knitting machinery to manufacturers in China discovered that a local competitor was selling a competing product not under the company's European trademark. The competing product copied the colors, exteriors, and dimensions of the original and diagrams, product specifications and pictures were all identical to the original product and the local product was harming the goodwill of the company by not meeting the standards of the original product.

Customers were misled due to that copying of product.

The company did not have any patents registered in China.

- The company could only rely on claims of copyright infringement on their brochure artwork and infringement of the Anti - Unfair Competition Law in relation to the false claims on the brochure
- To avoid the costs of litigation in the courts, the company engaged a local law firm to send a warning letter to the competitor, followed up with a phone call
- As a consequence of which some of the specifications, the content of the brochure and photographs were changed by the competitor.

### **5.2 Copyright protection abroad**

Automatic protection upon creation in the countries of the Berne Convention for the Protection of Literary and Artistic Works or is a Member of the World Trade Organization (WTO)

Remember: To maximize rights, if possible, register copyright claim with the national authority

### **5.3 Advantages of Registration**

Registration helps in identifying the original owner of the copyright holder and infringer can be easily sued by providing the relevant evidence.

## **6. REFERENCES**

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