

RIAA's Day in Court Nearly Over

By Anders Bylund September 24, 2007

4 Recommendations

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The music industry's lawsuit crusade against defenseless college students and housewives appears to have hit the skids lately. That might mean it's almost time for socially responsible investors to start looking at music publishers again, after their long industrywide hiatus from research lists.

Sympathy for the devil

Warner Music (NYSE: WMG), **Sony** (NYSE: SNE) **BMG**, Universal Music, and **EMI** (OTC BB: EMIPY.PK), the main movers behind the Recording Industry Association of America (RIAA), may have expected easy victories when they began their much-maligned campaign to sue alleged illegal music downloaders. But instead of settling their cases for a few thousand dollars each, many defendants decided to fight back -- with great success.

Some lawsuits have proven ridiculous from the outset, targeting computer-illiterates and dead people, or accusing grandmothers of downloading gangsta rap. Others have been dismissed for a lack of evidence against the purported file-sharers. Nearly every standard weapon in the recording industry's legal arsenal has been proven ineffectual at best, and unconstitutional at worst.

Flat-fee subscription services like the revamped **Napster** (Nasdaq: NAPS) and **RealNetworks'** (Nasdaq: RNWK) Rhapsody, as well as pay-per-download distributors like **Apple** (Nasdaq: AAPL), can't wait to see the old-fashioned music distribution networks go down in flames. Consumers in general are honest, law-abiding people, and as long as you give them a chance to get what they want by legal means, and at a reasonable price, piracy will be a niche phenomenon. Today, the opposite is true, thanks to draconian licensing policies and a wrong-headed take on the law. But that's all about to change.

Love is a battlefield

If you follow this legal saga at all, you know that the RIAA members have lately been fighting primarily to avoid paying the defendants' legal fees -- and losing. Instead of a quick and easy cash machine, the labels' lawsuit machine has become a costly public relations disaster, and it seems unlikely that any sane and responsible manager would order the madness to continue much longer.

Support for the lawsuits from artists and their representatives seems lukewarm, with a few high-profile exceptions like Metallica. And it's easy to see why the lesser lights of the Billboard charts don't swarm to the cause: Spreading your music like wildfire across the globe, for free, can be a brilliant word-of-mouth marketing tool.

The Timberlakes and Aguileras of the world, on the other hand, do have something to lose. Their names are already well-known, and free downloads can cut into their profits more than they increase their market presence. These are the golden calves of the music industry, the acts for whom the RIAA is really fighting. Not to reimburse those artists for lost wages, mind you -- just to protect their own easy profits.

88 lines about 44 women



The legal system has a role to play in music publishing, particularly in protecting copyrights and trademarks from profit-taking, mass-producing pirate shops and so forth. But John Doe filings against nameless IP addresses is wrong on so many levels that I can't list them all in this brief space. Let me just name a few of the most important flaws:

- It's a great way to alienate music fans, with very little payoff. The lawsuits have so far failed to stem the illegal downloading tide, and the costs must rival the settlement payoff by now.
- Even if the Internet service provider keeps very detailed access logs, it's nearly impossible to prove that a certain IP address was used by a particular person at any given time.
- Copyright is meant to encourage the creative process, not to fatten corporate coffers or limit the available means of distribution. Again, we haven't seen any payouts to the actual artists and composers here, only to legal teams and company bankrolls.

Everybody's free (to wear sunscreen)

It's about time for the Luddite music business to come around to the new realities of the media market. They've spent a lot of money on payola to get their chosen mainstream fodder played on the radio. If the computer is the new radio, why should they spend even *more* money and effort trying to stop that music from being played for free?

A less restrained distribution model would move some of the control from the music industry's hands and into the consumer's, which would be great news for a plethora of struggling, hopeful rockers and popsters. I'm thinking "paradigm shift" here -- the end of massive superstars, and the rise of music for the people, by the people, and of the people. It'll mean lower marketing costs, since the music speaks for itself; lower distribution costs, as a meaningful all-digital model takes the place of physical discs; and freedom for everyone to find their own favorites with a click of the mouse, rather than being told what to like. *Everybody* wins.

Right?