



## 2nd QUARTER 2008 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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### HEADLINE NEWS

#### **RIAA CONTINUES CAMPUS CAMPAIGN**

##### ***LEGAL DOWNLOADS ARE UP, PRE-LAWSUIT LETTERS ARE WORKING***

The Recording Industry Association of America (RIAA), on behalf of its member record companies, sent a new wave of 401 pre-litigation settlement letters to 12 universities during February 2008.

The letters cited individuals for online music theft via peer-to-peer services such as Ares, BitTorrent, Gnutella, Limewire, and Morpheus.

The RIAA's thirteenth wave of letters were sent to the following colleges: Boston University (35 pre-litigation settlement letters), Columbia University (50), Drexel University (33), Indiana University (40), North Carolina State University (35), Ohio State University (30), Purdue University (28), Tufts University (20), University of Maine System (32), University of New Hampshire (32), University of Southern California (50) and the University of Virginia (16).

The pre-lawsuit letters, sent to individuals at more than 150 schools, are one part of a multi-faceted industry campaign to encourage fans to enjoy music legally. Recipients of the letter have the opportunity to avoid a potential lawsuit by settling out of court for a reduced fee. Formal lawsuits have been filed against 2,465 letter recipients. These individuals either disregarded settlement opportunities or were not given the option to settle early because the university failed to forward the letters. Of the 5,003 letters sent in prior rounds, the RIAA has reached settlements with more than 2,300 of those individuals.

"One year into our legal campaign, we've seen an emerging legal marketplace that would have struggled to gain traction were it not for our efforts to clamp down on online music theft," said Cara Duckworth, RIAA's Director of Communications. "The exponential growth of illicit peer-to-peer has stabilized and music lovers know what they can and can't do when getting music online. This has fostered a climate that helps music companies earn a fair return so that they can invest in the next generation of artists and new bands can have a shot at realizing a dream."

Record companies have made efforts to partner with innovative services to offer fans an unprecedented array of legitimate alternatives. According to global music trade body the International Federation of the Phonographic Industry (IFPI,) there are now more than six million tracks available on 500 different services. In the United States, many users frequent legal download services like Amazon, iTunes and Wal-Mart.com, subscription services like Rhapsody and Napster, social networking sites such as

iMeem, satellite and Internet radio businesses like XM, Sirius, and Last.fm, and even legal peer-to-peer sites such as iMesh.

Since launching its deterrence program in February 2007, the RIAA has sent approximately 5,404 pre-litigation settlement letters. These letters are 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.

Slyck.com, February 28, 2008 (Thomas Mennecke)  
<http://www.slyck.com/story1422.html>

RIAA.com, February 21, 2008  
Read the Press Release:  
[http://www.riaa.com/newsitem.php?news\\_year\\_filter=&resultpage=2&id=B0FAEEC1-A56A-0F04-D999-94A807ADAA6E](http://www.riaa.com/newsitem.php?news_year_filter=&resultpage=2&id=B0FAEEC1-A56A-0F04-D999-94A807ADAA6E)

## **ARTIST'S CORNER**

### **MARY J BLIGE 'Brilliant' Bootleg Blitz**

MARY J. BLIGE has filed a lawsuit in a New York court against counterfeiters who planned on selling knockoff T-shirts and merchandise of her "Heart of the City" tour outside her sold-out concert with JAY-Z at Nassau Coliseum on March 27, 2008.

In a move that was considered "brilliant" by many in the industry, the infamous R&B singer sued 'John Does' and 'Jane Does' numbered one through 100 the day before the show, so law enforcement could confiscate the bogus merchandise as it was being sold.

According to the suit, any defendants caught selling and distributing unauthorized goods at the Coliseum bearing the marks of Mary J. Blige, will be "sued under fictitious names because their true names are unknown at this time."

New York Post, March 26, 2008  
[http://www.nypost.com/seven/03262008/gossip/pagesix/its\\_a\\_bootleg\\_blitz\\_103533.htm](http://www.nypost.com/seven/03262008/gossip/pagesix/its_a_bootleg_blitz_103533.htm)

Starked NY, March 26, 2008  
<http://www.starkedny.com/archives/mary-j-blige-files-lawsuit-against-counterfeiters>

### **BEACH BOYS Settle Copyright Battle**

Two former members of the BEACH BOYS have settled a five-year legal dispute over the use of the band's name.

AL JARDINE and MIKE LOVE reached an agreement after a two-day conference in Superior Court, however, details of the settlement were not disclosed.

Love sued Jardine in 2003, claiming he fronted a group that used various versions of the Beach Boys name. The lawsuit claimed Love was the sole licensee to perform under the name, and that Jardine was denied use because he did not agree to abide by the terms of a proposed license. Love was seeking \$2 million in court costs and \$1 million he said Jardine collected from using the name.

A judge ruled in January 2008 that the case could go to trial, which had a scheduled date of April 14, 2008 before it was settled.

Daily Herald, March 21, 2008  
<http://www.dailyherald.com/story/?id=158011>

### **AVRIL LAVIGNE Settles With RUBINOOS**

Canadian singer AVRIL LAVIGNE reached a confidential settlement in a copyright infringement lawsuit leveraged against her by 70's power pop band the RUBINOOS. The plaintiffs claimed that Lavigne's 2007 hit song "Girlfriend" plagiarized a chorus from the Berkeley based Rubinoos' 1978 song "I Wanna Be Your Boyfriend."

Rubinoos members TOMMY DUNBAR and JAMES GANGWER believed that Lavigne's "Girlfriend" borrowed too heavily from their track and its chorus, "Hey, hey, you, you, I wanna be your boyfriend," and filed a copyright infringement lawsuit in California's Northern Federal District Court in July 2007. Lavigne had denied that she'd ever heard the song and said that it bore no similarity to hers, which she wrote with Luke Gottwald. Lavigne's manager, Terry McBride, said he consulted with a musicologist who reached the same conclusion.

However, on January 9, 2008, the two sides reached a confidential agreement. The amount of money exchanged was not disclosed.

Chart Attack, January 10, 2008  
<http://www.chartattack.com/DAMN/2008/01/1006.cfm>

Cinema Blend, January 9, 2008 (Mariana McConnell)  
<http://www.cinemablend.com/music/Lavigne-Settles-in-Copyright-Infringement-Lawsuit-8229.html>

## **LEGAL BEAGLE**

### **Harry Potter Author Sues Over Infringing Encyclopedia**

J.K. Rowling, British writer and author of the Harry Potter fantasy series, is suing RDR Books for copyright infringement for publishing Steven Vander Ark's unauthorized reference book, the "Harry Potter Lexicon."

On April 14, 2008, Rowling appeared in court, claiming the book was nothing more than a rearrangement of her own material and told the judge it copied so much of her work that it amounted to plagiarism. "I think it's atrocious. I think it's sloppy. I think there's very little research," she testified. "This book constitutes wholesale theft of 17 years of my hard work."

The British author filed the suit against Michigan-based RDR Books in November 2007 to stop publication of Steven Vander Ark's "Harry Potter Lexicon," claiming copyright infringement. Vander Ark runs the popular Harry Potter Lexicon website, and RDR wants to publish a print version of the site and charge \$24.95.

The trial began eight months after Rowling published her seventh and final book in the Harry Potter series. The books have been published in 64 languages, sold more than 400 million copies and produced a film franchise that has pulled in \$4.5 billion at the worldwide box office.

Rowling also contends that the proposed RDR book will clash with her own plans to create the definitive Harry Potter encyclopedia, which will contain new material not found in her novels. Her book is slated to benefit a number of charities. Rowling emphasized, "I cannot, therefore, approve of 'companion books' or 'encyclopedias' that seek to preempt my definitive Potter reference book for their authors' personal gain."

Rowling did acknowledge that she once bestowed an award on Vander Ark's website because she wanted to encourage a very enthusiastic fan. The author said she now has second thoughts about all the encouragement she has given to online discussions and websites devoted to her books. "I never censored it or wanted to censor it," she said, adding that if she loses the lawsuit, she will conclude she essentially gave away her copyrights by encouraging the websites. "Other authors will say, I need to exercise more control. She was an idiot. She let it all go."

MSNBC.com, April 14, 2008 (Larry Neumeister)  
<http://www.msnbc.msn.com/id/24116517/>

Publishers Weekly, November 1, 2007 (*Shannon Maughan*)  
<http://www.publishersweekly.com/article/CA6496325.html?nid=2788>

## **Record Companies Sue Sites in China**

Three global record companies, Universal Music Ltd, Sony BMG Music Entertainment (Hong Kong) Ltd and Warner Music Hong Kong Ltd, have launched legal proceedings against China's top Internet search engine, Baidu.com, accusing it of violating copyright by giving users access to unauthorized music files.

On February 4, 2008, after months of fruitless negotiations, legal proceedings were filed against Baidu, China's largest Internet company. Separate actions were also brought against Sohu and its associate company Sogou. Yahoo! China also faces proceedings following its refusal to comply with a landmark ruling in December 2007, confirming it violated Chinese law by committing mass copyright infringement. The courts found that Yahoo! China's music delivery service was illegal under Chinese law, setting the precedent for the latest suits filed in China. Although the legal victory against Yahoo! China was an encouraging step in the fight against piracy in the region, notoriously fragile law enforcement in China remains a global concern.

All of the Chinese companies involved in the proceedings operate services based on delivering thousands of infringing tracks on third party sites to their users. It is alleged that these illegal acts were committed in an effort to drive the sites' advertising revenue higher. The three record companies have called for the court to order Baidu to remove all links to copyright-infringing tracks to which they own the rights. Similar actions were taken against Sohu and its associate company Sogou. Sohu is the official sponsor of Internet content service for the upcoming Beijing Olympic Games, gaining the exclusive contract to build and host the summer Games' official website. Sogou has also been accused of actively encouraging copyright infringement by means of recommendations and charts, while Sohu provides file-linking services through its associate company.

None of the Chinese companies have yet responded to the new suits.

China has potentially the largest online music-buying public in the world with as many broadband connections as the United States. However, it is estimated that





the following statement at its website, "In claiming that the music industry is asking it to become the 'Internet police,' 'impinge customers rights' or 'restrict freedom to use of the Internet,' Talk Talk is either seeking to misrepresent our position, or just doesn't get it...We firmly believe in an Internet where property rights are respected, and creativity is fairly rewarded. This will grow our digital economy, which is in the interest of all of us. Talk Talk should play its part in building this future."

The BPI has also published an article detailing what it hopes to achieve by working together with ISPs at its website.

Clock It Up, April 2008

<http://clockitup.co.uk/talk-talk-refuse-Internet-police-bpi/>

BPI.co.uk, April 4, 2008

Read The Press Releases:

[http://www.bpi.co.uk/index.asp?Page=news/press/news\\_content\\_file\\_1137.shtml](http://www.bpi.co.uk/index.asp?Page=news/press/news_content_file_1137.shtml)

[http://www.bpi.co.uk/index.asp?Page=piracy/content\\_file\\_329.shtml](http://www.bpi.co.uk/index.asp?Page=piracy/content_file_329.shtml)

### **Nintendo Needs Help: Piracy is No Game**

Nintendo of America Inc. has asked the U.S. Trade Representative to encourage specific governments around the world to take a more aggressive stance to combat piracy of Nintendo video games and systems. Nintendo filed its comments under a "Special 301" process, in which the U.S. Trade Representative solicits input from the public to underscore specific areas of concern.

While China remains the primary source of manufacturing pirated Nintendo DS and Wii games, Korea has emerged as the leader in distributing illegal game files via the Internet. Despite aggressive anti-piracy actions taken by Nintendo, Brazil and Mexico remain saturated with counterfeit Nintendo software. Meanwhile, Paraguay and Hong Kong continue to serve as major transshipment points for global distribution of illegal goods.

"The unprecedented momentum enjoyed by Nintendo DS and Wii makes Nintendo an attractive target for counterfeiters," said Jodi Daugherty, Nintendo of America's senior director of anti-piracy. "We estimate that in 2007, Nintendo, together with its publishers and developers, suffered nearly \$975 million USD worldwide in lost sales as a result of piracy. Nintendo will continue to work with governments around the world to aggressively curtail this illegal activity."

Nintendo.com, February 14, 2008

<http://www.nintendo.com/whatsnew/detail/3GwK3IZlp7jrUUeZdcp7se3MIENRIULs>

## **2 Q 2008 (Second Quarter) 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>

### **U.S. Breaks Up Family Piracy Ring**

Lakeland, Florida residents Maurice A. Robberson, and his brother Thomas K. Robberson, were sentenced to federal prison for managing several for-profit websites and selling more than \$6 million in pirated computer software. Maurice Robberson was sentenced to 36 months in prison, while his brother Thomas was sentenced to 30 months. Both were also ordered to agree to an additional three years of supervised release and pay restitution. The sentence was handed down by U.S. District Court Judge Claude M. Hilton in Alexandria, Virginia.

Maurice Robberson pleaded guilty to conspiracy and felony copyright infringement, while Thomas Robberson pleaded guilty to a single count of felony copyright infringement. The brothers also forfeited the more than \$1 million they had grossed from their illegal businesses.

The March 7, 2008 sentencing marked the conclusion of a multiyear effort that was first brought to the Business Software Alliance's (BSA) attention in 2002 and ultimately referred to the Department of Justice in 2003. In early 2002, the BSA began investigating these individuals after receiving complaints from software copyright holders. After reviewing the reported websites, the BSA made undercover purchases and determined that the software sold was pirated. The BSA then referred the case to the Federal Bureau of Investigation's Washington Field Office, which conducted its own investigation and subsequently shut the operation down in October 2005.

Two others who conspired with Maurice Robberson to commit copyright infringement were also sentenced. Danny Ferrer, 39, was given 72 months for selling more than \$4 million in pirated software with a retail value of nearly \$20 million on BuysUsa.com. Alton Lee Grooms, 56, who helped initiate some of the illegal businesses and profited by more than \$150,000, was sentenced to one year and one day in prison after cooperating with the investigation.

The men ran businesses selling counterfeit software from late 2002 to October 2005 from companies such as Adobe, Autodesk and Macromedia. The counterfeit items were manufactured by members of the conspiracy and included labels that featured trademarks and service marks of the legitimate software companies.

VnuNet.com, March 10, 2008 (Robert Jaques)

<http://www.vnuset.com/vnuset/news/2211588/software-pirates-porridge>

Business Software Alliance, March 7, 2008

Read The Press Release: <http://www.bsa.org/country/News%20and%20Events/News%20Archives/en-03072008-robberson.aspx>

U.S. Department of Justice, March 7, 2008

Read The Press Release: [http://www.usdoj.gov/opa/pr/2008/March/08\\_crm\\_184.html](http://www.usdoj.gov/opa/pr/2008/March/08_crm_184.html)

## **WORLDWIDE PIRACY UPDATE**

### **AUSTRALIA**

#### **Operation 'Rein in the Rip Offs'**

On April 3, 2008, Victoria Police raided a music retailer in Melbourne, Australia seizing thousands of pirate music CDs and DVDs. During the operation, the retailer was forced to close its doors to the public as police searched the premises and removed 5,000 discs openly on sale and extensive burning equipment that was housed in a back room.

The successful raid marked the launch of Operation *Rein in the Rip Offs*. The nationwide operation is spearheaded by Music Industry Piracy Investigations (MIPI) and will target crooked retailers across Australia who are blatantly selling pirate music discs and ripping off consumers, songwriters, artists and legitimate music retailers.

Sabiene Heindl, General Manager of MIPI, commended the Victorian Police on their commitment to tackling pirate activity in the state and said "This proactive raid by the Victorian Police signals the start of a national campaign by the Australian music industry to crack down on rogue traders that are damaging the music industry and ripping off consumers by selling pirate music. No matter where they are located, we will find illegal traders that are selling pirate music and take appropriate enforcement action."

MIPI.com.au, April 3, 2008

Read the Press Release: <http://www.mipi.com.au/documents/FirststrikeinOperationReinintheRipOffs-3April2008Homepage.pdf>

### **CHINA**

#### **Ferrero Rocher Wins Sweet Victory in Copyright Suit**

The chocolate maker Ferrero Rocher has won a long-fought lawsuit in China's Supreme Court against a Chinese company that copied Ferrero Rocher's famous, gold wrapped pralines. Montesor, the Chinese chocolate maker that was copying Ferrero Rocher, was ordered not only to stop but also to pay a fine of \$80,000.

Ferrero Rocher was just one of many western companies to find that they could not sell their product in China because there is already a Chinese clone of the product. The victory is welcome news in continuing hopes that China is submitting to global pressure to adopt more fair marketing practices.

Slash Foods, April 14, 2008 (Shayna Glick)

<http://www.slashfood.com/2008/04/14/ferrero-roche-won-a-copyright-lawsuit-in-china/>

### **HUNGARY**

#### **Top Sites Taken Down**

On March 18, 2008, Hungarian police, aided by IFPI, took action against two 'top sites' specializing in the illegal distribution of music on the Internet before it is legitimately available for sale online.

Top sites are groups of high-speed computer servers used to upload copyright infringing music for users involved in "release groups" to then distribute further over the Internet.

The servers seized by the police, called XXS and Z, contained a total of eight terabytes of copyright infringing content that was distributed by several release groups, most notably XXL and RAGEMP3. The servers were all hosted by the Hungarian company, Sigmanet.

Although top sites notoriously operate under high security, tech experts from IFPI and the Hungarian anti-piracy organization, ProArt, were able to infiltrate the servers. The evidence collected of the large-scale infringements was turned over to Hungarian authorities for further legal action.

IFPI.org, March 19, 2008

Read the Press Release: [http://www.ifpi.org/content/section\\_news/20080319.html](http://www.ifpi.org/content/section_news/20080319.html)

## **JAPAN**

### **YouTube Agrees to Fees for JRC**

Google, the owner of the popular video site, YouTube, has struck a deal with the Japanese copyright body, Japan Rights Clearance Inc. (JRC), to allow people to record their own versions of songs, and upload them to the popular site.

According to the deal, announced on March 27, 2008, users may record their own versions of any of the 5,000 songs they represent. YouTube will then pay an undisclosed amount to the JRC based on the number of times a song is performed, and that amount will then be distributed to the music publishers holding the copyright to the lyrics and music. While the agreement permits people to sing the lyrics and play the music, it will remain a breach of copyright to sing along to an artist's recording.

This is the first deal of its kind for YouTube, and it is expected that similar agreements will be forthcoming in the near future. The Japan Society for the Rights of Authors, Composers and Publishers (JASRAC) anticipates that they will be able to make a similar arrangement with YouTube. JASRAC, representing over one-million songs, already has comparable deals in place with companies such as Yahoo and Sony.

Mashable.com, March 29, 2008 (Sean P. Aune)

<http://mashable.com/2008/03/29/youtube-japan-copyright-deal/>

## **MEXICO**

The recording and film industry organizations in Mexico have joined together to create a new anti-piracy body that represents both their interests. The Asociación Protectora de Cine y Música México (APCM) will tackle the problems of both disc and digital piracy in the country.

Mexico is one of the major markets for music and film in Latin America and ranks as the number 10 music market in the world. However, Mexico also has one of the most serious piracy problems globally. The country is most affected by CD and DVD piracy, with a 65% music piracy rate in 2006 and an illegal market worth \$180 million. Digital piracy is an ever-growing problem as well.

Announced on April 2, 2008, the formation of the APCM follows the successful combination of the anti-piracy efforts of the recording and film industries in Brazil in April 2007. APCM's launch was endorsed by the Mexican Attorney General's Office (PGR), which is responsible for investigating and pursuing federal crimes across the country. Officials are optimistic that the combination of the two operations will significantly simplify administrative processes. For example, now authorities can file only one joint complaint when they uncover cases of pirates violating Mexican copyright law.

IFPI.org, April 2, 2008

Read the Press Release: [http://www.ifpi.org/content/section\\_news/20080402.html](http://www.ifpi.org/content/section_news/20080402.html)

## **SWEDEN**

### **New Efforts to Keep Pirates at Bay**

Sweden, home to the popular file-sharing site *The Pirate Bay*, has long been criticized as a safe haven for online piracy. In March 2008, new hope for a crackdown on piracy emerged when it was announced that Swedish courts will be able to force the country's Internet providers (ISPs) to produce information of suspected file-sharers.

File-sharing suspects can be traced by tracking the IP addresses of the computers that download or distribute a file. According to the proposal, the "courts shall be able to demand an Internet provider to give the copyright owner information about who had a certain IP address when it was used for infringement on the Internet."

The measures to identify Sweden's top piracy offenders are expected to take effect by the summer of 2008.

News8.net, March 14, 2008 (The Associated Press)

<http://www.news8.net/news/stories/0308/503826.html>

## **END OF GRAYZONE DIGEST**

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