

# Expert Report

## THE GROKSTER PLAYLIST

There is no shortage of people who want to give the Supreme Court advice on how to decide the *Grokster* case. Copyright policy advocates have submitted over 50 amicus briefs to the court, giving new meaning to the term “file sharing.” The briefs present a jumble of proposed tests, standards, and liability rules that reflect, refract, or reject the innovation principle of the landmark *Betamax* case. Copyright attorney Jonathan Band provides an overview of who is arguing what for whom, in search of the melodies amid the noise.

### Twist and Shout: Amicus Briefs Squeeze *Betamax* to Defend Opposing Views

BY JONATHAN BAND

**T**he case *Metro-Goldwyn-Mayer Inc. v. Grokster Ltd.*, No. 04-480 (U.S., argued 3/29/05) (see related story this issue) has provoked a torrent of amicus briefs: 23 in support of the entertainment industry Petitioners, 25 in support of the software company Respondents, and seven in support of neither party. The large volume of briefs reflects the high stakes involved. On the one hand, the entertainment industry believes it will suffer irreparable injury from Internet based copyright infringement if it cannot prevent the distribution of peer-to-peer software by companies such as Grokster. On the other hand, the information technology industry feels that the tests for secondary copyright infringement liability advocated by Petitioners and their amici will significantly impede innovation. Public interest groups concerned about the dissemination of harmful material over the Internet have lined up behind the entertainment industry—ironic, given that these same groups often criticize the entertainment industry for its content. At the same time, public interest groups that represent consumers or promote free speech tend to support Grokster.

The central question in the briefing is how does the “*Betamax* Rule” fashioned by the Supreme Court in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), the case concerning Sony’s *Betamax* video cassette recorder, apply to file-sharing. In *Betamax*, the Supreme Court stated that a manufacturer of a product is not secondarily liable for infringing uses of the product so long as the product was capable of substantial noninfringing uses. In their petition for review, the Petitioners argued that there was a split between the Ninth Circuit’s interpretation of *Betamax*

in *Metro-Goldwyn-Mayer Studios v. Grokster Ltd.*, 380 F.3d 1154, 72 U.S.P.Q.2d 1244 (9th Cir. 2004) (9 ECLR 720, 8/25/04), and the Seventh Circuit’s interpretation of *Betamax* in *In re Aimster*, 334 F.3d 643 (7th Cir. 2003), cert. denied, 540 U.S. 1107 (2004) (8 ECLR 689, 7/16/03). Petitioners further suggested that the Seventh Circuit’s interpretation was superior to the Ninth Circuit’s. Interestingly, notwithstanding this framing of the issue, few of the 59 briefs filed fully endorse either circuit’s interpretation.

### Petitioners’ Round

#### The *Betamax* Rule

Among the briefs filed in the first round of briefing—the briefs filed by Petitioners and amici supporting Petitioners or supporting neither party—five basic interpretations of *Betamax* were advanced.

**Plain Language.** Associations representing technology companies argued that the phrase “capable of substantial noninfringing use” means exactly that: “if there exists a reasonable possibility that there will be substantial current or future use of a technology for noninfringing activities, the provider of the technology is not secondarily liable.” See Brief of Digital Media Association, NetCoalition, Information Technology Association of America, and the Center for Democracy and Technology. This interpretation recognizes that the current or future noninfringing uses might well be a minority of the uses.

**Principal or Primary Use.** The motion picture and recording industry Petitioners, along with several of their entertainment industry amici (e.g., the collection societies ASCAP and BMI), argued that the *Betamax* safe harbor applied only if lawful uses predominate over unlawful uses—in other words, only if a majority of actual uses were noninfringing.

**Aimster.** The songwriter Petitioners and a few amici (e.g., the major sports leagues) appeared to support the *Aimster* interpretation: that liability attaches if (a) there

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are substantial infringing uses; and (b) the provider of the technology fails to implement available means to prevent the infringement, so long as they are not disproportionately costly. Thus, even if a majority of the uses are noninfringing, liability could still attach if the provider did not take sufficient steps to prevent infringement. In this vein, several amici (e.g., iMesh.com, Snocap, and Audible Magic) argued that filtering technology currently exists that could reduce infringement without interfering with legitimate uses.

**Willful Blindness.** Several amici, including the National Association of Broadcasters, argued that the *Betamax* defense should not apply when a provider took affirmative acts to evade responsibility for infringement, or when the provider had actual knowledge of the infringing activity and profited from it.

**Sliding Scale.** The Solicitor General of the United States advocated different tests for liability depending on the relative amount of infringement. On the one extreme, when a technology is overwhelmingly used for infringing purposes, and the commercial viability of the product is dependent on the infringing uses, there should be liability. On the other end of the spectrum, there should be no liability if the primary use of the product is noninfringing. In between these extremes—when infringing uses predominant but are not overwhelming—a court should consider “subsidiary indicia,” such as what steps the seller could have taken—but didn’t—to eliminate infringement. This is somewhat different from the *Aimster* approach, because *Aimster* considers preventative measures even when the predominant use is noninfringing, while the Solicitor General would consider such measures only when the predominant use is infringing. The motion picture and recording industry Petitioners seem to agree with the Solicitor General on this point.

## Inducement

Many amici filing in the Petitioners’ round asserted that certain conduct that induces infringement falls outside of the scope of the *Betamax* defense, and that the provider of the technology could incur liability for engaging in such conduct. However, there were significant disagreements concerning the type of conduct that might trigger liability.

**Inducing Acts Other Than Design and Distribution.** Several of the technology associations that advocated a plain language reading of *Betamax* asserted that a provider could incur liability for acts *other than the design and distribution of the technology* that encouraged infringement. For example, instructions on how to use the technology to engage in specific acts of infringement could lead to liability. See, e.g., Brief of Business Software Alliance.

**Inducing Acts Including Design and Distribution.** Petitioners and entertainment amici argued more broadly that if a provider engaged in a pattern of encouraging or assisting infringement, where part of the pattern was providing a technology with certain functionalities, liability could attach. Several amici (e.g., the National Association of Recording Merchandisers) stated that a business model based on encouraging mass infringement should lead to liability. To some extent, this “encouragement” approach is predicated on the existence

of a continuing relationship between the provider and the user, which was absent in *Betamax*. See, e.g., Brief of Macrovision.

## Rejection of *Betamax*

Several prominent law professors and economists, including David Nimmer and Kenneth Arrow, argued that *Betamax* was wrongly decided, or should be limited to its facts. In its place, they contend, the Court should adopt a comprehensive balancing test, or perform a cost-benefit analysis regarding design choices.

## Vicarious Liability

Several Petitioners’ Round briefs addressed vicarious liability. The Business Software Alliance and the American Intellectual Property Law Association argued that *Betamax* provides a defense to vicarious liability as well as contributory infringement. But a brief filed by Kids First and the Christian Coalition argued that *Betamax* does not provide a defense to vicarious liability because the right and ability to control infringement implies a continuing relationship. A brief filed by 40 state attorneys general argued that the “right and ability to control” prong is satisfied by the ability to redesign a product to prevent infringement. Thus, a provider has the right and ability to control misconduct that it can reasonably foresee and which it can reasonably combat with available technology. As noted above, several amici argued that effective filtering technologies now exist.

## Respondents’ Round

In general, the briefs filed in the Respondents’ round were far more consistent with one another than were the briefs in the Petitioners’ round.

## The *Betamax* Rule

As noted above, the Respondents and their amici did not endorse the Ninth Circuit’s rather idiosyncratic interpretation of *Betamax*. (Rather than finding that *Betamax* provided a complete defense to contributory liability, the Ninth Circuit held that the existence of a substantial noninfringing use meant only that constructive knowledge of infringement could not be presumed.) Instead, the Respondents and their amici universally adopted a plain language interpretation of the “capable of substantial noninfringing uses” rule. They variously argued that:

- (1) the rule so interpreted is good for innovation, free expression, democracy, and education;
- (2) the other interpretations advanced by Petitioners and their amici have no basis in law;
- (3) the other interpretations of *Betamax* would harm innovation and free expression;
- (4) using rigorous economic analysis rather than anecdotal evidence, the overall harmful impact of P2P software is far from clear; and
- (5) reinterpreting the *Betamax* rule would have little positive impact on unlawful P2P file sharing, while it will have a significant negative impact on lawful activity.

Accordingly, Respondents asked the Court to respect *stare decisis* and not overturn or modify the *Betamax* rule.

Respondents and their amici then argued that because the software distributed by Respondents, and P2P

software generally, is capable of substantial noninfringing uses, the Ninth Circuit's decision should be affirmed.

Respondents and some of the *amici* further argued that only Congress has the institutional competence and the legal ability to modify and expand principles of secondary copyright liability.

### Inducement

Some *amici*, including the Consumer Electronics Association and the Computer & Communications Industry Association, argued that the inducement liability advocated by the Petitioners and their *amici* does not exist under current copyright law principles. Other *amici* (such as Intel) argued that even if such a theory does exist, the allegedly inducing acts mentioned by Petitioners all related to earlier releases of the software, which are still before the district court and thus are not before the Supreme Court now.

### Vicarious Liability

Numerous *amici*, including the United States Telecommunications Association and the Cellular Telecommunications and Internet Association, asserted that *Betamax* provided a defense to vicarious liability. Others, such as Intel, rejected Petitioners' argument that the ability to redesign constitutes the "right and ability to control" infringement. A group of computer scientists responded to the argument made by Petitioners and their *amici* that existing filtering technologies could effectively reduce infringement. These *amici* observed that the filters could be easily circumvented and thus would have little impact on infringement.

### Other Arguments

A group of law professors questioned the premise that underlay this entire case: that file trading constitutes an infringement. They argued that in this and other file sharing cases (*Napster* and *Aimster*), no direct infringers had been named as defendants, and thus the issue of whether file trading was an infringement had not been fully explored. They further argued that many acts of file trading could constitute a fair use.

Finally, two briefs (filed by Sharman Networks and a group of 60 law professors) argued that the plain language interpretation of the *Betamax* rule was consistent with international law. The copyright and other intellectual property law treaties to which the United States is a party are silent on the issue of secondary liability; and the secondary liability regimes in other countries are no stricter, and often are more lenient, than the *Betamax* rule.

### Petitioners' Reply Briefs

The motion picture and recording industry Petitioners responded to the legal arguments made by Respondents and their *amici*. They contended that the Court's

use of the word "capable" in the *Betamax* Rule "might be best understood as referring to those situations in which a product or service has not yet been brought to market at all, and thus is not in wide use for any purpose. In that narrow set of circumstances, it may be appropriate to consider whether the product will be widely put to such use when introduced." They also stressed that they were not seeking to outlaw P2P technology, but rather a business model built on infringing uses of P2P. They noted that Respondents continued to expand a network used for mass infringement when they knew, to a moral certainty, that virtually every new user was joining for the same illegitimate purpose.

The songwriter Petitioners responded to the policy arguments made by Respondents and their *amici*. In particular, they argued that the Respondents' products had inflicted serious harm upon them. They further asserted that courts had never interpreted the *Betamax* rule in the bright line, plain language manner advocated by Petitioners; despite that, the technology industry has flourished.

### Conclusion

The parties and their *amici* have offered the Supreme Court numerous interpretations of *Betamax*. All the technology associations support a plain language interpretation, but the entertainment industry is more fragmented concerning how *Betamax* should be applied to the facts in *Grokster*. Similarly, the technology associations strongly oppose any test for liability that considers the ability to design the product differently so as to prevent or reduce infringement. In contrast, the entertainment companies embrace such an approach.

Twenty law professors support the Petitioners, but over 80 support the Respondents. Ten economists support Petitioners, and five support the Respondents. Seventeen computer scientists and 21 professors of communications and media studies support the Respondents; none filed in favor of Petitioners.

Conservative groups were split: Americans for Tax Reform, Defenders of Property Rights, and the Christian Coalition filed on with the Petitioners, while the American Conservative Union, the National Taxpayers Union, and Phylis Schlafly's Eagle Forum filed with Respondents. Conversely, "liberal" public interest groups were solidly behind the Respondents, including the American Civil Liberties Union, Consumers Union, and Consumer Federation of America. But the state attorneys general, who are charged with protecting consumers, sided with the Petitioners.

Given this diversity of views, the Court's ruling cannot be predicted with any confidence.

*A detailed chart outlining the positions of many amici on a variety of secondary liability issues is reprinted on the following pages. The chart is also available in Microsoft Word format at <http://pub.bna.com/eclr/groktabl.doc>*

## SUMMARY OF LEGAL ARGUMENTS ADVANCED IN GROKSTER BRIEFINGS

PETITIONERS' ROUND: WHEN DOES BETAMAX APPLY?						
Not if There Is Actual Knowledge or Willful Blindness	Not if There Are Substantial Infringing Uses and Available Means to Prevent Them	Principal or Primary Use Noninfringing	Reasonable Possibility of Substantial Noninfringing Uses	Merely Capable of Substantial Noninfringing Uses		
<p><b>NAB</b> Taking affirmative steps to evade responsibility for infringement, while profiting from it, leads to liability.</p> <p><b>Country Music Association</b></p> <p><b>NARM</b></p> <p><b>State AGs</b></p> <p><i>Betamax</i> does not apply when defendant was actively aware of and intended infringement</p> <p><b>Petitioners' Reply</b> Liability when continue to expand network used for mass infringement when know to a moral certainty that virtually every new user is doing so for same illegitimate purpose</p>	<p><i>Aimster</i> <b>Supported By:</b></p> <p><b>VSDA</b></p> <p><b>Songwriter Petitioners</b></p> <p><b>Sports Leagues</b> Different facts between here and <i>Betamax</i> justify <i>Aimster</i> approach</p> <p><b>NARM</b></p> <p><i>Aimster</i> <b>Opposed By:</b></p> <p><b>BSA</b></p> <p><b>DIMA/NC</b></p> <p><b>IEEE</b></p>	<p><b>Petitioners</b> (also: when primary use infringing and there is a way to block them without affecting noninfringing uses) – Commercial viability not relevant</p> <p><b>ASCAP/BMI</b> – Noninfringing uses must be probable, not merely possible – Liability if infringing uses predominate over lawful ones</p> <p><b>Napster</b> – In <i>Betamax</i>, predominant use noninfringing – involved only reproduction, not distribution</p> <p><b>NARM</b></p>	<p><b>DIMA/NC</b> If there exists a reasonable possibility that there will be substantial current or future use of a technology for noninfringing activities, the provider of the technology is not secondarily liable.</p>	<p><b>BSA</b> Where technology is capable of substantial or commercially significant non-infringing uses, and distributor has no direct involvement with any infringing activity, then no liability (design, manufacture, general advertising customer support, product manuals, upgrades).</p> <p><b>Hollaar, IPO</b> potential, not imaginary or illusory</p> <p><b>AIPLA</b> “a potential noninfringing use is not necessarily deficient, a noninfringing use that is merely a physical possibility may not be sufficient.”</p>		
		<b>Solicitor General's Sliding Scale</b>				
				primary purpose noninfringing = no liability	50% > x > 10% subsidiary indicia a) how product marketed b) efficiency of product for noninfringing use c) what steps may seller take to eliminate or discourage infringement	overwhelming infringing use and commercial viability dependent on infringing use = liability
				But not overwhelming infringing use: <b>NAB, ATR, DPR, International Rights Owners</b>		

<b>PETITIONERS' ROUND: CONDUCT OUTSIDE OF BETAMAX</b>	
<b>Intentional Facilitation of Infringement, Including Design Decisions</b>	<b>Conduct Other Than Design That Encourages Infringement</b>
<p style="text-align: center;"><b>Petitioners</b></p> <ul style="list-style-type: none"> <li>- more than mere sale</li> <li>- marketing infringing use</li> <li>- cites <i>Dyncore</i>; if in addition to sale, active steps are taken to encourage direct infringement</li> <li>- But discussion of pattern of encouraging and assisting seems to include many design elements</li> </ul> <p style="text-align: center;"><b>AIPLA</b></p> <p>Active inducement when distributor intends product to be used to infringe, even when product has substantial noninfringing uses (e.g., supply to known infringer)</p> <ul style="list-style-type: none"> <li>- knowledge of infringement suggests intent to facilitate infringement</li> </ul> <p style="text-align: center;"><b>Hollaar</b></p> <p>Intentional and knowing inducement of infringement - applies to acts beyond mere distribution. Circumstantial evidence includes:</p> <ul style="list-style-type: none"> <li>- reliance on infringement for commercial viability;</li> <li>- instruction on infringing use</li> <li>- adding features to conceal infringement</li> <li>- replacing an infringing system (unless takes steps to reduce infringement)</li> </ul> <p style="text-align: center;"><b>PFF</b></p> <p>Business should be held liable if it encapsulates a technology within a web of practices that make the enterprise deliberately dependant on infringements</p> <p>Business practices include:</p> <ul style="list-style-type: none"> <li>- default settings</li> <li>- performance enhancements if upload more</li> <li>- continuing relationships</li> </ul> <p style="text-align: center;"><b>ATR</b></p> <p>Business model built on encouraging mass theft of copyrighted works</p> <ul style="list-style-type: none"> <li>- designed network to emulate Napster</li> <li>- modify to make detection more difficult</li> <li>- aids and abets unlawful conduct</li> <li>- more revenue if more infringement</li> </ul> <p style="text-align: center;"><b>NARM</b></p> <p>Business model based on infringement</p> <ul style="list-style-type: none"> <li>- provide site and facilities for infringement</li> <li>- conscious effort to evade liability</li> </ul> <p style="text-align: center;"><b>Macrovision</b></p> <ul style="list-style-type: none"> <li>- Provide services over which they maintain and exercise control on ongoing basis</li> </ul> <p style="text-align: center;"><b>DPR</b></p> <ul style="list-style-type: none"> <li>- defendants took affirmative steps to assist and encourage infringement</li> <li>- configured service to facilitate illegal copying</li> <li>- limit own ability to prevent infringement</li> <li>- "design, marketing, and support activities directly assist infringers"</li> </ul>	<p style="text-align: center;"><b>IEEE</b></p> <ul style="list-style-type: none"> <li>(i) an overt act that actually induces another to engage in infringing conduct exclusive from mere provision of a dual use technology (or incidental conduct, e.g., general advertising or product information);</li> <li>(ii) knowledge that the induced conduct constitutes infringement;</li> <li>(iii) intent that the induced acts would occur.</li> </ul> <p style="text-align: center;"><b>IPO</b></p> <ul style="list-style-type: none"> <li>- Objective action (objectively promotional behavior) that encourages infringement (safe harbor for honest developer of infringement-neutral systems)</li> <li>- Subjective intent that infringement would result (circumstantial evidence - termination of or failure to implement filters)</li> </ul> <p style="text-align: center;"><b>BSA</b></p> <p>Activities beyond development, general advertising, distribution, and ordinary customer service that entail knowing and material encouragement of infringement such as teaching how to use technology for particular infringement</p> <p style="text-align: center;"><b>DIMA/NC</b></p> <p><i>Betamax</i> does not shield vendor who, with knowledge of infringement, actively encourages user to infringe copyright</p> <p>But</p> <ul style="list-style-type: none"> <li>- no liability merely because company profits from infringing use</li> <li>- designer's purpose irrelevant</li> <li>- ongoing relationship does not constitute encouragement</li> <li>- No act relating to design, manufacture, general advertising, routine support, or distribution should lead to liability</li> <li>- acts not related to design, etc., should be evaluated pursuant to traditional criteria</li> <li>- Remedy narrowly tailored to violation - remedy for active encouragement limited to that activity, and cannot reach underlying technology.</li> </ul> <p style="text-align: center;"><b>Solicitor General</b></p> <p>Liability for active role in inducing infringement.</p> <ul style="list-style-type: none"> <li>- marketed networks as optimally suited for infringement.</li> <li>- advised users how to download infringing options</li> </ul>

<b>PETITIONERS' ROUND: FORGET BETAMAX</b>	
<b>Menell/Nimmer</b>	
<ul style="list-style-type: none"> <li>- Supreme Court should not have imported § 271(c) from Patent Act</li> <li>- Instead, court should adopt comprehensive balancing test:                             <ul style="list-style-type: none"> <li>■ knowledge of infringing use</li> <li>■ designed purposefully to evade liability</li> <li>■ can non-infringing use be achieved for most consumers through other, less-infringing, means?</li> <li>■ cost of enforcement</li> </ul> </li> </ul>	
<b>Arrow/Ayres</b>	
<ul style="list-style-type: none"> <li>- <i>Betamax</i> rule gives manufacturers no incentive to deter infringement even when deterrence could be accomplished at low cost and without significant interference with non-infringing uses</li> <li>- <i>Betamax</i> mistakenly considers non-infringing uses in isolation, rather than evaluating them in light of substitute mechanisms already available to accomplish the same ends</li> </ul>	
<b>Gibson</b>	
<ul style="list-style-type: none"> <li>- Technology has rendered <i>Betamax</i> obsolete</li> <li>- Under <i>Betamax</i>, non-infringing uses must be both substantial and commercially significant</li> <li>- <i>Betamax</i> does not apply where infringing activity known and principal use</li> <li>- design choices should trigger liability; cost/benefit analysis must be employed</li> </ul>	

<b>PETITIONERS' ROUND: VICARIOUS LIABILITY</b>			
<b><i>Betamax</i> No Defense</b>	<b>Ability to Redesign is Control</b>	<b>Ability to Redesign is Not Control</b>	<b><i>Betamax</i> Provides Defense</b>
<p style="text-align: center;"><b>Petitioners</b></p> <p>had control over users to whom outsourced indexing function; elimination of log-in feature doesn't eliminate control</p> <p style="text-align: center;"><b>Kids First</b></p> <p>Continuing relationship with infringers triggers liability; if lacked ability to supervise it was out of choice not technological constraints</p> <ul style="list-style-type: none"> <li>- technological advancements eliminate all or nothing <i>Betamax</i> choice</li> </ul>	<p style="text-align: center;"><b>Petitioners</b></p> <ul style="list-style-type: none"> <li>- Financial benefit creates obligation on business to adopt measures to prevent infringement.</li> <li>- Failed to implement with respect to both existing and new ones</li> </ul> <p style="text-align: center;"><b>State AGs</b></p> <p>P2P network designer has the right and ability to supervise and control misconduct that it can reasonably foresee and which it can reasonably combat with available technology.</p> <ul style="list-style-type: none"> <li>- Software code regulates conduct (citing Lessig)</li> <li>- Affirmatively choose not to prevent illicit sharing—choose not to supervise and control at code level</li> <li>- Product liability model</li> </ul> <p style="text-align: center;"><b>iMesh.com; Snocap; Audible Magic</b></p> <p>Effective filtering technology now exists</p> <p style="text-align: center;"><b>Directors Guild</b></p>	<p><b>SG</b></p> <p><b>DIMA/NC</b></p> <p><b>AIPLA</b></p>	<p><b>BSA</b></p> <p><b>DIMA/NC</b></p> <p><b>AIPLA</b></p>

**RESPONDENTS' ROUND: NO LIABILITY UNDER BETAMAX****A. The *Betamax* Rule Is That No Secondary Liability Attaches to the Distribution of a Product That Is Capable of Substantial Noninfringing Uses.**

Respondents (Normal incidents of distribution)

Intel	CEA/CCIA	Eagle
NVCA	ACU	Consumers
Telcos	Nesson	Innovation Scholars
NASCAT	ACLU/Libraries	FSF
Moritz Law Profs	Emerging Comp.	Musicians
Berkman Law Profs	DCIA	Media Profs
Samuelson Law Profs (Capable = reasonable possibility of or suitability for noninfringing use)		

**1) *Betamax* Rule is good for innovation and First Amendment values.**

Respondents	Berkman Law Profs	DCIA
Intel	CEA/CCIA	Eagle
NVCA	ACU	Consumers
Creative Commons	Nesson	Innovation Scholars
Telcos	ACLU/Libraries	Musicians
Moritz Law Profs	Emerging Comp.	Media Profs (education)

**2) Other interpretations (primary purpose, *Aimster*/redesign, commercial viability) have no basis in law.**

Respondents	CEA/CCIA	Samuelson Law Profs
Intel	DCIA	FSF
Telcos	Eagle	Media Profs
NASCAT	Consumers	

**3) Other interpretations will harm innovation and free speech.**

Respondents	ACU	Eagle
Intel	Moritz Law Profs	Consumers
NVCA	Berkman Law Profs	Innovation Scholars
Creative Commons	CEA/CCIA	Samuelson Law Prof
Telcos	ACLU/Libraries	FSF
NASCAT (Antitrust concerns)	Emerging Comp.	Musicians
Computer Scientists	DCIA	Media Profs

**4) *Stare decisis* weighs against modification.**

Respondents

**5) Overall harmful impact of P2P uncertain.**

Respondents	Berkman Law Profs
Economists	Innovation Scholars

**6) Reinterpreting *Betamax* will have little impact on P2P infringement.**

Consumers	Economists
CEA/CCIA	Innovation Scholars

**B. P2P Software Is Capable of Substantial Noninfringing Uses**

Respondents	ACLU/Libraries	FSF
Creative Commons	ACU	Musicians
Mortiz Law Profs	Eagle	Media Profs
Nesson	Innovation Scholars	

**C. Congress is the Proper Forum for Addressing Technology-Specific Solutions**

Respondents	Berkman Law Profs	Eagle
Lessig	ACU	Innovation Scholars
Telcos	Sharman	Samuelson Law Profs
NASCAT	Altnet	FSF
Pollack Law Profs		

