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Chapter 10 notes

**Peer-to-Peer File Sharing**

* Sony test: determined “whether a company’s product is capable of substantial or commercially significant noninfringing uses. “
* Notable cases:
  + A&M Records v. Napster, Inc. : Napster was held liable for contributory infringement and vicariously liable due to direct financial interest is visitor’s infringing activities.
  + MGM, Inc. v. Grokster: court held that “one who distributes a device with the object of promoting its use to infringe copyright… is liable for the resulting acts of infringements by third parties.”
  + Perfect 10, Inc. v. Megaupload Ltd.; Perfect 10 contended that Megaupload stored billions of dollars of pirated media on their servers, including copyrighted images and videos. Court dismissed vicarious liability claim, but held contributory infringement.

**Database Protection**

* European Union has Database Directive, established in 1996. Grants legal protection of databases in any form.
* Copyright law protects compilations meeting the requirements of fixation, and originations, for a 70-year term.

**Limitations of Exclusive Rights**

* Calling an agreement a license does not make it so. Courts look at economic realities such a whether the software publisher has placed limits on the use of copyrighted content or other attributes of a license versus a sale.

**DMCA**

* Enacted in 1998 to implement the WIPO Copyright treaty and the WIPO Performances and Phonograms Treaty.
* Criminalizes the circumvention or removal of DRMs
* Prohibits trafficking in tools that are primarily designed, valued, or marketed for such circumvention.

**Safe Harbor Requirements**

* Immunizes service providers from copyright infringement claims so long as they do not have actual knowledge of the infringing activity and promptly block infringing sales once notified.
* Three Requirements:
  + Lack both knowledge of the activity and awareness of facts or circumstances
  + Provider must not receive a financial benefit directly attributable to infringing activity it can control
  + Provider my remove material upon receipt of appropriate written notice.