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## Quarterly Digest

### January 2002

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## Napster Appeals to Congress for Help

The head of Internet music service Napster Inc. asked the U.S. government in early January to force recording companies to share their catalogs with independent digital music sites.

Napster CEO Konrad Hilbers told musicians, lawyers and music-industry officials at a music conference that Congress should consider establishing a mandatory per-song rate that websites such as Napster could pay recording companies if they cannot negotiate their own deals.

"If no agreement between rights holders and new, independent distribution initiatives can be achieved in the short term, Congress will have little choice but to consider the compulsory licensing of sound recordings," Hilbers said.

It is an argument Napster has used since last spring, when the company announced that it intended to pay artists for their music.

Napster attracted more than 60 million users last year, lured by its unlimited supply of free music, but has been in the process of retooling itself as a fee-based service since it was shut down by a court order last July.

Analysts say the company will have a difficult task recapturing an online audience that now can choose from two industry-backed services and a variety of rogue services that provide free, unlimited access as Napster once did.

The growing demand for online music services has led the conglomerates that own the major record companies to create their own channels for distribution. AOL Time Warner, Bertelsmann and EMI Group formed MusicNet, and Universal Music Group and Sony Corp. created Pressplay.

In late September, 2001, Napster reached a preliminary licensing deal with several music publishers.

Under terms of the agreement, Napster agreed to pay \$26 million to songwriters and copyright owners to settle damages for past, unauthorized uses of music and also an advance of \$10 million against future licensing royalties for music used on a new secure, fee-charging service it hopes to launch this year.

"We are pleased to have secured such an important element in creating our new service, one that will benefit songwriters, artists and consumers alike," said Hilbers.

The Los Angeles-based company said the licensing agreement may also settle a class action lawsuit on behalf of publishers against Napster.

Read More About Napster's Legal Issues: <http://www.findlaw.com/napster/index.html>

Napster Head Calls on U.S. Congress for Help; SiliconValley.com, January 7, 2002 (Reuters); <http://www.siliconvalley.com/docs/news/tech/063228.htm>

New Napster Previewed; MP3 Newswire.net, January 2, 2001 (Robert Menta); <http://www.mp3newswire.net/stories/2002/napsterlives.html>

Napster Gets License Deal; CNNfn, September 24, 2001; <http://money.cnn.com/2001/09/24/technology/napster/>

## And On A Related Sour Note: KAZAA Defies Court Order to Shut Down

The Amsterdam district court ruled in late December, 2001 that the KaZaa P2P program is acting unlawfully by making software available that allows users to download music files and must shut down or face \$40,000 a day in fines. So far, KaZaa has not complied with the order.

The company told the court that since the software does not rely on centralized servers, the service could not be shut down. Users have downloaded over 27 million copies of the program and they will be able to continue to trade even if the company folds.

KAZAA Ignores Court Order to Shut Down; MP3newswire.net, December 21, 2001 (Robert Menta); <http://www.mp3newswire.net/stories/2001/kazaa.html>

Hollywood and the Recording Industry Sue the Post-Napsters; CNET News.com, October 3, 2001 (John Borland); <http://news.cnet.com/news/0-1005-200-7389552.html>

RIAA and MPAA sue Morpheus, Grokster and KaZaa; MP3newswire.net, October 3, 2001 (Richard Menta); [http://www.mp3newswire.net/stories/2001/sue\\_morpheus.html](http://www.mp3newswire.net/stories/2001/sue_morpheus.html)

Suit Hits Popular Post-Napster Network; CNETNews.com, October 3, 2001 (John Borland); <http://news.cnet.com/news/0-1005-200-7389552.html>

Read the NMPA Press Release: <http://www.nmpa.org/pr/peer2peermusic.html>

To read more about the ongoing MP3 debate: <http://www.impactmedia.com/mp3/>

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## Beat the Boots: Phish To Continue Live Series

Phish has released the sixth volume of their new "Live Phish" series. The recent release has been a big hit with fans, as all five double-CD volumes hit the Top 200, and each set sold more than 10,000 copies. The current schedule will offer Phish fans six two-disc sets a year, culled from the band's archives, dating back to the mid-Eighties. Read more about the series at the band's official website: [www.phish.com](http://www.phish.com) .

RollingStone.com, October 1, 2001

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## Major Global Piracy Raid Nets Results

In an apparent global software piracy crackdown, law enforcement authorities conducted several raids this past December and made numerous arrests in a sting operation dubbed "Operation Buccaneer." Underway since December 2000, the investigation targeted 62 people in Australia, Finland, England, Norway and the United States. Investigators say they have

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leads in 20 other countries. In London, officers from the National Hi-Tech Crime Unit (NHCTU) arrested and detained six men. Federal law enforcement agents raided major universities such as Duke, MIT and UCLA. Agents seized computers and undergraduate students were questioned by federal agents.

Police Arrest Six in Global Cyberpiracy Probe; Daily News, December 12, 2001 (Reuters); Feds Crack Down on Software Piracy; Nando Times, December 12, 2001 (D. Ian Hooper/Associated Press); <http://www.nandotimes.com/technology/story/193009p-1872000c.html>

Internet Piracy is Suspected as U.S. Agents Raid Campuses; Daily News, December 12, 2001 (Reuters); <http://college4.nytimes.com/guests/articles/2001/12/12/890248.xml>

## Pirate CD Seizures Double in US

In 2001, seizures of pirate CDs in the US have risen more than 133% over the same period in 2000, according to the RIAA. Police seized more than 1.2 million counterfeit CD-Rs and helped shut down almost 9,000 music online sales. The RIAA said that its anti-piracy unit also searched 34 CD manufacturing plants and seized more than 600 CD-R burners. The first half of 2001 also saw an 89% increase in arrests related to music piracy, with the total rising to 1,762.

BBC News, October 9, 2001; [http://news.bbc.co.uk/1/hi/english/entertainment/new\\_media/newsid\\_1588000/1588392.stm](http://news.bbc.co.uk/1/hi/english/entertainment/new_media/newsid_1588000/1588392.stm)

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## Worldwide Update

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### China

## Microsoft Wins Anti-Piracy Pledge From China PCs

In an effort to control piracy, four Chinese personal computer manufacturers recently announced that all new home PC's will be bundled with Microsoft's new operating system (Windows XP). This decision could increase the number of home PC's running legal versions of the software by 50 percent. In China's competitive PC market, distributors often use pirated software in domestic brands in order to lower costs.

FindLaw, December 6, 2001 (Reuters); <http://news.findlaw.com/legalnews/s/20011206/pek24419.html>

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### Hong Kong

## Pirated "Harry Potter" VCDs Magically Appear in Hong Kong

Prior to its December 12 premiere, pirated versions of "Harry Potter and the Sorcerer's Stone" appeared in back street stalls around Hong Kong. Street peddlers were selling the counterfeit copies for \$2.56 each, a fraction of what moviegoers pay. Selling counterfeit goods can lead to a maximum penalty of four years in jail and a HK\$50,000 fine per fake item sold. Approximately 880,000 pirated VCDs were confiscated by customs during the first six months

of 2001 and a total of 1.53 million discs were seized in 2000.

SiliconValley.com, November 27, 2001 (Reuters) <http://www.siliconvalley.com/docs/news/tech/008469.htm>; Detroit News, November 21, 2001

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## Thailand

### **Pirates Crack Microsoft's New Windows System**

Microsoft's new Windows XP operating system was available to Thai computer users one week ahead of its official launch, thanks to software piracy. Hundreds of copies were being sold at \$2.70. Licensed home and office versions in the United States retail between \$99 and \$199. Microsoft officials and vendors said software pirates found ways to circumvent the system's new security features.

FindLaw, November 12, 2001 (Reuters); <http://www.siliconvalley.com/docs/news/tech/015176.htm>

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## Legal Beagle

### **Industry Welcomes Copyright Treaty**

Music industry organizations are delighted that the first of the World Intellectual Property Organization's (WIPO) two international copyright-protection treaties for the digital age comes into force this March. The WIPO Copyright Treaty provides guidelines on protecting the works of composers, lyricists, authors and publishers when legitimately distributed via the Internet or other interactively transmitted media. The second WIPO treaty is the WIPO Performances and Phonograms Treaty.

"It's enormously significant, because the provisions on technology measures are expressed internationally for the first time," says Richard Owens, international intellectual property rights advisor at British Music Rights, the lobbying arm for U.K. authors copyright organization MCPSPRS. "We now have a legally binding instrument that should give teeth to international enforcement efforts."

Read More About the Treaty: <http://www.wipo.org/>

IFPI News, December 6, 2001; <http://www.ifpi.org/site-content/press/20011206.html>

### **Russian Programmer Can Go Home**

The federal government agreed to defer the prosecution of a Russian computer programmer who was the first person to be charged under a controversial digital- copyright law. The programmer, Dmitri Sklyarov, 27, has been allowed to return to Moscow. In July, 2001 he was arrested for writing a program that allowed people to disable encryption software protecting electronic books.

Sklyarov's lawyers reached a compromise with the government that will defer prosecution against Mr. Sklyarov in exchange for his cooperation in the prosecution of his employer, ElcomSoft, based in Moscow. As part of the agreement, Mr. Sklyarov is obligated to "appear at the trial and testify truthfully," according to a statement from the United States Attorney's Office for the Northern District of California. The trial date is set for April 15, 2002. ElcomSoft contends that the decryption program is legal in Russia.

Sklyarov drew international attention as the first person to be criminally prosecuted under the 1998 Digital Millennium Copyright Act. (See GrayZone Digest [September 2001](#)). He could have faced up to five years in prison and a \$500,000 fine.

In Digital Copyright Case, Programmer Can Go Home; New York Times, December 14, 2001 (Jennifer 8. Lee); <http://www.nytimes.com/2001/12/14/technology/14HACK.html>

Russian Hacker Charges Dropped; Wired News, December 13, 2001 (Reuters); <http://www.wired.com/news/politics/0,1283,49122,00.html>

## **Professor's Suit Against RIAA Dismissed**

A New Jersey judge threw out a lawsuit brought against the music industry, saying that threatened legal action didn't keep a computer-science professor from publishing research on anti-copying technology. The judge dismissed charges brought by Princeton University professor Edward Felten, who said legal threats stopped him from publishing a paper outlining the weaknesses in the industry's technologies for protecting digital music. Felten had sued the Recording Industry Association of America (RIAA).

"We are happy that the court recognized what we have been saying all along: there is no dispute here. As we have said time and again, Professor Felten is free to publish his findings," Cary Sherman, the RIAA's senior executive vice president, said in a statement.

Princeton Professor's Digital-copying Suit Dismissed; USA Today, November 20, 2001 (Associated Press); <http://www.usatoday.com/life/cyber/tech/2001/11/29/princeton-professor.htm>

## **Hollywood Studios Win Major Victory in DVD Case**

In a major victory for Hollywood movie studios, a federal appeals court has barred a website from revealing how to make unauthorized copies of digital videodiscs. The 2nd US Circuit Court of Appeals in New York ruled that the controversial 1998 Digital Millennium Copyright Act (DMCA) does not infringe on the constitutional right to freedom of speech. A three-judge panel of the Court of Appeals issued a 71-page decision affirming an August 2000 ruling by a federal district court judge. The lower court ruling prohibited Eric Corley from posting DVD descrambling software on the "2600: The Hacker Quarterly" <http://www.2600.com/> magazine website he publishes, or linking to websites that post the software. The software, called DeCSS for Decoding Content Scramble System, can be used to decode the anti-piracy safeguards embedded in DVDs.

Appeals Court Rules In Favor Of Studios In DVD Case; TechTV.com, November 29, 2001 (Elinor Mills Abreu/Reuters); <http://www.techtv.com/news/politicsandlaw/story/0,24195,3362792,00.html>

## **Quick Bits and Bytes**

### **But Are My MP3s Legal?**

Every time someone downloads a tune off the Internet, he is almost certainly stepping outside the law. "It's copyright infringement," says Andy Norwood, an intellectual-property attorney at Waller Lansden Dortch & Davis in Nashville. "Downloading a copyrighted file is making a copy, one of the exclusive rights of the copyright holder."

You are on safe legal ground if you copy songs for your own use from CDs you own. But duplicate a song and give it to a friend, whether on a burned disk or over the Internet, and you too are violating copyright. And unless you know otherwise, it's safe to assume that every piece of recorded music you encounter online is copyrighted.

Cnnfn.com, November 29, 2001; [http://money.cnn.com/2001/11/29/saving/mp3\\_legal](http://money.cnn.com/2001/11/29/saving/mp3_legal)

## **Pirate-Proof Pop Goes Public**

Music makers are stepping up attempts to stamp out piracy with the public release of CDs that cannot be played on computers. Natalie Imbruglia's latest album "White Lilies Island" is the first to go on general release with a copy-protection system built in. Commentators say that soon many more CDs will employ similar anti-pirate technologies. Before now, such systems have been added in a piecemeal fashion to a limited number of releases in different countries.

BBC News, November 12, 2001; [http://news.bbc.co.uk/1/hi/english/sci/tech/newsid\\_1651000/1651544.stm](http://news.bbc.co.uk/1/hi/english/sci/tech/newsid_1651000/1651544.stm)

## **Pirates Sail Ahead of Porn on the Net**

Queries for pirated software outstripped searches for "Harry Potter," the young wizard-in-training from the popular J.K. Rowling books and blockbuster Hollywood film. Internet searches for pirated software are on the rise, joining the ranks of such popular search engine queries as "sex" and "MP3," according to US software firm Websense. The availability of "warez" sites, virtual trading posts where pirated software is made available free of charge to other Internet users, is on the rise. In Web vernacular, "warez" refers to any illegally obtained software, ranging from pornography to computer operating systems. A recent tally by Websense says the number of hacker and pirate software sites numbers 5,400 representing a growth of more than 240 percent in the past year.

Reuters/ZD Net, October 31, 2001

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