

All about caselaw & cases:
*researching caselaw, tracking
cases, & finding court documents*

What we will cover

- **Caselaw:** how to search for caselaw quickly and effectively using Westlaw & Lexis
- **Cases:** case-tracking & finding court documents

Search techniques available to you



Next generation search \approx NLP+

- Secret algorithm
- Uses the Key Number system (WLNNext), Legal Topics (Lexis Advance), citators, secondary source content, information about search habits of its users

Terms & Connectors

- *Literal search*
- Boolean Operators
- Proximity Limiters
- Truncation
- Field/Segment Searching

Questions to ask before you start



- Which jurisdictions do you want me to focus on?
- Do you want all cases or just the recent ones?
How recent?
- Do you want a hit list or do you want the actual cases? What format?

How can I make my searches more effective?



- **Choose the right database:**
 - Select the smallest database possible
 - Save money
 - Save time and avoid frustration
- **Craft a smart search**
(on the 1st try)

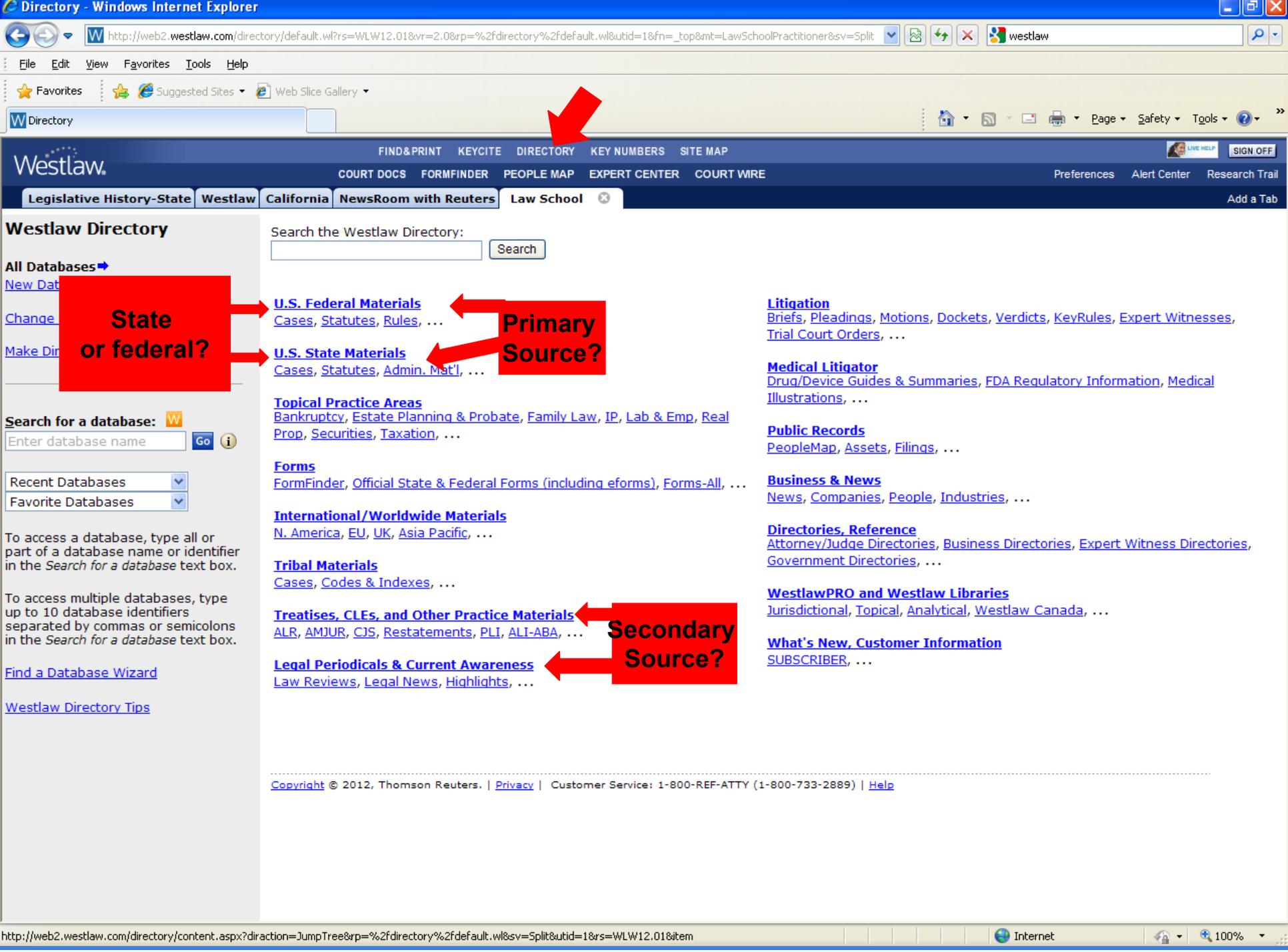
Choose the right database



Ask yourself the following questions:

1. What type of materials am I looking for?
 - Primary v. secondary sources
2. Which jurisdiction?

This is how most of WL & LN databases are arranged



Westlaw Directory
Search the Westlaw Directory:
 Search

All Databases →
New Database
Change Database
Make Database
State or federal?
Primary Source?
[U.S. Federal Materials](#)
Cases, Statutes, Rules, ...
[U.S. State Materials](#)
Cases, Statutes, Admin. Mat'l, ...
[Topical Practice Areas](#)
Bankruptcy, Estate Planning & Probate, Family Law, IP, Lab & Emp, Real Prop, Securities, Taxation, ...
[Forms](#)
FormFinder, Official State & Federal Forms (including eforms), Forms-All, ...
[International/Worldwide Materials](#)
N. America, EU, UK, Asia Pacific, ...
[Tribal Materials](#)
Cases, Codes & Indexes, ...
[Treatises, CLEs, and Other Practice Materials](#)
ALR, AMJUR, CJS, Restatements, PLI, ALI-ABA, ...
Secondary Source?
[Legal Periodicals & Current Awareness](#)
Law Reviews, Legal News, Highlights, ...
[Litigation](#)
Briefs, Pleadings, Motions, Dockets, Verdicts, KeyRules, Expert Witnesses, Trial Court Orders, ...
[Medical Litigator](#)
Drug/Device Guides & Summaries, FDA Regulatory Information, Medical Illustrations, ...
[Public Records](#)
PeopleMap, Assets, Filings, ...
[Business & News](#)
News, Companies, People, Industries, ...
[Directories, Reference](#)
Attorney/Judge Directories, Business Directories, Expert Witness Directories, Government Directories, ...
[WestlawPRO and Westlaw Libraries](#)
Jurisdictional, Topical, Analytical, Westlaw Canada, ...
[What's New, Customer Information](#)
SUBSCRIBER, ...

Search for a database:
Recent Databases
Favorite Databases

To access a database, type all or part of a database name or identifier in the Search for a database text box.

To access multiple databases, type up to 10 database identifiers separated by commas or semicolons in the Search for a database text box.

[Find a Database Wizard](#)
[Westlaw Directory Tips](#)

Sources View Tutorial | Help

Legal (Default Subtab) Search Selected

- Cases - U.S.** View more
- Federal & State Cases, Combined
 - Federal Court Cases, Combined
 - State Court Cases, Combined

Primary source?

- Court Records, Briefs and Filings** View more
- Federal and State Pleadings, Combined
 - Federal and State Briefs and Motions, Combined
 - U.S. Supreme Court Briefs

- Expert Witness Analysis, Jury Verdicts & Settlements** View more
- Mega Verdicts & Settlements (Incl. IDEX & ALM)

- Federal Legal - U.S.** View more
- United States Code Service - Titles 1 through 51
 - USCS - Federal Rules Annotated
 - CFR - Code of Federal Regulations
 - Federal Register
 - Federal Agency Decisions

State or federal?

- States Legal - U.S.** View more
- California
 - Florida
 - Georgia
 - Illinois
 - Massachusetts
 - Michigan
 - Ohio
 - Pennsylvania
 - Texas
 - Virginia

- Legislation & Politics - U.S. & U.K.** View more
- State Codes, Constitutions, Court Rules & ALS, Combined
 - State Administrative Codes & Registers, Combined
 - State Net Bill Tracking - Current Session

- Area of Law - By Topic** View more
- Banking & Financial Services
 - Bankruptcy
 - Environment
 - Estates, Gifts & Trusts
 - Foreign Laws & Legal Sources
 - Insurance
 - International Arbitration
 - International Law
 - Labor & Employment
 - Litigation Practice & Procedure
 - Patent Law
 - Securities
 - Taxation
 - Trademark Law

- 50 State Multi-Jurisdictional Surveys** View more
- LexisNexis 50 State Surveys, Legislation & Regulations

- Secondary Legal** View more
- Emerging Issues Analysis
 - Matthew Bender(R)
 - CLE Materials
 - Jurisprudences, ALR & Encyclopedias
 - Law Reviews & Journals
 - Jurisprudences, Restatements and Principles of the Law
 - In-House Memoranda

Secondary source?

- Legal News** View more
- Mealey's Daily News Update
 - The National Law Journal
 - New York Law Journal
 - ABA
 - Mealey's

- Reference** View more
- Martindale-Hubbell(R) Listings, All

- Find Laws by Country or Region** View more
- LexisNexis(R) Information & Training** View more

Recently Used Sources Help

U.S. Supreme Court Briefs

Edit Sources

Go

Quick Tools Help

Enter a citation or term

Get a Doc Shepardize® Find a Source Lexis@Web

Search by Topic or Headnote Help

Select Topic

Go

Don't see the topic you need? View more

Litigation and Transactional Resources

- LexisNexis® Verdict & Settlement Analyzer
- LexisNexis® Expert Witness Profiles
- LexisNexis® Total Litigator
- LexisNexis® Tax Center
- Bankruptcy Practice Center
- Patent Law Practice Center
- Banking & Financial Services Practice Center
- Health Care Practice Center
- Mergers & Acquisitions Practice Center
- More Transactional Practice Centers

Find Forms

Deal Type

Select ...

Form

WestlawNext

powered by WestSearch™

Enter search terms, or a jurisdiction and a topic

California

SEARCH

advanced

Which jurisdiction?



Browse

- All Content
- Federal Materials
- State Materials
- Topics
- Tools

| | | |
|-------------------------------------|--------------------------------|-----------------------------------|
| Cases | Briefs | Dockets |
| Statutes & Court Rules | Trial Court Documents | News |
| Regulations | Expert Materials | Sample Agreements |
| Administrative Decisions & Guidance | Jury Verdicts & Settlements | Patents |
| Trial Court Orders | Proposed & Enacted Legislation | Public Records |
| Secondary Sources | Proposed & Adopted Regulations | Trial & Oral Argument Transcripts |
| Forms | | Directories |
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| | | International Materials |



**What type?
Secondary Sources?
Which type of
primary source?**

Judith's Research (0)

Favorites

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Edit home page

Home
Cases

See specific court for coverage information. Search all Cases content above or navigate to specific content below.

- All Federal Cases
- All State Cases

Federal Cases by Court

- | | | |
|---------------------------|-----------------------------------|---|
| U.S. Supreme Court | U.S. Tax Court | U.S. Court of Appeals for Veterans Claims |
| U.S. Courts of Appeals | U.S. Court of Federal Claims | Military Courts |
| Federal District Courts | U.S. Court of International Trade | Judicial Panel on Multidistrict Litigation (JPML) |
| Federal Bankruptcy Courts | | |

Federal Cases by Circuit

- | | | |
|-------------|-------------|-----------------|
| 1st Circuit | 6th Circuit | 10th Circuit |
| 2nd Circuit | 7th Circuit | 11th Circuit |
| 3rd Circuit | 8th Circuit | D.C. Circuit |
| 4th Circuit | 9th Circuit | Federal Circuit |
| 5th Circuit | | |

Cases by State

- | | | |
|----------------------|---------------|----------------|
| Alabama | Kentucky | North Dakota |
| Alaska | Louisiana | Ohio |
| Arizona | Maine | Oklahoma |
| Arkansas | Maryland | Oregon |
| California | Massachusetts | Pennsylvania |
| Colorado | Michigan | Rhode Island |
| Connecticut | Minnesota | South Carolina |
| Delaware | Mississippi | South Dakota |
| District of Columbia | Missouri | Tennessee |
| Florida | Montana | Texas |
| Georgia | Nebraska | Utah |
| Hawaii | Nevada | Vermont |
| Idaho | New Hampshire | Virginia |



TOOLS & RESOURCES

- Dockets
- West Key Number System
- American Federal Tax Reporter
- American Maritime Cases (AMC)
- UCC Cases

Home > Cases

California State & Federal Cases

Add to Favorites

See specific court for coverage information. Search all California State & Federal Cases content above or navigate to specific content below.

Search all content Specify content to search

Federal

- All California Federal Cases
 - U.S. Supreme Court
 - Ninth Circuit Court of Appeals
 - California Federal District Court
 - California Bankruptcy Courts

State

- All California State Cases
 - California Supreme Court
 - California Courts of Appeal

WestlawNext™

Q- california

Looking for this?

- California
- California State & Federal Cases
- California Supreme Court Cases
- California Federal Cases
- California Jurisprudence
- California State Cases
- California Statutes & Court Rules
- California Affirmative Defenses 2d
- Rutter Group-California Practice Guide: Alternative Dispute Resolution
- California Practice Guide: Proposed & Enacted Legislation
- Public Records
- Secondary Sources
- Proposed & Adopted Regulations
- Trial & Oral Argument Transcripts
- Directories
- Business Information
- Forms
- International Materials

Start typing what you are looking for, and WLNext will suggest possible databases

All Federal

SEARCH

advanced

Judith's Research (0)

Favorites

Matter Benchmark Reports

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All Content Types ▾

California, Texas ▾

All Practice Areas & Topics ▾

Shepard's®

Material type selection

All Content Types (includes all the currently available content)

Primary Legal Materials [Select all](#) | [Clear all](#)

Cases 

Statutes and Legislation

Administrative Codes and Regulations

Administrative Materials

Secondary Legal Materials [Select all](#) | [Clear all](#)

Secondary Materials

Litigation/Drafting Tools [Select all](#) | [Clear all](#)

Forms

Briefs, Pleadings, and Motions

Jury Instructions

Jury Verdicts and Settlements

Expert Witness Analysis

Dockets

News, Business & Reference Materials [Select all](#) | [Clear all](#)

Directories

News

Legal News

Scientific

Company and Financial

Start in: ▾

[Refresh](#) | [Show](#)

Lexis® Advance

Search LexisNexis® and select legal content from Lexis® Web

Enter search terms, a citation, or shep: to Shepardize®.

Search

Search Tips

Cases

U.S. Federal

All Practice Areas &...

Shepard's®

Select jurisdiction

- All Jurisdictions
- U.S. Federal
- States (& Territories)
 - Alabama
 - Guam
 - Massachusetts
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 - Alaska
 - Hawaii
 - Michigan
 - North Carolina
 - Texas
 - Arizona
 - Idaho
 - Minnesota
 - North Dakota
 - Utah
 - Arkansas
 - Illinois
 - Mississippi
 - Northern Marianas
 - Vermont
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 - Indiana
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 - Connecticut
 - Kansas
 - Nebraska
 - Oregon
 - Washington
 - Delaware
 - Kentucky
 - Nevada
 - Pennsylvania
 - West Virginia
 - Dist. of Columbia
 - Louisiana
 - New Hampshire
 - Rhode Island
 - Wisconsin
 - Florida
 - Maine
 - New Jersey
 - South Carolina
 - Wyoming
 - Georgia
 - Maryland
 - New Mexico
 - South Dakota
 - Puerto Rico

OK

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Search LexisNexis® and select legal content from Lexis® Web

 Enter search terms, a citation, or shep: to Shepardize®.

Search

[Search Tips](#)

★ Recent & Favorites ▾

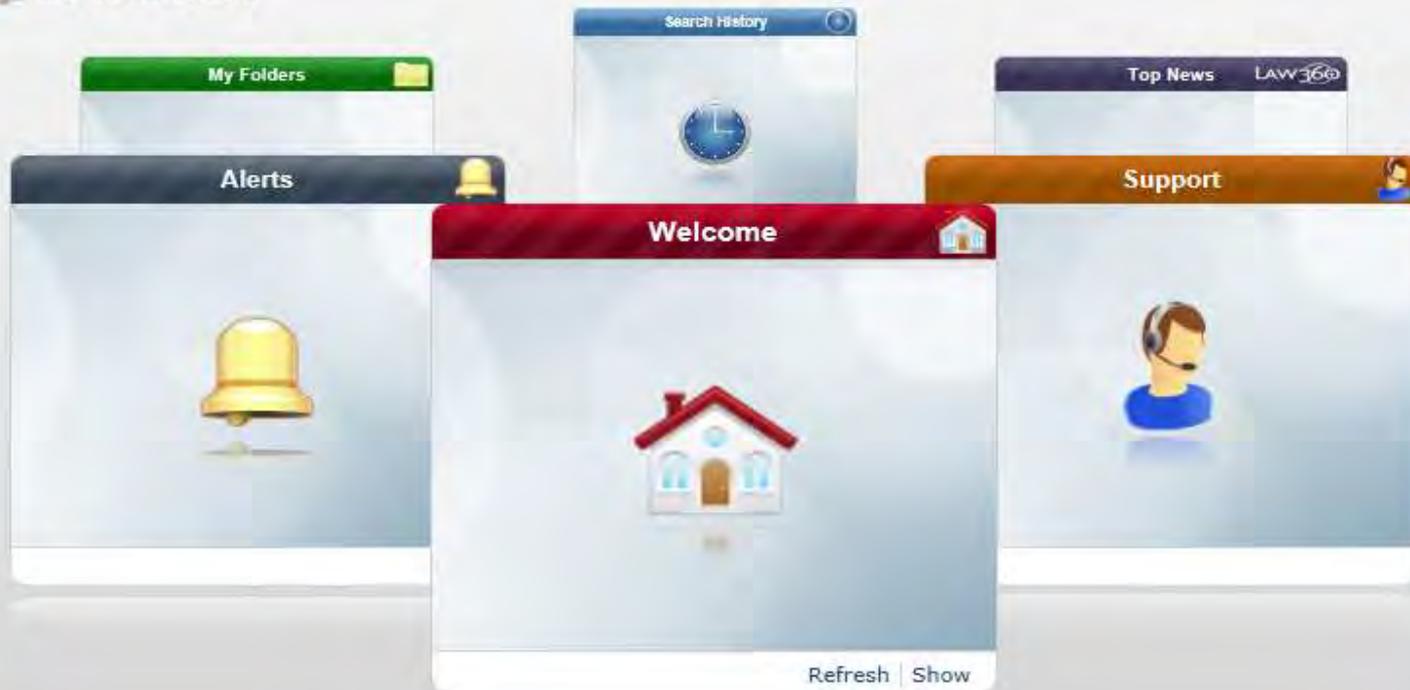
Cases ▾

California ▾

All Practice Areas & Topics ▾

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My Workspace



The My Workspace dashboard features several widgets: **My Folders** (green header), **Search History** (blue header with a clock icon), **Top News** (dark blue header with LAW360 logo), **Alerts** (dark grey header with a bell icon), **Welcome** (red header with a house icon and Refresh/Show buttons), and **Support** (orange header with a headset icon).

| Jurisdiction | |
|--------------------|-----------------|
| Non-jurisdictional | 972 |
| U.S. Federal | 249 |
| California | 129 |
| Colorado | 77 |
| Connecticut | 66 |
| More | Select multiple |

- CA - AAJ Trial
- CA - AAJ TrialNews
- CA - ALM Verdicts
- CA - Barclays Official California Code of Regulations
View table of contents
- CA - California Advance Legislative Service
- CA - California Bulletins & Notices
- CA - California Compensation Cases**
- CA - California Constitution
View table of contents
- CA - California Local, State & Federal Court Rules
View table of contents
- CA - California Regulatory Law Bulletin
View table of contents
- CA - Deering's California Codes Annotated
View table of contents
- CA - Dolan Media Verdicts and Settlements
- CA - Expert Witness Verdicts and Settlements (Including IDEX)
- CA - Federal Jury Verdict Reporter
- CA - LexisNexis Jury Verdicts and Settlements - Mealey's
- CA - National Jury Verdict Review & Analysis
- CA - National Medical Malpractice Review & Analysis
- CA - WCAB Noteworthy Panel Decisions
- CA - What's It Worth? A Guide to Personal Injury Awards and Settlements
- CA Agricultural Labor Relations Board
- CA Attorney General Opinions
- CA Bill Tracking Reports
- CA Board of Equalization Opinions
- CA Briefs
- CA Courts of Appeal Cases from 1905**
- CA Department of Corporations Decisions
- CA Div. Labor Standards Enf. Policies & Interp. Manual
View table of contents
- CA Fair Employment & Housing Commission
- CA Fair Political Practices Commission
- CA Franchise Tax Board Chief Counsel Rulings
- CA Franchise Tax Board Decisions

- The Cairns Post/The Cairns Sun
- Caixin Online
- Calculating and Proving Damages
View table of contents
- Calculating Construction Damages
- Calculating Lost Labor Productivity in Construction Claims
- Caldwell's Kentucky Form Book
View table of contents
- Calgary Herald
- California Class Actions and Coordinated Proceedings, Second Edition
View table of contents
- California Community Property With Tax Analysis
View table of contents
- California CPA
- California Criminal Defense Practice
View table of contents
- California Criminal Defense Practice Reporter
- California Criminal Discovery
View table of contents
- California Department of Financial Institutions Releases
- California Deposition and Discovery Practice
View table of contents
- California Division of Labor Standards Enforcement Opinion Letters
- California Employer's Guide to Employee Handbooks & Personnel Policy Manuals
View table of contents
- California Energy & Climate Report
- California Environmental Law & Land Use Practice
View table of contents
- California Environmental Law Reporter
- California Evidence Courtroom Manual
View table of contents
- California Evidentiary Foundations
View table of contents
- California Family Law Litigation Guide
View table of contents
- California Family Law Monthly
- California Family Law Practice and Procedure**
View table of contents
- California Forms of Jury Instruction
View table of contents

Crafting a smart search



How to increase the **breadth** of your search terms

- Include **synonyms**
 - Use tobacco and cigar in addition to cigarette
 - Use Westlaw's Thesaurus or Lexis' "Suggest terms"
- Use **truncators** to capture all forms of a word
 - Root expander = !
 - Litigat! → litigate, litigator, litigation
- Use the **wild card** (*) to find a word you're not sure how to spell
 - Marb*ry → Marbury, Marbary, Marbery
 - Wom*m → woman, women

Check "search tips" in Lexis Advance or "Advanced" in WLNext

Crafting a smart search

- **Narrow** your search by choosing less inclusive terms
 - *Instead of “bird”, use “parrot” or “macaw”*
- Take advantage of connectors, limiters, & expanders to broaden or narrow your search
 - To search for ERA and not era: *allcaps (era)*
 - To search for “damage” and not “damages”:
 - Westlaw: #damage*
 - Lexis: singular (damage)*

Browse

All Content

Federal Materials

State Materials

Topics

Tools

| | | |
|-------------------------------------|--------------------------------|-----------------------------------|
| Cases | Briefs | Dockets |
| Statutes & Court Rules | Trial Court Documents | News |
| Regulations | Expert Materials | Legislative History |
| Administrative Decisions & Guidance | Jury Verdicts & Settlements | Sample Agreements |
| Trial Court Orders | Proposed & Enacted Legislation | Patents |
| Secondary Sources | Proposed & Adopted Regulations | Public Records |
| Forms | Arbitration Materials | Trial & Oral Argument Transcripts |
| | | Directories |
| | | Business Information |
| | | International Materials |

News and insight from REUTERS



FDA OxyContin decision: anti-abuse or anti-competition?

Friday, April 19, 2013 | REUTERS LEGAL

By Terry Baynes (Reuters) - A decision this week by the Food and Drug Administration to curb



If you enter a search that contains boolean connectors, your search will automatically be transformed into a terms & connectors search by both Lexis Advance & WestlawNext

Tip: WLNext lets you force a terms & conn. search if you add "adv:" to the beginning of your search query

Lexis® Advance

Search LexisNexis® and secondary legal content from Lexis® Web

Search

Search Tips

Cases ▾

U.S. Federal ▾

All Practice Areas &... ▾

Shepard's®

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My Folders

Support

Search History

Alerts

Welcome



Crafting a smart search



Example: need cases dealing with copyright infringement on the Internet

Sample search strings in Westlaw Classic ALLFEDS database (terms & connectors searching):

- Internet copyright infringement:
 - space = “or”
 - 10000+ hits
- Internet & copyright & infringement: 3779
- Internet /p copyright /p infringement: 1363
- Internet /s copyright /s infringement: 654
- Internet /s “copyright infringement”: 553

Sample search string in WestlawNext’s all federal cases

- Internet copyright infringement: 2154
- Internet & copyright & infringement 2154
- Internet /p copyright /p infringement 1363
- Internet /s copyright /s infringement 654
- Internet /s “copyright infringement”: 553

Crafting a smart search



Take advantage of field/segment searching

- Each document is divided into sections
- **Idea:** increases relevant documents retrieved by limiting where your searches are performed

Legal > States Legal - U.S. > California > Find Cases > CA State Cases, Combined

Search View Tutorial | Help

- Broaden this search with additional sources**
- CA State Cases, Combined (source you selected)
 - California Forms Of Pleading and Practice - Annotated
 - California Points & Authorities
 - California Matthew Bender® Practice Guides, Combined
 - Matthew Bender® Practice Guide: CA Pretrial Civil Procedure and Discovery
 - Matthew Bender Practice Guide: California E-Discovery and Evidence
- [View all sources](#)

Select database

Select Search Type and Enter Search Terms

Terms & Connectors

Natural Language

Easy Search™

Suggest terms for my search

Search

Check spelling

Restrict by Document Segment

Select a document segment, enter search terms for the segment, then click: Add.

OVERVIEW Add

Field/segment searching

Note: Segment availability differs between sources. Segments may not be applied consistently across sources.

Restrict by Date

No Date Restrictions From To Date formats...

Search Connectors

| | | | |
|-----|----------------|-------|-------------------|
| and | and | w/p | in same paragraph |
| or | or | w/seg | in same segment |
| w/N | within N words | w/s | in same sentence |

How Do I...?

- Combine sources?
- Restrict by date?
- Restrict by document segment?
- Use wildcards as placeholders for one or more characters in search terms?

Legal > States Legal - U.S. > California > Find Cases > CA State Cases, Combined

Search View Tutorial | Help

Broaden this search with additional sources
 CA State Cases, Combined (Source you selected)

- Select a Segment of Pleading and Practice - Annotated
 - CITES Authorities
 - CONCUR Bender® Practice Guides, Combined
 - CONCURBY Practice Guide: CA Pretrial Civil Procedure and Discovery
 - CORE-TERMS Practice Guide: California E-Discovery and Evidence
 - COUNSEL
 - COURT
 - COURT-TEXT
 - DISPOSITION
 - DISSENT
 - DISSENTBY
 - HEADNOTES
 - HISTORY
 - JUDGES
 - LN-HEADNOTES
 - LN-SUMMARY
 - NAME
 - NOTICE
 - NUMBER
 - OPINION
 - OPINIONBY
 - OPINIONS
 - OUTCOME
 - OVERVIEW
 - POSTURE
 - SYLLABUS
 - WRITTENBY
- Segment Segment
gment, enter search terms for the segment, then click Add.
- OVERVIEW Add



Segment Segment

gment, enter search terms for the segment, then click Add.

OVERVIEW Add

Note: Segment availability differs between sources. Segments may not be applied consistently across sources.

Restrict by Date

No Date Restrictions From [] To [] Date formats...

Search Connectors

| | | | |
|-----|----------------|-------|-------------------|
| and | and | w/p | in same paragraph |
| or | or | w/seg | in same segment |
| w/N | within N words | w/s | in same sentence |

How Do I...?

- Combine sources?
- Restrict by date?
- Restrict by document segment?
- Use wildcards as placeholders for one or more characters in a search term?

Search

Suggest terms for my search

Check spelling

Legal > States Legal - U.S. > California > Find Cases > CA State Cases, Combined

Search View Tutorial | Help

Broaden this search with additional sources

- CA State Cases, Combined (Source you selected)
- California Forms Of Pleading and Practice - Annotated
- California Points & Authorities
- California Matthew Bender® Practice Guides, Combined
- Matthew Bender® Practice Guide: CA Pretrial Civil Procedure and Discovery
- Matthew Bender Practice Guide: California E-Discovery and Evidence

View all sources

Select Search Type and Enter Search Terms

Terms & Connectors OVERVIEW("dog bite")

Natural Language

Easy Search™



Suggest terms for my search

Search

Check spelling

Restrict by Document Segment

Select a document segment, enter search terms for the segment, then click Add.

OVERVIEW "dog bite" Add

Note: Segment availability differs between sources. Segments may not be applied consistently across sources.

Restrict by Date

No Date Restrictions From To Date formats...

Search Connectors

| | | | |
|-----|----------------|-------|-------------------|
| and | and | w/p | in same paragraph |
| or | or | w/seg | in same segment |
| w/N | within N words | w/s | in same sentence |

How Do I...?

- Combine sources?
- Restrict by date?
- Restrict by document segment?
- Use wildcards as placeholders for one or more characters in a search term?

FOCUS™ Terms OVERVIEW("dog bite") Search Within Original Results (1 - 17) Go Advanced... View Tutorial

View Cite 1 - 10 of 17 Edit Search | Save As Alert | Hide Hits
Sort By Default What's this?

Source: Legal > States Legal - U.S. > California > Find Cases > CA State Cases, Combined
Terms: OVERVIEW("dog bite") (Suggest Terms for My Search)

Select for FOCUS™ or Delivery

1. Priebe v. Nelson, S126412, SUPREME COURT OF CALIFORNIA, 39 Cal. 4th 1112; 140 P.3d 848; 47 Cal. Rptr. 3d 553; 2006 Cal. LEXIS 9976; 2006 Cal. Daily Op. Service 7977; 2006 Daily Journal DAR 11418, AUGUST 28, 2006, Filed

OVERVIEW: Because a kennel technician assumed the risk of being bitten or otherwise injured by a pit bull under her care and control while the dog was in the custody of the kennel that employed her pursuant to a boarding agreement, a strict liability cause of action against the dog's owner under Civ. Code, § 3342, was unavailable to the technician.

CORE TERMS: dog, kennel, veterinarian's, dog bite, bitten, dog owner, assumption of risk, animal, strict liability, duty of care ...

2. Baker v. Kinsey, [NO NUMBER IN ORIGINAL], SUPREME COURT OF CALIFORNIA, 38 Cal. 631; 1869 Cal. LEXIS 208, October 1869

OVERVIEW: Judgment in favor of a dog bite victim in a personal injury action was reversed as to an employer. Unless an employee acted as the employer's servant in keeping and harboring the dog, the employer could not be held responsible for the injuries.

CORE TERMS: dog, bridge, servant, vicious, obstruction, keeper, toll, safe, omission, toll-house ...

3. Johnson v. McMahan, No. 115029, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FOUR, 68 Cal. App. 4th 173; 80 Cal. Rptr. 2d 173; 1998 Cal. App. LEXIS 999; 98 Cal. Daily Op. Service 8808; 98 Daily Journal DAR 12213, December 1, 1998, Decided

OVERVIEW: Plaintiff dog bite victim was entitled to relief from defendants dog owners under the strict liability California dog bite statute even though victim did not suffer wound.

CORE TERMS: dog, wound, bite, jaws, causes of action, jeans, skin, leg, dog bite, summary adjudication ...

4. Davis v. Gaschler, No. C011785, COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, 11 Cal. App. 4th 1392; 14 Cal. Rptr. 2d 679; 1992 Cal. App. LEXIS 1476; 92 Cal. Daily Op. Service 10295; 92 Daily Journal DAR 17243, December 23, 1992, Decided

OVERVIEW: Plaintiff's voluntary act of helping an injured dog did not remove her from the class of persons protected by the dog bite statute and the doctrine of reasonable implied assumption of risk did not bar plaintiff's claims.

CORE TERMS: dog, assumption of risk, summary judgment, dog bite, animal, veterinarian's, dog owner, ordinance, rabies, owe ...

5. Cohen v. McIntyre, No. A047342, COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO., 10 Cal. App. 4th 449; 277 Cal. Rptr. 91; 1991 Cal. App. LEXIS 5; 91 Daily Journal DAR 289, January 3, 1991, Decided, NOT CITABLE - SUPERSEDED BY GRANT OF REHEARING, Review Granted March 14, 1991 (S019527)

FOCUS™ Terms OVERVIEW("dog bite") Search Within Original Results (1 - 17) Go Advanced... View Tutorial

View Full 3 of 17 Edit Search | Save As Alert | More Like This | More Like Selected Text | Shepardize® | TOA
Johnson v. McMahan, 68 Cal. App. 4th 173 (Copy w/ Cite) Pages: 6

Source: Legal > States Legal - U.S. > California > Find Cases > CA State Cases, Combined
Terms: OVERVIEW("dog bite") (Suggest Terms for My Search)

Select for FOCUS™ or Delivery

68 Cal. App. 4th 173, *; 80 Cal. Rptr. 2d 173, **;
1998 Cal. App. LEXIS 999, ***; 98 Cal. Daily Op. Service 8808

View Official Reports PDF of This Document

BRADLEY JOHNSON, Plaintiff and Appellant, v. ROBERT McMAHAN et al., Defendants and Respondents.

No. B115029.

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FOUR

68 Cal. App. 4th 173; 80 Cal. Rptr. 2d 173; 1998 Cal. App. LEXIS 999; 98 Cal. Daily Op. Service 8808; 98 Daily Journal DAR 12213

December 1, 1998, Decided

PRIOR HISTORY: [***1] APPEAL from a judgment of the Superior Court of Los Angeles County. Super. Ct. No. MC001725. Frank Jackson, Judge, and Pamela Rogers, Judge.

* Judge of the Municipal Court for the Antelope Judicial District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

DISPOSITION: The judgment is reversed and the case remanded for further proceedings on the basis of the Civil Code section 3342 claim. Appellant to have his costs on appeal.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff appealed the grant of summary adjudication entered by the Superior Court of Los Angeles County (California) in favor of defendant dog owners claiming that it was error for the trial court to dismiss his claim based on the dog bite statute, Cal. Civ. Code § 3342, in his lawsuit arising from a dog bite.

OVERVIEW: Plaintiff dog bite victim filed a law suit against defendants dog owners as a result of an incident in which plaintiff fell off a ladder and suffered injuries when

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports

CA(1) (1) **Animals § 16--Injuries Caused by Animals--Dogs--Applicability of Dog Bite Statute--When No Bite Wound Occurred.** --In an individual's action against a couple under the dog bite statute (Civ. Code, § 3342), arising from injuries plaintiff sustained when defendants' dog grabbed his leg through his jeans, causing him to fall from a ladder he was using while doing some repair work for defendants, the trial court erred in granting defendants' summary adjudication motion on the ground that a bite wound was needed to impose liability under the statute. Civ. Code, § 3342, applied, even though plaintiff did not suffer a bite wound. Assuming that plaintiff's leg was between the dog's jaws, separated only by the jeans plaintiff was wearing, there was a "bite" even though the skin was not broken or a wound inflicted. The word "bite" does not require a puncture or tearing away of the skin. Arguably, the statute applied even if the dog did no more than seize the jeans within its jaws and pull, causing plaintiff to fall and suffer injury.

[See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1223 et seq.]

COUNSEL: White & Demaret, Merlin L. Reed, Jr., Nadasi, Kwasigroch & Associates and Michael D. Kwasigroch for Plaintiff and Appellant.

Horvitz & Levy, Lisa Perrochet, Holly R. Paul, Dennison, Bennett & Press and James H. Goudge for Defendants and Respondents.

JUDGES: Opinion by Epstein, Acting P. J., with Hastings and Curry, JJ., concurring.

OPINION BY: EPSTEIN

68 Cal. App. 4th 173 ;
80 Cal. Rptr. 2d 173 ;
1998 Cal. App. LEXIS 999, ***1

OPINION

[*174] [**174] EPSTEIN, Acting P. J.

The sole issue in this case is whether the California dog bite statute, Civil Code section 3342, applies when the bitee does not suffer a wound. It does. The trial court ruled otherwise, granting defendants' motion for summary adjudication. [***2] Plaintiff was unsuccessful in his other causes of action, and suffered an adverse judgment from which he appeals. Beyond this statement, we eschew word play opportunities offered by the factual context of the case. (See *Phillips v. San Luis Obispo County Dept. etc. Regulation* (1986) 183 Cal. App. 3d 372, 374 [228 Cal. Rptr. 101]; *Edwards v. Superior Court* (1991) 230 Cal. App. 3d 173 175, fn. 3 [281 Cal. Rptr. 30].)

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| <input type="checkbox"/> 1. Deep v. Boies, 2007 U.S. Dist. LEXIS 4133 Plaintiff's present action is based on his legal malpractice and related state tort claims against his former attorney David Boies and the firms of Boies , Schiller, & Flexner, LLP and Straus & Boies , LLP. These claims arise from Defendants' representation of Plaintiff in certain transactions and court proceedings involving his software program called "Aimster." Currently before the Court is Defendants' motion to dismiss for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) of the ... | U.S. Federal | New York Northern District Court | January 17, 2007 |
| <input type="checkbox"/> 2. A&M Records v. Napster, Inc., 239 F.3d 1004 David Boies , Jonathan Schiller and Robert Silver , Boies , Schiller & Flexner , Armonk, New York, Laurence F. Pulgram , David L. Hayes , Daniel Johnson, Jr. and Darryl M. Woo , Fenwick & West , Palo Alto, California , for the defendant-appellant. | U.S. Federal | 9th Circuit Court of Appeals | February 12, 2001 |
| <input type="checkbox"/> 3. Baird v. Boies, Schiller & Flexner LLP, 219 F. Supp. 2d 510 Baird and Porter filed charges of discrimination with the EEOC on April 2, 2001 against the Firm and two of its partners, David Boies and Robert Silver, alleging discrimination "with respect to their compensation, terms, conditions, and privileges of employment because of their gender in violation of" Title VII, the Equal Pay Act, and New York State 's Equal Pay and Human Rights Laws. (Id. Exs. G & H; Defs. Opp'n Fees at 3). In response, the Firm, Boies , and Silver filed a detailed position ... View BNA and/or CCH versions | U.S. Federal | New York Southern District Court | August 28, 2002 |
| <input type="checkbox"/> 4. Corbin v. Boies, 34 F. 692 ... character. At the time of the alleged dissolution of the limited partnership, and the sale by Boies of his interest to Fay & Conkey, a large amount of the limited partnership paper was about to mature, and the firm was still purchasing goods; and the testimony shows that the partners deemed it unwise to then give notice of the alleged withdrawal of Graves and Boies . The business was continued in the name of the limited partnership, with Graves' knowledge, and checks were signed in ... | U.S. Federal | 7th Circuit Court of Appeals | April 30, 1888 |
| <input type="checkbox"/> 5. Bernstein v. Boies, Schiller & Flexner, L.L.P., 416 F. Supp. 2d 1329 THIS CAUSE came before the Court upon Defendant Boies , Schiller & Flexner, L.L.P.'s Motion for Sanctions and Reconsideration (DE # 44). On January 24, 2006 the Court held a hearing on Defendant Boies , Schiller & Flexner, L.L.P.'s motion. | U.S. Federal | Florida Southern District Court | February 02, 2006 |
| <input type="checkbox"/> 6. Deep v. Boies, 2008 U.S. Dist. LEXIS 75528 For David Boies , Boies Schiller & Flexner LLP, Straus Boies LLP , Defendants: Robert S. Frank , Harvey & Frank , Portland, ME. | U.S. Federal | Maine District Court | September 24, 2008 |

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Attorney

- David Boies
- Joseph R. Saveri
- Allan Steyer
- Eric B. Fastiff
- Craig C. Corbitt
- More
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Law Firm

- Boies, Schiller & Flexner LLP
- Lieff, Cabraser, Heimann & Bernstein, LLP
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| | ... character. At the time of the alleged dissolution of the limited partnership, and the sale by Boies of his interest to Fay & Conkey, a large amount of the limited partnership paper was about to mature, and the firm was still purchasing goods; and the testimony shows that the partners deemed it unwise to then give notice of the alleged withdrawal of Graves and Boies . The business was continued in the name of the limited partnership, with Graves' knowledge, and checks were signed in ... | | |
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| | THIS CAUSE came before the Court upon Defendant Boies , Schiller & Flexner, L.L.P.'s Motion for Sanctions and Reconsideration (DE # 44). On January 24, 2006 the Court held a hearing on Defendant Boies , Schiller & Flexner, L.L.P.'s motion. | | |
| <input type="checkbox"/> | 6. Deep v. Boies, 2008 U.S. Dist. LEXIS 75528 | U.S. Federal Maine District Court | September 24, 2008 |
| | For David Boies , Boies Schiller & Flexner LLP, Straus Boies LLP , Defendants: Robert S. Frank , Harvey & Frank , Portland, ME. | | |
| <input type="checkbox"/> | 7. Deep v. Boies, 493 F. Supp. 2d 88 | U.S. Federal Maine District Court | June 26, 2007 |
| | On October 2, 2006, I dismissed John A. Deep's complaint in a case that named more than 30 defendants, including David Boies , Esq.; Boies , Schiller & Flexner, LLP ; and Straus 85 Boies , LLP ("the Lawyers"); and Trans World Entertainment Corp . ("Trans World"). In re Compact Disc Minimum Advertised Price Antitrust Litig., 456 F. Supp. 2d 131 (D. Me. 2006) . I explicitly referred to Deep's "repetitive filings, . . . their prolixity, . . . [and] the difficulty in measuring his wide-ranging ... | | |
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| | ... to Boies , Millstein stated that he hoped to retain VE to represent American in the Galveston case. Boies responded that this probably was not possible, for it was his understanding that VE would be representing Northwest in a suit against American. Millstein, however, asserts that he told Boies that VE would be representing American in Galveston, and that Boies responded that VE might have a conflict with Northwest, not that VE was going to sue American on Northwest's | | |
| <input type="checkbox"/> | 9. Bush v. Gore, 531 U.S. 98 | U.S. Federal Supreme Court | December 12, 2000 |
| | David Boies argued the cause for respondents Albert Gore, Jr., et al. | | |
| <input type="checkbox"/> | 10. L.A. Police Dep't v. United Reporting Publ'g Corp., 528 U.S. 32 | U.S. Federal Supreme Court | December 07, 1999 |
| | Thomas C. Goldstein argued the cause for petitioner. With him on the briefs were David Boies , James K. Hahn , and Frederick N. Merkin . | | |



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| <p>1. A&M Records v. Napster, Inc., 239 F.3d 1004</p> <p>David Boies , Jonathan Schiller and Robert Silver , Boies, Schiller & Flexner , Armonk, New York, Laurence F. Pulgram , David L. Hayes , Daniel Johnson, Jr. and Darryl M. Woo , Fenwick & West , Palo Alto, California , for the defendant-appellant.</p> | U.S. Federal 9th Circuit Court of Appeals | February 12, 2001 |
| <p>2. Baird v. Boies, Schiller & Flexner LLP, 219 F. Supp. 2d 510</p> <p>Baird and Porter filed charges of discrimination with the EEOC on April 2, 2001 against the Firm and two of its partners, David Boies and Robert Silver, alleging discrimination "with respect to their compensation, terms, conditions, and privileges of employment because of their gender in violation of" Title VII, the Equal Pay Act, and New York State 's Equal Pay and Human Rights Laws. (Id. Exs. G & H; Defs. Opp'n Fees at 3). In response, the Firm, Boies, and Silver filed a detailed position ...</p> <p>View BNA and/or CCH versions</p> | U.S. Federal New York Southern District Court | August 28, 2002 |
| <p>3. In re Am. Airlines, Inc., 972 F.2d 605</p> <p>... to Boies, Millstein stated that he hoped to retain VE to represent American in the Galveston case. Boies responded that this probably was not possible, for it was his understanding that VE would be representing Northwest in a suit against American. Millstein, however, asserts that he told Boies that VE would be representing American in Galveston, and that Boies responded that VE might have a conflict with Northwest, not that VE was going to sue American on Northwest's</p> | U.S. Federal 5th Circuit Court of Appeals | September 04, 1992 |
| <p>4. Westinghouse Elec. Corp. v. Republic of Phil., 951 F.2d 1414</p> <p>RICHARD W. CLARY (Argued), DAVID BOIES , Cravath, Swaine & Moore , Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019, RAYMOND M. TIERNEY, JR. WILLIAM D. SANDERS, Shanley & Fisher, P.C., 131 Madison Avenue, Morristown , NJ 07962, JEROME J. SHESTACK , Schnader, Harrison, Segal & Lewis , Suite 3600, 1600 Market Street, Philadelphia, PA 19103, JONATHAN D. SCHILLER , Donovan, Leisure, Rogovin, Huge & Schiller, 1250 Twenty-Fourth Street, NW, Washington, DC 20037, Attorneys for ...</p> | U.S. Federal 3rd Circuit Court of Appeals | December 19, 1991 |
| <p>5. Bose Corp. v. JBL, Inc., 274 F.3d 1354</p> <p>David Boies , Boies, Schiller & Flexner , of Armonk , New York, argued for defendants-appellants. With him on the brief was Alan B. Vickery. Of counsel on the brief were Victor G. Savikas , and Maria K. Nelson , Jones, Day, Reavis & Pogue , of Los Angeles, California . Also of counsel on the brief were Gregory A. Castanias , Jones, Day, Reavis & Pogue, of Washington, DC ; and Darryl E. Towell , Jones, Day, Reavis & Pogue of Irvine, California .</p> | U.S. Federal Federal Circuit Court of Appeals | December 17, 2001 |
| <p>6. California Computer Products, Inc. v. International Business Machines Corp., 613 F.2d 727</p> | U.S. Federal 9th Circuit | June 21, 1979 |

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1. Religious Technology Center v. Netcom On-Line Communication Services, Inc.

United States District Court, N.D. California. | November 21, 1995 | 907 F.Supp. 1361

Copyright holders brought infringement action against operator of computer bulletin board service (BBS) and Internet access provider, seeking to hold defendants liable for copyright...

...action against operator of computer bulletin board service (BBS) and Internet access provider, seeking to hold defendants liable for copyright infringement committed by BBS subscriber. Access provider filed motion for summary...

...99 72 Actions for Infringement 99 77 k. Persons liable. Internet access provider could not be held liable for contributory copyright infringement based on infringing messages posted on Usenet newsgroup before it...

2. A&M Records, Inc. v. Napster, Inc.

United States Court of Appeals, Ninth Circuit. | February 12, 2001 | 239 F.3d 1004

INTELLECTUAL PROPERTY - Computers and Online Services. Transmission of digital audio files over Internet was not fair use of copyrighted musical works.

...Amended April 3, 2001. Record companies and music publishers brought copyright infringement action against Napster, an Internet service that facilitated the transmission and retention of digital audio...

...owned or administered more than 70% of files available on Internet service that facilitated transmission and retention of digital audio files by its users established prima facie case of direct copyright infringement by users of service, based on users' activities of downloading...

3. Perfect 10, Inc. v. CCBill, LLC

United States District Court, C.D. California. | June 22, 2004 | 340 F.Supp.2d 1077

COPYRIGHTS - Internet. ISP came within DMCA safe harbor for providers who merely link users to infringing websites.

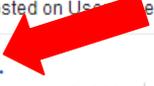
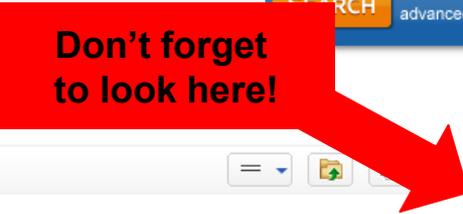
...Act (DMCA) was enacted both to preserve copyright enforcement on Internet and to provide immunity to service providers from copyright infringement liability for passive, automatic actions in which service provider's system...

...k. Defenses. Digital Millennium Copyright Act's (DMCA's) protection of innocent Internet service provider (ISP) disappears at the moment provider loses its...

4. Perfect 10, Inc. v. Amazon.com, Inc.

United States Court of Appeals, Ninth Circuit. | May 16, 2007 | 508 F.3d 1146

E-COMMERCE - Computers and Online Services. Search engine's display of thumbnail images of copyrighted photographs on third-party websites was fair use.



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INTERNET SERVICE PROVIDER LIABILITY FOR SUBSCRIBER COPYRIGHT INFRINGEMENT, ENTERPRISE LIABILITY, AND THE FIRST AMENDMENT

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June, 2000

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June, 2000 INTERNET SERVICE PROVIDER LIABILITY FOR

SUBSCRIBER COPYRIGHT INFRINGEMENT, ENTERPRISE

LIABILITY, AND THE FIRST

AMENDMENT Alfred C. Yen [FNa1...

Cause of Action for Copyright Infringement of Internet Material

Causes of Action Second Series

15 Causes of Action 2d 535 (Originally published in 2000)

...Second Series Database updated March 2013 Cause of Action for

Copyright Infringement of Internet Material Catherine Palo, J.D., LL.M. [*

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Proof of Copyright Infringement By File Sharing

American Jurisprudence Proof of Facts 3d

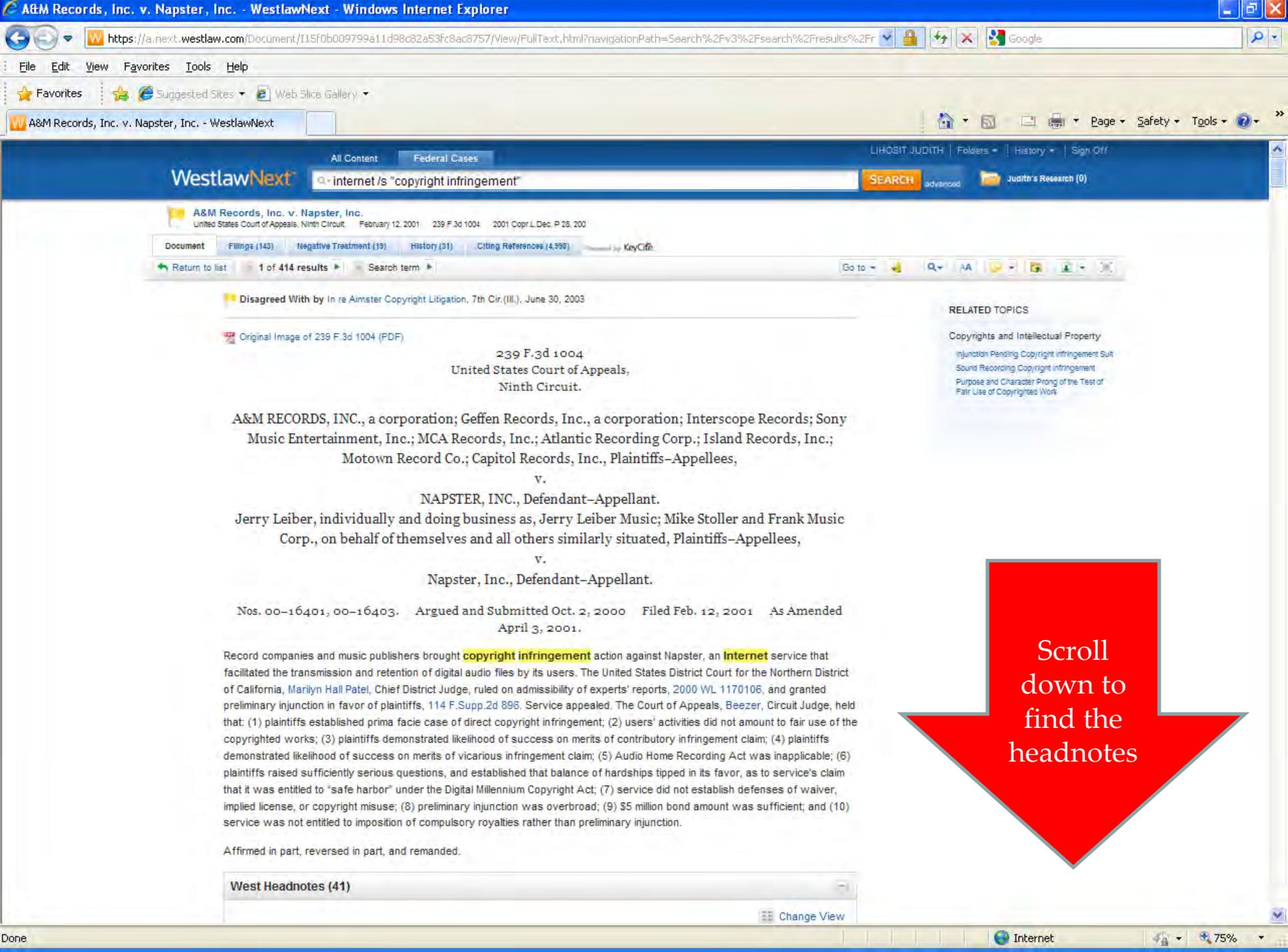
63 Am. Jur. Proof of Facts 3d 1 (Originally published in 2001)

...discusses copyright infringement by file sharing. More specifically, it's about

copyright infringement by the widespread distribution of copyrighted

material on the Internet. The article explores the recent case law

concerning file sharing.



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A&M Records, Inc. v. Napster, Inc.

United States Court of Appeals, Ninth Circuit February 12, 2001 239 F.3d 1004 2001 Copr.L.Dec. P.28, 200

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Disagreed With by In re Aimster Copyright Litigation, 7th Cir.(Ill.), June 30, 2003

Original Image of 239 F.3d 1004 (PDF)

239 F.3d 1004
United States Court of Appeals,
Ninth Circuit.

A&M RECORDS, INC., a corporation; Geffen Records, Inc., a corporation; Interscope Records; Sony Music Entertainment, Inc.; MCA Records, Inc.; Atlantic Recording Corp.; Island Records, Inc.; Motown Record Co.; Capitol Records, Inc., Plaintiffs–Appellees,

v.

NAPSTER, INC., Defendant–Appellant.

Jerry Leiber, individually and doing business as, Jerry Leiber Music; Mike Stoller and Frank Music Corp., on behalf of themselves and all others similarly situated, Plaintiffs–Appellees,

v.

Napster, Inc., Defendant–Appellant.

Nos. 00–16401, 00–16403. Argued and Submitted Oct. 2, 2000 Filed Feb. 12, 2001 As Amended April 3, 2001.

Record companies and music publishers brought copyright infringement action against Napster, an Internet service that facilitated the transmission and retention of digital audio files by its users. The United States District Court for the Northern District of California, Marilyn Hall Patel, Chief District Judge, ruled on admissibility of experts' reports, 2000 WL 1170106, and granted preliminary injunction in favor of plaintiffs, 114 F.Supp.2d 896. Service appealed. The Court of Appeals, Beezer, Circuit Judge, held that: (1) plaintiffs established prima facie case of direct copyright infringement; (2) users' activities did not amount to fair use of the copyrighted works; (3) plaintiffs demonstrated likelihood of success on merits of contributory infringement claim; (4) plaintiffs demonstrated likelihood of success on merits of vicarious infringement claim; (5) Audio Home Recording Act was inapplicable; (6) plaintiffs raised sufficiently serious questions, and established that balance of hardships tipped in its favor, as to service's claim that it was entitled to "safe harbor" under the Digital Millennium Copyright Act; (7) service did not establish defenses of waiver, implied license, or copyright misuse; (8) preliminary injunction was overbroad; (9) \$5 million bond amount was sufficient; and (10) service was not entitled to imposition of compulsory royalties rather than preliminary injunction.

Affirmed in part, reversed in part, and remanded.

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A&M Records, Inc. v. Napster, Inc.

United States Court of Appeals, Ninth Circuit. February 12, 2001 | 239 F.3d 1004 | 2001 Copr.L.Dec. P 28, 200

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29 Copyrights and Intellectual Property 🔑 **Sound recordings**



Audio Home Recording Act section precluding copyright infringement actions based on manufacture, importation, or distribution of digital audio recording device or digital audio recording medium, or based on noncommercial use by a consumer of such a device or medium for making digital musical recordings, did not extend to downloading of digital audio files to computer hard drives; computers and their hard drives were not "digital audio recording devices" because their primary purpose was not to make digital audio copied recordings, and computers did not make digital music recordings as defined by the Act. 17 U.S.C.A. § 1008.

3 Cases that cite this headnote

30 Copyrights and Intellectual Property 🔑 **Preliminary injunction**

Record companies and music publishers alleging contributory and vicarious copyright infringement by Internet service that facilitated transmission and retention of digital audio files by its users raised sufficiently serious questions, and established that balance of hardships tipped in its favor, as to service's claim that Digital Millennium Copyright Act's "safe harbor" provision protected service from liability, for purpose of companies' and publishers' motion for preliminary injunction. 17 U.S.C.A. § 512.

41 Cases that cite this headnote

31 Copyrights and Intellectual Property 🔑 **Abandonment**

Waiver or abandonment of copyright occurs only if there is an intent by the copyright proprietor to surrender rights in his work.

9 Cases that cite this headnote

32 Copyrights and Intellectual Property 🔑 **Abandonment**

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67.2 Sound recordings (24)

Jurisdiction: 9th Circuit [Change](#)

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 - 99I(J)1 What Constitutes Infringement (1,550)
 - 99I(J)1.1 67.2 Sound recordings (24)

1. Range Road Music, Inc. v. East Coast Foods, Inc.
United States Court of Appeals, Ninth Circuit | February 16, 2012 | 668 F.3d 1148
Headnote: Unlicensed use of recorded songs at restaurant and unauthorized live performances of copyrighted musical compositions at adjacent lounge constituted copyright infringement where disc jockey had played four tracks from a copyrighted CD at restaurant, and live band at lounge had introduced the songs they were playing as "Coltrane standards" and then proceeded to play them. 17 U.S.C.A. § 106(4).
Document Preview: COPYRIGHTS - Music. Court found vicarious liability for copyright infringement at restaurant and lounge.

2. Capitol Records, LLC v. BlueBeat, Inc.
United States District Court, C.D. California. | December 8, 2010 | 765 F.Supp.2d 1198
Headnote: Owner of internet website was liable for copyright infringement to record company that owned copyrights to musical recordings when website owner reproduced recordings without authorization and distributed more than 67,000 of the recordings via its interactive website either as downloads or streaming transmissions; although website owner had applied for license, it had not been approved, and although website owner claimed that the recordings were pure sound simulations, they were not independent works, original from the copyrighted material. 17 U.S.C.A. §§ 101, 106, 112(a)(1), 114(j)(7), 117.
Document Preview: COPYRIGHTS - Internet. Website owner was liable for copyright infringement, misappropriation, unfair competition, and conversion.

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Document Preview: COPYRIGHTS - Music. Court found vicarious liability for copyright infringement at restaurant and lounge.

2. Capitol Records, LLC v. BlueBeat, Inc.

United States District Court, C.D. California. | December 8, 2010 | 765 F.Supp.2d 1198

Headnote: Owner of internet website was liable for copyright infringement to record company that owned copyrights to musical recordings when website owner reproduced recordings without authorization and distributed more than 67,000 of the recordings via its interactive website either as downloads or streaming transmissions; although website owner had applied for license, it had not been approved, and although website owner claimed that the recordings were pure sound simulations, they were not independent works, original from the copyrighted material. 17 U.S.C.A. §§ 101, 106, 112(a)(1), 114(j)(7), 117.

Document Preview: COPYRIGHTS - Internet. Website owner was liable for copyright infringement, misappropriation, unfair competition, and conversion.

Q Search k67.2 Sound recordings

All Federal

SEARCH

Judith's Research (0)

Home > West Key Number System > 99 COPYRIGHTS AND INTELLECTUAL PROPERTY > I. COPYRIGHTS, k1-k100 > (J) INFRINGEMENT, k51-k100 > 1. WHAT CONSTITUTES INFRINGEMENT, k51-k69

67.2 Sound recordings (145)

Jurisdiction: All Federal Change

1-20

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 - 99I(J) Infringement (Up to 10,000)
 - 99I(J)1 What Constitutes Infringement (7,911)
 - 99I(J)1.67.2 Sound recordings.(145)

1. Range Road Music, Inc. v. East Coast Foods, Inc.

United States Court of Appeals, Ninth Circuit | February 16, 2012 | 668 F.3d 1148

Headnote: Unlicensed use of recorded songs at restaurant and unauthorized live performances of copyrighted musical compositions at adjacent lounge constituted copyright infringement where disc jockey had played four tracks from a copyrighted CD at restaurant, and live band at lounge had introduced the songs they were playing as "Coltrane standards" and then proceeded to play them. 17 U.S.C.A. § 106(4).

Document Preview: COPYRIGHTS - Music. Court found vicarious liability for copyright infringement at restaurant and lounge.

2. Swatch Group Management Services Ltd. v. Bloomberg L.P.

United States District Court, S.D. New York | August 30, 2011 | 808 F.Supp.2d 634

Headnote: Fixation requirement of Copyright Act creates a legal fiction that simultaneous fixation occurs before the transmission for purposes of an infringement claim; in other words, the law treats the unauthorized recording of sounds that are transmitted live and recorded simultaneously as an infringement of the copyright in the fixed work, assuming the work otherwise qualifies for protection, notwithstanding that the alleged infringer does not copy the fixed version of the work but rather records the live transmission directly. 17 U.S.C.A. §§ 101, 102(a).

Document Preview: COPYRIGHTS - Sound Recordings. Audio recording of conference call was "fixed" in tangible medium of expression, as required to constitute "sound recording" under Copyright Act.

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Back to 67.2 Sound recordings
67.2 Sound recordings (1)
Jurisdiction: All Federal Change

1-1
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- 99 COPYRIGHTS AND INTELLECTUAL PROPERTY (Up to 10,000)
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 - 99I(J)1 67.2 Sound recordings.(145)

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1. Faulkner Press, L.L.C. v. Class Notes, L.L.C.
United States District Court, N.D. Florida, Gainesville Division. | November 23, 2010 | 756 F.Supp.2d 1352
Headnote: Competitor that did not have access to publisher's sound recordings to state university lectures, and that did not reproduce, sell, or distribute any form of lectures as sound recording, did not violate publisher's copyright in that sound recording, although it did reproduce notes of lectures. 17 U.S.C.A. § 114(b).

Document Preview: COPYRIGHTS - Compilations and Lists. Film study questions for course at University of Florida were protected by copyright.

20 per page

1. WHAT CONSTITUTES INFRINGEMENT, k51-k69 (7,911) ☆

Jurisdiction: All Federal [Change](#)

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- 99 COPYRIGHTS AND INTELLECTUAL PROPERTY (Up to 10,000)
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- 99I(J)1 What Constitutes Infringement (7,911)
- 99I(J)51 Nature and elements of injury.(1,204)

1. Range Road Music, Inc. v. East Coast Foods, Inc.

United States Court of Appeals, Ninth Circuit. | February 16, 2012 | 668 F.3d 1148

Headnote: To establish a prima facie case of copyright infringement, a plaintiff must demonstrate: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.

Document Preview: COPYRIGHTS - Music. Court found vicarious liability for copyright infringement at restaurant and lounge.

2. Partain v. Mid-Continent Specialty Ins. Services, Inc.

United States District Court, S.D. Texas, Houston Division. | January 20, 2012 | --- F.Supp.2d ---

Headnote: To succeed on a claim of copyright infringement, a claimant must prove (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. 17 U.S.C.A. § 101, et seq.

Document Preview: INSURANCE - Duty to Defend. No disqualifying conflict of interest existed under Texas law to bar insurer from appointing counsel to defend insureds.

3. Dorchen/Martin Associates, Inc. v. Brook of Cheboygan, Inc.

United States District Court, E.D. Michigan, Northern Division. | January 18, 2012 | --- F.Supp.2d ---

Headnote: To establish copyright infringement, two elements must be proven: ownership of a valid copyright and copying of constituent elements of the work that are original.

Document Preview: TRADEMARKS - Name or Likeness. Copyright owner failed to state a Lanham Act claim for false designation of

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 - 99I(J)1 What Constitutes Infringement (7,911)
 - 99I(J)1-53 Acts constituting infringement.(1,674)

1. Chautauqua School of Nursing v. National School of Nursing
District Court, W.D. New York | January 27, 1914 | 211 F. 1014

Headnote: Letter as part of correspondence course held infringement of [lecture](#).

Document Preview: In Equity. Suit by the Chautauqua School of Nursing against the National School of Nursing. Decree for complainant.

- 99 COPYRIGHTS AND INTELLECTUAL PROPERTY (Up to 10,000)
 - 99I Copyrights (Up to 10,000)
 - 99I(J) Infringement (Up to 10,000)
 - 99I(J)1 What Constitutes Infringement (7,911)
 - 99I(J)1-54 Books or Other Literary Works (1,159)
 - 99I(J)1-57 Copying.(257)

2. Nutt v. National Inst. Inc. for the Imp. of Memory
Circuit Court of Appeals, Second Circuit. | March 11, 1929 | 31 F.2d 236

Headnote: [Lectures](#) showing similarity and copying of association, presentation, and combination of ideas and thought, making up copyrighted [lectures](#), constituted infringement.

Document Preview: Appeal from the District Court of the United States for the District of Connecticut. Suit by the National Institute

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*239 F.3d 1004, *; 2001 U.S. App. LEXIS 5446, **;
57 U.S.P.Q.2D (BNA) 1729; Copy. L. Rep. (CCH) P28,200*

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A&M RECORDS, INC., a corporation; GEFFEN RECORDS, INC., a corporation; INTERSCOPE RECORDS; SONY MUSIC ENTERTAINMENT, INC.; MCA RECORDS, INC.; ATLANTIC RECORDING CORP.; ISLAND RECORDS, INC.; MOTOWN RECORD CO.; CAPITOL RECORDS, INC., Plaintiffs-Appellees, v. NAPSTER, INC., Defendant-Appellant. JERRY LEIBER, individually and doing business as, JERRY LEIBER MUSIC; MIKE STOLLER and FRANK MUSIC CORP., on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. NAPSTER, INC., Defendant-Appellant.

No. 00-16401, No. 00-16403

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

239 F.3d 1004; 2001 U.S. App. LEXIS 5446; 57 U.S.P.Q.2D (BNA) 1729; Copy. L. Rep. (CCH) P28,200; 2001 Cal. Daily Op. Service 1611

October 2, 2000, Argued and Submitted, San Francisco, California
February 12, 2001, Filed

SUBSEQUENT HISTORY: [1]** As Amended April 3, 2001.

Injunction granted at *A&M Records, Inc. v. Napster, Inc.*, 2001 U.S. Dist. LEXIS 2186 (N.D. Cal., Mar. 5, 2001)

PRIOR HISTORY: Appeals from the United States District Court for the Northern District of California. D.C. No. CV-99-05183-1
Patel, Chief District Judge, Presiding.

Original Opinion Previously Reported at: 2001 U.S. App. LEXIS 1941.

A&M Records, Inc. v. Napster, Inc., 2001 U.S. App. LEXIS 1941 (9th Cir. Cal., Feb. 12, 2001)

DISPOSITION: AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

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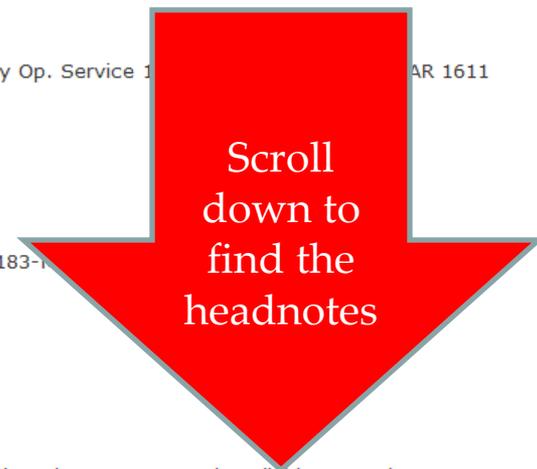
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HN29 Computers and their hard drives are not digital audio recording devices because their primary purpose is not to make digital audio copied recordings. More Like This Headnote | Shepardize: Restrict By Headnote
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Copyright Law > Civil Infringement Actions > Liability of Related Defendants > Contributory Infringement
HN31 The limitations in 17 U.S.C.S. § 512(a)-(d) protect qualifying service providers from liability for all monetary relief for direct, vicarious, and contributory infringement. More Like This Headnote | Shepardize: Restrict By Headnote
Copyright Law > Civil Infringement Actions > Defenses > Abandonment
HN32 Waiver is the intentional relinquishment of a known right with knowledge of its existence and the intent to relinquish it. In copyright, waiver or abandonment of copyright occurs only if there is an intent by the copyright proprietor to surrender rights in his work. More Like This Headnote | Shepardize: Restrict By Headnote
Civil Procedure > Discovery > General Overview
Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
HN33 The denial of an evidentiary hearing is reviewed for abuse of discretion, as is the court's decision to deny further discovery. The decision to deny discovery will not be disturbed except upon a clear showing that the denial of discovery results in actual and substantial prejudice. More Like This Headnote
Copyright Law > Civil Infringement Actions > Defenses > General Overview

239 F.3d 1004 ;
2001 U.S. App. LEXIS 5446, **1

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HN29 - Computers and their hard drives are not digital audio recording devices because their primary purpose is not to make digital audio copied recordings.

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1. Recording Indus. Ass'n of Am. v. Diamond Multimedia Sys., 180 F.3d 1072, 1999 U.S. App. LEXIS 13131 (9th Cir., June 15, 1999, Filed)

OVERVIEW: Because a device manufactured by appellee could only make copies from a computer hard drive and not make copies from transmissions, the device did not fall within the ambit of the Audio Home Recording Act of 1992.

HN6 - To be a digital audio recording device, the device must be able to reproduce, either directly or from a transmission, a digital music recording. More Like This Headnote

HN9 - Under the plain meaning of the Audio Home Recording Act's, 17 U.S.C.S. § 1001 et seq., definition of digital audio recording devices, computers and their hard drives are not digital audio recording devices because their primary purpose is not to make digital audio copied recordings. More Like This Headnote

HN10 - Because computers are not digital audio recording devices, they are not required to comply with the Serial Copyright Management System requirement and thus need not send, receive, or act upon information regarding copyright and generation status. More Like This Headnote

2. Recording Indus. Ass'n of Am. v. Diamond Multimedia Sys., 29 F. Supp. 2d 624, 1998 U.S. Dist. LEXIS 21323 (D. Cal., October 26, 1998, Decided)

OVERVIEW: An injunction would substantially impact computer manufacturer's projected revenues from the sale of a hand-held digital audio receiving and storing device and sound recording organizations failed to establish any irreparable or incalculable injury.

HN6 - The Audio Home Recording Act of 1992, 17 U.S.C.S. § 1001 et seq., defines a "digital audio recording device" as any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use. 17 U.S.C.S. § 1001 (3). More Like This Headnote

HN7 - The Audio Home Recording Act of 1992, 17 U.S.C.S. § 1001 et seq., defines a "digital audio copied recording," as a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission. 17 U.S.C.S. § 1001(1). More Like This Headnote

HN9 - Under the Audio Home Recording Act of 1992, 17 U.S.C.S. § 1001 et seq., a "digital musical recording" does not include a material object in which the fixed sounds consist entirely of spoken word recordings, 17 U.S.C.S. § 1001(5)(B)(i), or in which one or more computer programs are fixed, except that a digital recording may contain statements of instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material. 17 U.S.C.S. § 1001(5)(B)(ii). More Like This Headnote

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Construction and Operation of Audio Home Recording Act of 1992, 17 U.S.C.A. §§ 1001 to 1010. (178 A.L.R. Fed. 523)
Validity, Construction, and Application of Digital Millennium Copyright Act (Pub. L. No. 105-304, 112 Stat. 2860 (1998)) (179 A.L.R. Fed. 319)
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Parties liable; vicarious and contributory infringers (18 Am Jur 2d Copyright and Literary Property § 219)
Generally (29 Ca Jur Employer and Employee § 143)
- BNA® (4)**
NEWS, DISTRICT COURT EXPLAINS NAPSTER INJUNCTION THAT WAS LATER STAYED PENDING APPEAL (60 Pat. Trademark & Copyright J. (BNA) 315)
NEWS, NAPSTER SERVICE INFRINGES BUT INJUNCTION IS OVERBROAD (61 Pat. Trademark & Copyright J. (BNA) 315)

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No. 00-16401, No. 00-16403

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

239 F.3d 1004; 2001 U.S. App. LEXIS 5446; 57 U.S.P.Q.2D (BNA) 1729; Copy. L. Rep. (CCH) P28,200; 2001 Cal. Daily Op. Service 1255; 2001 Daily Journal DAR 1611

October 2, 2000, Argued and Submitted, San Francisco, California
 February 12, 2001, Filed

SUBSEQUENT HISTORY: [**1] As Amended April 3, 2001.
 Injunction granted at *A&M Records, Inc. v. Napster, Inc.*, 2001 U.S. Dist. LEXIS 2186 (N.D. Cal., Mar. 5, 2001)

PRIOR HISTORY: Appeals from the United States District Court for the Northern District of California. D.C. No. CV-99-05183-MHP. D.C. No. CV-00-00074-MHP. Marilyn Hall Patel, Chief District Judge, Presiding.

Original Opinion Previously Reported at: 2001 U.S. App. LEXIS 1941.
A&M Records, Inc. v. Napster, Inc., 2001 U.S. App. LEXIS 1941 (9th Cir. Cal., Feb. 12, 2001)

DISPOSITION: AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

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Subsequent History: As Amended April 3, 2001. Injunction granted at [A&M Records, Inc. v. Napster, Inc., 2001 U.S. Dist. LEXIS 2186 \(N.D. Cal., Mar. 5, 2001\)](#)

Prior History: Appeals from the United States District Court for the Northern District of California. D.C. No. CV-99-05183-MHP. D.C. No. CV-00-00074-MHP. Marilyn Hall Patel, Chief District Judge, Presiding.

Original Opinion Previously Reported at: [2001 U.S. App. LEXIS 1941](#).

[A&M Records, Inc. v. Napster, Inc., 2001 U.S. App. LEXIS 1941 \(9th Cir. Cal., Feb. 12, 2001\)](#)

Disposition: AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Core Terms

infringement, users, district court, recordings, files, music, fair use, download, contributory, copying, digital, vicarious, copyright infringement, plaintiffs, injunction, holder, preliminary injunction, rights, sampling, provider, requires, license, royalties, servers, format, drive, song, noncommercial, software, space-shifting

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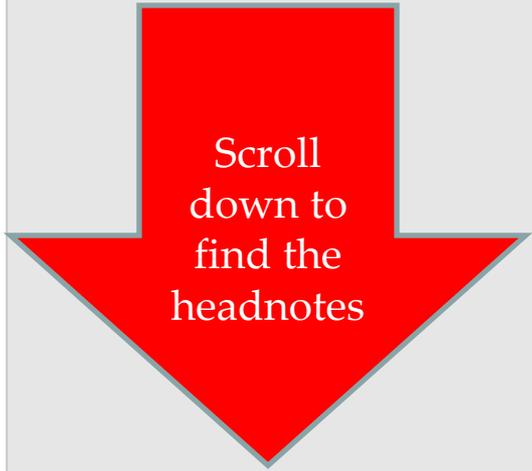
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HN26 The ability to block infringers' access to a particular environment for any reason whatsoever is evidence of the right and ability to supervise. [Shepardize - Narrow by this Headnote](#)

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HN27 To escape imposition of vicarious liability, the reserved right to police must be exercised to its fullest extent. Turning a blind eye to detectable acts of infringement for the sake of profit gives rise to liability. [Shepardize - Narrow by this Headnote](#)

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HN28 See [17 U.S.C.S. § 1008](#). [Shepardize - Narrow by this Headnote](#)

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HN29 Computers and their hard drives are not digital audio recording devices because their primary purpose is not to make digital audio copied recordings. [Shepardize - Narrow by this Headnote](#)



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2nd Circuit 2

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Discussion

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Headnotes

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HN29

HN19

HN21

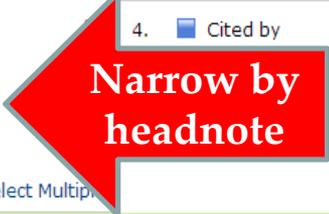
HN27

HN20

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1 - 22 of 22 Legend

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| 1st Circuit - U.S. District Courts | | | | |
| 1. | <input checked="" type="checkbox"/> Cited by | <p>Sony BMG Music Entm't v. Tenenbaum 🔴</p> <p>721 F. Supp. 2d 85, 2010 U.S. Dist. LEXIS 68642, 98 U.S.P.Q.2d (BNA) 1115</p> <p>Headnotes: HN20, HN29</p> <p>Cited by: 721 F. Supp. 2d 85 p.90</p> <p>Peer-to-peer networks allow users to share with others digital files stored on their computers. See A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1011-13 (9th Cir. 2001) . Although such networks have legitimate uses, they are often used to share copyrighted works without authorization from the copyrights' owners.</p> | <input type="checkbox"/> | D. Mass. |
| 2nd Circuit - U.S. District Courts | | | | |
| 2. | <input checked="" type="checkbox"/> Cited by | <p>Arista Records LLC v. Lime Group LLC 🟡</p> <p>784 F. Supp. 2d 398, 2011 U.S. Dist. LEXIS 47455</p> <p>Headnotes: HN19, HN21, HN22, HN23, HN27, HN29</p> <p>Cited by: 784 F. Supp. 2d 398 p.410</p> <p>... programs, including the distributors of the programs Napster, Kazaa, Morpheus, and Grokster, have faced liability for copyright infringement, on the ground that they facilitated infringement committed by users of their programs. See e.g., A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001) . 5 Napster, Inc. was one of the first companies to develop a file-sharing program that permitted users to exchange digital recordings via the Internet. The vast majority of files ...</p> | <input type="checkbox"/> | S.D.N.Y. |
| 3. | <input checked="" type="checkbox"/> Cited by | <p>Arista Records LLC v. Lime Group LLC 🟢</p> <p>715 F. Supp. 2d 481, 2010 U.S. Dist. LEXIS 46638, Copy. L. Rep. (CCH) P29921, 96 U.S.P.Q.2d (BNA) 1437</p> <p>Headnotes: HN19, HN21, HN22, HN23, HN27, HN29</p> <p>Cited by: 715 F. Supp. 2d 481 p.494</p> <p>... programs, including the distributors of the programs Napster, Kazaa, Morpheus, and Grokster, have faced liability for copyright infringement, on the ground that they facilitated infringement committed by users of their programs. See e.g., A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001) . 5 Napster, Inc. was one of the first companies to develop a file-sharing program that permitted users to exchange digital recordings via the Internet. The vast majority of files ...</p> | <input type="checkbox"/> | S.D.N.Y. |
| 4th Circuit - U.S. District Courts | | | | |
| 4. | <input checked="" type="checkbox"/> Cited by | <p>Arista Records LLC v. Gaines 🟢</p> <p>635 F. Supp. 2d 414, 2009 U.S. Dist. LEXIS 54347</p> <p>Headnotes: HN29</p> <p>Cited by: 635 F. Supp. 2d 414 p.417</p> <p>... 14. Plaintiffs also have shown that Defendant copied the recordings in question, as use of an online media system to download and distribute copyrighted sound recordings constitutes a direct copyright infringement. See <i>id.</i> at P 15; see also A & M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir. 2001) . Thus, the court will next address Plaintiffs' requested</p> | <input type="checkbox"/> | E.D.N.C. |



Copyright Law > ... > [Elements](#) > [Copying by Defendants](#) > [Access](#)

HN26 The ability to block infringers' access to a particular environment for any reason whatsoever is evidence of the right and ability to supervise. [Shepardize - Narrow by this Headnote](#)

Copyright Law > ... > [Civil Infringement Actions](#) > [Defenses](#) > [General Overview](#)
Copyright Law > ... > [Civil Infringement Actions](#) > [Secondary Liability](#) > [General Overview](#)

HN27 To escape imposition of vicarious liability, the reserved right to police must be exercised to its fullest extent. Turning a blind eye to detectable acts of infringement for the sake of profit gives rise to liability. [Shepardize - Narrow by this Headnote](#)

Communications Law > [Overview & Legal Concepts](#) > [Related Legal Issues](#) > [Copyright](#)
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HN28 See [17 U.S.C.S. § 1008](#). [Shepardize - Narrow by this Headnote](#)

Computer & Internet Law > ... > [Civil Infringement](#) > [Protection of Rights](#) > [Audio Home Recording Act](#)
Copyright Law > [Scope of Copyright Protection](#) > [Ownership Rights](#) > [Audio Home Recording Act](#)

HN29 Computers and their hard drives are not digital audio recording devices because their primary purpose is not to make digital audio copied recordings. [Shepardize - Narrow by this Headnote](#)

Communications Law > [Overview & Legal Concepts](#) > [Related Legal Issues](#) > [Copyright](#)
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HN30 Computers do not make digital music recordings as defined by the Audio Home Recording Act. [Shepardize - Narrow by this Headnote](#)

Communications Law > [Overview & Legal Concepts](#) > [Related Legal Issues](#) > [Copyright](#)
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A&M Records, Inc. v. Napster, Inc.

United States Court of Appeals, Ninth Circuit. February 12, 2001. 239 F.3d 1004. 2001 Copr. L. Dec. P 28, 200. (Approx. 36 pages)

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Disagreed With by In re Aimster Copyright Litigation, 7th Cir.(Ill.), June 30, 2003

Original Image of 239 F.3d 1004 (PDF)

239 F.3d 1004
United States Court of Appeals,
Ninth Circuit.

A&M RECORDS, INC., a corporation; Geffen Records, Inc., a corporation; Interscope Records; Sony Music Entertainment, Inc.; MCA Records, Inc.; Atlantic Recording Corp.; Island Records, Inc.; Motown Record Co.; Capitol Records, Inc., Plaintiffs–Appellees,

v.

NAPSTER, INC., Defendant–Appellant.

Jerry Leiber, individually and doing business as, Jerry Leiber Music; Mike Stoller and Frank Music Corp., on behalf of themselves and all others similarly situated, Plaintiffs–Appellees,

v.

Napster, Inc., Defendant–Appellant.

Nos. 00–16401, 00–16403. Argued and Submitted Oct. 2, 2000 Filed Feb. 12, 2001 As Amended April 3, 2001.

Record companies and music publishers brought copyright infringement action against **Napster**, an Internet service that facilitated the transmission and retention of digital audio files by its users. The United States District Court for the Northern District of California, Marilyn Hall Patel, Chief District Judge, ruled on admissibility of experts' reports, 2000 WL 1170106, and granted preliminary injunction in favor of plaintiffs, 114 F.Supp.2d 896. Service appealed. The Court of Appeals, Beezer, Circuit Judge, held that: (1) plaintiffs established prima facie case of direct copyright infringement; (2) users' activities did not amount to fair use of the copyrighted works; (3) plaintiffs demonstrated likelihood of success on merits of contributory infringement claim; (4) plaintiffs demonstrated likelihood of success on merits of vicarious infringement claim; (5) Audio Home Recording Act was inapplicable; (6) plaintiffs raised sufficiently serious questions, and established that

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A&M Records, Inc. v. Napster, Inc.
United States Court of Appeals, Ninth Circuit. February 12, 2001 239 F.3d 1004 2001 Copr.L.Dec. P 28, 200

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| Cases 428 | <input type="checkbox"/> Declined to Extend by | 1. UMG Recordings, Inc. v. Shelter Capital Partners LLC 667 F.3d 1022, 1037+, 9th Cir.(Cal.) E-COMMERCE - Computers and Online Services. Operator of a video-sharing website was entitled to safe harbor protection under the Digital Millennium Copyright Act. | Dec. 20, 2011 | Case | 5 | 21 24 26 F.3d |
| Administrative Decisions & Guidance 24 | <input type="checkbox"/> Distinguished by | 2. Perfect 10, Inc. v. Visa Intern. Service Ass'n 494 F.3d 788, 795+, 9th Cir.(Cal.) COPYRIGHTS - Internet. Payment processing by credit card companies did not constitute material contribution to infringement. | Jul. 03, 2007 | Case | 5 | 21 23 25 F.3d |
| Administrative Filings 2 | <input type="checkbox"/> Distinguished by | 3. Perfect 10, Inc. v. Amazon.com, Inc. 487 F.3d 701, 713+, 9th Cir.(Cal.) E-COMMERCE - Computers and Online Services. Search engine's display of thumbnail images of copyrighted photographs on third-party websites was fair use. | May 16, 2007 | Case | 5 | 7 21 37 F.3d |
| Secondary Sources 2,004 | <input type="checkbox"/> Distinguished by | 4. Perfect 10, Inc. v. Amazon.com, Inc. 508 F.3d 1146, 1157+, 9th Cir.(Cal.) E-COMMERCE - Computers and Online Services. Search engine's display of thumbnail images of copyrighted photographs on third-party websites was fair use. | Dec. 03, 2007 | Case | 5 | 21 23 37 F.3d |
| Appellate Court Documents 379 | <input type="checkbox"/> Distinguished by | 5. Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd. 454 F.Supp.2d 966, 975+ C.D.Cal. | Sep. 27, 2006 | Case | 5 | 18 32 37 |
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A&M Records v. Napster, Inc., 239 F.3d 1004 (Copy citation)

United States Court of Appeals for the Ninth Circuit
 October 2, 2000, Argued and Submitted, San Francisco, California ; February 12, 2001, Filed
 No. 00-16401, No. 00-16403

Reporter: 239 F.3d 1004 | 2001 U.S. App. LEXIS 5446 | 57 U.S.P.Q.2D (BNA) 1729 | Copy. L. Rep. (CCH) P28,200 | 2001 Cal. Daily Op. Service 1255 | 2001 Daily Journal DAR 1611

A&M RECORDS, INC., a corporation; GEFFEN RECORDS, INC., a corporation; INTERSCOPE RECORDS; SONY MUSIC ENTERTAINMENT, INC.; MCA RECORDS, INC.; ATLANTIC RECORDING CORP.; ISLAND RECORDS, INC.; MOTOWN RECORD CO.; CAPITOL RECORDS, INC., Plaintiffs-Appellees, v. NAPSTER, INC., Defendant-Appellant. JERRY LEIBER, individually and doing business as, JERRY LEIBER MUSIC; MIKE STOLLER and FRANK MUSIC CORP., on behalf of themselves and all others similarly situated, Plaintiffs-Appellees, v. NAPSTER, INC., Defendant-Appellant.

Subsequent History: As Amended April 3, 2001.
 Injunction granted at [A&M Records, Inc. v. Napster, Inc., 2001 U.S. Dist. LEXIS 2186 \(N.D. Cal., Mar. 5, 2001\)](#)

Prior History: Appeals from the United States District Court for the Northern District of California. D.C. No. CV-99-05183-MHP. D.C. No. CV-00-00074-MHP. Marilyn Hall Patel, Chief District Judge, Presiding.

Original Opinion Previously Reported at: [2001 U.S. App. LEXIS 1941](#).

[A&M Records, Inc. v. Napster, Inc., 2001 U.S. App. LEXIS 1941 \(9th Cir. Cal., Feb. 12, 2001\)](#)

Disposition: AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Core Terms

infringement, users, district court, recordings, files, music, fair use, download, contributory, copying, digital, vicarious, copyright infringement, plaintiffs, injunction, holder, preliminary injunction, rights, sampling, provider, requires, license, royalties, servers, format, drive, song, noncommercial, software, space-shifting

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Headnotes

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| Citing Decisions | Court | Date |
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| U.S. Supreme Court | | |
| 1. Cited in Concurring Opinion at, and Cited by: MGM Studios Inc. v. Grokster, Ltd. 545 U.S. 913, 125 S. Ct. 2764, 162 L. Ed. 2d 781, 2005 U.S. LEXIS 5212, 18 Fla. L. Weekly Fed. S 547, 33 Media L. Rep. (BNA) 1865, 75 U.S.P.Q.2d (BNA) 1001 <i>Headnotes:</i> HN10, HN19, HN22, HN23, HN30 <i>Cited in Concurring Opinion at:</i> 545 U.S. 913 p.944 ; 125 S. Ct. 2764 p.2784 ; 162 L. Ed. 2d 781 p.805 <i>Cited by:</i> 545 U.S. 913 p.923 ; 125 S. Ct. 2764 p.2772 ; 162 L. Ed. 2d 781 p.792 | U.S. | 2005 |
| 1st Circuit - Court of Appeals | | |
| 2. Cited by: Sony BMG Music Entm't v. Tenenbaum 660 F.3d 487, 2011 U.S. App. LEXIS 19086, Copy. L. Rep. (CCH) P30134, 100 U.S.P.Q.2d (BNA) 1161 <i>Headnotes:</i> HN10, HN20 <i>Cited by:</i> 660 F.3d 487 p.492 | 1st Cir. Mass. | 2011 |
| 1st Circuit - U.S. District Courts | | |
| 3. Cited by: Elsevier Ltd. v. Chitika, Inc. 2011 U.S. Dist. LEXIS 138838, Copy. L. Rep. (CCH) P30166 <i>Headnotes:</i> HN4, HN21 | D. Mass. | Dec. 2, 2011 |
| 4. Followed by: Coach, Inc. v. Gata Corp. 2011 U.S. Dist. LEXIS 45093, 98 U.S.P.Q.2d (BNA) 1911 <i>Headnotes:</i> HN25 | D.N.H. | Apr. 26, 2011 |
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| 6. Cited by: Sony BMG Music Entm't v. Tenenbaum 721 F. Supp. 2d 85, 2010 U.S. Dist. LEXIS 68642, 98 U.S.P.Q.2d (BNA) 1115 | D. Mass. | 2010 |

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 Penguin Group(USA) Inc. v. American Buddha, Docket No. 3:13-cv-00497 (D. Or. Mar 22, 2013), Court Docket (03/22/2013)

agent of the infringement. American Buddha counsel counter noticed the agent stating that publishing The Golden Ass on the Website was not infringing for various reasons including **fair use** and the library exception. Penguin responded informing counsel that neither the **fair use** nor the library

Parties American Buddha, Penguin Group(USA) Inc.
Date Filed Mar. 22, 2013
Last Updated Mar. 23, 2013 at 03:09 AM
Federal Nature of SuitProperty Rights: Copyright [820]
Cause of Action 28:1338 Copyright Infringement

 Mid-America Pool Renovations, Inc. v. Perry, Docket No. 4:12-cv-01491 (W.D. Mo. Dec 27, 2012), Court Docket (12/27/2012)

Arb. Forum Jan 23 2001 Respondent does not have rights in a domain name when Respondent is not known by the mark. Furthermore Respondent is not using the domain names in connection with a bona fide offering of goods or services or a legitimate noncommercial or **fair use** pursuant to Policy 4ci iii because it is using

Parties Mid-America Pool Renovations, Inc., Robert Perry
Judge Scott O. Wright
Date Filed Dec. 27, 2012
Last Updated Feb. 26, 2013 at 12:44 AM
Federal Nature of SuitProperty Rights: Trademark [840]
Cause of Action 15:44 Trademark Infringement

 Authors Guild, Inc. v. Hathitrust, Docket No. 12-04547 (2d Cir. Nov 14, 2012), Court Docket (11/14/2012)

Fox Broadcasting Company, Inc., et al v. Dish Network L.L.C., et al, Docket No. 12-57048 (9th...

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United States Court of Appeals for the Ninth Circuit
Docket for Case #: 12-57048

Fox Broadcasting Company, Inc., et al v. Dish Network L.L.C., et al

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[Docket Proceedings - \(Last\)](#)

Date Filed: Nov. 09, 2012
Status: Open
Nature of suit: 3820 Copyright
Original Cases: 2:12-cv-04529-DMG-SH on 05/24/2012, U.S. District Court for Central California, Los Angeles
District: 0973
NOA Date: 11/09/2012

Parties and Attorneys

Plaintiff - Appellant,
FOX BROADCASTING COMPANY, INC.

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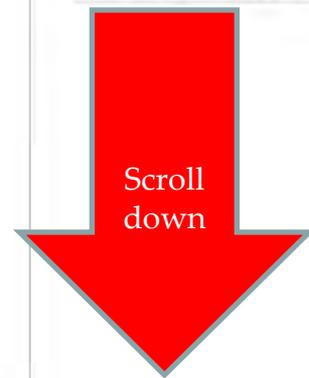
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Case Name
Fox Broadcasting Company, Inc.,
et al v. Dish Network L.L.C., et al

Docket Number
12-57048

Court
United States Court of Appeals for
the Ninth Circuit

Nature of Suit
Property Rights: Copyright



Docket Proceedings

Reverse Proceedings

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| Req # | Filed | Docket Text |
|-------|---------------|--|
| 1 | Nov. 09, 2012 | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 11/16/2012. Referred to MOATT pursuant to FRAP 3-3 - Preliminary Injunction Appeal. [8396915] (JN) |
| 2 | Nov. 09, 2012 | Received Appellants' Representation Statement. Served on 11/09/2012. [8396942] (JN) |
| 3 | Nov. 13, 2012 | Filed clerk order (Deputy Clerk: TP): The appeal filed November 9, 2012 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. If they have not already done so, within 7 calendar days after the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than December 7, 2012; the answering brief is due January 4, 2013 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 14 days after service of the answering brief. See 9th Cir. R. 3-3(b). Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. [8397659] (WL) |
| 4 | Nov. 13, 2012 | Filed (ECF) Appellants Fox Broadcasting Company, Inc., Fox Television Holdings, Inc. and Twentieth Century Fox Film Corporation Correspondence: JOINT STIPULATION ESTABLISHING BRIEFING SCHEDULE RE APPEAL FROM DENIAL OF PRELIMINARY INJUNCTION MOTION.. Date of service: 11/13/2012 [8398938] (RLS) |
| 5 | Nov. 14, 2012 | Filed (ECF) Appellants Fox Broadcasting Company, Inc., Fox Television Holdings, Inc. and Twentieth Century Fox Film Corporation Mediation Questionnaire. Date of service: 11/14/2012. [8401549] (DS) |
| 6 | Nov. 15, 2012 | Filed clerk order (Deputy Clerk: TSP): This is a preliminary injunction appeal. The joint stipulation to amend the briefing schedule is granted. The opening brief and excerpts of record are now due December 13, 2012; the answering brief is due January 17, 2013; and the optional reply brief is due January 31, 2013. [8403337] (WL) |
| 7 | Nov. 15, 2012 | Filed clerk order (Deputy Clerk: VLS): Based on a review of the Mediation Questionnaire, this case is not selected for inclusion in the Mediation Program. The existing briefing schedule remains in effect. Counsel for any party interested in obtaining assistance from the court in pursuing settlement of the case on appeal or learning more about the Mediation Program is encouraged to contact Roxane G. Ashe, Circuit Mediator, by fax (415) 355-8566. The communication will be kept confidential, if requested, from the other parties in the case. Counsel are requested to send copies of this order to their clients. [8403755] (WL) |
| 8 | Dec. 13, 2012 | Submitted (ECF) Opening brief for review. Submitted by Appellants Fox Broadcasting Company, Inc., Fox Television Holdings, Inc. and Twentieth Century Fox Film Corporation. Date of service: 12/13/2012. [8438660] (RLS) |
| 9 | Dec. 14, 2012 | Filed clerk order: The redacted opening brief submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8439077] (JB) |
| 10 | Dec. 14, 2012 | Filed Appellants' motion to file opening brief UNDER SEAL. Served on 12/13/2012. [8440503] (LA) |
| 11 | Dec. 14, 2012 | Filed Appellants' motion to lodge DVD exhibit with excerpts of record. Served on 12/13/2012. [8440513] (LA) |
| 12 | Dec. 14, 2012 | Received Appellants' notification of filing excerpts of record Vols. 5-9 under seal, with DC protective orders attached. [8440517] (LA) |
| 13 | Dec. 14, 2012 | Received UNDER SEAL original and 7 copies of Appellants' opening brief (Informal: No) 64 pages. Excerpts of record in 9 volumes (Vols. 5-9 UNDER SEAL). Served on 12/13/2012. Major deficiencies: motion to seal pending. [8440544] (LA) |



No. 12-57048

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE
NINTH CIRCUIT**

**FOX BROADCASTING COMPANY, INC., TWENTIETH CENTURY FOX
FILM CORP., AND FOX TELEVISION HOLDINGS, INC.,**
Plaintiffs-Appellants,

v.

DISH NETWORK L.L.C. AND DISH NETWORK CORP.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
Case No. 12-cv-04529
District Judge Dolly M. Gee

BRIEF OF PLAINTIFFS-APPELLANTS

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General Information

Case Name

Fox Broadcasting Company, Inc.,
et al v. Dish Network L.L.C., et al

Docket Number

12-57048

Court

United States Court of Appeals for
the Ninth Circuit

Nature of Suit

Property Rights: Copyright

| Req # | Filed | Docket Text |
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| 1 | Nov. 09, 2012 | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 11/16/2012. Referred to MOATT pursuant to FRAP 3-3 - Preliminary Injunction Appeal. [8396915] (JN) |
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- (03/14/12) Palomar Medical Center v. Sebelius, 10-56529 (Amicus Briefs invited by 4/16/12)
- (03/09/12) Perry v. Brown, No. 10-16696 and 11-16577 (Prop. 8)**
- (2/23/12) 10-15152 Haskell v. Harris - Opinion (Prop 69 - DNA from arrestees)
- (02/08/12) Doe #1 et al. v. Sam Reed, et al., Nos. 09-35818, 09-35826, 09-35863, 11-35854 (Disclosure of Washington referendum signatures)
- (12/22/11) ("Birther" Appeal)

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