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Analysis: What the ruling against Grokster really means

By *srlinuxx*
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As this morning's 55-page US Supreme Court decision in MGM v. Grokster has now had time to be fully disseminated and analyzed, consensus is taking shape that even peer-to-peer services not named in the lawsuit may find themselves in legal hot water very soon. By vacating a Ninth Circuit Court of Appeals ruling and remanding the case back to that circuit, legal analysts told Tom's Hardware Guide, the high court may have made fuzzy what was once a clear interpretation of fair use law: specifically, the matter of secondary copyright infringement liability.

In short, states the syllabus, it may be impossible to sue millions of infringing downloaders, so a plaintiff's only alternative may be to argue that the software manufacturer contributed to those millions of alleged infringements by encouraging them, promoting them, or simply by doing nothing to stop them.

But the Court stopped short of finding Grokster and Streamcast, respectively, guilty of infringement, leaving that for the lower court to determine. "I think this puts emphasis on lower courts looking at the intent of the parties putting forth the software and the system

The Court basically issued a very vague and somewhat schizophrenic ruling about exactly what companies in the digital media space can and can't do." On the one hand, stated Schultz, the Court states that a P2P proprietor cannot encourage infringement; but on the other hand, the decision leaves it to others--perhaps the lower court--to determine what such encouragement entails.

"We're getting into shades of subjectivity, stated P2P United's Eisgrau, "that may well stretch the credulity [of courts] and the ability of courts to deal with. For a technology-driven economy, what you want is an environment in which innovators feel safe to innovate, and investors feel safe to invest in innovators. This opinion today, regrettably, is scary because it swapped that universe of relative certainty for a brave and alarming new world in which there is no such assurance and, in fact, quite the contrary, now I think the watchword for inventors has to be, 'Be afraid; be very afraid.'"

There are still a lot of questions left unanswered. This isn't the definitive word on this topic at all."

Full Analysis [2].

Legal

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