



GrayZone Digest October 1996

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Legal Highlights

Busts and Raids

More than 85,000 counterfeit audio tapes were confiscated and 14 people arrested as police busted a citywide ring that specialized in cheap rip-offs of best-selling popular albums. Raids over the last six days in Staten Island, Queens and the Bronx, on the heels of a nine month investigation, yielded approximately 3,000 master tapes and electronic equipment.

Katherine Timon, an attorney for the Recording Industry Association of America (RIAA), said pirated tapes hurt small record stores that can't compete with the low pricing, and the city and the state, which cannot collect taxes on the illicit recordings. "It is not a victimless crime," she said. The ring distributed the products not only in the city, she added, but also in the South and Midwest.

The operation had the potential to produce 10 million tapes a year - costing the recording industry \$90 million in lost revenues annually. Those arrested were charged with possession of forgery devices, counterfeiting trademarks, and failure to disclose the origin of a sound recording.

(New York Daily News, Sept.27, 1996 - Rafael Olmeda and Wendell Jamieson; Staten Island Advance, Sept.20, 1996 - Tom Wroblewski)

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Worldwide Update

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Bahrain

Last June, the Department of Censorship and Copyright Protection at the Ministry of Cabinet Affairs and Information launched an inspection campaign against a large number of video stores, bookstores, toys and computer retail stores suspected of copyright violations. The raids resulted in enforcement measures taken against infringing stores, ranging from statutory warnings to temporary shutdowns.

The Ministry of Cabinet Affairs and Information also called upon all dealers in literary and artistic works to comply with the provisions of the copyright law as well as with censorship regulations, and to contact the ministry with any questions relating to the applicable regulations.

(Copyright World, September 1996 Issue 63)

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China

Washington

U.S. Trade Representative Charlene Barshefsky said China has made progress in enforcing a copyright protection agreement. At a House Ways and Means subcommittee meeting, Barshefsky described 15 CD factories that were shut down by authorities, and remain closed. She also said that China has clamped down on the import of illegal CD presses, strengthened border enforcement and intensified raids against copyright pirates, while making progress in allowing opportunities for American music, film and software industries in China.

(Reuters/Variety Sept.19, 1996)

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Hong Kong

The Microsoft Corporation has initiated legal proceedings against the Hong Kong company Buz Buz Limited for copyright infringement. Microsoft claims that the company has continued its illegal practice of 'hard disc loading' despite having reached a settlement with the American giant last year. In June of 1995, Buz Buz (also known as PC Buz Buz) paid damages and costs for copyright infringement, and offered Microsoft a legal undertaking to refrain from all copyright infringement in the future. 'Hard disc loading' is the practice computer dealers employ to copy illegal software onto personal computer hard drives, which lends additional incentive for end users.

(Copyright World September 1996 Issue 63)

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Luxembourg

Brussels

Responding to a complaint issued by the International Federation for the Phonographic Industry (IFPI), the head of intellectual property rights at Luxembourg's economics ministry said laws would be passed this year bringing the Grand Duchy into line with the rest of the European Union. The IFPI had asked the European Commission to take legal action against Luxembourg, claiming that between one and two million bootleg CDs entered the EU from the Grand Duchy each year.

IFPI legal advisor, Stefan Krawczyk said there were two areas where Luxembourg was allowing copyright law to be flouted -- direct bootlegs and so-called "back catalogs." The latter involves manufacturers producing CDs first recorded less than 50 years ago. EU law says the copyright only falls into the public domain after half a century, but in Luxembourg the period is 30 years. Luxembourg has completed drafting a law which will be presented to parliament on October 8. (Reuters/Variety Sept.10, 1996 - David Fox)

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Peru

Lima

Peru's pirate music cassette industry has grown to such an extent that pirates sell eight times more cassettes than the official retail outlets. With legal sales approaching 1 million cassettes per year, recording industry representatives calculate that pirates cost them \$8 million annually in lost revenue. While it is easy to purchase cheap, pirated cassettes, the pirate producers are much more elusive. A reliable anonymous source indicated that anti-piracy operations are complex. Weak legislation, lack of law enforcement resources, corruption and widespread poverty have crippled many investigations.

Authorities acknowledge that laws were previously ineffective, but Ruben Ugarteche, head of the Author's Rights section of the three-year-old government watchdog agency, Indecopi, claimed that since May, a new law has given officials added clout. The new legislation increases the maximum prison sentence for pirates from four to eight years, which is significant because police cannot detain suspects for any offense that carries a sentence of four years or less.

It also allows for the seizure and destruction of pirate goods, which, in the past, were not destroyed and would, ironically, be returned to the culprits. Indecopi says it has imposed fines of \$600,000 in the past three years for copyright infractions. Recently, Peru's music consumers are opting to purchase compact disc players. Music retailers claim their profits now depends on CDs, currently an untapped market by the pirates.

(UPI @ clari.net Sept.5, 1996 - Jane Holligan)

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Multimedia

Philips Electronics NV announced it was confident that issues hindering the widespread introduction of a new high capacity video disc technology were close to being resolved. During a Digital Video Disc (DVD) forum in Brussels, Philips Key Modules managing director Jan Oosterveld presented a proposal on encryption aimed at assuaging primarily movie industry concerns about the potential piracy of its catalogs.

The consortium, consisting of companies from Japan, Europe and the U.S., has convened to support a single standard. Top electronics firms last year agreed on a technical format for DVD, clearing the way for a multi-billion dollar market. "You're dealing with four or five different industry groupings. The interests at stake are quite clear; the software industry want to protect their assets and we all agree that software availability will be key to the success of DVD-Video," Oosterveld said.

Industry observers said the key issue for the global success of the format will be availability of publishable material. "Most major studios have said that they will release titles once a copyright protection system is agreed upon and in place," Oosterveld added. Philips, which plans to introduce its DVD players next year,

sees industry-wide sales of 250 million optical drives by the year 2000, 10 percent of which will be DVDs.

(Reuters, Sept.16, 1996 - Keiron Henderson)

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Internet

New York

U.S. District Judge Sidney Stein dismissed a trademark lawsuit brought by New York's legendary Blue Note jazz club against a Missouri college nightspot with the same name that is promoted on the Internet. The lawsuit was filed by Bensusan Restaurant Corporation, the founder of New York's Blue Note, and the owner of its trademark. Defendant Richard King, who owns the nightclub of the same name in Columbia, Missouri, claims his Blue Note is primarily patronized by University of Missouri students. King began using the name Blue Note for his club in 1980 and Bensusan registered the trademark in 1985. Because King used the name first, he had a common law right to retain its use, but solely in Missouri.

In April, King introduced his web site, "Blue Note Cyberspot," which provided general information about his club as well as a calendar of events and ticket information. Bensusan argued that by placing the information on the Internet, King had extended the use of the name outside of the state of Missouri. Judge Stein dismissed the case for lack of jurisdiction after determining that King was merely attempting to attract patrons. Stein said the issue concerned whether King's use of his Web site as a box office constituted an offer to sell product in New York. There was no proof that any tickets were shipped to New York or that any wrongful activity occurred at the web site. "The mere fact that a person can gain information on the allegedly infringing product is not the equivalent of a person advertising, promoting, selling or otherwise making an effort to target its product in New York," Stein said.

(Reuters Sept.9, 1996 - Gail Appleson, Law Correspondent)

Curtis Management Group (CMG), an Indiana licensing agent that represents the James Dean Foundation Trust, has filed a lawsuit against American Legends, charging the California company with posting the signature and several photographs of the late movie star James Dean on its Internet web site, [American Legends](#). The plaintiff alleges that a promotion for a book on James Dean, located on American Legends' site, contains Mr. Dean's name, signature and other visual depictions of the late star, and also displays the CMG trademark. CMG alleges misappropriation of name and likeness, violation of the Indiana and California right of publicity statutes, unfair competition and trademark dilution. CMG is seeking damages and injunctive relief.

(Multimedia Strategist, August 1996)

The Software Publishers Association (SPA) has filed a civil copyright infringement lawsuit against Seattle resident Max Butler for allegedly distributing software illegally over the Internet. The suit, filed in a Seattle federal district court, on behalf of plaintiffs Cinco Network Inc., Symantec Corp. and Traveling Software Inc., charges that while Butler worked as a temporary employee for a subsidiary of CompuServe, he copied the plaintiff's software from a computer located in CompuServe's Bellevue, Washington office. The plaintiffs seek damages and

injunctive relief. (Multimedia Strategist, August 1996)

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