

**Interpreting the Supreme Court's 9-0 Grokster decision:
What is the Practical Impact and
What is Left for Congress to Do?
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The Supreme Court's unanimous decision in the *Grokster* case held that a file-sharing service is responsible for the copyright infringement committed on its service when it encourages the infringement. The Court distinguished this conduct from merely distributing a product with knowledge that it may be used by some to infringe, thereby leaving the Supreme Court's *Sony Betamax* holding unchanged.

Sony Betamax Intact The *Grokster* decision is a careful balance between the interests of content creators and technology innovators, removing the need for legislation on the issue of secondary liability. The *Sony Betamax* doctrine, as adopted by the Supreme Court in 1984, remains intact; and the Ninth Circuit's incorrect interpretation that would have allowed the use of *Betamax* as a shield against liability when infringement is encouraged, and that would have required a finding that a service know of a particular infringement at a time when it could prevent it -- was vacated. The inducement standard articulated in *Grokster*, like the theories of "aiding and abetting" or contributory and vicarious liability within Copyright Law, is centuries-old court-based doctrine that more precisely articulates the true holding of *Sony Betamax* which, the Court noted, "was never meant to foreclose rules of fault-based liability derived from the common law."

Inducement Standard Established While the Court mentioned guiding factors that, taken together or combined with other factors, could lead to liability (including targeting infringers as customers; relying on unauthorized copyrighted works to generate an audience for an ad-based business; and, added to other affirmative acts, failing to use filtering technology, or failing to take any steps to impede infringement), the contours of this inducement theory will become even clearer over time as courts decide cases. The record and examples of inappropriate behavior by businesses reflected in the Supreme Court's unanimous opinion provide a roadmap clearer than Congress could further articulate through legislation.

Certainty in the Marketplace The *Grokster* decision, far from breaking new ground, simply reaffirms the simple premise that theft, in any medium, is unacceptable. The Court's holding merely establishes appropriate consequences for engaging in behavior whose "unlawful objective is unmistakable." The result will be increased innovation—and more certainty—in the legitimate marketplace.

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