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Napster: Loses Court Battle, Offers \$1 Billion Settlement

To Quote...

"This is a clear victory. The court of appeals found that the injunction is not only warranted, but required. And it ruled in our favor on every legal issue presented." Hilary Rosen, President and Chief Executive of the Recording Industry Association of America

"We are delighted that the court has upheld the rights of all artists to protect and control their creative efforts. All we have ever asked is that artists be able to control how, when and in what form their creativity is distributed through these channels." Metallica

"Metallica Hails Napster Decision as Music Downloads Continue"; CNN.com, February 13, 2001 <http://www.cnn.com/2001/LAW/02/12/napster.decision.05/>

"The importance of Napster is a downward trajectory at this point."

(Eric Scheirer, market research analyst, Forrester Research) "Napster's Clouded Future"; The New York Times, February 14, 2001 (Matt Richtel);

<http://www.nytimes.com/2001/02/14/technology/14NAPS.html>

"This decision is a victory for all those who want to develop a legitimate on-line music business."

Jay Berman, Chairman and CEO of International Federation of the Phonographic Industry; IFPI Press Release, February 12, 2001; <http://www.grayzone.com/ifpi21201.htm>

"We divide the world into two kinds of people: those who respect the rights of creators and owners of intellectual property to determine how and when their property is used, and those who do not."

Richard Parsons, AOL Time Warner Co-Chief Operating Officer; "A House Divided Cannot Stand"; Remarks to the Recording Academy Entertainment Law Initiative; Regent Beverly, California - February 20, 2001.

Read his entire speech:

<http://www.aoltime Warner.com/press/speeches/parsons/Parsons022001.htm>

A federal appeals court ruled February 12 that the music-swapping service Napster must stop trading in copyrighted materials and may be held liable for "vicarious copyright infringement."

Napster must prevent users from gaining access to copyright content through its lists of songs archived by the service's users, the 9th U.S. Circuit of Appeals said. Napster officials said such a ruling could force them to shut down the service.

Napster press conference transcript: <http://www.napster.com/pressroom/pr/010212.html>

In a 58-page opinion, a three-judge panel told a lower court judge to rewrite her injunction to focus more narrowly on the copyrighted material. The panel also directed the Redwood City-based company to remove links to users trading copyrighted songs stored as MP3 files.

(Read the court's decision: <http://news.findlaw.com/cnn/docs/napster/napsterop0212.pdf>)

Webnoize (<http://www.webnoize.com>), a web site that monitors the digital entertainment industry, estimated that 250 million songs were downloaded using Napster on the weekend following the court's decision. Webnoize.com claimed that, on average, 1.5 million users were logged on to Napster at any one time.

However, on February 20, with a stark admission that it cannot survive alone, Napster proposed a \$1 billion settlement with the major and independent record labels to end the lawsuit threatening to shut down the free Internet song-swapping service. Under the proposed settlement, \$150 million would be paid annually for the first five years to the major record labels - Sony, Warner, BMG, EMI and Universal - with an additional \$50 million allotted annually for independent labels.

IFPI General Counsel Allen Dixon was not impressed: "We are disappointed that Napster has resorted to a tactic which is little more than a public relations gambit," said Dixon in a terse press release issued shortly after Napster's splashy settlement offer, which was made at a highly publicized press conference and not directly to the record companies. On February 23, Napster asked a full federal appeals court to review the three-judge decision that could shut it down, saying that an injunction against the company was too broad and violated its rights to free speech.

Meanwhile, the Recording Industry Association of America (RIAA) sent notices to 75 Internet Service Providers (ISPs) that supply connections to operators asking them to "immediately remove or block access to the infringing material offered via this server." The notices were delivered to ISPs nearly a week after the ruling. "The 9th Circuit court decision confirmed our view that this activity is infringing," said Jonathan Whitehead, anti-piracy counsel for the RIAA. At press time, between 20 and 30 of the ISPs had blocked access to Napster.

For the latest updates please visit the Findlaw.com website at <http://www.findlaw.com/napster/index.html>.

Read More About Napster:

Napster to Start Screening Copyrighted Material; CNN.com/LAW, March 2, 2001
<http://www.cnn.com/2001/LAW/03/02/napster.hearing.03/index.html>

Why Napster Must Die; ZDNet, February 22, 2001 (David Coursey)
<http://www.zdnet.com/anchordesk/stories/story/0,10738,2688600,00.html>

Napster Offers Record Companies \$1 Billion to Settle; CNN.com/LAW, The Associated Press, February 20, 2001
<http://www.cnn.com/2001/LAW/02/20/napster.settlement.ap/index.html>

Excellent overview from CNN.com, February 20, 2001; Napster: Stealing or Sharing?
<http://www.cnn.com/SPECIALS/2001/napster/>

Legal Expert Sees Light Focused on Napster Users; The New York Times, February 16, 2001 (Carl S. Kaplan)

<http://www.nytimes.com/2001/02/16/technology/16CYBERLAW.html?printpage=yes>

The Ninth Circuit's Decision in Napster: The Definitive End to an Era
FindLaw's Writ, February 15, 2001 (Marci Hamilton) (hamilton02@aol.com)
<http://writ.news.findlaw.com/hamilton/20010215.html>

Napster Users Make Plans for the Day the Free Music Dies
The New York Times, February 13, 2001 (Amy Harmon)
<http://www.nytimes.com/2001/02/13/technology/13MUSI.html?pagewanted=all>

1Q Busts

Napster to Launch Fee-Based Service; IDG.net, January 29, 2001 (Joris Evers)
<http://www.cnn.com/2001/TECH/computing/01/29/fee.based.napster.idg/index.html>

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Picture Imperfect

In the largest seizure of its kind in Canada, the Royal Canadian Mounted Police confiscated over 30,000 counterfeit CDs and DVDs after executing several search warrants. Four people were charged with conspiracy to import, sell and manufacture counterfeit and pirated CDs, DVDs, and CD videos.

Pulse24.com, February 15, 2001; http://www.pulse24.com/News/Top_Story/20010215-009/page.asp

FACT: Biggest Euro Video Piracy Bust Ever

Investigators from the Federation Against Copyright Theft (FACT - the Motion Picture Association's anti-piracy arm in the UK) assisted officers from the Norfolk, England County Police in raiding four premises in the Norfolk area involved in Europe's largest known video piracy operation. One person was arrested. Police seized a staggering 1,120 VCRs (600 in use at the time copying "One Flew Over the Cuckoo's Nest"), pirate videocassettes, large quantities of blank videocassettes and artwork. Officials also seized a record 40,000-plus counterfeit videocassettes including "Gladiator," "Mission: Impossible 2," "Saving Private Ryan," "The Matrix," "The Green Mile," "American Pie," among many other major release movies. Contact Emily Kutner (MPA) for additional information: 818-995-6600 x382

MPAA Press Release, February 9, 2001

RIAA, New York Police Shut Down Area CD Pirates

The break-up of a Manhattan counterfeit CD operation led to the confiscation of thousands of alleged illegal CDs and three arrests. The action, which resulted from a search of a distributor of illegal CD-Rs, was carried out by the New York City Police Department assisted by the RIAA.

RIAA Anti-Piracy Release, February 5, 2001; http://www.riaa.com/PR_Story.cfm?id=368

CDs Confiscated in Dallas, Texas

Search warrants executed at two illegal manufacturing facilities in Dallas led to the seizure of over 36,000 alleged counterfeit CD-Rs and cassettes, and many pieces of counterfeit duplication and shrink-wrapping equipment. Seven people were arrested in the late-January raids which were conducted by the Dallas Police Department assisted by members of the RIAA Anti-Piracy Unit in Texas. The two counterfeiting operations were reportedly worth a total in excess of \$50 million annually.

RIAA Anti-Piracy Release, February 5, 2001; http://www.riaa.com/PR_Story.cfm?id=368

IFPI Applauds London Police Breakup of Russian Credit Card Fraud and Pirate CD Ring

The City of London Police Cheque and Credit Card Unit have uncovered the most sophisticated credit card case ever seen in Britain. Russian-made pirate pop CDs were the tipoff that helped police uncover the illicit operation. The pirate music CDs were part of a massive Russian organized crime operation, with couriers of false passports smuggling

supplies from St. Petersburg to a secret counterfeiting factory in North London. The leader of the syndicate and an accomplice - Vladimir Stroguine and Alexander Tanov - pleaded guilty to various conspiracy charges. They were jailed for four years and served a deportation order as their sentences.

IFPI Press Release, January 12, 2001; <http://www.grayzone.com/ifpi011201.htm>; IFPI Press Release, February 2, 2001; <http://www.grayzone.com/ifpi20201.htm>

London Police Break Up Ukraine Pirate Ring

London police seized 10,000 Eastern European-made counterfeit CDs - carrying top best-sellers like the Beatles I, The Spice Girls and Eminem - during Britain's pre-Christmas shopping spree. The CDs were found in a police raid at several private addresses in East London. Investigators believe the CDs originated in Ukraine. Authorities were notified after Heathrow customs officials intercepted the shipment entering the country from Lithuania.

Eastern Europe Brings Pirate CDs for Christmas; IFPI Press Release, December 21, 2000; <http://www.grayzone.com/ifpi122100.htm>

RIAA, New York Authorities Break Up Series of Alleged Pirate Music Operations

Production equipment and thousands of counterfeit CDs were seized, and numerous people were arrested, in November raids targeting counterfeit street distribution as well as illegal sales at store fronts and shopping malls throughout the New York City area. The RIAA assisted New York authorities in breaking up the alleged counterfeit music operations.

RIAA Press Release, November 10, 2000; http://www.riaa.com/PR_Story.cfm?id=354

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RIAA Anti-Piracy Target Sentenced for Counterfeit Operation

Rodger 'Cowboy' Bynum, a convicted music and movie counterfeiter brought to justice through the assistance of the RIAA's Anti-Piracy Unit, was sentenced to 24 months in federal prison and ordered to pay \$290,000 restitution to the RIAA upon completion of his three-year supervised release. Bynum was indicted on felony charges of conspiracy and copyright infringement and pleaded guilty to conspiracy.

RIAA Anti-Piracy Release, February 5, 2001; http://www.riaa.com/PR_Story.cfm?id=368

File-Swapping Site Breaks Under DOJ Pressure

Citing Justice Department concerns, popular web site FreeDrive shut down a file-swapping service created for sharing personal files such as family photos; instead it became a haven for software pirates. The closure reflects a growing movement among software makers and other content providers to target online services they fear are aiding in the proliferation of pirated products.

ZDNet News, January 23, 2001 (John Borland and Lisa Bowman)
<http://www.zdnet.com/zdnn/stories/news/0,4586,2677468,00.html>

Quick Bits and Bytes

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Pirates Beware: We're Watching

The entertainment industry is currently investigating new monitoring applications that allow it to attack online piracy by going directly to the service provider. While music and movie companies continue to work with encryption systems to protect copyrighted material, they realize that digital rights management solutions at the user level can't fully protect their content.

Wired News, January 3, 2001 (Brad King) <http://www.wired.com/news/technology/0.1282.40866.00.html>

New Front Opened Against Online Piracy

A new way to combat piracy - by building a copy-prevention scheme into every hard drive and memory card - is the entertainment industry's latest hope in the war against online piracy. The rights-protection technology uses a combination of encryption and scrambling to prevent unauthorized duplication of copyrighted files. It is the brainchild of IBM, Intel, Toshiba and Matsushita, and is one of several copy-protection schemes designed to meet the criteria set by the recording industry-sponsored Secure Digital Music Initiative (SDMI). The first products could begin appearing by next summer.

The Mercury News, December 29, 2000 (Dawn C. Chmielewski) <http://www.mercurycenter.com/business/top/030421.htm>

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