US Court rejects Napster appeal

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After three months of deliberation, the 9th US Circuit Court of Appeals agreed with the major record labels that the online music swap service Napster must prevent its users from exchanging copyrighted material.

Essentially the decision upholds a lower court ruling in July last year, which ordered Napster to prevent its users being able to exchange unauthorised music. An injunction granted at that time was postponed, pending appeal, after Napster had said it was not technologically possible to do this without shutting down its services. The appellate court have sent the case back to the lower court with instructions to narrow the injunction, respecting the technological limitations that Napster faces in policing its service.

Lawyers representing the record industry and a handful of musicians, such as the rock band Metallica and rapper Dr Dre, claim that the removal of copyrighted material from the Napster system is technically very simple. Howard Kink, a Los Angeles lawyer representing Metallica and Dr Dre, said copyright holders would simply provide Napster "with a song name and artist, and if they're in Napster's directory, they'll have to be taken off."

Napster said the record labels have made the job of policing the site sound more feasible than it is. In reality, Napster would have difficulty blocking some songs without blocking others with similar names, and the process could slow the service down to the point where it becomes unusable, the company said. In addition, songs that are taken from a CD, converted to MP3 format and then stored on a hard disk can be given any name at all.

Napster has made an appeal to its 50,000,000-strong user base to lobby Congressmen and others in an attempt to subvert the recording industry's legal assault. In a statement appearing on their web site dated February 12, the company states: "The Napster community is about the love of music. Napster community members love music and purchase far more CDs than most people. They share files with no expectation of gain. We have again and again stated that we intend to make payments to artists, songwriters and other rights holders. Yet the largest and most successful media companies in the world have taken aim at our more than 50 million users, and today they landed a blow. We will respond and deal with this situation in the courts...

"Finally, even if Napster file sharing is shut down while our trial is pending, we will do whatever we can to work within the limits of the injunction to continue to provide more than 50 million Napster community members access to music."

Although the company did not specify how this would be facilitated, Napster chat rooms are already being used to discuss alternative means of accessing free music downloads.

Napster founder Shawn Fanning adds: "I would like to thank everyone for being so supportive. Napster works because people who love music share and participate. Along the way, many people said it would never work. We've heard that we couldn't survive before—when we had 700,000 members, and when we had 17,000,000 members. Today we have more than 50,000,000 members, and we'll find a way to keep this community growing. If we work together and let Members of Congress know how important Napster is to us, we'll succeed."

Given the efforts Napster has made to transform its service into one based on subscription, one could be forgiven for taking a somewhat cynical view of the company's professed commitment to the "Napster community."

Having announced an alliance with media giant Bertelsmann last October, Napster has since reached agreement with two independent distributors, Edel in Germany and TVT in the United States. TVT dropped their lawsuit against Napster last month. According to the February 12 statement, Napster "have been engaged in serious negotiations with several major record labels."

Whatever the motives of Napster executives, however, there is no doubt that what exists around the service is a community that see it as something more than a place to get free music. Among millions of young people, the Napster chat rooms are a place to exchange ideas with like-minded individuals. In this sense, a service such as Napster flows logically from the creation of the World Wide Web itself, and it was only a matter of time before such a thing developed.

The World Wide Web has emerged as a powerful new medium, with the potential to facilitate the social interaction of millions of people internationally. Its functioning depends upon the ability of users to share, in an unrestricted manner, material appearing on any of the hundreds of thousands of servers connected to the Internet. What the Napster technology does is to take this process a step further.

Through the use of peer-to-peer file-sharing technology, Napster software effectively transforms the PC of its 50 million registered users into a server on which the user can make available any music file to others. Though designed for the transfer of MP3 music files, the technology could equally be applied to any file format.

The controversy that has engulfed Napster since its launch is of crucial importance for the future direction of new technologies and the World Wide Web in particular. Emerging as it did in a world dominated by the accumulation of private profit, the vast social benefits of the Napster model were immediately submerged in a legal battle over intellectual property and copyrights.

From the standpoint of existing law, it seems Napster does not have a leg to stand on. Their business is based upon facilitating the distribution of music, the rights over which were held by others. It could be said that in creating the service, only later to approach the recording industry giants for a deal, Napster executives were engaging in something close to industrial blackmail.

Although the most vocal opposition to Napster has come from some of the wealthiest artists, lesser-known artists who rely on the sale of CDs for their living have also voiced concern over the financial implications of a free download service. However, many performers are supportive of the Napster model, precisely because it facilitates a wide distribution of their work. This has led to a passionate debate on the rights and wrongs of music swapping.

The significance of this case, however, goes beyond the narrow legal questions or the effects of the service upon this or that artist. It points to the fundamental contradiction that exists between the emergence of a new technology, which makes it possible to share information in almost any format—audio, video, text, images—across the planet, and the organisation of society on the basis of private property. More than ever, intellectual property rights and royalties as a means of compensation for artistic work are becoming a barrier to the broadest possible distribution of the art itself.

Whatever the courts decide, the free exchange of music will continue. A number of clones of Napster's database already exist and new software has been developed that does not even require a central database, but simply allows users to connect to each other directly over the Internet to share their files.

This does not mean that there should be any indifference to the outcome of the case. If the profit interests of the recording giants can dictate the shutting down of a service such as Napster, it will be a further step towards corporate control of the Internet itself. If the free exchange of information, artistic or otherwise, conflicts with the organisation of society along capitalist lines, then it is the system that must be changed in line with the emergence of the technology, not the technology curtailed to safeguard a socially regressive system.