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HEADLINE NEWS

RIAA DEFEATS USENET IN COURT

The Recording Industry Association of America (RIAA) has prevailed in its copyright fight against Usenet.com, according to court documents.

On June 30, 2009, in a decision that hands the RIAA an overwhelming victory, U.S. District Judge Harold Baer of the Southern District of New York ruled in favor of the music industry. Judge Baer agreed with the RIAA's claim that Usenet.com is guilty of direct, contributory, and vicarious infringement. In addition, Judge Baer said that Usenet.com could not claim protection under the famous Sony Betamax decision. The Betamax ruling set the precedent that companies cannot be held liable for contributory infringement if the device they create is "capable of significant non-infringing uses."

Judge Baer noted that in citing the Sony Betamax case, Usenet.com failed to see one important difference between itself and Sony. Once Sony sold a Betamax, an early videotape recorder, the company's relationship with the buyer ended. Sony held no influence over what the buyer did with the device after that. Usenet.com, however, maintains an ongoing relationship with the customer and does have some say in how the customer uses the service.

The two-decade-old Usenet network was one of the early ways to distribute conversations and binary files, long before today's Internet and peer-to-peer networks existed. Usenet.com is a company that enabled users to access the Usenet network. The RIAA filed suit against Usenet.com in October 2007, accusing the company of encouraging customers to pay up to \$19 a month by enticing them with illegal access to copyrighted music.

The case has been considered highly unusual because of the many findings of discovery misconduct on the Usenet.com side. Usenet.com apparently destroyed evidence and failed to produce witnesses on multiple occasions. The RIAA accused Usenet.com of intentionally destroying the contents on seven hard drives, providing false information and attempting to prevent employees from giving depositions by sending them to Europe.

documents, two of the employees, after returning home, allegedly evaded service, and the Usenet.com boss "provided misleading information concerning these witnesses' contact information and employment status."

The judge found the evidence credible but denied the RIAA's motion to hand it a victory based solely on the misconduct. Instead, the judge sanctioned Usenet.com from asserting the affirmative defense of protection under the DMCA's safe harbor provision. The Digital Millennium Copyright Act's safe harbor provides refuge to Internet service providers (ISPs) from being held responsible for criminal acts committed by its users. Without this provision and without the support of the Betamax decision, Usenet.com did not have much of a defense.

Steven Marks, General Counsel for the RIAA, commented, "We're pleased that the court recognized not just that Usenet.com directly infringed the record companies' copyrights but also took action against the defendants for their egregious litigation misconduct. This decision is another example of the courts recognizing the value of copyrighted music and taking action against companies and individuals who are engaging in wide scale infringement."

RIAA.com, July 1, 2009

Read The Pres Release: <http://www.riaa.com/newsitem.php?id=B82854F8-F5A1-77A1-E1B6-846E516D90B0>

ARS Technica, July 1, 2009 (Nate Anderson)

<http://arstechnica.com/tech-policy/news/2009/07/judge-throws-book-at-usenetcom-in-riaa-lawsuit.ars>

CNET News, June 30, 2009 (Greg Sandoval)

http://news.cnet.com/8301-1023_3-10276607-93.html

ARTIST'S CORNER

MEN AT WORK Accused of Stealing "Down Under"

Australian pop icons MEN AT WORK are fighting accusations that a riff in their 1980s smash hit "Down Under" was taken from a popular children's song.

Publisher Larrikin Music is suing Song BMG Music Entertainment and EMI Songs Australia for compensation from the royalties the song earned its writers, Colin Hay and Ron Strykert. Larrikin claims the flute riff was copied from the refrain in a 1934 children's song, Kookaburra Sits in the Old Gum Tree, written by Melbourne music teacher Marion Sinclair for a Girl Guides competition.

Larrikin claims it bought the copyright after Sinclair's death in 1988. On June 25, 2009, Sony and EMI argued in Australia's federal court in Sydney that Sinclair gave the copyright to the Girl Guides Association of Victoria when she submitted the song to the competition. Lawyer David Catterns, representing Sony and EMI, said competition details printed in a circular and in the Girl Guide magazine Matilda stated that all material entered would become property of the Girl Guides.

"Down Under" and the album it was on, "Business as Usual," reached No. 1 on the U.S., British and Australian pop charts in 1983. The song remains an unofficial anthem of Australia and was ranked fourth in a 2001 music industry survey of the best Australian songs.

CBCNews.ca, June 27, 2009

<http://www.cbc.ca/arts/music/story/2009/06/27/downunder-copyright.html?ref=rss>

TIMBALAND Sued Over NELLY FURTADO's "Do It"

A record label based in Helsinki, Finland has brought a lawsuit against multi-platinum producer TIMBALAND and pop star NELLY FURTADO, alleging that the duo heavily borrowed from a song recorded by Finnish artists to create the song "Do It." The song, produced by Timbaland and written by Furtado, appeared on the Canadian singer's third studio album, "Loose," released in June 2006.

The plaintiff, Kernel Records, alleges that "Do It" was recorded using the "original and central identifying melodic, harmonic and rhythmic components" of the song "Acidjazzed Evening." As explained in the lawsuit, filed in the Miami-Dade Division of the US District Court Southern District of Florida on June 11, 2009, "Acidjazzed Evening" was recorded in the Commodore 64 SID format by Norwegian musician Glenn Rune Gallefoss in 2002. Kernel Records acquired the track in 2007.

The claim alleges that when Timbaland created the beat for "Do It" in 2006, using a program that emulates the Commodore 64 SID chip, he "knowingly and willfully stole" Gallefoss's creation. With "Do It" having been released on the multi-platinum selling "Loose: The Concert" live CD and the DVD "Loose: The Concert," and as a single, Kernel Records has also named the Mosley Music Group, Interscope-Geffen-A&M and Universal Music Distribution as co-defendants in the lawsuit.

Kernel has charged all defendants with copyright infringement, requested that the ownership of the copyrights held by Mosley Music, LLC and Geffen be transferred back, and requested an injunction prohibiting the further release, reprinting, performance and sale of the song "Do It."

AllHipHop.com, June 16, 2009 (Tai Saint Louis)

<http://allhiphop.com/stories/news/archive/2009/06/16/21674319.aspx>

LIL WAYNE Sues Producer Over Copyright Infringement

Rapper LIL WAYNE filed a legal document against the production company Rebel Rock Productions Inc., on April 29, 2009.

Lil Wayne was originally sued in May 2008 over copyright infringement for allegedly taking an illegal sample from Karma-Ann Swanepoel's song, "Once" for his own single, "I Feel Like Dying." In his lawsuit, Lil Wayne claims that Rebel Rock Productions was responsible for obtaining any necessary licensing agreements for the song's sample, which was taken from the Karma-Ann track.

Most recently, the rapper was ordered to hand in financial records for his Grammy-winning album "Tha Carter III" to Urband & Lazar Music Publishing, which published Karma-Ann's song. Though Lil Wayne's track is not listed in "Tha Carter III", lawyers for Karma-Ann insisted that the song has a connection with the album. They argued Lil Wayne had used the song to promote the album by performing it during his concerts.

In related news, the release of Lil Wayne's latest album "Rebirth" was held back from June 16, 2009 to June 23, 2009 due to sample clearance issues.

Ace Show Biz, April 29, 2009

<http://www.aceshowbiz.com/news/view/00023888.html>

LEGAL BEAGLE

Retrial Denied - The Pirate Bay Still Sinking

On June 25, 2009, a Swedish appellate court ruled that there would be no retrial in the Pirate Bay case, despite accusations the trial judge was biased against the four founders of the world's most notorious BitTorrent tracker.

Pirate Bay administrators Fredrik Neij, Gottfrid Svartholm Warg and Peter Sunde were found guilty of facilitating copyright infringement in April 2009, along with Carl Lundström, who was convicted of funding the five-year-old operation. They each face one year in prison and \$3.8 million in fines. Days after the April 2009 convictions, attorneys for the four charged that Tomas Norstrom, the judge presiding over the trial, was hostile to the defense because of his affiliations with the Swedish Copyright Association and the Swedish Association for the Protection of Industrial Property.

The defendants also charged that the Stockholm trial court administrators secretly steered the case to Norstrom, an assertion the Stockholm court flatly denied. The verdict triggered a political backlash among Swedish youth, and the *Swedish Pirate Party* more than doubled in size to 40,000 members. On June 7, 2009, the party surprisingly won a seat in the European Parliament.

The Pirate Party's political success was also a reaction to the Swedish government's April 2009 implementation of the Intellectual Property Rights Enforcement Directive, known as IPRED. The law's main goal is to enable copyright holders to acquire once-private data identifying people linked to illegal file sharing.

In a related story, the Swedish gaming company *Global Gaming Factory X AB* purchased The Pirate Bay for \$7.7 million on June 30, 2009, and plans to transform the embattled file sharing site into a legitimate peer-to-peer service. "We would like to introduce models which entail that content providers and copyright owners get paid for content that is downloaded via the site." The recording industry remains cautiously optimistic that this can be the end of the Pirate Bay's illegal piracy run.

Wired.com, June 25, 2009 (David Kravets)

<http://www.wired.com/threatlevel/2009/06/pirate-bay-retrial-denied/>

Jury Rules Against Minnesota Woman in Download Case

On June 18, 2009, a federal jury in Minneapolis ruled a Minnesota woman violated several music copyrights in the nation's only file-sharing case to go to trial.

The jury found that Jammie Thomas-Rasset "committed willful violation" of the copyrights on 24 songs. The jury also awarded the recording companies \$80,000 per song, totaling \$1.92 million.

It was a retrial for Thomas-Rasset, who was also found in 2007 to have illegally shared music files. The new trial was ordered after the judge in the case decided he had erred in jury instructions.

The second outcome was worse for Thomas-Rasset. In the first trial, the jury awarded recording companies just \$222,000. The companies that sued Thomas-Rasset are subsidiaries of all four major recording companies, Warner Music Group Corp., Universal Music Group, EMI Group PLC and Sony Music Entertainment.

Chron.com, June 18, 2009 (Steve Karnowski, AP)

<http://www.chron.com/disp/story.mpl/tech/news/6487039.html>

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SIDEBAR – YouTube Dodges Another Legal Bullet

A U.S. judge dismissed damages claims in a copyright infringement lawsuit against Google, Inc. and its video-sharing site, YouTube.com, but left open the possibility that non-U.S. based rights owners could seek damages for live broadcasts, if they prevail.

A group of sports and music copyright holders, led by the UK-based Football Association Premier League, had argued that foreign works were exempt from any registration requirements under the U.S. Copyright Act. But the judge ruled that damages are not available for any foreign works that were not registered in the United States, except those that fall under a "live broadcast exemption" in the Act. Punitive damages are barred for all the claims, U.S. District Judge Louis Stanton wrote in a July 3, 2009 order, reiterating an earlier ruling he made in an associated case brought by Viacom Inc.

Viacom, owner of movie studio Paramount and MTV Networks, filed a \$1 billion copyright infringement lawsuit against YouTube and its parent company, Google, in 2007. The suit was brought against YouTube for video piracy of Viacom-owned content. The class action led by the Football Association was filed the same year in the Southern District of New York. The cases have been consolidated for purposes of discovery.

Reuters, July 7, 2009 (Gina Keating)
<http://www.reuters.com/article/rbssBroadcasting/idUSN0734493020090708>

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Quick BITS AND BYTES

Virgin Media and Universal Launch New Music Service

Virgin Media, the cable TV operator owned by entrepreneur Richard Branson, has launched a new kind of music download subscription service with Universal, the world's largest music company. Announced on June 15, 2009, the service has been described as a world first, and will allow Virgin Media's broadband customers in Britain to stream and download as many songs and albums as they like from Universal's catalog for a fee.

Virgin is continuing talks with other British major and independent music labels and publishers about including their artists in the new service. The music will be available to download in MP3 format, giving buyers the ability to listen on a range of devices, including iPods, mobile phones and PCs as well as other MP3 players. The subscription service, due to be available beginning late 2009, builds on mobile phone unlimited download services such as Nokia's "Comes With Music," allowing for a massive range of music, as the industry fights an ongoing battle against illegal downloading.

USA Today, June 15, 2009 (Jane Wardell, AP)
http://www.usatoday.com/tech/news/2009-06-15-virgin-universal_N.htm

LA Gangs Turning to Piracy to Make a Buck

Gangs that previously made money by dealing drugs are now turning to film and music piracy because of more lenient criminal penalties, according to police. "We are seeing more gang involvement because the penalties are much less than for drug offenses," police Lt. Patrick Shields told the Los Angeles Public Safety Committee.

Penalties for possession of the pirated goods have been elevated to a felony for possession of 100 or more discs, but the courts generally grant probation to first-time offenders. By comparison, possession with intent to sell marijuana carries a maximum sentence of three years in prison.

Shields said his unit, which has recovered more than \$61 million in pirated goods since 2002, concentrates on Santee Alley in downtown LA, where vendors sell many pirated products. Many have been found to be gang-related. "It's a big business," Shields said. "They make these discs for 50 cents or \$1 and sell them for \$5, so there is a big profit for them on this." When there is indication of gang involvement, officers with the Gang Enforcement Detail are notified and work with the officers to shut down any illegal activity.

Daily News, July 6, 2009 (Rick Orlov)
http://www.dailynews.com/ci_12765456

3 Q 2009 (Third Quarter) BUSTS

Be sure to peruse the Recording Industry Association of America's (RIAA) monthly newsletter which covers numerous bootleg, piracy and counterfeit raids across the United States. Read about the recent busts at our website: <http://grayzone.com>

Police Catch Top Theater Pirate

On June 11, 2009, The Motion Picture Association of America (MPAA) honored the South Barrington, Illinois police for their efforts to stop a man believed to be one of the top movie pirates in the world. When the police first caught the man recording a film at the AMC 30 Movie Theater they thought it was a fairly routine, straight-forward case. They soon learned he was suspected of being one of the top three members of the world's largest movie piracy operation.

On April 10, 2009, police arrested 32-year-old Gerardo Arellano, after they caught him recording the "Hannah Montana" movie at the AMC 30 in the South Barrington suburb of Chicago. When authorities went to Arellano's home, they found 44,000 DVDs and CDs, along with duplicating equipment. He was subsequently charged with computer fraud, online sale of stolen goods, criminal use of a motion picture facility, and unlawful use of a recording device. Also arrested was Arellano's wife, 32-year-old Maribell Fernandez, who reportedly admitted bringing the camera to her husband at the theater.

Investigators believe Arellano not only recorded the movies with a video camera, but also created copies and sold them as digital downloads and hard copies. Nine officers were honored by the MPAA for their efforts to catch Arellano. The MPAA hailed the arrests as significant progress in their anti-piracy efforts.

NBC Chicago, June 12, 2009 (Zach Christman)
<http://www.nbcchicago.com/news/local/Pirate-Caught-at-Barrington-Movie-Theater-Digital-Film-Piracy.html>

Daily Herald, June 12, 2009 (Eric Peterson)
<http://www.dailyherald.com/story/?id=300001>

Six Arrested in Houston Piracy Raid

On June 20, 2009, investigators raided a well-known flea market in the Long Point area of Houston, Texas. More than 25,000 illegal DVDs and CDs were confiscated during the sting operation that took place at noon. Undercover officers with the Houston Police Department say they were able to purchase movies and music that had been illegally downloaded on to discs from suspects selling right out of the back of their vehicles. Investigators say the vehicles were still running when they approached them, providing the suspects a chance at a quick getaway.

Working off a tip, investigators for the RIAA discovered the illegal operation in 2008. The district attorney's office then got involved and the raid was planned. Six suspects were arrested and charged with engaging in organized crime and unlawful labeling. The suspects can face up to five years in prison and a \$250,000 fine.

KHou.com, June 24, 2009 (Jeff McShan)

http://www.khou.com/topstories/stories/khou090623_mp_pirates-arrested-for-illegal-dvds.1d5b1d4e.html

WORLDWIDE PIRACY UPDATE

ARGENTINA

Qsound Goes Down

Qsound.com.ar, a file-sharing site with 1,500 registered users dedicated to distributing copyright infringing music files, has been shut down by CAPIF, which represents the recording industry in Argentina. The site contained more than 2,000 posts linking to around 3,000 unauthorized music files before it was closed.

On June 22, 2009, the site was removed from the Internet, following the appropriate notifications. The service was aimed at the users of file-sharing sites and forums that had been previously closed down by CAPIF as part of a regional anti-piracy campaign. Users of the site were primarily based in Argentina (59.4%), Spain (12.5%) and Uruguay (9.4%). CAPIF investigated the site, identified the infringements taking place and then notified the operators of the activity.

IFPI.org, July 7, 2009

Read the Press Release: http://www.ifpi.org/content/section_news/20090707.html

FRANCE

SPPF Sues YouTube, Seeks More

SPPF, a French royalty collection society for independent record labels, has filed a copyright infringement lawsuit against Google's YouTube, claiming \$13.9 million in damages over videos removed from YouTube at SPPF's request last year that have since reappeared.

According to YouTube, SPPF has not signed up for its Content ID service, which enables copyright owners to submit copies of their works, which are then actively blocked from upload by YouTube.

SPPF has also recently focused its efforts on neighboring rights rates. After

commercial and state-owned radio channels fees were increased in 2007 and 2008, SPPF has considered a change in the rate paid by public places playing recorded music. The rates are currently set by a dedicated body headed by a government representative.

Digital Media Wire, June 18, 2009 (Mark Hefflinger)

<http://www.dmwmedia.com/news/2009/06/18/french-indie-label-group-sppf-sues-youtube-over-copyrights>

GERMANY

Court Orders Rapidshare to Filter Content

The file-sharing site, Rapidshare, has recently lost a case to the German copyright society GEMA. On June 23, 2009, Rapidshare was ordered by the Regional Court in Hamburg to "proactively filter" more than 5000 tracks from GEMA's catalog.

In January 2008, another regional court in Düsseldorf had already found that Rapidshare was responsible for what its users uploaded to the service. Rapidshare then implemented a screening process and maintained hashes of files that were pulled down for infringement. However, GEMA was not satisfied with the results and went back to court.

GEMA has created software that can search web forums and extract links to content that infringes on its members' copyrights. However, Rapidshare complained that this software did not work. "It's questionable whether the application can deal with mechanisms to prevent the scraping of links, open encrypted files, accurately identify audio files or find links in forums that can't be accessed by search engines," said Rapidshare CEO Bobby Chang.

The most recent decision may imply that, in the future, user-generated content sites located in Germany will need to take proactive, efficient measures to screen copyrighted material. Rapidshare has announced that they will appeal the verdict.

European Digital Rights, July 1, 2009

<http://www.edri.org/edri-gram/number7.13/rapidshare-de-filter-tracks>

IRELAND

Major Labels Hold ISPs Responsible

The 'big four' music labels have launched legal proceedings against Ireland's second-largest telecommunications company, BT Ireland, and the largest cable operator UPC Ireland, to force them to act against illegal music downloads by their subscribers.

The move follows an out-of-court settlement in January 2009 between the labels (EMI, Sony, Universal and Warner Music) and the leading broadband company, Eircom, under which the company agreed to introduce a "three strikes and you're out" rule for persistent infringing downloaders.

As part of the agreement, the record labels agreed that they would seek a similar system to be put in place by all other Internet service providers (ISPs), so that Eircom would not be at a competitive disadvantage.

The most recent proceedings were issued in Ireland's High Court on June 16, 2009.

Irish Times, June 20, 2009 (John Collins)

<http://www.irishtimes.com/newspaper/finance/2009/0620/1224249188923.html>

ITALY

Pirates Forced to Forfeit Funds

On June 18, 2009, an Italian judge ordered the operators of online music pirate sites to forfeit more than \$3.3 million following an investigation into copyright infringement.

The ruling follows legal proceedings relating to a number of Italian websites that were used to offer unlicensed music for unlawful downloading. The websites had been the object of an investigation by the Italian Fiscal Police (GDF) back in 2003 with the support of the Federation against Music Piracy (FPM).

The investigation had led to the charging of more than 54 people throughout Italy, but was dropped as a result of the expiration of the relevant limitation period. The Judge for Preliminary Investigations (GIP), however, considered it had been proved that the offences had been committed and ordered the seizure and the destruction of the computers in question and the forfeiture of money that had been previously frozen by the Office of the Public Prosecutor amounting to more than \$3.3 million.

IFPI.org, June 18, 2009

Read the Press Release: http://www.ifpi.org/content/section_news/20090618.html

JAPAN

Downloading Now a NO-NO

The upper house of Japan's Parliament has unanimously approved a revision to the Copyright Law making downloading of pirated content illegal. The revision, approved on June 16, 2009, will go into effect on January 1, 2010.

Uploading of pirated music and video content is already illegal, but downloading has been tolerated as long as it is for personal use. The new legislation will make it illegal for private users to download copyrighted material that has been uploaded without the rights holders' permission.

Legislators have not yet specified the cost of the penalties for illegal downloads, counting on a strong cultural aversion against lawbreaking to keep Internet users in line. However, illegal uploading of video content is rampant at Japanese file-sharing sites, leading to large losses for rights holders in Japan and around the world.

Variety, June 17, 2009 (Mark Shilling)

<http://www.variety.com/article/VR1118005056.html?categoryid=19&cs=1>

TURKEY

Police Pound Piracy in Turkey

Turkish police have conducted major anti-piracy operations against four organized criminal syndicates. The recent actions effectively collapsed the illegal organizations due to the numbers of arrests made and products seized.

The first operation, conducted on May 7, 2009, targeted 83 addresses in 17 cities throughout Turkey, resulting in the arrest of 29 people and the seizure of more than seven million pirate and counterfeit items. Police confirmed that much of this product was sold or distributed through Internet sites requiring the use of codes and keywords.

The second operation, held on June 1, 2009, saw 84 different sales points in Istanbul raided simultaneously. More than two million pirate and counterfeit items were seized, 46 people charged with infringing copyright law and 11 people, thought to be the gang leaders, were arrested by police.

The total estimated value placed on the seizures by Turkish police is more than \$105 million. As a result of these operations, the main pirate network was disrupted and its most important members were arrested. In addition, police believe the biggest pirate market, the *Tahtakale*, is finished.

IFPI.org, June 17, 2009

Read the Press Release: http://www.ifpi.org/content/section_news/20090617.html

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