

**Class 19: Third-Party Liability**

**Administrative**

Next Time: 617-24; 624-26; 634-48; 769-70; 772-777 (skip Murphy Door Bed)  
Longest assignment of year  
But Wednesday's is among the shortest.

- News Wednesdays
- iTouch Ad 🤖
  - Radiohead Follow-up 🎧
  - Forbes' Dead Celebrities List 📰
  - OINK shut down. 🐷

**Last Time**

- Recap Cases
- Acuff-Rose Reasoning
    - 1. Character and Purpose of Use
    - 2. Nature of the copyrighted work
    - 3. Amount and Substantiality of the Portion Used
    - 4. Effect of the use on the market

**Third-Party Liability**

**Basic Doctrine**

- Origin: Not in the Copyright Statute
  - Borrows from general principles of Tort Law
  - Also borrows from Patent Act
- Respondeat Superior
  - Employers liable for infringing acts of their employees under traditional master/servant principles.
- Vicarious Liability
  - Two requirements
    - Right and ability to supervise → Even without knowledge of infringing acts
    - Direct financial interest in the infringement.
  - Role of Landlords
    - Leased office space: no liability.
    - Leased flea market stand: liability.
  - Example: Dance halls are liable.
- Contributory Infringement
  - Induces, causes, or materially contributes to the infringement → WITH KNOWLEDGE
  - Example: Coin-operated "make-a-tape" system. in electronic store.

**The possible holdings of Grokster**

- Inducement Theory
  - Can't design a product used for infringement
  - IF intent is to allow infringement
  - REGARDLESS of substantial noninfringing uses
- Amending Contributory Infringement
  - Induces, causes, or materially contributes to the infringement
    - WITH KNOWLEDGE → Intent?
    - OR through the design of the product itself → UNLESS capable of subst. noninfringing uses
  - Example: Coin-operated "make-a-tape" system. in electronic store.

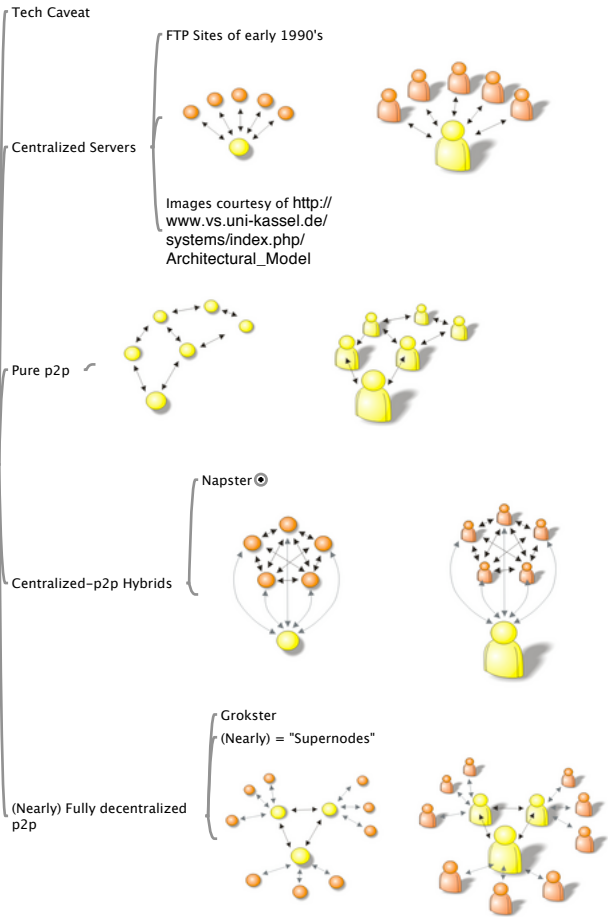
**Sony**

- Basic Facts
  - Discussed previously
  - Issue presented: When is the creator of a technology liable for the infringing acts of the purchasers/users of that technology?
- Held
- Reasoning
- Contributory or Vicarious? 🗳️
- Substantial Noninfringing uses

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**Grokster Inducement Liability**

**P2P Network Technology Primer**



**Grokster v. MGM**

- Over 100 million copies of software distributed
- "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 users.
    - "Bridge" application OpenNap
    - Banner Ads for OpenNap
    - Proposed Ads → Not clear whether they were released.
  - Grokster → "Sparsier, but revealing"
    - Snaptor "Bridge"
    - Used metatags
    - Their name
- Non-Infringing Uses**
  - Breyer: 10% noninfringing → Ginsburg contradicts in FN3: The 10% are merely files for which there is "not enough information to form reasonable conclusions"
  - Note: figure is files shared, not files traded. → Does that matter?
  - Examples of noninfringing uses
    - Shakespeare (noncopyrighted)
    - Authorization (Wilco, Pearl Jam)
- Held
- Reasoning ☉
- Advice for next big thing?