The New York Times
nytimes.com

June 28, 2005

Justices Reinstate Suits on Internet File Sharing

By LINDA GREENHOUSE and LORNE MANLY

WASHINGTON, June 27 - The Supreme Court handed a major victory to the entertainment and recording industries on Monday by reinstating a copyright-infringement suit against two file-sharing services.

In a unanimous opinion, the court strongly suggested that the services, Grokster and StreamCast Networks, should be found liable for the vast copyright infringement committed by those using their software to download music and movies.

Two lower federal courts in California had ruled in favor of the two companies, dismissing the lawsuit without a trial on the basis of a legal analysis that the Supreme Court found seriously flawed.

In his opinion for the court on Monday, Justice David H. Souter suggested that when properly evaluated, the evidence against Grokster and StreamCast was, in fact, so strong that the entertainment-industry plaintiffs might be entitled to summary judgment.

At the least, he said, MGM Studios and the other plaintiffs - including the Recording Industry Association of America, the Motion Picture Association of America and a class of 27,000 music publishers and songwriters - were entitled to a trial to prove their accusations that the file-sharing companies were in business primarily to enable and induce computer users to find and download copyrighted material.

In the Supreme Court's view, the plaintiffs have effectively made that case already. Justice Souter called the record "replete with evidence" that the companies "acted with a purpose to cause copyright violations by use of software suitable for illegal use." The opinion referred to "evidence of infringement on a gigantic scale" and said that "the probable scope of copyright infringement is staggering." [Excerpts, Page C5.]

The movie and music industries, even armed with a decision affirming their legal recourse, have a long way to go to capitalize on it, and they plan new efforts to persuade or force those actually doing the downloading to desist.

Digital rights advocates, while somewhat relieved that the court did not go further, were concerned that the ruling could invite a deluge of lawsuits and a risk that they would inhibit innovation.

There is no dispute that individual users violate copyright law when they share files of copyrighted material, and the industry has had some modest success in seeking fines from college students and others. But with millions of users downloading billions of files each month, retail prosecution proved inefficient, so the music and entertainment industries turned their attention several years ago to the commercial services that make the file sharing possible.

That effort led to the Supreme Court's most important copyright case since its ruling in 1984 that

shielded the manufacturers of the videocassette recorder from copyright liability for possibly infringing use by home consumers.

The court based its decision then, in Sony v. Universal City Studios, on a finding that the VCR was "capable of substantial noninfringing uses," like time-shifting, in which home users simply recorded programs for viewing later.

In ruling last year for Grokster and StreamCast, the United States Court of Appeals for the Ninth Circuit in San Francisco relied on the Sony decision, finding that the file-sharing software had possible noninfringing uses. Because the software operates in a decentralized way without using a central computer, the appeals court found, Grokster and StreamCast could not track users and had no direct knowledge of any specific instance of infringement.

The Supreme Court on Monday held that the appeals court had misapplied the Sony decision by focusing only on the technology, without regard to the business model that the technology served.

"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," Justice Souter wrote.

Movie and music industry executives hailed the decision. "If you build a business that aids and abets theft, you will be held accountable," said Dan Glickman, chief executive of the Motion Picture Association of America, the lobbying organization for the major Hollywood studios. BMI, representing more than 300,000 songwriters and composers, called the decision "good news indeed for the creative community whose work has been blatantly infringed."

The movie and music industries had warned that file sharing was hurting them financially, and could ultimately inhibit the creation of content. The music industry has blamed song-swapping over the Internet for its decade-long sales slump.

While movies and television shows are more difficult to trade online because of the size of their files, technological advances are making that easier and threatening the rich source of cash that DVD sales have become for the studios.

On the other hand, groups including the American Civil Liberties Union, Consumers Union, the Consumer Electronics Association and other elements of the computer and technology industries warned the court that too broad a rule of contributory copyright infringement would stifle innovation if there was a possibility that consumers might put a product to an infringing use.

It was clear from the opinion, Metro-Goldwyn-Mayer Studios Inv. v. Grokster Ltd., No. 04-480, that the justices had taken note of that argument and tried to draw a line that would protect both copyright holders and innovators. The court identified the line as "inducement" - deliberately urging consumers to make illicit use of the product or showing them how it could be done.

"Mere knowledge of infringing potential or of actual infringing uses would not be enough here to subject a distributor to liability," Justice Souter said. He added: "Nor would ordinary acts incident to product distribution, such as offering customers technical support or product updates, support liability in themselves. The inducement rule, instead, premises liability on purposeful, culpable expression and conduct, and thus does nothing to compromise legitimate commerce or discourage innovation having a lawful promise."

James Gibson, a professor of intellectual property and computer law at the University of Richmond School of Law, applauded what he called a balancing act between artistic creators and

technological innovators.

By putting so much weight on proving companies' bad behavior, he said, the decision could create more legal expenses and unpredictability for technology companies. At the same time, he added, it should provide peace of mind to creators of technology that could be used for both legitimate and infringing uses.

But several technology advocates expressed concern, saying innovators would now be saddled with the befuddling notion of "intent." Matthew Neco, StreamCast's general counsel, said the ruling turned Hollywood and the recording industry into "thought police."

Michael Petricone, vice president for technology policy at the Consumer Electronics Association, said that without clear guidelines from the court on what a company must do to avoid being held liable for contributing to copyright infringement, "the legal clarity has decreased and the risk of litigation has increased."

Attorney General Alberto R. Gonzales said he was pleased the court had "determined that those who intentionally induce or encourage the theft of copyrighted music, movies, software or other protected works may be held liable for their actions." The Bush administration joined the argument in support of the studios.

While the court's judgment was unanimous, the justices did not share the same view of how useful the Sony precedent remained after more than 20 years of changing technology. A concurring opinion by Justice Ruth Bader Ginsburg, which Chief Justice William H. Rehnquist and Justice Anthony M. Kennedy joined, suggested that the Sony case's reference to "substantial noninfringing use" was too easily misunderstood by lower courts and might have to be tailored for different types of technology.

The file-sharing software might be used to swap large numbers of noninfringing files, Justice Ginsburg said, but even a big number would be "dwarfed by the huge total volume of files shared."

Justice Stephen G. Breyer, in a concurring opinion also signed by Justices John Paul Stevens and Sandra Day O'Connor, said the Sony decision had basically achieved its "innovation-protecting objective" and struck the right balance between protecting copyrights and technology. It should be retained, he said.

Linda Greenhouse reported from Washington for this article and Lorne Manly from New York. Jeff Leeds and Tom Zeller Jr. contributed reporting.