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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ARISTA RECORDS, LLC, et al.

Plaintiffs,

v.

LIME WIRE LLC, et al.

Defendants.

CIVIL ACTION NO. 06 CV 5936 (GEL)  
ECF Case

NOTICE OF MOTION AND MOTION OF NONPARTIES ELECTRONIC FRONTIER  
FOUNDATION, CENTER FOR DEMOCRACY AND TECHNOLOGY, COMPUTER &  
COMMUNICATIONS INDUSTRY ASSOCIATION, CONSUMER ELECTRONICS  
ASSOCIATION, HOME RECORDING RIGHTS COALITION, INFORMATION  
TECHNOLOGY ASSOCIATION OF AMERICA, PUBLIC KNOWLEDGE, SPECIAL  
LIBRARIES ASSOCIATION, AND U.S. INTERNET INDUSTRY ASSOCIATION TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF NEITHER PARTY

TO ALL PARTIES AND COUNSEL OF RECORD:

Nonparties the Electronic Frontier Foundation (EFF), Center for Democracy and Technology (CDT), Computer & Communications Industry Association (CCIA), Consumer Electronics Association (CEA), Home Recording Rights Coalition (HRRC), Information Technology Association of America (ITAA), Public Knowledge (PK), Special Libraries Association (SLA), and U.S. Internet Industry Association (USIIA) (collectively, “*Amici*”) hereby move for leave to file the accompanying *amicus curiae* brief in the above-captioned case in support of neither party in connection with the pending cross-motions for partial summary judgment, filed by the parties on July 18 and 21, 2008 (Doc. No. 75 and 108). Defendants have consented to the filing of this brief. Plaintiffs do not consent to its filing.

*Amici* represent diverse facets of the U.S. innovation economy: information technology companies, consumer electronics companies, technology retailers, small entrepreneurs, amateur tinkerers, and consumers. They are united, however, in their interest in balanced secondary liability standards for copyright that punish bad actors while simultaneously protecting legitimate innovators from the chilling effects of legal uncertainty. The Supreme Court set out just such a standard in its landmark ruling in *Sony v. Universal City Studios*, 464 U.S. 417 (1984), declaring that a court may not impose liability nor infer culpable intent to induce infringement based on the development and distribution of a product capable of substantial noninfringing use—even if the product’s maker knows that some infringing uses are certain to occur.

Unfortunately, some of the factors Plaintiffs point to in the pending cross-motions for summary judgment would, if accepted as a basis for secondary liability, upend the standard set by the Supreme Court in *Sony v. Universal* and recently reaffirmed in *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 928 (2005). As discussed further in the attached brief, relying on certain of Plaintiffs’ arguments would replace the limiting principles set out in

*Sony v. Universal* and *MGM v. Grokster* with broad, ill-defined substitutes that would chill innovation in multi-use technologies (i.e., those capable of both infringing and noninfringing uses), resulting in harm to at least three constituencies. First, the technology industry would be denied the opportunity to develop and market technologies that form an increasingly important segment of the U.S. and global economy. Second, consumers would be denied the legitimate, noninfringing benefits that multi-use technologies offer. And third, copyright owners who are eager to discover and develop the new opportunities made possible by the technologies would be stymied.

Because an erroneous reinterpretation of secondary liability would chill legitimate innovation to the detriment of the technology sector, consumers, and ultimately copyright owners themselves, *Amici* seek leave to file the attached *amicus curiae* brief in order to contribute a more comprehensive overview of the relevant secondary liability principles that ought to guide the Court's resolution of this case. Because much of the factual record is under seal, *Amici* offer no view in the attached brief on which parties should prevail in the pending cross-motions for summary judgment. The copyright principles at issue in this case, however, are of crucial importance to the technology sector. Regardless of the outcome in this case, the legal standards the Court enunciates will be persuasive precedent in future cases. *Amici* will therefore focus on the proper legal standards that should apply in secondary liability cases.

*Amici* have all participated in a number of leading cases that address the proper scope of copyright's secondary liability doctrines as applied to technology innovators, including the Supreme Court's recent 2005 ruling in *MGM v. Grokster*. Two of the *Amici*, CEA and HRRC, also participated extensively in the Supreme Court's 1984 ruling in *Sony v. Universal*.

The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit public interest organization devoted to maintaining the traditional balance that copyright law strikes between the interests of copyright owners and the interests of the public. Founded in 1990, EFF represents more than 13,000 dues-paying members including consumers, hobbyists, computer programmers, entrepreneurs, students, teachers, and researchers united in their reliance on a balanced copyright system that ensures adequate protection for copyright owners while ensuring broad access to information in the digital age.

The Center for Democracy & Technology (CDT) is a nonprofit public interest group that seeks to promote free expression, privacy, individual liberty, and technological innovation on the open, decentralized Internet. CDT advocates balanced copyright policies that provide appropriate protections to creators without curtailing the openness and innovation that have been vital to realizing the democratizing potential of new digital media.

The Computer & Communications Industry Association (CCIA) is an international, nonprofit trade association dedicated to open markets, open systems, and open networks. CCIA members participate in the information and communications technology industries, ranging from small entrepreneurial firms to the largest in the business. CCIA members employ nearly one million people and generate annual revenues exceeding \$200 billion. A complete list of CCIA's members is available online at <<http://www.ccianet.org/members.html>>.

The Consumer Electronics Association (CEA) is the preeminent trade association of the U.S. consumer electronics industry. CEA members lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related

services, that are sold through consumer channels. Its more than 2,200 corporate members contribute more than \$173 billion to the U.S. economy.

The Home Recording Rights Coalition (HRRC), an unincorporated association, is a leading advocacy group for consumers' rights to use home electronics products for private, non-commercial purposes. The members of HRRC include consumers, retailers, manufacturers and professional servicers of consumer electronics products. The HRRC was founded in 1981, in response to the Ninth Circuit's ruling, in *Sony v. Universal*, later overturned by the Supreme Court, that distribution of consumer video recorders constituted contributory copyright infringement.

The Information Technology Association of America (ITAA) is the premier information technology (IT) and electronics industry association working to maintain America's role as the world's innovation headquarters. ITAA provides leadership in market research, standards development, business development, networking and public policy advocacy to some 350 corporate members doing business in the public and commercial sector markets. These members range from the smallest start-ups to industry leaders offering Internet, software, services and hardware solutions. ITAA offers the industry's only grassroots-to-global network, carrying the voice of IT to companies, markets and governments at the local, state, national and international levels to facilitate growth and advocacy.

Public Knowledge (PK), a nonprofit public interest advocacy organization in Washington, D.C., represents consumers' rights and works with consumer and industry groups to promote balance in intellectual property law and technology policy, ensuring that the public can benefit from new innovations, access to knowledge, and the use of content.

The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 83 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives.

The U.S. Internet Industry Association (USIIA) is the North American trade association for Internet commerce, content and connectivity. Founded in 1994, USIIA advocates effective public policy for the Internet and provides its members with essential business news, information, support and services. With members of every size, engaged in virtually every facet of the Internet, USIIA works to craft a business environment in which Internet companies can thrive.

For the foregoing reasons and based on the documents submitted herewith, *Amici* respectfully requests that the Court grant the motion for leave to file the accompanying *amicus curiae* brief.

Dated: September 26, 2008



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 26, 2008, a copy of each of the following documents was served upon the Plaintiffs and Defendants:

1. Notice of Motion and Motion of the Electronic Frontier Foundation (EFF), Center for Democracy and Technology (CDT), Computer & Communications Industry Association (CCIA), Consumer Electronics Association (CEA), Home Recording Rights Coalition (HRRC), Information Technology Association of America (ITAA), Public Knowledge (PK), Special Libraries Association (SLA), and U.S. Internet Industry Association (USIIA) for Leave to File Amicus Curiae Brief
2. Declaration of Fred von Lohmann in Support of Motion of the Electronic Frontier Foundation (EFF), Center for Democracy and Technology (CDT), Computer & Communications Industry Association (CCIA), Consumer Electronics Association (CEA), Home Recording Rights Coalition (HRRC), Information Technology Association of America (ITAA), Public Knowledge (PK), Special Libraries Association (SLA), and U.S. Internet Industry Association (USIIA) for Leave to File Amicus Curiae Brief
3. Proposed Order
4. Amicus Curiae Brief of the Electronic Frontier Foundation (EFF), Center for Democracy and Technology (CDT), Computer & Communications Industry Association (CCIA), Consumer Electronics Association (CEA), Home Recording Rights Coalition (HRRC), Information Technology Association of America (ITAA), Public Knowledge (PK), Special Libraries Association (SLA), and U.S. Internet Industry Association (USIIA) in Support of Neither Party
5. Rule 7.1 Corporate Disclosure Statement

Service was accomplished via the Court's ECF system. Lead counsel, listed below, will also receive a courtesy copy via electronic mail.

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