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Napster: Will The Beat Go On?

Music publishers and the Recording Industry Association of America (RIAA), in an effort to avoid a protracted trial, have asked a federal judge to rule that Napster is liable for willfully violating music copyrights. The motion for summary judgment, filed August 14 in U.S. District Court for the Northern District of California in San Francisco, asks that Judge Marilyn Hall Patel find that the file-sharing service engaged in contributory and vicarious copyright infringement.

"Napster's web site advertised the piratical nature of the system by bragging that 'With Napster, you'll never come up empty handed when searching for your favorite music again,'" attorneys for the recording industry wrote in their brief. (Read the motion for summary judgment: <http://www.riaa.com/pdf/PlaintiffsSJM.pdf>)

A hearing is scheduled for October 1. An RIAA spokesman says this marks the first time the trade group has formally requested a ruling following its request for a preliminary injunction against Napster, filed December 6, 1999. Napster officials would not comment, but the service filed a formal motion August 7 that its emergency stay of operations, granted July 18, be made permanent.

The RIAA's action seeks to hold Napster accountable for all copyright infringements that it has committed. "The evidence in this case is clear and irrefutable," according to Matt Oppenheim, RIAA senior vice president. "Napster knowingly and willfully set out to build a business based on copyright infringement on an unprecedented scale."

Meanwhile, at the height of Napster's court battles, some committed file swappers have set up shop overseas, outside the reach of U.S. courts and copyright organizations, as international versions of Napster spring up around the world. But they're already meeting their own legal resistance by the RIAA's counterpart, International Federation of Phonographic Industry (IFPI).

In early June, Napster agreed to exclusively license music from MusicNet, a joint venture established by three record companies: AOL Time Warner's Warner Music, Bertelsmann's BMG Entertainment and EMI Group. The three companies, in collaboration with Internet media technology provider RealNetworks, formed MusicNet.

Read about the joint venture:

<http://cnfnf.cnn.com/2001/04/02/technology/realnetworks/index.htm>

"MusicNet is focused on providing a platform that will help consumers who are used to the experience of Napster to find, acquire and enjoy music in a manner that's legal, reliable, secure and supportive of artists and rights holders," says MusicNet CEO and Chairman Rob Glaser. MusicNet is expected to launch its service in the very near future."

Pirated music battle spreads overseas; ZDNet, August 23, 2001 (John Borland);
<http://netscape.zdnet.com/zdnn/stories/news/0.4586.2807154.00.html>

South Korean 'Napster' Under Pressure; Find Law (BBC News), August 13, 2001;
http://news.bbc.co.uk/1/hi/english/entertainment/new_media/newsid_1489000/1489213.stm; South Korean Legal Resources;
<http://www.findlaw.com/12international/countries/kr.html>

With Napster Down, Its Audience Fans Out; The New York Times, July 20, 2001 (Matt Richtigel);
<http://www.nytimes.com/2001/07/20/technology/20MUSI.html?Todayshdlines>

Report: Napster File Sharing Down 90 Percent; CNN.com (IDG.net), June 7, 2001 (Sam Costello);
<http://www.cnn.com/2001/TECH/internet/06/07/napster.use.down.idg/index.html>

Napster Joins MusicNet; CNNfn, June 5, 2001; <http://cnfn.cnn.com/2001/06/05/technology/napster/>

Napster Near Accord on Music Sales; The New York Times, June 5, 2001 (David D. Kirkpatrick and Matt Richtigel);
<http://www.nytimes.com/2001/06/05/technology/05MUSI.html>

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Artist's
Corner

"Live Phish" Releases Beat the Boots

Phish recently announced the debut of their much-anticipated Live Phish series. Live Phish 01 - 05 will be officially released in stores on September 18, and Live Phish 06 and the ShowCase CD Organizer will follow in early October. Preorders for Live Phish 01 - 06 and the ShowCase are available at <http://www.phish.com/>.

This is the first installment of the ongoing Live Phish series. Twice a year, six complete, unedited shows will be released, mastered directly from Phish sound engineer Paul Langedoc's original two-track soundboard mixes. Jim Pollock created the cover art for the series, designed such that the six individual packages form one large, panoramic illustration when they're arranged together.

RollingStone.com, August 14, 2001

'Bootleg Series' Reveals Velvet Underground

In 1969, Robert Quine, who later went on to play guitar in Richard Hell and the Voidoids, discovered an obscure New York band called the Velvet Underground. He started to casually record their club appearances, forging a friendship with the group in the process. After over 30 years, Quine finally turned the tapes over to Universal Music Enterprises, and the result is the long-awaited October release of The Velvet Underground Bootleg Series Volume 1: The Quine Tapes. It is a three-CD set of unreleased performances which have never been bootlegged. The package was designed by well-known graphic artist Mathieu Bitton. The Velvet Underground is one of the most lauded bands of its era, influencing such latter-day notables as Sonic Youth and R.E.M.

ICE Magazine, August 2001

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Media Group Found Guilty of Copyright Infringement

On August 15, the Recording Industry Association of America (RIAA) obtained Summary Judgment against Media Group, a CD manufacturing plant in northern California, and its President for direct copyright infringement. The court also found all the defendants liable as willful infringers. Judge Cooper of the Central District of California also found the president of the plant liable for contributory and vicarious infringement.

The court found them liable for infringing 1,547 works that were owned by RIAA members based on the evidence the RIAA provided of its educational training to Media Group by RIAA anti-piracy personnel which included a RIAA toll-free number that was available to answer questions on piracy, and Media Group's practice of looking at and not listening to CDs before replicating them. These in-depth training seminars were conducted at Media Group.

RIAA anti-piracy personnel found that Media Group reproduced and distributed copyrighted material from such high-profile artists as Madonna, Santana, P. Diddy, James Brown, and Elvis Presley among others. A trial has been set for October to determine damages.

RIAA.com, August 17, 2001; http://riaa.com/News_Story.cfm?id=445

Congress Covets Copyright Cops

For those contemplating violating the Digital Millennium Copyright Act, be warned: Congress is set to more than double the number of federal copyright cops. A draft of next year's budget includes plans to hire far more Justice Department attorneys and FBI agents who are charged with placing more pirates in prison. The Senate has earmarked \$10 million for copyright prosecutions, enough money for 155 agents and attorneys in the fiscal year starting in October. That's up from a current \$4 million allocated for 75 positions.

Wired News, July 28, 2001 (Declan McCullagh); <http://www.wired.com/news/politics/0,1283,45608,00.html>

U.S. Arrests Russian Cryptographer as Copyright Violator

In one of the first cases of criminal prosecution under a 1998 federal digital copyright law, Dmitri Sklyarov, a 27-year-old Russian cryptographer was arrested at a Las Vegas hotel on July 16, a day after giving a presentation to a large convention of computer hackers on decrypting the software used to protect electronic books.

A San Jose, California federal grand jury indicted Sklyarov, 26, a Russian graduate student, and his employer, ElcomSoft of Moscow, on charges arising from contributions to the Advanced eBook Processor, software that can decrypt the electronic books of Adobe Systems. Sklyarov pleaded not guilty to four counts of trafficking in illegal technology and one count of conspiracy. He faces up to five years in jail and a \$500,000 fine. Alexander Katalov, the president of ElcomSoft, also pleaded not guilty to all counts on behalf of his company. The company maintains that the program is legal in Russia.

The case is being closely watched for the precedent it could set for the criminal provisions of the Digital Millennium Copyright Act of 1998.

The New York Times, July 18, 2001 (Jennifer Lee); <http://www.nytimes.com/2001/07/18/technology/18CRYP.html?todaysh headlines>

The New York Times, August 31, 2001 (Jennifer Lee); http://dailynews.yahoo.com/h/nyt/20010831/tc/russian_programmer_enters_plea_1.html

Quick Bits and Bytes

Campus Music Trades Continue

College students returning to school this fall will have fewer restrictions on sharing music and movie files over the Internet. In the wake of Napster's demise earlier this year, hundreds of Napster-like alternatives have sprung up, making it impossible for universities to create individual firewalls for each program. And students have been unwilling to accept university monitoring of their specific files. So universities have crafted general Internet guidelines addressing the problem of bandwidth issues, but have left file-trading issues alone.

Wired News, August 27, 2001 (Brad King); <http://www.wired.com/news/school/0.1383.45807.00.html>

Piracy Threat Prompts Creation of Padlocks for Digital Music

As part of a concerted effort to block the unfettered copying of digital music, the music industry has paired with electronics companies to develop technologies that put digital locks on songs and limit how often they can be played or copied, and on which devices. Some makers of electronics components are already building in the necessary microchips and software.

Seattle P-I.com (Associated Press), August 25, 2001 (May Wong); http://seattlep-i.nwsource.com/business/36478_hacker25.shtml

Copy-protected CDs Quietly Slip into Stores

For the past four to six months, consumers have unwittingly been buying CDs that include technology designed to discourage them from making copies on their PCs. Macrovision has provided the technology - which inserts audible clicks and pops into music files that are copied from a CD onto a PC - to several major music labels, which are looking for way to protect new releases. If the technology is successful and widely adopted, the ability to create personal music collections on PCs, or to create mixed CDs from purchased CDs, may significantly diminish. The Audio Home Recording Act, a law passed in 1992, says that copyright holders can't sue people who are making personal home copies of music. But lawyers note that the act does not require copyright holders to make this power available to consumers.

CNET News.com, July 18, 2001 (John Borland); <http://two.digital.cnet.com/cgi-bin2/flo?y=eB1U0xzeh0LC0dSw0Ad>

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