

- **Pantomimes and choreographic works**—This includes ballets or other expressions of dance. It also includes mime shows.
- **Pictorial, graphic, and sculptural works**—This includes photographs, sculptures, fine art, and cartoons.
- **Motion picture and audiovisual works**—This includes movies and television shows.
- **Sound recordings**—This includes recordings of music, sound, and words.
- **Architectural works**—This includes building designs, blueprints, and drawings.

 NOTE

Copyright protection isn't available for names. You can read more about it at <http://www.copyright.gov/circs/circ34.pdf>.

The categories are very broad. A work of authorship might be properly copyrighted in a number of different categories. For example, the advertising and information material that an organization posts on its Web site can be copyrighted as a literary work. Pictures on the Web site can be copyrighted as a pictorial or graphic work.

Federal law grants copyright protection to “an original work of authorship fixed in any tangible medium of expression.”³⁸ To be eligible for copyright protection, a work must be both original and in a fixed form.

A work is original if it's not copied from another source. If a work isn't original, it's not eligible for copyright. Works that are created completely from publicly known facts, with no other original material, aren't copyrightable.

Unlike an invention or discovery that's patentable, copyrighted works don't have to be new or novel. They also don't have to be good or aesthetically pleasing. They simply have to be an author's original expression of an idea.

Copyright protection doesn't extend to mere ideas. Instead, these ideas must be written down or put in a fixed format. This is why books are entitled to copyright protection, but ideas that are simply in the head of the author aren't. Copyright also isn't available for useful articles. Patents may protect these types of articles, which can include clothing, furniture, machinery, and other items. Works that are in the public domain also aren't copyrightable.

The **public domain** refers to the body of works that are free for public use. This includes works where the copyright has expired. It also includes works of the U.S. government such as the United States Code. It's important for you to remember that information that's available on the Internet isn't necessarily in the public domain.

Copyright protection arises as soon as an original work is created in a fixed form. An author doesn't have to do anything to gain this protection. Instead, it arises as a matter of law. An author isn't required to register a work in order to get copyright protection. Writers don't have to mark their work to get copyright protection.

The owner of a copyright has the exclusive right to do anything with the copyrighted work. Subject to only a few exceptions, only the copyright owner can reproduce, perform, or sell the work.³⁹ Copyright owners also have the power to

allow others to use their copyrighted material. They do this by using a special kind of contract called a *license*. The law gives copyright holders the following broad rights:

- To reproduce the copyrighted work
- To prepare derivative works based upon the copyrighted work
- To distribute copies or phonorecords of the copyrighted work to the public
- To publicly perform the copyrighted work
- To publicly display the copyrighted work

NOTE

A *derivative work* is a work derived from an original work. A movie based on a best-selling novel is a derivative work.

Copyright owners also have the power to keep others from using their copyrighted material. It's important to understand who the owner of a copyright is. Often the owner of a copyright is the person who created the original work. This isn't always the case, however. For example, when an employee creates work for his or her employer, the employer typically is the owner of the copyright. Copyright law calls this situation a "work made for hire" (WFH).

Other than in the employer/employee context, a WFH must be reflected in a written document. This document shows that a person has specifically commissioned a WFH. The document also reflects that the author agrees to work on a WFH, and that copyright belongs to the person who commissioned the work. The following items are common works for hire:⁴⁰

NOTE

A WFH situation is created via a contract.

- A contribution to a collective work
- A part of a motion picture or other audiovisual work
- A translation
- A supplementary work
- A compilation
- An instructional text
- A test and answer material for a test
- An atlas

The length of copyright protection is determined through ownership. For original works created after January 1, 1978, a copyright lasts for the length of the author's life plus 70 years after the author's death. If two or more authors prepare a work, the 70-year period doesn't begin to run out until after the last author's death. For WFH, a copyright lasts for 95 years from publication of the work. Protection also could extend for 120 years from creation of the work. Whichever period is shorter is the proper term.⁴¹

There are special rules for unpublished works. These rules depend on when the work was created. They are also very complicated. To read about the laws for unpublished and unregistered works, you can visit <http://www.copyright.gov/circs/circ01.pdf>.

NOTE

The U.S. Copyright Office has prepared a number of documents to help people better understand copyright. You can see a list of those documents at <http://www.copyright.gov/circs/>.

Copyright Registration

Copyright protection arises automatically as soon as an original work of authorship is fixed. An author isn't required to register a work in order to get protection. There are many reasons why an author may choose to register for copyright protection. The main reason for a person to register a copyright is so that the copyright can be enforced. An author who created a work in the United States may not file a lawsuit for copyright infringement without first registering the copyright with the U.S. Copyright Office.⁴² The U.S. Copyright Office is a unit of the Library of Congress.

The law creates a number of other reasons to register a copyright. Registration creates a public record of the copyright. In addition, if a copyright is registered within five years of publication, it creates a presumption of valid ownership.⁴³ This means a copyright is presumed to be valid, and the person challenging it must present proof that it's invalid.

An author must submit copyright registration to the U.S. Copyright Office. The Copyright Office accepts both paper and electronic registration applications. It reports that it takes three to five months to process electronic applications. It takes seven to ten months to process paper-based applications.⁴⁴

A person registers a work by submitting an application and a copy of the work. The applicant also must pay a fee.

How Do You Protect Copyrights Internationally?

The Berne Convention for the Protection of Literary and Artistic Works (1886) is the main treaty regarding international copyright protection. The World Intellectual Property Organization administers it. The Berne Convention also states that any party to the convention agrees to protect the copyrighted works of foreign citizens at least as much as it protects the copyrighted works of its own citizens.

More than 165 countries are members of the Berne Convention. The United States became a member of the Berne Convention in 1989. It took a long time for the United States to join the Berne Convention because the convention requires member countries to provide a minimum level of copyright protection. The United States had to rewrite its copyright laws in order to give these protections. The Berne Convention requires each member nation to recognize the following:

- A minimum term of copyright protection that is the life of the author plus 50 years.
- Freedom from formalities such as notice or registration to recognize a copyright. Copyright protection arises automatically.
- Protection for certain moral rights of the author.

The only way to register a copyright is with the U.S. Copyright Office. Some people believe that mailing a copy of their work to themselves via U.S. mail is copyright registration or proof of ownership in the work. This is sometimes called a *poor man's copyright*. This is not a valid way to register a copyright. The only way to register a copyright in the United States is with the U.S. Copyright Office.⁴⁵

Infringement and Remedies

Copyright holders have exclusive rights in the work that they create. These rights arise when the work is created and continue for the length of the copyright. The federal government doesn't enforce copyrights. Authors must enforce their own rights. They can sue people who infringe on their copyright. Liability for infringement is based upon strict liability. A copyright owner can hold an infringer liable for violating a copyright even if the infringement was unwitting.

To pursue an action for copyright infringement, a plaintiff must prove ownership of the copyright. The plaintiff also must show that the defendant has infringed on that copyright. A plaintiff usually proves ownership of a copyright by showing a copyright registration. Copyright registration is proof of the validity of the copyright.

Copyright infringement cases are very rarely simple cases of a defendant directly copying a plaintiff's work. To show that there has been an unauthorized reproduction, the plaintiff must show that the defendant had access to the copyrighted work. Access to the copyrighted work alone isn't enough to prove infringement. The plaintiff also must show that the plaintiff's and defendant's work are substantially similar.

One of the most common tests used to determine substantial similarity is "whether a lay observer would consider the works as a whole substantially similar to one another."⁴⁶ This is a fact-intensive inquiry. The court will look at all the ways in which the two works are similar. If the two works are substantially similar, then copyright infringement has occurred.

Remedies for copyright infringement are similar to remedies for infringements of other intellectual property rights. A court can issue an injunction, which stops the infringer from violating the copyright holder's rights. A court also can order a defendant to pay damages for violating a plaintiff's copyright. A defendant also may be liable for statutory damages under copyright law. These damages are higher for willful copyright infringement.⁴⁷

NOTE

Piracy refers to unauthorized copying and distribution of electronic, music, and audiovisual works.

NOTE

Statutory damages are damage amounts that law specifies. Lawmakers specify statutory damage in cases where it might be hard for a party to prove the amount of actual damages.

FYI

Posting a URL to another person's copyrighted materials on your own Web page is generally not considered copyright infringement. Posting a copy of their content on your own Web page, even if you acknowledge their work, may be copyright infringement. This is because only the owner of the copyright has the right to reproduce and distribute their copyrighted materials.

The most common way for a defendant to defend against a copyright infringement case is to argue that the plaintiff's work isn't original. A defendant also can present facts that the works aren't substantially similar. Another defense in a copyright infringement case is that the use of the copyrighted work is allowed under the fair use doctrine.

Fair Use

A copyright holder has a large number of rights in his or her original work. The scope of these rights is to encourage artistic expression. However, there are some limitations on a copyright holder's exclusive rights. These limitations are a defense to copyright infringement. **Fair use** is one of the most common limitations.

The law states that fair use of a copyrighted work isn't copyright infringement.⁴⁸ The law lists a number of examples of fair use. Fair use is permitted in these situations in order to promote free speech. The examples include uses for:

- Criticism
- Comment
- News reporting
- Teaching (including multiple copies for classroom use)
- Scholarship
- Research

If portions of a copyrighted work are used for these purposes, then a defendant might have a defense against claims of copyright infringement.

The law also lists a number of factors that should be considered in determining whether a use should be considered fair use. These factors are technology neutral. They can be used to analyze the use of any type of creative work. The factors are:

- **The purpose and character of the use**—A use for nonprofit, educational, or comment purposes tends to favor fair use. A use that is for commercial or profit purposes tends to weigh against fair use.
- **The nature of the copyrighted work**—The more creative a work is, the more protection it will be afforded. Fair use tends to favor the use of facts and not the creative expression of an idea.
- **The amount and substantiality of the work used**—Use of a small amount of a copyrighted work tends to favor fair use. However, use of a small part of a work that encompasses the substantial idea in that work weighs against fair use.
- **The effect of the use upon the potential market**—A use that has no effect on a potential market for a work tends to weigh in favor of fair use. A use of a work that has a major effect on the market is less likely to be considered fair use.

Courts weigh these factors against one another to determine whether use of a copyrighted work is fair use. If fair use is indicated, it may be a defense to a copyright infringement claim. Fair use cases are very difficult to decide. Courts must engage in a very detailed analysis to determine fair use.

In 2009, the Second Circuit Court of Appeals reviewed a fair use case.⁴⁹ In that case, a book publisher created an illustrated biography about the history of the Grateful Dead rock band. As part of the book, it included pictures of concert posters. The plaintiff owned the copyrights to the posters and sued the book publisher for copyright infringement.

The defendant argued that its use of the posters was allowed under the fair use doctrine. In reviewing the case, the Second Circuit held that the use of the copyrighted posters was fair use. It said that the use didn't exploit the copyrighted works, but was instead transformative. This means that the purpose and character of the use was different from the original use of the copyrighted works. The posters were greatly reduced in size and used to commemorate events in the band's history in a biographical fashion. As such, the use was different from the original use of the posters and could properly be considered fair use.

Fair Use for Educational Purposes

Some people believe that the use of any copyrighted work by an educator is always fair use. This isn't true. The educator must still review the fair use factors.

For example, an education professor shares one short excerpt from a copyrighted academic journal article about teaching styles with students to illustrate a lesson.

This activity is probably fair use. Analysis of the fair use factors shows:

- A use in an educational setting tends to favor fair use.
- Use of a scholarly journal article that contains facts tends to favor fair use.
- Use of a small amount of a copyrighted work tends to favor fair use.
- This use likely has no effect on a potential market because it's being used in a restricted classroom setting.

The same education professor prepares a newsletter for a Web site. The professor includes a copyrighted cartoon about teaching students in the newsletter to illustrate a humorous point. This activity probably isn't fair use. The cartoon's creator must give permission for the cartoon to be included in the newsletter. Analysis of the fair use factors shows:

- A use on a Web site for entertainment purposes tends to weigh against fair use.
 - Use of creative works tends to weigh against fair use. A cartoon is a very creative work.
 - A use of an entire work, such as a cartoon, tends to weigh against fair use.
 - Use of the work could have a major effect on the cartoonist's ability to market his or her products, especially since it's made available through the Internet.
- This weighs against fair use.

The rules for determining fair use can be very detailed. The U.S. Copyright Office has prepared fair use guidance for educators. You can read this guidance at <http://www.copyright.gov/circs/circ21.pdf>.

Protecting Copyrights Online— The Digital Millennium Copyright Act (DMCA)

In 1998, Congress passed the Digital Millennium Copyright Act (DMCA).⁵⁰ Congress created the DMCA to help protect copyrights in the digital world. It also contains provisions that help insulate Internet service providers from the actions of their customers.

DMCA Basics

The Digital Millennium Copyright Act has five titles. They are:

- **Title I**—This title implements two World Intellectual Property Organization treaties. It contains provisions about technological measures used to protect electronic copyrighted works.
- **Title II**—This title is called the Online Copyright Infringement Liability Limitation Act. It limits the liability of online service providers for copyright infringement by users.
- **Title III**—This title is called the Computer Maintenance Competition Assurance Act. It allows computer technicians to make a copy of a computer program for maintenance or repair.
- **Title IV**—This title contains miscellaneous provisions.
- **Title V**—This title is called the Vessel Hull Design Protection Act. It creates a new form of IP protection for the design of vessel hulls.

NOTE

Many college students are aware of the DMCA because of its Title II copyright infringement provisions.

Titles I, II, and III are discussed in this section.

Technology Protection Measures

Title I of the DMCA implements two World Intellectual Property Organization treaties. They're the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The DMCA amended the Copyright Act (1976) to extend U.S. copyright law to creative works made by citizens in other countries. These changes were required as part of the WIPO treaties.

The WIPO treaties required two major changes. The first is that members of the treaties must prevent people from bypassing technological measures used to protect copyrighted works. Many digital products, such as DVDs, video games, electronic books, and Web sites use access controls to protect certain types of content. For example, a Web site might password protect some sections so that only registered members can get to those sections.

The technology measures and tools that some businesses use to protect their content are referred to as "digital rights management" (DRM). Many large businesses in the entertainment industry use DRM to protect their digital works.

The DMCA forbids people from accessing protected copyrighted content by bypassing these access controls. They may not tamper with content protected by technological access controls. This provision intends to protect content that's transmitted electronically from copyright infringement. In addition, a person isn't allowed to make or sell devices that

would allow other people unauthorized access to a copyrighted work that's protected by these types of access controls.⁵¹

The DMCA also forbids the sale of devices that would allow other people to bypass technological controls in order to copy a copyrighted work. The DMCA doesn't prohibit people from actually bypassing technological controls on their own to copy a work. This is because copying might be necessary to use parts of a work under the fair use doctrine.

There are some exceptions to these anti-circumvention measures.⁵² It may be possible for a person to bypass technological controls that prevent unauthorized access in these instances. Each of these exemptions has additional detailed terms. They're described only briefly here. The exemptions include:

- Nonprofit libraries, archives, and educational institutions may bypass technology protection measures to make a good faith determination that they wish to obtain authorized access to the work.
- A person who has lawfully obtained a computer program may bypass technology protection measures to identify and analyze elements of the program in order to make sure it's compatible with other programs.
- A person may bypass technology protection measures and create tools to do so in order to research and identify weaknesses in encryption technologies.
- A person may bypass technology protection measures to protect children from certain material on the Internet.
- A person may bypass technology protection measures when those measures are capable of collecting or sharing personally identifying information about a person's online activities.
- A person may bypass technology protection measures and create tools to do so for testing the security of a computer system or network. The owner of the system must specifically authorize the testing.

Title I criminalizes the act of bypassing technological measures. A person who willfully violates the technology protection measures for profit can be held criminally liable. Penalties include both prison time (up to 10 years is possible) and monetary fines (up to \$1,000,000 is possible). The law makes nonprofit libraries, archives, and educational institutions entirely exempt from its criminal liability provisions.⁵³

NOTE

The provisions forbidding bypassing technological measures are called the "Circumvention of Technological Protection Measures." You also may hear these referred to as the DMCA anti-circumvention measures.

FYI

Title II also allows the Library of Congress to issue administrative exemptions. These exemptions are allowed when technology protection measures substantially limit the ability of people to make non-infringing uses of copyrighted materials. The Library of Congress must issue administrative exemptions every three years. You can read the administrative exemption rules at <http://www.copyright.gov/1201/>.

NOTE

Online service provider is defined by the DMCA. It's a provider of online services or network access. An Internet service provider (ISP) is an online service provider.

Online Copyright Infringement

Title II of the DMCA is called the Online Copyright Infringement Liability Limitation Act. It limits the liability of an online service provider (OSP) for its customers' copyright infringement.⁵⁴ Online service providers lobbied hard for these provisions. They were concerned that they could be held liable for their users' actions under some secondary liability legal theories. In these theories, an online service provider could be held liable for a user's actions if they knew about them and contributed to them. This was worrisome to service providers whose entire function was to provide services to customers.

DMCA exempts OSPs from copyright infringement claims that result from the conduct of their customers if certain criteria are met. If they meet these criteria, they fall into a safe harbor. If an OSP qualifies for a safe harbor exemption, only the individual infringing customer is liable for monetary damages. The OSP's service or network, through which the customer engaged in the copyright infringement, isn't liable. The DMCA provides safe harbors for common OSP activities.⁵⁵ They are:

- Transitory communications (providing network communications services)
- System caching
- Storage of information on systems or networks at the direction of users (hosting)
- Providing information location tools (search engines)

The safe harbors don't require an OSP to monitor content posted or transmitted by their users for copyright infringement. To take advantage of any of the safe harbor provisions, the OSP must develop a policy of terminating the accounts of repeat copyright offenders. OSPs also must not interfere with any technological measures that copyright owners use to protect their copyrights. OSPs must also meet additional criteria for three of the safe harbors.

Under the transitory communications safe harbor section, an OSP isn't liable for copyright infringement by its customers simply because the OSP provides digital transmissions, routing, or connections for the communicating content. To use this safe harbor, an OSP must show the following:

NOTE

The transitory communications safe harbor is commonly called the "conduit" defense. This is because the OSP is merely providing a conduit for its users to communicate. Internet service providers often rely on this safe harbor.

- Someone other than the OSP initiated the transmission of content.
- The transmission was carried out through an automated process.
- The OSP doesn't select who receives the transmitted material except as an automatic response to the request of another person.
- No copy of the transmission is retained in a manner that makes it available to other recipients.
- OSPs transmit the material through its system without modification of its content.

DMCA Takedown Notices

Under the DMCA, if a copyright owner wishes to have allegedly infringing material removed from an OSP's network, the copyright owner must send a "notice and takedown" letter to the OSP's specified agent. DMCA requires each OSP to specify an agent who will receive these notices and respond to them.

The U.S. Copyright Office maintains a list of DMCA agents. You can find this list at <http://www.copyright.gov/onlinespl/>.

A DMCA "notice and takedown" letter must be in writing and contain the following elements:⁵⁶

- A physical or electronic signature of the copyright owner or representative
- Identification of the copyrighted work
- Identification of the infringing material that's to be removed, along with sufficient information to enable the ISP to locate it
- Contact information for the complaining party
- Statement that the complaining party has a good faith belief that the use of the copyrighted work isn't authorized by the copyright owner or the law
- Statement that the information is accurate and, that under penalty of perjury, the complaining party is authorized to act for the copyright owner

After receipt of a valid notice, the OSP must notify the user and remove or disable access to the allegedly infringing material. In the event that a user believes that the takedown is in error, the DMCA gives users an opportunity to require that the OSP reinstate the materials.

This provision protects the OSP from user-initiated communications that the OSP automatically processes. In these situations where an OSP is merely transmitting material, it won't be liable for the alleged copyright infringement of system users.

Under the information storage and information location tools safe harbor provisions, an OSP also must show that users control what material they post online. OSPs also must show that they don't have actual knowledge of users' infringing activities. OSPs must show that they don't profit from the users' infringing activities. OSPs further must show that they take down or block access to infringing material when they receive proper notice from a copyright owner.

Computer Maintenance

Title III of the DMCA is called the Computer Maintenance Competition Assurance Act. It allows computer repair technicians to make temporary, limited copies of computer software while they're repairing a computer. The computer must already have a copy of the software program on it. These new copies can't be used in any manner and technicians must delete them when the repair job is over. The DMCA allows a technician to make these copies to assist in repairing the computer.⁵⁷

DMCA Implementation Concerns

There are a number of implementation concerns with the DMCA. Many of these concerns turn on how the law is worded. Most of them concern the provisions of DMCA Title I and Title II. Many of the issues raised will need to be litigated in order to understand the true scope of some of the DMCA's provisions.

There are many concerns about the anti-circumvention technology protection measures specified in Title I. Many scientists, educators, and industry groups are concerned that these provisions will stifle research. This is because of the criminal penalties that are attached to violating these provisions. There's already some indication that this concern isn't unreasonable.

In 2001, the U.S. Federal Bureau of Investigation (FBI) arrested a security researcher from Russia. The FBI arrested him for publishing software that bypassed access controls on e-books. This was allegedly a violation of DMCA's technology protection measures. He was arrested after making a presentation about the security issues at the Def Con

conference in Las Vegas. Both the researcher and the Russian company that he worked for were charged under the DMCA. The charges against the researcher were dropped. In 2002, a jury acquitted the Russian company of charges that it violated the DMCA.

Other complaints about these provisions center on the fact that the anti-circumvention provisions hinder fair use and, as a result, free speech. These complaints ask about what happens when DRM-protected materials enter the public domain. How can they be properly used in the public domain if there are no available tools to remove DRM protection?

There are also concerns with Title II of the DMCA. Many people argue that it places too much of a burden on OSPs in responding to "notice and takedown" letters from copyright holders. Since the OSP must act on the notice in order to maintain its safe harbor protection, it might take down material inappropriately. Taking down material in such a broad manner could hamper free speech. In 2009, Google reported that over a third of the DMCA takedown notices that it received weren't valid copyright claims.⁵⁸

NOTE

To acquit means to find a person *not guilty* of the crimes with which he or she was charged.

NOTE

You can read Google's Transparency Report, <http://www.google.com/transparencyreport>, to learn more about the number of copyright claims that it receives.

Case Studies and Examples

The following case studies show how the concepts discussed in this chapter are used. These case studies are real-world examples of how intellectual property laws are applied.

Trade Secrets

In 2008, the U.S. government charged a design engineer with stealing trade secrets from Intel. The value of the trade secrets was estimated at \$1 billion. The trade secrets were about its newest microprocessor.

The engineer worked at Intel in Massachusetts. He resigned from his job at the end of May 2008. He told Intel that he would use his accrued vacation time for two weeks until his final day at work. His employment with Intel would officially end on June 11, 2008. The engineer didn't tell Intel that he had a new job with an Intel competitor. He started his new job on June 2, 2008.

Intel heard rumors that the engineer had accepted employment with its competitor. The company began to review logs to see his network activities during his last two weeks with the company. It notified law enforcement once it discovered that the employee had accessed sensitive company documents.

The U.S. Federal Bureau of Investigations investigated the incident. Their investigation showed that the engineer remotely accessed the Intel system several times between June 8 and June 11, 2008. He downloaded highly sensitive Intel documents that contained data relating to the design of the new chip. The FBI found no evidence that he had disclosed or used the information that he downloaded from Intel.

In April 2012 the engineer pleaded guilty to charges of wire fraud for illegally accessing the Intel system and downloading documents. He was sentenced to three years in prison. The case highlights that even large companies must implement access control measures to protect their secrets.

NOTE

You can read the Department of Justice press release about the case at <https://archives.fbi.gov/archives/boston/press-releases/2012/former-intel-employee-sentenced-to-prison-for-stealing-valuable-computer-chip-manufacturing-and-design-documents>.

Service Provider Liability for Copyright Infringement

Napster was an online music file-sharing software program. At one point, it was the most popular peer-to-peer program in use. Napster allowed computer users to share their music collections online with other computer users. Napster freely distributed its software.

In 1999, several music companies filed a lawsuit against Napster for copyright infringement under the Digital Millennium Copyright Act. They argued that Napster users were directly infringing on their copyrights. They argued that Napster was responsible for copyright infringement on several secondary liability theories. They argued that Napster engaged in copyright infringement as well because it provided the services used by its customers to engage in copyright infringement. The case is called *A&M Records, Inc. v. Napster*. It was filed in U.S. District Court for the Northern District of California.

Napster offered several defenses. It claimed that its activities fell within DMCA safe harbor provisions. These defenses were not successful after the district court determined that Napster failed to meet all the safe harbor requirements.

The district court held that at least some of Napster's users were engaging in activities that infringed upon the copyrights of others. It also held that Napster had knowledge of this activity. It also found that Napster provided services that its users used to engage in copyright infringement. It also found that Napster profited financially from its users' activities. Napster lost the case in district court.

NOTE

The Electronic Frontier Foundation maintains a Web site regarding the Napster litigation. You can find the main court documents related to the Napster case at <http://w2.eff.org/IIPIP2P/Napster/>.

Napster appealed to the Ninth Circuit U.S. Court of Appeals. The Court of Appeals upheld the district court's decision. The court ordered Napster to monitor the activities of its network. It also ordered Napster to block access to infringing material when notified by copyright owners.

Napster shut down its service in July 2001. It declared bankruptcy in 2002. In 2003, it sold all of its assets. Today, Best Buy, Inc. owns Napster. The Napster case is one of the most famous cases about service provider liability for copyright infringement under the DMCA.

Digital Collections

In 2008, several U.S. college and university research libraries formed the HathiTrust. The HathiTrust digitizes and stores the printed collections of its partner libraries. It does this to preserve them. A number of different organizations, such as Google and Microsoft, are partners in digitizing the collections. Since its creation, the HathiTrust has digitized over 5 million books and 3 billion pages of materials.⁵⁹ You can see a list of participating institutions at <http://www.hathitrust.org/community>.

The HathiTrust also provides access to this digitized content. The HathiTrust provides access to digital resources when a copyright holder has allowed it. It also provides access to digital resources where allowed by law, as in providing materials to individuals with visual disabilities. It also provides access to works in the public domain.

In September 2011, the Authors Guild sued the HathiTrust. The Authors Guild helps writers learn about copyright and how to protect it. The Authors Guild alleged that the HathiTrust was violating the copyright of guild members by creating a digital archive of copyrighted materials. They argued that the HathiTrust and its partners copied and provided access to the materials without the owners' consent. The HathiTrust argued that the digitization of the materials was allowed under a number of different copyright law exceptions. It argued that its activities were fair use and fell under the preservation provision. In October 2012, a federal district court agreed with the HathiTrust. The judge said that the HathiTrust's activities didn't violate copyright laws.

In November 2012, the Authors Guild appealed the case to the Second Circuit Court of Appeals. The appellate court heard oral arguments on October 30, 2013. As of this writing, the court had not yet issued a decision.