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Napster - The Battle Continues

U.S. District Judge Marilyn Hall Patel ruled that the popular online music-swapping site Napster must halt the distribution of copyrighted material by midnight PT Friday, July 28. Faced with going out of business, Napster quickly filed an appeal with 9th U.S. Circuit Court of Appeals; with hours to spare, the company received a stay on the injunction.

The below link provides a complete transcript of Patel's decision, issued orally, in which she explains the basis for granting the injunction. Because it marks one of the first times a judge has issued a decision in a case of online music-swapping, Patel's interpretation of the law is likely to be widely cited in subsequent cases and will be crucial to the Court of Appeals as it grapples with the case.

CnetNews.com, August, 2000.

Point Your Browser Transcript Tip: <http://yahoo.cnet.com/news/0-1005-201-2426706-0.html>

Other Interesting Napster Reading:

Survey: 13 million Americans Have Downloaded Music for Free; CNN.com, June 9, 2000

RIAA Asks Judge to Pull All Major-Label Songs Off Napster CNET News.com, June 12, 2000 (John Borland)

Point Your Browser Tip: <http://news.cnet.com/news/0-1005-200-2066662.html?tag=st.ne.1002.tgif.ni>

Foes Hone Strategy for Web Copyright Clash; New York Times, June 16, 2000 (Matt Richtel)

Point Your Browser Tip: <http://www.nytimes.com/library/tech/00/06/biztech/articles/16music.html> - [You have to register first...it's free!]

Napster Goes To Washington; Wired News, July 11, 2000 (Brad King)

Point Your Browser Tip: <http://www.wired.com/news/politics/0,1283,37485,00.html>

Judge Orders Injunction Vs. Napster; Associated Press, July 26, 2000

Napster Shutdown Seen as Potential Boon for Competitors; CNN.com, July 27, 2000

Point Your Browser Tip: <http://www.cnn.com/2000/LAW/07/27/napster.backlash/index.html>

Napster Asks Court to Block Order Shutting Down Online Music Service; CNN.com, July 27, 2000

Point Your Browser Tip: <http://www.cnn.com/2000/LAW/07/27/napster.appeal.01/index.html>

Appeals Court Grants Napster Reprieve; CNN.com, July 28, 2000

Point Your Browser Tip: <http://www.cnn.com/2000/LAW/07/28/napster.stay/index.html>

Napster Wins Stay in Federal Appeals Court; Associated Press, July 28, 2000

Read Napster's successful Motion for a Stay Pending Appeal [PDF]: http://dl.napster.com/napster_stay.pdf

Napster Legal Scrap Could Backfire on Record Industry; Reuters, July 29, 2000

Project Code Name: Lapster!; MP3.com Press Release, August 3, 2000

Point Your Browser Tip: http://news.mp3.com/news/liststory?topic_id=912&category_id=1006&month=200008

Napster, DVD Cases Raise Copyright Questions in Digital Age; CNN.com, August 7, 2000 (Raju Chebium)

Point Your Browser Tip: <http://www.cnn.com/2000/LAW/08/07/copyright.overview/index.html>

Where Napster Has Gone, Others Will Follow; Los Angeles Times.com, August 21, 2000 (Jeremy Rifkin)

Napster Files Brief in Defense; Yahoo! News, August 23, 2000 (Andrew Dansby)

Point Your Browser Tip: http://dailynews.yahoo.com/h/rolls/20000822/en/napster_files_brief_in_defense_1.html

Why Scour is Not the New Napster, August 22, 2000 (Damien Cave); (Dan Rodrigues defends his multimedia search engine, even as it faces a nasty lawsuit.) Point Your Browser Tip: <http://www.salon.com/tech/view/2000/08/22/scour/index.html>

Where is online music headed? Our roundtable of performers, executives, and revolutionaries hashes it out. Digital Music Roundtable [participants in the discussion include Hilary Rosen, RIAA president, Todd Rundgren, Chuck D, and Alanis Morissette. From Yahoo! Internet Life/ZDNet Music].

Point Your Browser Tip: http://music.zdnet.com/features/napster_round_table/

Artists Against Piracy website: <http://www.ArtistsAgainstPiracy.com/> created to give artists a voice in determining how their music is presented, marketed, and distributed on the Internet.

The Next Piracy Panic: Software

Bill Gates is watching a court case closely these days, and for once, it's not his own. If Napster prevails in appealing the court order effectively shutting it down, and the courts rules that online music swapping is legal, what's to stop users from "sharing" other digital property...like, say Windows?

The Standard.Com, August 23, 2000 (Mike Romano); Point Your Browser Tip: <http://biz.yahoo.com/st/000823/17762.html>

MP3.COM Settles with Majors

The copyright infringement suit brought by Warner Music Group, BMG, EMI, Sony and Universal, following the launch of the My.MP3.com system late last year has been settled with four of the five record companies. The terms of the settlements with Warner, BMG, EMI and Sony are believed to be around \$20 million per label and each of these majors has also agreed to license its catalog to MP3.com on a nonexclusive basis. However, U.S. District Judge Jed S. Rakoff ruled that for purposes of determining damages, the copyrightworks in the case are the CDs that MP3.com has made available for Internet users to download, not the individual songs contained on those CDs, leaving the company liable for a smaller amount of damages.

Point Your Browser Tip (read about the ruling): <http://news.cnet.com/news/0-1005-200-2600324.html?tag=st.ne.1002.thed.ni>

MP3.com has agreed to pay 1.5 cents for every stored song and .3 cents for every song streamed by an MP3.com user. MP3.com is also facing a suit from the indie sector filed by Tee Vee Toons (TVT) Records on May 24.

MP3.com Settles Copyright Infringement Suit with Warner Music Group; MP3.com Press Release, June 9, 2000

Point Your Browser Tip: <http://pr.mp3.com/pr/111.html>

MP3.com and Sony Settle Copyright Dispute; E-Commerce Times, August 22, 2000 (Gary Gately)

Point Your Browser Tip: <http://www.ecommercetimes.com/news/articles2000/000822-3.shtml>

Judge's Ruling Would Limit Damages for MP3.com; Bloomberg News, August 24, 2000

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Artist's
Corner

"If a Song Means a Lot to You, Imagine What it Means to Us" - Musicians Unite for Copyrights

In an effort to educate consumers, an industry backed artist coalition, Artists Against Piracy, placed full page ads on July 11 in the New York Times, Los Angeles Times, USA Today, Wall Street Journal and the Washington Post. The first ad was intended to support Metallica band member Lars Ulrich's testimony in the Napster case. Subsequent Artists Against Piracy messages in the near future will aim at educating the public about music on the Internet.

Everclear's Art Alexakis, Alanis Morissette and Christina Aguilera are among the nearly 70 musicians who have joined the coalition.

Wired News, July 12, 2000 (Brad King); Point Your Browser Tip: <http://www.wired.com/news/culture/0.1284.37516.00.html>

Alexakis, Alanis Among Artists Against Piracy; RollingStone.com, July 14, 2000

Point Your Browser Tip: <http://tm0.com/RSWeekly/sbct.cgi?s=54691762&i=222105&d=314948>

Beat the Boots Award Winners: Pearl Jam Announces Official Bootlegs

In a June 4 statement on their Sony Music web site, Pearl Jam announced plans to release officially sanctioned double-disc live recordings for each of the 28 shows on their recent European tour. This decision is the latest proactive step taken by the group to deter sales of expensive bootlegs. Most unauthorized live CDs cost \$25, which would make recordings of each Pearl Jam set \$50 given the length of their shows. The Pearl Jam offering includes at least 56 CDs. Brett Eliason, Pearl Jam sound man, who mixed and engineered the group's "Live on Two Legs" album, mixed down the concert recordings after the Euro leg of the tour wrapped on July 3. The live CDs can be purchased starting September 5 at the following web sites: <http://www.tenclub.net> and <http://www.pearljam.com>. The band in on a U.S. tour through November 5.

Wall of Sound, June 6, 2000; Point Your Browser Tip: <http://wallofsound.go.com/news/stories/pearljam060600.html>

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Worldwide Events

Worldwide Piracy Update

According to IFPI's Music Piracy Report 2000, there is growing evidence of the link between CD piracy and organized crime which could be responsible for up to 75% of the illegal trade. In 1999 a new trend of "underground" pirate CD plants emerged with illicit plants discovered in Latin America, Asia and Europe. Encouraging moves have been made by governments in Hong Kong, Mexico, Italy and the Ukraine with the implementation of strong new laws and progress has been made by the European Commission towards creating a pan-EU anti-piracy strategy. The increase in the sales of CD-Rs has had an insidious effect on the music business in Europe, particularly the singles driven dance industry. Internet piracy is on the rise with at least 25 million infringing files available on file-trading services such as Napster and MP3.com and an estimated download rate of 1 billion annually. A major move to improve the secure delivery of music is the Secure Digital Music Initiative (SDMI) which involves computer manufacturers and the information technologies community. There is speculation that MP3.com may soon sign up with the SDMI following its settlement with major labels. IFPI's Main Board granted new resources to the global enforcement team, whose head count will be doubled to 50 by the end of this year.

IFPI Press Release, June 14, 2000; Point Your Browser Tip: <http://www.grayzone.com/ifpi61400.htm>

IFPI Music Piracy Report 2000, June 2000

Pirate CD Sales Considered Billion-Dollar Business; CBC Infoculture, June 14, 2000

Point Your Browser Tip: http://infoculture.cbc.ca/archives/musop/musop_06142000_cdpiracy.phtml

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Ukraine

The record industry applauded the announcement June 5 of an action plan agreed on between President Clinton and President Leonid Kuchma of the Ukraine to tackle head-on the CD piracy problem in that country. In order to avoid possible US trade sanctions the plan is due to be fully implemented by November 1, 2000. The Ukraine government has taken immediate steps, suspending production at five CD plants known to produce pirate discs. The government is also committed to enforcement and legislative initiatives. Currently the Ukraine is one of the predominant producers of pirate optical discs in the world, with a capacity to produce 70 million discs annually, nearly all for export.

Record Industry Hails Ukraine Anti-Piracy Measures; IFPI Press Release, June 6, 2000

Point Your Browser Tip: <http://www.grayzone.com/ifpi60600.htm>

Ukraine Closes Down Counterfeit CD Plants; CBC Infoculture, June 7, 2000

Point Your Browser Tip: http://infoculture.cbc.ca/archives/musop/musop_06072000_ukrainecds.phtml

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Legal Beagle

MP3Board.com

On June 23, major record labels including BMG, Sony and Warner Bros., filed a copyright infringement suit against MP3Board Inc. claiming the site posts links to thousands of "pirate" copies of the plaintiff's copyright-protected sound recordings which can be downloaded by users directly onto their computers free of charge. MP3Board's site provides indexing, searching and linking of music-related sites and files over the Internet. This follows the filing of a suit by MP3Board on June 5 to prevent the Recording Industry of America (RIAA) from shutting down its web site. On July 18, MP3Board filed a further claim against the RIAA asking for redress for the RIAA's role in temporarily shutting down their web site. They contend that they simply post links to other web sites and that there is nothing illegal about such hyper links while the RIAA allege that MP3Board.com actively solicits users to post illegal sites. MP3Board's latest strategy was unveiled on August 22 when they filed an addition to their lawsuit asking that a judge declare its searches of the Gnutella file-sharing network to be legal, further stating that if those searches aren't legal, then AOL, which employed the programmers who created Gnutella, should share the liability.

Warned by the Music Industry, Web Site Files Suit; New York Times, June 6, 2000 (Matt Richtel)

Major Recording Labels Sues MP3Board on Copyright; Reuters, June 23, 2000

Read the full text of the complaint (Artist Records v MP3Board) at: <http://news.findlaw.com/documents/mp3board.pdf>

MP3Board Countersues RIAA; CNet News.Com, July 18, 2000 (John Borland)

Point Your Browser Tip: <http://news.cnet.com/news/0-1005-200-2285804.html?tag=st.ne.1002.bgif.ni>

CNet News, August 22, 2000; Point Your Browser Tip: <http://news.cnet.com/news/0-1005-200-2579735.html?tag=st.ne.1002.tgif.ni>

Internet Copyright Laws Debated

Content providers and the federal copyright office are arguing that Internet companies should be denied the blanket broadcast licenses which currently allow cable operators and satellite companies to retransmit broadcast programming without getting individual consent from each company. With these licenses comes a requirement to pay a portion of their revenues into a fund which is distributed to the individual copyright holders. Content providers are against granting Internet companies licenses in part because of the potential for near-perfect digital copies to be made. At this time Internet businesses must get permission from each copyright holder individually in order to stream broadcast programming or other content.

Associated Press, June 15, 2000

Hollywood Cracks Down on Web VCR Site

RecordTV, a web site that acts as a VCR, recording TV shows for later playback, is being sued by the motion picture industry and a dozen TV and movie studios for violation of their copyrights. This lawsuit is the latest in the film industry's efforts to stop online businesses that take distribution of TV or movies out of studios' or broadcasters' hands. Canadian company iCraveTV.com was closed down earlier this year in a similar case.

CNet News.Com, June 15, 2000 (John Borland); Point Your Browser Tip: <http://news.cnet.com/news/0-1004-200-2086951.html?tag=st.ne.1002.bqif.ni>

New York Court Case Pits Hollywood vs. Hackers

On August 17, U.S. District Judge Lewis Kaplan handed the film industry a victory against digital video piracy. The plaintiffs in the case, which included Hollywood's eight biggest movie studios, sought to bar journalist Eric Corley from republishing the software code that unlocks the media scrambling within DVDs. Corley, publisher of 2600 (<http://www.2600.org>) a computer hacker magazine and web site, has been permanently blocked in making available online or posting links to DeCSS software code. The judge found that "...in an era in which the transmission of computer viruses ... can disable systems upon which the nation depends and in which other computer code also is capable of inflicting harm, society must be able to regulate the use and dissemination of code in appropriate circumstance."

Reuters, July 16, 2000

Attorneys in Video Hacker Court Case Predict Mass Piracy CNN.com, July 18, 2000; Point Your Browser Tip: <http://www.cnn.com/2000/TECH/computing/07/18/videohackers.trial.reut/index.html>

DeCSS Piracy Case Looms; Reuters/Wired News, August 8, 2000

Point Your Browser Tip: <http://www.wired.com/news/politics/0,1283,38122,00.html>

Judge Orders Injunction in DVD Hacker Case; Reuters, August 17, 2000

Quick Bits and Bytes

Web Pirates Unearth Treasure: Hit Films

Young People are terrifying Hollywood. When they want to see a movie, they don't need to go to the multiplex or to their local video rental ... they can go to their computer.

Washington Post, June 7, 2000 (Paul Farhi); Point Your Browser Tip: <http://www.washingtonpost.com/wp-dyn/articles/A9978-2000Jun6.html>

American Groups Unite to Fight Piracy

The Motion Picture Association and IFPI signed a deal June 5 to form the Anti-Piracy Certification/Compliance Program. The program will battle music, audiovisual and Internet piracy.

CBC Infoculture, June 6, 2000; Point Your Browser Tip: http://infoculture.cbc.ca/archives/misc/misc_06062000_piracy.phtml

IFPI, MPA Join Forces To Fight Global Piracy

Bootleggers Use Hearing Aid To Record

Bootleggers are taking advantage of a federal law requiring arenas to offer patrons use of an assistive listening device (ALD) to obtain high-quality feeds of live shows via a low-level FM



frequency broadcast. The pirates then steal the headset feed, giving them near-pristine versions of concerts.

Associated Press, July 31, 2000

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