MP3.com face up to $250m penalty for music copyright infringements

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12 September 2000

US District Judge Jed S Rakoff ruled last week that MP3.com had wilfully violated the copyrights of music companies. The ruling will cost MP3.com a penalty of around $25,000 per CD. Depending on the number of CDs the court decides are subject to the fine, MP3.com will be forced to pay between $118 to $250 million.

Should MP3.com lose a planned appeal, the ruling will mean financial bankruptcy. The company's shares dropped 27 percent to $5.77, despite the Nasdaq Stock Market halting trading of the stock just prior to the decision for two and a half hours.

The judgement against MP3.com follows the temporary injunction against Napster in July, demanding that the company prevent the downloading of copyrighted music. The injunction was suspended pending technical enquiries after Napster claimed it was not possible to deny access to some recordings without shutting down its operations altogether. Unlike MP3.com, the music made available by Napster does not reside on its own servers but on users local hard disks. Napster simply provides the software that allows users to share their music.

The similarity in the two cases lays in the fact that both assert the relevance of copyright laws to the new medium of the Internet. Stating that it was necessary to send a message to the Internet community to prevent future copyright infringements, Judge Rakoff said, "They need to understand that the law's domain knows no such limits."

This was welcomed by Howard King, the lawyer acting for recording artists Dr Dre and Mettalica in suits against Napster. "You've had now two federal court judges on two coasts say, ‘This is not a close issue. What's all the fuss about?'" King said.

While Napster provided a means for users to share music on each other's hard disks, MP3.com took a different approach. Converting thousands of CDs to the digital MP3 format and uploading them to their servers, the company set up a type of digital locker service through which it gave users access to CDs they already owned.

Napster and MP3.com followed very different business models. Both are part of a wave of emerging companies seeking to utilise the superior network provided by the Internet for the distribution of popular music. For this reason both Napster and MP3.com have felt the wrath of the recording industry giants, who are desperate to defend their traditional control over distribution.

Widespread hostility to such control and a belief that music should be freely available through the Internet has led to what are essentially business conflicts becoming the focus for ideological conflicts that go to the heart of the Internet as a mass medium. People claiming to support Napster have even gone so far as to engage in Internet vandalism, hacking into various web sites and defacing pages with pro-Napster slogans.

While Napster's selling point was its informal and mass character, MP3 paid more attention to copyright issues from the beginning and have thus been able to secure agreements with four out of the five major labels who took action against them. Time Warner's Warner Music, Sony, EMI and Bertelsmann's BMG have all reached settlements that guarantee them royalty payments from music made available through MP3.com.

Some industry observers believe that Seagram's Universal has only held off from making a similar agreement in order to secure more favourable terms than its rivals. It is just as possible, however, that Universal really do want to see MP3.com put out of business. The company has an estimated $25 million

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tied up in MP3.com competitor Farmclub and is a partner of Musicbank, which offers a service similar to Mp3.com.

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