



4th QUARTER 2009 DIGEST

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HEADLINE NEWS

RIAA WINS FILE-SHARING CASE, SEEKS INJUNCTION

The Recording Industry Association of America (RIAA) has won a long legal battle against illegal file-sharing.

On July 31, 2009, a Boston federal jury ordered Joel Tenenbaum to pay a total of \$675,000 (\$22,500 per song) to the major record labels for willfully infringing 30 songs by downloading and distributing them over the KaZaA peer-to-peer (p2p) network.

The RIAA was pleased with the verdict: "We are grateful for the jury's service and their recognition of the impact of illegal downloading on the music community. We appreciate that Mr. Tenenbaum finally acknowledged that artists and music companies deserve to be paid for their work. From the beginning that's what this case has been about. We only wish he had done so sooner rather than lie about his illegal behavior."

The trial was an almost entirely one-sided affair. Plaintiffs built their case with forensic evidence collected by MediaSentry, which showed that he was sharing over 800 songs from his computer on August 10, 2004. A subsequent examination of his computer showed that Tenenbaum had used a variety of different p2p programs, including Napster, KaZaA, AudioGalaxy and iMesh, to obtain music for free, starting in 1999. Tenenbaum continued to illegally share files despite the many deterrents that would have stopped most from continuing the illegal activity. This included warnings from his father in 2002 that he would get sued, a harshly-worded letter from the plaintiffs' law firm in 2005, and the lawsuit he was slapped with in 2007. When he took the stand at trial, Tenenbaum admitted to all of the accusations and that he had "lied" in his written discovery responses and at his first deposition in September 2008.

Tenenbaum is only the second of approximately 18,000 individual file-sharers to go to trial, and the second to lose. In June 2009, a Minnesota jury ordered Jammie Thomas-Rasset to pay \$80,000 for infringing each of 24 songs, totaling \$1.92 million.

On September 2, 2009, the RIAA asked the courts to issue injunctions against the repeated infringers Joel Tenenbaum and Jammie Thomas-Rasset. In the latest filing with the Massachusetts federal court, RIAA lawyers cited Tenenbaum's "repeated lies

and continued infringement," saying that "it is likely Defendant will continue to infringe and/or act in concert with others in committing online copyright infringement of Plaintiffs' sound recordings, especially given that he is currently promoting the online copyright infringement by countless others."

The RIAA felt it was necessary to file the injunction partly due to the fact that in August 2009, a torrent was posted at the notorious file-sharing site, The Pirate Bay, of all 30 songs at issue in the Tenenbaum case, labeling it "DJ Joel: The \$675,000 Mixtape." Tenenbaum claimed to have no notice of or involvement with the torrent. However, his team did post a message to Twitter saying, "Interesting: a 'Joel' torrent list of the 30 songs is now on The Pirate Bay/other torrent sites and is being downloaded widely in protest."

Given Tenenbaum's admission of infringement of thousands of songs for over a decade, supporters of the RIAA agree that the injunction is more than appropriate.

ARS Technica, September 2, 2009 (Nate Anderson)

<http://arstechnica.com/tech-policy/news/2009/09/riaa-continues-to-squeeze-tenenbaum-wants-injunction.ars>

RIAA.com, August 5, 2009

Read More About the Case: http://www.riaa.com/blog.php?content_selector=Musings-On-Tenenbaum-Case

ARS Technica, July 31, 2009 (Ben Sheffner)

<http://arstechnica.com/tech-policy/news/2009/07/o-tenenbaum-riaa-wins-675000-or-22500-per-song.ars>

RIAA.com, July 31, 2009

Read The Press Release: http://riaa.com/newsitem.php?news_month_filter=&news_year_filter=&resultpage=2&id=E5FDED3B-27E3-F1F5-67A6-89406231B62D

ARTIST'S CORNER

EMINEM and Apple Settle Dispute

Apple Inc. and the music publisher for EMINEM, Eight Mile Style LLC, have settled a lawsuit over the digital downloading rights to many of the Detroit rapper's songs.

Eight Mile claimed that its contract with Aftermath Records did not authorize the record label to strike a download deal with Apple and the popular iTunes service. Eight Mile and another plaintiff, Martin Affiliated LLC, were seeking millions of dollars, alleging copyright violations on 93 songs, including Eminem's biggest hit, "Lose Yourself."

"The case was settled to the satisfaction of all parties," Eight Mile attorney Richard Busch said. The agreement was reached on the night of October 1, 2009, after five days of trial in federal court in the hip-hop star's hometown of Michigan. Eminem was not a witness and did not testify. Eight Mile is owned by brothers Mark and Jeff Bass, songwriters and producers who are credited with launching the rapper's career.

Eight Mile claimed Apple wrongfully gained at least \$2.5 million through iTunes downloads, including \$466,915 from "Lose Yourself," which was co-written by Jeff Bass. Aftermath Records also collected at least \$4 million off Eminem's songs on iTunes, according to the lawsuit. At trial, attorneys for Apple claimed Eminem's publisher did receive royalties off iTunes downloads but simply wanted more money. Eight Mile manager Joel Martin testified that the music publisher wants a separate contract with Apple so it can keep a closer eye on how its songs are sold.

The terms of the settlement have been kept confidential.

Yahoo! News, October 2, 2009 (Ed White, AP)
http://news.yahoo.com/s/ap/20091002/ap_on_en_mu/us_eminem_apple

LILY ALLEN Takes a Stance against File-Sharing

The famous 24-year-old British singer, LILY ALLEN, launched a campaign on her MySpace blog against file-sharing, branding it “music piracy” and claimed it was turning the British music industry into “nothing but puppets paid for by Simon Cowell” and has it made it “harder and harder for new acts to emerge.”

On September 14, 2009, Allen wrote: “I think music piracy is having a dangerous effect on British music, but some really rich and successful artists like NICK MASON from PINK FLOYD and ED O'BRIEN from Radiohead don't seem to think so.”

Mason and O'Brien had been outspoken as members of the Featured Artists Coalition (FAC) asking that commercial and private file-sharing be treated separately, and advocated a new approach for individual file-sharers that enables the industry to make money from it, rather than criminalizing them.

Allen continued: “These guys from huge bands said file-sharing music is fine. It probably is fine for them. They do sell-out arena tours and have the biggest Ferrari collections in the world. For new talent though, file-sharing is a disaster as it's making it harder and harder for new acts to emerge. You don't start out in music with the Ferraris. When you manage to get a contract, all those pretty videos and posters advertising your album have to be paid for and, as the artist, you have to pay for them. I've only just finished paying off all the money I owe my record company. I'm lucky that I've been successful and managed to pay it back, but not everyone's so lucky.”

She added: “File-sharing's not OK for British music. I want to get people working together to use new digital opportunities to encourage new artists.”

Sparked by her statements, the FAC met on September 25, 2009 to discuss their position on file-sharing. Members of the group, once at odds with Lily Allen's position, signed a statement supporting Allen: “We the undersigned wish to express our support for Lily Allen in her campaign to alert music lovers to the threat that illegal downloading presents to our industry and to condemn the vitriol that has been directed at her in recent days.

“Our meeting also voted overwhelmingly to support a three-strike sanction on those who persistently download illegal files, sanctions to consist of a warning letter, a stronger warning letter and a final sanction of the restriction of the infringer's bandwidth to a level which would render file-sharing of media files impractical while leaving basic email and web access functional.”

Ed O'Brien, one of the artists mentioned by name in Allen's post was among the members who signed the statement backing her position.

Pitchfork Media, September 25, 2009 (Tom Breihan)
<http://pitchfork.com/news/36605-featured-artists-coalition-issues-statement-supporting-lily-allen/>

London Evening Standard, September 15, 2009
<http://www.thisislondon.co.uk/showbiz/article-23744513-lily-allen-file-sharing-is-not-fair.do>

Visit Lily Allen's blog:
<http://blogs.myspace.com/index.cfm?fuseaction=blog.view&friendId=36707169&blogId=510114316>

JACKSON BROWNE v. John McCain: Copyright Lawsuit Settled

The lawsuit between rock artist JACKSON BROWNE and Senator John McCain and the Republican Party was recently settled, and ordered dismissed on August 4, 2009, a year after the suit was filed by Browne. Browne filed the lawsuit against McCain, the Republican National Committee, and the Ohio Republican Party over the unauthorized usage of Browne's signature song "Running on Empty" in a commercial criticizing the energy policy of then-Democratic Presidential candidate Barack Obama. The commercial was aired on both television and YouTube.com.

The causes of action listed in Browne's complaint, filed in U.S. District Court in California, included copyright infringement, trademark infringement, and violation of the California common law right of publicity. The defendants' motion to dismiss relied, amongst other things, on a fair use defense against Browne's copyright claims and a political speech exemption against the trademark claim. The motion to dismiss was ultimately denied.

The lawsuit brought to light the clash between intellectual property rights and fair use as well as the First Amendment in the context of political speech, as political campaigns turn more and more to popular culture references in the media to reach out to voters. Obama also ran into trouble during his campaign, when soul legend Sam Moore (of "Soul Man" fame) asked Obama to stop using one of his songs.

Michigan Telecommunications and Technology Law Review, August 7, 2009 (Travis Rimando)
<http://www.mttlrblog.org/2009/08/07/jackson-browne-v-john-mccain-copyright-lawsuit-settled-case-dismissed/>

LEGAL BEAGLE

'ELLEN' Show Sued Over Copyrights

Some of the world's largest recording companies have sued "The Ellen DeGeneres Show," claiming producers violated their copyrights by playing more than 1,000 songs without permission. The plaintiffs include Arista Music, Atlantic Recording Corp., Capitol Records, Motown Record Company, Sony Music Entertainment, Virgin Records America and Warner Bros. Records, Inc.

According to the suit filed September 9, 2009, in U.S. District Court in Nashville, the daytime talk show used copyrighted music without permission since its inception, including "recordings by virtually every major current artist of popular music." It claims the show routinely used some of the most popular songs of the day, which the record labels do not license for daytime television at any price. Popular songs cited in the lawsuit include MICHAEL JACKSON's "Thriller"; THE BEACH BOYS' "Good Vibrations" and WILL SMITH's "Gettin' Jiggy Wit It."

Many of the songs were played during the "dance over" segment of the show, when DeGeneres dances from the stage to the interview area, often through the audience. The suit calls the segment and the music played by the show's own disc jockey "signature elements of the show." When representatives of the recording companies asked defendants why they hadn't obtained licenses to use the songs, the defendants allegedly said they didn't "roll that way."

Scott Rowe, spokesman for the Ellen DeGeneres Show's Telepictures Productions, wrote in an e-mailed statement that the company has been working with the record labels for months to resolve the issue and remains willing to resolve it on "amicable

Black Internet, the Pirate Bay's one-time ISP, was threatened with fines in Sweden unless it cut off service. The Pirate Bay then moved to a Ukrainian ISP, which also folded when faced with legal actions.

As the Pirates who run 'The Bay' struggle to find a stable home they face these ISP blackouts and nation-wide banning from cooperative countries. On June 25, 2009, a Swedish appellate court ruled that there would be no retrial in the Pirate Bay case, where the administrators were found guilty of facilitating copyright infringement in April 2009 and sentenced to one year in prison and \$3.8 million in fines.

Just where The Pirate Bay will go next or how long the site can continue its illegal activity isn't clear. The founders of the site have vowed to continue operating the site no matter what.

CNet News, October 5, 2009 (Greg Sandoval)
http://news.cnet.com/8301-1023_3-10367767-93.html

See GrayZone 3Q 2009 Digest: <http://grayzone.com/709.htm#LB>

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Quick BITS AND BYTES

Counterfeit Cigars Smoked Out

On September 15, 2009, Lauro Perez was convicted in a cigar counterfeiting case by a Miami jury. Perez was marketing Cuban replicas of cigar brands such as Montecristo and Romeo y Julieta. However, Altadis U.S.A. owns the trademarks for these brands in the United States, and Perez violated their trademark rights. Labeling the cigars "Habana" or "Cuban Replicas" does not make them legal. Altadis, as well as other cigar makers, have stated they will continue to seek criminal prosecution of anyone who infringes on their trademark rights.

Altadis U.S.A. also continues to work successfully with U.S. Customs to arrange for the seizure and destruction of shipments of counterfeit cigars and packaging materials. Members of the trade who have paid for counterfeit cigars that are then seized by U.S. Customs should be aware that in such circumstances they will find themselves without recourse - counterfeiters do not refund monies nor are they in a position to make good with legitimate product.

About.com, September 21, 2009 (Gary Manelski)
<http://cigars.about.com/b/2009/09/21/counterfeit-cigars.htm>

Software Piracy: Whistle-Blowers Show Genuine Concern

Recent statistics released by the Business Software Alliance (BSA) have shown that revenge is not the primary motive of individuals who blow the whistle on software piracy. Surprisingly, neither is money, with fewer than half of the informants who report their employers for using pirated or unlicensed PC software even asking about financial rewards.

In 2008, the BSA received more than 2,500 reports of illicit use of software by companies in the U.S. It settled 588 cases for a total of \$9.5 million. The BSA also paid out \$136,000 to 42 informants, with the average reward being about \$3,000. Clearly, the number of informants exceeds the rewards paid out. This is because

most informants aren't interested in financial compensation, according to the BSA, which maintains a reward pool of up to \$1 million annually.

Many informants are current or former employees of companies who are using stolen software. Some informants, especially those who are in IT, also express concern about their professional reputations: "Most informants feel they have professional credentials to protect," says Jennifer Blank, the BSA's senior director of legal affairs. "People who call our hot line are outraged by the situation."

Computer World, September 14, 2009 (Julia King)
http://www.computerworld.com/s/article/342046/Blowing_the_Whistle

Visit the BSA: <http://www.bsa.org>
Report Software Piracy Confidentially: <https://reporting.bsa.org/usa/>

4 Q 2009 (Fourth 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>

Nation-Wide Piracy Ring Brought Down

On September 11, 2009, four individuals were indicted by a federal grand jury in the Eastern District of Virginia with conspiracy to commit copyright infringement for allegedly obtaining and illegally releasing copyrighted music.

Bennie Glover, 35, of Shelby, North Carolina; Adil R. Cassim, 29, of Granada Hills, California; Matthew D. Chow, 28, of Missouri City, Texas; and Edward L. Mohan, II, 46, of Baltimore, Maryland were charged in the one-count indictment with being high-level members of the music piracy group known as "Rabid Neurosis" or "RNS," which operated from at least 1999 to 2007. According to the indictment, the defendants allegedly conspired to illegally upload to RNS thousands of copyright protected music files, which were subsequently reproduced and distributed hundreds of thousands of times.

RNS was a "first-provider" or "release group" for leaking pirated music and other content to the Internet. Once a group obtains and prepares infringing digital copies of copyrighted works, the copies can then be distributed in a matter of hours to secure computer servers throughout the world. According to the indictment, RNS members were granted access to massive libraries of pirated music, video games, software, and movies by gaining a reputation for providing previously unavailable pirated materials. The indictment alleges that the supply of pre-release music was often provided by music industry insiders, such as employees of CD manufacturing plants, radio stations and retailers, who typically receive advance copies of music prior to its commercial release.

In addition to the four defendants charged in the indictment, two additional individuals allegedly involved with the group were each charged by criminal information with one count of conspiracy to commit copyright infringement: Patrick L. Saunders, 30, of Brooklyn, New York, was charged on August 14, 2009; and James A. Dockery, 39, of Mooresboro, North Carolina, was charged September 8, 2009. Saunders pleaded guilty on September 8, 2009, before U.S. District Court Judge Gerald B. Lee in the Eastern District of Virginia and is scheduled to be sentenced on December 4, 2009.

The case is part of a multi-year federal investigation of organized piracy groups responsible for the illegal distribution of significant amounts of copyrighted movies, software, games and music through the Internet. The investigation of music piracy groups was led by agents from the FBI's Washington Field Office-Northern Virginia Resident Agency. If convicted, the defendants face a maximum sentence of five years in prison, a \$250,000 fine and three years of supervised release, as well as possible orders of restitution.

FBI.gov, September 9, 2009

<http://washingtondc.fbi.gov/dojpressrel/pressrel09/wfo090909.htm>

WORLDWIDE PIRACY UPDATE

BRAZIL

MP3 Site Shut Down in Brazil

APCM Brazil, the national anti-piracy team in Brazil, successfully shut down the activities of musicagratismp3.net, an MP3 website with approximately 200,000 monthly visitors. The site contained more than 200 pages of unauthorized music files available for distribution.

Musicagratismp3.net users were mainly from Brazil (59.4%) and based on previous verifications, the site contained 60% international and 40% Brazilian repertoire. APCM Brazil led the investigation of the site, identified its infringements and notified the ISP and operators of the website. Following the appropriate notifications, the site was taken down in 15 minutes by the ISP.

The latest action against musicagratismp3.net is part of an ongoing effort to combat rampant piracy and illegal content distribution in Brazil.

IFPI.org, August 18, 2009

Read the Press Release: http://www.ifpi.org/content/section_news/20090818.html

CHINA

Pirates Rain on Anniversary Parade

Police in China, where DVD and other product piracy is rampant, were ordered to hunt down illegal copies of two new films made in honor of the nation's 60th anniversary. Celebrations of the anniversary included a massive military parade in Beijing.

Authorities warned that any copies of the historical epic "The Founding of a Republic" and the World War II-era drama "The Message" sold ahead of the official release were fakes and should be reported to police.

"Founding of the Republic" features a host of top movie stars, including martial arts stars Jackie Chan and Jet Li, Zhang Ziyi of "Crouching Tiger, Hidden Dragon," Stephen Chow of "Kung Fu Hustle" and action picture director John Woo, among many others. It had already premiered in theaters but was not meant for DVD release until October 16, 2009.

ABC News, September 29, 2009 (AP)

<http://abcnews.go.com/International/wireStory?id=8698046>

NETHERLANDS

BIG Ruling against Mininova

A Dutch district court has ruled that Mininova.org, the world's largest BitTorrent indexer, must clean up its site and remove all torrents that link to infringing content. The August 26, 2009 ruling was in favor of the Dutch ant-piracy body, BREIN, whose intention was not to shut down the site. Instead, the organization called for a filter based on infringing keywords and possibly digital fingerprints to guarantee that the rights holders have sufficient means to protect their content.

The court agreed with BREIN's assessment that Mininova is not doing enough to protect the rights of copyright holders, and ordered the site to remove all torrent files that link to infringing content within three months, or pay a penalty of 1000 euro (\$1500) per infringing torrent with a maximum of 5 million euros (\$7.4 million).

Mininova's notice and takedown policy that allows copyright holders to remove infringing torrents is not sufficient, the court said. Interestingly, the recently announced copyright filter that Mininova launched together with the Motion Picture Association (MPAA) wasn't mentioned in the verdict. The court did not agree with Mininova's defense that it is impossible to moderate all torrents that are uploaded to the site. It further said that Mininova is encouraging its users to download copyrighted material, helped by the several moderators that the site has in place.

The moderators claim to keep the site clean and "family friendly" by removing torrents that link to adult content, viruses and fake files. The court responded to these claims by pointing out that they should also be able to moderate torrents that link to copyrighted material. It was further concluded that Mininova profits from copyright infringement through the ads that appear on the site.

In a related story, a Dutch court also ordered that file-sharing site, The Pirate Bay, block all traffic between the site and the Netherlands.

WinMatrix, August 26, 2009

<http://www.winmatrix.com/forums/index.php?/topic/25813-mininova-ordered-to-remove-infringing-torrents/>

UNITED KINGDOM

UK Music Calls For Filtering of P2Ps

On September 29, 2009, the UK government's latest consultation process on how to address illegal file-sharing concluded and its final decision for legislation was set to be announced in November 2009.

UK Business Secretary, Lord Mandelson, made clear the "evolved" thinking in support for Internet disconnection after concluding that the current timetable, which stands at 2 to 3 yrs for a 70% reduction using a combination of notifications and technical measures, would take an "unacceptable amount of time to complete in a situation that calls for urgent action."

UK Music, an umbrella organization that represents the "collective interests" of the UK's commercial music industry, clarified its position by announcing that it firmly supports plans to disconnect file-sharers. It also submitted a nine-page brief to the government as part of the consultation process reiterating this stance.

In the brief, UK Music supported the government's proposals for ISPs to send notifications and apply technical measures, "to impede and discourage the distribution of copyrighted content via unlicensed P2P networks and encourage the use of legitimate services."

UK Music also proposed that P2Ps and other "illegitimate" sites be filtered. It stated that the development of a filter-list of the most egregious illegitimate sites including one-click hosting sites, would be invaluable.

ZeroPaid.com, October 1, 2009

<http://www.zeropaid.com/news/87080/uk-music-wants-to-filter-illegitimate-p2p-sites/>

Read The UK Music Press Release:

<http://www.ukmusic.org/files/Consultation%20on%20p2p%20filesharing%20Uk%20Music%20response%20final%2029th%20Sept%2009.pdf>

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GrayZone, Inc.
P.O. Box 22068
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