



2nd QUARTER 2010 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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HEADLINE NEWS

MAJOR VICTORY – ISPs MUST COMPLY

A federal appeals court has ruled that record labels have the right to demand that ISPs (Internet service providers) hand over the identities of individuals illegally downloading copyrighted music.

On May 3, 2010, a three-judge panel in the US Court of Appeals for the Second Circuit found that a group of record labels' right to enforce their copyrights superseded an Internet user's right to remain anonymous. The anonymous defendant "Doe 3" argued on appeal that the allegations in the record labels' complaint were not sufficient to overcome his First Amendment right of anonymity. The panel found "no merit in Doe 3's contentions."

Arista Records LLC, Sony BMG Music Entertainment, Virgin Records America Inc., Warner Bros. Records Inc. and other major labels filed the original suit in 2008, alleging that 16 individuals known only by their IP (Internet Protocol) addresses assigned by their ISPs had infringed their copyrights. The anonymous defendants downloaded or distributed to the public various music recordings via online file-sharing networks. The labels sought damages and an injunction against further infringement. They also sought authorization to serve a subpoena on the defendants' common ISP, the State University of New York at Albany, in an effort to identify the defendants.

Doe 3 moved to quash the subpoena, saying the First Amendment affords a qualified right to use the Internet anonymously. A magistrate judge denied the motion to quash, and the district judge then rejected Doe 3's contentions to the contrary as well. According to the ruling, the judges saw "no abuse of discretion in the refusal to quash the subpoena. The First Amendment does not provide a license for copyright infringement"

"Given the factual detail in the complaint and its exhibit, plaintiffs' pleading plainly states copyright infringement claims that are plausible," the panel ruled.

Jennifer Pariser, Senior Vice President of litigation and legal affairs at the RIAA (Recording Industry Association of America) commented on the decision:

"We're pleased that this decision reaffirms what we've known all along: Our process is sound and arguments to the contrary – especially the use of the First Amendment defense to sanitize blatantly illegal activity – have no merit."

Law 360, May 3, 2010 (Christopher Norton)
<http://www.law360.com/articles/165729>

Read the Decision: <http://courtlister.com/ca2/Arista-Records-LLC-v.-Doe-3/>

ARTIST'S CORNER

JAY-Z Sues David Ortiz for Infringement

Rap mogul JAY-Z has sued Boston Red Sox star David Ortiz for infringing on the name and reputation of his star-studded sports lounge, the 40/40 Club.

The suit, filed on April 15, 2010 in Manhattan Federal Court, claims Ortiz aka "Big Papi" visited the sleek hotspot in the Flatiron District of NYC and liked it so much, he stole the idea for a club of his own. After enjoying his time at the club, Boston's designated hitter then opened the "Forty-Forty" club in his native Dominican Republic, the \$5 million suit claimed.

According to the suit, Ortiz's use of "Forty-Forty" to name the nightclub in the Dominican Republic violates the Lanham Act, the Trademark Dilution Act, the Anti-Cybersquatting Consumer Protection Act, and various New York state laws. The case was filed by The Name, LLC, a Delaware company that owns the 40/40 trademark, against Ortiz and his company, D. Ortiz C. por A, an entity organized under the laws of the Dominican Republic.

"David Ortiz was at the club at least twice, and certainly knew of it," according to Jay-Z's attorney, Peter Raymond, of the firm Reed Smith LLP. Ortiz stopped into the West 25th Street, New York hangout when the Red Sox were in town to play the Yankees and was there during an All-Star Game celebration. Photos of Ortiz enjoying himself at the real 40/40 Club were also submitted.

Attorneys for Jay-Z claim that the website for David Ortiz's copycat club also "blatantly trades on the goodwill and fame" Jay-Z and his partners have built.

Entertainment Litigation, April 18, 2010 (Hank Fasthoff)

<http://entertainmentlitigation.com/2010/04/18/jay-z-v-david-ortiz>

NY Daily News, April 15, 2010 (Alison Gendar)

http://www.nydailynews.com/gossip/2010/04/15/2010-04-15_david_ortiz_steals_jayzs_4040_club_name_for_dominican_republic_hotspot_fortyfort.html

LIL WAYNE Sued Over 'Lollipop'

Hip hop star LIL WAYNE is facing legal action over his song "Lollipop." A little-known Pennsylvania-based rapper, Dirahn Gilliams, claims he should have been credited for writing portions of the hit.

According to the lawsuit filed on April 30, 2010, Gilliams is convinced his track "Grindin' Like a Goon" was the inspiration for Lil Wayne's Grammy-winning single. Gilliams' track was allegedly distributed to record industry executives in 2007.

Gilliams has named Lil Wayne, writer Rez Zamor and producers Darius 'Deezle' Harrison and Jim Jonsin in the suit, alleging they illegally used parts of his song for "Lollipop." Gilliams is demanding an injunction to block further sales of "Lollipop" and "Tha Carter III", the album it appears on. Gilliams is also seeking monetary damages and lost profits.

The suit comes just a month after Jonsin took legal action against Lil Wayne, alleging he has yet to receive any royalty payments for his work on "Lollipop." Meanwhile Harrison has also filed a multi-million dollar lawsuit over royalties from Lil Wayne's track, "Mrs. Officer."

LEGAL BEAGLE

"Innocent Infringer" Not A Valid Defense

A federal appeals court has ordered a university student to pay the RIAA (Recording Industry Association of America) \$27,750 (\$750 per track) for file-sharing 37 songs when she was a high school cheerleader.

The February 25, 2010 decision by the 5th US Circuit Court of Appeals reverses a decision made by a Texas federal judge who had ordered defendant Whitney Harper to pay \$7,400, or \$200 per song. The lower court had granted her an "innocent infringer's" exemption to the Copyright Act's minimum of \$750 per track because Harper claimed she didn't know she was violating copyrights and thought file-sharing was akin to internet radio streaming.

The New Orleans-based appeals court, however, ruled that Harper was not eligible for such a defense even though she was between 14 and 16 years old when the infringing activity occurred on the notorious file-sharing site, Limewire. The reason, the court concluded, is that the Copyright Act precludes such a defense if the legitimate CDs of the music in question provide copyright notices. The court stated that "Harper cannot rely on her purported legal naivety" as an innocent infringer defense, and ruled unanimously. Plaintiffs in the case (Maverick Recording, et al. v. Harper) included Arista Records LLC, Maverick Recording Company, Sony/BMG, Universal Music Group and Warner Bros. Records, Inc.

Harper, now 22 and a Texas Tech senior, said in a 2008 interview that she didn't know what she did was wrong when she file-shared EMINEM, THE POLICE, MARIAH CAREY and others as a teen. "I knew I was listening to music. I didn't have an understanding of file-sharing," she said.

Most of the thousands of RIAA file-sharing cases have settled out of court for several thousand dollars. The RIAA is winding down its 6-year litigation campaign targeting individual file-sharers and instead is working with ISPs (Internet Service Providers) to adopt rules that could cut off or hinder Internet access to repeat copyright infringers.

Wired.com, February 26, 2010 (David Kravets)
<http://www.wired.com/threatlevel/2010/02/former-teen-cheerleader-dinged-27750-for-infringing-37-songs/>

Read The Decision: <http://www.docstoc.com/docs/34022317/Maverick-Recording-Co-v-Harper/>

Quick BITS AND BYTES

7,000 'Folex' Watches Steamrolled in Philly

A steamroller crushed 7,000 'Folex' (fake Rolex) watches in Philadelphia under the orders of federal authorities seeking to deter would-be counterfeiters.

On April 26, 2010, customs officials staged the destruction to highlight law enforcement's role in protecting intellectual property rights. Immigration and Customs Enforcement officials said the watches were seized from Binh Cam Tran, who pleaded guilty in 2009 to charges including trafficking in counterfeit goods. Tran is serving six years in federal prison and has been ordered to pay more than \$2.2 million to the Rolex Company.

Authorities say Tran fabricated hundreds of thousands of fake Rolex watches in his home near Philadelphia. Officials seized about 24,000 counterfeit watches and enough parts to create 1 million more.

Odd News, April 28, 2010 (Associated Press)

<http://oddties.gaeatimes.com/2010/04/27/federal-authorities-in-philadelphia-crush-7000-fake-rolex-watches-with-a-steamroller-1494>

James Cameron: Innovation Trumps Digital Piracy

Oscar-winning director JAMES CAMERON has said the key to combating digital piracy in the movie industry is to use technology to create an experience that is unmatched anywhere other than the theater. "Avatar," Cameron's blockbuster 3D-film, has made more money than any other movie in history, topping \$2.6 billion at the box office worldwide. The movie was filmed in high-definition 3D video, which requires a high bandwidth. The film is also more than three hours long, which should make it harder to distribute via the Internet.

Cameron has aimed to innovate, giving movie-goers a reason to still see films in the theater. Attempting to create a "reinvigorated cinema experience," he discovered that people will pay to experience the same content in different ways. Not only are they willing to pay \$10 or more to see Avatar on the big screen in 3D, but they also will pay to own the DVD and to take it with them on their phone or portable device.

Cameron said the fact that people were still going to the theater to see Avatar nearly four months after it was released supports his conclusion. Typically, DVDs are released after the film has left movie theaters. However, the DVD was released in April 2010, with the movie still playing in cinemas due to its popularity. The movie has also been made available on iTunes.

CNet.com, March 25, 2010 (Marguerite Reardon)

http://reviews.cnet.com/8301-12261_7-20001201-10356022.html

2 Q 2010 (Second Quarter) BUSTS

US Breaks Up Asian Smuggling Ring

On March 19, 2010, US authorities brought charges against nine people for running a vast smuggling ring responsible for thousands of counterfeit shoes and handbags from China and Malaysia.

A federal grand jury in Baltimore indicted four Chinese nationals, two Malaysians and three naturalized Americans. Together they face more than 1,000 years in prison and millions of dollars in penalties. For nearly two years, the suspects sent 33 shipments of counterfeit goods, mostly made in China and Malaysia, to the port of Baltimore until December 2009. The goods included 120,000 pairs of counterfeit Nike shoes, 500,000 fake Coach handbags, 10,000 pairs of counterfeit Coach and Gucci shoes and 500 counterfeit Cartier wrist watches, the indictment said.

"Criminal organizations that smuggle and sell counterfeit goods in the United States endanger our economy and rob legitimate industries of their business," said John Morton, assistant secretary of US Immigration and Customs Enforcement.

The prosecutors alleged that the suspects also laundered \$122,943.50 for the illegal operations and said that London authorities had also confiscated 350,000 pounds (\$530,000 dollars) in cash. During the operation, one of the suspects sent a sample of fake Viagra pills to an undercover agent, hoping to branch out into sales of the erectile dysfunction drug. The suspects were charged with 72 counts of smuggling, trafficking in counterfeit goods, conspiracy and money laundering.

If convicted on all counts, they together face 1,095 years in prison and \$66 million in penalties. The defendants were identified as Malaysian nationals Wai Hong Yong and Eng Cheng Kee, Chinese nationals Hexing Yang, Chan Hong Xu, Lidan Zhang, Kai T. Jaing and US citizens Josephine O. Zhou, Kin Yip Ng and Yenn-Kun Hsieh.

The suspects were arrested across the eastern United States and the Pacific territory of Guam and were brought to Baltimore according to US officials.

Yahoo! News, March 19, 2010 (Associated Press)

http://ca.rss.news.yahoo.com/s/afp/100319/usa/us_china_malaysia_britain_counterfeit_trafficking

Operation Faux Bowl: The ICE Super Bust

A month-long operation executed by federal and local law enforcement authorities in South Florida resulted in the seizure of 8,165 items of counterfeit Super Bowl-related memorabilia and other counterfeit items. The confiscated merchandise was valued at more than \$400,000, according to ICE (US Immigration and Customs Enforcement).

The NFL (National Football League) cooperated with law enforcement in an operation dubbed *Operation Faux Bowl*, which started before the Miami-based Pro and Super Bowls in January 2010 and yielded six arrests.

"Two major games in the same week, in the same city was a strong magnet for criminals who steal trademarks and knock off trusted brands to sell their substandard wares," said John Morton, assistant secretary of Homeland Security for Immigration and Customs Enforcement. "ICE made a major dent in these criminals' plans to profit from fan enthusiasm. We struck a blow for the consumers, the businesses and the American workers who are hurt by this kind of crime."

Most of the seized items were knockoffs of allegedly official NFL merchandise. Special agents seized counterfeit merchandise in Miami Beach, Miami Gardens, Pompano Beach, Fort Lauderdale, Hollywood, Boca Raton and other south Florida cities.

NBC Sports, February 18, 2010 (Michael David Smith)

<http://profootballtalk.nbcsports.com/2010/02/18/feds-seize-400000-in-counterfeit-super-bowl-memorabilia/>

WORLDWIDE PIRACY UPDATE

The Numbers Don't Lie: Piracy Still a Global Problem

On April 28, 2010, IFPI (International Federation of the Phonographic Industry) published its Recording Industry in Numbers report to provide a "comprehensive picture of key trends of today's music business."

The trade group's report shows that physical sales were down 12.7% on a global scale to \$11.93 billion, a smaller decline than the 15% slump in physical sales for 2008. Trade revenue for global recorded music market totaled \$17.03 billion in 2009, a year-over-year decline of 7.2%, according to IFPI.

According to the report, 80% of the global decline in sales occurred in the US and Japan, the two most technology-driven countries in the world, where the transition from physical media has been the most pronounced. In the US alone, digital sales account for nearly half (43%) of the recorded music market. Music sales in Japan were off 10.8% in 2009 to \$4.05 billion, and sales in the US slipped 10.7% to \$4.63 billion.

However, sales of recorded music were up in 13 markets, while six countries experienced growth in digital sales that was strong enough to offset the physical decline. The six countries were Australia, India, Mexico, South Korea, Thailand and the UK. The total global digital revenue jumped 9.2% to \$4.31 billion. Digital music now accounts for 25.3% of all music sales.

Europe was the second-fastest growing region for digital sales in 2009, up by 29.7%, but the region's digital share of revenue is still below the global average of 13%. The best digital growth was in Australia/New Zealand at 41.4%.

The UK remains the third-largest market, up 1.9% to \$1.57 billion. Germany was down 3% to \$1.53 billion to put it at number 4. Physical sales there represent 85% of that market, and in dollar terms, IFPI estimates the German music retail market is worth \$2.148 billion, just \$5 million less than the UK. Following the passage of anti-piracy measures in France, that market stabilized: it slid 2.7% for a total of \$947.7 million. The real horror stories in 2009 were Spain (down 14.3%) and Italy (down 17.4%).

Performance rights income rose 7.6% for a worldwide total of \$785 million. On a retail basis, IFPI estimates that the global recorded music market was worth \$25.44 billion in 2009. SUSAN BOYLE's "I Dreamed a Dream" was the world's biggest-selling album last year with sales of 8.3 million.

IFPI chairman and CEO John Kennedy commented that the global music business is continuing to do its part, "investing in talent and developing new business models despite the problems of a market rigged by piracy." He added, "reducing piracy is critical if these improvements are going to translate into long term recovery for our global business."

IFPI.org, April 28, 2010

Read The Press Release: http://www.ifpi.org/content/section_news/20100428.html

The Hollywood Reporter, April 28, 2010

http://www.hollywoodreporter.com/hr/content_display/music/news/e3if0dcc1217c8006b4bbb78a667b3d9cdc

ZeroPaid.com, April 29, 2010 (Jared Moya)

<http://www.zeropaid.com/news/88931/ifpi-global-music-sales-down-7-in-2009/>

AUSTRALIA

Nintendo Takes Action To Combat Piracy

Nintendo has confirmed the settlement of a Federal Court action against an individual in Australia for illegally copying and uploading to the Internet Nintendo's highly-anticipated video game, New Super Mario Bros. Wii for the Wii™ console. The game file was first made available for illegal download worldwide on November 6, 2009, a week prior to its official release in Australia.

According to Nintendo, the legal proceeding was commenced to protect the creative rights and innovation of game developers, and to combat the growing international problem of Internet piracy. Under Australian law, copying and distributing games without the permission of the copyright holder is a breach of the Copyright Act. The legal proceeding resulted in a settlement in which the uploader agreed to pay Nintendo the sum of \$1.5 million in damages to compensate for the loss of sales revenue caused by the infringements.

Upon the game being uploaded to the Internet, Nintendo was able to employ the use of technological forensics to identify the person responsible for illegally copying the file and making it available for further distribution. On November 23, 2009, Nintendo obtained a Federal Court search order for the suspect's residential premises. This led to the seizure of property from the premises in order to gain further evidence.

Nintendo continues to "guard its intellectual property rights in order to protect the interests of its valued consumers, its own interests, as well as the interests of game development companies." The company has vowed to pursue those who attempt to jeopardize their industry by using all means available to it under the law.

Nintendo.com, February 9, 2010

Read the Press Release: <http://ap.nintendo.com/pdf/news/783788543.pdf>

ITALY

Labiaia.net Closed for Offering Access to The Pirate Bay

Italian Fiscal Police (GdF) in Bergamo have closed Labiaia.net, a proxy site created specifically to allow Internet users in Italy to access The Pirate Bay.

The action came in direct response to a February 9, 2010 court order requiring ISPs in the country to block access to the unlicensed Pirate Bay service. The Court of Bergamo had ruled that Italian ISPs should act to prevent their users from accessing the notorious BitTorrent service that facilitates access to a large amount of copyright-infringing material.

The court originally ordered ISPs to act in 2008, but that verdict was appealed and overturned. A subsequent ruling by the Italian Supreme Court declared that ISPs could be required to block BitTorrent sites being illegally used to disseminate copyright infringing content, even if they are located outside the country. The Italian Supreme Court ruled that sites hosting torrent files play a significant role in the uploading and downloading process of their users, constituting a form of complicity in the offense of copyright infringement.

IFPI.org, February 9, 2010

Read The Press Release: http://www.ifpi.org/content/section_news/20100209.html

INDIA

Guruji.com CEO Arrested for Music Piracy

Guruji.com founder and CEO, Anurag Dod, was arrested in Bangalore, India on April 29, 2010. Along with other company executives, Dod was charged with alleged infringement of copyright by engaging in music piracy.

The action was initiated by music label T-Series whose music catalog was allegedly exploited by the website Guruji.com. Commenting on the arrest, T-Series VP digital content Neeraj Kalyan said, "Guruji.com was infringing our copyright under the garb of a search engine. The website was working in nexus with some music pirate websites and was exploiting our content."

Users of the Guruji.com service were directed to a music player which linked to other pirate websites such as Songs.pk, musicplug.in, pz10.com and bollymobile.in. Guruji.com, which acted as a hub for these pirate sites, has been held legally accountable for doing so. Although the music player that was used to play content was based *out* of India, the company serving the content was based *in* India. This became a criminal offence according to Kalyan.

In October 2009, Guruji.com was rated as the most preferred music search engine by JuxtConsult, the online market research company in India. Guruji.com started in 2006 and initiated its music search engine in July 2008.

In addition to Guruji.com, T-Series plans to track down other pirate websites exploiting their content and initiating legal action against them. Previous to the recent action against Guruji.com and its CEO, T-Series had initiated legal proceedings against websites such as YouTube, MySpace and Ibibo.

RadioandMusic.com, April 30, 2010 (Anita Iyer)

<http://www.radioandmusic.com/content/editorial/news/gurujicom-ceo-arrested-music-piracy>

JAPAN

Avatar Uploader Arrested

Japan has increased its efforts to toughen the measures against illegal file-sharing. The new P2P surveillance system, part of the new anti-piracy law introduced in January 2010, has produced its first major bust in Shizuoka.

The system helped the High-tech Crime Control Office arrest a 62-year-old man who was accused of uploading two major box-office hits: "Avatar" and "Percy Jackson and the Olympians." The accused man uploaded "Avatar" in December 2009 after it was

allegedly downloaded from another P2P file-sharing website. "Percy Jackson and the Olympians" was uploaded in March 2010.

The uploader has admitted to making about 500 movies available on torrent sites over the last four years. He also said he uploaded the flicks using "Share" software. The movie industry is extremely encouraged by the news and in a recent statement Mike Ellis, the president and managing director of the Motion Picture Association, Asia-Pacific region, thanked the police for their efforts.

P2P On!, April 6, 2010

<http://www.p2pon.com/2010/04/06/avatar-uploader-arrested-due-to-japanese-new-anti-piracy-system/>

MEXICO

Major Raids: Two Million Discs Seized

Mexican law enforcement officers and military personnel conducted two major anti-piracy enforcement operations during March 2010.

The first, aimed at a cartel known as "Los Zetas," led authorities to raid five warehouses and five laboratories. The product seized included 349 burners, 125,000 recorded CD-Rs and more than 200,000 recorded DVD-Rs. In addition, five premises believed to be used for the storage, reproduction and sale of pirate music and films were also raided and eight gang members were arrested. APCM Mexico, the joint music and film industry anti-piracy unit, filed a formal complaint based on the evidence.

The second raid was conducted in Mexico City's "Tepito" district, widely reputed to be a hub of commercial pirate activity. This operation resulted in the dismantling of two laboratories and 65 warehouses. More than 940,000 recorded DVD-Rs and 1,000,000 recorded CD-Rs were seized in this second operation.

Music Industry News Network, April 7, 2010

http://www.mi2n.com/press.php3?press_nb=129028

ZAMBIA

Pirate CDs and DVDs Crushed

Anti-piracy experts in the southern African state of Zambia say there is a need to intensify efforts against the piracy problem in shops set up at gas stations across the country. Kingsley Nkonde, an intellectual property specialist, has stated that he is saddened to see an increasing number of pirate vendors at gas stations across Zambia. The remarks were made at an anti-piracy event held in the capital city of Lusaka. At the event, thousands of pirate CDs and DVDs valued at more than \$34 million were destroyed.

Nkonde is confident that the planned decentralization of the Zambian Police Service Intellectual Property Unit will see a reduction in physical format piracy, as it will encourage other enforcement agencies and stakeholders to take part in anti-piracy work. The crushed infringing CDs and DVDs had been confiscated at Lusaka International Airport in January 2010.

IFPI.org, April 8, 2010 (Peter Chikwampu)

Read The Press Release: http://www.ifpi.org/content/section_news/20100408b.html

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GrayZone, Inc.
P.O. Box 22068
Brooklyn, NY 11202-2068

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