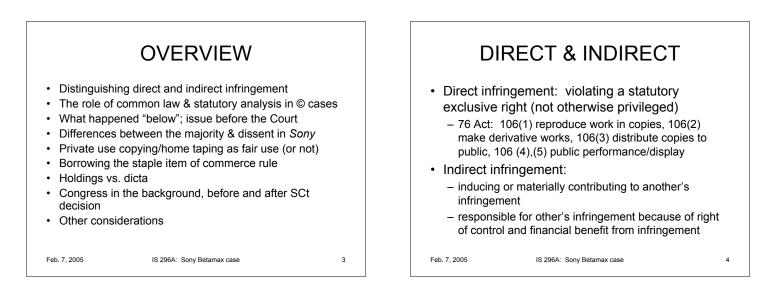
#### WHY STUDY? · Sony's Betamax machine was not a peer to peer technology in sense of Napster, Aimster, & Grokster (although some users did tape Sony v. Universal programs and share their copies with others) • Principal defense in all 3 p2p cases was based on Sonv decision: Pamela Samuelson - my technology has and is capable of SNIUs - so I cannot be held indirectly liable for user IS 296A(2) infringements February 7, 2005 Sony ruling is being challenged both by MGM before SCt and by some in Congress Feb. 7, 2005 Feb. 7, 2005 IS 296A: Sony Betamax case IS 296A: Sony Betamax case 2



#### **INDIRECT IN PATENT & TM LAW**

- Patent law:
  - 271(b): active inducement of infringement (with specific intent to bring it about)
  - 271(c): selling product specially made to infringe, not a staple item of commerce
- TM law:
  - Lanham Act 32 (1)(b): copy mark on labels, signs, ads likely to confuse consumers as to source
  - Common law: intentional inducement; supplying products knowing others will use to infringe

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#### **COPYRIGHT LAW**

- Exclusive right "to authorize" reproductions, etc.
- Otherwise statute was silent about indirect liability
- Legislative history: House and Senate reports indicated Congress' recognition of court evolution of indirect liability rules
- Scattered cases:
  - Kalem (1911) (producer held indirectly liable for infringing distribution of movie)
  - Gershwin (1971) (organizer of public performances knew performers were infringing)

Feb. 7, 2005

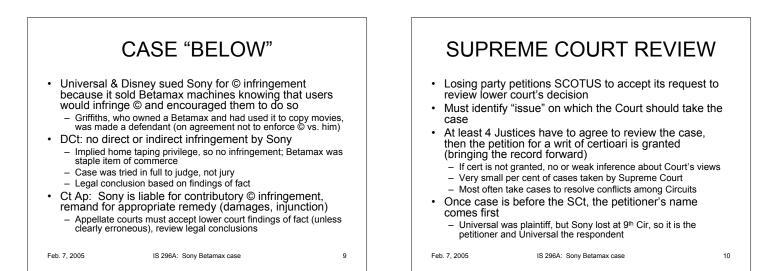
COMM	ON LAW & STATUTES
courts we	es of law evolve over time when ere asked to adjudicate a dispute two parties
	have a theory of the legal wrong and prove facts in support of theory
recogniz	lefend by saying law doesn't ze this theory, P didn't offer enough r extenuating circumstances exist
	es are purely statutory: legal ts only as set forth in statute
Feb. 7, 2005	IS 296A: Sony Betamax case 7

## CL & STATUTES IN ©

- Copyright statute since 1790
- Some questions can be resolved by applying the statute (e.g., pre-1989, had statutory formalities been complied with (© notice)?)
- Some questions can only be resolved by interpretation which introduces common law elements into statutory laws
  - © law requires "originality" but doesn't define term
  - some copying may literally infringe, but courts have evolved the "fair use" doctrine to limit scope of author's exclusive rights (case by case evolution)

Feb. 7, 2005

IS 296A: Sony Betamax case



ISSL	JE BEFORE SCOTI	JS	KI	EY DIFFERENCES	
that Son infringen recordin primary to make	<sup>•</sup> 9 <sup>th</sup> Circuit was correct in ru y was liable for contributory nent for selling video tape g machines knowing that th use of these machines wou illegal copies of programs, g movies made by Universa	e Id be	<ul> <li>Commor extend th control s</li> <li>Making c use, so E</li> <li>Blackmun</li> <li>Strict sta exclusive privilege, unprodut</li> <li>Remand</li> </ul>	or the majority: In law perspective: Studios are trying to taple item of commerce (ie, VTR technic copies for time-shifting purposes was fa Betamax had SNIUs, so OK for the dissent: atutory analysis: home tape copies viola e right to reproduce copies; no private u /not fair use to home-tape because ctive and potential to harm markets for determination of proportion of infrin -infringing uses	ology) air ate use
Feb. 7, 2005	IS 296A: Sony Betamax case	11	Feb. 7, 2005	IS 296A: Sony Betamax case	1

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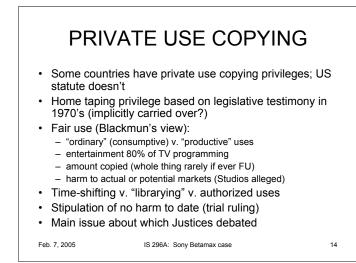
#### IRONY

- Blackmun was a strict constructionist when it came to the "implied exemption" for home taping, but if Congress intended to put every important rule in the 76 Act, then where was a secondary liability rule?
- Stevens was more comfortable with a common law approach: nothing in © so borrow rule from kindred body of law

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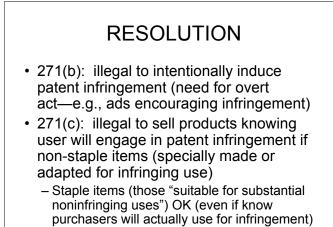
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#### STAPLE ITEM RULE Patent caselaw prior to 1952: many cases involved sales of components of inventions, sometimes subject to license restrictions on use · At first, patent holders won many of these cases (on the theory that D knew or should have known purchasers would infringe or intended to bring about infringement) · Later, courts became concerned about patentees who were trying to extend their patent monopolies to control unpatented products, interfering with "wheels of commerce" · Caselaw was unstable, unclear, confusing 15

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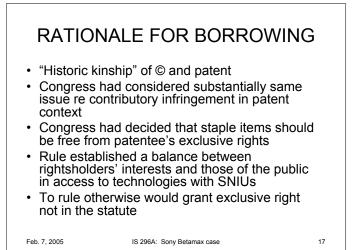
IS 296A: Sony Betamax case



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IS 296A: Sony Betamax case

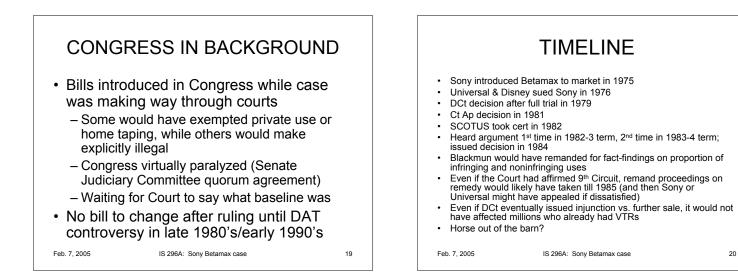
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# HOLDING v. DICTA

- Holding = what the court actually ruled - Sony is not contributorily liable for user infringement because of SNIUs of Betamax machine
- Dicta = what an opinion says, but which a court might walk away from or embrace in later cases (often hard to predict)
  - example: "indeed, it need merely be capable" of SNIUs
  - example: presume unfair if commercial use; presume fair if private noncommercial copying

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## OTHER CONSIDERATIONS

- · "Library" copies, sharing tapes, cable TV
- · Formality to have individual copier as defendant
- Only these two © owners suing (yet affecting interests of © owners who do not object)
- · What would remedies look like if Universal won?
- Conversation within the Court (disagreements showing through; opinion as compromise)
- Subsequent history (VTR as main revenue source for MPAA firms; Macrovision; DMCA)

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