



1st QUARTER 2009 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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HEADLINE NEWS

THE NUMBERS DON'T LIE: DIGITAL MUSIC SALES SOAR!!

All over the world, the music industry has transformed its business models, offering consumers an increasing range of new services with leading technology partners. However, generating value in an environment where 95% of music downloads are illegal and unpaid for is still the biggest challenge for music companies and their commercial partners.

Released in January 2009, the latest Digital Music Report shows the music business internationally saw a sixth year of expansion in 2008, growing by an estimated 25% to \$3.7 billion in trade value. Digital platforms now account for around 20% of recorded music sales, up from 15% in 2007. Recorded music is at the forefront of the online and mobile revolution, generating more revenue in percentage terms through digital platforms than the newspaper (4%), magazine (1%) and film industries (4%) combined.

At the same time, a new generation of music subscription services, social networking sites and new licensing channels is emerging. These were led in 2008 by services like *Nokia Comes With Music*, *MySpace Music* and new partnerships with Internet Service Providers (ISPs), such as TDC in Denmark, Neuf Cegetel in France, TeliaSonera in Sweden and BSkyB in the UK. Despite these positive developments, the music sector is still overshadowed by the huge amount of unlicensed music distributed online. Globally, an estimated 40 billion files were illegally shared in 2008, giving piracy a rate of around 95%.

Legal single-track downloads, up 24% in 2008 to 1.4 billion units globally, continue to drive the online market, but digital albums are also on the rise, up 36%. The top selling digital single of 2008 was LIL WAYNE's "Lollipop" with sales of 9.1 million units, 1.8 million more than the 2007 best selling digital single.

The digital age is expanding the role of music companies in developing and marketing artists and progress is being made internationally in getting cooperation from ISPs to end mass-scale copyright infringement on their networks. Partnerships with broadband providers are also likely to become more important in the future.

Advertising-supported services that are free to consumers are also opening up. One of the highest-profile moves in this area was the launch of *MySpace Music* in the US in September 2008. Several leading music companies have also signed licensing agreements with YouTube, the global market leader in video streaming.

Music companies are also increasingly licensing music to third parties. One notable success is the games sector, where music games were responsible for 15% of overall game sales in the US in the first half of 2008. "Guitar Hero" and its sequels have sold more than 23 million copies in three years, generating more than \$1 billion in North America alone.

Despite the success these changes have brought, the critical problem of online piracy remains. Cooperation from Internet Service Providers holds the key to this problem. This view has been increasingly accepted by governments internationally. In 2008 a tipping point was reached, with governments in France and the UK leading the way in requiring ISPs to help bring piracy on their networks under control. In France, a draft Creation and Internet Law sets up a system of "graduated response" by which ISPs will write to persistent copyright abusers to warn them about their actions, and eventually sanction them with loss of Internet access. The momentum for ISP cooperation extends beyond France and the UK. New Zealand will start requiring ISPs to implement a policy of terminating the accounts of repeat infringers in February 2009. Governments are also involved in discussions of the issue in the US, Italy, Australia, Japan, Hong Kong and South Korea.

According to John Kennedy, chairman and chief executive of IFPI, "The recorded music industry is reinventing itself and its business models. Music companies have changed their whole approach to doing business, reshaped their operations and responded to the dramatic transformation in the way music is distributed and consumed."

The continued success of legal digital sales through new business models and international cooperation is encouraging news in the ongoing battle against piracy.

Read the full Digital Music Report 2009: <http://www.ifpi.org/content/library/DMR2009.pdf>

IFPI.org, January 16, 2009

Read the Press Release: http://www.ifpi.org/content/section_resources/dmr2009.html

Digital Music News, January 21, 2009

<http://www.digitalmusicnews.com/stories/011509ifpi/view>

[Requires free registration]

ARTIST'S CORNER

Copyright Cases 'Breakthrough' Against MARY J. BLIGE

The infamous R&B singer, MARY J. BLIGE is facing two separate copyright infringement cases, both in connection with her latest album, "The Breakthrough."

In the first case, two music writers have accused the singer/songwriter of copyright infringement over the song "Take Me As I Am." Jay Brian Ballard and Kim Jones, of Utah say in a lawsuit filed in December 2008 that in 1995 they wrote the lyrics and music of "Take Me As I Am." A decade later, they claim, Blige included a substantially similar version of their song without permission on "The Breakthrough," her multi-platinum selling album. The lawsuit, filed December 17, 2008, in U.S. District Court in Los Angeles, seeks profits from the recording of the song and impoundment of all copies of "Take Me As I Am." Named as defendants are Blige, Geffen Records, and Universal Music & Video Distribution.

In the second suit, filed December 19, 2008, two New Jersey men claim the song "Enough Cryin'," also on "The Breakthrough" album, infringes on a song they

wrote. Jermaine George Jumps and Michael Clifton Adams Jr. say they submitted a CD in 2001 with five original recordings, including "On My Grind," to the office of a New Jersey producer. In 2005, the producer and others published "Enough Cryin'," performed by Blige, which is substantially similar to "On My Grind," according to their suit, which was filed in U.S. District Court in New Jersey.

The Salt Lake Tribune, January 5, 2009 (Pamela Manson)
http://www.sltrib.com/news/ci_11381587

Radar Online, December 23, 2008
<http://www.radaronline.com/exclusives/2008/12/blige-sued.php>

SATRIANI Sues COLDPLAY

Noted guitarist JOE SATRIANI has sued members of COLDPLAY, claiming the band's smash hit "Viva La Vida" copied parts of one of his songs.

The copyright infringement lawsuit was filed on December 4, 2008 in federal court in Los Angeles. The 52-year-old Satriani claims Coldplay copied "substantial, original portions" of his 2004 song, "If I Could Fly." The Coldplay hit, which was nominated for a Grammy in December 2008, has topped charts around the world and been used to sell iPods in commercials. Satriani wants a federal judge to order an accounting so he can determine how much money he may be owed, or else stop using the song.

Satriani insisted he did not want his claims to come to court, but that Coldplay ignored him. "I did everything I could to avoid a court case with this situation. But Coldplay didn't want to talk about it. They just wanted this whole thing to go away. Maybe they figured this little guitar player guy will leave them alone after a while, I don't know. But we're talking about a piece of art that I created, and that's something I feel is important. I think everybody should feel that way."

Coldplay have yet to respond to the guitarist's allegations.

NME.com, December 8, 2008
<http://www.nme.com/news/coldplay/41509>

Access Hollywood, December 5, 2008 (Associated Press)
http://www.accesshollywood.com/on-the-download/guitarist-sues-coldplay-for-copyright-infringement_article_12500

KRAFTWERK Case Overturned

The highest German civil court overturned a decision that ruled electronic music band KRAFTWERK had their copyright infringed by a rap producer who used two seconds of the band's music as a sample.

In the latest ruling, sampling music does not count as a copyright violation, which completely negates the previous ruling in Hamburg state court that even the shortest bit of music was a violation. The court that previously said the Krautrock legends were infringed will now take up the case again. The case was originally brought to court after German rap producer Moses Pelham used two seconds of Kraftwerk's "Metal On Metal" in the rhythm section of Sabrina Setlur's "Nur Mir." As one of the most influential electronic bands, Kraftwerk are frequently sampled, including lending the riff of their "Computer Love" to COLDPLAY's X&Y track "Talk."

The November 20, 2008 civil court ruling sets a new precedent on the international stage in defense of sampling. Many producers and mash-up artists who maintain that

sampling falls under the category of "fair use," have considered the ruling a victory in their favor.

Rolling Stone, November 21, 2008

<http://www.rollingstone.com/rockdaily/index.php/2008/11/21/kraftwerk-copyright-infringement-case-means-victory-for-sampling/>

LEGAL BEAGLE

Settlement Shuts Book on Google Copyright Suit

Google will pay at least \$45 million in compensation to authors and publishers and limit access to its book search program to settle a copyright infringement lawsuit over the scanning and uploading of books to its search engine. Google's "Print Library" program scans books from the New York Public Library, Harvard University and other colleges to make the texts searchable online.

Google had launched the program in 2005, hailing it as a digitized and convenient alternative to visiting the library. However, amid criticism from the Association of American Publishers (AAP) and other trade organizations, the search engine announced shortly thereafter that it would temporarily stop scanning copyright-protected books into its database. The Authors Guild, which represents more than 8,000 published writers, sued the search engine in the US District Court for the Southern District of New York, saying it unlawfully reproduced public domain works and works that are still under copyright protection.

The settlement has also established the Book Rights Registry, which Google will fund with a minimum of \$67.5 million. A minimum of \$45 million will be used to pay authors up to \$60 for complete works that have been scanned and uploaded to "Print Library." Google will also pay another \$34.5 million in administrative expenses and a maximum of \$30 million in plaintiffs' attorney fees.

The agreement provided that books not under copyright will be fully available and searchable. Users will be able to view 20 percent of the contents of books that are under copyright but are out of print, unless the publisher chooses to block access. Users will not be able to view the contents of books in print. However, they will be able to buy access to full-text versions of the books.

"From our perspective, the agreement creates an innovative framework for the use of copyrighted material in a rapidly digitizing world, serves readers by enabling broader access to a huge trove of hard-to-find books, and benefits the publishing community by establishing an attractive commercial model that offers both control and choice to the rights holder," AAP Chairman Richard Sarnoff said in a statement.

Sergey Brin, Google's co-founder and President of Technology, also praised the agreement, "Google's mission is to organize the world's information and make it universally accessible and useful."

FindLaw, November 5, 2008 (Joe Hylkema)

http://news.findlaw.com/andrews/bt/cmp/20081104/20081104_google.html

Read the Original Class Action Complaint: Authors Guild Inc. et al. v. Google Inc., No. 05-CV-8136

<http://www.authorsguild.org/advocacy/articles/settlement-resources.attachment/authors-guild-v-google/Authors%20Guild%20v%20Google%2009202005.pdf>

Tennessee Governor Signs First-Ever Campus Downloading Bill

On November 12, 2008, Tennessee Governor Phil Bredesen signed into law a bill aimed at curbing the disproportionate amount of music theft occurring on state campus networks via peer-to-peer (P2P) services. Members of the music community participated in the signing ceremony and welcomed the enactment of the legislation, which passed the state legislature earlier in 2008.

Specifically, the bill requires that Tennessee public and private colleges and universities exercise appropriate means to ensure that computers connected to their campus network are not being abused for the purpose of illegally downloading and distributing copyrighted material through P2P file-sharing programs. Upon a proper analysis of the network, those institutions are then required to implement technological support and develop and enforce a computer network usage policy to effectively limit the number of unauthorized transmissions of copyrighted works.

Schools that have implemented robust technological tools have not only reported seeing a dramatic reduction in the amount of copyright violations occurring on the campus network but a significant amount in savings. A 2007 Student Monitor survey had found that more than half of college students downloaded music and movies illegally. A senior administrator at the University of Utah recently testified in a Congressional hearing that after implementing certain technologies to curb instances of music theft, his school received 90 percent fewer notices of copyright theft and saved more than \$1.2 million per year in Internet bandwidth charges and an estimated \$70,000 per year in personnel costs. Upon developing and installing technological support for their network, University of Florida officials reported experiencing a rapid decline in bandwidth overload due to the drop-off in P2P use among its students. Because of this drop-off, administrators were able to delay server upgrades, resulting in savings of \$1.5 million.

The bill was signed into law on the same day the Country Music Awards (CMAs) were held in Nashville. "It's fitting that on the day the world focuses on Nashville and country music that Tennessee would take the lead in protecting the creativity that this state so uniquely inspires," said RIAA Chairman and CEO, Mitch Bainwol. "We have all seen the effects illegal downloading has had on Music Row – too many record stores have been shuttered and too many songwriters are out of the business of writing songs. This bill, the first of its kind in the nation, addresses the issue of campus music theft in a state where the impact is felt more harshly than most."

RIAA.com, November 12, 2008

Read the Press Release:

http://riaa.com/newsitem.php?news_month_filter=&news_year_filter=&resultpage=&id=72240403-D51A-209F-142F-98DC98F7AE18

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SIDEBAR

NEW Approach: Ads Pay So Vids Can Stay

Instead of trying to take down all copyright-protected videos that its members post, MySpace will let clips stay and give the creators of the original content a cut of the revenue from advertising that will be attached to the snippets.

MySpace and online video ad technology company, Auditudo, announced a partnership with MTV Networks (owned by Viacom Inc.) that will let ads be placed in clips of the network's shows that users upload to MySpace. MySpace had generally kept such clips off its social network along with other copyright-protected content that users posted. The News Corp. owned site has removed clips at the request of the copyright owners.

MySpace's new approach will be applied to videos produced by partners it makes in its new ad deal. Under this first partnership, MySpace users will be allowed to upload videos of MTV Networks shows. Technology from Auditudo will detect and identify the clip, and overlay an ad onto it. The system will tag videos with an "attribution overlay," a semitransparent bar across the bottom of a video that give viewers information such as the episode's original air date and a link to buy the episode. The overlays appear for about 10 to 15 seconds near the start of a video, and are followed by an ad. Revenue generated from the overlays and ads will be shared by MySpace, Auditudo and the copyright holders.

The directors of MySpace feel that the advantages of unprecedented access to copyright-protected content will outweigh any inconvenience the ads will pose to MySpace users.

If this is a success, Internet users can expect to catch a commercial while watching video clips at other sites as well.

Yahoo! Finance, November 3, 2008 (Rachel Metz, AP)
http://biz.yahoo.com/ap/081102/tec_myspace_video_ads.html?v=2s

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Quick BITS AND BYTES

Counterfeit Cash Climbs in US

'Funny money' is turning up all over the country. In 2008 alone, counterfeiters used more than \$64 million in fake cash to purchase items in the US. Some of them have used the fake currency to pay bills.

Police reports show counterfeiters were unusually busy hitting movie theaters, convenience stores, fast food restaurants, and even airports. According to the Secret Service, counterfeiting arrests are up by 28 percent in 2008. They have made 2,231 arrests, which is the highest number since 2004.

The federal government says counterfeiting is usually carried out by drug dealers, but because of the slow economy, they are catching other people trying to use counterfeit money just to get by.

KHOU.com, December 31, 2008 (Jeff McShan)

http://www.khou.com/news/local/stories/khou081230_mp_counterfeiters-increase.2248600a.html

Company Accused of Biting Off Edible Cards

A California company that makes edible greeting cards for pets says a Wisconsin business is infringing its patent.

Plaintiff Crunchkins Inc. owns the patent, which covers edible holiday cards for dogs, cats, rabbits, horses and birds. The company's patent description says, "Many families have pets which are increasingly treated as members of the family. Many pet owners enjoy including their beloved pets in holiday festivities such as birthdays, Christmas, Valentine's Day, Thanksgiving and Easter." The patent describes a greeting card made of a non-toxic material that is chewable and digestible in conjunction with a greeting that may have a picture and a textual message. Depending on the animal, the edible portion may be made of rawhide, grains, minerals or even seeds.

Crunchkins' complaint, filed in the US District Court for the Eastern District of Michigan, alleges that Milwaukee-based Chewed for Thoughts LLC is selling edible greeting cards that infringe the 101 patent. The lawsuit seeks injunctive relief and damages for Chewed for Thoughts' allegedly willful infringement.

LegalMinds.org, October 28, 2008 (Deborah Nathan, Esq.)

http://www.legalminds.org/andrews/bt/int/20081027/20081027_crunchkins.html

1 Q 2009 (First 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>

28 Crooks Catch a Wrap for Christmas

Retailers may have had a tough time this holiday season due to the recession, but stores in downtown LA's Santee Alley received some help thanks to the Los Angeles Police Department (LAPD).

The police raids were conducted the weekend before Christmas 2008, which led to the arrests of 28 people for making and selling knockoff goods. Police seized \$2.7 million in counterfeit items bearing names such as Air Jordan, Ed Hardy, Coach and Sony in the weekend raids, resulting in the second-largest take of knockoffs in Los Angeles County history. More than 45 officers participated in the annual Christmas-time raids.

The stores in Santee Alley, also known as the Callejones, have long been a hot spot for selling bootleg goods including electronics, clothes, music and movies. According to the LAPD, those arrested will face varying charges, including sales, distribution and manufacturing of counterfeit merchandise.

USA Today, August 29, 2008

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

WORLDWIDE PIRACY UPDATE

ARGENTINA

Major Market Raided

The Argentine coast guard raided the notorious La Salada market and seized enormous amounts of counterfeit product. The Economic Crime Unit of the coast guard executed numerous search warrants on several warehouses around the market in the suburbs of Buenos Aires on October 15 and 16, 2008.

The raids followed a year-long investigation and targeted imported products entering the Port of Argentina with suspect invoices and undervalued goods that eventually ended up in the pirate markets across the country.

The operation yielded five million discs containing music and films, 175 music and film CD-Rs/DVD-Rs, 63 burners, two industrial printers and 200 master plates used in the replication of album covers. La Salada had become well-known as a hub of pirate activity, including retail sales, wholesale distribution and unlicensed replication labs. The authorities also identified some organized criminal syndicates that operated in the market.

IFPI.org, November 3, 2008

Read the Press Release: http://www.ifpi.org/content/section_news/20081104.html

AUSTRALIA

Police Break Up Largest Piracy Manufacturing Ring

During December 2008, New South Wales (NSW) Police executed five search warrants across South Western Sydney uncovering an estimated one million pirate Asian movies and music discs. The illegal products were allegedly manufactured in a clandestine commercial scale production plant in Smeaton Grange. The seizure was the largest ever of pirate music and Asian movies in Australia. NSW Police were assisted by industry investigators from Australia's Music Industry Piracy Investigations (MIPI).

The raids followed months of extensive surveillance and investigation into key members of the pirate manufacturing ring, who allegedly used a shop front to distribute the pirate music and Asian movie discs. In a bid to avoid detection, the organized criminal gang had migrated its operations across a number of Sydney suburbs. Amongst the seized discs were a large number of Asian TV dramas released by companies such as TVBI, SBS, KBS, MBS as well as Van Son products and music CDs across a range of popular Asian artists.

The suspects now face criminal penalties for copyright infringement, which have risen in Australia up to \$100,000 and five years imprisonment per offence for individuals and up to \$460,000 for corporations.

MIPI.com.au, December 3, 2008

Read the Press Release:

<http://www.mipi.com.au/documents/NSWPolicesmashAustraliaslargestcommercialpiracymanufacturingring-3December2008homepage.pdf>

CHINA

Software Pirates Ring in the New Year in Prison

On December 31, 2008, the ringleaders of a Chinese counterfeiting gang that sold at least \$2 billion worth of counterfeit Microsoft software were sentenced to prison terms of up to 6½ years, in what is believed to be the harshest penalties yet under China's tightened piracy laws.

First announced by Microsoft, the punishments handed out against the 11 defendants could help China improve its image as a country that doesn't crack down hard enough on copyright violators, though the technology and entertainment industries still say China has a long way to go. The sentences handed down ranged from 1½ to 6½ years.

The counterfeit software was found in 36 countries in 11 different languages. It was so sophisticated that it contained legitimate computer code written by Microsoft for programs such as Windows XP, Vista and Microsoft Office, but also included the defendants' own coding as well. According to Microsoft, "There were a number of things that made this case unique and striking, and among them are the fact that customers provided information, the reach of the syndicate was so international, and that Chinese law enforcement partnered so well with American law enforcement."

Software piracy in China is still rampant despite international efforts to crack down on the problem. An estimated 82% of the software used in China in 2007 was not legitimately purchased, more than double the worldwide piracy rate of 38%.

Mercury News, December 31, 2008 (Jordan Robertson, AP)
http://www.mercurynews.com/ci_11345544

DENMARK

Pirate Bay Blocked

On November 27, 2008, a landmark Danish ruling was handed down involving the world's best known pirate distributor of music, books and films. The decision confirms the illegality of Sweden's Pirate Bay and requires the Danish Internet Service Provider (ISP) to implement measures to block access to the site.

The judgment, delivered by the Danish appeals court, upholds the 2008 decision that required access to Pirate Bay be blocked. The court confirmed the mass scale infringement taking place on the Pirate Bay site and that the ISP in question, Sonofon, is contributing to the infringements by allowing access to the pirate site. It is the latest step forward in attempts by the creative industries to engage ISPs to help stop massive copyright infringement on the Internet.

Pirate Bay is a commercially-driven business which makes substantial revenues by distributing unauthorized copies of copyrighted works. The four individuals responsible for setting up and running the site are facing criminal prosecution in Sweden and the hearing is scheduled to begin in February 2009 in Stockholm.

IFPI Chairman and CEO John Kennedy said: "This is a very important decision which sets a precedent for other countries and highlights the key role that ISPs should play

in helping protect copyright online. The ruling is also a clear confirmation of the illegality of the Pirate Bay, coming just a few weeks before the criminal prosecution of the site's operators in Sweden. For everyone trying to make a living out of music, this is hopefully the start of the endgame for a business which is ripping off creators all over the world, and whose motivation is very clearly nothing to do with music but a great deal to do with making money."

IFPI.org, November 27, 2008

Read the Press Release: http://www.ifpi.org/content/section_news/20081127.html

SWEDEN

New Anti File-Sharing Law in the Works

The Swedish government is drafting a law that will allow record and film companies to pursue Internet users sharing music and movies illegally. The proposal will make it possible for industry lawyers to seek a court order to obtain the identity of a person behind an Internet subscription in cases of suspected copyright infringement. Companies can then seek damages from the file-sharers in court.

The government introduced the proposal on December 4, 2008 and plans to distinguish repeat offenders who upload copyright-protected material from those who "occasionally" download such works. Similar legislation currently exists in Finland, Denmark and several other European countries.

International Herald Tribune, December 4, 2008 (The Associated Press)

<http://www.ihl.com/articles/ap/2008/12/04/business/EU-Sweden-File-Sharing.php>

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