

[US] Napster Continues Online

IRIS 2000-9:1/29

*Francisco Javier Cabrera Blázquez
European Audiovisual Observatory*

On 2 October, the 9 Circuit Court of Appeals in San Francisco, California, heard the arguments of both parties concerning the preliminary injunction granted by US District Judge Marilyn Hall Patel in the case RIAA v. Napster. On 26 July 2000, the District judge had enjoined Napster from causing, assisting, enabling, facilitating or contributing to the copying, duplicating or other infringement of all copyright songs, musical compositions or material in which Plaintiffs held copyright and ordered that the injunction should come into effect on 28 July 2000. On that same day, however, the 9th US Court of Appeals granted the Defendant an emergency stay and ordered the case to be argued before the first available panel in October. (for detailed information about the Napster case, see IRIS 2000-8: 14).

At the hearing, the main discussion centered on the applicability of the so-called Sony Betamax Doctrine. This doctrine basically says that the sale of recording devices does not constitute contributory infringement of copyrights if the product is capable of substantial non-infringing uses. Napster attorney David Boies stated that Napster was capable of non-substantial infringing uses, and therefore entitled to the same kind of protection given to VCRs. For the other party, RIAA attorney Russel Frackmen insisted that the Sony case was not applicable, and that Napster was not sued for its technology but rather because of its business practices.

These questions were discussed intensively during the hearing as well as, among others, the legal nature of the Napster system, and the burden of proof for the fair use defense. With a view to the decision on the merits, Judge Mary Schroeder asked the Plaintiffs' attorney whether an injunction naming every specific copyrighted song would be acceptable.

In the end, the three-judge panel adjourned without yet pronouncing on the legal question whether the preliminary injunction will be definitively lifted. Napster services will therefore continue.

Napster hearing of 2 October 2000

<http://www.cnn.com/2000/LAW/law.and.technology/10/02/napster.trial.01/>

Appellant Napster, Inc.'s Opening Brief

Brief of Plaintiffs/Appellees

