

**For Immediate Release: August 19, 2003**

## **Music and Motion Picture Companies Appeal Court Decision In Grokster, Morpheus Case**

Arguing that a district court dramatically departed from well-established copyright law, three leading rightsholder groups representing motion picture studios, record companies and music publishers, have filed briefs seeking to overturn a lower court ruling that found Grokster and StreamCast Networks (or MusicCity) -- operators of the file sharing services Grokster and Morpheus -- not liable for the massive copyright infringement occurring on their networks.

The motion picture studios, record companies and music publishers (and the songwriting community they represent) have requested that the U.S. Court of Appeals for the Ninth Circuit overturn the decision by the district court and hold StreamCast Networks and Grokster liable for those infringements. While the district court acknowledged that downloading and uploading copyrighted works without permission is illegal, it declined to hold the network operators liable.

“We appreciate that the district court affirmed that the underlying activity of downloading or distributing copyrighted works is illegal, but the ruling on the services themselves rewrote years of well-established copyright law,” said Cary Sherman, President, Recording Industry Association of America (RIAA). “It was wrong. These are businesses that were built for the exclusive reason of illegally exchanging copyrighted works, and they make money hand over fist from it. The Court of Appeals should hold them accountable.”

“The predominant use of these services is massive copyright infringement, causing tremendous harm to the songwriters and music publishers who form the bedrock of the music industry,” said Edward P. Murphy, President, National Music Publishers’ Association, Inc. “The district court’s ruling represents a serious blow to musical creativity, discouraging the creation of new musical works. The real losers here include the general public, who will never get to hear those songs. We appeal to the Ninth Circuit to see that does not happen.”

Jack Valenti, President and CEO, Motion Picture Association of America, Inc. (MPAA), said, “This nation is founded on the fundamental principle that taking property that belongs to someone else is wrong, legally and morally, whether you do the stealing yourself, or you aid others in stealing. It is on that simple, undeniable fact that we are appealing this decision.”

The appeal briefs make the following arguments as to why the district court's ruling was wrong:

### **Excerpts from MPAA-RIAA Brief**

- "The District Court decision sharply departed from the law of the Ninth Circuit and dramatically redrew the law of secondary infringement to set near-impossible standards for liability in an online environment."
- "Defendants reap millions of dollars in revenue from their on-line trading bazaars by selling advertising they display to their users while they engage in infringement."
- "There is no genuine dispute that the *raison d'etre* of Defendants' networks is the unlawful exchange of copyrighted songs and movies. The harm to Plaintiffs continues to be enormous: Defendants have, in essence, unlocked the door to every video and record store in the country and invited every person to come in and copy as much as they want, in flat violation of Plaintiffs' copyrights. "
- "It was undisputed, for example, that Defendants *currently* filter or block certain material available over their networks, *i.e.*, pornographic works, viruses, and bogus files. Instead, of employing their filtering to stop piracy defendants turned a blind eye to detectable acts of infringement for the sake of profit."
- "This case is not about Plaintiffs embracing or opposing technological innovation. It is about the conduct of businesses that intentionally misuse commonly available Internet "peer-to-peer" technology to profit from copyrights they do not own for works they did not create."

### **Excerpts from NMPA Brief**

- ". . . [T]he District Court incredibly equated MusicCity and Grokster to Xerox, rather than the more analogous comparison to the illegitimate Napster service. . . . [C]omparing Xerox to MusicCity and Grokster is like comparing a farmer who sells chickens to a promoter and organizer of cockfights."
- "The record indisputably shows that MusicCity and Grokster have created a virtual swap meet allowing users to download practically every extant piece of copyrighted music free of charge, in direct violation of the copyright laws."

- “MusicCity and Grokster know of infringing activity on their services, and yet they continue to permit millions of users to upload and download copyrighted works, while making millions of dollars from advertisements targeted to these very same users.”
  
- “MusicCity and Grokster cannot be permitted to operate commercial businesses that reap enormous financial profit from the illegal trafficking of copyrighted works, while, at the same time, purporting to claim ignorance by hiding their heads in the sand. The District Court’s Order effectively holds that a defendant may knowingly create a business that profits from widespread copyright infringement, refuse to make any effort to stop or limit the infringement, and escape any consequence for this deliberate conduct. This result makes a mockery of copyright law.”
  
- “The consequences of not correcting the serious error committed below should not be underestimated. Songwriters and music publishers are struggling to support the nascent legitimate Internet music services that comply with the law by taking licenses and paying royalties. But those services cannot compete with commercial services like MusicCity’s and Grokster’s that make the same songs available for free. . . . [I]t sends a bleak message to young songwriters and prospective songwriters that they should not expect to pursue careers in songwriting like the Cole Porters, Irving Berlins, and Leiber and Stollers of the last century. Unlike their forbears, their works will be given away for free.”

The appeal briefs have been filed under seal due to the inclusion of certain evidence designated confidential by the defendants, but the motion picture studios, music publishers and record companies will soon ask the court to unseal the briefs.

In October 2001, the plaintiffs sued KaZaA, Grokster and StreamCast Networks for contributory and vicarious copyright infringement, and nearly a year later, each side moved for an expedited ruling on liability (summary judgment). The district court ruled in favor of Streamcast Networks and Grokster on April 25<sup>th</sup>. The claims against KaZaA and Sharman Networks, which later acquired the KaZaA business, are still pending before the district court.

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*[The **National Music Publishers' Association, Inc.**, founded in 1917, works to protect and advance the interests of the music publishing industry. With over 900 members, the NMPA represents the most important and influential music publishing firms throughout the United States.]*

*[The **Recording Industry Association of America** 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, Los Premios De Oro y Platino™, an 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. These members include: Buena Vista Pictures Distribution, Inc.; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal Studios; and Warner Bros. Entertainment Inc.]*