EXHIBIT 6

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Sharing Culture Likely to Pause but Not Wither

By TOM ZELLER Jr.

Will the legal defeat of two file-sharing companies change anything?

The Supreme Court's ruling against Grokster and StreamCast Networks yesterday created serious concern among advocates of file-sharing technology, along with some sighs of relief that the decision left room for future technological innovations.

"The Supreme Court decision will unleash a new era of uncertainty," said Fred von Lohmann, an intellectual property lawyer with the Electronic Frontier Foundation, a digital rights advocacy group. Mr. Von Lohmann successfully argued the software companies' case before the United States Court of Appeals for the Ninth Circuit last year.

"America's entire innovation sector is now facing a new era of copyright uncertainty," he said, adding that the decision "created a new theory of liability that will tie up the courts for a long time."

In overturning lower court decisions that had favored the two peer-to-peer software makers, the court ruled that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties."

But the court provided little guidance on just how one might determine whether a company was purposely inducing its users to violate the law, and in this, many technology advocates saw reason for concern. The entertainment industry, they argue, can now use the ruling to sue without restraint, seeking to show bad "intent" or "purpose" behind every technology it does not like.

Still, some file-sharing advocates did see hope in the court's preservation of what has come to be known as the Sony doctrine - a 1984 Supreme Court decision in Sony Corporation of America v. Universal City Studios that has provided an umbrella of protection for technology innovators from claims of contributing to copyright infringement.

Gigi B. Sohn, the director of Public Knowledge, a public interest advocacy group focusing on intellectual property, said there was cause for optimism because the court "reaffirmed the core position of the Sony Betamax case," and that peer- to-peer technology can be used for noninfringing uses.

She also said that the drive for potentially stifling legislation on peer-to-peer technology - something the entertainment industry has pursued in Congress, including last year's failed Induce Act - has been rendered unnecessary.

Given this decision, "there's nothing that Hollywood should want or need from Congress," Ms. Sohn said.

Indeed, the decision did seem to indicate that peer-to-peer technology - and by extrapolation, whatever unknown innovations are to arise out of the minds of new generations of tinkerers - was not liable for copyright infringement simply because it might be used that way.

"A purpose to cause and profit from third-party acts of copyright infringement," the court said, would have to be demonstrated in order to hold a company responsible for the illegal ways its software is used.

"I think there's plenty more to be written on this," said Jonathan Zittrain, co-director of the Berkman Center for Internet and Society at Harvard Law School and the co-author of an amicus brief filed with the Supreme Court in support of Grokster. "And I think Sony emerges not in tatters," he said.

Even so, the decision's emphasis on finding the "intent" of a company could mire new technologies in a litigious limbo. Every e-mail message, every conversation, every cocktail napkin on which an entrepreneur scribbles a vision for a new technology, Grokster supporters said, could become evidence in a future lawsuit, making unfettered blue-sky innovation a risky business without lawyers vetting every move.

"If you're making a new piece of software with all kinds of cool Swiss Army-knife uses, and even if your motives are pure as the driven snow, you'll be given pause" by this decision, Mr. Zittrain said. "But there are a lot of tinkerers who don't follow Supreme Court decisions" and presumably will not be burdened with concerns and will keep on tinkering.

Mark Gorton, the chief executive of the Lime Group, a brokerage firm that makes LimeWire, a file-sharing alternative to Grokster, said he was likely to stop distributing LimeWire in reaction to the ruling. He said it appeared too difficult to meet the implied standard for inducement.

"Some people are saying that as long as I don't actively induce infringement, I'm O.K.," he said. "I don't think it will work out that way."

The court, Mr. Gorton said, has "handed a tool to judges that they can declare inducement whenever they want to."

The potential implications of the decision were not lost on young users of file-sharing programs.

"The record companies are spending Grokster and Morpheus into submission, so they won't be able to keep fighting the case," said Rick Hendrickson, 22, a student at Fitchburg State College in Massachusetts who said he avidly used Morpheus, StreamCast's file-sharing software, and operates a weekly radio blogcast called P2P Revolution.

"It might make people think twice," he said, about making the next peer-to-peer applications.

And the argument that the recording industry was actually hurting itself by suing file-sharing companies continued to be a familiar refrain yesterday.

Before Napster, the original file-sharing service, went dark in 2001, Brian Anderson, 33, a network administrator in Salt Lake City, downloaded an album by a British artist called Badly Drawn Boy. "I wanted to hear his music after reading an article about him," Mr. Anderson said, "so I burned a few copies for myself and my friends and ended up loving it."

Since then, Mr. Anderson said, he has purchased three of the artist's albums, as have many friends who first heard of Badly Drawn Boy through him. "Because I illegally downloaded his album for free," Mr. Anderson said, "he and his label ended up making hundreds of dollars from me and my friends."

According to Eric Garland, the chief executive of Big Champagne, a company that tracks peer-to-peer network use, the question of whether file-sharing has been a boon or a bust for the entertainment industry is irrelevant.

File-sharing technology is endlessly mutable, he said, and its users are a migratory species. From Napster, which used central servers to index the files its users stored on their computers, file-sharing enthusiasts turned to upstarts like Kazaa, Grokster and StreamCast, which had no central indexes. And in a world where innovations and programming wisdom can be shared across oceans and borders, there are always new options emerging, so it was never likely that users would stick with advertising-supported software anyway.

"Would anyone among the tens of millions of people in this country who use file-sharing tools to share copyrighted works - would anyone miss the businesses?" Mr. Garland said. "The banner ads, the bundled third-party software, the subscription offers, the paid upgrades?"

The answer, he said, is no.

Distributing file-sharing software has been profitable because the providers often installed other software programs on the computers of each user. The makers of pop-up advertising software and other programs paid as much as $1 each time their software was installed.

Still, industry experts say that the total revenue of most of the file-sharing companies can be measured in a few million dollars a year. Kazaa, once the largest file-sharing company, may have taken in tens of millions of dollars a year at its peak. But this revenue was dwarfed by the recording industry's spending on lawsuits and other antipiracy measures.

But even if the Grokster decision ultimately makes it difficult for companies to turn a profit as distributors of file-sharing software, that would not solve Hollywood's problems, Mr. Garland said.

"Businesses have never been responsible for innovation in the peer-to-peer file-sharing space," he said. "Businesses came as an afterthought. Shawn Fanning created the tools that made Napster possible, and the business just grew around the imagination of that teenager."

And with open source software continually evolving, it is not likely that even the shutting down of Grokster and StreamCast would eliminate peer-to-peer networks.

"People read the words 'Supreme Court' and they think it's the bottom of the ninth, but this is clearly only the second inning," Mr. Garland said. "We are continuing down a winding path here, and more questions have been asked than answered."

Roben Farzad and Saul Hansell contributed reporting for this article.