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# GrayZone

## Quarterly Digest

### January 2004

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## RIAA Reacts to Verizon Appeals Court Decision

On December 19, 2003, the U.S. Court of Appeals for the District of Columbia overturned a lower court's decision regarding the filing of subpoenas by the Recording Industry Association of America (RIAA). The previous January 2003 decision ruled that the RIAA was allowed to file subpoenas requesting Verizon Internet Services to turn over the names of suspected copyright infringers without having to file lawsuits against the alleged file traders. The RIAA, which served hundreds of subpoenas this year, filed 382 civil lawsuits against people who allegedly shared music files illegally through peer-to-peer file-sharing software. The RIAA argued that the subpoenas are necessary to fight the proliferation of illegal file trading using peer-to-peer software that has led to declining CD sales. The December 19 ruling in favor of Verizon indicated that the RIAA does not have the authority under U.S. law to subpoena the names of alleged peer-to-peer file traders from ISPs. The RIAA indicated that it will continue to pursue legal action against file traders, even without the benefit of the Digital Millennium Copyright Act (DMCA) subpoenas.

RIAA president, Cary Sherman, spoke on behalf of the association in reaction to the federal appellate court ruling: "This is a disappointing procedural decision, but it only changes the process by which we will file lawsuits against online infringers. This decision in no way changes our right to sue, or the fact that those who upload or download copyrighted music without authorization are engaging in illegal activity. We can and will continue to file copyright infringement lawsuits against illegal file sharers." Sherman added: "This decision is inconsistent with both the views of Congress and the findings of the district court. It unfortunately means we can no longer notify illegal file sharers before we file lawsuits against them to offer the opportunity to settle outside of litigation. Verizon is solely responsible for a legal process that will now be less sensitive to the interests of its subscribers who engage in illegal activity."

RIAA.com, December 19, 2003. Read the press release: <http://www.riaa.com/news/newsletter/121903.asp>

[BBC News, December 19, 2003: http://news.bbc.co.uk/1/hi/technology/3335063.stm](http://news.bbc.co.uk/1/hi/technology/3335063.stm)>

[BBC News, December 19, 2003: IDG News Service, December 19, 2003 \(Grant Gross\):](#)

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## The Cure Join the Dots and Box Out Bootleggers

THE CURE recently released a 71 track rarities collection to the delight of their fans around

the world. The Cure: Join The Dots: B-Sides And Rarities, 1978-2001 (The Fiction Years) offers fans an extensive collection of rare musical gems. As The Cure nears its third decade at the forefront of pop culture, Universal, Rhino and Fiction/Elektra are celebrating the band's remarkable career with this spectacular four-disc treasury of rarities, never-before-seen photos, track-by-track breakdowns and extensive liner notes.

The "rarities" include everything from "Lament," written for a Flexi-Pop magazine insert in 1982, to three versions of the Doors' "Hello I Love You," a previously unreleased live cover of JIMI HENDRIX's "Purple Haze" and an acoustic take of "Just Say Yes" that appeared on a limited edition bonus disc from 2001's Greatest Hits. Other covers include DEPECHE MODE's "World in My Eyes" and DAVID BOWIE's "Young Americans." Soundtrack cuts, including songs from The Crow, Judge Dredd and The X-Files, are scattered throughout.

"The first thing I ever did when I got a new single," remembers Cure vocalist Robert Smith, "was flip it over and play the other side. I always hoped the B-side would give me another version of the artist, something as good as the A-side but somehow different. I expected great B-sides from the artists I loved."

Smith pored over more than 4,000 tapes to put the collection together, and sat in on the remastering of the music at London's Abbey Road studios. The remastered rarities packed into the new four-disc box set offer fans a great quality comprehensive compilation as opposed to the many high-priced, low-quality bootleg compilations that have been floating around auction sites such as eBay.

The new release not only provides loyal Cure fans with the songs they have searched for all these years--it also beats the bootleggers at their own game: Fans get the hard-to-find gems in a great collection with superb quality, and straight from the band itself. The Cure plan to release a new studio album next summer, and their entire catalog will be remastered in the next 18 months, with each album to include an additional disc of rare, live and previously unreleased material.

The Cure official website: [www.thecure.com](http://www.thecure.com); RollingStone.com, November 12, 2003 (Gil Kaufman); <http://www.rollingstone.com/news/newsarticle.asp?nid=18961>

## **JAY-Z, 50 CENT and Others Rush Releases, Push Promotions to Punch-Out Pirates**

In an effort to beat bootleggers, JAY-Z and 50 CENT's G-UNIT rushed The Black Album and Beg for Mercy, respectively, into stores on Friday, November 14, 2003. Both albums also offered contests as incentives for fans to buy the legit releases rather than hit the street for the boots. Four copies of Beg for Mercy included "golden tickets" redeemable for a \$12,000 G-Unit medallion, while three Black Album copies included a chance to win a Mercedes Benz.

"You plan to do one thing and you just have to go to plan B," Jay-Z said. "There's no honor among thieves."

The DIXIE CHICKS' Top of the World Tour Live and KORN's Take a Look in the Mirror were also rushed to stores early to counteract Internet piracy. Both albums were made available Friday, November 21, 2003 instead of the following Tuesday.

RollingStone.com, November 10 & 19, 2003

## **Artists Involved in Claimed Copyright Infringement**

Maureen Marder, whose life as a construction worker by day and dancer by night inspired the hit movie Flashdance, is suing Jennifer Lopez for copyright infringement. Marder claims that Lopez's "I'm Glad" video, which recreates scenes from the movie, is an unauthorized depiction of her life story.

"Flashdance owes both its story and its soul to Maureen Marder," said Marder's attorney Robert Helfing. "But she has received almost nothing for her contribution. Now her life story is

on the screen again -- and other people are profiting from it."

Arrested Development, who are recording their first album in a decade, filed a trademark infringement suit against Fox after the television network launched a new sitcom called "Arrested Development" in November 2003.

RollingStone.com, November 7 & 17, 2003

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## U.S. Busts

Be sure to peruse the Recording Industry Association of America's (RIAA) monthly newsletter "RIAA Anti-Piracy Seizure Information," which covers numerous bootleg, piracy and counterfeit raids across the United States. Read about the recent busts at our website: <http://www.grayzone.com/usabusts.htm>

The RIAA has been actively conducting raids all across the country resulting in a crackdown on flea markets and the confiscation of large amounts of pirated Latin music:

### Florida

On Saturday, December 20, 2003, the Riviera Beach Police Department, in Riviera Beach, Florida, assisted by the RIAA, seized 14,790 counterfeit/pirated sound recording units in CD-R format, 513 counterfeit units in cassette format, three burners running at 52X speed, and five vehicles, from five different vendors from the Riviera Beach Swap Shop. The individuals were arrested under Florida's True Name and Address Statute. The genre of music seized consisted of 50% Latin and 50% urban/Hip Hop, with such artists as, Jay Z, Beyoncé, Luis Miguel, Gloria Estefan, and many others.

### Los Angeles

On December 12, 2003, the Los Angeles Police Department (LAPD), with the assistance of the RIAA, used approximately 80 police officers as part of an operation at Santee Alley involving various different trademark and counterfeit industries. A total of 1,410 illicit sound recordings in CD-R format were seized during the raids in Santee Alley. One vendor was arrested and charged with violating California's True Name and Address Statute.

RIAA.com

### New England

Music Piracy Arrests In Massachusetts And New Hampshire: Flea Markets Busted for Counterfeits. RIAA anti-piracy investigators conducted a routine investigation on November 15 and 16, 2003 of the Salem Flea Market at 20 Hampshire Street in Salem, New Hampshire and found pirated goods being sold there by vendors. Following up on the tip, the Salem Police Department on Saturday seized nearly 15,000 counterfeit and pirate CDs and arrested four individuals for engaging in the illegal sale of copyrighted music. Among those arrested were natives of Lowell, Massachusetts and Pawtucket, Rhode Island.

On November 16, the Northampton, Massachusetts Police Department seized 1,500 counterfeit CDs from the The Hill and Dale Treasure Chest Flea Market at 327 King Street. RIAA investigators had singled out a vendor at the flea market for illegally selling copyrighted music. Later, the Northampton Police Department made an on-site seizure of counterfeit CDs and subsequently arrested an individual from Holyoke, Massachusetts.

Commenting on the continued sale of pirated goods at flea markets, RIAA president Cary Sherman said, "Flea markets continue to be a haven for pirated music and we are stepping up our efforts accordingly. The industry has suffered massive sales declines over the last three years, due in large part to piracy."

RIAA.com, November 17, 2003; Read the press release: <http://www.riaa.com/news/newsletter/111703.asp>

### **New York**

Over 50,000 Counterfeit CDs Seized in N.Y. Raids. During the second week in November alone, New York City police seized more than 55,000 counterfeit compact discs along with the equipment to make them. The 56,100 compact discs and over 50 CD burners were seized during raids on four NYC locations, resulting from an 18-month investigation. The genre of the music was predominantly urban and Latin music, many of which had not yet been released to the public.

Yahoo! News, November 15, 2003 (Reuters)

Puerto Rico Authorities Continue to Crack Down on Flea Market Vendors On Sunday, December 14, 2003, the RIAA conducted a voluntary surrender/seizure raid at the Mayaguez Flea Market in Puerto Rico. Fourteen vendors were served with Cease and Desist warning letters and a total of 3,668 illicit sound recordings in CD-R format were removed from the flea market. This was part of an ongoing initiative in Puerto Rico to address flea market vendors who are involved in the sale of counterfeit sound recordings. 100% of the sound recordings were of the Latin music genre with works from Gloria Estefan, Alexandre Pires, Luis Miguel, Juanes, Jerry Rivera and others available for sale.

RIAA.com

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## **Worldwide Update**

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### **Australia**

#### **ISPs: New Target in Fight Against Piracy**

In a continuing effort to battle Internet music piracy, the Australian music industry has launched a federal prosecution of an Internet service provider. Beginning in October 2003, the civil action, believed to be the first of its kind since changes to the Copyright Act in 2000, provided Internet service providers with the defense of "innocent dissemination" which has yet to be tested in court.

Affidavits filed in the Federal Court in Sydney on October 21 named Stephen Cooper, of Bellbowrie, Queensland, as the registrant of the website mp3s4free.net as well as the second respondent, Internet service provider E-Talk Communications, of Camperdown, NSW, trading as ComCen Internet Services, which hosts the website.

Applicants in the action include Universal Music Australia, Sony Music Entertainment Australia, Warner Music Australia, BMG Australia and Festival Records. Acting on behalf of the record companies, Barrister Christian Dimitriadise told Justice Tamberlin that the applicants have proof there were more than 100 million hits to the website over the past 12 months. Music Industry Piracy Investigation (MIPI) alleges the website directly contributed to multi-million dollar losses for the music industry. MIPI general manager Michael Speck said, "It is estimated that up to 20% of the ISP revenue in Australia is generated by traffic in illegal sound recordings."

Speck added that this case shatters the myth that downloading music is an innocent pastime

## China

of computer nerds or music fans: "It's big business driven by ISPs."

AustralianIT News, October 22, 2003 (Steve Barrett and Chris Jenkins);  
<http://australianit.news.com.au/articles/0,7204,7631161%5e15306%5e%5enbv%5e,00.html>

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### China to Crack Down on Online Game Piracy

China, home to the world's second largest population of Internet users (78 million), is launching a crackdown on piracy of Internet-based games. The three-month crackdown, aimed at shutting down websites that offer unlicensed games and peripheral software, began on January 1, 2004. State media in China claims that violators are threatening to ruin a \$250 million-a-year industry if left unchecked. Deputy director of the State Press and Publication Administration, Yu Yongkang stated, "It costs a lot of money and time to develop a good Internet game, but the game can easily be ruined by illegal servers and cheating software. We are determined to create an environment for the industry to develop in a healthy and rapid way."

Yahoo! News December 24, 2003 (The Associated Press)

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## Dominican Republic

### CD-Rs Seized in December Raid

On Friday, December 26, 2003, the Dominican Republic National Police and ADOPROFONO (an RIAA sponsored task force) seized 6,000 units in CD-R format, containing counterfeit/pirate sound recordings, from a street vendor in Santo Domingo. The genre of music seized was 100% Latin, consisting of artist such as, Ricardo Arjona, Luis Miguel, Gloria Estefan, and Alejandro Sanz, among others.

RIAA.com

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## Germany

### Germany Cracks Down on Software Piracy

On November 10, 2003, German law enforcement officials raided more than 46 homes and businesses across the country and made at least nine arrests in connection with a multimillion-euro software piracy ring. The German federal criminal police (BKA) claim that the ring is suspected of selling at least E16 million (\$18.4 million) worth of counterfeit software in Germany, but that the final figure "is likely to be much, much higher." In Germany, software fraud translates into an estimated E1 billion annually in direct revenue loss for the software industry – a significant figure compared to the worldwide annual loss from software piracy estimated at E13 billion.

International Herald Tribune, November 11, 2003 (Jennifer L. Schenker - NYT)  
<http://www.ihf.com/articles/117133.htm>

International Herald Tribune, November 11, 2003 (Jennifer L. Schenker - NYT); <http://www.ihf.com/articles/117133.htm>

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## Russia

**Russia Still Haven For Software Piracy**

Russia has faced frequent criticism for its failure to protect intellectual property rights. Experts say that though the country has done much to develop copyright laws, enforcement remains nearly nonexistent. An estimated 87% of all software used in Russia is pirated. Recently, in November 2003, a code thief allegedly began illegally distributing a program called "RaceCAD" that is actually a product of a Texas-based software company, Alibre. Alex Presnyak, Chief Technical Officer of SoftDev SPB, a St. Petersburg-based software developer specializing in CAD programs said of the recent situation, "This kind of incident can have a very negative effect on Russia's reputation. We're doing everything we can in Russia to run our businesses like Western companies so when something like this happens it can be very damaging."

[http://www.infoworld.com/article/03/11/17/HNalibre\\_1.html](http://www.infoworld.com/article/03/11/17/HNalibre_1.html)

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Legal  
Beagle**Kazaa Wins Dutch Ruling: IFPI Responds**

On Friday, December 19, 2003, the Dutch Supreme Court ruled in favor of the computer file-sharing program, Kazaa. In the decision, the court ruled that Kazaa could not be held liable for copyright infringement of music or movies swapped with its free software. This latest decision upheld an appellate court ruling that had dismissed a suit filed against Kazaa in 2002. This suit was filed by the Dutch copyright group, Buma/Stemra, which demanded that Kazaa pay a daily fine of \$124,000 if it failed to stop offering free downloads from its website. The International Federation of the Phonographic Industry (IFPI), representing the recording industry, believes the judgment was based on a one-sided presentation of the facts in very limited summary procedures. In particular IFPI believes that Kazaa is able to control and filter its site, and thus should be held responsible for infringements taking place on its service. IFPI's view is that Kazaa is clearly able to control the uses of its system, despite its claims to the contrary. IFPI called on Kazaa to act responsibly and deal with the ongoing infringements taking place via its service, by taking the following steps:

- Stop people distributing copyrighted music by changing the default setting for users of the service;
- Explicitly notify Kazaa users that uploading copyrighted music without permission is illegal, whatever country they are in; and
- Filter Kazaa's service in order to protect copyrighted works from unauthorized distribution, transmission and copying.

General Counsel and Executive Director of IFPI, Allen Dixon, said: "The Dutch judgment is flawed because it was based on a one-sided presentation of the facts as put forward by Kazaa. We believe that any full airing of the facts would produce a different decision - including in the Netherlands. In any case, this decision has no bearing at all on the single most important fact, which is that people who are distributing copyrighted music over such systems - and that means the vast bulk of all users - are breaking the law."

IFPI.org, December 19, 2003; Read the Press Release: <http://www.ifpi.org/site-content/press/20031219.html>

New York Times, December 20, 2003 (The Associated Press); <http://www.nytimes.com/2003/12/20/technology/20suit.html?ex=1073451600&en=6ca8c21f7aa0aec0&ei=5070>; (requires free registration)

**New Wave of Lawsuits Against File Swappers: Support Grows in America**

On December 3, 2003, the RIAA filed 41 new lawsuits against illegal file sharers across the U.S. This latest action by the music industry is part of an ongoing legal campaign against those who illegally distribute significant amounts of copyrighted music files online. Since

September, 308 lawsuit notification letters have been sent along with 341 lawsuits filed. The music industry's education and enforcement campaign successfully continues, with many targeted illegal file sharers contacting the RIAA to work out settlements.

The RIAA secured 220 settlements with substantial file-sharers, resulting from a combination of lawsuits filed, notification letters sent to those targeted for legal action, and individuals who have contacted the RIAA after learning that their identifying information was subpoenaed from their Internet service provider (ISP).

Additionally, 1,054 former file sharers have submitted affidavits for the "Clean Slate" amnesty program, promising to stop copying music through peer-to-peer networks to avoid prosecution.

According to a November 2003 study, 64% of 802 Americans polled understood that it is illegal to "make music from the computer available for others to download for free over the Internet." This figure is an improvement from the 2002 poll which showed 37% of Americans polled understood the illegality of the issue. The latest November survey also indicates that Americans are supportive of the industry's decision to undertake lawsuits against online copyright infringers by a margin of more than two-to-one (56% - 23%). The music industry is optimistic that the continuing legal action will help to foster an environment that provides a level playing field for the growing number of legitimate online music services to thrive.

RIAA.com, December 3, 2003; Read the press release: <http://www.riaa.com/news/newsletter/120303.asp>

Reuters, December 3, 2003; <http://uk.biz.yahoo.com/031203/80/eg7sh.html>

## Quick Bits and Bytes

### WIPO Chief: Piracy is Form of Terrorism

The head of the World Intellectual Property Organization (WIPO) recently stated, "Piracy is like terrorism today and it exists everywhere and it is a very dangerous phenomenon." Speaking to reporters in Geneva, Director-General Kamil Idris insisted that better enforcement of intellectual property rights -- such as patents for inventions or copyright for songs -- could stoke the economic engines of many poor nations. Idris declared that WIPO, "Would like to have consensus by all countries and all nations that piracy is a very dangerous phenomenon today."

Yahoo! News, December 3, 2003 (AFP) <http://uk.news.yahoo.com/031203/323/efqp1.html>

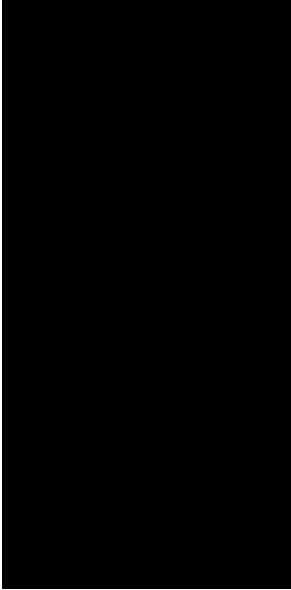
### Pirates Leak Longhorn

Pirated copies of Microsoft's next operating system have made their way onto the streets long before they were to be released. In fact, Longhorn, the 'next-generation' desktop operating system, is years away from official release, and isn't expected to be completely developed until 2006. According to news reports in Malaysia, counterfeit copies of an early edition of Longhorn were already on sale in Asia on December 1, 2003.

TechWeb News, December 1, 2003; <http://www.techweb.com/wire/story/TWB20031201S0001>

### Penn State and Napster Ink Pact

Penn State and Napster have signed an agreement to provide digital music to students for free. Penn State will now provide students with Napster's premium service, which includes unlimited streaming and tethered downloads, 40 radio stations and an online magazine and message boards. The program was kicked off in January 2004, and is currently available to the 18,000 students who live in dorms. Penn State plans to expand the service to 83,000 students on 24 campuses by next fall. Faculty and staff will also have access to the service, and alumni will be invited to participate in the future. Penn State President Graham Spanier



described the new program as, "the first step in a new, legal approach designed to meet student interest in getting extensive digital access to music." President and COO of Napster, Mike Bebel, said Penn State, "is paving the way for universities around the country to ensure that a legitimate marketplace for online music thrives." Students will not pay a fee for the new service, which normally costs \$10 a month. The program will be paid out of money collected for an existing information technology fee.

Wired News, Nov. 06, 2003 (Katie Dean); <http://www.wired.com/news/digiwood/0,1412,61093,00.html>

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