

**UNPRECEDENTED COALITION OF CREATIVE ARTISTS,
PRIVATE PROPERTY ADVOCATES, U.S. GOVERNMENT, STATE
ATTORNEYS GENERAL, FAMILY GROUPS, AND DIGITAL
ENTERTAINMENT SERVICES AND COPYRIGHT OWNERS
ASK SUPREME COURT TO OVERTURN
APPEALS COURT FILE SHARING RULING**

*Former Solicitor General Theodore B. Olson
Joins Effort As Defender of Property Rights*

WASHINGTON (January 25, 2005) – Friend-of-the-court briefs were submitted yesterday by an unprecedented coalition of movie and music organizations, property rights advocates represented by former U.S. Solicitor General Theodore B. Olson, U.S. Government, state Attorneys General, pro-family advocates including former Department of Justice’s Assistant Attorney General Viet Dinh, legal professors, legal online entertainment services and other copyright owners, who all urged the U.S. Supreme Court to overturn a lower court ruling that found Grokster and StreamCast Networks not responsible for the massive theft occurring on their file-sharing networks.

The plaintiffs in the case, the major motion picture studios and record companies represented by the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA), respectively, along with the National Music Publishers’ Association (NMPA), submitted their briefs to the Supreme Court yesterday.

The amici briefs were submitted by the following groups and individuals:

Defenders of Property Rights

Theodore B. Olson, former Solicitor General, Gibson, Dunn & Crutcher LLP,
Counsel for the Defenders of Property Rights

U.S. Government

Paul D. Clement, Acting Solicitor General

Copyright Owner Associations

Office Of The Commissioner Of Baseball
National Basketball League
National Football League
Graphic Artists Guild, Inc.
Association of American Publishers, Inc.
The Producers Guild
American Society of Media Photographers
Authors Guild
Entertainment Software Association

Association of American University Presses
Independent Film & Television Alliance (formerly known as American Film Marketing Association, or AFMA)
Professional Photographers of America

Music Publishers

American Society of Composers, Authors & Publishers
Broadcast Music, Inc.
Association of Independent Music Publishers
Church Music Publishers Association
Nashville Songwriters Association International
The Songwriters Guild of America

Artist Groups and Artists

National Academy of Recording Arts and Sciences
The Country Music Association, Inc.
The Gospel Music Association
The Hip-Hop Summit Action Network
Jazz Alliance International, Inc.
The Rhythm & Blues Foundation
Recording Artists Coalition
SESAC, Inc.

Don Henley, Glenn Frey, Joe Walsh and Timothy B. Schmit (“The Eagles”)
Kix Brooks and Ronnie Dunn (“Brooks & Dunn”)
Natalie Maines, Martie Maguire and Emily Robison (“The Dixie Chicks”)
Bonnie Raitt
Reba McEntire
Michael W. Smith
Sheryl Crow
Phil Vassar
“Mya” Harrison
Kenny “Babyface” Edmonds
Bill Kreutzman and Mickey Hart (of “The Grateful Dead”)
Jimmy Buffett
Patty Loveless
Stevie Nicks (of “Fleetwood Mac”)
Gavin Rossdale
Jesse Colin Young (of “The Youngbloods”)
Avril Lavigne
Dido
Denyce Graves
Tom Jones
Dean Friedman
Sarah McLachlan
Martina McBride

Sam Moore (of “Sam & Dave”)
Joe Terry and David White (of “Danny and the Juniors”)
Billy Preston
Boz Scaggs
Diana Krall
Elvis Costello
Brian Wilson
Kenny Rogers
Tom Waits
Tyler Stewart, Jim Creegan, Steven Page, Ed Robertson and Kevin Hearn (“Barenaked Ladies”)
Deryck Whibley, David Baksh, Cone McCaslin and Steve Jocz (“Sum 41”)
Brandon Hargest, Brittany Hargest, Chris Fedun and Lesley Moore (“Jump 5”)
Bethany Dillon
Nichole Nordeman

Artist Unions/Guilds/Trade Associations

American Federation of Musicians of the United States and Canada
American Federation of Television and Radio Artists
Directors Guild of America
Screen Actors Guild, Inc.
Writers Guild of America, West

Law Professors, Economics Professors, Treatise Writers

Neil Boorstyn, Author of Boorstyn on Copyright and editor of the monthly newsletter The Copyright Law Journal, former Special Master in the Napster case
Jay Dougherty, Loyola Law School
Michael Einhorn, Rutgers University School of Law
James Gibson, University of Richmond School of Law
Robert Gorman, University of Pennsylvania Law School
Hugh Hansen, Fordham Law School
Stan Liebowitz, University of Texas at Dallas
Ronald Mann, University of Texas School of Law
Mark McKenna, Saint Louis University School of Law
Roger Milgrim, Private practitioner in New York City, specializing in high-tech intellectual property law, former adjunct professor at New York University School of Law
Arthur Miller, Harvard Law School
Raymond Nimmer, University of Houston Law Center
Ralph Oman, George Washington University Law School
Eric Schwartz, Georgetown University Law
Rodney Smolla, University of Richmond School of Law
R. Polk Wagner, University of Pennsylvania Law School

Professors and Economists

Kenneth J. Arrow, Stanford University

Ian Ayres, Yale Law School
Gary Becker, The University of Chicago
William M. Landes, The University of Chicago Law School
Steven Levitt, The University of Chicago
Douglas Lichtman, The University of Chicago Law School
Kevin Murphy, The University of Chicago
Randal Picker, The University of Chicago Law School
Andrew Rosenfield, The University of Chicago Law School
Steven Shavell, Harvard Law School

Progress and Freedom Foundation

Retailers

National Association of Recording Merchandisers
Video Software Dealers Association

State Attorneys General

Alabama
Alaska
Arizona
Arkansas
Delaware
Florida
Georgia
Territory of Guam
Hawaii
Idaho
Illinois
Indiana
Kansas
Kentucky
Louisiana
Massachusetts
Michigan
Minnesota
Missouri
Mississippi
Montana
Nebraska
Nevada
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma

Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin

Online Technology Companies

Snocap
iMesh
DigiMarc
Gracenote

Family Groups

Kids First Coalition
Christian Coalition Of America
Concerned Women For America
Enough is Enough
Morality in Media, Inc.
National Center For Missing And Exploited Children
National Fraternal Order Of Police
National Law Center For Children And Families
We Care America

Online Distributors of Copyrighted Content

Napster, LLC
Musicnet, Inc.
Cinemanow, Inc.
Sea Blue Media, LLC D/B/A Cdigix
Movielink, LLC
Tennessee Pacific Group, LLC D/B/A Passalong Networks
Wurld Media, Inc.
Virtual Media Stores LTD.

###

Contacts: Jonathan Lamy - RIAA (202) 775-0101
Rich Taylor - MPAA (202) 293-1966
Phuong Yokitis – MPAA (202) 293-1966

What They Are Saying re Grokster

U.S. Department of Justice, Acting Solicitor General of the United States, Paul Clement:

“The position of the United States is that the court of appeals erred in adopting an unduly narrow view of the scope of secondary liability for copyright infringement.” (Brief of the United States as *Amicus Curiae* Supporting Petitioners at p. 2)

“The Ninth Circuit’s approach would eviscerate the ‘effective’ protection against copyright infringement that *Sony* demands. 464 U.S. at 442.””The most salient considerations are the extent to which the defendant’s product is, or reasonably foreseeably will be, utilized for infringement and, relatedly, the extent to which the defendants’ particular business depends on such illicit uses. If the defendant’s product is overwhelmingly used for infringing purposes, and the viability of the defendant’s business depends on the revenue and consumer interest generated by such infringement, such evidence alone suffices to support liability under *Sony*.”(Brief at p. 5)

“But here the overwhelming proportion of uses – each of which adds to respondents’ bottom line – is infringing, and there appears to be no evidence that noninfringing uses by respondents’ users are, or are likely to become, commercially significant in the relevant sense.” (Brief at p. 23)

Senators Orrin Hatch (R-Utah) and Pat Leahy (D-Vermont):

“*Amici* [Senators Hatch and Leah] seek to clarify the situation because a party has attempted to misrepresent congressional actions and roles in an effort to further its own case. In brief, respondents misconstrue the relationship between Congress and the Court in explicating law, misstate the doctrine of secondary liability in the realm of copyright, and misrepresent recent legislative activity in the Senate.” (Brief *Amici Curiae* of United States Senator Patrick Leahy and United States Senator Orrin G. Hatch in Support of Neither Party at p. 4-5).

“The Court’s role in declaring law is mandatory. Congress’s is not. They are simply not substitutes for each other, as respondents contend. The Court cannot refuse to fulfill its constitutional responsibility simply because Congress may be working through possible legislation, that, even if passed and signed into law by the President, may or may not address the issue at hand.” (Brief at p. 7)

Former Solicitor General Theodore B. Olson, Counsel for Defenders of Property Rights:

“The Ninth Circuit’s decision eviscerates intellectual property rights. It frustrates those who have invested substantial resources in creating an original word, only to see the fruits of their labors snatched away. It rewards those, like Respondents, who unjustly profit by

designing tools to enable the theft of private property. And it stifles innovation by depriving citizens of the incentive to create works of art or music or literature that can be enjoyed by people ages hence.” (Brief of Defenders of Property Rights as *Amicus Curiae* in Support of Petitioners, at p. 3)

Counsel for Kids First Coalition, Christian Coalition, Concerned Women for America, National Fraternal Order of Police, National Center for Missing and Exploited Children and Other Family Groups:

“Disturbingly, peer-to-peer networks are becoming the preferred method to transfer child pornography. The United States General Accounting Office (“GAO”) recently concluded that peer-to-peer networks are quickly emerging as a major conduit for the distribution of child pornography”.... “The National Center for Missing and Exploited Children has found that peer-to-peer technology is increasingly popular for the dissemination of child pornography”...Anonymous peer-to-peer networks – of the type that Respondents engineered to evade the *Napster* decision – present a particularly acute problem. The absence of registration of peer-to-peer networks conceals pedophiles’ efforts to identify, lure, and seduce children into illegal and abusive sexual activity.” (Brief of Kids First Coalition et al as *Amici Curiae* at p. 15, 16 and 17, Viet Dinh, Counsel of Record).

“The Ninth Circuit’s endorsement of engineered ignorance of use and content carries consequences far beyond copyright law. The decision below shelters file-sharing networks from copyright liability, but its reasoning encourages network architects to design their systems deliberately to disclaim knowledge of or control over other illegal conduct. The decision encourages peer-to-peer networks to blind themselves to distributed content and to avoid detecting and filtering illegal, pernicious activities such as the trafficking of child pornography and obscenity.” (Brief at p. 9-10)

Attorneys General *Amici Curiae* Brief:

“Given respondents’ affirmative disinterest in policing the networks they set in motion, and their reliance on conscious indifference to shield themselves from liability...it is not surprising that their networks have become havens for other crime. These services are, for instance, rife with criminal schemes, such as instructions on how to pilfer financial accounting data from computer users and engage in electronic identity theft. Moreover, the use of hidden ‘spyware’ (such as in Respondent Grokster’s software), which is designed to monitor and report on the user’s computer activities, violates consumers’ privacy. This illicit activity underscores the fact that the rule adopted by this Court is not limited, in its reach, to the realm of copyright. If respondents can evade responsibility for facilitating widespread copyright infringement simply by pretending not to know that it is occurring, then the creators of P2P networks that facilitate anonymous distribution of illicit pornography will believe they can do the same.”

“In the end, the most insidious consequence of respondents’ business model may be the way it fosters networks of illegality. The P2P networks established by respondents and immunized by the Ninth Circuit rule promote a culture of lawlessness.” (Brief, *Amici*

Curiae of Attorneys General at p. 6)

Fred Koenigsberg, Counsel for *Amici* American Society of Composers, Authors and Publishers et al:

“...we cannot effectively enforce our rights if individual P2P users are liable but the P2P services are not. The risk-to-reward ratio for individual infringing users of the P2P services is far more favorable to the infringer than it would be for the P2P services themselves if they are liable, and the cost-to-benefit ratio for copyright owners seeking to enforce their rights is skewed radically against copyright owners forced to proceed against individual P2P users. This is especially true for the individual songwriters and small independent publishers we represent.” (Brief of the American Society of Composers, Authors and Publishers, et al as *Amici Curiae* at p. 9)

James DeLong and Solveig Singleton, The Progress and Freedom Foundation:

“The dispute here cannot be characterized as a contest of ‘content providers vs. tech companies,’ or ‘producers v. consumers’...Instead, the case requires reconciliation of two complementary interests of consumers, each of which has been recognized in decisions of this Court. One interest is in technological innovation and progress in not allowing new technologies to be stifled by existing business models and in not allowing copyright holders’ control of content to be transformed into control over the devices through which that content is accessed. The importance of this value was emphasized in *Sony Corp. v. Universal City Studios, Inc.* 464 U.S. 417 (1984). The other equally important consumer interest recognizes that proper incentives and markets are crucial to the production of intellectual property. This value was emphasized most recently in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), in which the Court noted that ‘copyright law serves public ends by providing individuals with an incentive to pursue private ones.’” (Brief of *Amicus Curiae* The Progress & Freedom Foundation in Support of the Petitioners at p. 5)

###