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Napster Files Chapter 11

Napster, Inc., which filed for Chapter 11 bankruptcy protection recently, won final approval June 25, 2002 of a \$5.13 million debtor-in-possession (DIP) agreement with Bertelsmann AG, its prospective purchaser. Napster will use \$4 million of the loan to fund business operations. The remaining \$1.13 million will finance a key employee retention plan, the terms of which were also approved on June 25.

Napster first stirred controversy as the provider of a free Internet music service that allowed millions of music fans to download and swap copyright music for free. Eventually the legitimate music industry was able to convince the courts that Napster's business model was illegal.

Napster, which currently has a staff of 18, indicated it would rehire up to 28 additional employees once it received the DIP funding. The loan includes an 8% interest rate and expires the earliest of August 30, 2002, the completion of the sale, or the termination of the sale agreement.

Napster has reportedly said that Bertelsmann is its only hope for a sale in Chapter 11 bankruptcy. Bertelsmann has agreed to acquire Napster's assets for \$8 million in cash plus the elimination of its alleged \$83 million secured claim.

Napster filed for bankruptcy protection on June 3, listing assets of \$7.9 million and liabilities of \$101 million, as of April 30. Those suing Napster may now seek settlement through the bankruptcy proceedings.

Although it is possible that the recording industry may not recoup all or any of its losses from the blatant and widespread copyright violations that occurred at Napster on a routine basis, experts said the recording industry was victorious nonetheless. By flexing its legal muscle, it put a complete stop to a business allowing 60 million Napster users to violate the legitimate industry's copyrights with the simple click of a mouse.

Napster Approved for \$5.1M Loan; TechNews.com, June 25, 2002 (Associated Press)

Napster's Bankruptcy Won't Alter Court Rulings; HeraldNet.com, June 4, 2002 (David Kravets/Associated Press)
<http://www.heraldnet.com/Stories/02/6/4/15535695.cfm>

Napster Files For Chapter 11; InformationWeek.com, June 3, 2002 (Antone Gonsalves)
<http://www.informationweek.com/story/IWK20020603S0005>

Bertelsmann Stands To Lose As Napster Considers Bankruptcy;

Turmoil at Napster Moves the Service Closer to Bankruptcy; New York Times, May 15, 2002 (Matt Richtel)
<http://www.nytimes.com/2002/05/15/technology/15MUSI.html?todaysh headlines> (requires free registration).

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Bruce Springsteen Thwarts Online Piracy

It's an old-fashioned, low-tech approach, but Bruce Springsteen has managed to thwart pre-release file-sharers with the simple "lock-and-key" approach. In the weeks leading up to a release, hardly anyone can obtain a copy of his albums. Even music critics and other industry insiders aren't able to hear the new album. Record labels usually ship dozens, sometimes even hundreds, of albums to radio stations, journalists and others involved in the music industry months before the albums go on sale. Springsteen's organization, on the other hand, sent out less than 10 copies of his upcoming album "The Rising," due for release on July 30. Springsteen's success battling Internet piracy is an extension of his longtime fight for strict control of his artistic work. He has been known to battle bootleggers in court in the U.S. and abroad.

Springsteen Protects His New CD's Online in an Old-Fashioned Way; New York Times, July 15, 2002 (Chris Nelson) <http://www.nytimes.com/2002/07/15/technology/15SPRI.html> (requires free registration).

Dave Matthews Band Beats the Boots!

The Dave Matthews Band will release a full-length concert DVD from Boulder, CO this fall. The album "Open Up the Curtains" is the latest in a series of authorized bootlegs, following last year's "Live in Chicago." To read more about this concert, visit the band's official website: <http://www.dmband.com/>

Rolling Stone Daily, June 27, 2002

Eminem CD Becomes No. 1 Before Its Release

Eminem claims that he beat the bootleggers with elaborate security measures surrounding "The Eminem Show" despite a worldwide Internet leak. Because his album was circulating so widely on the net, his record label made the unprecedented move of officially releasing it a week earlier than planned.

According to Eminem during an interview with Tim Westwood on BBC Radio 1: "Throughout the whole album making process, only I had a copy. Nobody at the label had a copy - only me. That was premeditated and we all agreed it would be that way, just so that if anything happened I was the one to blame." Despite the net leaks, the album soared to Number 1 on the charts the first week of its official release.

New York Times, June 3, 2002 (Matt Richtel); <http://www.nytimes.com/2002/06/03/business/media/03MUSI.html?tnemail1> (requires free registration).

Eminem Shows Off; NME.com, June 14, 2002; <http://www.nme.com/news/102003.htm>

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U.S. Busts

The Recording Industry Association of America (RIAA) recently introduced a new monthly newsletter "RIAA Anti-Piracy Seizure Information" which covers numerous bootleg, piracy and counterfeit raids across the United States. Read about the busts: <http://www.grayzone.com/usabusts.htm>

Worldwide Software Piracy "Sweep"

The Business Software Alliance (BSA) announced nearly \$10.5 million in enforcement action recoveries worldwide in June as it "swept" around the globe as part of the second annual BSA International Software Piracy Sweeps Week. The worldwide campaign was established to "clean up" software piracy in the workplace. As a result, BSA announced an unprecedented 44 software piracy settlements in the United States totaling nearly \$3.1 million.

BSA, June 17, 2002. To read more about the BSA International Sweeps Week, visit <http://www.bsa.org/sweeps/>.

Read up on software piracy in the workplace with BSA's handy "Software Management Guide", <http://www.bsa.org/usa/freetools/business/gsmus.pdf>. (BSA guide requires Adobe Acrobat software. Download it free: <http://www.adobe.com/products/acrobat/>)

Spinning Stolen Music

Five people were charged in mid April with running a \$2.5 million-a-year music pirating operation. Police confiscated nearly 5,000 compact discs, 3,000 music cassettes and 36 CD burners, as well as phony music labels, CD cases and other material used to prepare the compact discs to be sold in stores. Ralph J. Marino, the West Islip store manager was arrested on charges of failure to disclose the origin of a recording. Also arrested were his wife Carol, son Vincent "Spinmaster Vin" Marino, daughter Carol and Madd Musik store owner Rickey Washington. Marino, 71, on probation for serving a 7 year prison sentence for racketeering, is a "known associate" of the Genovese crime family, according to Hauppauge, Suffolk County District Attorney Thomas Spota.

Newsday, April 21, 2002 (Ann Givens)

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Worldwide Update

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Mexico

In Mexico, Pirated Music Outsell the Legal Kind

In recent years, Mexican authorities have undertaken numerous raids in Tepito, Mexico - which has one of the world's great concentrations of contraband merchandise and is also the primary reason that Mexico has become the third-largest market for copied music (after China and Russia). Despite the increase in raids, Tepito bustles with trade in illicit music. According to a recent market study by Bimsa, a Mexican polling company, around 12,000 street vendors in Mexico peddle pirated discs for about \$1 each. Last year, they sold an estimated 73 million piratical recordings. However, for the average Mexican making \$5 a day or less, buying a legal disc is beyond their means.

New York Times, April 1, 2002 (Graham Gori); <http://www.nytimes.com/2002/04/01/business/worldbusiness/01MEXI.html?> (requires free registration)

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Hacker Drops Appeal of DVD Piracy Case

The publisher of a hacker website will not appeal a ruling that prohibits the posting of links to software that unlocks digital copyright protections on DVDs, according to his attorneys. Both the New York District Court and the 2nd Circuit Court of Appeals have ruled that Eric Corley and his "2600 Magazine" website <http://www.2600.com/> violated the 1998 Digital Millennium Copyright Act, which was enacted to protect intellectual property rights from digital piracy. Corley had planned to appeal to the U.S. Supreme Court, but has decided against doing so, according to attorneys at the Electronic Frontier Foundation who helped in his defense.

Corley's website had linked to software that allows people to unscramble copyright protections on DVDs. The software was written by a Norwegian teenager.

Yahoo Technology, July 4, 2002; <http://in.tech.yahoo.com/020704/64/1r87t.html>

RIAA and NMPA Reach Settlement With Audiogalaxy.com

The recording industry, music publishers and songwriters announced on June 17 that they reached an out-of-court settlement with Audiogalaxy.com, the Napster-like clone, which requires Audiogalaxy to stop the infringement of copyrighted works on their peer-to-peer network. The settlement reached allows Audiogalaxy to operate a "filter-in" system, which entails that the copyright owners must first consent to the use and sharing of their work. Audiogalaxy also agreed to pay a substantial sum to the plaintiffs.

NMPA, June 17, 2002. Read the press release: <http://www.nmpa.org/pr/NMPA-RIAA-Audiogalaxy2.pdf>. (Requires Adobe Acrobat. Download Adobe free: <http://www.adobe.com/products/acrobat/>).

Disney Sues Over Teddy Bears

The Walt Disney Co. has sued a Swedish importer, Harlequin Trade, for copyright infringement and requested the destruction of 25,000 teddy bears it claims are illegal replicas of the famous honey-loving bear, Winnie the Pooh. The stuffed bears, which were manufactured in China, were intercepted by Swedish customs in April. Disney's attorney Ann-Charlotte Soederlund defended Disney's actions: "Destroying teddy bears might seem a bit silly. But what if it's a pirate copy and it's dangerous and some child dies? Then Disney will be blamed."

IFPI Press Release, February 21, 2002; <http://www.nandotimes.com/entertainment/story/423803p-3382459c.html>

Copyright Trial Set For Russian Firm

The first criminal trial under the Digital Millennium Copyright Act (DMCA) will begin August 26, 2002. ElcomSoft Co. Ltd. Of Moscow could be fined \$500,000 if convicted of selling a program that allowed users to circumvent copyright protections on electronic book software made by Adobe Systems Inc. Although such programs are legal in Russia, they are banned under the 1998 DMCA.

CourtTV.com, May 20, 2002 (Associated Press); http://www.courttv.com/trials/news/0502/21_copyright_ap.html

RIAA Reaches \$3.2 Million Settlement With CD Copying Plant Manufacturing Unlicensed Recordings

The RIAA has reached a \$3.2 million settlement with DOCDATA USA, a CD manufacturing facility, to resolve claims of copyright infringement. The RIAA, in the course of extensive investigations, determined that DOCDATA USA had pressed dozens of infringing CDs. DOCDATA was willing to reach an immediate and amicable agreement with the RIAA, and

even conducted its own internal audit of its plants, supplying all relevant information to the RIAA.

RIAA.com, April 9, 2002; http://www.riaa.com/PR_Story.cfm?id=504

RIAA Collects \$1 Million From Company Running Internal Server Offering Thousands Of Songs

The Recording Industry Association of America (RIAA) announced in April that it had reached an out-of-court settlement for \$1 million with Integrated Information Systems, Inc. (IIS), a company that ran a dedicated server allowing its employees to access and distribute infringing MP3 files over the corporate network. The RIAA first became aware of IIS's activity from an e-mail tip.

RIAA.com, April 9, 2002; http://www.riaa.com/PR_Story.cfm?id=505

Quick Bits and Bytes

Internet Software Piracy Group Head Sent to Prison

John Sankus, 28, of Philadelphia, PA, was sentenced to 46 months in federal prison for conspiring to violate the criminal copyright laws as the leader of one of the oldest and largest international software piracy rings on the Internet. He began serving his sentence July 2. A co-conspirator, Barry Erickson, was sentenced to 33 months' imprisonment on May 2, 2002. The sentences are the longest ever imposed for organized Internet software piracy.

Sankus was co-leader of the online software piracy group known as DrinkOrDie. DrinkOrDie was a highly organized, security-conscious, Internet software piracy group that specialized in acquiring new software, "cracking" it (i.e., stripping or circumventing its copyright protections), and releasing the software over the Internet. Sankus supervised and managed the daily operations of the approximately 65 group members from more than 12 countries, including the United Kingdom, Australia, Sweden, Norway, and Finland.

The "cracked" version would then be tested, packed, and rapidly distributed over the Internet to an ever-expanding web of hundreds, if not thousands, of illegal Internet sites worldwide. "Cracked" software released by DrinkOrDie has been found on pay-for-access websites in the U.S. and abroad, including China.

Read official U.S. Department of Justice press release: <http://www.cybercrime.gov/sankusSent.htm>.

Pirates of the Web; New York Times, July 11, 2002 (Jennifer Lee); <http://www.nytimes.com/2002/07/11/technology/circuits/11WARE.html?todaysh headlines>. (requires free registration)

ARIA Ambushed by Pirate Kiosks

Australia plans to endorse CD-copying kiosks in a controversial world-first plan that legalizes music piracy. The Australian Mechanical Copyright Owners Society (AMCOS) will allow an Adelaide-based business to operate CD-pirating kiosks nationwide for a royalty payment of 6 per cent. The coin-operated kiosks could open in shopping malls, supermarkets or record stores in September and will charge \$5 for each CD "burn". Industry observers say the deal is likely to force the hand of the Australian Record Industry Association (ARIA), which considers the CD-burning kiosks illegal.

Herald Sun, June 24, 2002 (Nui Te Koha); http://news.com.au/common/story_page/0.4057.4567037^13762.00.html

"Copy-proof" CDs Cracked With 99-cent Marker Pen

Techno-buffs have sidestepped Sony Music's high-tech disc copy-protection technology with a low-tech method: scribbling around the rim of a disk with a felt-tip marker. Major music

labels, including Sony and Universal Music, have started selling the "copy-proof" discs as a means of tackling the rampant spread of music piracy.

The goal of the new technology is to prevent consumers from copying or "burning" music onto recordable CDs or onto their computer hard drives, which can then be shared with other users over file-sharing Internet services.

Herald Sun, June 24, 2002 (Nui Te Koha); http://digitalmass.boston.com/news/2002/05/20/copy_proof_cds.html

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