

ADDITIONAL DEVELOPMENTS—COPYRIGHT, PART II

321 STUDIOS V. METRO-GOLDWYN-MAYER STUDIOS, INC.

307 F. Supp. 2d 1085 (N.D. Cal. 2004)

The district court held that decryption software that enabled users to copy digital versatile discs (DVDs) violated the Digital Millennium Copyright Act (DMCA) anti-circumvention provisions. The court also upheld the DMCA as constitutional against First Amendment and congressional powers challenges.

321 Studios marketed and sold software for copying DVDs. Many DVDs store digital data in an encoded format called the “Contents Scramble System” (CSS). An industry group called the Copyright Control Authority administers the CSS encoding scheme and licenses to player manufacturers the electronic keys used to play back DVDs. The keys and algorithm that can be used to decode a DVD are also, however, broadly available on the Internet. 321 Studios sold two software products for decoding the content of DVDs so they may be copied: DVD Copy Plus and DVD-X Copy. DVD Copy Plus enabled a user to copy only the video contents of a DVD onto a recordable CD, while DVD-X, a later version of the software, allowed a user to copy an entire DVD. DVD-X used a CSS player key and publicly known computer code to accomplish the decoding. 321 Studios filed suit seeking a declaratory judgment that the distribution of these products did not violate the DMCA or, in the alternative, that the provisions of the statute at issue are invalid in light of other provisions in the Copyright Act and/or constitutional limitations in the First Amendment and the Enumerated Powers and Due Process Clauses. The defendants, primarily members of the Motion Picture Association of America, moved for partial summary judgment opposing 321 Studios claims.

Among other actions, the district court granted the defendants’ motion for partial summary judgment, held that the plaintiffs’ products violated 17 U.S.C. §§ 1201(a)(2) and 1201(b)(1), and issued an injunction under 17 U.S.C. § 1203(b) prohibiting 321 Studios from distributing any type of DVD circumvention software. The court relied heavily on *Universal Studios, Inc. v. Corley*, 273 F.3d 429 (2d Cir. 2001), *United States v. Elcom Ltd.*, 203 F. Supp. 2d 1111 (N.D. Cal. 2002), and *Universal Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 346 (S.D.N.Y. 2000), in reaching its decision.

321 Studios argued that it did not violate 17 U.S.C. § 1201(a)(2) (access restrictions) because circumvention by definition is done without the authorization of the copyright holder. It believed it was free from liability because as purchaser of the DVD, the user has the authority to bypass CSS and indeed does so every time she views the DVD. The court rejected this argument and adopted the *Corley* distinction between authority to view and authority to decrypt. Thus, the court found 321 Studios liable because the DVD player rather than the end user was the entity granted license to decrypt the contents of lawfully purchased DVDs. The court reasoned that unlike 321 Studios, makers of licensed DVD players are not liable under this provision because they circumvent CSS with the authorization of the copyright owner.

The court also found that CSS is a copy control system and that downstream uses of the software by customers of 321 Studios are not relevant in determining whether 321 Studios itself violated the statute. Therefore, the court ruled that 321 Studios also

violated 17 U.S.C. § 1201(b)(1) (copying restrictions) even though CSS in itself only controls access, not copying. The court did not rule on “the commercially significant purpose” prong of the statute because neither side produced sufficient evidence on the issue.

The court upheld the constitutionality of the DMCA because it does not impermissibly seek to regulate the content of code—that is, speech—but rather only the functional elements of technology. The court also found that the DMCA does not impermissibly burden the fair use rights of users under *Eldred v. Ashcroft*, 537 U.S. 186 (2003), which the court interpreted as declining to mandate absolute First Amendment protection for the fair use of copyrighted works. Furthermore, the court found that the DMCA still allows fair uses even if users are not able to copy via the most optimum method or in the desired format. The court also stated that the DMCA does not impair the First Amendment right to access the non-copyrighted works simply because it allows publishers to control access to particular copies; it does not grant publishers any legally enforceable rights in public domain works. The court further held that the DMCA did not exceed the scope of congressional powers under the Commerce or Intellectual Property Clauses of the Constitution, and deemed the Necessary and Proper argument irrelevant because Congress explicitly invoked the Commerce Clause in enacting the DMCA.