

Grokster II: Is P2P Software the New VCR? Is the DMCA DOA? . . . and Other Questions

by Hillel I. Parness*

Introduction

August 19, 2004 was just over three-and-a-half years into our new, thousand-year Millennium. It may ultimately mark the day, however, when the Digital Millennium Copyright Act was forced into early retirement. More on this thought a little later.

Without a doubt, August 19, 2004 is a seminal date in the ongoing battle between the entertainment industry and the illicit purveyors of entertainment over the Internet, for on that date the Ninth Circuit Court of Appeals decided that the owners of two peer-to-peer ("P2P") concerns—Grokster and Streamcast—were not secondarily liable for the copyright infringement taking place via Grokster and Streamcast, under either the contributory or vicarious theories of secondary liability.¹ Over the coming months we will no doubt see efforts by both camps in this battle to either extend the reach of this decision, or cut back or nullify it altogether, through a variety of means. It is therefore imperative that one understand *Grokster*—and its predecessor decisions, the Ninth Circuit's 2000 *Napster* decision, and the Seventh Circuit's 2003 *Aimster* decision—to understand the next rounds of this fight.

Secondary Copyright Liability

It has long been recognized that although U.S. Copyright Act does not expressly provide for secondary liability—liability ascribed to parties other than the actual infringer—the common law doctrines of contributory and vicarious liability are fully applicable to infringement actions under the copyright law. As long as a direct infringement can be shown, others can be held accountable under these theories, whether or not the direct infringer is the subject of the same or any other any legal action with respect to the primary infringement. The two doctrines operates as follows:

Contributory Liability: One can be held contributorily liable for copyright infringement if he or she: (i) materially contributes to the infringement, and (ii) knows or should know of the infringement.²

Vicarious Liability: Alternatively, vicarious copyright liability is found where one: (i) has a direct financial benefit from the infringement, and (ii) has the right and ability to control the infringement.³

In 1984, the United States Supreme Court found no liability on the part of Sony for any copyright infringement by users of Sony's Betamax videocassette recorders who recorded copyrighted broadcast television programs without the owners' consent.⁴ In reaching this conclusion, the Court

imported a doctrine from patent law and appended it to the U.S. copyright law, writing:

The staple article of commerce doctrine must strike a balance between a copyright holder's legitimate demand for effective—not merely symbolic—protection of the statutory monopoly, and the rights of others freely to engage in substantially unrelated areas of commerce. Accordingly, the sale of copying equipment, like the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. Indeed, it need merely be capable of substantial noninfringing uses.⁵

Under the circumstances presented to the Court in *Sony*—two copyright holders representing less than 10% of the industry, suing over the recording of free, broadcast television⁶—the Court determined that the Betamax VCR was a staple article of commerce, capable of substantial noninfringing uses.⁷ Specifically, the Court found that there were copyright holders—such as Fred Rogers of "Mr. Rogers' Neighborhood"—that did not object to the taping and "time-shifting" of programs.⁸ Furthermore, the Court found that even the time-shifting of copyrighted programs where the owners did not consent sustained a "fair use" defense to copyright infringement.⁹

From 1984 onward, however, no court in a published decision ever extended the *Sony* doctrine to any other device. In other words, no court found that another product was (i) a staple article of commerce, (ii) capable of substantial noninfringing uses, (iii) creating a basis for a fair use defense to secondary copyright infringement. That is, until 2003 and 2004, when the District Court and then the Ninth Circuit did so, in a case regarding certain types of P2P entities.

Napster

The first peer-to-peer systems to be challenged in the courts were Napster and Aimster, each of which was ultimately addressed in decisions issued by the Ninth Circuit in 2001,¹⁰ and the Seventh Circuit in 2003,¹¹ respectively. Both circuits affirmed the findings of their respective district

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courts, although each downplayed certain aspects of the lower court's conclusions.

The Ninth Circuit affirmed the ruling of the District Court for the Northern District of California that Napster was both contributorily and vicariously liable for the copyright infringement of its users. The court began by addressing defendant's argument that there was no direct infringement, because its users were engaged in sampling and "space-shifting," fair uses analogous to the "time shifting" recognized in *Sony*. The court proceeded through a traditional application of the fair use factors, rejecting both. On "space-shifting," the court wrote that *Sony* was inapposite because the shifting in *Sony* "did not also simultaneously involve distribution of the copyrighted material to the general public; the time or space-shifting of copyrighted material exposed the materials only to the original user."¹² Therefore, in the court's estimation, no defense existed.

On the issue of contributory infringement (knowledge and material contribution), the court wrote that it would "not impute the requisite level of knowledge to Napster merely because peer-to-peer file sharing technology may be used to infringe plaintiffs' copyrights," but only upon knowledge of specific infringements.¹³ On this point the Ninth Circuit departed from the District Court's holding that general knowledge was sufficient. The Court of Appeals "nevertheless conclude[d] that sufficient knowledge exists to impose contributor liability when linked to demonstrated infringing use of the Napster system."¹⁴ The court also agreed with the District Court that Napster had materially contributed to the underlying infringement, and that it "provides 'the site and facilities' for direct infringement."¹⁵

The Ninth Circuit court also affirmed the District Court's ruling for the plaintiffs on the basis of vicarious liability (direct financial benefit and right and ability to supervise). The court found direct financial benefit because the infringing material available on Napster acted as a "draw" to customers.¹⁶ Because Napster "retains the right to control access to its system," the court found it also had the right and ability to supervise infringing activity, and that "turning a blind eye to detectable acts of infringement for the sake of profit gives rise to liability."¹⁷

Aimster

In *Aimster*, the Seventh Circuit considered—and affirmed—a grant of preliminary injunction issued by the District Court for the Northern District of Illinois. The Aimster system utilized America Online's "AIM" instant-messaging software to transmit files, and defendants had claimed that they lacked knowledge for purposes of secondary liability. The District Court found knowledge in the fact that "Defendants either know or should know of the direct infringement occurring on the Aimster system,"¹⁸ and discounted defendants' argument that the encrypted nature of the files made defendants "unaware of the actual specific transfers of specific copyrighted music between specific users of the Aimster system" by noting that "there is absolutely no indication in the precedential authority that such specificity of knowledge is required in the contributory infringement context."

The court added that it was "disingenuous of Defendants to suggest that they lack the requisite level of knowledge when their putative ignorance is due entirely to an encryption scheme *that they themselves put in place*."¹⁹ The court also said that constructive knowledge of infringement would suffice for purposes of contributory liability.²⁰ The Seventh Circuit affirmed the District Court, focusing on the *Sony* "capable of substantial noninfringing uses" standard, finding that it cannot be the case that a defendant needs merely to demonstrate the "capability" of a system for noninfringing uses, but rather that one must make a quantitative analysis of how the system actually is used.²¹

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The District Court had also found the plaintiffs likely to prevail on the issue of vicarious liability (supervision and financial benefit), because, like Napster, Aimster had the right to terminate individual users,²² and because Aimster charged for certain premium services, and because the infringing materials generally acted "as a draw for potential customers."²³ On appeal, the Seventh Circuit affirmed the District Court's holding on vicarious infringement, although it stated it was "less confident than the district judge was that the recording industry would also be likely to prevail on the issue of vicarious infringement."²⁴

Napster, Aimster and the DMCA Safe Harbors

Both the Ninth and Seventh circuit courts also addressed defendants' arguments that they were immunized from liability by the safe harbors of the Digital Millennium Copyright Act,²⁵ and both concluded that no such protection was available to the operators.²⁶ In *Napster*, the Ninth Circuit affirmed an early ruling of the District Court that Napster was not entitled to summary judgment on the basis of the DMCA "transitory digital network communications" safe harbor, because Napster was not a system through which data was transmitted.²⁷ In *Aimster*, the Seventh Circuit rejected the applicability of any of the safe harbors, because:

The common element of its safe harbors is that the service provider must do what it can reasonably be asked to do to prevent the use of its service by "repeat infringers." 17 U.S.C. §512(i)(1)(A). Far from doing anything to discourage repeat infringers of the plaintiffs' copyrights, Aimster invited them to do so, showed them how they could do so with ease using its system, and by teaching its users how to encrypt their unlawful distribution of copyrighted materials disabled itself from doing anything to prevent infringement.²⁸

Which brings us to *Grokster*, a case shaped by, and during, the course of the *Napster* and *Aimster* litigations. *Grokster* not only departs from these two cases in its outcome, but perhaps in the defendants' entire approach to finding sanctuary under the law.

Grokster

Both the District Court and the Ninth Circuit found that the Grokster defendants were not liable, either on the basis of contributory infringement, or on the basis of vicarious infringement. Reading the Ninth Circuit's *Grokster* decision, one concludes that the Ninth Circuit agreed with the District Court on all points of law. This is basically true, although on the issue of knowledge the Ninth Circuit appears to add an entirely new logical construct to the question of knowledge, which is discussed below.

Software at Issue: The *Grokster* courts accepted the argument of the defendants that unlike Napster, which maintained a centralized list of all of the files its users had, and helped users connect to one another, the *Grokster* defendants were merely providers of software that did not rely upon the defendants to function. The *Grokster* system, the courts explained, used the "FastTrack" platform, which turned individual users into "supernodes" through which files were transferred, while the Streamcast system's "Morpheus" software relied upon "true" P2P technology, in which networks of Streamcast users assembled and disassembled to facilitate the transfer of files, all without the involvement of the defendants. The degree to which this argument resonated with the Ninth Circuit may be reflected in that court's use of the term "Software Distributors" to refer to the defendants.²⁹

Capable of Substantial Noninfringing Uses: As explained above, an important—and hotly disputed—element of the *Sony* doctrine is the proper interpretation of "capable of substantial noninfringing uses." In its decision the District Court wrote that "it is undisputed that there are substantial noninfringing uses for Defendants' software."³⁰ However, in their brief on appeal, the Plaintiffs wrote that they had "vigorously disputed that proposition."³¹ Nevertheless, the Ninth Circuit noted that "the district court found it undisputed that the software distributed by each defendant was capable of substantial noninfringing uses," adding that the record "indicates that there is no genuine issue of material fact as to noninfringing uses." The court elaborated upon the example of the band Wilco, which achieved success through distribution of its works for free through the defendant P2P systems.³²

This outcome differs from that of the Seventh Circuit in *Aimster*, which held that one cannot read *Sony* literally for the proposition that a product need merely be capable of substantial noninfringing uses, without considering whether or not there are such uses in reality, or the likelihood of such uses existing:

Were that the law, the seller of a product or service used *solely* to facilitate copyright infringement, though it be capable in principle of noninfringing uses, would be immune from liability for copyright infringement. That would be an extreme result, and one not envisaged by the *Sony* majority.³³

The Ninth Circuit in *Grokster* notes this disagreement, but muses over whether "the application of the *Aimster* rationale would assist the Copyright Owners here,"³⁴ and

that in any event there was evidence before it in *Grokster* of actual, commercially viable substantial noninfringing uses.³⁵

No Contributory Liability: According to both the District Court and the Ninth Circuit, the defendants were not contributorily liable because (i) they did not have actual knowledge at a time when they could stop the infringement; and (ii) they did not materially contribute to the infringement, because their software operated independently of their companies, and would function regardless of whether the companies even existed. I will address these points one by one:

– *No Knowledge:* The *Grokster* District Court held that for purposes of contributory liability, one must possess actual knowledge of specific infringements, rather than constructive, generalized knowledge that infringement is taking place. Because of the decentralized nature of the two types of P2P systems at issue, the court explained, the defendants did not possess actual knowledge of specific infringements until after the infringements had taken place, at which point the defendants were powerless to do anything about it.

The Ninth Circuit agreed, but enhanced the District Court's reasoning as follows:

In [the 9th Circuit's *Napster* decision], we construed *Sony-Betamax* to apply to the knowledge element of contributory copyright infringement. [That decision] held that if a defendant could show that its product was capable of substantial noninfringing uses, then constructive knowledge of the infringement could not be imputed. Rather, if substantial noninfringing use was shown, the copyright owner would be required to show that the defendant had reasonable knowledge of specific infringing files.³⁶

The Ninth Circuit's citations to its two prior decisions in the *Napster* matter notwithstanding, the language of those opinions does not explicitly lay out this concept—that if a product is a staple article of commerce capable of substantial noninfringing uses, the plaintiffs are held to a higher burden *vis-à-vis* the defendant's culpable knowledge. This new reading of the *Sony* doctrine, if broadly applied, has significant implications, for what the Ninth Circuit appears to be saying is that depending on whether or not a product has redeeming qualities, in the form of "substantial noninfringing uses," we are to apply one of two different standards for knowledge in the contributory infringement context.

On this basis the Ninth Circuit considered whether the P2P systems at issue were capable of substantial noninfringing uses, found that they were, and then imposed a burden on the plaintiffs of showing that the defendants had actual knowledge of specific infringements.³⁷ Due to the design of the systems at issue, however, the courts held that the Defendants lacked knowledge at the time of the infringements, and therefore lacked knowledge relevant to contributory copyright liability.

The Seventh Circuit does not appear to share this view of the knowledge that may be imputed to defendants. In

response to the argument that the defendants in *Aimster* did not have knowledge of infringement because the files were encrypted during transfer, so that the defendants could not read their contents, the court termed the encryption “willful blindness” on the part of the defendants, which, the court explained, “is knowledge, in copyright law....”³⁸

– *No Material Contribution*: The *Grokster* courts also held that the defendants had not materially contributed to copyright infringement, due to the fact that they were simply providers of standalone software. For example, the Ninth Circuit wrote:

As indicated by the record, the Software Distributors do not provide the “site and facilities” for infringement, and do not otherwise materially contribute to direct infringement.

....

[T]he Software Distributors here are not access providers, and they do not provide file storage and index maintenance. Rather, it is the users of the software who, by connecting to each other over the internet, create the network and provide the access. “Failure” to alter software located on another’s computer is simply not akin to the failure to delete a filename from one’s own computer, to the failure to cancel the registration name and password of a particular user from one’s user list, or to the failure to make modifications to software on one’s own computer.³⁹

The Court of Appeals appears to be saying that as long as software providers do not maintain control over the software they release, and as long as the software is capable of substantial noninfringing uses, the release of software does not constitute material contribution to copyright infringement. The court took this position despite the fact that—as both the District Court and the Ninth Circuit noted—the defendants had touted themselves as, and aspired to become, “the next Napster.”⁴⁰ With no material contribution by the defendants, and no knowledge of infringement on their part, the Ninth Circuit affirmed the District Court’s conclusion that no contributory liability could lie against the defendants.⁴¹

Vicarious Liability: Moving on to vicarious liability, the *Grokster* courts found no such liability on the part of the defendants because (i) although they did benefit financially, (ii) they did not have the right and ability to control the infringement, because of the way in which the P2P systems were designed.

– *No Right and Ability to Control*: Just as the design of the P2P systems affected the courts’ understanding of the materiality of the *Grokster* defendants’ contributions, it also affected the courts’ approach to the key question of vicarious liability—whether the defendants had the “right and ability to control” the infringing activity. As noted above, both courts found that the defendants lacked this right and ability, precisely because the software was designed that way. Unlike the entertainment industry plaintiffs, however,

the courts found that such an approach was appropriate—that one can design software, and receive a financial benefit from the distribution or sale of that software, that divests one’s self of the right and ability to control the behavior of users, and thus escape vicarious copyright liability. Both courts addressed the concerns of the entertainment plaintiffs, and both courts wrote that anything further should be left up to Congress.

[T]he Aimster court seems to disagree with the idea that software can be used to escape liability.

As noted above, the *Aimster* court seems to disagree with the idea that software can be used to escape liability. In point of fact, the Seventh Circuit skirted the issue of vicarious liability somewhat, writing that *Aimster*’s “ostrich-like refusal to discover the extent to which its system was being used to infringe copyright is merely another piece of evidence that it was a contributory infringer,” regardless of whether it affected the vicarious liability “right and ability to control” prong.⁴² With no right and ability to control the infringements, the Ninth Circuit found no vicarious liability, and affirmed the District Court’s grant of summary judgment to defendants.⁴³

DMCA Safe Harbors: The *Grokster* defendants did not argue for protection under the DMCA safe harbors, and thus the *Grokster* courts did not address it. Rather than arguing—as Napster and *Aimster* did before them—that their systems were “transitory digital networks” under the DMCA and thus not liable for what would otherwise be secondary copyright infringement, the *Grokster* defendants argued that they had no involvement in the networks at all. Instead, they put forth the idea that they were software providers—an idea apparently embraced by the Ninth Circuit—that were so far removed from the networks themselves, no secondary liability would attach in the first place.

Whether the software systems at issue in *Grokster* were designed with this litigation strategy in mind is an interesting question, but in any event the Ninth Circuit’s outcome seems to validate such an approach to software design.

Questions:

Naturally, a decision of this magnitude leaves us with many questions, including:

Are software providers off the hook?

In *Grokster*, the Ninth Circuit writes that the distribution of the P2P software at issue cannot in and of itself form the basis for either material contribution under the contributory copyright infringement doctrine, or right and ability to control under the vicarious copyright infringement doctrine. Does this reasoning hold up if taken to its logical extremes? Will we see defendants seek to extend this idea beyond the copyright realm, and indeed beyond the realm of software altogether?

Can the Ninth and Seventh Circuits' positions on this issue be reconciled?

Naturally, there is already speculation about whether the differences in the *Aimster* and *Grokster* decisions are enough to bring the issue up to the Supreme Court.⁴⁴ At first blush, the Seventh Circuit appears to be saying that a software provider cannot hide behind its own system design to avoid secondary copyright liability, while the Ninth Circuit quite clearly seems to state the opposite. It is worth bearing in mind, however, that in *Aimster* (according to the court's rendition of the facts), the software at issue maintained a connection between the defendants and the infringers, and the defendants' overlay of encryption made defendants blind to the data to which they had access. In *Grokster*, to the contrary (again, according to the court's factual rendition), the defendants never had either knowledge or control, because the system design left them fundamentally powerless to control users.

The Grokster defendants did not argue for protection under the DMCA safe harbors.

We may see the argument emerge that if a product is designed from the outset—like *Grokster*, Sony's Betamax and photocopy machines—with no substantive connection between proprietor and user, the proprietor cannot be forced to make himself knowledgeable or grant himself control; but where the system is one where the connection between user and system is maintained—like *Napster* and *Aimster*—the proprietor cannot escape knowledge or control by writing code to blind himself from reality. This reconciliation is not particularly satisfying, and troubling in its potential to encourage less monitoring by Internet services, an outcome opposite that intended by the proponents of the DMCA and the earlier Communications Decency Act.⁴⁵

Is the DMCA DOA?

Returning to the thought expressed in the opening paragraph of this article, the *Grokster* decision may also prove significant for what it suggests about the Digital Millennium Copyright Act, and specifically its safe harbors. We have already seen the Court of Appeals for the District of Columbia Circuit rule—in the *Verizon* case—that the subpoena power provided by the DMCA to copyright holders to identify infringers cannot be used in the P2P context, for the language of the DMCA limits the use of subpoenas to the types of service providers in three out of four of its safe harbors, and not to service providers that act as “mere conduits” of information across the Internet.⁴⁶

Many (including the author) have commented that the drafters of the DMCA did not envision that soon after the DMCA's passage the main route for copyright infringement would become trans-network file sharing, rather than downloading from Web sites. The *Verizon* decision signals that the DMCA's subpoena power has been overtaken, and been significantly marginalized, by new developments in technology.

Similarly, *Grokster's* strategic choice of arguing that its software code avoids secondary liability, rather than arguing that the systems at issue fit into one of the DMCA safe harbors (a route that failed *Napster* and *Aimster*), and its successful execution of that strategy so far, suggests that the DMCA safe harbors may be marginalized as well, by a combination of the advance of technology and the employment of technology to skirt altogether the pitfalls of secondary liability.

What comes next?

Recent history has shown that the entertainment industries are committed to a broad legal battle against Internet-based copyright infringement. Commenting upon the *Grokster* decision, the RIAA's Chairman and CEO said the RIAA “will continue to pursue legislative solutions and legal actions to address the ongoing illegal activity facilitated by *Grokster* and other P2P services.”⁴⁷

[T]he entertainment industries are committed to a broad legal battle against Internet-based copyright infringement.

As noted above, there will likely be a push, from one side or the other, to have the Supreme Court address the apparent differences in the holdings of the various circuits on secondary liability for P2P services. In addition, there are ongoing efforts in Congress to address the issues raised by P2P. Recently, Senator Orrin Hatch's INDUCE Act⁴⁸ has received a great deal of attention. Drafted expressly to overrule the lower court decision in *Grokster*, this concise proposed amendment to the Copyright Act would create a cause of action for copyright infringement against anyone who intentionally induces copyright infringement, with “intentionally induces” defined as “intentionally aids, abets, induces, or procures, and intent may be shown by acts from which a reasonable person would find intent to induce infringement based upon all relevant information about such acts then reasonably available to the actor, including whether the activity relies on infringement for its commercial viability.”

Now that *Grokster* has been affirmed over the entertainment industry's arguments, the INDUCE Act and others like it will certainly receive renewed attention, as well. ●

- 1 Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd., ___ F.3d ___, 2004 WL 1853717 (9th Cir. Aug. 19, 2004).
- 2 Gershwin Pub'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159, 1161-62 (2d Cir. 1971).
- 3 Shapiro, Bernstein & Co. v. H. L. Green Co., 316 F.2d 304, 307-08 (2d Cir. 1963).
- 4 Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).
- 5 *Id.* at 442.
- 6 *Id.* at 443.
- 7 *Id.* at 456.
- 8 *Id.* at 445.
- 9 *Id.* at 455-56.
- 10 A & M Records, Inc. v. Napster, Inc., 114 F. Supp. 2d, 896, 902 (N.D. Cal. 2000), *aff'd*, 239 F.3d 1004 (9th Cir. 2001).

- 11 *In re Aimster Copyright Litig.*, 252 F. Supp. 2d 634 (N.D. Ill. 2002),
aff'd, 334 F.3d 643 (7th Cir. 2003).
- 12 *Napster*, 239 F.3d at 1019. The court similarly distinguished
Napster from the portable MP3 players at issue in *Recording*
Industry Association of America, Inc. v. Diamond Multimedia
Systems, Inc., 29 F. Supp. 2d 624 (C.D. Cal. 1998), *aff'd*, 180 F.3d
1072 (9th Cir. 1999).
- 13 *Napster*, 239 F.3d at 1020-22.
- 14 *Id.* at 1021.
- 15 *Id.* at 1022.
- 16 *Id.* at 1023.
- 17 *Id.*
- 18 *Id.* at 650.
- 19 *Id.* at 651 (emphasis in original).
- 20 *Id.*
- 21 *Aimster*, 334 F.3d at 649-50
- 22 *Id.* at 655.
- 23 *Id.*
- 24 *Id.* at 654.
- 25 17 U.S.C. § 512(a)-(d) (1998).
- 26 *Napster*, 239 F.3d at 1025-26; *Aimster*, 334 F.3d at 655.
- 27 *Napster*, 239 F.3d at 1025.
- 28 *Aimster*, 334 F.3d at 654.
- 29 *Grokster*, 2004 WL 1853717 at *1.
- 30 *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.*, 259 F. Supp.
2d 1029, 1035 (C.D. Cal. 2003).
- 31 MGM Plaintiffs-Appellants' Opening Brief, *Grokster* (9th Cir.), at p.
41 (available at www.eff.org).
- 32 *Grokster*, 2004 WL 1853717 at *4.
- 33 *Aimster*, 334 F.3d at 651 (emphasis in original).
- 34 *Grokster*, 2004 WL 1853717 at *4 n. 9.
- 35 *Id.* at *4.
- 36 *Id.* at *3 (citing *Napster 9th I* at 1027; *Napster*, 239 F.3d at 1095-
96).
- 37 *Grokster*, 2004 WL 1853717 at *4.
- 38 *Aimster*, 334 F.3d at 650.
- 39 *Grokster*, 2004 WL 1853717 at *6.
- 40 *Grokster*, 259 F. Supp. 2d at 1036; *Grokster*, 2004 WL 1853717 at
*6.
- 41 *Id.* at *6.
- 42 *Aimster*, 334 F.3d at 654-55.
- 43 *Grokster*, 2004 WL 1853717 at *8.
- 44 See, e.g., Lessig Blog, "Cert.?" (available at
www.lessig.org/blog/archives/002103.shtml).
- 45 47 U.S.C. § 230 (1996).
- 46 *In re Verizon Internet Servs., Inc.*, 240 F. Supp. 2d 24 (D.D.C.
2003).
- 47 Press Release, "Reaction of RIAA on Appeals Court Decision In
Grokster Case" (Aug. 19, 2004) (available at www.riaa.com).
- 48 "Inducing Infringement of Copyrights Act of 2004," S. 2560,
108th Cong., 2d Sess. (June 22, 2004).