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## Quarterly Digest

### April - June 2001

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## Springsteen Shows He's 'Boss' in London Court Case

To Quote...

*"The music you release is the way you shape your career and I have always believed you have to do all you can to protect your work. There is a lot of bootlegging always going on. I have fought against it all my life."*

Bruce Springsteen, Reuters April 11, 2001

Bruce Springsteen won his battle in a London Court of Appeal to block a British company from releasing 19 songs he recorded before he became famous. In a complex case watched closely by the international music community, three judges dismissed a challenge by Masquerade Music Ltd to a December 1998 decision blocking the release of an album of Springsteen's work recorded in 1972.

Lord Justice Jonathan Parker told the court he could see nothing wrong with the High Court decision.

"I find myself unable to discern any ground on which the judge's finding of fact can be challenged in this court. The judge reviewed the evidence with scrupulous care, and in my judgment his findings cannot be faulted," he said.

Reuters, April 11, 2001

Nando Times/The Associated Press, April 10, 2001; <http://archive.nandotimes.com/entertainment/story/0.1088.500472225-500723646-504061147-0.00.html>

## Napster Update

*"Anybody that believes they can get any product from an entrepreneur or the creator of artistic products for free is either stoned, drunk or brain-dead or just stupid."*

(Ted Nugent in a March 14, 2001 phone interview with CNN from his home in Lansing, Michigan.)

"Rock Star Applauds Restraints on Napster" CNN, March 14, 2001;  
<http://www.cnn.com/2001/LAW/03/14/napster/index.html>

## Record Albums Skirt Napster Filters

Napster users are starting to trade entire albums as a devious way to bypass copyright filters that have made it more difficult to find popular tracks on the file-swapping service. At least 50 record albums have been found on Napster so far, as reported by research firm Webnoize. <http://www.webnoize.com/> The albums include music from Pink Floyd, the Beatles, Louis Armstrong and a host of other popular artists. Webnoize recently released a study claiming

that Napster use fell by 36 percent in April. In March, U.S. District Judge Marilyn Hall Patel ordered Napster to halt trades of unauthorized copyrighted music.

In early May, Napster launched new software that reads the sonic characteristics of a given song file. Based on that identifying information, it can block a music file from being traded.

Meanwhile, spoken audio download vendor MediaBay is the latest to file a copyright infringement suit against Napster. The complaint, alleging contributory and vicarious infringement and unfair competition, was filed in the U.S. District Court for the Northern District of California in San Francisco. A MediaBay spokesman declined to specify the amount of damages the company is seeking. MediaBay sells audio books and digital downloads from old-time radio shows (Abbott and Costello, Burns and Allen) over its MediaBay.com and RadioSpirits.com web sites. MediaBay said it has asked Napster to filter out its material.

Record Albums Spin Past Napster Filters CNET.com, May 24, 2001 (Gwendolyn Mariano) <http://news.cnet.com/news/0-1005-200-6031627.html?tag=hot>

Napster Software Will ID Sound FindLaw Legal News/Associated Press, May 8, 2001

Napster Licenses Acoustic Fingerprinting Tools Reuters, April 20, 2001

Study: College Students Would Pay for Napster CNET News.com, April 10, 2001 (Gwendolyn Mariano) <http://news.cnet.com/news/0-1005-200-5565644.html>

Music Stars, Reps Clash in Congress Over Napster CNN, April 3, 2001 (Richard Stenger) <http://www.cnn.com/2001/TECH/internet/04/03/napster.hearing/index.html>

Rockers, Record Execs to U.S. Congress on Napster FindLaw Legal News/Reuters, April 2, 2001

Music Industry and Napster Still at Odds The New York Times, March 20, 2001 (Matt Richtel) <http://www.nytimes.com/2001/03/21/technology/21NAPS.html>

## Napster Clones

Many of the 65 million registered Napster users are searching for alternatives to trade free tunes. Following is a list of the most popular file-swapping software available on the net:

\* Gnutella <http://gnutella.wego.com/>

First released on the web a year ago by programmers at Nullsoft, an America Online subsidiary. AOL quickly declared it "an unauthorized freelance project," but the software and its concepts have already spread. About 22,000 people are on its servers at any given time. Gnutella is not a website, a company or a product. Instead it is a protocol, a fancy term to describe a way computers talk to one another. Users of the Gnutella network share pornography, pirated software, huge video files, including complete TV shows and movies. There is no central database, which begs the question: who can be sued? But, users complain that traffic makes it hard to download files. There is also a significant risk of viruses from shared files.

\* LimeWire <http://www.limewire.com> and BearShare <http://www.bearshare.com> These software packages make it easier to get on the Gnutella network and start sharing files. LimeWire L.L.C. says that as many as 18,000 people are downloading its software each day.

\* OpenNap <http://opennap.sourceforge.net/>  
Allows file sharing the way Napster does.

\* Aimster <http://www.aimster.com/> (See also article in this issue "RIAA Files Suit Against Aimster.") Piggybacks on America Online's instant messaging software; has four million registered users.

\* Freenet <http://freenet.sourceforge.net>  
This software has been downloaded by 60,000 in the past year. Unlike Napster but similar to Gnutella, there is no centralized server.

\* Namster (pronounced "name-ster") <http://www.complink.net/mishler/Namster/> A Napster file-renaming scheme. Renames MP3s, turns all the filenames into long numeric strings. These files haven't been blocked by Napster yet.

\* Catnap <http://catnap.sourceforge.net/>

Redirects Napster queries through its own server, where search terms are scrambled. Even though the user is searching as he normally would and all the files still go by their original names, all the Napster network sees is the scrambled filenames being transferred.

Napster Users Test File-Sharing Alternatives The New York Times, April 5, 2001 (David F. Gallagher)  
<http://www.nytimes.com/2001/04/05/technology/05SHAR.html>

Sneaky Napster Workarounds Abound CNET Music Center, March 18, 2001 (Eliot Van Buskirk)

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## Artists, Get Your Songs Removed from Napster with Songbird Software

Music copyright holders across the world have been offered the first ever free Internet search tool that can track uses of their work on net peer-to-peer operations, such as Napster. Named Songbird, the software helps artists, musicians, publishers and record companies pinpoint thousands of their songs on Napster in a matter of minutes and - if they want - to take steps to get the songs removed. Download a free copy of this software at: <http://www.iapu.org/> today!!

(Editor's Note: Songbird software is very useful. In a recent test drive of the software, we received no hits at Napster for Sinatra. But when we searched for Sanatra, Songbird returned over 3,000 hits. When we searched Reznor for Trent Reznor of Nine Inch Nails, Songbird returned 580 hits. This clearly proves that Napster users continue to violate artists' copyrights.) Music Copyright Holders Offered Songbird, the First International, Publicly-Available, Napster Search Tool; IFPI Press Release, May 9, 2001. Read the press release at GrayZone: <http://www.grayzone.com/ifpi50901.htm>

Another Watchdog Eyes Napster Users; Business2.0, May 9, 2001 (Jim Welte)  
<http://www.business2.com/news/2001/05/songbird.htm>

## Musicians Sue MP3.com

Tom Waits, Randy Newman and Heart's Nancy and Ann Wilson filed a copyright infringement lawsuit against MP3.com on May 8, 2001. The \$40 million suit alleges that the site's My.MP3 service allows their songs to be copied and placed on servers accessible to other users. "This is a case of artists banding together to protect their most valuable assets - their songs," according to Bruce Van Dalsem, attorney for the musicians. A year ago, MP3.com shut down the My.MP3 service when it was found guilty of copyright violations, but reinstated the service after making licensing deals with all five major record labels.

On May 20, MP3.com was purchased by Vivendi Universal, the world's largest record company conglomerate and home to artists ranging from Eminem to Sheryl Crow, in a \$372 million cash and stock transaction.

RollingStone.com, May 10 and 23, 2001

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## Schoolboy Nabbed for Internet Music Piracy

Hong Kong customs arrested a 14-year-old boy for distributing copyrighted pop songs on the Internet for free. His web site was shut down, and the boy has been released on bail pending advice from the justice department. He faces fines of up to HK \$50,000 (US\$6,400) for each case of copyright infringement, and a maximum four-year jail sentence.

CNN.com/Reuters, May 16, 2001  
<http://www.cnn.com/2001/WORLD/asiapcf/east/05/16/china.hongkong.computer/index.html>

## **RIAA Anti-Piracy Raids in Chicago and Newark**

The first week of May brought numerous arrests and seizures of alleged counterfeit product during raids conducted by the Recording Industry Association of America (RIAA) Anti-Piracy Unit in cooperation with local authorities. Two Chicago-area locations allegedly manufacturing and distributing illegal CDs were shut down, three persons arrested, and over 1,200 alleged pirate CD-Rs and five hundred CDs were seized, along with alleged pirate cassettes, VHS tapes, DVD movies and equipment. And in Newark, New Jersey, eight people were arrested and approximately 4,000 alleged counterfeit and pirate CD-Rs and cassettes were seized from downtown vendors.

RIAA Press Release, May 10, 2001: [http://riaa.com/News\\_Story.cfm?id=415](http://riaa.com/News_Story.cfm?id=415)

## **NYPD, RIAA Action Nets New York Area Pirate Music Distribution Center**

Four individuals were arrested and 17,000 alleged counterfeit CD-Rs were seized in a raid of a location believed to be a distribution point for unauthorized sound recordings. The search and seizure, executed by the NYPD with assistance from the RIAA Anti-Piracy Unit, yielded felony charges of Trademark Counterfeiting and Failure to Disclose the Origin of a Recording against all four persons arrested.

RIAA Press Release, April 26, 2001: [http://riaa.com/News\\_Story.cfm?id=410](http://riaa.com/News_Story.cfm?id=410)

## **Secret Service Breaks Up CD Piracy Venture**

Secret Service raids in Queens and Manhattan broke up one of the biggest U.S. manufacturing operations of bootleg CDs ever uncovered, shutting down a factory that had the capacity to produce three million high-quality pirate CDs a year, complete with counterfeit labels and shrink-wrapped jewel-box cases. The illegal CDs represent an estimated \$47 million loss in annual sales to the record labels. In addition to 90 CD burners, a shrink-wrap machine, blank CDs, and CD jewel boxes, more than 17,000 counterfeit CDs ready for sale on the street were confiscated.

USA Today, April 13, 2001 (Greg Farrell) <http://www.usatoday.com/life/cyber/tech/review/2001-03-15-cd.htm>

Cooltech.iafrica.com, March 19, 2001

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## **Worldwide Update**

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### **RIAA Applauds Bush Administration for International Copyright Protection Efforts**

The Recording Industry Association of America (RIAA) commended the Bush Administration and U.S. Trade Representative (USTR) Robert Zoellick for the decisions announced in conjunction with their annual "Special 301" review. "Special 301" is a provision of U.S. trade law that requires USTR to identify countries that fail to afford adequate and effective protection to U.S. intellectual property. It also provides for the imposition of trade sanctions

and the removal of trade preferences.

Ukraine topped this year's list and was declared a "Priority Foreign Country." Taiwan, Indonesia and the Philippines were elevated to "Priority" status, while Russia maintained its Priority Watch List status.

RIAA Press Release, April 30, 2001; [http://www.riaa.org/PR\\_Story.cfm?id=408](http://www.riaa.org/PR_Story.cfm?id=408)

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## Mexico

### Music Industry Wants Action Against Mexican Pirates

An underground trade in pirated CDs and cassettes across Mexico costs record companies \$300 million a year and could hurt Mexico's trade relations with the United States. With a piracy rate of 63 percent last year, Mexico now is second only to Russia as the world's biggest market for pirated music.

FindLaw Legal News/Reuters, May 22, 2001

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## Legal Beagle

### RIAA Files Suit Against Aimster

The Recording Industry Association of America (RIAA) filed suit against file-sharing service Aimster <http://www.aimster.com/> in U.S. District Court in New York on May 24 for copyright infringement. The RIAA is seeking an injunction to stop the transfer of copyrighted material through the service, which is tied into America Online's Instant Messenger service. Another suit against Aimster was filed on behalf of several divisions of AOL Time Warner, including Warner Music, New Line Cinema and Atlantic Records.

"Aimster is just like Napster. The big difference between the two is that Aimster also allows you to get movies, software and pictures," according to Matt Oppenheim, RIAA's Senior Vice President of Business and Legal affairs.

Defendant Aimster has reportedly hired big gun defense attorney David Boies.

The Recording Industry vs. Aimster, June 1, 2001 (Matt Richtel)  
<http://www.nytimes.com/2001/06/01/technology/01MUSI.html> Reuters, May 25, 2001

Read the record label's complaint (Zomba Recording Co. v. Deep) [PDF] Requires Adobe Acrobat reader  
<http://news.findlaw.com/cnn/docs/aimster/recindaimster52401.pdf>

RIAA Takes Aim at Aimster, Rollingstone.com, May 25, 2001 (Christina Saraceno)  
<http://www.rollingstone.com/news/newsarticle.asp?afl=mail1&nid=13966>

### RecordTV, MPAA Settle Copyright Suit

A lengthy legal battle between an Internet-based TV taping service and a group of movie studios was settled after RecordTV.com agreed to pay \$50,000 and to stop offering recorded shows without the studios' permission. RecordTV had signed up 100,000 people who could have the site record specific TV shows and then play them back over the Internet at a later date. Twelve members of the Motion Picture Association of America (MPAA), including MGM and Disney, filed a lawsuit in federal court in June, alleging copyright infringement.

Associated Press, April 18, 2001 (Leslie Gornstein); Read the original complaint (MGM v. RecordTV.com) (PDF)

<http://news.findlaw.com/cnn/docs/recordtv/recordtv.pdf>

## **MP3.com Sued Over Insurance Claim**

MP3.com has been sued by an insurance company over the online music company's demand for a payment of \$5 million for some of the millions of dollars in losses resulting from its copyright violations. Westport Insurance Corp. claimed in a lawsuit filed in U.S. District Court in Manhattan that the San Diego-based music company is seeking \$5 million toward the \$170 million it set aside for settlements. Westport refused, saying it denied coverage because "MP3.com misrepresented its business practices, engaged in willful violations of the U.S. Copyright Act and entered into settlements without Westport's prior consent."

Insurance Journal Property and Casualty Magazine, March 8, 2001  
<http://www.insurancejrn.com/html/ijweb/breakingnews/regional/West/we0301/we0308011.htm>

## **Quick Bits and Bytes**

### **Report: 37 Percent of Software Pirated**

Software piracy grew in 2000 for the first time in more than half a decade and 37 percent of the programs used by businesses worldwide are illegal copies, a trade group of software makers reported recently.

The worldwide dollar losses to software makers due to piracy dropped slightly to \$11.75 billion, however, due to a growing market for software and lower prices, the group said. The Business Software Alliance (BSA), an organization of productivity software companies such as Adobe and Microsoft, has conducted the study since 1994.

The study comes as the trade group announces 159 software piracy settlements worldwide, totaling more than \$6.2 million. Thirty-six of those settlements - in which companies paid software companies to settle claims that they were using unlicensed software - are in the United States. In Vietnam, only 3 percent of business software is a legitimate copy, making it the worst offender. China and Russia also are in the top five. In the United States, 24 percent of programs are pirated copies, the report said.

Read the study at BSA's website: [http://www.bsa.org/usa/globalib/latest\\_research/](http://www.bsa.org/usa/globalib/latest_research/)

FindLaw Legal News/Associated Press, May 21, 2001

### **Congress Views New Internet Music Sales Network**

Internet media company RealNetworks unveiled a music download service May 17 that could change how consumers think about their song collections. RealNetwork's chairman, Rob Glaser, showed a House Judiciary subcommittee a mock-up of the music industry's for-pay alternative to Napster.

MusicNet, <http://www.musicnet.com/>, set to debut in August, is a collaboration of three of the big five record labels: AOL Time Warner, Bertelsmann AG and EMI Group. It promises a cafeteria-style way of purchasing songs. A competing service, also set to debut around the same time, has been shown to legislators over the past month. The other two record giants, Universal and Sony, are responsible for that service, called Duet.

Although final details of MusicNet aren't set, users can expect to pay either \$10 to \$15 per month for a certain number of downloads or more for an all-you-can-download plan.

CNN.com/Associated Press, May 18, 2001

### **RIAA to Music Pirates: Prepare to be Boarded**

RIAA to Music Pirates: Prepare to be Boarded RIAA yearend 2000 anti-piracy statistics show a significant increase in the number of online pirate sites and a marked increase in illicit CD-R seizures, arrests and indictments. The report indicates that the trade group's targeting of anti-piracy resources have resulted in a notable rise in piracy arrests and indictments.

"This past year we have taken significant strides in our war against illicit CD-R piracy," according to Frank Creighton, RIAA Senior Vice President and Director of Anti-Piracy. "While offenders are increasingly turning to the digital space to further their illegal operations, many are finding that we are already there and well prepared to deal with them."

RIAA's "Operation Clean Streets," put into action in April 2000 to address the distribution of unauthorized sound recordings on the streets of New York City, has resulted in 1,035 arrests over an eight month period, primarily at the retail level, and resulted in the confiscation of approximately 600,000 unauthorized CD-Rs.

RIAA Press Release, May 9, 2001: [http://riaa.com/PR\\_story.cfm?id=414](http://riaa.com/PR_story.cfm?id=414)

### **Pirated Film Clip Does the Talking**

A pirated clip of this year's Academy Award winner for Best Picture - "Gladiator" - spoke loud and clear at a high-powered Capitol Hill hearing on copyright and the Internet recently. Senator Orrin Hatch (R-Utah), chairman of the Senate Judiciary Committee, and other lawmakers were surprised at the clip's quality, downloaded from the Internet by undercover Motion Picture Association of America (MPAA) staffers. The clip was copied to a disc and played on a laptop computer hooked up to two TV monitors in the hearing room. Hatch then offered MPAA president and CEO Jack Valenti his support on copyright issues. Valenti said that more than 350,000 movies are being downloaded from illegal Internet files each day.

Read the MPAA April 3, 2001 press release: <http://www.mpa.org/jack/index.htm>; Reuters/Variety, April 4, 2001

### **Microsoft Launches Second Global Internet Sweep**

In an effort to cleanse the net of pirated products, Microsoft Corp. recently launched a "second global Internet sweep." Since the start of the first operation last August, nearly five million units of counterfeit Microsoft hardware and software with an estimated retail value of over \$1.7 billion were seized worldwide, according to a company statement.

Read the Microsoft corporate statement: <http://www.microsoft.com/presspass/newsroom/office/features/04-02InternetCrimeFAQ.asp>

InfoWorld.com, April 2, 2001; <http://iwsun4.infoworld.com/articles/hn/xml/01/04/02/010402hnmspiracy.xml>

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