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rights for it to begin with, so long as there are no costs to bargaining this case, the court's decision determines the initial state of rights, and the lobbying process that informs legislators is analogous to the bargaining process that ultimately determines how resources are used. As long as the court's decision does not interfere with that process, it doesn't matter.

Sometimes however, a court's decision will impact the future capabilities of interested parties, specifically when a ruling against a firm implementing new technology has negative financial consequences. Any penalties suffered as a result of the initial court decision could reduce or even eliminate a firm's opportunity to fight for its interests in the second stage game thereby

Institutes of Health and the National Library of Medicine, claiming that the unauthorized photocopying of medical journal articles violated their copyright. The case eventually reached the Supreme Court in *Williams & Wilkins Co. v. United States* (1975) where a divided court ended up ruling 4-4 (Justice Harry Blackmun recused himself), affirming the lower court's ruling that the photocopying involved constituted "fair use" of copyrighted materials.

It was close, but the court allowed the new technology's use to continue, and so it also set a major precedent for the "fair use" doctrine, which allows the limited use of copyrighted works without permission. Though the term "fair use" had been used prior to *Williams & Wilkins Co.*, it and several similar decisions in cases related to copiers along with related lobbying efforts—led Congress to formalize the term in the Copyright Act of 1976. That piece of legislation, which is still the basis of copyright law today, paved the way for other new technologies to make other uses of previously copyrighted materials. But not always quietly.

VCRs As copiers did before them, videotape recorders (or VTRs, as they are referred to in court transcripts) allowed individuals to make their own copies of copyrighted materials. In place of publishers, this time it was movie studios that were unhappy about the copying, and in what is now often referred to as "The Betamax Case," *Universal City Studios and Walt Disney Productions sued Sony Corp.*, maker of the Betamax VTR, for copyright infringement. Again, the court ultimately ruled in favor of the new technology. *Sony Corp. of America v. Universal City Studios, Inc.*, the court ruled that the use of VTRs to "time-shift" meaning viewers could record programs to watch at a later time and/or date legitimate, and thus "fair," use.

Somewhat ironically, but fitting with the Coase model, the studios themselves may have benefitted as much as (if not more than) viewers from the resulting legal landscape, as revenues from the prerecorded video market would soon far exceed those of theatrical releases. *cases* 6 (ch)6 (c)-9y

would consume digital media for the foreseeable future. While copiers and VCRs allowed consumers to enjoy facsimiles of copyrighted materials in different ways than they had before (reading outside the library, watching at later times), filesharing went further, allowing seemingly