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OUR SERVICES

DIGEST

ANTI-PIRACY FAQ

COPYRIGHT FAQ

BREAKING NEWS

PRESS

ARCHIVES

LINKS

SEARCH

HOME

Headline
News

GrayZone

Quarterly Digest

July 2004

[Headline News](#) [Artist's Corner](#) [Busts](#) [WorldWide Update](#) [Legal Beagle](#)

RIAA Delivers Two Rounds of Lawsuits to Nearly 1000 File Sharers

On June 22, 2004, the Recording Industry Assn. of America (RIAA) filed a new round of legal action against 483 individual file sharers. This latest round comes on the heels of the 493 lawsuits filed against illegal file sharers on May 24, 2004 in federal courts across the country.

As with all the lawsuits filed so far this year, the RIAA is utilizing the "John Doe" litigation process, which is used to sue defendants whose names are not known. To date, this approach has been used against 3,429 alleged copyright infringers since the RIAA began its campaign of legal action in September 2003. No lawsuit has yet led to a trial, although 600 people (17.5 per cent of those sued) have settled with the RIAA. Roughly 200 of them have reached a settlement since May 2004, and have paid up to \$ 3,000 each. In addition to the "John Doe" lawsuits, the RIAA, on behalf of the nation's leading record companies, brought a lawsuit against 24 named defendants. These individuals were identified through "John Doe" litigations and then declined or ignored a RIAA overture to settle the case before it proceeded any further.

RIAA President Cary Sherman said of the latest legal action:

"Our continuing objective is to send a message of deterrence, protect the rights of property owners, and foster an environment where the legitimate marketplace, both online and at retail, can flourish.

"We will continue to go the extra mile and seek to resolve these cases in a fair and reasonable manner. That's in the best interests of everyone involved."

The lawsuits target illegal file-sharers across the US, including Alabama, Arizona, California, Colorado, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, New Jersey, New York, Minnesota, Missouri, Pennsylvania, South Dakota, Washington D.C. and Texas.

Steven Marks, RIAA General Counsel, commented on the progress of the Association's legal campaign:

"The online marketplace has changed dramatically since we began this campaign. Legitimate music services are the wave of the future.

"Illegal downloading continues to cause enormous harm to the entire music community," added Marks. "We must stay on the path of education, enforcement, and offering great legal services."

Third-party analyses have documented the impact of the music community's education and enforcement campaign. A survey by The NPD Group released in May 2004 found that the number of CD buyers using a legal online service to purchase music tripled in the first quarter

of 2004, compared to the same time period in 2003. According to The NPD Group, "Among music buyers who purchased both physical CDs and a song download from a legal service, the likelihood that they also downloaded a song illegally fell dramatically, from 64 percent last year to 42 percent in 2004."

The Register, June 23, 2004 (Tony Smith); http://www.theregister.co.uk/2004/06/23/riaa_sues_482/

RIAA.com, June 22, 2004; Read the press release: <http://www.riaa.com/news/newsletter/062204.asp>

RIAA.com, May 24, 2004; Read the press release: <http://www.riaa.com/news/newsletter/052404.asp>

NPD Group, May 19, 2004; Read the press release: http://www.npd.com/press/releases/press_040519.htm

[Top](#)

MC5 Burns it Live to Beat the Bad Guys

In an era when music bootlegging is rampant, one Australian company is taking the pirates on at their own game. Smash Touring, a division of Smash Music, will become the first Australian touring company to introduce new "official bootlegging" technology when influential Detroit rock band MC5 tour this month. A CD of the night's show will be recorded straight off the mixing desk onto a computer via ProTools software. The CD will feature exclusive cover art, the set list, show details – and will be ready within minutes of the band leaving the stage.

Smash Music managing director John Denison said he saw the service "more like rewarding the fans" than beating bootleggers. "You're still going to get someone who's going to have a tape recorder in his pocket, you just can't stop that," he said. "But at the end of the day it's almost like the band taking revenge on the bootleggers secretly."

The Advertiser, July 10, 2004 (Lauren McMenemy); http://www.theadvertiser.news.com.au/common/story_page/0.5936.10093347%255E2682.00.html

Eminem, Apple Suit to Continue

A federal judge has ruled that rapper EMINEM's copyright infringement claims over use of his song "Lose Yourself" in a commercial for Apple Computer Inc. can go forward. Apple featured a 10-year-old boy singing the Oscar-winning theme song to the rapper's movie "8 Mile" in an ad on MTV for the computer company's iPod music player and iTunes music service.

On May 17, 2004, U.S. District Judge Anna Diggs Taylor ruled that the suit brought by Eminem's publishing company can proceed against several companies, including MTV parent company Viacom and advertising agency TBWA/Chiat/Day.

Taylor threw out two state law-based claims of unfair competition and unjust enrichment. The television ad appeared many times during three months beginning in July 2003 and on Apple's website, despite the fact that the computer company had unsuccessfully sought Eminem's permission for the campaign.

See also [GrayZone Digest 2nd Quarter 2004](#)

CNews, May18, 2004 (Associated Press); <http://cnews.canoe.ca/CNEWS/TechNews/2004/05/18/463872-ap.html>.

Britney Spears Sued in \$10 Million Trademark Infringement Action

Lite Breeze Inc., a San Diego company, has sued Britney Spears, along with three other defendants, in United States District Court for the Southern District of California for 10 million dollars. Lite Breeze alleges that Ms. Spears has infringed its United States Trademark, IN THE ZONE, in connection with her most recent CD, "In The Zone."

Lite Breeze, Inc. is a San Diego based clothing and sporting uniforms corporation operating under its brand name, IN THE ZONE. Additionally, Lite Breeze claims to promote musical and live sporting event entertainment using its IN THE ZONE trademark. Lite Breeze alleges that Ms. Spears' unauthorized use of its trademark is causing confusion in the marketplace and has harmed its trademark.

In the lawsuit, Ms. Spears is accused of stealing the intellectual property, i.e. the trademark, of Lite Breeze. If Lite Breeze is successful in its lawsuit, Ms. Spears and the other defendants could be ordered to turn over a share of the profits earned for Spears' In The Zone CD, the related tour and merchandising, and all damages to Lite Breeze.

This is not the first bout the pop star has had with claimed copyright infringement. In May, 2003, A federal judge threw out a copyright-infringement lawsuit against Spears brought by two Philly songwriters who accused her of ripping off their melody for the tune, "What U See (Is What U Get)", off her smash 2000 release, "Oops!...I Did It Again."

eMediaWire.com, June 10, 2004; Read the press release: <http://www.emediawire.com/releases/2004/6/emw132164.htm>

Manson Sues Spooky Kids

Marilyn Manson filed a lawsuit against former band mate Scott Putesky and Empire Musicwerks to stop the sale of "Lunch Boxes and Choklit Cows," a collection of recordings he recorded years ago as a member of the Spooky Kids. Manson's suit claims copyright infringement among other charges. Putesky says he obtained the rights to the recordings in the settlement of a 1998 legal tangle. "I've tried a couple of times since then to reach him, just to be friendly," Putesky said, "but he hasn't shown any interest, so I just assume he hates me."

Rolling Stone, May 13, 2004 (Andrew Dansby); <http://www.rollingstone.com/news/story?id=6051679&pageid=rs.Artistcage&pageregion=triple3>

Nelly Sued Over Vokal

Two members of a musical group called Vokal have accused rap star NELLY of wrongly taking their name for his multimillion dollar clothing line, Vokal. James Tyrone Wilson and Cameron Caines are suing Nelly for trademark infringement and unfair competition. The singers sought an injunction, along with millions in punitive damages, to stop Nelly from using the name. The lawsuit, filed in U.S. District Court in Orlando, maintains that Wilson and Caines obtained the rights to the Vokal name when they signed with Universal in 1998.

Vokal Clothing Co., which makes Nelly's line of clothes, made more than \$20 million in 2002. A lawyer for the music group estimates that a damage award could extend higher than eight figures.

Rap News Direct, April 29, 2004; http://www.rapnewsdirect.com/News/2004/04/29/Nelly_Sued_Vokal/

[Top](#)

3Q 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>

Bootlegger Busted on Opening Night

On June 30, 2004, a teenager was arrested in a California theater showing of "Spider-Man 2" after a projectionist using night vision goggles saw him using a camcorder to make an illegal copy of the superhero sequel. The 16-year-old could be charged under a law that went into effect January 1 and makes taking a recording device into a movie theater a crime punishable by up to one year in jail and a maximum fine of \$2,500.

According to the MPAA, the projectionist at the Pacific Winnetka theater in the Los Angeles suburb of Chatsworth spotted the teen using a camcorder a few minutes into the start of the film. The film industry's trade group hailed the arrest and credited its recent initiative to offer cash rewards of up to \$500 to theater employees who turn in moviegoers attempting to make illicit film copies. According to the MPAA, Camcorders account for 92 percent of all illegal copies of films that are sold online and on street corners worldwide.

CNN.com, June 30, 2004 (Associated Press); <http://www.cnn.com/2004/SHOWBIZ/Movies/06/30/spiderman.arrest.ap/>

Music Piracy Sentencing

On May 14, a defendant who operated a retail store and pirate CD manufacturing operation along with his father and other family members was sentenced in U.S. District Court for the Eastern District of New York on money laundering charges relating to his operation. He was sentenced to 30 months incarceration followed by three years of supervised release. In addition, he signed a consent order of forfeiture in the amount of \$200,000 to be secured through the sale or refinance of his residence.

RIAA.com

[Top](#)

Worldwide Update

[Brazil](#) [Germany](#) [Greece](#) [Japan](#) [Russia](#)

[Top](#)

Brazil

Brazil's Endemic Piracy Problem

Piracy in Brazil is a billion-dollar industry involving politicians, judges, civil servants, police and thousands of others, according to a long-awaited Congress report. According to the comprehensive 250-page report, piracy in Brazil is heavily controlled by organized crime and impacts on nearly every sector of the economy. The report was commissioned by the specially-formed Congressional Investigatory Commission on Piracy (CPI) to investigate the trade in counterfeit and pirate goods in the country.

The report calls for an investigation into, or indictment of, at least 100 people, some of them identified as heads of criminal organizations specializing in piracy. This includes the alleged piracy kingpin, Law Kin Chong, already in jail charged with allegedly attempting to bribe the chairman of the Commission.

Also highlighted in the document is Taiwan's role as a leading manufacturing source of pirate CDs and the role of Paranagua port in Parana state and Santos port in São Paulo State which are key conduits into the rest of the country.

IFPI.org, June 30, 2004; Read the press release: <http://www.ifpi.org/site-content/press/20040630.html>

[Index](#)
[Top](#)

Germany

German Fined €8000 for Kazaa Uploads

A 23-year-old man has become the first music sharer to be successfully convicted in Germany for uploading songs to Kazaa. The unnamed German was fined €8000 (\$9,814) for making thousands of songs available to other Kazaa users, and must sign a pledge never again to engage in music piracy. Police raided the man's house in the city of Cottbus last April when his identity was revealed by Kazaa to German prosecutors. Police seized a PC containing 6,000 MP3 files and CD-Rs holding over 1,000 songs. He later pleaded guilty to copyright infringement.

The Register, June 9, 2004 (Tony Smith); http://www.theregister.co.uk/2004/06/09/euro_piracy_cases/

[Index](#)
[Top](#)

Greece

Olympic Fans Warned Not to Play with Pirates

Millions of summer travelers headed to Greece this year have been warned they could be jailed for buying pirated CDs there. A man was jailed for three months by an Athens court for buying illegal CDs in the country's first case of its kind. He was arrested as he bought two CDs from a vendor in Athens last week, according to IFPI. IFPI spokesman Ion Stamboulis said: "This is not a symbolic measure. We are determined to prosecute the buyers and we have the support of the authorities."

Greece has the worst piracy rate in western Europe, with about 10 million pirated CDs sold each year - the same number of sales as those of genuine CDs - at an average cost of six euros each. Greek authorities appear to be acting to fend off the threat of an increase in piracy anticipated during this summer's Olympics in Athens. About 1,000 vendors have been prosecuted during the past few years, but this is the first time a buyer has been jailed.

"Until now, we were focusing on the sellers, but Greek courts generally hand them light suspended sentences and they resume their trade as soon as they are released," said Mr. Stamboulis. He added that production and distribution were virtually controlled by what he called a "Nigerian mafia." The IFPI spokesman also expects a big surge in pirated CD trafficking during the Olympics from August 13 to August 29, 2004.

BBC News, May 20, 2004 (Chris Heard); <http://news.bbc.co.uk/1/hi/entertainment/music/3731861.stm>

[Index](#)
[Top](#)

Japan

'Made in Japan' Trademark to Fight Anime Piracy

Japan's Organization for Promotion of Overseas Distribution of Contents (OPODC) has agreed to introduce a "Made in Japan" trademark in a bid to allow law enforcers to crack down on pirates infringing on copyright. The organization comprises 17 software, movie and other contents industry bodies and 21 computer software and video game companies, including Sony Computer Entertainment Inc. and Nintendo Co.

It has so far been difficult for individual companies to implement preventive measures in other countries. However, the introduction of a "Made in Japan" trademark will enable the OPODC to issue warnings to pirates and sue counterfeiters for infringing on the trademark.

Mainichi Daily News, July 3, 2004 ; <http://mdn.mainichi.co.jp/news/archive/200407/03/20040703p2a00m0dm010000c.html>

Russia

[Index](#)
[Top](#)

IFPI Applauds Action Against Russian Pirates

The owner of a Russia-based website, www.russian-cds.com, faces criminal proceedings against him for offering allegedly pirate music discs for sale. The case against the Russian site came as a result of initial investigations by online piracy investigators from IFPI. They discovered the site in October 2003, containing a catalog of allegedly pirate music discs offered for sale. Following an initial test purchase, a further purchase of 176 discs was made in March 2004 monitored by IFPI's Regional Office in Moscow together with officers from the Russian Federation's Ministry of Interior. All the discs examined appeared to be counterfeit.

The discs featured international artists such as Britney Spears, Robbie Williams, Sting, Texas and Yanni, signed to labels including EMI, BMG, Universal, Sony and SPV. The site is believed to have been distributing the discs in countries including the UK, Netherlands, Finland, Germany, Switzerland, Spain, France, Italy, USA, Korea and Canada.

Jay Berman, Chairman of IFPI said, "This action against one of the many Russian websites offering allegedly infringing product for sale is encouraging and to be applauded. We urge the authorities to maintain the pressure on those who seek to profit from the creativity of international stars as well as holding back the development of Russia's own domestic music talent."

IFPI.org, June 23, 2004; <http://www.ifpi.org/site-content/press/20040624.html>

[Index](#)
[Top](#)

Legal
Beagle

IFPI Hails Lengthy Prison Term for International Music Bootlegger

A British judge has jailed a notorious international music bootlegger for three and a half years, a move applauded by IFPI on behalf of the international recording industry. Mark Purseglove, 33, is estimated to be one of the biggest bootleggers worldwide, amassing a £6.6 million (\$12.5 million) fortune in 11 years of music piracy. Purseglove sold his bootlegs around Europe, in Japan and across the world via an international network of wholesale dealers. He had also used internet auction sites such as eBay, falsely advertising the discs as rare items, charging as much as \$240 per CD. He was arrested in June 2002 after protracted investigations by anti-piracy teams from IFPI and BPI, the bodies representing the international and UK recording industry.

Purseglove has now lost all of his assets including two homes in Chelsea in London, a home in Brighton and his Aston Martin sports car. He was jailed and ordered to forfeit all of his assets after being sentenced to three and a half years imprisonment on charges of Conspiracy to Defraud the UK recorded music industry. The confiscation order, amounting to £1.8 million (US\$3.4 million), is a British record for music piracy.

Delivering the sentence, Judge Pontius made it clear that Purseglove's decision to "flout the law to reap considerable financial rewards" would not be tolerated and that he "needed to pass a sentence to deter you and others and send a strong message that the courts will provide effective protection of the rights of producers, composers and publishers" and that he wished to "deprive you of as much as I lawfully can" adding that the "loss to the recording industry was likely to be considerable."

According to Iain Grant, IFPI's Head of Enforcement: "This kind of sentence sets a good example to the criminals involved in music piracy all over the world and to the judicial systems which need to deal with them. This was a major international bootlegger motivated

by enormous profits who ran a sophisticated illegal business across the world. The confiscation of the huge proceeds of his activities is warmly welcomed - this is one of the most vital elements of an effective criminal justice system in dealing with this kind of organized crime.”

IFPI.org, July 9 2004; Read the press release: <http://www.ifpi.org/site-content/press/20040708.html>

RIAA Applauds Senate Passage of the ART Act and PIRATE Act

On June 25, 2004, The United States Senate passed the PIRATE Act, introduced by U.S. Sens. Patrick Leahy (D-VT) and Orrin Hatch (R-UT), the Ranking Member and Chairman of the Senate Judiciary Committee respectively, that would allow the U.S. Department of Justice (DOJ) to bring civil copyright infringement cases. Currently, the Justice Department may only bring criminal prosecutions. This legislation offers flexibility in Federal enforcement to assure that the punishment fits the crime. The Senate also passed the ART Act, introduced by U.S. Sens. John Cornyn (R-TX) and Dianne Feinstein (D-CA), that will allow civil actions against piracy of pre-release works and prohibit camcording of motion pictures for unauthorized redistribution.

RIAA Chairman and CEO, Mitch Bainwol spoke on behalf of the association regarding the ART Act and the PIRATE Act:

“I commend the passage of these common sense proposals that offer flexibility in the enforcement against serious crimes that damage thousands of hardworking artists, songwriters and all those who help bring music to the public. These Acts will provide federal prosecutors with the flexibility and discretion to bring copyright infringement cases that best correspond to the nature of the crime, and will assure that valuable works that are pirated before their public release date are protected.

“Despite some encouraging signs, piracy continues to plague the music community. There’s an essential role for education, enforcement by copyright owners, and federal prosecutions of the worst offenders.”

In related news, On June 22, 2004, Senator Orrin G. Hatch (R-Utah), Chairman of the Senate Judiciary Committee, introduced the Inducing Infringement of Copyrights Act of 2004 to allow creative artists to sue corporations that profit by encouraging children, teenagers and others to commit illegal or criminal acts of copyright infringement.

RIAA.com, June 25, 2004; Read the press release: <http://www.riaa.com/news/newsletter/062504.asp>

Read Senator Hatch’s press release: http://hatch.senate.gov/index.cfm?FuseAction=PressReleases.Print&PressRelease_id=1083&suppresslayouts=true

BPI Not Set to Begin P2P Lawsuits - Yet

While the European music industry has started suing file swappers in Europe, the British Phonographic Industry (BPI) insists that it does not plan to join in yet.

Following the lead of the Recording Industry Assn. of America, European members of the International Federation of the Phonographic Industry (IFPI) have filed more than 200 suits in Germany, Denmark and Italy. Several hundred more are expected over the coming weeks.

According to IFPI Chairman and Chief Executive Jay Berman: “On the strength of the developments in Denmark, Germany and Italy we can confirm that there will be more legal action in other countries in the near future.

“We need to continue letting people all over the world know that file-sharing other people’s copyrighted music is illegal, that it is damaging the whole music sector, that it is not anonymous and that it carries legal consequences.”

In the UK, the BPI said it has no plans yet to launch legal action. “The implication from IFPI is that the UK will be next to file lawsuits, but this is not the case,” said a BPI spokesman. “Our

strategy currently is to monitor the situation. But if we feel that our warnings are not effective, including sending instant messages to P2P users, then legal action is a route we will take.”

Australian IT, March 25, 2004 (Simon Hayes); Vnunet.com, June 9, 2004 (Dinah Greek)
<http://www.vnunet.com/news/1155737>

eBay in Court: Can it Last as Counterfeit Central?

The popular auction site, eBay, has allegedly become a haven for piracy of all types. Not only can bootleg music and movies be found en masse, counterfeit merchandise has also made its home at the site.

Recently, luxury jeweler Tiffany & Co. has sued eBay, claiming the online auctioneer aided violations of the Tiffany trademark by letting counterfeit items be sold on its website. The lawsuit asks that eBay be stopped from listing any “Tiffany” merchandise that is not genuine and for eBay to account for profits it made on the sale of counterfeit Tiffany merchandise or else pay up to \$1 million for each type of fake Tiffany merchandise sold on the website. eBay has dodged the bullet of blame thus far when it comes to counterfeits, watching its members get hit with lawsuits, but now the auction site is starting to be held accountable.

In a related story, eBay members have initiated a class-action suit against the online auctioneer over a problem with the company's latest billing system.

CNET News.com, June 21, 2004 (Reuters); http://news.com.com/Tiffany+sues+eBay+in+counterfeit+items+suit/2100-1038_3-5242722.html

Quick Bits and Bytes

Hollywood Offers \$500 Bounty for Movie Bootleggers

LOS ANGELES (Hollywood Reporter) - The U.S. movie industry is enlisting theater employees to help combat piracy, offering a reward of up to \$500 for every person they turn into the police.

The Anti-Camcording Rewards Program was unveiled Monday by the Motion Picture Assn. of America (MPAA), which represents the major studios, and the National Assn. of Theater Owners (NATO). ‘Camcording’ has become a very potent source of piracy. A great majority of the films that show up on the Internet for download are a result of camcorders, according to MPAA spokesman Matt Grossman.

According to the MPAA, movies are usually filmed by camcorder during the first few days of their U.S. release. The pirated product is then distributed on file-sharing networks and other online outlets, as they make their way to street corners around the world. In 2003, the MPAA seized 52 million discs worldwide with an estimated cost of \$3.5 billion.

“Theater employees are increasingly vigilant about individuals who surreptitiously set up camcorders in their theaters,” NATO president John Fithian said. “This program will give every theater worker added incentive to take action against pirates and help protect our industry from this scourge.”

FindLaw Legal News, June 22, 2004 (Nicole Sperling); <http://news.findlaw.com/entertainment/s/20040622/filmpiracydc.html>

Hazardous Counterfeit Products

While the harmful effects of piracy are usually thought to be industry related, some have experienced the actual pain of the worldwide plague of counterfeiting first-hand. Injuries from overheating counterfeit cell phone batteries purchased right on Verizon store shelves sparked a recall in late June 2004 by the Consumer Product Safety Commission. “We know of at least one burn situation on someone's face that's occurred,” said Hal Stratton of the Commission. Counterfeit electrical cords have been known to melt and have been found as the reason

behind home fires. The auto industry has also felt its share of knock-off problems, for example, brakes made of compressed grass and wood were recently discovered in American stores. In China, fake baby formula recently killed 60 infants, and in June 2004, customs agents charged members of an alleged counterfeiting ring with smuggling a half-billion dollars in Chinese knock-offs in just 10 months. Commenting on the worldwide dangers of piracy and counterfeiting, Mike Garcia of the U.S. Immigration and Customs Enforcement said, "It's an incredibly lucrative business... It's seen as being an area where there's lax enforcement, lower penalties than narcotics smuggling."

CBSNews.com, June 25, 2004; <http://www.cbsnews.com/stories/2004/06/25/eveningnews/consumer/main626211.shtml>

Piracy Spreads to Ringtones

Record labels are concerned that Xingtone, software that allows users to turn digital music files into ring tones, is becoming the Napster of a \$3 billion industry. Labels for artists including HILARY DUFF offer Xingtone exclusives, but others are skeptical. "It's troubling that a company would be profiting off the backs of artists when this business is just getting started," said a source at EMI. A Xingtone rep responded, "Are we innovative and cool and all the great things Napster is? Absolutely. But we're not illegal."

RollingStone.com, June 11, 2004

[Top](#)

[Services](#) [Digest](#) [Anti-Piracy FAQ](#) [Copyright FAQ](#) [Breaking News](#) [Press](#) [Archives](#)
[Links](#) [Search](#) [Home](#) [Intro](#)