

GrayZone

Quarterly Digest

October 2005

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KAZAA RULED ILLEGAL

On September 5, 2005, the Federal Court of Australia ruled that Kazaa is an illegal business that is liable for copyright infringement. Kazaa has been considered the world's biggest single Internet piracy operation with 2.4 million users worldwide.

Sharman Networks, owner of the popular Kazaa peer-to-peer software, lost its case against a coalition of record labels. The court ruled that Kazaa infringed on artists' copyright and facilitated piracy. The list of plaintiffs included EMI, Sony BMG, Warner, Festival Mushroom and Universal.

In his decision, Justice Murray Wilcox made findings of liability against Sharman Networks, LEF Interactive Pty Ltd, Altnet Inc., and Brilliant Digital Entertainment Inc., along with executives Nicola Hemming and Kevin Bermeister. The ruling was the culmination of legal proceedings which were brought by the Australian recording industry in 2004 against a number of parties involved with Kazaa.

Justice Wilcox ruled that companies and individuals associated with Kazaa knowingly facilitated and profited from massive copyright infringement, and failed to take any measures to stop it. Sharman was ordered to pay 90% of the plaintiff's legal fees, with damages to be considered at a later date. Sharman has said it will appeal.

Justice Wilcox also ordered Sharman Networks to filter its infringing recordings within two months or face closure, and scheduled the file-sharing operator to return to court on November 24, 2005 to report on its progress. On October 10, 2005 the record companies demanded that Kazaa be closed down immediately after parent company Sharman Networks claimed it could not filter out copyright-infringing material from the system's software. Justice Murray Wilcox turned down the labels' claim to close down Kazaa immediately by explaining that this would be a premature decision to make prior to the deadline and impending appeal.

This is not the first case in which Sharman has had to defend itself: in a related case in the U.S. Supreme Court which concluded in June 2005, the court ruled that file-sharing networks could be held responsible for the actions of their users in some circumstances. This may have influenced this most recent case, where the court found the Kazaa website encouraged visitors to break copyright law and download illegal music. The recording industry hopes that the ruling against Kazaa will help to lay down the law for the new generation of unauthorized peer-to-peer operators.

This latest victory in the fight against illegal file-sharing is part of a global trend clarifying the rules around Internet music distribution. A similar court ruling in Korea in August 2005 required the peer-to-peer service, Soribada, to stop unauthorized file-swapping on its network or shut down.

It is still unclear whether the ruling against Kazaa will have a significant effect on preventing piracy in the music industry. Surveys have shown that many users have already abandoned Kazaa, which used to be the dominant peer-to-peer program used for sharing files, in favor of newer networks such as eDonkey and BitTorrent. This trend among users was also observed to happen with Grokster and Napster, two legacy peer-to-peer networks which faced similar suits.

Kazaa, or other versions of it, has been estimated to be installed on up to 300 million computers worldwide.

Federal Court of Australia, September 30, 2005

Read the full judgment: http://www.austlii.edu.au/au/cases/cth/federal_ct/2005/1242.html

IFPI.org, September 5, 2005

Read the press release: <http://www.ifpi.org/site-content/press/20050905.html>

RIAA.com, September 5, 2005

Read the press release: <http://www.riaa.com/news/newsletter/090505.asp>

WikiNews, September 5, 2005

http://en.wikinews.org/wiki/Court_rules_in_favour_of_record_labels,_Kazaa_found_illegal

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Artist's
Corner

KANYE WEST Sues Chicago DJ

Rapper KANYE WEST has filed a federal suit claiming a Chicago DJ forged his name and tried to sell recordings West made before his 18th birthday.

In a 20-page civil suit filed in Chicago federal court on August 29, 2005, the 28-year-old rapper/producer claims Eric "E-Smoove" Miller has possession of unreleased material the two had created together and tried to distribute it earlier this year.

The lawsuit also claimed that Miller, who helped West record the tracks while he was still a struggling artist, falsely claimed he had the rights to distribute the Grammy winner's recordings and tried to fool distributors with a fake contract on which he'd forged West's signature.

The suit came on the eve of West's second LP, "Late Registration," which hit stores on August 30, 2005, seeking a minimum \$1.3 million and that Miller be banned from ever using West's name or voice in connection with the sale or exploitation of the master recordings.

MTV.com, August 30, 2005 (Brandee J. Tecson)

<http://www.mtv.com/news/articles/1508641/20050830/story.jhtml>

TORI AMOS Releases Bootleg Series

After years of paying top dollar for low quality bootlegs, TORI AMOS diehards now have an alternative. Available exclusively online, the first of six official double-CD bootlegs was released on August 30, 2005. The website, ToriAmosBootlegs.com, was established for the distribution of the double-disc sets, captured during Amos' Spring 2005 Original Sinsuality tour. The first of the live recordings include performances from Chicago, Los Angeles, Denver, and Manchester, UK.

As an extra incentive, the website has offered a bonus gift to Tori fans: Those who order all six double-CD sets by November 22, 2005 receive a 'Box Set Case' to put the six bootlegs in, as well as six hexagon stickers with the artwork for each CD. The official bootlegs and special offers are part of a growing trend by artists to offer their fans the live rarities previously available as low-quality unofficial recordings.

Visit www.toriamosbootlegs.com

Sony BMG Music Entertainment, August 2005

<http://www.sonybmg.com.au/news/details.do?newsId=20030829002344>

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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>

Largest CD/DVD Manufacturing Raid In U.S. History

On October 12, 2005, a federal grand jury indicted three individuals in conjunction with two simultaneous actions referred to as "Operation Remaster" and "Operation Buccaneer." The actions involved 13 locations in California and Texas where individuals were suspected of involvement in a large-scale network that was illegally manufacturing and distributing millions of pirated CDs and DVDs. More than 500,000 CDs and over one million CD inserts were seized, along with thousands of DVDs and 3,300 stampers (the metal discs used to press multiple copies) making this combined operation the largest manufacturing raid in U.S. history.

Operations "Remaster" and "Buccaneer" were the result of joint efforts by the Rapid Enforcement Allied Computer Team (a task force administered by the Santa Clara County District Attorney's Office), the Federal Bureau of Investigation, the Sacramento Valley High Tech Task Force, the U.S. Secret Service, the RIAA and the MPAA. As part of these operations, raids were conducted on October 6, 2005 at several large-scale commercial mastering, replicating and packaging facilities in the Bay Area and Central Valley of California and in Austin, Texas. Approximately 85 percent of the counterfeit CDs seized in these operations were of the Latin genre.

According to the RIAA, pirate replication facilities such as those targeted by the recent actions are at the top of the physical goods piracy pyramid, since replicated discs are of high quality and can be manufactured in three to four seconds. In turn, the high quality of these products often allows for illicit sales within legitimate retail locations, often at prices that approach or equal the retail price of legitimate product. The RIAA sites that these illegal operations significantly damage local businesses, by costing people jobs and stifling the creativity that is critical to economic success.

RIAA.com, October 12, 2005

Read the press release: <http://www.riaa.com/news/newsletter/101205.asp>

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Worldwide Update

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Australia

iPod Users Breaking Piracy Laws

In September 2005, The Herald Sun, Australia's biggest-selling daily newspaper, reported that no legal method exists for Australian iPod owners to fill their player with music. These iPod users could potentially face court with anti-piracy groups refusing to rule out suing users of the popular player. None of the tunes available from legal download Internet sites in Australia are compatible with the Apple iPod music players. The common method of "ripping" tunes to an iPod from the user's own CD collection is illegal and is deemed a breach of copyright laws.

Unlike Britain and the US, Australia does not yet have an Apple iTunes store for iPod-compatible legal downloads. An estimated one million people throughout Australia have already bought and put music on their iPods. But all methods of filling the player with music are illegal. While no one in Australia has yet been sued for transferring tunes from CDs to iPods, Music Industry Piracy Investigations (MIPI) say that may not always be the case.

CDRinfo.com, September 23, 2005

<http://www.cdrinfo.com/Sections/News/Details.aspx?NewsId=15099>

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CRIA Calls on Canada to Get Tough

The Canadian Recording Industry Association (CRIA) has called for the federal government to toughen Internet piracy laws, declaring Canada has become a music piracy haven. According to a June 2005 report from the Organization for Economic Co-operation and Development, Canada has the highest per capita rate of unauthorized file-swapping in the world. Canada has also been reported to have the second highest level of broadband penetration, making its Internet users vulnerable to piracy.

CRIA President Graham Henderson said: "The law that is currently on the books -- that's enforced -- is so antiquated that the net result has been, despite all of our best efforts, Canada's become a piracy haven." The CRIA president also hopes the government will make the amendments necessary to give Canada a robust copyright law, so that the record industry can get its fair share of the digital marketplace.

CBC News, September 5, 2005

http://www.cbc.ca/story/canada/national/2005/09/05/CRIA_reax20050905.html

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EU Commission Proposes Counterfeit Clampdown

On July 12, 2005, the European Commission proposed tougher punishments directed at criminal gangs involved in counterfeit goods. Minimum prison sentences of four years were proposed as part of a clampdown on piracy.

The proposals would make commercial infringements of intellectual property a criminal offense across the 25-nation European Union: Offenders involved in criminal organizations or threatening public health would face minimum four-year prison terms and fines of at least 100,000 euros (\$120,000).

The commission expressed its concern with the increase in counterfeit toys and games which could pose safety risks to children. According to the commission, cosmetics and perfumes have been the most popular targets for pirates, along with CDs, DVDs and cassettes. EU governments and the European Parliament have yet to approve the new measures.

Europa Newsletter, July 12, 2005

http://europa.eu.int/newsletter/archives2005/issue62/index_en.htm

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German Group Protests U.S. Piracy Hunters

On June 30, 2005, Germany's association of art house theaters, AG Kino, called on exhibitors and distributors to stop treating moviegoers "like potential criminals" in the name of fighting film piracy. In a resolution passed the same day, AG Kino singled out the treatment of guests at the June 14, 2005 European premiere of "War of the Worlds" in Berlin as an example of how anti-piracy methods can go too far. At the premier, guests to the gala were required to pass through a metal detector to check for recording devices and were filmed during the screening to prevent piracy.

The Hollywood Reporter, July 01, 2005 (Scott Roxborough)

http://www.hollywoodreporter.com/thr/international/brief_display.jsp?vnu_content_id=1000972169

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Crackdown in Quiapo

On July 29 and July 30, 2005, the Motion Picture Association (MPA) and Optical Media Board (OMB), backed by the Philippine National Police (PNP) and representatives from the International Federation of Phonographic Industry (IFPI), conducted raids on what authorities called the "piracy stronghold in Quiapo," seizing more than half a million pieces of pirated optical discs and equipment worth over \$1 million during raids on the Ansari and Nasser Building and a nearby traders market.

Armed with 123 search warrants, the raiders seized 524,350 pirated optical discs. The raids were conducted by 440 law enforcement officers and support personnel, including 100 Special Action Force troops on hand to assure the security of the raiding team. Including previous operations, the piracy stronghold of Quiapo has seen three major raids since December 2004, resulting in total seizures of over 2.2 million pirated optical discs.

Senior vice president and regional director, Asia-Pacific for the Motion Picture Association, Mike Ellis, commented on the recent crackdown on piracy in the Philippines: "In seizing more than two million pirated optical discs in eight months, the Optical Media Board has cost Quiapo's pirate syndicates millions of dollars, and has unequivocally raised the cost of conducting this business in the Philippines. The next step for the Philippines must be to match these outstanding raids and seizures with comparable numbers of arrests and prosecutions. Only when pirates face the possibility of jail time will there be a realistic chance of deterrence."

The Manila Bulletin Online, August 5, 2005

<http://www.mb.com.ph/MTNN2005080541153.html>

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IFPI Tracks Pre-Release to Poland

Police in Poland have arrested a Polish individual alleged to have accessed a secure pre-release video copy of DEPECHE MODE's single "Precious" and made it available for public download without authorization. The police action followed investigations by IFPI, representing the recording industry internationally, and Polish recording industry group ZPAV after a link to the video was found posted on a Polish Internet site in July 2005.

IFPI and ZPAV worked to remove the link which was first posted online publicly on a forum site used by Depeche Mode fans. IFPI then examined a German server, on which the video had been posted originally, with strictly controlled access. After analyzing the data, numerous attempts to download the video were identified as coming from a specific Internet address in Kielce, Poland. On the basis of the evidence, a search warrant was issued by the Kielce District Prosecutor and the raid was carried out on August 17, 2005. Police from the Unit for Combating Intellectual Property and Internet Crimes removed two computers and a number of burned discs found at the searched premises for further examination. Jeremy Banks, head of IFPI's Internet Anti-Piracy Unit commented, "The success of this operation should underline that the recording industry internationally will not hesitate to pursue perpetrators - wherever they are based."

IFPI.org, August 18, 2005

Read the press release: <http://www.ifpi.org/site-content/press/20050818.html>

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IFPI Welcomes Conviction of Taiwan File-Sharing Service Kuro

IFPI, representing the international recording industry, welcomed the conviction of Taiwan-based Internet file-sharing service Kuro, in what was the first criminal conviction of a peer-to-peer (P2P) service in the world. On September 9, 2005, a Taiwan court convicted Kuro of criminal copyright infringement, imposing a fine of NT \$3 million (approx US \$90,000) and sentencing the three principals of Kuro, along with a user, to jail terms of up to three years.

The Chen brothers, who ran the service, have each been sentenced to three years imprisonment. Their father, who was president of Kuro, to two years, and the user, convicted of uploading copyrighted material onto the service, to four months.

The judgment followed three other major court rulings on file-sharing services, all within 2005. All four: The ruling against Kazaa in Australia, the unanimous US Supreme Court ruling against Grokster, and the injunction against Soribada in Korea were major victories for the recording industry against illegal file-sharing.

IFPI.org, September 9, 2005

Read the press release: <http://www.ifpi.org/site-content/press/20050909.html>

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RIAA Fires Two More Rounds at Internet Piracy

On September 29, 2005, the Recording Industry Association of America (RIAA) announced a new round of copyright infringement lawsuits against 757 individuals engaged in Internet theft, including computer network users at 17 different colleges.

These “John Doe” lawsuits cite individuals for illegally distributing copyrighted music on the Internet via unauthorized peer-to-peer services such as eDonkey, Grokster, Kazaa and LimeWire. In addition, lawsuits filed in this round against university network users target students using the file-sharing application i2hub to download and distribute music on the advanced network infrastructure of Internet2. The litigation marks the third time the music industry has taken action to combat theft on Internet2’s specialized, high-speed university computer network, for a total of 560 lawsuits at 39 campuses this year.

Included in this most recent round of litigation were lawsuits against individuals at the following schools: Boston University, Carnegie Mellon University, Columbia University, Drexel University, Georgia Institute of Technology, Harvard University, Massachusetts Institute of Technology, New York University, Princeton University, Rensselaer Polytechnic Institute, Rochester Institute of Technology, University of California – Berkeley, University of California – Los Angeles, University of California – San Diego, University of Massachusetts – Amherst, University of Pennsylvania and University of Pittsburgh.

Less than a month earlier, on August 31, 2005, the RIAA on behalf of its member companies, announced a round of copyright infringement lawsuits against 754 alleged file-sharers. Those lawsuits were filed in federal district courts in Arkansas, California, Colorado, Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Maryland, Minnesota, North Carolina, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas and West Virginia.

The two rounds of lawsuits are part of an ongoing effort to hold individuals who download songs without permission accountable for copyright infringement.

RIAA.com, September 29, 2005

Read the press release: <http://www.riaa.com/news/newsletter/092905.asp>

RIAA.com, August 31, 2005

Read the press release: <http://www.riaa.com/news/newsletter/083105.asp>

Internet Thief Pleads Guilty

On August 26, 2005, the operator of an Internet hub that allegedly facilitated on-line pilfering of copyrighted films, television shows, music and games pleaded guilty to conspiracy to commit grand theft.

In the first criminal Internet file-sharing case brought in California, Jed Frederick Kobles, 34, pleaded guilty to the single felony count before Los Angeles Superior Court Judge David Horwitz. Kobles pleaded the same day he was charged. The case charged the defendant with one count of conspiracy to commit grand theft between November 21, 2004, and February 25, 2005. In the overt acts listed in the complaint, it was alleged that Kobles, under the screen name Raging8, operated an Internet file-sharing hub called UTB Smokinghouse.

In January 2005, an undercover investigator from the Southern California High Tech Task Force joined the illegal file-sharing hub. During a four day period, the investigator was able to download more than 14 movies, television shows and music videos. The films included “Terminator 3: Rise of the Machines,” “National Treasure,” and “A Beautiful Mind.” The music videos were all by MADONNA and the

television show was one from the series "The Simpsons."

The undercover investigation led to a search warrant being served on Kolbes' residence in Los Angeles on February 25. As they served the warrant, McGrath said, Kobles was in the process of downloading the XBOX game, "Leisure Suit Larry."

Los Angeles District Attorney, Steve Cooley, said that the Southern California High Tech Task Force was formed to battle this latest crime front because of huge advancement in the use of sophisticated electronics and the Internet. He added, "These are difficult cases that require a great deal of expertise to investigate and prosecute."

Los Angeles County District Attorney's Office, August 26, 2005
<http://da.co.la.ca.us/mr/082605b.htm>

Israel Named U.S. Intellectual Property Czar

On July 22, 2005, President Bush announced that Chris Israel would fill the newly created intellectual property czar position in the cabinet. Israel now heads the international work of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) and coordinates and supervises international intellectual property protection plans among other agencies as well.

Since 2004, Israel had served as Deputy Chief of Staff for the Secretary of Commerce. Prior to becoming Deputy Chief of Staff, he was Deputy Assistant Secretary for U.S. Department of Commerce Secretary Carlos M. Gutierrez. Israel's main responsibilities at the Department of Commerce were in the field of intellectual property protection. Before joining the Commerce Department, Israel was a public policy executive at Time Warner.

I/P Updates, July 25, 2005
http://ip-updates.blogspot.com/2005_07_01_ip-updates_archive.html

=====SIDEBAR=====

Are NZBs Worse Than P2Ps?

On September 20, 2005, an organization of more than 8,000 authors accused Google of "massive copyright infringement," claiming the powerful Internet search engine cannot put its books in the public domain for commercial use without permission.

Filed in the U.S. District Court in Manhattan, the lawsuit asked the court to block Google from copying the books so the authors would not suffer irreparable harm by being deprived of the right to control reproduction of their works. It sought class-action status on behalf of anyone or any entity with a copyright to a literary work at the University of Michigan library.

The Author's Guild, a New York-based nonprofit organization, said its primary purpose as the nation's largest organization of book authors was to advocate for and support the copyright and contractual interests of published writers. "By reproducing for itself a copy of those works that are not in the public domain, Google is engaging in massive copyright infringement. It has infringed, and continues to infringe, the electronic rights of the copyright holders of those works."

British book publishers are also considering legal action against Google after learning of the search engine company's plans to create a

virtual library by digitizing millions of books held in public libraries and universities.

Google has said it offers protections to copyright holders by limiting users of books covered by copyrights to bibliographic information and a few sentences of text. The company also has said it will direct readers who want more to booksellers and libraries.

Computer Crime Research Center, September 23, 2005 (Elizabeth Judge)

<http://www.crime-research.org/news/23.09.2005/1509/>

Wired News, September 20, 2005 (Associated Press)

<http://www.wired.com/news/business/0,1367,68928,00.html>



Quick Bits and Bytes

New Technology Used in Copyright

The record industry has long been targeting online music sharing, but now it has undertaken a new war against “casual piracy.” Sony BMG and EMI has incorporated new technology that limits the number of copies you can make of any compact disc to three. Additionally, consumers will not be able to transfer songs from affected CDs to Apple iPod players unless they request a workaround from Sony. The new tactic, along with other recent developments in copyright protection are part of a continued effort by the record companies to shut down piracy on all fronts.

Sony BMG's copy-protected CDs incorporate First 4 Internet's XCP2 (extended copy protection) technology. The company is the first major label to offer XCP2-protected CDs to consumers, although they have already incorporated MediaMax copy protection from SunnComm in the past. The latest effort uses upgraded technology, allowing consumers a limited ability to copy. By the end of 2005, Sony BMG projects that most of its CDs sold in the United States will incorporate at least one of these technologies.

EMI has also incorporated a similar strategy with its CDs, using technology from Macrovision that also allows only three copies. The first titles using this technology have already hit record shops nationwide.

PC World Magazine, September 2005 (Laurianne McLaughlin)

<http://www.pcworld.com/news/article/0,aid,121949,00.asp>

Microsoft's Program to Close Down Fake Windows

Microsoft Corporation has launched a new program aimed at severely reducing the ways people using pirated copies of its Windows operating system can get software updates. When a computer user starts to download updates, the new program, called Windows Genuine Advantage, will scan the machine to see if it's running an authentic version of Windows. If the program detects a counterfeit copy, it will offer two options: Customers who fill out a piracy report, provide proof of purchase and send in the counterfeit CDs will get a free copy of Windows Home Edition, which retails for \$199, or Windows Professional, which sells for \$299. Those who simply submit a piracy report -- giving details of when, where and from whom the operating system was purchased -- and send in the counterfeit copy will get either version of Windows at half price.

After prompting customers that their operating systems need to be authenticated, the program will scan the computer, detecting the product number and automatically determine if it is a counterfeit copy. The authentication process was optional until July 25, 2005, however, it is now required for all Microsoft software updates aside from security patches.

The Detroit News, July 28, 2005 (Associated Press)

<http://www.detnews.com/2005/technology/0507/26/01tec-259539.htm>

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