

GrayZone

Quarterly Digest

April 2006

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WORLDWIDE STRIKE AGAINST ILLEGAL FILE-SHARING

On April 4, 2006, illegal music file-sharers across the world faced a fresh wave of legal actions as the recording industry announced an escalation of its worldwide campaign against digital music piracy. The latest actions come with a new warning to parents to monitor household online activity as they could face financial penalties if their children access illegal material. Many experts suggest that parents set up their computers in a common area of the home for convenient supervision.

IFPI (International Federation of the Phonographic Industry) and its affiliate national bodies announced nearly 2,000 new legal cases against individuals uploading large amounts of copyrighted music and are extending actions to Portugal, where the legal market has been devastated by the impact of illegal file-sharing.

Hundreds of people have already paid the price for illegally file-sharing copyrighted material, with average legal settlements of €2,633 (\$3,185).

In a development that could be mirrored in other E.U. countries, thousands of file-sharers in Denmark could now find their online connections cut off by their ISPs (Internet service providers). The ruling follows more than 130 injunctions that have been taken out in France that led to illegal file-sharers being disconnected by their ISPs.

In Italy, a series of raids against individual file-sharers and servers during March 2006 led to the seizure of more than 70 computers in the search for evidence. Each server had around 1,000 users and 30 terabytes of shared music. The Italian authorities also found a large amount of child pornography on one of the servers.

The latest wave of cases takes the total number of legal actions against uploaders to more than 5,500 in 18 countries outside the U.S.

These actions, a combination of criminal and civil suits, are aimed at 'uploaders' – people who have put hundreds or thousands of copyrighted songs on to Internet file-sharing networks and offered them to millions of people worldwide without permission from the copyright owners. The defendants are likely to face compensation payments averaging several thousand euros.

The latest international crackdown on file-sharing targeted users of all the major unauthorized p2p (peer-to-peer) networks including FastTrack (Kazaa), Gnutella (BearShare), eDonkey, DirectConnect, BitTorrent, Limewire, WinMX, and SoulSeek. The actions are being launched in Austria, Denmark, Finland, Germany, Hong Kong, Iceland, Italy, Portugal, Sweden and Switzerland.

BBC News, April 4, 2006

<http://news.bbc.co.uk/2/hi/technology/4875142.stm>

IFPI.org, April 4, 2006

Read the press release: <http://www.ifpi.org/site-content/press/20060404.html>

See GrayZone Digest 1Q 2006: <http://www.grayzone.com/106.htm#legal>

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ASHANTI Files Lawsuit

Multi-platinum R&B star ASHANTI is suing various record companies in a bid to keep demos she recorded in the mid-1990s out of record stores. The singer has filed a federal lawsuit in New York over the unauthorized release of her early recordings, naming recording labels in the U.S., Germany, England, Australia and Japan as defendants.

In the complaint filed on January 27, 2006, in the U.S. District Court in New York, Ashanti claims she recorded demos in a bid to land a major-label deal when she was 16-years-old. Insisting she never intended for the tracks to be released as an album, Ashanti launched the suit after learning of the existence of a compilation album, called *Can't Stop*, which appeared in stores in 2005. Big Records Australia, Farm Records, Unique Corp., Simply Vinyl, Team Entertainment, ZYX Music and others are named as defendants in the lawsuit.

The album featured her name and recent photographs of her on the cover. On two of the tracks she only sings background vocals, while on another she is not performing at all. Ashanti alleges invasion of privacy, unfair competition and trademark-related claims for releasing the demos without her permission. She is demanding an injunction, damages to compensate for lost profits and harm to her reputation, and punitive damages in excess of \$1 million.

ContactMusic.com, February 1, 2006

http://www.contactmusic.com/new/xmlfeed.nsf/mndwebpages/ashanti%20files%20lawsuit_01_02_2006

50 CENT Sued for Copyright Infringement

Nearly three years after his hit "In Da Club" soared to the top of the charts, rapper 50 CENT is being sued for copyright infringement over the song.

In January 2006, Richard C. Wolfe filed the copyright infringement lawsuit against Curtis James Jackson, aka 50 Cent, in Miami federal court on behalf of Lil' Joe Wein Music, alleging 50 Cent stole lyrics from former 2 LIVE CREW frontman Luther Campbell.

The lawsuit claims that parts of 50 Cent's "In Da Club," from the album *Get Rich or Die Tryin'*, copy "It's Your Birthday," released in 1994 on Campbell's solo album *Still a Freak for Life*. The lawsuit also claims that Campbell's song "I Like It, I love It" can also be heard on the 2003 DVD *50 Cent The New Breed*.

Lil' Joe Wein Music holds the copyright to "It's Your Birthday" and other songs Campbell produced with his rap group 2 Live Crew and as a solo artist. Lil' Joe Wein Music is owned by Joseph Weinberger, an attorney who formerly represented Campbell. The lawsuit seeks unspecified damages in addition to attorneys' fees and other legal costs.

Yahoo! Music, January 20, 2006 (Associated Press)

<http://music.yahoo.com/read/news/28780827>

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2Q Busts

U.S. Busts

Be sure to peruse the Recording Industry Association of America's (RIAA) monthly newsletter "RIAA Anti-Piracy Seizure Information," which covers numerous bootleg, piracy and counterfeit raids across the United States. Read about the recent busts at our website:

<http://www.grayzone.com/usabusts.htm>

Two Plead Guilty in Huge Piracy Bust

On April 3, 2006 two men involved in what U.S. authorities called the largest bust of pirated music CDs and computer software in America each pleaded guilty to five criminal counts.

Located in Union City, California, Ye Teng Wen, 30, and Hao He, 30, pleaded guilty on five piracy-related charges to manufacturing 200,000 illegal CDs, much of it Latin music. The two, along with a third man, Yaobin Zhai, 33, were indicted in October 2005 on charges of illegally copying music CDs, as well as Symantec Corp. computer security software and Adobe Systems Photoshop.

Officials seized nearly 50,000 pirated CDs and 5,500 stampers used to make the bootleg products, many of the disks bearing FBI anti-piracy seals. Each of the five counts against the men -- which include copyright infringement, trademark violations and trafficking in counterfeit labels -- carries a maximum prison sentence of five years. Ye and Hao will be sentenced at a later date. Zhai, who did not plead guilty, is due to appear in court in May 2006.

Yahoo! News April 4, 2006 (Reuters)

<http://au.news.yahoo.com/060403/11/ygz8.html>

Pre-Release Pirates Plead Guilty

On February 28, 2006, a group of three men admitted to distributing music illegally and another man pleaded guilty to one count of criminal copyright infringement. Matthew Howard of Colorado, Aaron Jones of Oregon, Derek Borchardt of North Carolina, and George Hayes of Virginia were members of piracy groups accused of leaking music to the Internet before the CDs even appeared in shops.

Each facing sentences of up to five years in prison and a \$250,000 fine, the accused men are the first to submit guilty pleas of copyright infringement for making music available on the Internet before it was released to the general public.

U.S. attorney Paul McNulty said:, "By stealing the creative product of talented people, this form of piracy deprives artists of the rewards they deserve. If left unchecked, such crime would drain the incentive to create that enriches our lives."

The Department of Justice warned these were the first arrests for the online pre-release of music as part of a crackdown called Operation FastLink: An ongoing anti-piracy investigation targeted at organized piracy operations responsible for the initial illegal online distribution of copyrighted movies, software, games and music.

High-Tech Daily, March 1, 2006
<http://www.hightechdaily.com/?p=5>

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Brazil

Brazil's Piracy = Big Loss for U.S.

On March 16, 2006, the American group DPR (Defenders of Property Rights) announced that it sent an open letter to U.S. Trade Representative Rob Portman urging the U.S. Government to block efforts by Brazil and India from undermining the World Trade Organization as their campaign against intellectual property rights continues.

According to the IIPA (International Intellectual Property Alliance), Brazil stands as the number one abuser of intellectual property rights in the Western Hemisphere, costing American businesses an estimated \$900 million in losses a year.

Claiming that undermining intellectual property law will have damaging consequences to the American economy, DPR argues that Brazil and India no longer deserve to receive billions of dollars in American subsidies and trade tariff reductions each year if they continue to hurt America's economy in this way.

Brazzil Magazine, March 16, 2006
<http://www.brazzilmag.com/content/view/5808/53/>

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U.S. and Japan Teaming Up to Fight Piracy

The United States and Japan have joined to fight product piracy and counterfeiting. Officials from both countries think the effort also will protect intellectual property in China and other nations.

While in Tokyo on March 31, 2006, U.S. Commerce Secretary Carlos Gutierrez made it clear that American businesses must work closer with their Japanese counterparts to better safeguard intellectual property. U.S. businesses complain they suffer major losses from piracy of music and films in China. For the Japanese, their major complaint is Chinese theft of designs and trademarks, especially of appliances and motorcycles.

Last year, Washington and Tokyo began a process under the World Trade Organization to obtain more information about Beijing's enforcement of intellectual property rights. However, officials here say China has yet to present any of the requested data.

Voice of America News, March 31, 2006 (Steve Herman)
<http://www.voanews.com/english/2006-03-31-voa10.cfm>

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Spanish P2P Raids

On April 8, 2006, Spanish police arrested 15 people and closed down 17 websites accused of facilitating copyright infringement.

The latest bust is the result of a large scale investigation by several Spanish copyright protection organizations and is described as "unprecedented in Europe."

According to police, the websites encouraged peer-to-peer trading in music and movies, offering the necessary vehicle to obtain illicit copies. The websites each brought in an average annual income close to €900,000 (\$1.08 million), according to police, and made money by inserting advertising slots.

An SGAE spokesman said "the police operation is good news, and helps people to realize the need to preserve authors' rights, and that piracy is a crime."

TorrentFreak.com, April 8, 2006
<http://torrentfreak.com/spanish-p2p-raids/>

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U.S. Reinstates Trading Benefits for Ukraine

In January 2006, the United States reinstated trading benefits for Ukraine, rewarding it for cracking down on the piracy of U.S. movies, computer programs and other intellectual property.

In July 2005, Ukraine passed legislation that strengthened its licensing regime and enforcement efforts targeting the illegal production and trade of CDs and DVDs. According to U.S. trade representative, Rob Portman, the United States will reinstate *Generalized System of Preference* benefits for Ukraine and lower Ukraine's designation from priority foreign country to priority watch list.

"Since the legislation passed, Ukraine has been actively inspecting plants licensed to manufacture optical discs, conducting raids against businesses involved in commercial distribution of infringing products and imposing fines against infringers," Portman said, adding that Ukraine's actions would encourage private investment in the country.

FindLaw.com, January 24, 2006 (Associated Press)

<http://practice.findlaw.com/dlt-012406.html>

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Liverpool Raids Target Counterfeit Games and DVDs

On March 16, 2006, a six-month investigation into the distribution and sale of counterfeit CDs, DVDs and computer games has resulted in 31 arrests, following a series of raids in the Liverpool area.

The operation, involving more than 135 police and trading standards officers, targeted 17 addresses in Liverpool, Sefton and Skelmersdale. It was jointly conducted by the DWP (Department for Work and Pensions), the BPI, FACT (Federation Against Copyright Theft) and ELSPA (Entertainment and Leisure Software Publishers Association).

Illegal steroids, more than 500 pornographic DVDs and at least one firearm were also recovered. Of the 31 arrested in Kirkby, and Sefton and Skelmersdale in Lancashire, seven were released after being questioned. Those still in custody included three girls aged 16 and 17, a man aged 69 and a woman aged 62. Six men aged 20 to 41 and a woman aged 52 were also being held.

For the first time, suspects will face multiple criminal fraud charges collectively brought by the BPI, FACT and DWP. The operation is described by the BPI and FACT as the biggest crackdown on counterfeiters seen in the UK. The government and the creative industries have pledged to increasingly tackle intellectual property theft and benefit fraud through this collaborative approach.

The BPI, FACT and ELSPA are members of the Alliance Against IP Theft (formerly the Alliance Against Counterfeiting and Piracy), a cross-industry body launched in 1999 to campaign for intellectual property protection on behalf of its members.

Pirated DVDs the illegal are inexpensive to make and cheaper to buy, are leading to big losses for the film industry in the U.K. The total cost to the UK audio-visual industry from piracy is around £818 million (\$1.4billion) a year. Of this, £450 million (\$788 million) is the value of lost DVD sales, £277 million (\$485 million) represents lost box office takings at the cinema and £74 million (\$130 million) is lost from the home rental sector.

The criminal gain from black market sales is estimated to be nearly £280 million (\$490 million) a year.

Big Strong and Beyond, March 30, 2006 (Keith & Pam Williamson)

<http://bigastroandbeyond.blogspot.com/2006/03/scousers-have-bad-reputation.html>

Times Online, March 23, 2006

<http://entertainment.timesonline.co.uk/article/0,,18589-2098430,00.html>

Times Online, March 17, 2006 (David Rose)

<http://technology.timesonline.co.uk/article/0,,20409-2089511,00.html>

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Kazaa Faces Contempt

On March 24, 2006, major record companies won a key battle in their legal fight against music pirates, securing approval from the Australian Federal Court to pursue contempt of court proceedings against the operators of file-sharing technology company Kazaa.

The music companies allege Kazaa's Sydney-based developer and distributor, Sharman Networks, failed to comply with a court order to stop authorizing Kazaa users to breach copyright.

Thirty record companies, including major labels Universal, EMI, Sony BMG and Warner Music Australia had sued Sharman Networks for copyright infringement in the Federal Court in 2005. In the September 2005 landmark judgment, Justice Murray Wilcox found Sharman Networks had breached artists' copyright. He ordered Kazaa's operators to stop authorizing music copyright infringement, giving them two months to comply.

The music companies first launched contempt proceedings in December 2005, but Sharman Networks and others named in the proceedings argued that Justice Wilcox's order was ambiguous and could not give rise to a contempt charge.

However, in an expedited decision, the full bench of the Federal Court disagreed. Justice Catherine Branson said the evidence might establish, for example, that Kazaa's operators "jointly decided that neither they, nor any of them, would accord any respect to the orders made by Justice Wilcox."

Australian IT News, March 24, 2006

<http://australianit.news.com.au/articles/0,7204,18580670%5E15319%5E%5Enbv%5E15306,00.html>

Apple Continues Copyright Battles

Apple Computer has vocally opposed the French parliament's controversial decision to introduce the right to interoperability in the long-awaited copyright bill. If passed, the law would effectively force Apple Computer to open up its until-now closed digital music store to be compatible with rival music players.

In a statement issued on March 22, 2006, Apple challenged that France's implementation of the European Union Copyright Directive "will result in state-sponsored piracy." However, the company stopped short of suggesting that it would pull out of the French market in order to avoid complying with the new legislation. The bill passed the lower house of the French legislature on March 21, 2006, by a two-to-one margin, and now heads for the Senate where debate and a vote are expected to occur in May 2006.

In a statement, Apple spokesperson Natalie Kerris said that if the law passes, "legal music sales will plummet just when legitimate alternatives to piracy are winning over customers." Apple recently sold its one billionth track in the iTunes Music store, selling up to 3 million downloads per day.

However, Kerris also suggested that the company was preparing to comply with the law, even if it disagreed with it. Furthermore, Kerris even suggested Apple might somehow benefit from the law, "iPod sales will likely increase as users freely upload their iPods with 'interoperable' music which cannot be adequately protected."

Apple also continues its legal tangle with THE BEATLES' Apple Corps Ltd. recording label.

The British company started by the Beatles in 1968, is suing Apple Computer in London's High Court, claiming that Apple Computer has infringed its territory by entering into the music business and is seeking to force Apple Computer to drop its logo from the iTunes Music Store and pay unspecified damages

On April 5, 2006, Anthony Grabiner, a lawyer for Apple Computer Inc., defended the right of the company to use the apple logo in a series of TV advertisements featuring U2, EMINEM and COLDPLAY, asserting the right to display the logo because they were promoting the iTunes store and not the music itself.

BetaNews, March 22, 2006 (Ed Oswald)

http://www.betanews.com/article/Apple_Blasts_French_Copyright_Law/1143039380

FindLaw.com, April 5, 2006 (Jane Wardell)

<http://news.lp.findlaw.com/ap/o/51/04-05-2006/ba7e000819ec4e36.html>

See GrayZone Digest 1Q 2006: <http://www.grayzone.com/106.htm#artists>

President Signs 'Stop Counterfeiting in Manufactured Goods' Act

On March 16, 2006, President Bush signed into law *The Stop Counterfeiting In Manufactured Goods Act*. The act, which enjoyed bipartisan support in Congress, closes loopholes left by previous legislation. The most exploited loophole has been the shipment of fake labels or packaging, which counterfeiters could then attach to phony products in order to cheat consumers by passing off poorly made items as brand-name goods.

The act further requires courts to order the destruction of all counterfeit products seized as part of a criminal investigation and requires convicted counterfeiters to turn over their profits and any equipment used in their operations. Finally, the act requires those convicted of counterfeiting to reimburse the legitimate businesses they ripped off.

“The tools in the bill I sign today will become a part of our broad effort to protect the creativity and innovation of our entrepreneurs,” said President Bush in signing the bill. “This administration and Congress have worked together to confront the illegal threat, the real threat of illegal activity such as counterfeiting.”

U.S. Gov Info / Resources, March 17, 2006 (Robert Longley)

<http://usgovinfo.about.com/b/a/217081.htm>

The White House, March 16, 2006

Read the Press Release: <http://www.whitehouse.gov/news/releases/2006/03/20060316-7.html>

RIAA Announces New Round Of Music Theft Lawsuits

On February 28, 2006, The RIAA (Recording Industry Association of America), on behalf of its member companies, announced a new round of copyright infringement lawsuits against 750 individuals. The lawsuits come as part of an ongoing effort to protect the recording industry's ability to invest in new music and further the success of legal online services.

The “John Doe” lawsuits cite individuals for illegally distributing copyrighted music on the Internet via unauthorized peer-to-peer services such as LimeWire and Kazaa. In addition to these “John Doe” litigations, the major music companies filed against 210 named defendants in Arizona, California, Georgia, Illinois, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia, Washington, and Wisconsin.

RIAA President Cary Sherman commented, “for legal online services to continue to break new ground, we must do our part to protect the integrity of the marketplace. Just as we continue to educate fans about the right ways to enjoy music online, we will continue to enforce our rights through the legal system. Songlifting is not without consequences.”

RIAA.com, February 28, 2006

Read the press release: http://www.riaa.com/news/newsletter/022806_2.asp

=====SIDEBAR=====

Runway Knockoffs - Do Fashion Designers Have a Legitimate Beef?

Fashion designers of high-end clothing lines are crying foul when it comes to inexpensive knockoffs of their designs. Rather than calling imitation the sincerest form of flattery, leading designers are acknowledging that inexpensive copies — which they label acts of piracy — have negatively affected the luxury business.

Designers say the high price of fashion is justified by the time and effort they spend researching fabrics, ideas and techniques. In their view it is unfair for people to profit from knockoffs of their work without a similar investment. Customers who crave these inexpensive designer look-alikes may have little empathy for designers who denounce knockoffs.

The reason clothing design is not protected under current copyright or trademark law in the United States is that it is considered foremost

as a utilitarian item, not an artistic expression or scientific invention. Logos, however, and some design signatures are protected from copying under trademark statutes.

But the designers' trade group argues that the legal principle exempting fashion from copyright protection is outdated in this era of sophisticated mass copying. They are asking lawmakers to support a proposed fashion design anti-piracy act.

The prohibition on copying dresses, coats and the like would seem to open an impossibly murky debate over how to separate a duplicate garment from one simply inspired by someone else's work and part of a fashion trend.

If passed, a fashion design anti-piracy act could change the retail landscape in ways merchants and designers are only beginning to absorb.

The New York Times, March 31, 2006 (Eric Wilson)

<http://select.nytimes.com/gst/abstract.html?res=F50612FA3E540C738FDDAA0894DE404482>

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Quick Bits and Bytes

World Health Organization Calls for Action Against Counterfeit Medicine

The World Health Organization (WHO) has called for immediate concrete action against the growing epidemic of counterfeit medicines. In a bid to accelerate the war on fake drugs, the agency pushed for stronger global cooperation, political commitment and creative solutions at meetings in Rome held from February 16 to 18, 2006.

WHO aims to create a global task force involving all major interested parties. The task force will focus on legislation and law enforcement, trade, risk communications and innovative technology solutions, including public-private initiatives for applying new technologies to the detection of counterfeits and technology transfer to developing countries.

The counterfeiting of medicines is present in all countries and is thought to represent 10% of the global medicines trade. Particularly dangerous, counterfeit medicines dupe sick people into believing they are taking something which will make them well, when it may instead make them sicker or even kill them.

World Health Organization, February 15, 2006

Read the Press Release: <http://www.who.int/mediacentre/news/releases/2006/pr09/en/index.html>

See GrayZone Digest 1Q 2006: <http://www.grayzone.com/106.htm#legal>

Suspected Counterfeiters Clog Toilet

On January 6, 2006, two people suspected of counterfeiting money were caught when the plumbing stopped working in their apartment after they flushed wads of suspected fake cash down the toilet fearing they would be discovered by police.

Selina Jean Valdez, 28, and Daniel Marquez, 41, of Colorado, were suspected of running a low-tech counterfeiting operation, using a combination printer-scanner-copier and a personal computer to make fake \$50 and \$100 bills, detectives said. The two were charged with

forgery, possession of forgery instruments and criminal mischief

The authorities believe the fake money was widely circulated among the couple's acquaintances, who spent it at local businesses. Investigators plan to compare the serial numbers on bills seized to those taken by police after being spent at businesses. The rental duplex where Valdez and Marquez were staying was discovered flooded with sewage when police executed the search warrant.

ABC News, January 6, 2006 (Associated Press)

<http://abcnews.go.com/US/wireStory?id=1480580>

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