

Statement of
The Honorable John Cornyn

United States Senator
Texas
September 28, 2005

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"Protecting Copyright and Innovation in a Post-Grokster World"
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Mr. Chairman, I want to thank you for holding this important hearing. Like the hearing you held last week regarding the recent Supreme Court decision, *Kelo v. City of New London*, this hearing focuses on the importance of protecting property rights.

Only, this time, the property right does not involve a home - rather, it involves the property interest that artists and others have in copyrighted works. Unfortunately, every day, literally millions of dollars in copyrighted works are stolen via online services. This theft is no less wrong because it is carried out in cyberspace - rather, it is putting thousands of Americans out of work and is damaging one of the most important and vibrant sectors of the United States economy.

There is nothing wrong with the development of new and innovative technologies. To be sure, peer-to-peer technology is here to stay, and we are all the better for it. However, it is important to set the record straight about what many of these companies have done - and continue to do today - with this technology.

The Supreme Court - in a unanimous decision - made the following observations in the *MGM v. Grokster* opinion:

? "[B]ecause well over 100 million copies of the software in question are known to have been downloaded, and billions of files are shared across [respondents'] networks each month, the probable scope of copyright infringement is staggering."

? "Grokster and StreamCast are not, however, merely passive recipients of information about infringing use."

? "The record is replete with evidence that from the moment Grokster and StreamCast began to distribute their free software, each one clearly voiced the objective that recipients use it to download copyrighted works, and each took active steps to encourage infringement."

? "Three features of the evidence of intent are particularly notable. First, each of the respondents showed itself to be aiming to satisfy a known source of demand for copyright infringement, the market comprising former Napster users. Respondents' efforts to supply services to former Napster users indicate a principal, if not exclusive, intent to bring about infringement. Second,

neither respondent attempted to develop filtering tools or other mechanisms to diminish the infringing activity using their software. While the Ninth Circuit treated that failure as irrelevant because respondents lacked an independent duty to monitor their users' activity, this evidence underscores their intentional facilitation of their users' infringement. Third, respondents make money by selling advertising space, then by directing ads to the screens of computers employing their software. The more their software is used, the more ads are sent out and the greater the advertising revenue."

As we all know, the Court went on to hold Grokster and Streamcast liable for the resulting acts of infringement by end users - irrespective of the potential legitimate uses of their products.

Time will tell how broadly the Court's decision will be interpreted and ultimately implemented. But the decision - at a minimum - recognizes and reinforces the importance of protecting intellectual property rights and makes clear that facilitation of copyright infringement will not be tolerated.

We must continue to be vigilant in protecting these rights. I was pleased to join my colleague, Senator Feinstein, in the 108th Congress to introduce the Artists' Rights and Theft Prevention, or "ART," Act, which focused on the most egregious form of copyright piracy plaguing the entertainment industry - the piracy of film, movies, and other copyrighted materials before copyright owners have had the opportunity to market fully their products. With the help of Senators Hatch and Leahy, that bill became law earlier this year as part of the Family Entertainment and Copyright Act (FECA).

I am also pleased to be working with the ranking member, Senator Leahy, and other colleagues on additional legislation that will protect against rampant counterfeiting that plagues the American public and American business today. I look forward to continuing to work together to address these and other serious problems involving intellectual property.

In closing, as we consider additional legislative measures and as we observe the implications of the Court's ruling in *MGM v. Grokster*, we must ensure that the advent of the internet and the expansion of innovative technologies do not set aside the basic principles that theft is wrong... and that facilitation of theft is equally wrong.

Mr. Chairman, thank you.