

## IMPACT OF THE SUPREME COURT GROKSTER DECISION

**ABOUT CEA:** The Consumer Electronics Association (CEA) is the preeminent trade association promoting growth in the consumer technology industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, CEA's members account for more than \$121 billion in annual sales.

**CEA POSITION:** We are pleased that the Supreme Court preserved the core principle of the “*Betamax*” decision, where as the mere distribution of a product that has substantial non-infringing uses does not expose a distributor to contributory infringement. In other words, the Court said that infringing business models, rather than the technology itself, should determine liability.

However, we are concerned with the Court’s establishment of an inducement standard and how it will be interpreted by the lower courts. The ambiguity created by this standard will generate an uncertain legal environment for innovators and investors, since the Court provided minimal guidance as to what acts qualify as “bad behavior.”

For example, does the marketing phrase “Rip, Mix, Burn” qualify as inducement to infringe? What if you are developing a product with knowledge that you could make your technology more “infringement proof” merely by tripling the cost of development? If you don’t do so, are you inducing?

We expect that corporate counsels and investors will now err on the side of caution when deciding whether to introduce innovative new products and services. This is especially true now that litigation will go to the issue of intent, making it very difficult to have an infringement suit dismissed quickly on summary judgment. Instead, entrepreneurs will face expansive discovery rules examining the notes of engineering meetings, marketing plans and emails of executives.

This new legal ambiguity will not enhance America’s competitiveness. Foreign firms will continue to receive funding and ship products free from concern about overreaching IP litigation, while their American counterparts will need to demonstrate compliance with Grokster’s ambiguous legal test.

We will not realize the overall impact of this decision until it is tested in the lower courts. We hope that the 9th Circuit interprets this decision narrowly, implicating only the specific marketing statements at issue in this case.

CEA will continue to work for a pro innovation environment, while cooperating with the content industry on developing legitimate business models.

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