



1st QUARTER 2010 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

Visit GrayZone online <http://www.grayzone.com> for late-breaking news!!

HEADLINE NEWS

MPAA Wins Case Against Isohunt

The movie studios have won a major legal victory in the ongoing war against file sharing. On December 21, 2009, US District Court Judge Stephen Wilson granted summary judgment to the Motion Picture Association (MPAA) members holding that Isohunt.com, one of Canada's largest bittorrent sites, contributed to massive worldwide copyright infringement. Following a 2006 complaint by several Hollywood studios, Judge Wilson ruled that Isohunt was guilty of inducing copyright infringement. Due to the similarities between this case and earlier cases involving Napster and Grokster, the judge decided there was no need to proceed to a full trial.

Operators of bittorrent sites such as Isohunt have often claimed they are nothing but content neutral search engines like Google. The court disagreed, based on uncontested expert evidence, that approximately 95% of all files made accessible through Isohunt were infringing or highly likely to be infringing.

The plaintiffs had claimed that Isohunt operator, Gary Fung, was liable for the direct infringement of his site's users based on three secondary liability theories: inducement to infringe, material contribution to infringement, and vicarious liability. The first two theories (inducement and material contribution) are known collectively in the US as "contributory liability." Despite the analytical similarities between the inducement and material contribution theories, some US courts have held that inducement and material contribution are distinct theories of contributory liability through which defendants can be found liable.

Fung had argued that to establish acts of direct infringement that are subject to the US copyright law, the plaintiff has to provide evidence that both the transferor and the transferee are located in the United States. The court rejected this contention holding that proof of either acts of uploading or downloading a file in the US are all that is required. According to the court:

"United States copyright law does not require that both parties be located in the United States. Rather, the acts of uploading and downloading are each independent grounds of copyright infringement liability. Uploading a copyrighted content file to other users (regardless of where those users are located) violates the copyright holder's § 106(3) distribution right. Downloading a copyrighted content file from other users (regardless of where those users are located) violates the copyright holder's § 106(1) reproduction right. Accordingly, Plaintiffs need only show that United States users either uploaded or downloaded copyrighted works; Plaintiffs

need not show that a particular file was both uploaded and downloaded entirely within the United States.”

The court found that there was overwhelming evidence of acts of direct infringement in the US. The argument that bittorrent sites like Isohunt are nothing but content neutral search engines like Google was also categorically dismissed by the court holding that “the evidence of Defendant’s intent to induce infringement is overwhelming and beyond reasonable dispute.” This evidence for this finding included messages to users, assistance to users, and the implementation of technical features, which were all intended to induce direct infringement by Isohunt users. The court also found that the defendants’ business model depended on massive infringing uses of the plaintiffs’ copyrighted materials.

Barrysookman.com, December 25, 2009 (Barry Sookman)

<http://www.barrysookman.com/2009/12/25/fung-and-isohunt-found-liable-for-inducing-worldwide-copyright-infringement/>

MPAA.org, December 24, 2009

Read The Press Release:

http://www.mpa.org/press_releases/mpaa%20statement%20on%20isohunt%20decision%2012.24.09.pdf

View The Ruling: <http://www.scribd.com/doc/24472378/Case-2-06-Cv-05578-Svw-Jc>

ARTIST’S CORNER

PARIS HILTON *Shued* in Seattle

PARIS HILTON and her shoe company, Antebi Footwear Group, have been sued in federal court in Seattle by a New York shoe company.

Brooke Hollow Inc., which does business as Gwyneth Shoes, filed the suit against Hilton and Antebi Footwear in U.S. District Court in Western Washington, alleging that a Gwyneth Shoe design patent has been infringed.

The suit involves the Gwyneth Shoe patent called “Shoe Sock Having a Heart Shaped Pad.” Gwyneth contends in the suit that the Paris Hilton Footwear Line Collection, which features a shoe with a similar pad, copies that design. The suit alleges that Hilton herself chose the styling and design for her shoe collection. The suit quotes a Hilton blog post, “Each shoe has a heart shaped comfort pad sewn into the inner sole, so you can dance all night long! They are super cute!”

According to the complaint, the Brooklyn, NY shoe company filed suit in Seattle “because the defendants conduct commerce within the judicial boundaries of this court at national department stores with branches located in Washington, including Macy’s located at 800 Stewart St., Seattle.” The complaint adds that the “venue is proper because Antebi Footwear Group is a corporation, and Paris Hilton is a person, subject to personal jurisdiction in this district.”

Seattle News Business Journal, December 30, 2009 (Travis Rimando)

<http://seattle.bizjournals.com/seattle/stories/2009/12/28/daily25.html>

MARILYN MONROE Reps Sue Borders for Infringement

The licensing representative for MARILYN MONROE has brought suit against the Borders bookstore chain for selling calendars featuring the Hollywood icon without authorization.

CMG Brands is seeking injunctive relief and treble damages against Borders and Moseley Road Inc., the company that makes the calendars.

In the complaint, filed in Washington State's King County Superior Court, CMG alleges that Borders began selling the calendars in August 2009.

Sean Moore, president of Moseley Road, said his company has a contract with a British agency that provided it with permission to use the images in calendars, and he is confident the matter will be resolved quickly. CMG claims to have entered into license agreements for calendars with some companies but has never authorized Moseley Road or Borders to use Monroe's intellectual property. The defendants' unauthorized use is intentional and malicious, CMG asserts.

The November 2009 complaint includes causes of action for trademark infringement, false endorsement, unfair competition, violation of the right of publicity and unjust enrichment.

FindLaw, November 12, 2009 (Deborah Nathan, Esq.)

http://news.findlaw.com/andrews/bt/int/20091112/20091112_cmg.html

LIL WAYNE and BIRDMAN Sued for "Respect"

A Florida singer has filed a copyright infringement lawsuit alleging rappers LIL WAYNE and BIRDMAN used his voice in songs on their 2006 album, without offering compensation.

The singer, Thomas Marasciullo, named the rappers, their record label Cash Money Records and various distribution outlets in the lawsuit, filed in a Manhattan federal court on October 30, 2009.

Specifically, Marasciullo claims he recorded an "Italian-styled" spoken word soundtrack which was used in the song "Respect" on the album, "Like Father, Like Son." He also claims to have written, recorded and copyrighted parts of several other tracks Birdman used in subsequent albums.

Marasciullo said he discovered the alleged infringement when his daughter was trying to purchase a ringtone of ARETHA FRANKLIN's "Respect." According to the lawsuit, his son also became entangled in the case when he was fired from a recording engineer job at Cash Money Records after the father started demanding payment. He is seeking unspecified damages.

Avvo.com, November 2, 2009

<http://www.avvo.com/news/lil-wayne-back-in-court--faces-copyright-infringement--521.html>

LEGAL BEAGLE

Major Labels File Petition: Pirate Bay Must Pay

The major record companies have repeated their call for the two founders of notorious file-sharing site, The Pirate Bay (TPB), to be fined.

On December 28, 2009, EMI, Sony Music, Universal Music and Warner Music chiefs asked Stockholm District Court to fine two of the site's founders, Fredrik Neij and Gottfrid Svartholm Warg, 500,000 kronor (\$71,000) each because they did not comply with a ruling in October 2009 saying they must stop operating the torrent site.

The two founders, who were sentenced to a year in jail term for their involvement in the site, removed the tracking system from the site following the October 2009 ruling. However, the major labels say this failed to stop the service acting as a file-sharing portal. "The changes in the tracker function haven't changed the file-sharing services function," the court petition stated. "Fredrik Neij and Gottfrid Svartholm Warg have seen to it that users can use the new tracker by making sure that TPB's web site automatically provides links to the trackers to all the torrent files which are on or are uploaded to TPB."

Both Neij and Svartholm Warg state that they are no longer involved in the site, which they say is operated by a company called Reservella.

NME.com, January 12, 2010
<http://www.nme.com/news/various-artists/49195>

'In House' Leak Prompts Federal File Sharing Act

An embarrassing electronic leak through file-sharing software, revealing ethics investigations into dozens of lawmakers, has led to a bill to prevent such breaches from happening again. Congress moved on November 17, 2009 to prohibit federal employees from using the same type of Internet file-sharing or peer-to-peer software blamed for the disclosure.

The Secure Federal File Sharing Act, introduced in the House, would ban government employees and contractors from downloading and installing peer-to-peer file sharing software without official approval. The bill also would require the White House to develop rules for employees and contractors working on home or personal computers.

The software is popular among computer users trading music, movies and other files over the Internet, usually in violation of copyright. The technology also makes other information on a person's computer vulnerable to being downloaded, especially if the software is not configured properly.

The House ethics committee report outlining inquiries involving dozens of members of Congress leaked onto the Internet after a junior committee staff member saved it on the hard drive of a home computer. The now-fired staff member, who had peer-to-peer software, did not realize the file was unprotected and it spread to other users of the software. The secret report detailed investigations that included financial dealings, travel and campaign donations.

The White House Office of Management and Budget advised federal agencies in 2004 not to use peer-to-peer software. Representative Edolphus Towns, D-NY, the new bill's sponsor, said putting the prohibition in federal law gives it much greater weight. "We can no longer ignore the threat to sensitive government information that insecure peer-to-peer networks pose," said Towns, chairman of the House Oversight and Government Reform Committee. "Voluntary self-regulations have failed so now is the time for Congress to act."

Critics of peer-to-peer software, including the entertainment industry, have warned that personal data, including Social Security numbers, medical records and tax returns, are being unwittingly shared because users are unaware of how the programs work. But national security information, such as details about the electronics in the president's Marine One helicopter, has now also been breached.

San Francisco Chronicle, November 18, 2009 (Richard Lardner, AP)
<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/11/17/national/w152831S46.DTL>

Library of Congress, November 17, 2009
Read The Bill: <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4098>

//

SIDEBAR – RIAA Calls Upon FCC: ISPs Must Do More

The Internet is quickly becoming the main artery of music distribution and will soon be the channel for the majority of music revenues, according to the Recording Industry Association of America (RIAA). On behalf of the major music labels, the RIAA submitted comments to the Federal Communications Commission (FCC) encouraging the agency to adopt flexible rules that require Internet service providers (ISPs) to implement anti-piracy measures that deter illegal downloading and enable legal music services to flourish.

Submitted on January 14, 2010, the RIAA highlighted the music industry's embrace of various digital distribution models and the Internet as a major channel for connecting with consumers to market and provide access to copyrighted works. Sales of digital albums and digital singles continue to break new records each year, as personal computers, portable devices, and smart phones increasingly displace physical media as the primary means for consuming music. The RIAA further estimated that by 2011, more than half of the industry's revenues will be based on legitimate online consumption of music. The Internet is expected to become the recording industry's primary channel for communicating with customers and for distributing content.

But the full potential of licensed digital distribution models are undermined by the glut of illegal file-sharing, which has inflicted enormous damage on the creative industries generally. According to one study cited by RIAA in its brief, by recent estimates copyright piracy has caused more than \$25 billion in direct revenue losses to core American copyright businesses, costing the United States economy more than 373,000 jobs. Within the music community specifically, the theft of sound recordings has contributed to more than a 60% reduction in workforce at the major record labels during the past decade.

ISPs play an essential role in enabling the growth of legitimate music distribution channels by implementing network management practices that discourage the exchange of unlawful copyrighted works. Specifically, the RIAA argued that the ISPs are in a unique position to limit online theft. They control the facilities over which infringement takes place and are singularly positioned to address it at the

The Street, December 31, 2009 (Associated Press)

<http://www.thestreet.com/story/10654392/1/2nd-man-to-plead-guilty-to-uploading-love-guru.html>

See GrayZone Busts, February 2009: <http://www.grayzone.com/february2009busts.htm>

AHA! Oprah and Omaha Settle

Mutual of Omaha insurance company and OPRAH WINFREY's Harpo Productions have settled a trademark dispute over the popular phrase, "Aha! moment."

The insurance company had started using "official sponsor of the aha moment" in a national advertising campaign. When Oprah learned of this, her Harpo Productions company sent a letter to Omaha insurance to stop using the "aha moment" as a part of its advertising campaign. Winfrey's representatives argued the phrase was synonymous with Winfrey and her show and is one of her trademarks. Her website and magazine described "Aha! moments" as "those flashes of understanding" with guests on her show.

The insurance company responded with a lawsuit and documents to prove it had obtained preliminary approval of a federal trademark. Mutual also claimed that no opposition was made to its trademark application. Oprah claimed that she made it famous, and the insurance company responded by stating she didn't "police the alleged mark."

However, on November 9, 2009, representatives from both camps announced that the trademark dispute was resolved on fair and amicable grounds. No details of the settlement were outlined in documents filed in the US District Court in Omaha.

FindLaw, November 13, 2009 (Kamika Dunlap)

http://blogs.findlaw.com/celebrity_justice/2009/11/a-ha-moment-trademark-case-settled.html

1 Q 2010 (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>

Busted!! Canal Counterfeiters Caught 'Holding the Bag'

Beginning on the night of December 7, 2009 and into the next morning, police shut down 30 counterfeit vendors along New York City's Canal Street and seized their merchandise. The items seized included fake perfumes, handbags, and other knock-off accessories of Gucci, Tiffany, Chanel, Coach, Juicy Couture, and Cartier products. An NYPD officer on scene said the bust was about "taking back the streets of New York."

The companies that were being knocked off by counterfeiters also contributed to the enforcement action. Kevin Dougherty, president of the private investigative firm Counter-Tech Investigations Inc., said his company had aided in the inquiry on behalf of brand owners. Over its five-week course, the investigation had seen more holiday traffic in the Canal Street area than in recent memory. "We feel like this year, unlike many past years, counterfeit sales are increasing and we attribute that to the economy," Dougherty said. He also added that the increased traffic meant more people were being subjected to the often unsafe conditions of the buildings used by counterfeiters.

The seized merchandise was turned over to a judge before authorities investigated the buildings themselves. A division in the New York Mayor's office is in charge of overseeing "quality of life issues," and the often unsafe places where counterfeit items are sold fall under their purvey. "It's not uncommon to go down there and see repeat customers," Dougherty said. "We've seen license plates from as far away as Carolina." He added that this is why closing down counterfeit vendors is important as these customers could travel across state lines to illegally distribute the knock-offs in operations across the country.

New York Magazine, December 9, 2009 (Amy Odell)
http://nymag.com/daily/fashion/2009/12/counterfeit_busts_necessary_to.html

WORLDWIDE PIRACY UPDATE

ARGENTINA

Recordings Protected by New Term Extension

Argentina has extended the term of protection on sound recordings for performers and producers from 50 to 70 years. The move is welcomed by the music industry in Argentina and internationally.

The move was announced at the "Tango National Day" celebrations in Buenos Aires when the modifications to Article 5 of the Intellectual Property Act were put into effect.

Term extension was supported by the Argentine Performers Association (AADI) and the Argentine Music Industry Chamber (CAPIF). Both groups said the new legislation would better protect local performers and producers and bring the country closer into line with emerging international trends in this area. It will also improve incentives for producers to invest in the recording of music in Argentina.

IFPI.org, December 17, 2009
Read The Press Release: http://www.ifpi.org/content/section_news/20091217.html

FINLAND

RAMMSTEIN Ripper Identified

Finland's North Karelia Police Department has established the identity of the person who leaked the German rock band RAMMSTEIN's single "Liebe Ist Für Alle Da" on the Internet before its official release.

In September 2009, the Finnish Copyright Information and Anti-Piracy Centre (CIAPC) was notified by its German sister organization of the possibility that the unauthorized uploading of the Rammstein single on Rapidshare, the file-hosting service, was the work of a Finnish person. Rammstein's latest single was then officially released on October 16, 2009.

On the basis of information received, CIAPC reported the matter to the police. The North Karelia Police, who investigated the case, established the identity of the person who had uploaded the file. When questioned, the man, who lives in Joensuu, Finland admitted to having uploaded the single onto the Rapidshare service and to having

posted the download URL onto discussion forums. It was also established during the course of the investigation that the material had originally been leaked by someone else other than the person in question. CIAPC and the person in question have agreed on the amount of the compensation. In addition, the police issued the admitted uploader a fine.

IFPI.org, December 7, 2009

Read The Press Release: http://www.ifpi.org/content/section_news/20091207.html

GERMANY

50,000 Discs Seized in Raids

The Federal Association of Music Manufacturers has announced that German police successfully raided a clandestine CD factory and seized 50,000 counterfeit discs. Police detained a suspect who stands accused of distributing and selling unlicensed dance music albums. A raid on the suspect's home recovered multiple PCs, burners and four high-performance printers designed to print onto CDs.

The action was the result of a collaboration between the police and legal services provider ProMedia GmbH, which was retained by the Federal Association of Music Manufacturers to work on the case. Music piracy remains a huge problem in Germany, with one study estimating the loss to the industry at US \$1.4 billion over five years.

DVD Intelligence, December 5, 2009

<http://www.dvd-intelligence.com/display-article.php?article=783>

ISRAEL

10 Illegal Cyberlocker Services Settle

IFPI Israel has reached a major legal settlement with 10 copyright infringing online services. The organization, which represents the recorded music industry in Israel, had filed court proceedings against the services which illegally provided links to unlicensed local and international repertoire hosted on cyberlockers. Cyberlocker services are specifically designed to host static content, typically large files, allowing users access thru web and FTP downloads.

The settlement is unprecedented in its scope, with Israeli courts issuing broad permanent injunctions prohibiting the individuals involved from copying, distributing, linking or ripping onto MP3 or other formats any copyright infringing repertoire. Ownership of all domains that were used to infringe copyright will pass to IFPI Israel. The settlement also involves the payment of around US \$50,000 in compensation.

The infringing content and websites were all hosted outside Israel, predominantly in the Netherlands and IFPI Israel's legal action followed a lengthy investigation.

Music Industry News Network, December 16, 2009

http://www.mi2n.com/press.php3?press_nb=125817

SPAIN

Spain Passes Anti-Piracy Law

On January 8, 2010, Spain's government took a decisive step towards fighting rampant piracy as it approved a measure that will allow it to quickly close websites that facilitate illegal downloading of films and music.

The new law requires a judge to act on a formal complaint filed by an Intellectual Property Commission to remove illicit material or close a website within four days. Before the measure was passed, it had previously taken over a year for a filed complaint to be heard by a judge.

"The new judicial procedure has no legal loopholes," said Spanish Vice President Maria Teresa Fernandez de la Vega. Spain has wrestled with its rampant piracy for more than five years. According to the rights management entity EGEDA, Spain is responsible for 20% of worldwide illegal downloads.

The Barcelona Reporter, January 8, 2010

http://www.barcelonareporter.com/index.php?/news/comments/spain_passes_anti-piracy_law_allowing_to_quickly_close_websites_that_facilitate_illegal_downloading_of_films_and_music

SWITZERLAND

Swiss Woman Found Guilty of Online Infringement

An 18-year-old Swiss woman from the Canton of Tessin was found guilty of online copyright infringement by a Swiss court after uploading more than 4,000 illegal music and film files.

She was ordered to pay a statutory fine of 900 Swiss francs (\$885), with an additional penalty of 400 Swiss Francs (\$394) levied by the court. If the additional penalty of 400 Swiss Francs is not paid then the woman faces a 14 day prison sentence. She also has to pay court costs of 250 Swiss francs (\$246).

The court heard the woman had distributed 4,253 copyright infringing music and film files on the eMule and Bearshare peer-to-peer networks to millions of potential users causing estimated losses to rights holders of 13,500 Swiss francs (\$13,273).

IFPI Switzerland, which brought the case against the uploader, had offered to settle the case out of court. Peter Vosseler, attorney for IFPI Switzerland, said: "Music and film fans should access the products they love through legal services that reinvest in creating new works. Legal sites are run by reputable vendors who fully disclose their identity, such as Ex Libris, iTunes or Musicload."

IFPI.org, January 13, 2010

Read The Press Release: http://www.ifpi.org/content/section_news/20100113.html

UNITED KINGDOM

Mandelson Cracks Down on File-Sharing

Lord Mandelson has confirmed that persistent illegal file-sharers could have their broadband accounts suspended as part of the government's plan to curb online piracy. "It must become clear that the days of consequence-free widespread online infringement are over," the business secretary said.

The suspension proposals, introduced unexpectedly during the Digital Britain Consultation in August 2009, have since divided the UK media industry. Such technical measures to punish pirates will be introduced only if a year-long campaign of letter writing, backed by the threat of legal action by content owners, fails to reduce online piracy by 70%.

Under the plans, the secretary of state will decide in spring 2011 whether to introduce temporary disconnection as a "very last resort" for "persistent rule breakers" who have already had two warnings. "I have no expectation of mass suspensions resulting," Lord Mandelson said.

Rights holders have welcomed the plan after lobbying for the UK to follow France's example of a "three strikes" policy. John Reid, chairman of Warner Music Europe, said the digital economy bill would "help to deter illegal file-sharing and create an environment in which compelling, legitimate music services can flourish, preserving investment in new talent and protecting the many jobs in this country that depend on the existence of recorded music."

According to Mandelson, broadband providers and rights holders would "share the costs" of anti-piracy measures. Rights holders will have to pay a flat fee per notification of an individual case of file-sharing. People accused of file-sharing will then be able to make three appeals before having their broadband cut off, in what Lord Mandelson pledged would be a "fair, thorough process, involving clear warnings."

Financial Times, October 29, 2009 (Tim Bradshaw, Salamander Davoudi and Stanley Pignal)
http://www.ft.com/cms/s/0/e2eab958-c42b-11de-8de6-00144feab49a.html?nclick_check=1

END OF GRAYZONE DIGEST

Publisher: Dorothy Sherman
Executive Editor: Douglas Kassem
News Contributor: Eileen Murton
Graphic Design: Ajaxx63/Seattle

Copyright © 2010 GrayZone, Inc.

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

To be removed from this mailing, please contact us at: GrayZone@grayzone.com
Visit GrayZone online: <http://www.grayzone.com>