

## Consequences of *Grokster* and Next Steps in the Digital Copyright Debate

In CDT's view, the Supreme Court decision in *MGM v. Grokster* strikes an appropriate balance by holding peer-to-peer (P2P) companies liable for their actual bad behavior, but not for merely providing a technology that some (or even most) people choose to misuse. CDT was one of several parties that submitted briefs suggesting this approach.

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The Court's unanimous decision makes it clear that our legal system will not treat online copyright infringement as some widely tolerated technical violation, akin to jaywalking, but rather as a serious matter for which culpable parties must be held responsible. At the same time, the decision should be read as encouraging innovation by preserving the principle that simply creating a technology does not expose inventors to liability under copyright law. This principle has been a foundation of the technology boom of the last 20 years, and is essential in a digital world where many of the most valuable innovations – from the iPod to the Internet itself – potentially can be misused to infringe.

As in any such case, the consequences of the decision will depend in part on the lower courts. But so long as courts interpret and apply *Grokster* appropriately, CDT believes that further congressional action on the question of secondary liability for copyright infringement will not be necessary. Several crucial elements of the *Grokster* balance should help ensure that the Court's inducement test does not burden legitimate innovators. In particular, innovators who truly are not seeking to promote infringement:

- do not need to try to predict what the mix of lawful versus unlawful uses of their new invention may eventually turn out to be;
- cannot be forced to redesign their products by judges second-guessing technical design decisions (because the Court expressly stated that failing to take affirmative steps to prevent infringement is not a sufficient basis for liability); and
- will not be exposed to liability simply because infringing uses may lead to greater sales or ad revenues (which is true for essentially any multi-use technology).

On the other hand, those who intentionally promote infringement can be held liable.

It is also important to understand where the *Grokster* case fits in an overall strategy for addressing the problem of online copyright infringement. *Grokster* does not end the digital copyright debate. Even if the entities behind Grokster and Streamcast were to shut their doors, it would not eliminate P2P file sharing and would not change the basic fact that the Internet and digital technologies make large-scale copying possible. Therefore, it is still necessary to seek balanced solutions to online piracy.

CDT recently released a paper outlining a combination of steps that we believe represent a sound overall approach to these issues. Enforcement is one element, and *Grokster* figures into that. But equally essential is the development of *legal* online distribution outlets that are sufficiently attractive to meet consumer demand and draw users away from unlawful options. Public education is important as well. CDT's paper, "Protecting Copyright and Internet Values," is available at [www.cdt.org/copyright/2005060/framing.pdf](http://www.cdt.org/copyright/2005060/framing.pdf).