

**A&M Records, Inc. v. Napster, Inc.,
239 F.3d 1004 (9th Cir. 2001)**

Year	2001
Court	United States Court of Appeals for the Ninth Circuit
Key Facts	Defendant Napster, Inc. designed and operated a peer-to-peer (P2P) file-sharing network allowing users to search, access, and download audio recordings stored in MP3 digital file format on their own or others' computers. Plaintiffs, corporate music producers, complained that Napster users obtained copyrighted works from each other's networked computers without copyright holders' authorization. Napster asserted that the service had legitimate purposes: sampling works in deciding whether to make a purchase; accessing works the users already owned (space-shifting); and receiving authorized distributions of copyrighted works. Plaintiffs alleged Napster was liable for contributory and vicarious copyright infringement as a result of its operation of the P2P network. The district court granted plaintiffs a preliminary injunction, finding in part that Napster's P2P file-sharing service was not a fair use of copyrighted works. Napster appealed.
Issue	Whether transferring copyrighted works in digital audio files from someone else's computer through a P2P file-sharing network to download a copy, without authorization or payment, constituted fair use.
Holding	<p>The Ninth Circuit held that the district court did not err in ruling that transfer of digital files through Napster's service was not fair use. The court deemed the purpose of the use non-transformative, noting that courts are reluctant to find fair use where the original work is merely retransmitted in a new medium. The court also found the purpose to be commercial, concluding that recurring exploitative copying constitutes commercial use when made to avoid the expense of buying an authorized copy and that users also received other copyrighted works in exchange for making their own files available for download. Additionally, the court found that the nature of the works was creative (as opposed to fact-based) and that the file-sharing process generally involved copying works in their entirety, both weighing against a finding of fair use. Regarding the market effect, plaintiffs introduced sufficient evidence to show that Napster caused a reduction in audio CD sales and hindered plaintiffs' ability to enter the digital sales market.</p> <p>The court also found that the lower court did not err in determining that downloading for sampling purposes is a commercial use. It determined that, even if users ultimately buy the recording, free promotional downloads are highly regulated by the recording industry. Furthermore, the court found that the users who downloaded for sampling purposes were actually less likely to purchase an authorized copy. Regarding space-shifting, the court remarked that courts have only permitted space shifting by the original user. Napster impermissibly allowed space shifting between different, subsequent users.</p>
Tags	Ninth Circuit; Internet/Digitization; Format shifting/Space shifting; Music
Outcome	Fair use not found

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