

In June 2005 the Supreme Court issued its landmark ruling in *MGM v. Grokster*, finding that Grokster and StreamCast, makers of peer-to-peer file sharing software, could be secondarily liable for copyright infringement committed by their users if the companies took active steps to induce infringement. In the months since then, several lower courts have referenced the reasoning laid out in *Grokster*, and a number of lawsuits have been filed raising claims based on of this inducement theory of liability. The following is a brief summary of these court decisions and pending suits, plus an overview of the status of popular file sharing networks and sites.

Court Decisions

MGM v. Grokster

C.D. Cal. 9/27/2006

On remand from *Grokster*, court found P2P provider StreamCast secondarily liable based on extensive factual evidence of intent to promote infringement. Evidence included purposeful recruitment of Napster users, affirmative responses to users seeking assistance for infringing uses, numerous internal emails, failure to take steps to combat infringement, etc.

Monotype Imaging v. Bitstream

N.D. Ill. 7/12/2005

Court found no secondary liability for maker of software that enabled users to view and print documents in their original fonts. The software could be used to infringe font copyrights, but Court found no evidence supporting liability under either the *Aimster* test (amount of infringing versus non-infringing uses; encouragement; efforts to mitigate) or *Grokster* (purposeful, culpable expression and conduct). Court held that ads saying software could be used with “any font” did not promote infringing use.

Perfect 10 v. Google

C.D. Cal. 2/27/2006 (appeal in progress)

Court found Perfect 10 unlikely to prevail on secondary liability claims against Google, because Google does not materially contribute to infringement committed by third-party Web sites displaying Perfect 10’s images. Neither the usefulness of Google’s search function in building an audience for the Web sites, nor the usefulness of Google’s AdSense program in increasing the Web sites’ revenues, are likely sufficient to show material contribution.

Arista Records v. Flea World

D. N.J. 3/31/2006

In case finding flea market contributorily liable, court said *Grokster* test requiring affirmative promotion of infringement is not relevant to a case that involves running a market on an ongoing basis rather than putting a device into the stream of commerce.

Pending Litigation

Cases Against Torrent Sites (or Similar Web Sites)

Several cases have been filed against operators of Web sites that facilitate file sharing without providing the actual software used for distribution. Some cases involve “torrent sites” such as TorrentSpy, IsoHunt, and TorrentBox. These Web sites index and/or make available for download a large number of “torrent files,” which provide the information that BitTorrent software needs to locate and download specific files (shows, movies, etc.) to a user’s computer. Other cases target Web sites playing a similar role for other file exchange systems, such as eDonkey or Usenet NZB. Pending cases include:

- Columbia Pictures Industries v. Valence Media (C.D. Cal.)
- Columbia Pictures Industries v. Gary Fung (C.D. Cal.)
- Columbia Pictures Industries v. Ben Fysh (W.D. Mich.)
- CBS Broadcasting v. Joseph Morganelli (N.D. Tex.)

Atlantic Recording Corp. v. XM Satellite Radio

S.D. N.Y.

The record labels’ complaint against XM’s portable “Inno” device includes allegations of inducement and contributory infringement. These claims focus on such factors as the nature of the device’s recording/librarying capabilities and XM’s marketing of those capabilities.

Io Group v. Veoh Networks

N.D. Cal.

Veoh allows users to upload videos, to view streaming videos uploaded by others, and to transfer videos to others on a peer-to-peer basis. Io argues Veoh is secondarily liable for infringement involving several of Io’s adult entertainment videos.

Robert Tur v. YouTube

C.D. Cal.

Tur claims YouTube is secondarily liable for allowing users to upload and download copies of Tur’s videos without his authorization. YouTube says it was never served with a “notice and take down” request from Tur.

Arista Records v. LimeWire

S.D. N.Y.

Record labels allege that LimeWire, a popular peer-to-peer file sharing application, is liable for inducement based on such factors as application design, marketing to known sources of demand for infringement, failure to take steps to reduce infringing uses, and business model.

In re Napster, Inc. Copyright Litigation

N.D. Cal.

As part of the Napster litigation, several record labels sued two Napster investors for contributory and vicarious copyright infringement. In May 2006 the court denied the investors' motion for summary judgment, finding that the plaintiffs are "entitled to pursue recovery from the investors under the *Grokster* theory of liability, which does not require actual or even reasonable knowledge of specific infringing files."

Universal Music Group v. Grouper Networks

Universal Music Group v. Bolt Inc.

C.D. Cal.

Grouper and Bolt are online video sharing Web sites that allow users to upload and view video content. Universal Music alleges that the sites are allowing users to share and view Universal's copyrighted music videos and create unlawful derivative works.

Universal Music Group v. MySpace Inc.

C.D. Cal.

MySpace allows users to upload music and video content to their profiles. In some cases this content may be shared and downloaded by other MySpace users or posted to other sites. Universal argues that MySpace is liable for inducing infringement and vicarious infringement based on this functionality.

Status of Major Peer-to-Peer File Sharing Networks and Applications

Grokster	<ul style="list-style-type: none"> • Sued by 28 entertainment companies in 2002. • Settled for \$50 million following Supreme Court's 2005 ruling. • Shut down all operations. • May be in the process of developing a legal version and/or selling its assets to Mashboxx, an industry-authorized P2P service.
Morpheus StreamCast	<ul style="list-style-type: none"> • Sued by 28 entertainment companies in 2002. • Lost case in district court in September 2006. • Remains operational.
iMesh	<ul style="list-style-type: none"> • Settled with RIAA for \$4.1 million. • Continues to operate with industry authorization and use of acoustic fingerprinting technology from Audible Magic.
BearShare Free Peers	<ul style="list-style-type: none"> • Received cease-and-desist letter from RIAA in September 2005. • Settled with RIAA for \$30 million. • Shut down all operations. • Sold all assets to MusicLab, a subsidiary of iMesh. MusicLab has re-released BearShare on the iMesh network.
eDonkey MetaMachine	<ul style="list-style-type: none"> • Received cease-and-desist letter from RIAA in September 2005. • Sued by 6 record labels in September 2006. • Settled with RIAA for \$30 million. • Shut down all operations, although eDonkey client programs can still communicate with each other on the network.
WinMX FrontCode Technologies	<ul style="list-style-type: none"> • Received cease-and-desist letter from RIAA in September 2005. • Shut down all operations, although WinMX client programs can still communicate with each other after installing a software patch.
Kazaa Sharman Networks	<ul style="list-style-type: none"> • Settled out of court with 4 record labels for \$100 million in July 2006. • Continues to operate by offering paid legal content and by developing a system for filtering infringing content.
LimeWire	<ul style="list-style-type: none"> • Sued by 13 record labels in August 2006. • Filed counterclaims in September 2006. • Remains operational.
i2hub	<ul style="list-style-type: none"> • Shut down all operations in November 2005, citing legal threats from the RIAA.

Status of Usenet NZB Sites

While only three NZB sites* have been hit with copyright infringement lawsuits, several others appear to have folded out of fear of legal action. The site responsible for the creation of the NZB format, Newsbin.com, remains operational. The following chart summarizes the status of several of the most popular NZB sites.

Site	Sued by film/TV studios?	Still operational?	Lawsuit status
Binnews.com	Yes	Yes	Litigation pending
DVDRs.net	Yes	No	Default judgment against DVDRs.net
NZB Zone	Yes	No	Default judgment against NZB Zone
TVNZB	No	No	N/A
Newzmonster	No	No	N/A
NewsReactor.net	No	No	N/A
Newsbin.com	No	Yes	N/A

* NZB sites host searchable indexes of Usenet NZB files. Usenet is a system that has been in existence for over twenty years and contains thousands of different newsgroups (online bulletin boards) organized by topic area (e.g., one political newsgroup is “alt.politics.usa.congress”). Recently, newsgroups have appeared for the purposes of hosting non-text files such as software, audio, and video. Because these files can be large, they are often broken into pieces and spread across many different Usenet messages. NZB files are small programs that can locate, download, and assemble these fragments into complete files. If a user searches an NZB site and finds an NZB file that corresponds to the user’s desired piece of content, the fragments of that content will be automatically downloaded and reassembled on the user’s computer after he or she installs the NZB file.