

1 KEKER & VAN NEST, LLP
MICHAEL H. PAGE - #154913
2 MARK A. LEMLEY - #155830
STACEY L. WEXLER - #184466
3 710 Sansome Street
San Francisco, CA 94111-1704
4 Telephone: (415) 391-5400
Facsimile: (415) 397-7188

5 JENNIFER STISA GRANICK - #168423
6 STANFORD LAW SCHOOL
Crown Quadrangle
7 559 Nathan Abbott Way
Stanford, CA 94305-8610
8 Telephone: (650) 724-0014
Facsimile: (650) 723-8440
9 Attorneys for Defendant
10 GROKSTER, LTD.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 METRO-GOLDWYN-MAYER STUDIOS,
INC., et al.,

16 Plaintiffs,

17 v.

18 GROKSTER, LTD., et al.,

19 Defendants.

Case No. CV 01-08541 SVW (PJWx)

21 JERRY LEIBER, et al.,

22 Plaintiffs,

23 v.

24 GROKSTER, LTD., et al.,

25 Defendants.

Case No. 01-09923 SVW (PJWx)

**DEFENDANT GROKSTER'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Date: December 2, 2002
Time: 1:30 p.m.
Dept: 6

26 AND RELATED COUNTERCLAIMS
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	3
III. ARGUMENT	9
A. The Supreme Court’s Sony Opinion Precludes Imposition of Contributory Copyright Infringement Liability	9
1. The Provider of a Product Capable of Substantial Noninfringing Uses Cannot Be Contributorily Liable.....	9
2. Grokster Is Not a “System” or “Service”; It Is A Piece Of Software	14
B. Under Napster and Fonovisa, Grokster Cannot Be Liable for Vicarious Copyright Infringement Because Grokster Lacks the Ability to Control the Allegedly Infringing Conduct	15
C. Allowing Individual Industries to Control Technologies With General Application Is Bad Public Policy	19
D. Principles of Comity Preclude Imposition of Liability for Distribution of the Grokster Application	21
IV. CONCLUSION.....	24

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

A&M Records, Inc. v. Napster, 239 F.3d 1004 (2001) passim

Alesayi Bev. Corp. v. Canada Dry Corp., 947 F. Supp. 658, 663 (SDNY 1996) 23

ALS Scan v. Remarq Communities, 239 F.3d 619 (4th Cir. 2001)..... 20

Arista Records, et al. v. AT&T Broadband et al. (S.D.N.Y. 2002) 20

Bata v. Bata, 163 A.2d 493, 507 (Del. 1960)..... 22

DVD Copy Control Ass'n v. Bunner, 113 Cal. Rptr. 2d 338 (Ct. App. 2001), rev. granted, 117 Cal. Rptr. 2d 167 (2002)..... 20

Ellison v. Robertson, 189 F. Supp. 2d 1051 (C.D. Cal. 2002) 20

Finanz AG Zurich v. Banco Economico S.A., 192 F.3d 240, 246 (2d Cir. 1999) 22, 23

Fonovisa, Inc. v. Cherry Auction, Inc. 76 F.3d 254 (9th Cir. 1996)..... 2, 15, 16

Gordon and Breach Science Publishers, S.A. v. American Institute of Physics, 905 F. Supp. 169, 178 (SDNY 1995) 22

Hilton v. Guyot, 159 U.S. 113, 163-64 (1895) 22

Katz v. Napster et al., 284 F.3d 1091 ((9th Cir. 2001) 21

Kelly v. ArribaSoft, 280 F.3d 934 (9th Cir.2002) 20

mp3.com v. Cooley, Godward, Santa Clara County Superior Court, Case No. CV 806837 21

Religious Technology Center v. Netcom, 907 F. Supp. 1361 (N.D. Cal. 1995) 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(cont'd)

Page(s)

RIAA v. Diamond Multimedia Systems, 180 F.3d 1072 (9th Cir. 1999)..... 20

Sony v. Universal City Studios, 464 U.S. 417 (1984)..... passim

Universal City Studios v. Corley, 273 F.3d 429 (2d Cir. 2001) 20

Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 169 F.
Supp. 2d 1181 (N.D. Cal. 2001) 24

Statutes

Berne Convention Article 3(1)(b) (Paris Text 1971)..... 23

Netherlands Civil Code Section 1954..... 22

U.S. Const. Article 1, Section 8..... 17

