



Consumer Federation of America

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ON THE RELEASE OF

**TIME FOR THE RECORDING INDUSTRY TO FACE THE MUSIC:
THE POLITICAL, SOCIAL AND ECONOMIC BENEFITS OF
PEER-TO-PEER COMMUNICATIONS NETWORKS**

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This analysis shows that the effort to impose a tyranny of copyright regulation on digital communications technologies will be disastrous for consumers, citizens and the economy.

By creating a surveillance society that requires technologies to fingerprint every file, tag every user, and monitor every transaction, the recording company and movie studio proposals would destroy the fundamental nature of peer-to-peer networks. Driven by a “piracy panic” they demand a “hub and choke” architecture of central servers and lists that the Internet has left behind.

Contrary to the copyright holder claims that peer-to-peer communications networks are copyright infringement schemes, decentralized peer-to-peer networks have become the dominant form of Internet communications because they are vastly more efficient. Peer-to-peer technologies eliminate the congestion and cost of central servers and distribute bandwidth requirements throughout the network. In so doing they become a powerful force to expand freedom of expression and the flow of information, stimulate innovation and promote the economic interests of consumer and creative artists alike.

Copyright holders are always thrown into a “piracy panic” by technological change and seek to turn back the clock, but in the past the Supreme Court and Congress have refused to allow copyright law to regulate technological innovation. The recording industry and movie studios will adjust to these new digital technologies, as they did to the VCR and Compact Disc, and the nation will prosper from the dynamic innovation that is the result.

Innovation

Demanding that innovators guess how people will use a new technology and holding them liable retroactively if they fail to anticipate what users will do, as the recording

companies and movie studios have proposed, is a radical new definition of “secondary liability” that will chill innovation. This unprecedented liability risk is embedded not only in the Supreme Court briefs of the recording companies and movie studios, but it was the core of the Induce Act legislation debated in Congress last year. The tyranny of copyright risk and liability will make innovators timid about inventing new communications technologies.

That is why computer, software, and communications companies, large (e.g. Intel and the Cellular Telecommunications & Internet Association) and small (e.g. Altnet and Shared Media Licensing, Inc.), the National Venture Capital Association and the National Association of Shareholder and Consumer Attorneys, and over a hundred professors and scholars, specializing in copyright, intellectual property, technology and Internet law, economics, innovation and computer science, have all weighed in at the Supreme Court against the demands of the recording companies and movie studios. These groups have also strenuously have opposed Congressional efforts to stymie peer-to-peer technology.

Consumers

The consumer benefits of this new technology are clear as well. Consumers no longer have to pay outrageous prices for bundles of songs, most of which they do not want to purchase. After eliminating music singles from the market and failing to eliminate peer-to-peer technology, the recording industry gave in to consumer demand and began selling digital singles last year. The results were phenomenal. Last year, the industry sold more singles than at any time in the previous two decades and consumers saved hundreds of millions of dollars. This proves that just as the movie studios were wrong to attack the VCR two decades ago, the recording companies are wrong to attack digital distribution of music today.

That is why consumer advocates, like Consumers Union and U.S. PIRG, and consumer equipment manufacturers, like the Consumer Electronics Association, have weighed in at the Supreme Court and in Congress against the demands of the recording companies and movie studios.

Free Speech

Because peer-to-peer networks lower the cost of moving large files to a fraction of what they are with the client-server, central-index networks, they dramatically expanding the ability of ordinary people and noncommercial entities to speak in the digital age, to distribute video and other content in new and innovative ways. From the individual politician or the most isolated dissident who can use peer-to-peer to get their message out, to private citizens making Congressional hearings and Supreme Court arguments available on line, to the Internet Archive distributing over 20,000 live concerts this technology democratizes speech in countless ways.

That is why First Amendment advocates on the left, like the American Civil Liberties Unions and Free Press, and the Right, like the American Conservative Union and the Eagle Forum Education and Legal Defense Fund, and institutions dedicated to expanding the

availability and use of content, like the Creative Commons, the Free Software Foundation, and Media Studies Professors, have weighed in at the Supreme Court against the demands of the recording companies and movie studios.

Creative Artists

Peer-to-peer technologies are a win-win for consumers and creative artists, particularly in the music business because they lower the costs of production, marketing, promotion and distribution. They eliminate the “brick and mortar” middlemen, enabling creators to reach and communicate directly with their audiences cheaply and effectively. As costs fall, the highly centralized blockbuster system that benefits a handful of recording companies and a few star artists by restricting the variety of content that reaches the public, will recede. New approaches to digital distribution enable more artists to earn more selling singles through peer-to-peer networks at a fraction of the cost of albums. Because they can charge less and earn more, more artists will succeed financially and a broader range of work will receive wider distribution.

That is why many recording artists have embraced peer-to-peer distribution of their works and have weighed in at the Supreme Court against the demands of the recording companies and movie studios.

The Courts and Congress

Historically copyright laws have operated to stimulate the free flow of ideas and create a balance between the rights of copyright owners and the need to stimulate information exchange, creativity and innovation. The Supreme Court preserved that balance in the Sony Betamax case two decades ago and the nation has prospered as a result. We are confident that the Supreme Court will turn down the invitation to legislate a new balance in copyright law. Indeed, the public interests will be greatly advanced if the Supreme Court not only rejects the demands of the recording companies and movie studios to extend their copyright to regulate technology, but also takes this opportunity to put an end to the reign of litigation terror that the copyright holders have launched in an effort to slow technological progress. The Supreme Court must make it clear that technology is not the villain and send a signal to the lower courts to dismiss out of hand the frivolous litigation brought by the recording companies and movie studios.

But the public must not be lulled into a false sense of security, even with a victory in the courts. “Piracy panics” are potent afflictions and copyright holders have been in a fever since the advent of the Internet and the emergence of digital technologies. Copyright holders rarely accept court decisions when the underlying laws can be amended to do their bidding. There will be protracted legislative fights before this digital piracy panic subsides. In order to protect their rights as citizens, people, and consumers, the public must become aroused and engaged to balance the immense monetary and political power of the recording companies and movie studios.