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**SUPREME COURT HITS HIGH NOTE FOR COPYRIGHT HOLDERS**

On June 27, 2005, the United States Supreme Court issued its long-awaited opinion in *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, providing needed guidance as to when distributors of products that are used by others to infringe copyrights may be held liable for the resulting infringement.

**MGM V. GROKSTER**

In *MGM*, members of the entertainment industry sued distributors of software products that allowed computer users to download and share electronic files through so-called peer-to-peer networks for copyright infringement. Although there was substantial evidence that the defendants knew that their software products were being used for the illegal downloading of copyrighted works and that the defendants indeed intended this result, the courts below found in favor of the defendants. Those courts read prior Supreme Court precedent as holding that distribution of a product capable of substantial noninfringing uses, as could allegedly be said of the defendants' software products in this case, could not give rise to liability, subject to fairly narrow exceptions.

The Supreme Court reversed the decision of the court below and adopted the so-called "inducement rule," under which "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." In adopting this rule, the Court was mindful of the need to balance the age-old tension between the respective values of supporting creative pursuits through copyright protection and promoting technological innovation by limiting the incidence of liability for copyright infringement. The Court, thus, emphasized that mere knowledge of infringing potential or even of actual infringing uses would not alone be enough to create liability. Rather, expressions of intent to cause infringement and affirmative acts aimed at bringing about that result are required. The Court refused, however, to provide any more quantitative measure of the point of balance between the protection of copyrighted works and the desire to promote innovation in cases in which liability rests solely on distribution of a product with knowledge that unlawful use will occur, finding it unnecessary to address that issue in this case and leaving that difficult question for another day.

**PRACTICAL IMPACT**

In *MGM*, the Supreme Court provided guidance as to the reach of infringement claims against distributors of products that are capable of both lawful and unlawful uses. In leaving for another day the difficult issue of line-drawing, where a distributor markets a product knowing that the product will be used to infringe copyrights even if it also has lawful uses, the Court reminded us that the law in this area is still developing, as courts continue to try to balance the goals of supporting creative pursuits and promoting innovation. Thus, we strongly advise parties who are contemplating releasing a product that may be impacted by the *MGM* decision, or who are concerned that another party may be infringing their own creative works, to consult legal counsel.

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