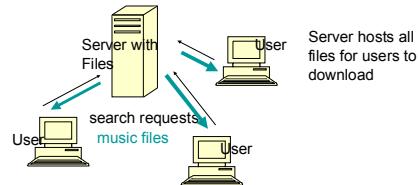


IP and Technology Regulation

Wendy Seltzer

1

Pre-Napster Music Sites

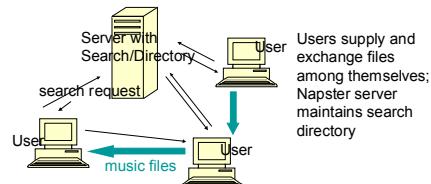


2



3

Napster 1.0



4

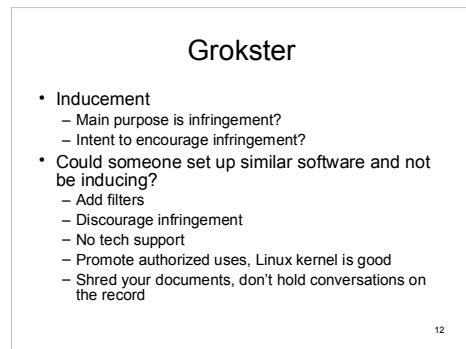
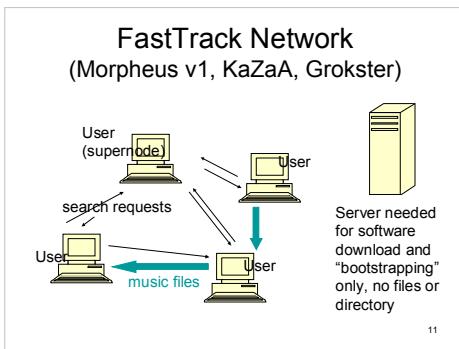
Napster

- Betamax: capable of substantial non-infringing uses -> lawful
- Napster:
 - Search directory – actual knowledge of specific infringing uses
 - Control, on an ongoing basis
 - Space-shifting different from time-shifting?
 - How much non-infringing use?
 - Is Google doing the same thing?
 - general-purpose search vs mp3.
 - but some mp3s non-infringing
 - What's angering the music companies?

5



6



Music Downloads

- The networks keep going
- Jurisdiction: music sites abroad
 - Credit card companies
- Whom to sue next?
 - ISPs?
 - Social policy. Networks have lots of beneficial uses, filesharing not decidedly harmful
 - Legal policy. DMCA safe harbor
 - End-users

13

Suing End-Users

- Find the “John Does”
 - Subpoena ISPs
 - Not with DMCA 512(h) subpoenas
 - FRCP 45 subpoena
 - Start by suing John Doe
 - Maybe the University doesn’t have full identifying information
 - university shouldn’t be compelled to *create* information
 - Pre-litigation notices
 - Should ISPs forward them?
 - Do we have to forward notices for everyone who asks?
 - Concerns about privacy? FERPA? Maybe more concern in the case of information sent back to RIAA

14