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## Quarterly Digest

### January 2005

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## Success!! The Legitimate Digital Music Market Takes Off

Music on the Internet and mobile phones has moved into the mainstream of consumer life, with legal download sites spreading internationally, more users buying songs in digital format, and record companies achieving their first significant revenues from online sales.

These are the conclusions of the International Federation of the Phonographic Industry (IFPI) Digital Music Report 2005, a comprehensive review of the music industry's digital strategies and of the fast-emerging market for online and mobile music distribution.

Music fans downloaded well over 200 million tracks in 2004 in the U.S. and Europe - up from about 20 million in 2003. This helped bring record companies their first year of significant revenues from digital sales, running into several hundred million dollars. The digital music market's estimated worth was \$330 million in 2004, and is expected to double in value in 2005.

The supply of music available digitally is proliferating. The number of online sites where consumers can buy music legally has now hit more than 230, up from 50 a year ago, with record companies licensing the bulk of their active catalog for download, totaling over one million songs - more than doubling the amount of available repertoire within one year. Services like iTunes and Napster have become household names internationally, and many other national sites are specializing in local repertoire.

Portable players, led by the hugely successful iPod, and mobile phones, are helping transform the consumer experience of enjoying music and creating new revenue opportunities. There are estimates that 50% of mobile content revenues will be from music.

Digital piracy remains a very significant problem, but the recording industry's campaign of legal actions against music uploaders is helping contain it. Consumer awareness of the illegality of unauthorized file-sharing remains very high (seven people out of 10) compared to before the enforcement actions began. The supply of music files on unlicensed P2P (peer-to-peer) services has fallen over the last year. The total number of infringing music files on the Internet in January 2005 is slightly down from one year ago at 870 million tracks, and this is despite a huge increase in the use of broadband internationally.

IFPI Chairman and CEO, John Kennedy, commented on the increasing success of the legitimate digital music market: "The biggest challenge for the digital music business has always been to make music easier to buy than to steal. At the start of 2005, as the legitimate digital music business moves into the mainstream of consumer life, that ambition is turning into reality.

"The record industry's priority now is to license music - to as many services, for as many consumers, on as many formats and devices for use in as many places and countries as it can. The straightforward conditions are that the business must be legitimate, the music must be correctly licensed, and record companies and other rights holders must get properly paid.

"A sector that now accounts for a very small percentage of the industry's revenues is poised for take-off in the next few years. At long last the threat has become the opportunity."

IFPI.org, January 19, 2005. Read the press release: <http://www.ifpi.org/site-content/press/20050119.html>

Read the Digital Music Report 2005: <http://www.ifpi.org/site-content/library/digital-music-report-2005.pdf>

(Requires Adobe Acrobat, Download Adobe free: <http://www.adobe.com/products/acrobat>)

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## Artist's Corner

### **Mary J. Blige Sued by Maverick**

Madonna and Mary J. Blige are set to take different sides in a new court battle over pop hit song, "Holiday." Bosses of the publishing company behind the 1983 classic claim Blige's 'Barbershop 2' song "Not Today" is a rip-off of the tune and they are suing the R&B superstar and collaborators EVE and DR. DRE. New York musicologist Judith Finnell insists the Maverick publishers have a strong case, "It sounds similar enough to bear further consideration. Both the pitches and the rhythms sound closely related."

Launch Music on Yahoo!, January 19, 2005 (Wenn, Soundbuzz) <http://au.launch.yahoo.com/050117/10/2rzr.html>

### **Ludacris and Kanye West in Copyright-Infringement Suit**

Ludacris and Kanye West are set to attend a settlement conference in a copyright infringement lawsuit filed against them. Judge Debra Freeman of the United States District Court Southern District of New York scheduled a conference for February 4, 2005 between Ludacris, producer-turned-rapper West and aspiring rap group IOF.

The New Jersey group, IOF, filed a copyright infringement lawsuit in April 2004, alleging that the two stole the hook for Ludacris' 2003 hit "Stand Up" from them. The group members say they handed four demo tapes to Ludacris and West on separate occasions, and that one of the records featured, "Straight Like That," was recorded in 2000 and has a chorus similar to that of "Stand Up."

ContactMusic.com, January 18, 2005.

<http://www.contactmusic.com/new/xmlfeed.nsf/mndwebpages/ludacris%20and%20kanye%20west%20in%20copyright.infringement%20suit>

### **Jerry Garcia Estate Sues Food Chain**

Almost a decade after his death, the Jerry Garcia Estate LLC has filed a lawsuit against an up-and-coming burrito chain. Claiming that the chain used Garcia's likeness in violation of federal trademark and copyright laws, Garcia's heirs seek an unspecified amount of money in damages.

The suit alleges that Moe's Southwest Grill hung artistic portraits of Garcia in more than 130 locations and used the artwork as part of the chain's overall marketing strategy. The portraits were accompanied by altered lyrics to the Grateful Dead song "Casey Jones."

In the early 1990s, Ben and Jerry's began selling an ice cream flavor called Cherry Garcia, named after the Grateful Dead guitarist. When Garcia pursued legal action, Ben and Jerry's quickly struck a licensing deal with him.

Longtime Grateful Dead publicist and band historian Dennis McNally explained why the case against Moe's Southwest Grill is different: "Moe's is a multi-million dollar company -- this is something more (or maybe less) than just plain 'people.' The idea that such an entity would profit on him would have bothered him considerably. Even more, the fact that they've appropriated his and Robert Hunter's lyrics... believe me, that's something Jerry would not have tolerated."

RollingStone.com, January 13, 2005 (Benjy Eisen); [http://www.rollingstone.com/news/story/\\_/id/6840248](http://www.rollingstone.com/news/story/_/id/6840248)

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### **U.S. Busts**

## 1Q 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>

**Los Angeles:** On December 2, 2004, Los Angeles Police Department Detectives, assisted by RIAA and MPAA, served a warrant on E. 99th Street in Los Angeles. Six suspects were arrested and charged. Seized pursuant to the warrant were 18,053 counterfeit and pirate CD-Rs, 1,762 counterfeit DVDs, 10 eight-bay CD/DVD burners, two computers, three Rimage Printers, two Cannon laser color copy machines, one commercial grade shrink wrap machine and one commercial grade full size paper cutter.

RIAA.com

**New York:** On January 13, 2005, the New York Police Department's 33rd Precinct, assisted by the RIAA, executed a search warrant at 1306 St. Nicholas Avenue in Upper Manhattan. The illicit activity was taking place in the basement of a retail location, which was being used as a manufacturing and distribution point for unauthorized sound recordings on CD-R format. The police action resulted in the arrest of two individuals, who were charged with felony trademark offenses. Police seized 22,100 counterfeit/pirated CD-Rs. Also seized from the location were 16 CD burners (40x speeds) and 14 boxes of raw materials (labels, trays, and blank CD-Rs). The music seized was 100% Latin repertoire including music from the artists Alejandro Fernandez, Daddy Yankee, Tego Calderon, Don Omar, Juanes, Monchy and Alexandra, Luis Miguel and Anthony Santos.

RIAA.com

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## Worldwide Update

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### Australia

#### Universities Target in 2005 Music

The Australian music recording industry has denied reports that it has already laid down plans to raid Australian universities by the end of February 2005 in order to hunt for illegally shared music files. According to Michael Speck, general manager of the record labels' Music Industry Piracy Investigations (MIPI) unit, it is not yet certain whether MIPI will deal with the situation by conducting raids or simply continue ongoing legal proceedings against the Universities of Tasmania, Melbourne and Sydney: "We intend on prosecuting. At this point, the primary target are Australian universities. Whether by way of raids or simply commencing the proceedings remains to be seen. We need to finalize the individual investigations, make no mistake about it. Australian universities on the public purse have become the principal source of music piracy beyond peer to peer operations."

Speck said the three universities had not complied with a court order allowing the music industry's forensics expert access to the data to retrieve infringing sound recordings. He added that MIPI is preparing to take the universities back to court. Speck affirmed that they will not be prosecuting students directly and will focus mainly on the "big businesses."

ZDNet Australia, January 4, 2005 (Kristyn Maslog-Levis); <http://www.zdnet.com.au/news/0.39023165.39176166.00.htm>

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**Brazil****U.S. Tackles Brazil in War on Piracy**

On December 6, 2004, the United States warned Brazil it may implement trade sanctions if it fails to take more action to combat piracy, and extended a review of the matter until March 31, 2005. The U.S. Trade Representative's (USTR) office said it would extend its review of a petition to remove trade benefits from Brazil "for inadequate protection of intellectual property rights."

The move threatens to remove Brazil from a list of countries under the Generalized System of Preferences (GSP), a program that provides duty-free access to imports from many developing countries in an effort to spur economic growth. "The U.S. government has held a series of meetings with the government of Brazil and notes the measures taken to date to address copyright piracy concerns," the USTR said.

"These discussions have resulted in identification by the Brazilian government of a number of key priorities and actions to combat copyright piracy through enforcement of existing laws. Accordingly, the United States and Brazil expect to maintain a dialog on developments in this critical area.

One study showed losses of \$785 million from piracy of copyrighted materials from Brazil in 2003, an increase of \$70 million over the previous year and the largest loss in the hemisphere. U.S. officials have previously criticized Brazil for failing to stem piracy of U.S. films and music.

Business Report, December 7, 2004 (AFP); <http://www.busrep.co.za/index.php?fArticleId=2336475>

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**China****Americans Face Jail In China for DVD Piracy**

Two Americans face up to 15 years in a Chinese jail if convicted by a Shanghai court of selling pirated DVDs on the Internet. Randolph Guthrie and Cody Thrush were detained in July 2004 after police seized \$100,000 in cash and hundreds of thousands of pirated DVDs as well as computers, telephones and mailbags from two warehouses in Shanghai. The two men, along with two Chinese nationals, are accused of running an operation that sold 180,000 movie and music discs worth more than \$1.1 million. Prosecutors maintained that since October 2002, 38-year-old Guthrie earned more than \$320,000 by selling pirated discs via US-based eBay.com and Russian-based threedollardvd.com.

Shanghai police made the arrests when American authorities alerted China that a large number of discs were being sold in the United States and other countries through the Internet. At the time both lauded the bust as an exemplary case of Chinese-American cooperation in the war against piracy.

According to experts, China produces 70% of the world's counterfeit goods, with pirated music and video discs and all manner of fake brand-named products widely available.

FairFax Digital, January 19, 2005; <http://www.smh.com.au/news/World/Americans-face-jail-in-China-for-DVD-piracy/2005/01/18/1105810911889.html?oneclick=true>; (Requires free registration)

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**Hong Kong****Hong Kong Makes First File-Sharing Arrest**

Hong Kong authorities have made their first arrest for allegedly sharing copyrighted files over the Internet. The suspect used the popular file-sharing program BitTorrent, said Customs and Excise Department spokeswoman Agnes Law. The 38-year-old man, who was not identified, is suspected of uploading the films Daredevil, Red Planet and Miss Congeniality onto a website from which others could obtain them, Law said. The suspect was not immediately charged and investigations are continuing. Illegally distributing copies of copyrighted material carries a maximum penalty of four years' prison and a fine of \$6,400 for every illegal copy. BitTorrent uses innovative software that speeds up as the number of people sharing data increases. Officials have promised to step up copyright protection efforts in Hong Kong, which is known for its fake luxury goods and illegally copied music and films.

FindLaw, January 13, 2005 (Associated Press); [http://news.lp.findlaw.com/ap/ht/1700/1-13-2005/20050113121505\\_19.html](http://news.lp.findlaw.com/ap/ht/1700/1-13-2005/20050113121505_19.html)

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## Italy

### Italian Police Officer Shot at by Piracy Gang

On November 14, 2004, A Fiscal Police officer, coordinator of a unit involved in the recent anti-piracy "Operation Jolly Roger" was shot at by two people near the Gianturco police station in Naples. The brigadier, who has ten years' experience in copyright investigations, was driving his car when he became the target of concentrated gunfire from two people in a jeep. Following the shoot out, forensic police specialists confirmed they believe the attack was designed to kill the member of the police unit, who avoided any injury.

This is viewed as a dramatic escalation in the fight against the mafia gangs who moved from tobacco smuggling to music and video piracy. "Operation Jolly Roger" recently uncovered a wide organization involved in the production and distribution of counterfeit music CDs and movie DVDs. Seven people have been arrested and more than 3 million pirate CDs and DVDs have been seized.

IFPI.org, November 19, 2004; Read the press release: <http://www.ifpi.org/site-content/press/20041119.html>

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## Spain

### Spain Launches Anti-Piracy Plan to Combat Rampant Piracy

Spain's ruling socialist party has announced a five-point Integrated Government Plan to deal with the country's rampant music and film piracy. Culture Minister Carmen Calvo told a crowd of film and music executives that the government will create an anti-piracy commission made up of politicians, trade representatives, and consumer representatives. The country's government will also create a piracy report, launch anti-piracy campaigns, analyze the efficiency of anti-piracy legislation and organize anti-piracy training for public servants. The move follows Spain's inclusion in the International Federation of the Phonographic Industry's 2004 Commercial Piracy Report. Spain was the only western nation named as a top 10 priority piracy territory. IFPI said Spain's music piracy market was worth \$58 million in 2003.

UPI News Service, January 3, 2005; <http://www.realitytvworld.com/index/articles/story.php?s=1000884>

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## Legal Beagle

### Justice Department's Anti-Piracy Operation Yields Two Guilty Pleas

The U.S. Department of Justice (DOJ) and U.S. Attorney for the District of Columbia announced that guilty pleas were entered into court on January 18, 2005, for two individuals targeted in "Operation Digital Gridlock," a major anti-piracy action initiated by the DOJ in August 2004. "Operation Digital Gridlock" was, according to the DOJ, the "first federal enforcement action ever taken against criminal copyright theft on peer-to-peer networks." The operators of these networks were responsible for the "illegal distribution and reproduction of copyrighted music, movies, software and games."

Recording Industry Association of America (RIAA) Executive Vice President of Anti-Piracy, Brad Buckles, commented on the recent announcement:

"The RIAA welcomes and applauds [this] unprecedented announcement. The Department of Justice and the U.S. Attorney for the District of Columbia have made it clear that those who operate peer-to-peer systems to flout the law by intentionally trading in copyright works will face the consequences. These guilty pleas further demonstrate that the campaign of federal law enforcement against online piracy is both serious and steadfast.

"The copyright industries are one of this nation's leading economic exports. The illegal theft of music, movies, games and software is a threat to our economic security. It's imperative and appropriate that federal law enforcement agencies do their part to help protect this vital economic and cultural sector."

FMQB.com, October 26, 2004; <http://www.fmqb.com/Article.asp?id=45943>

RIAA.com, January 18, 2005; Read the press release: <http://www.riaa.com/news/newsletter/011805.asp>

Visit the Department of Justice online: [www.usdoj.gov](http://www.usdoj.gov)

## Hollywood Sues Computer Server Operators

On December 14, 2004, Hollywood movie studios sued over 100 operators of U.S. and European-based computer servers that help relay digitized movie files across online file-sharing networks. The copyright infringement suits expand on a new U.S. film industry initiative whose first targets were individual file-swappers.

The defendants this time ran servers that used BitTorrent, the program of choice for online sharers of large files. John Malcolm, head of the Motion Picture Association of America's (MPAA) anti-piracy unit commented on the latest legal action:

"Today's actions are aimed at individuals who deliberately set up and operate computer servers and websites that, by design, allow people to infringe copyrighted motion pictures.

"These actors are neither innovative nor innocent," Malcolm added. "These people are parasites, leeching off the creativity of others. Their illegal conduct is brazen and blatant."

The suits target computer servers that index movies for BitTorrent users, but Malcolm said the MPAA is eyeing similar action against servers that direct data for the DirectConnect and eDonkey file-swapping services. Malcolm noted that neither the creator nor distributors of BitTorrent, whose architecture enables speedy downloads because users share received bits of a file as it is downloaded, were sued.

"The target of our actions is not technology," Malcolm said. "There are many legal Torrent sites... that are dedicated to the distribution of public domain work and we are taking no action against them whatsoever."

Hollywood movie studios has maintained that the unauthorized trading of films online has the potential to threaten their industry, particularly as increasing bandwidth to homes makes large movie files easier to download.

Forbes.com, December 14, 2004 (Alex Veiga, AP Business Writer); <http://www.forbes.com/home/feeds/ap/2004/12/14/ap1712075.html>

## Lawmakers OK Anti-Piracy Czar

Included within a \$388 billion bill funding Justice Department operations, approved by Congress in late November 2004, is a program that creates a federal copyright enforcement 'czar.'

Under the program, the President can appoint a copyright law enforcement officer whose job is to coordinate law enforcement efforts aimed at stopping international copyright infringement and to oversee a federal umbrella agency responsible for administering intellectual property law.

Intellectual property law enforcement is divided among a range of agencies including the Library of Congress, the Justice and State departments and the U.S. Trade Representative. The legislative effort coincides with the administration's new emphasis on intellectual property protection. Under former Attorney General John Ashcroft, the Justice Department has cracked down on intellectual property crimes, and the White House has set up the Strategy Targeting Organized Piracy program, which is designed to curb the production and importation of items ranging from fake purses to pirated CDs and DVDs.

"We welcome Congress' recognition of the challenges the U.S. intellectual property industries face and their efforts to better arm the U.S. government to respond to these challenges," an MPAA official said. "We're gratified to see the high priority they've placed on tackling international enforcement problems."

The Hollywood Reporter, November 23, 2004 (Brooks Boliek); [http://www.hollywoodreporter.com/thr/article\\_display.jsp?vnu\\_content\\_id=1000725300](http://www.hollywoodreporter.com/thr/article_display.jsp?vnu_content_id=1000725300)

## Loaded Devices: Newest Piracy Problem at Ebay

The popular auction site eBay has allegedly become a haven for piracy of all types. Not only can bootleg music and movies be found en masse, counterfeit merchandise has also made its home at the site. Digital recording devices, such as iPods, loaded with music are the latest forms of piracy to surface at eBay and similar auction sites. Bootleggers and pirates worldwide are now exploiting this new avenue to

sell their unauthorized collections.

Thousands of songs are uploaded onto these devices, with bids reaching into the hundreds of dollars. Intellectual property owners are actively urging eBay to police its site for these 'loaded devices,' many of which offer entire catalogs of unauthorized material. Producers of such devices have also complained to eBay to remove devices that have been modified. In early December 2004, Apple Computer complained of copyright violations when an eBay seller modified a U2 special edition iPod, adding seven unauthorized mix albums, and attempted to resell the device as genuine Apple product. The item received nine bids -- topping out at \$455 before eBay removed the auction under pressure from Apple. The loaded device issue has become the newest piracy battle at eBay, and experts predict that the auction site may be facing a flood of copyright lawsuits if the problem continues.

Wired News, December 8, 2004 (Katie Dean); [http://www.wired.com/news/digiwood/0,1412,65959,00.html?tw=wn\\_tophead\\_2](http://www.wired.com/news/digiwood/0,1412,65959,00.html?tw=wn_tophead_2)

## Quick Bits and Bytes

### Las Vegas Man Charged for Counterfeit Bills

A Las Vegas man has been charged with making more than 1,000 counterfeit \$100 bills and using them at various businesses in Las Vegas. On January 11, 2005, 30-year-old Alberto Tapia Perea was indicted by the Federal Grand Jury in Las Vegas. At his residence in Las Vegas, investigators had seized more than 1,100 images of counterfeit \$100 bills, a personal computer, printer, scanner, and copier. Other items used to manufacture counterfeit currency were also confiscated. The indictment states that from approximately November 17, 2003, to November 17, 2004, Perea and others entered into a conspiracy to manufacture and pass counterfeit Federal Reserve notes in Las Vegas. Perea is accused of manufacturing and possessing nearly \$144,000 worth of counterfeit \$100 bills. Perea is currently in federal custody in Las Vegas.

KRNV Reno, January 12, 2005 (Associated Press); <http://www.krnv.com/Global/story.asp?S=2799613&nav=8faOV6vM>

### Roxio Completes Software Sale

Roxio, Inc., parent company of Napster, today announced that it has completed the sale of its consumer software division to Sonic Solutions.

"We are very pleased to have closed this transaction before the end of 2004 so we can now focus 100% of our efforts on taking Napster to new levels of success," stated Chris Gorog, Chairman and Chief Executive Officer.

The sale has been approved by the Boards of Directors of both companies and stockholder approvals are not necessary for either party. Roxio had filed a preliminary proxy to solicit stockholder approval of the transaction, but recent developments in Delaware corporate law and the recent growth of the Napster service have made a stockholder vote unnecessary. Following the close of the transaction, Roxio, Inc. has changed its name to Napster, Inc.

Yahoo! Finance, December 20, 2004; [http://biz.yahoo.com/prnews/041220/nym080\\_1.html?printer=1](http://biz.yahoo.com/prnews/041220/nym080_1.html?printer=1)

### Invisible Technology May Slow Piracy

Invisible technology could soon point the finger toward the camcorder pirates responsible for bootleg copies of the latest films out on the street or posted on the Internet. Hollywood is considering whether the new technology, developed by a New Jersey company, could help reduce video piracy, which the major studios contend is costing them more than \$3 billion in worldwide revenue. The secret code imprinted on a movie would not stop film pirates from spreading counterfeits on the Internet, but it would reveal the identity of the last legitimate user. The developers claim their method will improve on existing techniques to create such a code, known as a "watermark" after printing, that can only be seen under certain conditions. The watermark itself is neither words nor numbers, but blobs that slowly get either lighter or darker. It is repeated throughout the film. The sequence of light and dark blobs is unique to each legitimate copy. To crack the code, a pirated copy is compared on a computer, frame by frame, to a version of the film that lacks a watermark. Since the images on both versions are digitized, the computer can "subtract" the version that lacks a watermark from the bootleg, revealing the unique watermark. None of the studios have agreed to start using the technology yet, but if the tests go well, the code could be used on a film as soon as early 2005.

WTOP NEWS, December 3, 2004 (JEFFREY GOLD, AP Business Writer);

<http://www.wtop.com/index.php?nid=108&sid=350838>

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