

IN THE
Supreme Court of the United States

METRO-GOLDWYN-MAYER STUDIOS INC., *et al.*,
Petitioners,

v.

GROKSTER, LTD., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE OFFICE OF THE COMMISSIONER OF BASEBALL,
NATIONAL BASKETBALL ASSOCIATION, NATIONAL FOOTBALL LEAGUE,
PROFESSIONAL PHOTOGRAPHERS OF AMERICA, INC., AMERICAN SOCIETY
OF MEDIA PHOTOGRAPHERS, INC., ASSOCIATION OF AMERICAN
PUBLISHERS, INC., ASSOCIATION OF AMERICAN UNIVERSITY PRESSES,
PRODUCERS GUILD OF AMERICA, INC., GRAPHIC ARTISTS GUILD,
ENTERTAINMENT SOFTWARE ASSOCIATION, THE AUTHORS GUILD, INC.,
AND THE INDEPENDENT FILM & TELEVISION ALLIANCE
IN SUPPORT OF PETITIONERS

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Cited Authorities

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<i>In re Cases Filed by Recording Companies</i> , Case Nos. A-04-CA-550 LY, A-04-CA-636 SS, A-04-CA-703 LY, A-04-CA-704 LY (W.D. Tex. Nov. 17, 2004)	9
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<i>Interscope Records v. Does 1-25</i> , No. 6:04-CV-197-ORL-22-DAB (M.D. Fla. Apr. 27, 2004)	9
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Cited Authorities

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<i>Recording Indus. Ass'n of Am., Inc. v. Verizon Internet Servs., Inc.</i> , 351 F.3d 1229 (D.C. Cir. 2003), <i>cert. denied</i> , 125 S. Ct. 309 (2004); 125 S. Ct. 347 (2004)	9
<i>Rupp & Wittgenfeld Co. v. Elliott</i> , 131 F. 730 (6th Cir. 1904)	26
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 STATUTES	
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*Cited Authorities**Page***OTHER AUTHORITIES**

- William J. Adkinson, *Liability of P2P File-Sharing Systems for Copyright Infringements by their Users*, PROGRESS ON POINT (The Progress & Freedom Foundation Mar. 2004) (*available at* <http://www.pff.org/publications/ip/pop11.7p2psystems.pdf>) 19
- Administrative Office of the U.S. Courts, Table C3 - U.S. District Courts-Civil Cases Commenced, by Nature of Suit and District, During 12-Month Period Ending September 30, 2003, 2003 Judicial Business (*available at* <http://www.uscourts.gov/judbus2003/appendices/c3.pdf>) 8
- Stacey L. Dogan, *Is Napster a VCR? The Implications of Sony for Napster and Other Internet Technologies*, 52 HASTINGS L.J. 939 (2001) 20, 21
- Jane Ginsburg, *Copyright Use and Excuse on the Internet*, 24 COLUM. V.L.A. J.L. & ARTS 1 (2000) 23
- The Intentional Inducement of Copyright Infringements Act of 2004: Hearing on S. 2560 Before the Senate Comm. on the Judiciary*, 108th Cong. (2004) (statement of the Hon. Marybeth Peters, Register of Copyrights, U.S. Copyright Office) (*available at* <http://www.copyright.gov/docs/regstat072204.html>) 6, 11, 25

