

Class 19: Grokster

Administrative

- Next Time: 749-66; Three Links
 - See paulohm.com for details
 - No "on call" next time
 - Skim the two longest sections
- Mind maps by Thursday
- Exam
 - Three questions
 - One policy, two issue spotters
 - Clarification on questions about computers and/or the Internet on the exam
 - Open Everything

Third-Party Liability

Basic Doctrine

- Respondeat Superior
 - Employers liable for infringing acts of their employees under traditional master/servant principles.
- Vicarious Liability
 - Two requirements
 - Control Prong
 - Right and ability to supervise
 - Even without knowledge of infringing acts
 - Benefit Prong:
 - Direct financial interest in the infringement.
- Contributory Infringement
 - Induces, causes, or materially contributes to the infringement
 - WITH KNOWLEDGE
 - Critical Factor in Grokster
 - Intentionally?
- One reading of Grokster:
 - Invents a new "inducement" third-party liability theory
- If there is no first-party infringement, there can be no third-party liability.
 - This is why Sony discusses fair use (later)

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Sony

Capable of substantial noninfringing uses

Note 2: Three different formulations
Is this the only test for Contributory Infringement? What does Sony say about intent?

Grokster

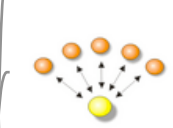
P2P Network Technology Primer

Problem

Two subproblems

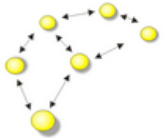
Centralized Servers

FTP Sites of early 1990's



Images courtesy of http://www.vs.uni-kassel.de/systems/index.php/Architectural_Model

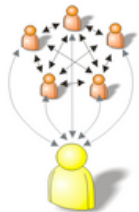
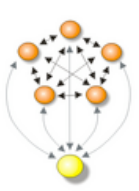
Pure p2p



Centralized-p2p Hybrids

Napster

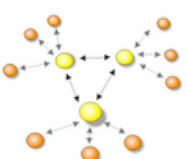
Centralized Indexing Servers



(Nearly) Fully decentralized p2p

Grokster

(Nearly) = "Supernodes"



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Grokster

Grokster v. MGM

Basic Facts

Over 100 million copies of software distributed

Billions of files shared
"The probable scope of copyright infringement is staggering"

Evidence of Intent

Streamcast

Targeted Napster's orphans

Internal e-mails admitting intent.
Press kit about attempt to capture Napster
"Bridge" application
OpenNap
Banner Ads for OpenNap
Proposed Ads - Not clear whether they were released.

Grokster

"Sparser, but revealing"

Snaptor "Bridge"
Used metatags
Their name

Non-Infringing Uses

Breyer: 10% non-infringing

Ginsburg contradicts in FN3: The 10% are merely files for which there is "not enough information to form reasonable conclusions"

Sony: Survey's of how users used VCRs

75%: Time-shifting
96%: Caught a show I would've missed.
70% of total programs only watched once.

Note: figure is files shared, not files traded.

Does that matter?

Examples of non-infringing uses

Shakespeare (non-copyrighted)
Authorization (Wilco, Pearl Jam)

Held Reasoning