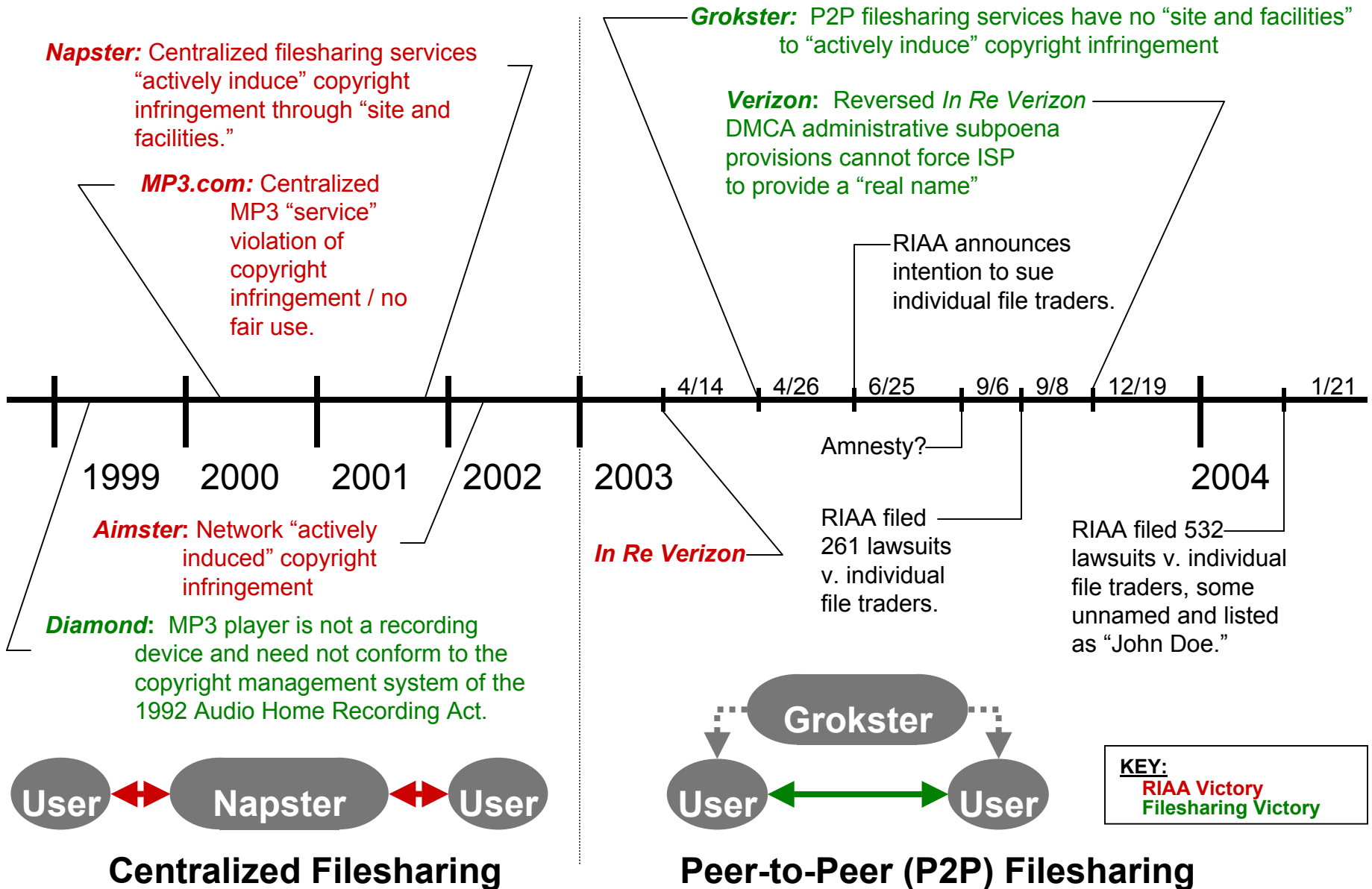


The Evolution Of Filesharing



Why Am I Getting Sued?

Contributory Infringement

- 1) Knowingly
- 2) Contributes to the infringing conduct of another

Napster:

- 1) Documentation existed that Napster “knew” its system was being used to infringe plaintiff’s copyrights. Also, Napster could have used that knowledge to stop the infringement.
- 2) Court relied on *Fonovisa* case and held that Napster provides the “site and facilities” for direct infringement (“without the support services defendant provides, Napster users could not find and download the music they want with the ease of which defendant boasts.”)

Grokster:

- 1) Grokster has “actual knowledge” that software is used to infringe copyrighted works.
- 2) Grokster did not provide “site and facilities” for the infringement to take place. Distinguished *Napster* and *Fonovisa* stating if Napster deactivated its computers, users could no longer trade files. However, if Grokster were to deactivate its computers, users would still be able to trade files. Hence, Grokster hasn’t done anything, aside from distributing software, to actively facilitate their users’ infringing activity.

The Court compared Grokster to companies like Xerox or Sony which sell copy machines and video recorders, both of which may be used to infringe copyrights. Sellers may know that their products will be used illegally by some, but they are not “actively inducing” the illegal use.

How Am I Getting Sued? / My Name Is Not John Doe

Contributory Infringement

- 1) Knowingly
- 2) Contributes to the infringing conduct of another

In Re: Verizon:

- 1) Under section 512(h) of the DMCA, a copyright owner may request the clerk of any United States District Court to issue a subpoena to an ISP for identification of an alleged infringer.
- 2) Verizon claimed:
 - a) Because RIAA's subpoena related to material transferred over Verizon's network – rather than stored on it – it fell outside the scope of the subpoena power authorized by section 512(h).
 - b) Subpoena could not issue under Article III because no “case or controversy” existed.
 - c) Subpoena abridges First Amendment rights of Internet users.

Verizon:

- 1) Court reversed district court and held that section 512(h) only applies to an ISP storing infringing material on its servers and does not apply to an ISP routing infringing material to or from a personal computer owned and used by a subscriber.
- 2) No matter what information the copyright owner may provide, the ISP can neither “remove” nor “disable access to” the infringing material because that material is not stored on the ISP's servers.

Resources

RIAA v. Diamond Multimedia Systems Inc., 180 F.3d 1072 (1999)

UMG Recordings, Inc. v. MP3.com, Inc., 92 F Supp. 2d 349 (S.D.N.Y. 2000)

A&M Records, Inc., v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)

In Re: Aimster Copyright Litigation, 252 F. Supp. 2d 634 (N.D. Ill. 2002)

In Re: Verizon Internet Services, Inc., 257 F. Supp. 2d 244 (D.D.C. 2003)

Mgm Studios v. Grokster, Ltd., 259 F. Supp. 2d 1029 (C.D.Cal. 2003)

RIAA v. Verizon Internet Services, 2003 U.S. App. LEXIS 25735 (D.C. Cir. 2003)

See Also:

Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259 (9th Cir. 1996)

Sony Corporation of America v. Universal City Studios, Inc., 464 U.S. 417 (1984)

www.riaa.com

www.eff.org