

---

## Lesson Update: Intellectual Property

### Peer-to-peer Networks –

MGM vs. Grokster Supreme Court Ruling (July 2005)

#### How the Court Ruled:

**"For the same reasons that Sony took the staple-article doctrine of patent law as a model for its copyright safe-harbor rule, the inducement rule, too, is a sensible one for copyright. We adopt it here, holding that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties."**

#### What This Means:

Previously peer-to-peer Networks have won many court cases with the argument that just because they provide technology, they cannot be responsible for how the user intends to use it – i.e. they are not responsible for the fact that their technology/software promotes downloading and sharing of movies and music.

However, this ruling states that any software or technology that *promotes* or *fosters* an environment of copyright infringement becomes liable. This ruling DID NOT state that Grokster was liable. That is for the lower courts to decide. Based on this ruling, the music and movie industry can now take software and technology designers to court for the court to decide whether their software/technology promotes or fosters such an environment.

#### Possible Consequences:

An end to many peer-to-peer networks as we know them is possible. It is expected that the format will need to be changed to monitor content in some way or legalize downloads. Users may see many peer-to-peer networks disappear rather than try to change. Others may charge fees, etc.

Another possible consequence could be a slowdown in technological innovation. It is suggested that the cost of lawsuits and the threat of expensive court cases could cause many tech companies to have to fold.

#### Illegal Peer-to-Peer Activities

Using a peer-to-peer network to share music, movies, software, etc. that is protected by copyright protection is an illegal use of this network configuration.

#### Legal Peer-to-Peer Activities?

So are there legal peer-to-peer activities? Will future peer-to-peer networks survive? Some say yes. Peer-to-peer is the wave of the future as more and more information that is not limited by copyright becomes available.

For example, several picture-hosting companies are considering a peer-to-peer network configuration for picture exchanging and downloading. This is a perfectly valid use of the peer-to-peer configuration. By setting up for that purpose, advertising for that use, and limiting to that type item, a valid peer-to-peer network scenario is born.

---

## Discussion:

- What are some valid uses of peer-to-peer networks?
- In the future how might companies make valid use of the peer-to-peer network configuration?
- Have you used a peer-to-peer network for downloading?

## From the Court Records

What is Considered Inducement?

### As to what the defendants did wrong here that could lead to a finding of inducement:

"Three features of this evidence of intent are particularly notable. First, each company showed itself to be aiming to satisfy a known source of demand for copyright infringement, the market comprising former Napster users.

StreamCast's internal documents made constant reference to Napster, it initially distributed its Morpheus software through an OpenNap program compatible with Napster, it advertised its OpenNap program to Napster users, and its Morpheus software functions as Napster did except that it could be used to distribute more kinds of files, including copyrighted movies and software programs. Grokster's name is apparently derived from Napster, it too initially offered an OpenNap program, its software's function is likewise comparable to Napster's, and it attempted to divert queries for Napster onto its own Web site. Grokster and StreamCast's efforts to supply services to former Napster users, deprived of a mechanism to copy and distribute what were overwhelmingly infringing files, indicate a principal, if not exclusive, intent on the part of each to bring about infringement.

Second, this evidence of unlawful objective is given added significance by MGM's showing that neither company attempted to develop filtering tools or other mechanisms to diminish the infringing activity using their software. While the Ninth Circuit treated the defendants' failure to develop such tools as irrelevant because they lacked an independent duty to monitor their users' activity, we think this evidence underscores Grokster's and StreamCast's intentional facilitation of their users' infringement. [fn 12]

[fn 12] Of course, in the absence of other evidence of intent, a court would be unable to find contributory infringement liability merely based on a failure to take affirmative steps to prevent infringement, if the device otherwise was capable of substantial noninfringing uses. Such a holding would tread too close to the Sony safe harbor.

Third, there is a further complement to the direct evidence of unlawful objective. It is useful to recall that StreamCast and Grokster make money by selling advertising space, by directing ads to the screens of computers employing their software. As the record shows, the more the software is used, the more ads are sent out and the greater the advertising revenue becomes. Since the extent of the software's use determines the gain to the distributors, the commercial sense of their enterprise turns on high-volume use, which the record shows is infringing."