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RIAA Continues Campaign Against Illegal File Sharers

On October 28, 2004, the Recording Industry Association of America (RIAA) brought a new round of copyright infringement lawsuits against 750 illegal file sharers, including 25 users on 13 different university campuses. In addition to the 750 "John Doe" litigations, 213 separate lawsuits were filed against named defendants on behalf of the major record companies. The individuals named in these suits had already been identified through the litigation process and then declined or ignored an RIAA overture to settle the case before it proceeded any further. The alleged illegal file sharers used unauthorized peer-to-peer services such as eDonkey, Kazaa, LimeWire and Grokster.

The lawsuits against named defendants were filed in federal district courts across the U.S. including Alabama, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington.

The university computer networks used by the illegal file sharers include: Bloomsberg University, Grinnell College, Hamilton College, Indiana State University, Iowa State University, Michigan Technological University, Ohio Northern University, SUNY College at Morrisville, Ohio State University, University at Albany, State University of New York, University of Minnesota at Duluth, University of Southern Mississippi, and University of Wisconsin at Oshkosh.

RIAA President Cary Sherman said of the latest nation-wide legal action: "Our legal efforts help build an essential foundation for the continued development of the legal online music marketplace. On that count, we continue to see promising developments." Sherman pointed to the RIAA's recently released mid-year numbers which show that 58 million single tracks were downloaded or burned from a licensed service for the first half of 2004. Sherman emphasized the importance of supporting legitimate music services: "In order for legitimate services to continue their growth, we cannot ignore those who take and distribute music illegally, there must be consequences to breaking the law or illegal downloading will cripple the music community's ability to support itself now or invest in the future."

InfoWorld, October 28, 2004 (Grant Gross, IDG News Service); http://www.infoworld.com/article/04/10/28/HNriaasuits_1.html;

Yahoo! News, October 28, 2004 (Alex Veiga, Associated Press);

http://news.yahoo.com/news?tmpl=story&u=/ap/20041028/ap_on_bi_ge/downloading_music_1

RIAA.com, October 28, 2004; Read the press release: <http://www.riaa.com/news/newsletter/102804.asp>

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Artist's
Corner

Judge Rules in Beastie Boys Sampling Suit

On November 4, 2004, the 9th U.S. Circuit Court of Appeals in San Francisco handed down a decision regarding the prevalent practice of musicians "sampling" others' sound recordings. That decision upheld a lower-court dismissal of the case in favor of the Beastie Boys, granting the pioneer hip-hop group a summary judgment. The ruling found the use of three notes of a musical composition was de minimis, or trivial copying,

and thus not copyright infringement of jazz flutist James Newton's recording, Choir. Sampling has become a staple of many artists, especially in the rap and hip-hop genres.

Citing the fact that the Beastie Boys had already obtained a license in the sound recording of Choir, the Ninth Circuit only considered whether the composition was infringed. The court found that the Beastie Boys did not appropriate the overall essence or structure of the composition such that the average audience would recognize Newton's work. Conversely, the court held that the copying was trivial since it constituted only a minimum percentage of the entire work of Choir and because the three-note sequence was "simple" and "generic." Chief Judge Mary Schroeder also stated in her opinion:

"We hold that Beastie Boys' use of a brief segment of that composition, consisting of three notes separated by a half-step over a background C note, is not sufficient to sustain a claim for infringement of Newton's copyright."

Stanford Center for Internet and Society, November 2004;

http://cyberlaw.stanford.edu/packets/vol_1_no_5/#ninth_circuit_rules_that_sampling_of_jazz_composers_copyright_is_de_minimis_noninfringement.

Read Chief Judge Mary Schroeder's Opinion:

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/38D1DF2306D7CD8C88256DD4005CF20B/\\$file/0255983.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/38D1DF2306D7CD8C88256DD4005CF20B/$file/0255983.pdf?openelement)

213 Sued For Copyright Infringement

213, the superstar rap act featuring Snoop Dogg, Warren G. and Nate Dogg, is being sued for copyright infringement over an alleged three unauthorized tracks featured on their new album, The Hard Way.

MMZ, LLC allege the three tracks infringe on the copyright of producer DJ Battlecat, who has worked with artists such as Ice Cube, Busta Rhymes, Lucy Pearl, Bryan McKnight, Xzibit, WC and Faith Evans. The group is accused of using DJ Battlecat's work on the three songs without his permission. Lawyers Farhad Novian and Josh Mendelsohn of Novian & Novian filed the suit in the United States District Court for the Central District of California on September 2, 2004 against Snoop Dogg, Nate Dogg and Warren G as well as record label TVT Records.

Undercover.com, September 6, 2004 (Paul Cashmere): http://www.undercover.com.au/news/2004/sept04/20040906_213.html.

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4Q 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>

NYPD Raids Bronx Piracy Hotbed

On October 26, 2004, the New York Police Department's Trademark Unit, assisted by the RIAA, executed a search warrant at 2165 Jerome Ave in the Bronx. The location (a storage facility) acted as a distribution point, which was supplying counterfeit/pirate Latin CD-Rs and music DVDs to street vendors in Upper Manhattan and the Bronx. One person was arrested and charged with felony trademark offenses. All merchandise, including the 5,150 counterfeit/pirated CD-Rs and 750 Latin pirated music DVDs, was seized at the storage facility. The person arrested was in possession of one box of inserts, one box of blank trays and 1,600 pirated CD-Rs that he was bringing into the storage location. The music seized was 100% from the Latin genre. The unauthorized sound recordings seized included the works of Alex Bueno, Anthony Santo, Aventura, Don Omar, Grupo Niche, Juan Luis Guerra and Los Tigre Del Norte.

RIAA.com

Police Crackdown on Pittsburgh Piracy

A man accused of dealing thousands of dollars in counterfeit DVDs and CDs was hauled away by Pittsburgh police in a citywide crackdown on suppliers of pirated music and films. On October 19, 2004, detectives arrested Norman Johnson, 37, inside his store, The Zone, on one count of counterfeit and trademark fraud. Police said they seized \$25,800 worth of pirated major motion picture discs including copies of "Shark Tale," "Ladder 49," and "Bourne Supremacy," films still showing in theaters and months away from being released by studios on DVD and VHS.

Police also seized hundreds of pirated CDs -- including a yet-to-be-released disc from the late rap pioneer

TUPAC SHAKUR.

If convicted, Johnson faces up to 10 years in prison and would have to reimburse the Motion Picture Assn. of America (MPAA) and the RIAA, said police Detective Jimmy Conn.

Johnson, being led away from his shop in handcuffs for a trip to the Allegheny County Jail, yelled to a crowd of onlookers, "It ain't like I killed four people or nothing. I'm only selling movies."

PittsburghLive.com, October 20, 2004 (Richard Byrne Reilly); http://www.pittsburghlive.com/x/tribune-review/trib/pittsburgh/s_263768.html

Key Distributor Brought Down in Miami

On October 5, 2004, the Miami Police Department, with the assistance of the RIAA, raided a Miami home and arrested one person for manufacturing and distributing pirate/counterfeit music in CD-R and DVD formats. The individual had been under investigation for some time as a key distributor of music to street vendors in Miami. At the residence, two computers were seized along with 21 CD-R/DVD-R burners, over 3,500 CD and DVD inserts, 2,000 music CD-Rs and 2,000 music DVD-Rs. In addition, over 4,000 movies on DVD-R were also seized by the Miami Police Department. The music seized was 95% from the Latin music genre. The remaining five percent was pre-1972 repertoire containing Rock and R&B. Artists whose works were pirated included: Marc Anthony, Telgo Calderon, Thalia, Alejandro Fernandez, Chayanne and Tito Nieves. The individual was charged with violating Florida's True Name and Address Statute.

RIAA.com

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Australia

Website Faces the Music

Australia's war on music piracy entered Federal Court on October 25, 2004 when a hearing began in a \$500 million suit filed by Australian and international recording companies and the music sharing website mp3s4free.net.

The companies, including Universal Music Australia, Sony Music Entertainment Australia, Warner Music Australia, BMG Australia and Festival Records, brought the \$500 million suit against Stephen Cooper, an ex-policeman whose site ran for five years before it was shut down under a court order last year. The companies claim that mp3s4free.net was a virtual one-stop shop for illegal music copying, making website owner Stephen Cooper one of the biggest copyright infringers in the world.

The record companies hope success in the landmark copyright case will toughen download laws in Australia and help end the practice of music freeloading over the Internet. The action was brought following an investigation by Australia's Music Industry Piracy Investigations (MIPI).

While Mr. Cooper argues his site did not breach copyright as it was only a third-party site used to link Internet users to downloads elsewhere on the web, counsel for the companies believe the scale of infringement was "unprecedented" with over seven million people visiting the site each year.

The Australian, October 26, 2004 (Vanda Carson); http://www.theaustralian.news.com.au/common/story_page/0,5744,11186350%255E15306,00.html

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China

Europe to China: Get Tough on Piracy

Japan

The European Union Chamber of Commerce in China called for Beijing to do a better job of protecting intellectual property, joining a chorus of foreign complaints about rampant Chinese product piracy. The European appeal made on October 15, 2004, followed a report by the American Chambers of Commerce in China and Shanghai last month that called on China to impose tougher penalties for product pirates who violate foreign patents, trademarks and copyrights. Counterfeit goods, including books, software, DVDs, medicines and designer fashion, are widely available in China in spite of sporadic crackdowns and arrests. The U.S. government estimates Chinese piracy costs companies worldwide up to \$50 billion a year in lost sales. Paul Ranjard, head of the EU chamber's intellectual property rights working group appealed to the Chinese government:

"The list of European companies suffering from counterfeiting is too long. We are saying that every counterfeiter should be exposed to the risk of going to jail, and so far the Chinese law still does not meet that standard."

Yahoo! Finance, October 15, 2004 (Audra Ang, Associated Press); http://biz.yahoo.com/ap/041015/china_business_2.html

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Sony Drops CD Copy Protection in Japan

Beginning on November 17, 2004, all of Sony's audio CDs sold in Japan will be free of any technical copy protection mechanism. Sony's official reasons behind the move are that Japanese consumers have learned important issues about piracy and legality of music copying. Sony also recognizes that Japan's legislation is now tougher towards piracy than what it was when the copy protection mechanisms were introduced. The announcement is met with speculation that the real reasoning is simply that Sony doesn't want to anger its consumers -- at least not in its own home market.

AfterDawn.com, October 3, 2004 (dRD); <http://www.afterdawn.com/news/archive/5659.cfm>

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Pakistan

Pakistan: New Piracy Hotspot

Pakistan has recently been deemed a new piracy hotspot as a result of its massive exports of unauthorized optical discs. According to IFPI, Pakistan exports several million pirated CDs across the world each year. The software piracy rate in Pakistan is an estimated 83%, contributing to a \$16 million loss to the local entertainment industry.

In light of the piracy epidemic spreading in Pakistan, three international organizations working to protect the intellectual property rights of music, have donated computer equipment to the country's Central Board of Revenues (CBR) to help it check the export of pirated optical discs. The computers, scanners and printers were donated by IFPI, the Business Software Alliance (BSA) and the Motion Picture Association (MPA). This equipment will be installed in key Pakistani locations at Karachi, Islamabad and Lahore airports as well as Port Qasim to check the illegal business of CDs, VCDs and DVDs.

Pakistan Observer, October 9, 2004; <http://pakobserver.net/200410/09/news/islamabad01.asp>

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United Kingdom

DrinkOrDie London Trial Open

On October 19, 2004, the long awaited trial of two men accused of playing a key role in an international computer piracy ring began in London. Alex Bell and Steven Dowd are alleged to be part of an international Internet group called DrinkOrDie, accused of cracking complex and expensive programs. While the two men deny any conspiracy to defraud, a number of members of the international piracy ring have already pleaded guilty to "cracking" software protection to allow games and programs to be downloaded. Prosecutor Bruce Houlder said of the defendants:

"They do not do what they do for money. They do it for streetwise credibility. They may see themselves as latter-day Robin Hoods, stealing from the rich to give to the poor, but in reality it is a cover for fraud."

BBC News, October 19, 2004; <http://news.bbc.co.uk/1/hi/england/merseyside/3756670.stm>

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Legal
Beagle

RIAA Settles Suit With Puretunes.com

On October 25, 2004, the RIAA reached a \$10 million settlement with the Spanish MP3 site Puretunes, which operated briefly in 2003. The website sold MP3s for pennies a song and claimed that it had obtained the rights to the songs legally through overseas licensing authorities. However, the RIAA disagreed and sued Puretunes shortly after it was shut down in June 2003 for its sale of "unauthorized unlimited music downloads."

Major record companies including Warner Music Group, EMI Music North America, Universal Music Group, Sony Music Entertainment and BMG (now Sony BMG Music Entertainment) sued the parent company and operators of Puretunes in July 2003 for illegally selling copyrighted music at Puretunes.com. The founders of the Grokster downloading service were named in the RIAA suit.

The settlement calls for Grokster founder Daniel Rung, his brother Michael Rung, his son Matthew Rung and former Grokster Pres. Wayne Rosso to pay a total of \$500,000 in damages. It also requires Sakfield Holdings, the Spain-based company the Rungs created to operate Puretunes, to pay \$10 million. The actual operators of the site -- Rosso and the Rungs -- were identified after a comprehensive international legal search through several corporate entities in multiple foreign countries.

RIAA President Cary Sherman commented on the recent settlement:

"Puretunes.com duped consumers by claiming it was a legitimate online music retailer when, in fact, it was no such thing. It's essential for the integrity and security of the legitimate online music marketplace that impostors like Puretunes.com are held accountable."

FMQB.com, October 26, 2004; <http://www.fmqb.com/Article.asp?id=45943>

RIAA.com, October 25, 2004; Read the press release: <http://www.riaa.com/news/newsletter/102504.asp>

IFPI and BPI Take Action Against JetGroove.com

The controversial music download site, JetGroove.com, has removed more than 50,000 songs from its database after receiving cease and desist requests from the International Federation of Phonographic Industries (IFPI) and its U.K. wing, the British Phonographic Industry (BPI).

JetGroove claimed that they would pay royalties to the copyright owners based on the material that was actually downloaded, but the website prompted numerous complaints from IFPI and BPI members on the grounds that these tracks were made available without permission.

The Internet service providers were based in Moscow and the domain name server and digital files were hosted on U.S. servers. Upon learning of the site's illegal practices, IFPI sent a strongly worded cease and desist notice to the content providers requesting the immediate removal of the infringing material. BPI Director of Anti-Piracy David Martin commented:

"Whether it's individuals illegally uploading files to peer-to-peer networks or companies seeking to make money out of our members' copyrights without permission, the BPI's anti-piracy unit is here to protect our members' rights."

The Register, October 15, 2004 (Tony Smith); http://www.theregister.co.uk/2004/10/15/jetgroove_drops_songs/

IFPI.org, October 14, 2004; Read the press release: <http://www.ifpi.org/site-content/press/20041014.html>

U.S. Justice Department Committed to Protecting Intellectual Property

On October 12, 2004, the U.S. Department of Justice and former Attorney General John Ashcroft announced "the recommendations of the Justice Department's Intellectual Property Task Force, created by the Attorney General on March 31, 2004 to examine all aspects of how the Department handles intellectual property issues and report on proposals for future activity."

In his remarks at a Los Angeles news conference, former Attorney General Ashcroft said:

"Intellectual property theft is a clear danger to our economy and the health, safety, and security of the American people. The enforcement of our intellectual property laws is among the highest priorities of the Justice Department, and I created the Intellectual Property Task Force to explore ways for us to strengthen our protection of the nation's valuable intellectual resources. With the recommendations put forward by the Task Force, the Department is prepared to build the strongest, most aggressive legal assault against intellectual

property crime in our nation's history.”

RIAA Chairman and CEO, Mitch Bainwol, commented on the Justice Department's commitment to intellectual property:

“Intellectual property theft is an enormously damaging economic and cultural crime. It is within this context that the Justice Department has appropriately made these crimes a top enforcement priority. No administration has ever mounted such a comprehensive approach to defending America's gift to the world -- our creativity. For those who work in the community of record labels, songwriters and artists, the commitment of focus, energy and resources outlined in this report is music to our ears.”

United States Department of Justice, October 12, 2004; <http://www.usdoj.gov/criminal/cybercrime/AshcroftIPTF.htm>

RIAA.com, October 12, 2004; Read the press release: <http://www.riaa.com/news/newsletter/101204.asp>

Big Names Wait and Watch as eBay Takes Hands-Off Approach

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. Most recently, eBay is causing trouble for big designer brands like Gucci, Prada, and the like -- all of which are closely watching the action in a lawsuit filed by luxury jeweler Tiffany & Co.

Tiffany & Co. has filed suit over the hundreds of counterfeit Tiffany items for sale at eBay, suggesting the auction giant has responsibility to actively police its site. After all, the firm is profiting from the frauds, Tiffany says.

“Everybody wants to see where this is going,” said Lou Ederer, an intellectual property rights expert. “How much longer can eBay hide behind their bigness? They are taking the position that they can't monitor thousands of auctions going on all at once. But where do you draw the line? Firearms, alcohol? There are certain industries where the line has to be drawn.”

Other firms are watching and legal experts predict a flood of similar copyright lawsuits if Tiffany prevails. Others who are frustrated by eBay's hands-off approach -- victims of con artists who never deliver items, for example -- are also watching.

MSNBC News, September 21, 2004 (Bob Sullivan); <http://msnbc.msn.com/id/6030048/>

See GrayZone Digest 3Q 2004: <http://www.grayzone.com/704.htm>

Quick Bits and Bytes

Pirates Break Halo 2: Latest Victim of Video Game Piracy

A month before the newest hot sci-fi action game even had a chance to warm-up to the busy thumbs of video-gamers, it was already illegally sizzling all over the Internet. Set for a release date of November 9, 2004, the legit version of “Halo 2” was preceded by its unreleased French-language version on file-sharing networks and news groups in October 2004. Maker of “Halo 2,” Brian Jarrard of Microsoft Corp.'s Bungie Studios commented on being the latest victim of video game piracy:

“You spend three years of your life pouring everything you have into this project, and then somebody gets their hands on the game and gives it away to the world for free. We made this, and these guys had no right to give it out to the public.”

Microsoft is still investigating, and working with authorities to track down those responsible. It remains unclear how the leak occurred, but it did not affect the game's November 9, 2004 release date.

FindLaw Legal News, November 8, 2004 (AP tech writer Matt Slagle); http://news.findlaw.com/ap/ht/1700/11-8-2004/20041108051501_07.html

MPAA Fears Four More Years: \$15 Billion Problem

The Motion Picture Assn. of America (MPAA) projects that movie piracy could drain the industry of \$15 billion over the next four years if bold measures are not taken immediately.

On October 21, 2004, MPAA anti-piracy chief, John Malcolm, spoke to a panel at the Hollywood Chamber of Commerce about the plight of the movie industry. The MPAA fears that the film business could suffer the same losses that the music business has, unless civil and criminal actions, coupled with aggressive public outreach, do not stem the growth of illegal file trading and worldwide DVD bootlegging.

Citing industry figures, Los Angeles Mayor James Hahn said that 92% of the movies made available for illegal downloading originate from camcording in a theater. As a result, Hahn noted the city's effort to criminalize such videotaping as well as arrest people for street-level sales of bootleg DVDs. The L.A. Mayor also emphasized that entertainment represents a crucial \$30 billion slice of the Los Angeles economy, employing about 200,000 people:

"To have all this work just ripped off by someone is not only aggravating, but if it continues, we won't have an industry -- it will suck the life out of it."

Yahoo! News, October 22, 2004 (Jesse Hiestand); http://story.news.yahoo.com/news?tmpl=story&cid=598&ncid=790&e=2&u=/nm/20041022/film_nm/film_piracy_dc

New Job For Ex-Universal Chief

Former Universal Music executive John Kennedy has been appointed chairman and chief executive officer for music industry group the International Federation of the Phonographic Industry (IFPI).

Kennedy, who started on October 1, 2004, replaces Jay Berman, who will retire at the end of the year after a six-year stint. Kennedy was the former president and chief operating officer of Universal Music International, a position he left in February 2004. Kennedy commented on the new position: "These are very challenging times for the music industry, but I believe the industry has the creativity, ability and determination to deal with its problems and I am looking forward to the job that needs to be done. I am inheriting IFPI in wonderful shape thanks to the tremendous leadership that Jay Berman has demonstrated over the last six years."

Reuters, September 14, 2004; IFPI.org, September 14, 2004; Read the press release: <http://www.ifpi.org/site-content/press/20040913.html>

Iraqi Accused of Currency Counterfeiting

Ahmad Chalabi, once a favored adviser to the United States, was accused of counterfeiting old Iraqi dinars in Iraqi arrest warrants. Chalabi is a former member of the Iraq governing council. From Iran, where he was attending an August 2004 economic conference, he called the charges "outrageous." The Iraqi government warrants were issued August 7, 2004. The old Iraqi dinars were removed from circulation after the fall of Saddam Hussein's regime last year.

The Washington Times, August 8, 2004 (United Press International); <http://washingtontimes.com/upi-breaking/20040808-071442-4017r.htm>

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