

REVIVING BETAMAX: THE LEGAL IMPLICATIONS OF GROKSTER VS. MGM

On March 29, 2005, the Supreme Court heard oral briefs from Grokster, a P2P file-sharing software and network provider, and MGM Studios, a behemoth of the culture industry representing the copyright community. A boon to the P2P community, the Ninth Circuit Court of Appeals decided in favor of Grokster, citing protection and absolution of responsibility according to the landmark 1984 *Betamax vs. Sony* lawsuit. According to the Circuit Court, Grokster is a mere provider of a technology that facilitates a *type* of use (file-sharing) but is *not* liable for the *content* (copyright or not) transmitted by anonymous users once said technology is acquired. Additionally, the Circuit Court noted the software's potential for facilitating cheaper and decentralized distribution of (permissible) content, thereby proliferating the sharing of art and speech; deciding otherwise would curtail this social benefit and set a dangerous precedent for court-sanctioned interventions in innovation.

In its attempt to overturn this decision, MGM petitioners argue that unlike *Betamax* (which was chiefly employed as a means to *record* television broadcasts that were offered freely already), Grokster software is primarily used to record and *distribute* pirated material that is duplicated to near –if not, exact – verisimilitude. Furthermore, Grokster operators, concerned that they would one day befall the fate of Napster (its predecessor), thought it had ensured its “plausible deniability” by outsourcing file indexing to user computers while removing “fingerprinting” and master-database-matching technologies; while this may support Grokster's claim to innocence, it does impose questions about their business practices. Concerned that a failed challenge to the lower court's decision will result in the crippling of legitimate (and profitable) online music distribution, amicus briefs from every corner of the copyright world flew into the fray (most notably from Napster), offering support for a decision that renders providers of pirate-enabling software liable for infringement.

While a decision has yet to be reached (public disclosure is not expected until June, 2005), a startling outcome has been the negotiations between Sony and Grokster principals over the development of a legitimate P2P service. Known as Machboxx, this partnership will provide Grokster users filtered access to pre-approved content. As tenuous (and potentially disingenuous) as this alliance may be, it does speak to the moral, legal and commercial motives that will inform both the Court's decision and further co-ventures between content providers and the P2P networks. The integrity of artistic expression and the virtues of fair-use aside, at the end of the day, this scenario will end with one concern in mind: profitability.