

seller of the equipment that expands those producers' audiences cannot be a contributory infringer if, as is true in this case, it has had no direct involvement with any infringing activity.

If the Betamax were used to make copies for a commercial or profit-making purpose, such use would presumptively be unfair. The contrary presumption is appropriate here, however, because the District Court's findings plainly establish that time-shifting for private home use must be characterized as a noncommercial, nonprofit activity. Moreover, when one considers the nature of a televised copyrighted audiovisual work, and that time-shifting merely enables a viewer to see such a work which he had been invited to witness in its entirety free of charge, the fact that the entire work is reproduced does not have its ordinary effect of militating against a finding of fair use.

The timeshifter no more steals the program by watching it once than does the live viewer, and the live viewer is no more likely to buy pre-recorded videotapes than is the timeshifter. Indeed, no live viewer would buy a pre-recorded videotape if he did not have access to a VTR.

Today, the larger the audience for the original telecast, the higher the price plaintiffs can demand from broadcasters from rerun rights. There is no survey within the knowledge of this court to show that the rerun audience is comprised of persons who have not seen the program. In any event, if ratings can reflect

Betamax recording, original audiences may increase and, given market practices, this should aid plaintiffs rather than harm them.

Of course, plaintiffs may fear that the Betamax will keep the tapes long enough to satisfy all their interest in the program and will, therefore, not patronize later theater exhibitions. It should also be noted that there is no evidence to suggest that the public interest in later theatrical exhibitions of motion pictures will be reduced any more by Betamax recording than it already is by the television broadcast of the film.

. . . [We] must conclude that this record amply supports the District Court's conclusion that home time-shifting is fair use. . . . [T]he Court of Appeals erred in holding that the statute as presently written bars such conduct.

Reversed.

CASE QUESTIONS

1. What is "time-shifting"?
2. What is the significance of the fair use doctrine in the court's decision?
3. What is the standard for imposing "vicarious liability for infringement"? What does the court examine in determining copyright vicarious infringement liability?
4. Has Sony infringed the rights of Universal and Walt Disney? Explain your answer.