



4th QUARTER 2008 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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HEADLINE NEWS

Senate Passes Intellectual Property Rights Act of 2008

On September 26, 2008, the Senate unanimously passed legislation designed to address intellectual property rights enforcement concerns and to protect American innovation and advancement. The Intellectual Property Rights Act of 2008 was introduced in July 2008 by Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) and Ranking Member Arlen Specter (R-Pa) along with senators from both sides of the aisle. After ongoing negotiations in the Senate, and with the House of Representatives and the administration, the bill was amended and passed.

The legislation provides increased resources for Department of Justice programs to combat intellectual property theft, and provides coordination and strategic planning of federal efforts against counterfeiting and piracy. The Act also allows for the Attorney General to prosecute civil copyright infringement cases, and includes measures to strengthen both civil and criminal copyright laws and to beef up law enforcement resources to fight intellectual property crimes. Specifically, the provisions of the recently passed bill will:

1. Prioritize the federal government response to domestic intellectual property crimes by streamlining the coordination and improvement of interagency efforts;
2. Provide grants to the Department of Justice to assist state and local law enforcement agencies in enforcing intellectual property related crimes;
3. Devote additional agents and resources to the FBI for the study, implementation and active enforcement of efforts against intellectual property and counterfeiting crimes; and
4. Provide tools to better gather evidence for the prosecution of Intellectual Property crimes.

The Senate legislation mirrors the PRO-IP Act, which passed in the House of Representatives in May 2008, and also includes a provision that would create a White House-level position to coordinate intellectual property law enforcement across government agencies.

Recording Industry Association of America (RIAA) Chairman & CEO, Mitch Bainwol, commented, "This bill truly is music to the ears of all those who care about strengthening American creativity and jobs. At a critical economic juncture, this bipartisan legislation provides enhanced protection for an important asset that helps lead our global competitiveness. The intellectual property industries are widely recognized as a cornerstone of the U.S. economy. Additional tools for intellectual

property enforcement are not just good for the copyright community but for consumers who will enjoy a wider array of legitimate offerings."

According to a recent report, global piracy of copyrighted material costs the U.S. economy \$58 billion per year and more than 370,000 jobs and \$16 billion in earnings for U.S. workers.

Senate.gov, September 26, 2008

Read the Legislation, with Floor Amendment: <http://judiciary.senate.gov/legislation/upload/IP.pdf>

RIAA.com, September 26, 2008

Read the Press

Release: http://riaa.com/newsitem.php?news_month_filter=&news_year_filter=&resultpage=&id=2FB888F3-E167-AE4E-98A5-122555B793DF

Digital Media Wire, September 24, 2008 (Mark Hefflinger)

<http://www.dmwmedia.com/news/2008/07/24/senate-introduces-intellectual-property-rights-act>

ARTIST'S CORNER

JOHN LENNON "Imagine" Lawsuit Dropped

YOKO ONO, the widow of late BEATLES frontman JOHN LENNON, along with record label EMI have dropped lawsuits filed against documentary makers who used a sample of Lennon's song "Imagine" without permission. The documentary, "Expelled: No Intelligence Allowed," a film by the Premise Media Corp. about scientists being discriminated against for opposing Darwin's theory of evolution, featured a 15-second clip of the song. In the film, the clip of of Lennon's "Imagine" was used, along with the lyrics "Nothing to kill or die for/and no religion, too," while footage of Joseph Stalin was shown.

The claims were dropped on October 7, 2008, after the New York Supreme Court denied a motion to prevent further showings of the film, concluding that the plaintiffs were not likely to overcome Premise Media's "fair use" defense. The lawsuit was originally filed in April 2008 by Ono and son Sean, along with Lennon's son Julian, and publisher EMI Blackwood Music Inc.

Although the filmmakers claimed victory with this development in the case, they had already removed the song from the documentary's DVD release.

eFlux Media, October 8, 2008 (Jane Ivory)

http://www.efluxmedia.com/news_Yoko_Ono_Drops_Lawsuit_over_Use_of_John_Lennon_Song_26089.html

TIM MCGRAW Sued For Copyright Infringement

Country music star TIM MCGRAW has been hit with a \$20 million copyright infringement lawsuit over his song "Everywhere." James Martinez filed suit against McGraw in August 2008 in a U.S. District Court in Texas.

In the suit, Martinez alleges the singer lifted "Everywhere" from a tape containing his track "Anytime, Anywhere Amanda." The audio was originally given to a team of songwriters who also wrote tracks for McGraw's 1997 album, also titled "Everywhere."

The track "Everywhere" was written by Mike Reid and Craig Wiseman, who are also among the names listed in the lawsuit. The suit alleges that "The Defendants

internationally released and distributed the "Everywhere" album containing their infringing copies of a song substantially similar to the Plaintiff's song.

McGraw's attorneys are confident the case will be dismissed altogether, commenting that the accusations are "totally without merit."

CMT.com, August 6, 2008 (Calvin Gilbert)

<http://blog.cmt.com/2008-08-06/tim-mcgraw-copyright-infringement-suit-grabbing-attention>

PRINCE Pushes for Video Removals From YouTube

PRINCE and the labels that represent his music have recently been involved in several controversial video removals in an attempt to protect the infamous artist's copyright at YouTube.

Most recently a case was filed by Stephanie Lenz, a mother who filmed her young children dancing in their kitchen to the Prince song "Let's Go Crazy." She posted her video to YouTube where it was removed due to a DMCA takedown notice from Universal. She filed a counter-notice stating that her video was non-infringing, and then with the assistance of the Electronic Frontier Foundation, sued Universal for sending a takedown notice over a video she says it should have known was non-infringing.

On August 22, 2008, U.S. District Court of California Judge Jeremy Fogel ruled that the video could stay on YouTube and that the copyright holders must consider whether the use of the work is "fair use" under law before unleashing a takedown notice under the Digital Millennium Copyright Act.

Universal Music defended its decision to remove the videos: "Prince believes it is wrong for YouTube, or any other user-generated site, to appropriate music without his consent. That position has nothing to do with any particular video that uses his songs. It's simply a matter of principle."

In May 2008, NPG Records on behalf of Prince also requested that all versions of his RADIOHEAD cover of "Creep" be removed from YouTube. The artist sang the song at Coachella Valley Music & Arts Festival.

Some have criticized that these actions have only served to make more people aware of the videos and will send music fans on a scavenger hunt to find them. The extent to which artists can protect their copyright at online sites like YouTube continues to be shaped by the courts' decisions.

ARS Technology, August 21, 2008 (Timothy B. Lee)

<http://arstechnica.com/news.ars/post/20080821-fair-use-gets-a-fair-shake-youtube-tot-to-get-day-in-court.html>

Los Angeles Times, May 30, 2008 (Todd Martens)

<http://latimesblogs.latimes.com/extendedplay/2008/05/random-cuts-pri.html>

LEGAL BEAGLE

Last Days for Last.fm?

The German music service, Finetunes, has issued a cease-and-desist order to online music platform Last.fm, for infringement of German copyright law. The suit claims that Last.fm is using Finetunes' music catalogue for its music streaming service without having been granted permission by either Finetunes or Germany's collecting societies.

Finetunes has ordered Last.fm to end the use of songs from its catalog and is demanding compensation for the previous illegal use of its copyrighted material. While Last.fm has held negotiations with many potential licensors, talks between Last.fm and Finetunes have failed several times and are not currently in progress. Finetunes says it therefore felt obliged to take action behalf of some of its licensors, who include German independent labels such as Grand Hotel van Cleef, Hot Action Records and Buback Tonträger.

Finetunes CEO Oke Göttlich commented on the recent action, "Finetunes supports the growth of the digital music market with innovative business models such as Last.fm. Such new models can enrich the market but it's also crucial that rights holders are properly included, which is already a well-established practice with similar online music platforms. It is not acceptable that the artists' music is just taken away from them, and used extensively without any adequate compensation."

Music Week, September 9, 2008 (Ben Cardew)
<http://www.musicweek.com/story.asp?storycode=1035440>

Court Rules: Even FreeWare is Protected by Copyright

In what is considered a crucial win for the free software movement, a federal appeals court has ruled that even software developers who give away the programming code for their works can sue for copyright infringement if someone misappropriates that material.

The August 13, 2008 decision by the U.S. Court of Appeals for the Federal Circuit in Washington, D.C., helps clarify a gray area of the law concerning how much programmers can control their intellectual property once it's been released for free into the "open source" software community.

People are free to use that material in their own products, but they must credit the original authors of the programming code and release their modifications as well, a cycle that's critical for free software to continue improving. Because the code in free software is given away for free, questions emerged when violations were discovered of copying the code into their own for-profit products without giving anything back, in the form of attribution and disclosure of the alterations they made.

According to the court, "Traditionally, copyright owners sold their copyrighted material in exchange for money. The lack of money changing hands in open source licensing should not be presumed to mean that there is no economic consideration, however."

NewsVine.com, August 14, 2008 (Jordan Robertson)
http://www.newsvine.com/_news/2008/08/14/1749189-court-says-copyrights-apply-even-for-free-software

The company's three co-founders say the idea came from a desire to better align the interests of artists who want to sell their music and fans who want to get it for free. "We thought that by providing this extra incentive to buy a song legally, namely, owning a stake in that song, would make it more attractive to buy," co-founder Hannes Hesse said.

The site's selection is still pretty slim - it includes around 700 songs from about 200 artists - but Popcuts is adding musicians through a deal it recently made with music distributor DashGo Inc. and is looking to connect with more distributors and with record labels.

Anyone making music can sell their tunes through the site, while maintaining full rights to their work. The agreement between artists and Popcuts is not exclusive, so music makers can sell songs through services like Apple's online iTunes Store as well.

Popcuts takes 10% to 20% of song sales. Artists can determine what cut they get, and the rest goes to fans. Since fans who buy songs early get a larger cut of subsequent sales, the site hopes a lot of people will search for new tunes and buy those that sound promising.

The future of Popcuts is uncertain. Besides its small music catalog, it is navigating a market populated by several large, established players like Apple and Amazon that already have the allegiance of many digital music buyers. However, the Popcuts model of sharing with users may prove to be very effective. Besides making money, users might feel as if their purchases are helping to invest in the bands they follow.

Newser.com, October 16, 2008 (Rachel Metz)
<http://www.newser.com/article/d92v9omg0/new-music-site-popcuts-pays-music-lovers-for-being-trendsetters.html>

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Quick BITS AND BYTES

Rocket Man Lands in Hot Water

Arye Sachs, a former Israeli Army Sergeant, was attempting to get attention when he drove a 25-foot-long replica missile with the slogan "Viva Viagra" painted on its side into the center of Manhattan. However the stunt only caused the man to be sued for trademark infringement

In September 2008, Sachs drove the missile from his home on Long Island on the back of his pickup truck, and parked it in front of the 42nd St. headquarters of Pfizer, the maker of Viagra. Pfizer's lawyers were not impressed and slapped him with a trademark infringement lawsuit and demanded he remove the drug's name from his rocket.

Sachs has built other mock rockets that have landed him in trouble, including the dual "Obama-Oh Mama" and "Viva McCain" projectile -- for which he was detained by the Secret Service recently in Washington, D.C.

October 10, 2008 (Tom Radler)
<http://www.asylum.com/2008/10/10/man-sued-over-viagra-missile-stunt>

eBay Has to Pay For Knock-Offs

A French commercial court ordered online auction site, eBay, to pay more than \$59 million to a high-end fashion company because counterfeit goods were sold there.

The fashion company, LVMH Moët Hennessy Louis Vuitton SA, is home to such brands including Louis Vuitton, Givenchy, Fendi, Emilio Pucci and Marc Jacobs, and had complained that it was hurt by the sale of knockoff bags and clothes on eBay. Pierre Godet, an adviser to LVMH Chairman and CEO Bernard Arnault, said the Paris court's decision was "an answer to a particularly serious question, on whether the Internet is a free-for-all for the most hateful, parasitic practices."

eBay countered that LVMH is trying to crack down on Internet auctions merely because it is uncomfortable with the business model, which tends to cut out the middleman.

Current.com, June 30, 2008

http://current.com/items/89061851_ebay_to_pay_59m_to_fashion_house_for_selling_fakes

4 Q 2008 (Fourth 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://grayzone.com/news/C13>

Blogger Busted for Leaking 'Chinese Democracy'

On October 27, 2008, a blogger suspected of streaming songs from the GUNS N' ROSES album "Chinese Democracy" before its release was arrested and appeared in court, where his bail was set at \$10,000.

FBI agents arrested 27-year-old Kevin Cogill on suspicion of violating federal copyright laws. Cogill allegedly posted nine unreleased Guns N' Roses songs on his website in June 2008, which were later removed. According to an arrest affidavit, Cogill admitted to agents that he posted the songs on his website. Prosecutors said the leak could result in a "significant" financial loss for the band.

"Guns N' Roses representatives have been made aware of the arrest and are leaving the matter to the authorities," the band's spokesman said.

USA Today, August 29, 2008

http://www.usatoday.com/life/music/news/2008-08-27-guns-roses_N.htm

WORLDWIDE PIRACY UPDATE

AUSTRALIA

Toyota Kicks Counterfeit Car Parts to the Curb

Toyota Australia has recently warned that repair workshops selling and fitting counterfeit Toyota vehicle parts are putting their businesses at risk. There has been an increase in counterfeit Toyota parts being imported into Australia illegally, which can be sold locally for a fraction of Toyota's retail price. The parts are not made to the standards of quality, reliability and durability Toyota Genuine Parts are renowned for, says Matthew Callachor, divisional manager for Toyota customer service.

"The safety of Toyota drivers and their passengers is of paramount importance to Toyota Australia, and it is not acceptable that inferior parts are being fitted to their vehicles. Additionally, these parts being passed off as our product compromise our good reputation and the reputation of workshops repairing Toyota vehicles across Australia," he said.

Counterfeit auto parts are usually manufactured in unknown locations with inferior materials and no guarantee on safety, quality or usage, which is why they are offered so cheaply. Toyota also warned the public that the safest way to protect business from the risks involved with counterfeit parts is to purchase Toyota Genuine Parts directly from a Toyota dealer.

CarAdvice.com.au, October 1, 2008

<http://www.caradvice.com.au/17106/toyota-gets-tough-on-counterfeit-parts>

CHINA

Microsoft Slashes Prices to Cut Down Piracy

Microsoft has cut prices by 70% on its software products in China to counter rampant piracy. It is the first special offer since Microsoft entered the Chinese market in 1992, the company said.

Microsoft said it had slashed the price for Office 2007 Home and Student Edition to 199 yuan (\$29) from 699 yuan (\$102). The price cut is designed to make Microsoft's products in China more affordable and more promotions are likely in the future, according to Jim Lin, the company's public relations manager in Beijing.

Violation of intellectual property rights has been an ongoing issue in China's relationships with its trading partners, including the United States. U.S. movie, music, software and book industry groups alone estimate they lost \$3.5 billion in China due to piracy in 2007, three times more than in 2001. Microsoft, the world's largest software firm, is among the hardest-hit victims. Pirated versions of Microsoft's Office software can sell in China for less than 10 yuan (\$1.50).

In August 2008, Chinese police detained the operator of a website, 'Tomato Garden', from which millions of pirated versions of Microsoft software had been downloaded.

iT News, September 24, 2008 (Reuters)

<http://www.itnews.com.au/News/85335.microsoft-cuts-prices-in-china-to-fight-piracy.aspx>

ITALY

Colombo-BT Closed for Business

Colombo-BT.org, the largest BitTorrent tracker site in Italy, has been closed following police action. BitTorrent trackers help users find and exchange the computer files they want on certain peer-to-peer networks, enabling them to distribute uploaded copyright infringing material.

Colombo-BT.org made available more than 390,000 music files and 500,000 movie files, including numerous pre-release titles. The illegal service had more than 400,000 registered users and 800,000 unique user accesses each month. On July 28, 2008, the Guardia di Finanza undertook the action in cooperation with FPM, the Italian anti-music piracy group.

The site was run by three Italian men who have been charged by the police with infringing copyright law and face potential prison terms of up to three years and heavy financial penalties through administrative sanctions. The operators were making money by accepting online donations from users. The three men now face potential prison sentences and fines as a result of their activities.

According to Enzo Mazza, president of FPM, "This police action sends a strong message that Italy will not tolerate serious online music piracy so criminals looking for get rich quick schemes should consider other options."

IFPI.org, July 29, 2008

Read the Press Release: http://www.ifpi.org/content/section_news/20080729.html

KOREA

Warner Fights Piracy On Demand

In an effort to limit piracy in South Korea, Warner Bros. has announced that they will be releasing their movies 'on-demand' at least two weeks before their official DVD release dates

According to Thomas Gewecke, president of Warner Bros. Digital Distribution, the experimental move is a chance to see if the action will impact Internet piracy in a country where almost everyone has broadband Internet. "Korea is the ideal market for us to expand our digital distribution strategy," Gewecke said. "There is already a broad base of consumers who are immersed in technology and very comfortable getting movies through video-on-demand or similar services."

Managing director of Warner Home Video Korea, Harrison Lee, also added that more than 47% of people surveyed in Korea said they had downloaded movies from the Internet at least once.

Afterdawn.com, October 5, 2008 (Andre Yoskowitz)

<http://www.afterdawn.com/news/archive/15597.cfm>

MEXICO

Pirates Burned in Mexico City Raids

On August 29, 2008, Mexican law enforcement authorities raided a total of 70 warehouses and 15 laboratories around the market of Tepito in Mexico City. The area had become a well-known distribution point for pirated music and film in Mexico. The raids followed several weeks of investigation into the activities of pirate music distributors and are part of the stepped-up intellectual property enforcement policy recently advanced by the Calderon Administration.

The operation took place with the assistance of local industry anti-piracy group APCM, and led to the seizure of approximately 410,000 recorded CD-Rs/DVDs, 3 million covers and 850 CDR/DVD burners, and two individuals were arrested. A force of 375 police officers and 10 prosecutors from the Attorney General's office (PGR) carried out the raids.

According to the authorities, the organization targeted in the raids supplied pirate music and film product throughout the country.

IFPI.org, September 8, 2008

Read the Press Release: http://www.ifpi.org/content/section_news/20080909.html

TAIWAN

EzPeer Pirates Face Hard Time For Infringement

On October 6, 2008, the Taipei District Prosecutors' Office announced the indictment of the local websites EzPeer and EzPeer+ for copyright infringement. Digital Global Ltd., the company operating the sites, as well as the company's Chairman and four staff, were also indicted. The operators of EzPeer and EzPeer+ face up to three years in prison for facilitating copyright infringement.

EzPeer was a popular website in Taiwan which allowed its users to exchange and download unauthorized music and movie files. Following the settlement of an earlier copyright infringement complaint in 2006, EzPeer was understood to have closed and been replaced by a new site, EzPeer+. However, the EzPeer site in fact remained active and continued to facilitate copyright infringement. On November 14, 2006, the Criminal Intelligence Bureau raided EzPeer, which was then housed in the same offices of EzPeer+. The raid found that four servers located in EzPeer+'s office also hosted the operations of EzPeer. In addition, some EzPeer+ employees were found to be working for EzPeer. After lengthy investigations, on October 6, 2008, the Taipei District Prosecutor indicted both EzPeer and EzPeer+.

"The Taiwan authorities' persistence in obtaining these indictments is to be commended and sends a strong signal that those seeking to profit by stealing others' creative works cannot escape the law in Taiwan," said Mike Ellis, President and Managing Director, Asia-Pacific for the Motion Picture Association (MPA). "As Internet piracy continues to grow, we hope to see such resolve as shown in Taiwan from the authorities in the rest of the region, which will go a long way in tackling this scourge."

In Taiwan, Internet piracy is of increasing concern. In 2007, the Taiwan Foundation Against Copyright Theft (TFACT) representing the MPA coordinated with local enforcement authorities to take action in respect of more than 300 online piracy

cases. This number has already been exceeded in 2008. As at end-September 2008, there have been 320.

MPAA.org, October 8, 2008

Read the Press Release: http://mpaa.org/press_releases/taiwan_piratewebsiteraid_oct08.pdf

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

UNITED KINGDOM

Companies Pay the Price for Software Piracy

A travel company based in the north of England has been fined a six-figure sum for using unlicensed versions of Microsoft software, an amount negotiated by the Business Software Alliance (BSA). The BSA has taken further enforcement action against three other companies: debt recovery firm Philips Collection Services, packaging company Procurasell and online marketing group Webevents, all due to the use of unlicensed software.

The fined travel company was using unlicensed editions of SQL Server and the corresponding SQL CALs, Visio, Project, Office and Windows Server. As well as paying the penalty charge, the company will have to purchase legal versions of the software, resulting in an additional cost of more than £100,000 (more than \$170,000 USD.)

Both Procurasell and Webevents have also been fined tens of thousands of dollars for using unlicensed versions of Adobe and Microsoft software, however the BSA did not disclose the exact amount in each case. The filing against Philips Collection Services is still underway. The firm used unlicensed copies of Microsoft and Adobe software on around 100 PCs. The BSA sent a software audit request to the company in June 2007 but it failed to respond and this led to the BSA pursuing the case in court.

PC Magazine, October 2, 2008 (Rosalie Marshall)

<http://www.pcmag.co.uk/vnunet/news/2227430/bsa-cracks-unlicensed-software>

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

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