

Ella Grady

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The End to CD Players – How Can the Many CDs Purchased Be Used Now?

Sony v Universal is considered one of the most important technology copyright cases as it discusses the use of unauthorized home tapings and whether that is a copyright infringement. When Sony released the Betamax, designed to record tv shows for watching at a later time, Universal Studios sued, claiming Sony was liable for contributory infringement by making technology available that allowed for copyright infringements. The Ninth Circuit Court held Sony liable, however, the Supreme Court overturned the decision, ruling manufactures not liable if they can find a substantial non-infringing use of the technology, in this case time-shifting, which was additionally decided to be fair use. In the 1980s, as this technology was emerging, this decision was monumental in setting forth technological limits, pathing the way for VCRs and DVRs. Today, this ruling has implications on other technologies, for example the use of music on CDs. Many people who purchase CDs today choose to make copies onto their computers and then download to their phones or iPods, known as space shifting; however, this use often raises questions of copyright infringement, whether this action is fair use, and if it is, when it stops being fair use.

When a CD is purchased, the buyer owns that physical copy of the music, and as such can use that copy as they choose for personal, non-commercial uses. So long as the person making the digital copy owns the physical CD, and keeps the CD, the implications of *Sony* are

that the owner can use that CD to make a copy of the music on to their computer and put it onto another device. This technique, space shifting, works the same way as time shifting, fulfilling the criteria of fair use: for personal, non-commercial use, not harmful to the market, or decreasing the overall listener count, and benefitting society overall. Space shifting does not hurt the market as the CD has already been purchased, really increasing the number of listeners by making it more available, and by expanding that access, benefits society as a whole.

The issue of space shifting and sharing the file arises from who the file can be shared with. The most obvious answer is the buyer themselves, but most take it as widely accepted to share the file with those within the buyer's household: a spouse or children, for example. Space shifting clearly stops being fair use once the files are shared with non-family members of the buyers, for example, friends or coworkers. So long as the buyer owns the device the file is being downloaded to, the downloading is considered fair use.

This question of copyright infringement has been brought up in court, in *RIAA v Diamond Multimedia*. In 1999, the RIAA sued Diamond Multimedia claiming that a device manufactured by Diamond did not meet the requirements for digital audio recording devices set forth under the Audio Home Recording Act of 1992 because it did not use a system designed to relay information about the copyright status of the files played and encouraged piracy (Kaplan). The device, similar to an iPod, was designed to allow the downloading of digital music files from a computer to be listened to. The lower court ruled to deny the RIAA's request for injunction, and upon the RIAA's appeal, in the Ninth Circuit, the court ruled to uphold the lower court and ruled that the device was not a digital recording device as the RIAA had claimed under the AHRA,

deciding instead that the device was consistent with the AHRA's goal of facilitation of personal use. Writing for the court, Judge Diarmuid F. O'Scannlain put forth that the device was merely designed to provide a portable format of the files, space shifting the pre-owned files, and as with time shifting, is a fair use of personal, non-commercial form consistent with copyright laws (Kaplan).

This ruling reinforces the idea that space shifting is not a form of copyright infringement so long as the copy is used only for personal and non-commercial uses. The RIAA and other opponents argue that such a ruling, attitudes, and development of similar technologies encourages music piracy. These devices would be subject to music piracy only if the source of the file was a pirated source. If someone downloaded the music from a service such as Napster, Grokster, Sharebeast, or other similar sites the court has ruled as liable for copyright infringement, then the devices would be used for music piracy. However, as *Diamond Multimedia* showed and is clear from how these devices, such as an iPod, are used there are substantial non-infringing uses for these devices so long as the music is sourced in a legal manner – space shifting from a CD or purchasing a digital file, for instance.

The question of time shifting answered in *Sony* gave implications that are important as technology continues to develop, providing an answer for the idea of space shifting which will be important still as technology continues to further develop. In the 20 years since *RIAA v Diamond* was decided, shortly after CDs were introduced, CDs have phased out of popularity as devices and cars lose the CD drive. The many people who purchased CDs are have been faced with either purchasing a digital copy or space shifting their CDs to accommodate new technologies. It

is important that space shifting is legal under copyright law as it further grows the listener base of an artist by allowing the portability of the music that was once purchased as a CD, and as such bettering society as a whole.

Works Cited:

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