

Heavy-handed tactics against music fans: the recording industry's new assault

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On September 8, the Recording Industry Association of America (RIAA) filed the first 261 of possibly thousands of lawsuits against private individuals accused of music piracy. This is the beginning of a legal campaign aimed at the intimidation of music fans themselves. The criterion set by the RIAA for targeting particular persons is suspicion of downloading over 1,000 songs each across the Internet. The organization claims more than a 30 percent drop in revenues from CD sales over the last three years and blames this on the practice of downloading music.

The reaction of many of the newly named defendants was surprise and shock. As one defendant, Julie McGough, a 23-year-old single mother stated, "I watched the whole Napster thing on TV; I read about it in the papers... I just assumed that if Napster was down, why would something be up that was illegal? I wouldn't intentionally put something on my computer that was illegal."

Peer-to-peer file sharing web sites such as KaZaA, Morpheus and Grockster are the followers of Napster, which was shut down as a result of the RIAA's legal campaign more than two years ago. File sharing on these sites works the same way as it did on Napster. Users who sign up to download music files are configured by default to share access to the files that they accumulate on their hard drives. More and more personal computers have broadband Internet connections, which are connected to the Internet as soon as they are turned on. Millions of unsophisticated users, many of whom are children, are unaware that their computers are acting as hosts, continuously providing access to songs that they may have only listened to once.

One of the most publicized of the defendants was 12-year-old Bianca LaHara, an honors student at a parochial school in the Bronx, New York. Her mother, director of a placement agency for nurses, became the

first of this week's defendants to settle with the industry organization by agreeing to pay a \$2,000 fine.

The campaign of the recording industry is blatantly based on intimidation, threatening private individuals with possible damages ranging from \$750 to \$150,000 per downloaded song. The courts have consistently come down on the side of the companies despite the controversy that has erupted over the legal offensive. Private individuals, like Bianca LaHara's mother, with no financial ability to conduct any serious legal defense are forced to confront some of the world's largest corporations, which have unlimited resources at their disposal. The RIAA is pushing its overwhelming advantage in the courtroom so far as to demand that those whom it chooses to prosecute may not express any public disagreement with the practices of the industry.

This virtual gag order requires litigants to say nothing in public that contradicts the settlement. Bianca and her mother have made statements that are described by Adam Liptak of the *New York Times* as being "reminiscent of those prisoners of war make at the behest of their captors."

RIAA vice-president Matt Oppenheim expressed no regrets about children being victims of the organization's assault. He said, "We know that there are a lot of young people who are using these services and we totally expected that we would end up targeting them. As we have said from the beginning...there is no free pass to engage in music piracy just because you haven't come of age. We're not surprised and we're not deterred."

The RIAA's latest offensive against file sharing was launched months ago by gathering usernames from the better-known peer-to-peer file sharing networks for the purpose of later obtaining subpoenas to force Internet service providers (ISPs) to release their names and addresses. RIAA employees, using sophisticated tracking technology, have been logging on to the sharing sites and

keeping records of users' IP (Internet Protocol) addresses (the 12-digit code numbers that are the basis by which all traffic is routed on the Internet) with music files available for download. The IP addresses of those users deemed by the organization to be the worst offenders are then presented to the ISPs with subpoenas ordering release of personal information about them.

Along with the lawsuits comes the industry's so-called "Clean Slate" amnesty program, which invites music file sharers to identify themselves and pledge to cease the practice in exchange for not being the targets of RIAA lawsuits. This program is itself the subject of a suit by a California attorney who claims it represents "unfair, misleading and fraudulent business practices."

The legal basis for the prosecutions was established in January when US Federal Appeals Court judge John Bates ruled against Verizon Internet Services in a suit brought by the RIAA based on the Digital Millennium Copyright Act of 1998 (DMCA). Verizon held that the subpoenas violated the privacy rights guaranteed under the First Amendment and sought a stay until an appeal could be filed. The stay was lifted in June. The terms of the decision compel ISPs to turn over the names and personal information of any of the user names requested by the RIAA, based on "reasonable evidence" of illegal file sharing over the Internet. The ruling means in practice, however, that no evidence will have to be presented in subsequent cases, since it provides that the RIAA will not have to sue for additional subpoenas.

The enactment of the DMCA in 1998 represented a huge step toward giving copyright holders virtually limitless powers to prosecute violations of vastly strengthened proprietary interests. The passage of this act by politicians of both parties was a product of a pro-business environment in which software, media and entertainment corporations had already amassed huge fortunes selling easily duplicated digital data. Personal computers had become so ubiquitous that a clear threat was posed by masses of people having access to technology that could easily duplicate and distribute data in any form. The DMCA established legal tools for criminalizing activities viewed by the entertainment conglomerates as intended to undermine their preventing the unauthorized copying of digital data.

The bill was a response to the public's growing ability to take the distribution of digital material out of the hands of corporate interests. The draconian measures it outlined to protect these interests reflected the outlook of the politicians who drafted and passed it, including Bill

Clinton, who as president, signed the bill into law. The battles that have been launched by the record industry are in a sense just the advance guard of the efforts of the entertainment industry as a whole. The film industry, which has a huge profit base in the sale of DVDs, faces a situation in which DVD writers are now accessible to wide layers of the population.

The recording industry hypocritically claims that it is acting to protect the interests of the artists. This is merely a fig leaf to cover up its ruthless attempts to preserve the ability to extract huge profits from those artists. The latter are under enormous pressure from the labels not to speak out on this issue.

A recent article in the *New York Times*, "File-Sharing Battle Leaves Musicians Caught In Middle" by Neil Strauss, points out that while the RIAA claims to be defending the rights and livelihoods of recording artists, many musicians question both the industry's tactics and motives. The article quotes Deborah Harry, formerly of the band Blondie: "It would be nice if record companies would include artists on these decisions,'...adding that when a grandfather is sued because, unbeknownst to him, his grandchildren are downloading songs on his computer, 'it's embarrassing.'" The article goes on to point out that "very few" musicians receive any royalties at all, as the companies' cut from CD sales comes first and the payments to musicians are last. In addition, the accounting practices of the major labels in regards to paying artists are notoriously flawed. "Even the Backstreet Boys, one of the best-selling acts of the 1990's, did not appear to have received any CD royalties, their management said."

In an attempt to counteract the drop in CD sales, the Universal Music Group announced early this month a 30 to 40 percent drop in the sales price of CDs. This breaks a decades-long practice in the industry of united price-fixing. Effective October 1, the Vivendi-owned company will market CDs that normally retailed for \$17.95 or \$18.95 at \$12.95. The other major labels have not responded to Universal's announcement.



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