

started watching." Now she watches the show weekly when it airs, enlarging the market for UPN's advertisers. Are entertainment companies are now making the same mistake they made 21 years ago?

Legitimate uses evolving

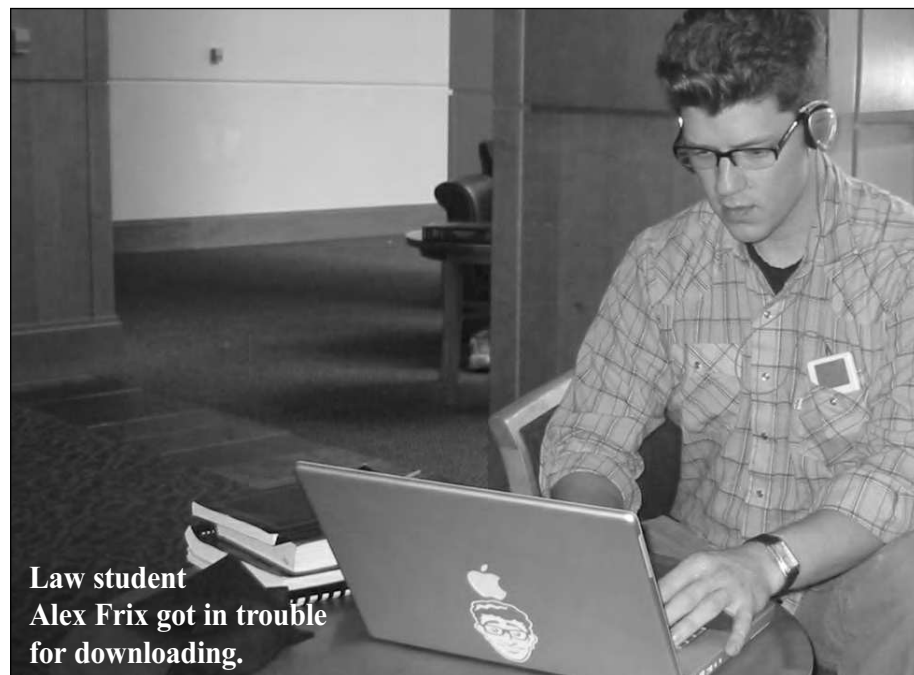
If the Supreme Court decides to stick with the *Sony* standard in *Grokster*, the justices will have to decide whether file-sharing services have significant, legitimate uses. While Napster's lawyers failed to make the case in court that the service was being used by almost anyone for legal purposes, newer file-sharing technologies have started to find fully legal uses. One of the newest, and the perhaps the best developed to date, peer-to-peer program, BitTorrent, is used by many to download legal material. Etree runs a site (<http://bt.etrue.org>) that offers BitTorrent downloads of concert recordings of "taper-friendly" bands who have explicitly given fans permission to record their performances and to freely distribute the tapes. With the BitTorrent software and a high-speed connection, you can go to Etree and download a super-high quality recording of a 1978 Grateful Dead concert at Mac Court in just an hour or two.

"Digital rights" activist groups such as the Electronic Frontier Foundation are strong advocates for the legality of file-sharing programs. Fred von Lohmann, an EFF attorney, fears that if *Grokster* is decided in favor of the movie studios, the result will be "the installation of Hollywood lawyers in every technology company's engineering meetings" and a serious harm to innovation. The justices might

agree: At oral argument, several asked questions about how ruling for MGM might prevent companies from inventing products like the iPod.

Owning Congress

Professor Keith Aoki, the UO School of Law's intellectual property expert, thinks that



Law student Alex Frix got in trouble for downloading.

DANIEL EPPS

the Supreme Court might actually vote to uphold the Ninth Circuit, allowing *Grokster* and others to keep distributing their software. He notes that even some of the most conservative justices have shown a preference for the free market over strong intellectual property rights.

However, he isn't optimistic about the current and future state of intellectual property. "Congress is in the pocket of the recording industry," he says. "In 1998, they passed the Digital Millennium Copyright Act which was an incredibly far-reaching extension of copyright laws. And now, just a few years later, the recording and entertainment industries are demanding even stronger copyright protec-

hard drives of copyright infringers was given serious consideration in the U.S. House. He warns that even if the Supreme Court rules that the creators of non-centralized, peer-to-peer file sharing services are not liable under current laws, it's possible that Congress will simply create a new kind of liability. "Inducement liability," as it has been named by its proponents, would make inventors of programs like *Grokster* and *KaZaA* responsible for the acts of those who use their inventions, even if indirect and unintended.

Congress' willingness to create new kinds of liability at the request of the entertainment industry is troubling. Through numerous incremental changes, American copyright law has quietly and quickly undergone radical extension over the last few decades. Copyrights, which at one point in American history lasted only 28 years, have been repeatedly increased by Congress; as of 1998, they can last as much as the life of the author plus 95 years.

Critics point out that for the most part the beneficiaries of such long copyright extensions are almost all corporations who own wildly successful franchises. They are quick to point out that Disney was about to face the copyright expiration of some of the earliest Mickey Mouse cartoons before the passage of the most recent extension, for which the company lobbied aggressively. Many think Congress' concern over downloading has more to do with corporate welfare than a sense of justice. "If we're going to punish companies who make products with illegal or dangerous uses, why isn't Congress going after the gun industry, the alcohol industry or the car industry as well?" Aoki asks.

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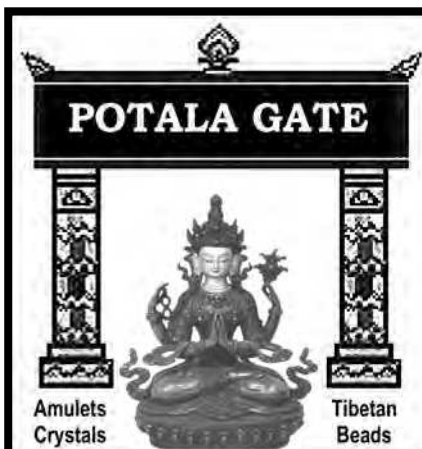


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