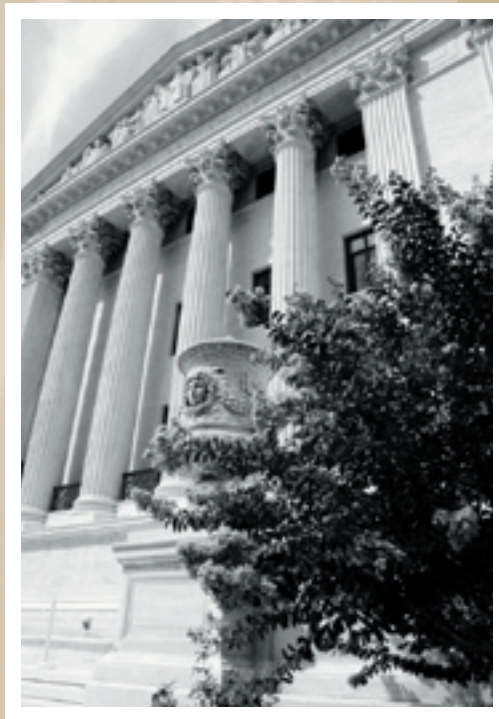


# Copyright in the public eye

The

*The east face  
of the United States  
Supreme Court*



# Supreme Court's ruling

The Supreme Court's ruling in *Metro-Goldwyn-Mayer Studios v. Grokster* was one of the most significant developments in copyright law in the past twenty years. The emergence of online music distribution demonstrated that technological progress can bring societal advances and also create legal difficulties. In its ruling in *Grokster*, the Court clarified that those who offer products and services in a way that induces others to engage in copyright infringement can be held secondarily liable for that infringement.

The *Grokster* decision offered hope to the world of legitimate online music distribution. However, one area that poses hurdles to efficient and affordable distribution is the process of licensing the underlying musical works. Because this process is constrained by practical difficulties and statutes out of step with rapid technological change, it creates an incentive and opportunity for piracy to flourish. Congress is considering the necessity of legislation in the wake of *Grokster*, one element of which is the reform of the process for licensing online distribution of musical works.

*Grokster* coincided with, and in some cases preceded, a surge in negotiations, agreements, and launchings of new legitimate online music services or supporting technologies. Ironically, it appears that some parties who used to be at cross-purposes are now becoming partners.

While a U.S. Supreme Court decision has no binding precedential value outside of this country's borders, since the *Grokster* decision three courts spanning the globe have reached results consistent with the result in *Grokster*. In fact, the *Grokster*

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decision should be very helpful to the United States as it continues its discussions with other countries about updating their copyright laws to meet the challenges of the digital networked environment that connects people around the world. Peer-to-peer infringement is a major problem abroad as well.

A beneficial side effect of the publicity given to the *Grokster* decision is that it has helped to bring the issue of illegal file sharing to public consciousness and made it more difficult for defenders of the practice to claim that it is lawful. Before *Grokster*, members of the public could be excused for being unclear about the legal status of unauthorized file sharing. While *Grokster* did not directly address first-party liability of the person actually engaging in the file sharing, the Court's decision and the media attention it has garnered mean that no member of the public can reasonably make the argument that he or she is unaware that unauthorized file sharing is illegal.

The majority of consumers who have engaged in illegal peer-to-peer file-sharing of music would choose to use a legal service if it could offer a comparable product and if they knew which services were legal. This Supreme Court decision affords legitimate music services an opportunity to make great strides in further educating the public and developing successful business models for marketing their products. Such developments will assist the copyright owners to obtain the benefits of their exclusive rights and help users to engage in lawful use of these copyrighted works.