



## Issue Analysis

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# Expanding the Market's Role in Advancing Intellectual Property

by James Plummer

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## Introduction

As processing power and bandwidth expand, the cost of replicating and distributing digital content like music and movies is rapidly approaching zero. Technological advances are changing the way consumers spend their entertainment dollars and make use of copyrighted culture and content.

This new landscape provides the entertainment industry an opportunity to reevaluate many of the economic assumptions under which they have operated for decades. Is the current system of extremely long copyright, backed by criminal prosecution, the most efficient method to advance copyright's constitutional justification, "to promote the progress of science and the useful arts"?

Congress has noted the entertainment content producers and copyright holders' concerns over exponential technological progress and acted on it. The 1997 Digital Millennium Copyright Act (DMCA) made it illegal to circumvent copyright protection technology and ordered Internet service providers (ISPs) to take steps to identify any user who posts copyrighted material on their servers. Major content owners—the recording and the film industries—have asked courts to construe the latter provision to also apply to consumers who share files from their own hard drive on peer-to-peer (P2P) networks.

The major recording and film industries now also seek policies that could effectively outlaw file sharing itself. In the *MGM vs. Grokster* case, the film studios seek to hold file-sharing software manufacturers liable for copyright infringement by people buying their products. After losing in the Ninth Circuit Court of Appeals, the plaintiffs have brought the case to the Supreme Court. A ruling is expected in June on the arguments made March 29.

Members of the 108th Congress, taking to heart concerns that threats of fines are an insufficient deterrent, sought to clamp down on file sharing by introducing legislation like the Author, Consumer and Computer Owner Protection and Security Act of 2003 (ACCOPS), which would have imposed prison sentences of up to five years and fines of up to \$250,000 for sharing a file via P2P. The Inducing Infringements of Copyright Act, also considered by the 108th Congress, like the DMCA, would have extended contributory liability to P2P technology itself, effectively banning it with the threat of both fines and jail time.

The rapid progression of technology and, concomitantly, consumer preferences and behavior, poses problems for the content industries' dominant paradigms and business models as configured today. Enforcement costs for protection of old models—encouraged and calcified by congressional expansion (and court ratification) of the length of copyright

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## About the Author

James Plummer is an Adjunct Analyst at the Competitive Enterprise Institute, a Washington, D.C.-based public interest group dedicated to the principles of free enterprise and limited government. He is also the Policy Director for the Liberty Coalition, a network of groups working on privacy and Bill of Rights issues. He has also served as Director of the National Consumer Coalition's Privacy Group and is a former Policy Analyst for Consumer Alert.

Plummer has been published in several newspapers and magazines, including *The Washington Times*, *Consumers' Research*, *Houston Chronicle*, *Washington Post*, *Buffalo News*, *Seattle Times*, *Information Week*, *Reason*, and *Ideas on Liberty*. He was a two-time winner of the Felix Morley Journalism Prize and recipient of a Virginia Press Association Award for Editorial Page Editing.

He has received an M.A. in Economics from George Mason University, where his studies concentrated on Public Choice theory.

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