

Exhibit B

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IN THE SUPREME COURT OF THE UNITED STATES

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METRO-GOLDWYN-MAYER STUDIOS, INC., :
ET AL., :
Petitioners, :
v. : No. 04-480
GROKSTER, LTD, ET AL. :
- - - - - x

Washington, D.C.

Tuesday, March 29, 2005

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:13 a.m.

APPEARANCES:

DONALD B. VERRILLI, JR., ESQ., Washington, D.C.; on behalf
of the Petitioners.

PAUL D. CLEMENT, ESQ., Acting Solicitor General,
Department of Justice, Washington, D.C.; for United
States, as amicus curiae, supporting the Petitioners.

RICHARD G. TARANTO, ESQ., Washington, D.C.; on behalf of
the Respondents.

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1 Are you sure that you could recommend to the iPod inventor
2 that he could go ahead and have an iPod, or, for that
3 matter, Gutenberg, the press? I mean, you see the
4 problem.

5 MR. VERRILLI: Yes, I think my answer to --

6 JUSTICE BREYER: What's the answer?

7 MR. VERRILLI: -- those questions are: yes, yes,
8 yes, and yes.

9 [Laughter.]

10 JUSTICE BREYER: Because in each case -- for all
11 I know, the monks had a fit when Gutenberg made his press
12 --

13 [Laughter.]

14 JUSTICE BREYER: -- but the problem, of course,
15 is that it could well be, in each of those instances, that
16 there will be vast numbers of infringing uses that are
17 foreseeable.

18 MR. VERRILLI: I disagree with that, Your Honor.
19 Certainly not -- I don't think there's any empirical
20 evidence to suggest, with respect to any of the things
21 that Your Honor just identified -- and let me pick out the
22 iPod as one, because it's the most current example, I
23 guess. From the moment that device was introduced, it was
24 obvious that there were very significant lawful commercial
25 uses for it. And let me clarify something I think is

1 unclear from the amicus briefs. The record companies, my
2 clients, have said, for some time now, and it's been on
3 their Website for some time now, that it's perfectly
4 lawful to take a CD that you've purchased, upload it onto
5 your computer, put it onto your iPod. There is a very,
6 very significant lawful commercial use for that device,
7 going forward.

8 And, remember, I -- what our test -- our test is
9 not "substantial." Our test is that it's a -- it's a --
10 when it's a vast-majority use, like here, it's a clear
11 case of contribution --

12 JUSTICE SCALIA: How do you -- how do you know,
13 going in, Mr. Verrilli? I mean, I'm about to start the
14 business. How much time do you give me to bring up the
15 lawful use to the level where it will outweigh the
16 unlawful use? I have to know, going in.

17 MR. VERRILLI: Well, I --

18 JUSTICE SCALIA: And it's one thing to sit back
19 and, you know, calculate with this ongoing business, it's
20 90 percent/10 percent. But I'm a new inventor, and I'm --
21 you know --

22 MR. VERRILLI: I think the weight --

23 JUSTICE SCALIA: -- I'm going to get sued right
24 away. I know I'm going to get sued right away, before I
25 have a chance to build up a business.