



MOTION PICTURE AND MUSIC COMPANIES FILE BRIEF FOR U.S. SUPREME COURT REVIEW OF GROKSTER, MORPHEUS CASE

WASHINGTON (January 25, 2005) – In a brief filed with the Supreme Court, the country's leading entertainment companies urge the Court to stop the growing threat of theft of movies and music over the Internet. In the filing, the nation's major motion picture studios and recording companies emphasized that they do not seek to overturn the *Sony-Betamax* decision, but rather ask the Court to reaffirm the fundamental principles of the protection of private property, including intellectual property, central to the country's laws since the days of the framing of the Constitution.

The Motion Picture Association of America (MPAA) member company studios and Recording Industry Association of America (RIAA) recording companies urge the Court to overturn the Ninth Circuit Court of Appeals ruling that held that certain internet file sharing services, including Grokster and Morpheus, are not liable for the massive, rampant copyright infringements occurring over their networks.

The motion picture studios, record companies and music publishers argue that these services are liable for those copyright infringements based on their history of encouraging and assisting the massive illegal downloading and uploading by the users of their services of copyrighted motion pictures, television programs and music; and, as the services are used overwhelmingly for infringement, they cannot escape liability for those infringements.

"Today's motion picture industry depends on the amazing advances of modern technology, and sees enormous potential in the ways those advances will let studios reach new audiences, more conveniently, more economical -- and we welcome those new opportunities," said Dan Glickman, President and Chief Executive Officer of the Motion Picture Association of America. "We will not welcome, however, theft masquerading as technology. No business, including the movies, can keep its doors open, its employees paid, and its customers satisfied if pirates and thieves are allowed to run rampant over this country's basic protection of the right of individuals to the ownership of their creative expressions, and to benefit from those expressions and that ownership."

"A broad consensus has emerged around the conclusion that the *Sony-Betamax* decision was never meant to provide cover for Grokster-style theft," said Mitch Bainwol, Chairman and CEO, Recording Industry Association of America (RIAA). "We've seen legal briefs echoing this perspective filed by a remarkable set of voices - creators,

technologists, state attorneys general, the Solicitor General on behalf of the federal government, Members of Congress, property rights organizations and many others.”

“Theft is theft,” added Bainwol. “Whether physical or intellectual, in a store or over the Internet, a business model predicated on theft can’t stand. The Groksters of the world are not innovators. Far from it. They are parasites who hide behind technology as they steal from the artists that create entertainment; they jeopardize the incentives to create new artistic works for society to enjoy. The Court has an opportunity to unleash a wave of investment in legitimate distribution models by establishing clear legal rules of the road and a balanced playing field that respects all innovation – creative and technological.”

In December 2004, the Supreme Court granted the plaintiffs’ petition to review the Ninth Circuit’s decision. Yesterday, January 24th, the petitioners submitted their opening brief to the Court on that review; the Court is scheduled to hear argument on the case on March 29, 2005.

Highlights of the Brief

“Respondents Grokster and StreamCast operate Internet-based services that contribute to copyright infringement on a ‘mind-boggling’ scale. Their services make it possible for millions of users to reproduce and distribute copyrighted sound recordings and motion pictures without permission – and without paying for them. Virtually all those who use Grokster and StreamCast are committing unlawful copyright infringement, and they commit million of acts of infringement each day. Grokster and StreamCast exploit this massive infringement for profit, and petitioners are suffering extreme harm as a consequence.”

The Supreme Court’s decision in *Sony-Betamax*, “held that the manufacturer of copying equipment used principally for legitimate noninfringing purposes could not be held liable for its customers’ incidental infringing uses of that equipment. *Sony-Betamax* does not, however, absolve Grokster and StreamCast of liability, as the Ninth Circuit believed. . To the contrary, *Sony-Betamax* calls for a balance between ‘effective – and not merely symbolic – protection of copyright’, and ‘the rights of others freely to engage in substantially unrelated areas of commerce.’”

“Grokster and StreamCast are liable as contributory infringers because they have “knowledge of infringing activity” on their services and they ‘induce[], cause[] or materially contribute[] to’ that infringing activity in myriad ways. Neither proposition can be seriously disputed. Despite their efforts to achieve plausible deniability, respondents know full well that their services are rife with infringing activity. And they materially contributed to that infringement by creating, maintaining, and expanding their services, which make possible the infringement that could not otherwise occur.”

“Grokster and StreamCast ‘depend[] upon this infringement’ to make money. *Id.* They do not sell the specially designed software needed to gain access to the vast array of copyrighted material available through their services. Rather, they give away their

software to build their networks of anonymous users, and then profit by selling advertising that they display to the millions of users committing infringement on the services.”

“...*Sony-Betamax* provides no safe harbor where, as here, a defendant engages in conduct that encourages or assists infringement, or intends to facilitate it.”

“...where it benefits their business interests, Grokster and StreamCast have implemented filters – to eliminate files with ‘viruses,’ ‘bogus’ files that are not the works they purport to be (and which thus discourage or disrupt downloading of copyrighted works), and some pornographic files.”

Yet, “Respondents avoid filtering [for copyrighted works] because it is inconsistent with their strategy of plausible deniability. As one StreamCast employee noted, filtering is ‘a technology that will allow [us] to see what our users are sharing...[and] I know this is something we DO NOT want to do.’”

“Before petitioners brought suit, Grokster and StreamCast required users to log in to the networks through their central servers using a unique user name and password, as is common practice for Internet services. This feature allowed respondents to control access to their services and to terminate the accounts of known infringers by deleting their user names, changing their passwords, or blocking their IP addresses...After Grokster and StreamCast were sued, however, they eliminated the log-in feature, thereby disabling a readily available (albeit imperfect) tool for excluding infringing users.”

“The Ninth Circuit’s approach also undermines innovation in legitimate copyright commerce. Internet services for licensed digital distribution of music and movies, such as Apple’s iTunes or Movielink – which must charge a fee to cover licensing costs for copyrighted works – cannot compete on a level playing field when potential customers can get the same works for free on Grokster and StreamCast. The same unfair competition would hobble innovative peer-to-peer services that use filtering technology to ensure that copyrighted works are distributed over their networks only when authorized.”

“It is the Ninth Circuit’s rule that threatens innovation – not only in artistic creation but also in software design (which copyright protects), as well as in the efforts of legitimate businesses to distribute copyrighted content in digital form on the Internet, through wireless services, or by satellite, cable and other means.”

“...reversing the Ninth Circuit is necessary to restore a climate of appropriate respect for intellectual property on the Internet, thereby preserving the ‘economic incentive to create and disseminate ideas,’ and ensuring that copyright remains the ‘engine of free expression’ the Framers intended.”

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The Recording Industry Association of America (RIAA) is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes our members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States.

In support of this mission, the RIAA works to protect intellectual property rights worldwide and the First Amendment rights of artists; conduct consumer industry and technical research; and monitor and review - state and federal laws, regulations and policies. The RIAA also certifies Gold®, Platinum®, Multi-Platinum™, and Diamond® sales awards, and recently launched Los Premios De Oro y Platino™, a new award celebrating Latin music sales.

The Motion Picture Association of America, Inc. (MPAA) serves as the voice and advocate of the American motion picture, home video and television industries from its offices in Los Angeles and Washington, D.C. Its members include Buena Vista Pictures Distribution, Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, and Warner Bros. Entertainment Inc.

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