

Music industry turns against file sharing customers

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The recording giants have turned their fire on music consumers after failing to halt online music swapping, despite shutting the file-sharing pioneer Napster.

Last month recording labels organised in the Recording Industry Association of America (RIAA) sued four university students who allegedly ran file-sharing networks on their school's local networks.

The students, two from the Rensselaer Polytechnic Institute and the others from Princeton University and Michigan Technological University, were accused of operating "local area Napster networks" by the RIAA. The organisation claims the students operated Napster-like networks "designed to enable widespread music thievery".

Under the terms of the settlement reached this week, Jesse Jordan and Aaron Sherman, students from the Rensselaer Polytechnic Institute in Troy, New York, agreed to pay \$12,000 and \$17,000 respectively, according to an RIAA announcement on May 2. Princeton University's Daniel Peng and Michigan Technological University's Joseph Nievelt will pay the RIAA \$15,000 each.

Payments will be collected by the RIAA in annual increments from 2003 to 2006. The students are also expected to disable the web sites that allowed campus users to download songs and files from school network computers.

Originally, the RIAA was looking for damages payable up to \$150,000 per song, but the less onerous settlement has successfully established a principle that damages can be extracted.

In its May 2 statement, the group said it believes the settlement amounts are appropriate but warned that in future cases it may not be as lenient and could enforce stiffer settlement obligations on individuals.

The intimidation appears to have already borne fruit. The RIAA claims that since filing the initial suit against the four students, at least 18 similar campus file-sharing services have come down without the RIAA having to issue further lawsuits.

While identifying campuses as a source of music piracy during the case against Napster and sending out warnings to campus heads, the recording giants had until now refrained from action against individual students in fear of the bad publicity it would generate.

Throughout the case against Napster, the RIAA was careful to stress that it was not attacking consumers but simply opposing an illegal business set up by Shaun Fanning. Even in the case against the four students, the RIAA claimed that they weren't simply swapping music but essentially running a Napster-like network.

The decision to go after the four students came after the RIAA suffered a serious setback in a case against two of the most popular file-sharing services, Grokster and StreamCast Networks. Los Angeles judge Stephen Wilson dismissed a lawsuit against the two companies on April 25, saying that they could not be held culpable for illegal file trading carried out over their networks. The ruling represented an about-turn from previous decisions in favour of the recording giants. The RIAA said it would appeal the ruling immediately.

Wilson ruled that the peer-to-peer (P-to-P) networks have substantial non-infringing uses in addition to infringing uses that cannot be dismissed. "It is undisputed that there are substantial non-infringing uses for defendants' software," Wilson wrote, such as distributing movie trailers, free songs and other non-copyright works.

Wilson ruled further that the P-to-P network operators do not have any direct knowledge of when illegal trading is happening on their systems. Acknowledging, "It is undisputed that defendants are generally aware that many of their users employ defendants software to infringe copyrighted works," Wilson said that direct knowledge of users' infringement could not be proven.

The judge compared the case to the ruling in the Universal City Studios' lawsuit against Sony, in which the court said that the sale of video recorders did not subject Sony to contributory copyright liability.

The RIAA said it was not entirely displeased with the ruling as the court affirmed that individual users are accountable for sharing copyright protected material.

Another popular provider of file sharing software, Kazaa, has argued that it cannot be held to US law given that it is incorporated in the South Pacific island nation of Vanuatu and has no ties there.

In a move that opens up an offensive against the general public, the recording giants have also taken to the tactic of

“spoofing”—introducing corrupt or bogus files into file-sharing services. For example, anyone who went to download a song from the new White Stripes CD, “Elephant”, in the last few weeks would likely get a spoofed tune. The first 15 seconds of the song would play, it would then fade out and begin playing again—over and over. In a more high-profile example of spoofing, Madonna planted a version of a song from her latest album that included her cursing at the listener about copyright abuse. Technologically astute users have reportedly taken her words and worked them into homemade remixes of other songs.

In addition to the spoofing, the RIAA have posted threats on the Kazaa and Grokster services. Utilising the instant messaging feature built into these services, the RIAA sent a notice to those who had been identified as offering copyrighted materials.

The notice read, in part: “It appears that you are offering copyrighted music to others from your computer. Distributing or downloading copyrighted music on the Internet without permission from the copyright owner is ILLEGAL. When you offer music on these systems, you are not anonymous and you can easily be identified.”

A Recording Industry Association of America spokesman told Reuters News Service that the group has no plans to actually sue users. But that is the implication of the threat.

Far from a decline in file sharing since the case against Napster, the opposite has taken place. Services such as Kazaa, Grokster and Morpheus have far more users than Napster ever had. With the development of relatively low-cost high-speed permanent Internet access for home users, moreover, far more files are being swapped. An abundance of free software is available which makes ripping a CD to MP3 files no less difficult than playing one. More and more people are making their entire music collection available online.

The recording giants are quick to attribute the continue decline in music sales to online file-sharing, but there are other factors that cannot be ruled out—not least the extortionate prices charged for popular CDs. Some studies indicate that those who download music actually buy more CDs, and that they use file-sharing to sample new music before paying for it. Whatever the effect on music sales, file-sharing is here to stay and attempts to criminalise those who seek to share their music collection will not prevent it.

While launching a legal onslaught against music fans, the recording giants have dabbled with their own efforts to make music collections available online with subscription-based services such as Rhapsody and pressplay. These have failed to take off not because of pricing, but because they place too many restrictions on what users can do with the files they download such as preventing them being burned to CD or copied.

Apple Computer has introduced its own service, abandoning the subscription model for its iTunes Store and instead asking

users to pay 99 cents per song, with major-label selections. This has been hailed as a breakthrough, but like Rhapsody it has serious restrictions on what users can do with the files. For one thing it is only available to Macintosh users, which is about 3 percent of the PC market. Files are offered in Apple’s proprietary AAC format, rather than the industry standard MP3 (though they can be burned to a CD, and then ripped from the disc into MP3s). And there are limits to the number of CDs you can burn, and how often songs can be transferred to external players. Furthermore, only 200,000 songs are offered.

The problems confronting the music industry are similar in character to those faced by proprietary software developers such as Microsoft in the face of developments in free Open Source software. What the recording giants, like their software counterparts, fail to grasp is that the attraction of online music is not only reduced cost but increased freedom. For many the main attraction of online music sites is not the ability to download songs free of charge but the ability to exchange opinions with fellow fans, to make their tastes known and encourage others to listen to music they think highly of. But this socialisation of music immediately comes into conflict with the interests of the multibillion-dollar corporations.

Because “intellectual property rights” translates into big money, the freedom of the consumer is curtailed in the interests of maintaining corporate profits. While the free exchange of music, as with other forms of information, grew organically out of the emergence of the Internet as a mass medium, it comes into direct conflict with the capitalist profit system and is subject to repeated attacks.

The arguments in relation to online music have been complicated by the support given to the RIAA by a number of artists in its initial campaign against Napster. This allowed the RIAA to pose as the defender of the interests of the struggling artist and individual copyright. But this is a red herring. The vast majority of copyrights are not held by the creator of the work, but by multinational labels. For many artists the Internet represents a welcome opportunity for mass distribution, independent of the recording labels. In attacking those downloading online music the recording giants are denying all artists the most important motivator for artistic creation, a wider and more attentive audience for their work.



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