

2nd QUARTER 2007 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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HEADLINE NEWS

RIAA BATTLES ON-CAMPUS FILE-SWAPPING

On April 11, 2007, The Recording Industry Association of America (RIAA), on behalf of the major record companies, sent 413 pre-litigation settlement letters to 22 universities. In a continued effort to address the extensive music theft that persists on college campuses, the RIAA has sent out three rounds of these settlements directed at the universities and their students.

In February 2007, the RIAA launched new deterrence and education initiatives focused on illegal file trafficking on college campuses. This significant escalation and expansion of the industry's ongoing efforts, has been joined with the implementation of a new process that gives students the opportunity to resolve copyright infringement claims against them at a discounted rate before a formal lawsuit is filed. Each letter informs the school of a forthcoming copyright infringement lawsuit against one of its students or personnel. The RIAA then requests that universities forward those letters to the appropriate network user. Under this new approach, a student (or other network user) can settle the record company claims against him or her at a discounted rate before a lawsuit is ever filed.

With the third wave of this new initiative, the RIAA has now sent over 1,200 letters to nearly 60 schools, including: Brown University, Columbia University, Dartmouth College, Kent State University, Ohio University, Syracuse University, University of Massachusetts, University of Southern California and Vanderbilt University.

University students have been widely viewed as the core of the various file-swapping networks ever since the appearance of Napster on the digital scene in late 1999. Universities have seen half or more of their network bandwidth used by people uploading and downloading songs, software and movies over the past few years. Schools have attempted to crack down on the practice of file-swapping in various ways, ranging from blocking network traffic associated with Napster or Kazaa to confiscating computers used to trade files. In a recent congressional hearing, some lawmakers called for criminal prosecutions for campus file-swappers.

In its lawsuits, the RIAA compares the use of the campus search software--variously called "Phynd," "Flatlan" or "Direct Connect"--to the defunct Napster service, calling the services "local area Napster networks." In fact, the technology used by the three pieces of software varies widely, sometimes looking very different than the old Napster model.

"Without question, this new enforcement initiative has invigorated a meaningful conversation on college campuses about music theft, its consequences and the numerous

ways to enjoy legal music," said Steven Marks, General Counsel and Executive Vice President, RIAA. "We hope that fans on campuses and administrators recognize the extraordinary legal marketplace for music online now. The question we ask of students is this: with high-quality legal music options available for free or deeply discounted, why take the twin risks of exposing your computer to viruses or spyware by downloading from an illegal site or exposing yourself to a costly lawsuit?"

A survey by Student Monitor from spring 2006 found that more than half of college students download music and movies illegally, and according to market research firm NPD, college students alone accounted for more than 1.3 billion illegal music downloads in 2006. While college students represented only 10 percent of the sample in the new online NPD study, they accounted for 26 percent of all music downloading on P2P networks and 21 percent of all P2P users. Furthermore, college students surveyed by NPD reported that more than two-thirds of all the music they acquired was obtained illegally.

These enforcement actions come in addition to the lawsuits that the RIAA continues to file on a rolling basis against those engaging in music theft via commercial Internet accounts.

RIAA.com, April 11, 2007

Read the Press Release: <http://www.riaa.com/news/newsletter/041107.asp>

CNET News.com, April 3, 2007 (John Borland)

<http://www.riaa.com/news/newsletter/041107.asp>

RIAA.com, March 21, 2007

Read the Press Release: <http://www.riaa.com/news/newsletter/032107.asp>

RIAA.com, February 28, 2007

Read the Press Release: <http://www.riaa.com/news/newsletter/022807.asp>

NPD.com

Read The Press Release: http://www.npd.com/press/releases/press_0703141.html

Student Monitor.com

Read The Press Release: <http://www.studentmonitor.com/press/11.pdf>

ARTIST'S CORNER

KEITH URBAN v. Keith Urban

Country singer KEITH URBAN has filed a lawsuit against a painter of the same name, claiming that the lesser known Urban's website infringes trademark and cyber-squatting laws.

The 39-year-old singer filed the suit on February 2, 2007, in U.S. District Court in Nashville, Tennessee against the New Jersey painter who uses the website keithurban.com to advertise oil paintings for sale. In the suit, Urban claims that the website is being used, "in a manner likely to deceive the public into believing that the website has a connection to [Keith Urban] that does not exist." The suit also calls for the painter's website to be shut down and its domain name transferred to the singer's ownership.

Keith Urban, whose own website address is www.keithurban.net, is also seeking an unspecified amount in monetary damages.

Yahoo! News, February 7, 2007 (Reuters)
<http://in.tech.yahoo.com/070207/137/6bv09.html>

THE BEATLES Settle Apple Battle

Apple and THE BEATLES have finally settled their long-running trademark dispute, a move that will likely lead Apple's iTunes to add the legendary group's music to its catalog.

Apple and the Beatles' company, Apple Corps, agreed to end their long battle over Apple's use of its cartoon apple logo, which the Beatles claimed infringed on its trademarked logo of a Granny Smith apple.

The new deal, for which the terms were undisclosed, replaces a previous settlement agreement the parties agreed to in 1991. The new agreement gives Apple ownership of all the trademarks related to "Apple." In addition, Apple will license some of those trademarks back to Apple Corps for its continued use.

"We love the Beatles, and it has been painful being at odds with them over these trademarks," Apple CEO Steve Jobs said in a statement. "It feels great to resolve this in a positive manner, and in a way that should remove the potential of further disagreements in the future."

The Beatles have not yet allowed any online service to sell their music.

MP3.com, February 5, 2007
<http://www.mp3.com/news/stories/8558.html>

See GrayZone Digest 4Q 2006: <http://www.grayzone.com/406.htm#legal>
See GrayZone Digest 1Q 2006: <http://www.grayzone.com/106.htm#artists>

LEGAL BEAGLE

Music Publishers File Federal Suit Against XM Satellite Radio

The National Music Publishers' Association (NMPA) has filed a lawsuit against XM Satellite Radio for refusing to acknowledge the rights of or pay compensation to the music publishers and songwriters who own songs being distributed through its digital download service.

Filed on March 22, 2007 in federal court in New York, the suit alleges that XM engages in massive copyright infringement by offering an unlawful music download service, called XM + MP3. The NMPA asserted that the service violates copyright laws and is not covered by the royalties paid to music publishers for broadcast rights. The suit was filed on behalf of plaintiffs Famous Music, Warner/Chappell, Sony/ATV and EMI, after months of unsuccessful discussions with the satellite radio company about its obligation to compensate creators fairly for the songs it distributes.

The XM + MP3 service allows users to record and store individual songs on iPods and other portable music players, and to automatically record large blocks of programming from which music can be cherry-picked and permanently retained for replay.

According to the NMPA, XM has been profiting at the expense of others, and its XM + MP3 service, "Constitutes pervasive and willful copyright infringement to the overwhelming detriment of copyright holders, legitimate online music services and, ultimately, consumers."

In 2006, the Recording Industry Association of America (RIAA) filed a similar copyright infringement lawsuit against XM on behalf of its record label members. In the lawsuit filed by the record labels, XM argued that it is just a "radio broadcaster" that does not provide download services. But after it announced its intent to merge with one of its main competitors, SIRIUS Satellite Radio, XM began aggressively defending against charges that the merger would create an unacceptable monopoly. On January 19, 2007, Judge Deborah A. Batts of the U.S. District Court for the Southern District of New York ruled in favor of the record companies stating that, 'XM is both a broadcaster and a distributor, but is only paying to be a broadcaster.'

The complaint filed by the NMPA seeks a maximum of \$150,000 in statutory damages for each work infringed by XM, and lists over 175 songs as only a "small fraction" of those being illegally distributed through the XM + MP3 service.

Ag-IP-news Agency, March 25, 2007

http://www.ag-ip-news.com/getArticle.asp?Art_ID=4181&lang=en

NMPA.org, March 22, 2007

Read The Press Release: <http://www.nmpa.org/pressroom/showrelease.asp?id=129>

RIAA.com, January 19, 2007

Read The Press Release: <http://www.riaa.com/news/newsletter/011907.asp>

EMI Settles with Bertelsmann

On March 26, 2007, major record label EMI Group and German media conglomerate Bertelsmann announced that they have settled a copyright infringement lawsuit brought by EMI over Bertelsmann's investment in the original Napster free file-sharing service.

While financial terms of the settlement were not disclosed, it is speculated that Bertelsmann will pay EMI up to \$150 million. Bertelsmann settled a similar lawsuit with Universal Music Group in 2006, agreeing to pay \$60 million. Bertelsmann had been sued over its \$85 million investment in the original Napster, with the labels and publishers arguing that the company was contributing to copyright infringement.

Venture capital firm Hummer Winblad, a fellow Napster investor, was also a target of copyright infringement litigation. The firm also reached a tentative settlement with EMI and Universal in December 2006.

"We can now put this matter behind us and continue to pursue the development of new legitimate digital music business models," said EMI Group CEO, Eric Nicoli.

Digital Media Wire, March 27, 2007 (Mark Hefflinger)

<http://www.dmwmedia.com/news/2007/03/27/emi-settles-with-bertelsmann-over-napster-investment>

Bolt Settles with UMG

Bolt.com and Universal Music Group (UMG) have reached an out of court, multi-million dollar settlement, resolving a lawsuit brought against the video-sharing website in October 2006.

In the suit, UMG had claimed that Bolt.com allowed its users to share music videos and other copyrighted material without permission and without compensating copyright holders. At the time, Bolt claimed that it had complied with copyright holders requests to take down videos.

As part of the settlement, Bolt has also agreed to implement filter technology to block UMG videos and other content from being posted on the site. New York-based Bolt has since been acquired by GoFish Corp., which has been a licensed partner of UMG for the last two years. The exact financial terms of the settlement have not been disclosed.

AfterDawn.com, March 11, 2007 (Dela)
<http://www.afterdawn.com/news/archive/8934.cfm>

See GrayZone Digest 1Q 2007: <http://www.grayzone.com/107.htm>

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SIDEBAR: Can YouTube Survive? Video Site in Billion Dollar Copyright Battle

On March 13, 2007, Viacom Inc. filed suit against YouTube and its owner, Google, in U.S. District Court for the Southern District of New York, for massive intentional copyright infringement of Viacom's entertainment properties.

The suit seeks more than \$1 billion in damages, as well as an injunction prohibiting Google and YouTube from further copyright infringement. The complaint contends that almost 160,000 unauthorized clips of Viacom's programming have been available on YouTube and that these clips had been viewed more than 1.5 billion times.

In connection with the filing, Viacom contends that YouTube is a significant, for-profit organization that has built a lucrative business out of exploiting the devotion of fans to others' creative works in order to enrich itself and its corporate parent Google. Viacom described the YouTube business model of building traffic and selling advertising off of unlicensed content as clearly illegal and in obvious conflict with copyright laws.

Viacom contends that this behavior stands in stark contrast to the actions of other significant distributors, who have recognized the fair value of entertainment content and have reached agreements to make content legally available to their customers around the world.

The Viacom case is expected to trigger an avalanche of lawsuits against the popular site. The future of YouTube will undoubtedly be determined in the legal arena as the video-sharing website continues to be a battleground for claims of copyright infringement.

FindLaw, March 13, 2007
<http://technology.findlaw.com/articles/01177/010731.html>

Seeking Alpha, March 13, 2007 (Larry Dignan)
<http://Internet.seekingalpha.com/article/29466>

See GrayZone Digest 4Q 2006: <http://www.grayzone.com/1006.htm#legal>

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QUICK BITS & BYTES

EU to Investigate Apple for Antitrust Violations

On April 3, 2007, the European Union (EU) announced that an investigation of Apple is underway for antitrust violations related to the pricing of music sold through the iTunes store. The European Commission (EC) has issued a statement of objections against Apple, along with major recording companies, for violating EU antitrust laws by restricting online music sales.

The antitrust allegations center on how Apple charges a different price in the iTunes store for the same content across different countries. According to the EU, consumers can only buy music from the iTunes online store in their country of residence. Consumers are therefore restricted in their choice of where to buy music, what music is available, and at what price. This circumstance, according to the EU, unfairly penalizes consumers in countries where the content is more expensive. For example, in the U.S. a track on iTunes costs \$0.99, but throughout the Europe, a track costs €0.99 (\$1.34), while in the U.K. a track costs £0.79 (\$1.58).

ZDNet.com, April 3, 2007 (Adrian Kingsley-Hughes)
<http://blogs.zdnet.com/hardware/?p=343>

BitTorrent Launches Legitimate Movie Service

BitTorrent Inc. will launch a new website that will sell downloads of films and TV shows licensed from the studios.

BitTorrent, developers of file-sharing technology often used to trade pirated copies of Hollywood movies, will try its hand at the legitimate distribution business. The service is aimed at young people who regularly use BitTorrent to trade pirated versions of the same films and who more often watch such files on their computer instead of on a conventional television.

The San Francisco-based company is betting that at least one-third of the 135 million people who have downloaded the BitTorrent software will be willing to pay for high-quality legitimate content rather than take their chances with pirated versions.

The BitTorrent Entertainment Network is set to launch with films from Warner Bros., Paramount Pictures, 20th Century Fox, Metro-Goldwyn-Mayer and Lionsgate and episodes of TV shows such as "24" and "Punk'd."

Yahoo! Finance, February 26, 2007 (Gary Gentile)
http://biz.yahoo.com/ap/070225/downloading_movies.html?v=2

L.A. Losing Big to Piracy

On February 16, 2007, the Los Angeles County Economic Development Corporation (LAEDC) released a study that shows just how big a financial hit L.A. is taking due to piracy.

Piracy of movies, music, prescription drugs and other products in nine "at risk" categories cost the city more than 100,000 jobs and the companies that manufacture those products about \$5.2 billion in lost sales in 2005 alone. Pirated motion pictures represented more than half the loss, at \$2.7 billion, followed by music at \$851 million. The LAEDC report also determined that the black market in pirated goods diverted \$2 billion from legitimate retailers in L.A. This amount is equal to the average annual sales of about 39 Wal-Marts or 54 Target stores.

There is an overlap between the \$5.2 billion lost by manufacturers and the \$2 billion retail loss, with LAEDC using pirated Disney DVDs as an example of a product that caused losses to both a local product supplier and local retailers. In response to the study, local officials in Los Angeles have formed an Inter-Governmental Anti-Counterfeit Task Force. Consisting of law enforcement and industry officials, the goals of the task force will be to develop new strategies to deal with the problem of counterfeited goods.

VideoBusiness.com, February 16, 2007 (Marcy Magiera)
<http://www.videobusiness.com/article/CA6417364.html>

LAECD.com, February 2007
Read the LAECD study: http://www.laedc.org/consulting/projects/2007_piracy-study.pdf

2 Q 2007 (Second Quarter) BUSTS

U.S. Busts

Be sure to peruse the Recording Industry Association of America's (RIAA) monthly newsletter which covers numerous bootleg, piracy and counterfeit raids across the United States. Read about the recent busts at our website:

<http://www.grayzone.com/usabusts.htm>

NYC Man Charged for Counterfeit Costumes

A man has been charged with selling knockoff costumes of popular children's cartoon characters to a person he believed to be a porn film producer, according to the Queens, New York district attorney.

On February 26, 2007, Julio Quevedo, 43, was charged with trademark counterfeiting. An investigation into Quevedo's alleged operation began last year after the DA's office was contacted by Hit Entertainment, the licensed trademark holder of many of the animated children's characters, that suspected Quevedo was illegally selling bogus adult-size versions of its children's costumes. When questioned, Quevedo told investigators that his family had been selling the bogus costumes for four years, and that his father-in-law manufactured them in a factory located in Lima, Peru.

During a sting operation an undercover private investigator purchased a fake costume from Quevedo for \$250. Then, an undercover agent from the DA's office posing as the investigator's wife, told Quevedo she needed costumes for roles in erotic movies. Quevedo then took her to a storage facility that contained the costumes. Representatives from Hit

Entertainment and Warner Bros. were then brought to the scene and verified that the costumes were counterfeit.

"A one-man counterfeiting operation like the one discovered here is capable each year of fleecing legitimate owners of trademark products out of tens of thousands of dollars, substantial sums in lost royalties," Queens District Attorney Robert Brown said in a statement.

Newsday.com, February 27, 2007 (Associated Press)
http://www.newsday.com/news/local/wire/newyork/ny-bc-ny--kiddiecostumes-po0227feb27_0.6698620.story?coll=ny-region-apnewyork

Flushed Out for Uploading 'Flushed Away'

A Los Angeles man faces felony charges for allegedly uploading a copy of the film "Flushed Away" onto the Internet, after getting a copy from an Oscar voter.

Facing up to three years in prison if convicted, 27-year-old Salvador Nunez Jr., was charged with copyright infringement on February 23, 2007. According to prosecutors, the man obtained a copy of the movie after it was sent in advance to his sister, an Oscar voter and member of The International Animated Film Society.

The Academy of Motion Picture Arts and Sciences received a tip in early January that someone put "Flushed Away" on the Internet, and a digital watermark identified it as an Academy screener film. When interviewed by FBI agents, he admitted to uploading "Flushed Away" and the Oscar-nominated film "Happy Feet" onto the Internet. Upon searching his residence, investigators found the advance-copy of Flushed Away in his computer hard drive.

USA Today, February 23, 2007 (Associated Press)
http://www.usatoday.com/tech/news/2007-02-23-flushed-felony_x.htm

WORLDWIDE PIRACY UPDATE

AUSTRALIA

MIPI Battles Karaoke Pirates

On March 12, 2007, Music Industry Piracy Investigations (MIPI) announced that it has obtained thousands of dollars in compensation from karaoke pirates. In late 2006, MIPI stepped up its comprehensive program of monitoring online auction sites for pirated karaoke music. Numerous pirate karaoke sellers have already received letters of demand, ordering payment of large fines, to compensate for the sale of burnt karaoke CDs or DVDs.

Music piracy remains a serious threat to the Australian music industry. The unauthorized copying or downloading of karaoke music whether from physical CD-Gs or the Internet has a major effect on the karaoke industry. The makers of karaoke music, the composers, lyricists and all the other people involved in the karaoke industry are paying the price with

less legitimate karaoke music being sold. MIPI has also released a Guide to Using Music for Karaoke to educate people in the karaoke industry.

MIPI.com.au, March 12, 2007

Read the Press Release: <http://www.mipi.com.au/documents/Crackdownonkaraokepiracy12March2007-homepage.pdf>

CHINA

U.S. Files WTO Complaints Against China

On April 9, 2007, U.S. trade officials brought two complaints to the World Trade Organization (WTO) linked to longstanding complaints about China's lack of enforcement in connection with copyrights and trademarks on books, music, videos and movies.

"Piracy and counterfeiting levels in China remain unacceptably high," said U.S. Trade Representative Susan Schwab.

The United States has asked the Geneva, Switzerland-based WTO to begin dispute-settlement consultations with China. This is the first step in bringing a WTO complaint. If U.S. and Chinese officials, with the help of the WTO, can't resolve the dispute within 60 days, the case may then be referred to a dispute-settlement panel. Among the U.S. complaints are charges that China has failed to make needed changes to its legal framework to ensure a sufficient crackdown on piracy and has failed to meet its WTO obligations to remove barriers to trade in books, music, videos and movies.

The latest action comes after years of complaints from U.S. firms that China has been negligent in enforcing intellectual property rights.

Market Watch, April 9, 2007 (William L. Watts)

<http://www.marketwatch.com/news/story/us-takes-chinese-piracy-complaints/story.aspx?guid=%7BEB997BEA-56D8-4B73-8776-7A4EEB9DB775%7D>

ITALY

Italian Court OKs Non-Profit Downloads

Italy's top criminal court has ruled that downloading content and software over the Internet isn't a crime if profit is not the motivation. Issued in January 2007, the court's decision overturned earlier convictions against two former Turin Polytechnic Institute students who set up a peer-to-peer, file-sharing network that was shut down within months. The students had been found guilty of illegal duplication and given a one-year sentence, which was later reduced to three months. In this latest ruling, the top criminal court in Rome threw out the convictions, ruling that it was not a crime to download computer files from such networks if there was no financial gain.

According to the Italian Authors' Society, SIAE, the ruling was not a major setback in terms of author's rights because the case predates current legislation calling for a fine for anyone who shares protected material over the Internet, even without financial gain.

XBiz News, January 23, 2007 (Rhett Pardon)

http://www.xbiz.com/news_piece.php?cat=2&id=19245

GUATEMALA

One Million Counterfeit Discs Seized in Major Piracy Raid

On February 9, 2007, police seized more than one million counterfeit discs containing pirate music and films in a major street operation in downtown Guatemala City.

Guatemalan National Police worked in coordination with the Attorney General's Office to launch a massive raid of involving 560 officers in the infamous 'Avenida 6' market. In addition to the counterfeit discs, police also seized 45 CD-R/DVD-R burners, audio and television equipment.

The operation took place after police, prosecutors and judges participated in a three-day anti-piracy seminar hosted by the U.S. Department of Justice, the American Embassy and industry representatives including IFPI, and the MPA, which represents the international film industry.

IFPI.org, February 28, 2007

Read The Press Release: http://www.ifpi.org/content/section_news/20070228c.html

RUSSIA

Russian Music Website Fined in Court

A Russian court has fined the parent company of two websites that allowed users to download songs for 15 cents each, following a lawsuit brought by the EMI's Russian label, Gala Records.

Viewed as the first major successful anti-piracy case in Russia, the Moscow Arbitration Court ruled in favor of Gala Records on February 14, 2007. Gala had sued websites Delit.ru and Delit.net for illegally selling soundtracks and music albums online without the consent of copyright owners. The court also fined the sites' parent company, Delit, 60,000 rubles (\$2,300).

According to the International Intellectual Property Alliance, Russia is home to the world's worst piracy market in the world after China. Moscow's failure to crack down on the violations was cited as a major obstacle to an agreement with the United States, finally signed in November 2006, that paved the way for Russia to join the World Trade Organization.

TMC Net, February 14, 2007 (Maria Danilova)

<http://www.tmcnet.com/usubmit/2007/02/14/2336660.htm>

UNITED KINGDOM

UK Approves New Anti-Piracy Powers

The UK's Copyright, Designs and Patents Act of 1988 has recently been updated to allow trade standard officials the power to seize pirated music and movies in addition to the

pirated merchandise already allowed under the Act. These new anti-piracy powers went into effect for the first time on April 6, 2007.

The move had been recommended by the 2006 Gowers Review, an independent report that re-examined U.K. copyright law. According to the most recent figures from the BPI, the music industry loses about 16.5 million units of albums to piracy. That is valued at an estimated £165 million (\$326 million) a year.

Previously, only piracy raids backed by police authorities could seize illegal recordings. The new additions to the Copyright Act give the U.K.'s Trading Standard officers similar powers to the police, granting trade officers the power to seize illegal physical media (i.e. CDs and DVDs) as well as the right to seize bootleg recordings of live performances.

FutureMusic.com, April 5, 2007
<http://futuremusic.com/blog/?p=1265>

Read The Gowers Report: http://www.hm-treasury.gov.uk/media/583/91/pbr06_gowers_report_755.pdf

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