Napster offers deal to recording industry

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Digital music company Napster has made an offer to the Recording Industry Association of America (RIAA) that could end long-running court battles over alleged copyright infringements. Napster has said it would introduce a $4.95 fee for subscribers to its service, which allows users to swap digital music or mp3 files online. A portion of the charge could then go the music industry as compensation for losses due to the file sharing software.

Napster CEO Hank Barry revealed the offer during a reconvened court hearing on Monday, October 2. The court was asked to consider an appeal by the RIAA, which represents recording giants such as Universal Music, Sony, Bertelsmann and Time Warner, to lift a stay on a ban on Napster. In July of this year, US District Court Judge Marilyn Hall Patel found Napster guilty of "wholesale" copyright infringement and ordered the service to be shut down pending a full trial. Following objections from Napster, the 9th Circuit Court of Appeals in San Francisco granted a suspension of the order pending further information about the technical possibilities of Napster blocking access to copyrighted material.

At the resumed hearing, Barry said the company had offered several compromises, including the $4.95 subscription model, which he said would make some $500 million in revenues for music companies and musicians. "Every one of these proposals has been rejected and we've received no counterproposals," Barry said at the hearing.

Hilary Rosen, president of the RIAA, said the lack of response suggested that Napster had "not presented something even one company" had found enticing enough to pursue. A final agreement along similar lines to Napster's proposals, however, cannot be ruled out, and it is possible that companies represented by the RIAA are simply holding out for a better offer.

On July 26, Judge Patel of the Federal District Court in Northern California had issued an injunction against Napster saying the company existed primarily as a means for users to exchange copyrighted music. Two days later, a two-judge panel from the 9th Circuit Court issued an emergency stay, saying it found substantial questions about the "merit and form of the injunction."

In months since the Napster case has become the focus of a broad-ranging debate about copyright and the Internet. Artists themselves have been deeply divided, with some wholeheartedly embracing the music-sharing technology and others, such as rock band Metallica and rap artist Dr. Dre, pursuing their own suits against the company. Between these two positions lie understandable and legitimate concerns regarding compensation to songwriters and performers and the protection of their intellectual property.

At times this debate has assumed a somewhat surreal character with Napster being presented as the "Robin Hood" of the Internet, taking from the rich recording industry and giving to the poor Internet user. The longer the case goes on, however, the corporate interests on both sides of the debate emerge.

Since the July hearing a number of outside interests have opposed the lawsuit and called on the courts not to place too narrow a limit on the exchange of copyrighted works and information over the Internet. The Association of American Physicians and Surgeons and the Consumer Electronics Association have both filed court briefs on behalf of Napster.

Several observers said that the judges appeared to be more critical of the RIAA and questioned some of Patel's earlier conclusions. Responding to an argument by RIAA lawyer Russel Frackman that Napster should be held liable in the same way as someone who organises the sale of bootleg CDs, Judge Mary Schroader said, "Napster doesn't have any idea what's being transmitted [over its system]."

The apparent shift in attitudes reflects the inevitable

impact such new technologies have upon existing corporate entities. As with other technologies, such as audio and videocassettes, DVDs and now the emergence of Web radio, the opposition of the entertainment industries has little to do with protecting the interests of artists. Having opposed the encroachment of an upstart that disrupted their business model, the recording giants will not shirk from adopting the technology developed by Napster if it can be made to work in their interests, and boost their profits.

The Napster case reveals the possibilities opened up by the emergence of the Internet as a channel for the mass distribution of popular culture. There is no reason in principle why this could not be utilised in a planned and rational manner to satisfy music fans' hunger for recordings, meet the legitimate financial needs of established artists/composers, and the desire of new creators to find an audience. At the same time, such an approach would encourage the further development of Internet technology and its utilisation by masses of people.

The emergence of technologies such as Napster cuts across the traditional distribution and marketing channels for popular music. The Internet offers a superior method of distribution, rendering conventional channels less valuable. What is clear from the latest legal wrangling, however, is the lengths that big business interests will go to bring such technologies under their control. Having failed to prevent the development of this technology, the recording industry is now concentrating on bending it to its own ends.