

# Exhibit 5

September 14, 2003

## File-Sharing Battle Leaves Musicians Caught in Middle

By NEIL STRAUSS

Since the Recording Industry Association of America began its campaign against file-sharing services and unauthorized song swapping online in 1999, it has offered one chief justification for its actions: downloading songs is stealing money from the pockets of musicians.

But the musicians themselves have conflicted responses to file sharing and the tactics of the association, a trade group that represents record labels, not the musicians themselves, who have no organization that wields equal power.

So, many musicians have found themselves watching helplessly from the sidelines as the recording industry has begun suing people who are their fans, their audience and their consumers -- who also share music online without authorization. Last week, 261 lawsuits were filed, the first battle in what the association says will be a long campaign of litigation against the most active music fans sharing songs on services like KaZaA.

"On one hand, the whole thing is pretty sick," said John McCrea, a singer and songwriter in the rock band Cake. "On the other hand, I think it'll probably work."

Many musicians privately wish file sharing would go away, though they are reluctant to admit it, because they do not want to seem unfriendly to their fans. So they have been happy to have the industry group play the role of bad cop. But with the escalation of the battle last week (with lawsuits filed against, among others, a 71-year-old grandfather and a 12-year-old girl), some musicians say they are beginning to wonder if the actions being taken in their name are a little extreme. This is especially true because, regardless of file sharing, they rarely see royalties.

"It would be nice if record companies would include artists on these decisions," said Deborah Harry of Blondie, adding that when a grandfather is sued because, unbeknownst to him, his grandchildren are downloading songs on his computer, "it's embarrassing."

The artist Moby, on his Web site, offered a similar opinion, suggesting that the music companies treat users of file-sharing services like fans instead of criminals. "How can a 14-year-old who has an allowance of \$5 a week feel bad about downloading music produced by multimillionaire musicians and greedy record companies," he wrote. "The record companies should approach that 14-year-old and say: 'Hey, it's great that you love music. Instead of downloading music for free, why don't you try this very inexpensive service that will enable you to listen to a lot of music and also have access to unreleased tracks and ticket discounts and free merchandise?'"

A few artists, like Metallica and Loudon Wainwright III, have come out strongly in favor of the record industry's crackdown. It could be seen as a gutsy move, considering the criticism Metallica faced from music fans when it campaigned against the file-sharing service Napster, which was declared illegal.

In a new song, "Something for Nothing," Mr. Wainwright makes fun of the mentality of file sharers, singing: "It's O.K.

to steal, cuz it's so nice to share." As for the lawsuits, he said that he was not surprised. "If you're going to break the law, the hammer is going to come down," he said.

At the same time, other influential musicians and groups -- like Moby, System of a Down, Public Enemy, and the Dead -- contend that the record industry's efforts are misguided and that it must work with the new technology instead of against it.

But most seem ambivalent, or confused.

"I see both sides," said Rodney Crowell, a country music singer and songwriter. "In some ways, I think the record companies have it coming, but at the same time, being a writer and therefore in the business of copyright, they're saying it's impacting our business by 30 percent or more, so we have to do something."

The Recording Industry Association says there has been a 31 percent drop in sales of recorded music since file sharing became popular more than three years ago, but statistics from Forrester Research show that the sales decline since 2000 has been half that, or 15 percent, and that 35 percent of that amount is because of unauthorized downloading.

The situation has become so thorny that many top-selling artists, even those who have been outspoken about embracing new technology, declined to comment on the lawsuits on the record, for fear of upsetting their labels. In interviews, some musicians and their representatives said that their labels had asked them not to talk. And in a dozen cases, record labels did not grant interviews with musicians on the subject.

"I don't think anyone really understands the impact of what's happening, and they don't want to make a mistake," said Allen Kovac, who runs 10th Street Entertainment, an artist management company in Los Angeles. "The impact of lawsuits on fans is a double-edged sword. If you're a record company, do you want record company acts being persona non grata at every college campus in America?"

Much of the stated concern over file sharing has centered on the revenue that record companies and musicians are losing, but few musicians ever actually receive royalties from their record sales on major labels, which managers say have accounting practices that are badly in need of review. (Artists do not receive royalties for a CD until the record company has earned back the money it has spent on them.)

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.

"I don't have sympathy for the record companies," said Mickey Melchiondo of the rock duo Ween. "They haven't been paying me royalties anyway."

Musicians tend to make more money from sales of concert tickets and merchandise than from CD sales. In fact, many musicians offer free downloads of their songs on their Web sites to market themselves.

For some of them, the problem with file sharing is control. Before a CD is released, early versions of the songs often end up on file-sharing services, where fans download the music under the misconception that it is the finished product. Other times, songs online by one act are credited to another act. And fans exchange studio outtakes, unreleased songs, and live performances that some artists would prefer remain unheard.

Serj Tankian of the hard-rock band System of a Down, for example, said he thought that the free exchange of songs by his band and others online was healthy for music fans, but objected when that free exchange included unfinished studio recordings.

Ween, which recently left a major record label, Elektra, to release its records independently, has found a way to coexist with file sharing, which the band actually supports by encouraging fans to record and trade shows.

At the same time, Ween fans police eBay for people who are selling live recordings and KaZaA for people who are leaking songs before an album is released. "Before 'Quebec,' came out," Mr. Melchiondo said, referring to Ween's latest CD, "our fans would message people on KaZaA who were sharing tracks and ask them to take the music down. And they also mounted a campaign where they put up fake copies of our record to throw people off."

Mr. Melchiondo said that Ween's fans acted out of respect for the band, not because of intimidation from the record industry or sympathy with it. "We never asked them to do this," he said. "They just took it upon themselves."