



## 2nd QUARTER 2009 DIGEST

The Digest Covering Anti-Piracy Operations and Related Topics

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### **HEADLINE NEWS**

#### ***FINALLY - ISPs AGREE TO DO MORE AT&T, OTHERS TO SEND OUT COPYRIGHT WARNINGS***

AT&T Inc., the nation's largest Internet service provider, will now start sending warnings to its subscribers when music labels and movie studios allege that they are trafficking in pirated material. The phone company now joins other major Internet service providers (ISPs) that are going beyond the minimum legal requirements under the law to crack down on infringing users of their services.

Jim Cicconi, AT&T's top executive in Washington, confirmed that the company is looking to expand a trial program it ran late last year with movie studios. It is currently testing a system with the Recording Industry Association of America (RIAA) and will expand the program with other rights organizations. Comcast Corp., Cox Communications Inc. and Verizon Communications Inc. already forward such notices to alleged pirates, but the approaches differ.

Copyright holders such as movie studios can usually identify Internet users who download or provide pirated material by their numerical (IP) address, but cannot identify the subscriber's identity without the cooperation of the ISP. ISPs have previously only identified their customers to copyright holders who bring court orders. The copyright holders and their representatives, such as the RIAA, have then been able to pursue legal action against the infringing parties.

This strategy has been modified recently, with the RIAA ending its policy of filing lawsuits in December 2008, opting instead to work with ISPs to cut abusers' access if they ignore repeated warnings. The RIAA has agreed with several leading ISPs to notify alleged illegal file-sharers and cut off service if they fail to stop. To copyright owners, this shift in strategy is a victory. For a long time, the music and film industries have complained that broadband service providers were profiting from piracy. Many in the entertainment industry have called on ISPs to lend a hand in plugging up the flow of illegal content.

Internet service providers AT&T and Comcast have confirmed their participation in the RIAA program designed to send account deactivation warning notices to subscribers suspected of uploading music to unauthorized peer-to-peer (P2P) networks. Under the new system at AT&T, copyright holders will send a notice to the ISP that an IP address is associated with piracy. The ISP will then automatically forward the notice to the customer via e-mail, without telling the copyright holder who the customer is.

The new copyright warnings are part of a growing trend by ISPs that are doing more for copyright owners than they are legally obliged to and to clean up widespread piracy from their servers.

USA Today, March 27, 2009 (Peter Svensson, AP)

<http://content.usatoday.net/dist/custom/gci/InsidePage.aspx?cid=thejournalnews&sParam=30429685.sto>  
[ry](#)

CNet News, March 25, 2009 (Greg Sandoval)

[http://news.cnet.com/8301-1023\\_3-10204047-93.html](http://news.cnet.com/8301-1023_3-10204047-93.html)

## **ARTIST'S CORNER**

### **PHISHing for Boots**

On March 5, 2009, a federal judge ruled that he would bar bootleg vendors from hawking unlicensed T-shirts, hats, posters and other items at PHISH concerts at the Hampton Coliseum in Virginia. However, U.S. District Judge Raymond Jackson declined to issue the band's request that the unlicensed items be seized. Judge Jackson didn't issue the seizure order in part because Phish and its attorneys failed to follow a requirement that the U.S. attorney's office be notified of the request. That requirement is designed to prevent any federal investigations being hampered. "You had plenty of opportunity to notify the U.S. attorney of what you planned to do," Jackson said, noting that the request was filed in late February. "So that's a problem...the court can't blink past this requirement."

Jackson also said he couldn't issue the seizure order because of a federal rule that prohibits a requester from publicizing the potential seizures of goods. Based on public court records, local media publicized Phish's request for a crackdown on bootleggers. The band's attorneys argued that they didn't ask for the publicity, but Jackson said Phish's attorneys were responsible for it by failing to file the request under seal, as they could have done.

Although they were not fully satisfied with the Judge's decision, the recent preventative measures taken by Phish are part of a growing trend of artists taking action to curb counterfeit merchandise from being sold at their shows.

Sun Sentinel, March 6, 2009 (Peter Dujardin)

[http://www.sun-sentinel.com/topic/dp-local\\_phishcase\\_0306mar06.0.4468125.story](http://www.sun-sentinel.com/topic/dp-local_phishcase_0306mar06.0.4468125.story)

### **SANDLER Sued for Lifting 'The Zohan'**

Actor ADAM SANDLER has been sued by a comic book author who has accused the star of stealing the idea for his 2008 movie "You Don't Mess With The Zohan." Author Robert Cabell filed a copyright infringement suit against Sandler, Happy Madison Productions, Sony and Columbia Pictures on February 23, 2009 in Manhattan Federal court in New York.

Cabell claimed the idea for Sandler's Zohan character, an Israeli special forces officer who fakes his death and becomes a hair dresser, was taken from his comic book series *Hair-Raising Adventures of Jayms Blonde*, which chronicles the main character wielding a blow dryer against corporate bad guys. Pitching the *Blonde* movie on his website, Cabell wrote, "He's gorgeous, he's gay, he makes bad guys pay."

Cabell claimed he brought the idea of taking his *Blonde* comic book character to the big screen when he pitched it to executives at Columbia in the autumn of

2007. Sandler began filming the movie in Los Angeles close to the time Cabell pitched the film, five years after the author published the first books in the series.

IMDB News, February 24, 2009  
<http://www.imdb.com/news/ni0689446/>

## **LEGAL BEAGLE**

### **New Anti-Piracy Law in France, Other Nations to Follow Lead**

French Internet users who share music or videos without permission from the copyright holders are one step closer to losing their Internet access, after the French National Assembly gave its assent to a new anti-piracy law on April 2, 2009. The law had its first reading in the Senate last year.

Under the new law, copyright holders will have the right to monitor file-sharing networks and report people they suspect of piracy to a new regulatory body, the High Authority for the Distribution of Works and the Protection of Rights on the Internet, known in French as the Hadopi. The authority will send an electronic message to those accused of distributing copyrighted works without permission, warning them not to do it again, without identifying the works they are accused of sharing or copying. Repeat offenders may have their Internet access suspended for up to three months and, if they do it again, for up to one year. In each case, their name will be added to a blacklist preventing them from signing up with a different ISP for the duration of the suspension. ISPs will have 15 days to put such suspensions into effect, or risk a fine of €5,000 (\$7,500).

Among the concessions made to the opposition of the new law was that Internet users who have their Internet access suspended by the Hadopi will no longer have to continue to pay their ISP while the suspension is in force. Open wireless connections or lawless house guests might get Internet subscribers into trouble for the actions of others, but the law will also exempt anyone who agrees to install a government-approved filter on their computers.

Those opposing the French law warn that it could threaten net neutrality, with ISPs being forced to filter Internet traffic. Article 5 of the new law allows courts to impose any measure necessary, technical or otherwise, to end or prevent breaches of copyright by Internet users. Amendments aiming to limit those measures to those proportionate to the offense, or to put the responsibility on those publishing or hosting the content before the ISP, were defeated.

In Sweden, a similar anti-piracy law came into force on April 1, 2009, allowing owners of copyright works to apply for a court order to identify anonymous Internet users found sharing those works without permission. The day after the law took effect, Swedish Internet traffic dropped by between 30% and 50%, after reaching a new high on the day before the law was passed. In March 2009, the New Zealand government withdrew its "three strikes" anti-piracy law in response to widespread criticism, but still plans to introduce a revised version.

Network World, April 3, 2009 (Peter Sayer, IDG)  
<http://www.networkworld.com/news/2009/040309-french-three-strikes-antipiracy-law.html?page=3>

## Bill Backs Radio Play for Musicians

On February 4, 2009, the Performance Rights Act (H.R. 4789) was introduced to the U.S. Senate. Currently, songwriters get paid every time one of their songs is played on the radio; the Performance Rights Act would do the same for the musicians who performed on the recording. Under current law, musicians do not get compensated when their music is played on AM and FM radio. However, they do get royalties from satellite radio, cable radio services, and other non-terrestrial broadcasters.

The Performance Rights Act brings the United States in line with almost every other nation in the world. Only a few countries do not provide a fair performance right on radio, including Iran, North Korea and China. Because the U.S. does not have a performance right, foreign stations do not have to pay American artists when their music is played on stations around the globe – an inequity that has cost American artists an estimated tens of millions of dollars each year.

With income from CDs and download sales taking a major hit from piracy, the Act is welcomed by artists and the music industry. According to the RIAA, The Performance Rights Act will close an archaic provision of America's copyright law that allows AM and FM radio stations to earn \$16 billion a year in advertising revenue without compensating the artists and musicians who bring music to life and listeners' ears to the radio dial. AM and FM radio is the only music platform that does not pay a fair performance right to artists and musicians for the use of their work.

The Performance Rights Act was introduced by Senator Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee, and Senators Orrin Hatch (R-Utah), Dianne Feinstein (D-Cal.), Bob Corker (R-Tenn.), and Barbara Boxer (D-Cal.); and in the House by Representative John Conyers (D-Mich.), chairman of the House Judiciary Committee, and Representatives Howard Berman (D-Cal.), Darrell Issa (R-Cal.), Marsha Blackburn (R-Tenn.), Jane Harman (D-Cal.), John Shadegg (R-Ariz.), Paul Hodes (D-N.H.) and Henry Waxman (D-Cal.)

CNet News, February 4, 2009 (Steve Guttenberg)  
[http://news.cnet.com/8301-13645\\_3-10165558-47.html](http://news.cnet.com/8301-13645_3-10165558-47.html)

RIAA.com, February 4, 2009  
Read the Press  
Release: [http://riaa.com/newsitem.php?news\\_month\\_filter=&news\\_year\\_filter=&resultpage=&id=7BE7264B-5BC4-C823-777D-73D5B410805A](http://riaa.com/newsitem.php?news_month_filter=&news_year_filter=&resultpage=&id=7BE7264B-5BC4-C823-777D-73D5B410805A)

Read The Bill: <http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.4789>

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## SIDEBAR - YOUTUBE: Videos Vanish As Rights Clash

The popular video-sharing site, YouTube, has found itself at a crossroads involving license fee rates for streaming services. Already this year, there have been several clashes over what companies pay for the rights to stream music and videos.

The situation has also raised new questions about the definition of fair use under copyright law in the context of the digital age, when anyone can easily excerpt

copyrighted works and distribute the result in a manner that is sometimes hard to identify as being commercial product.

Keeping a steady supply of music videos on its site is important to YouTube's effort to increase the flow of advertising dollars. At the same time, the site's reputation relies on being a place where users can freely display their own material. Parent company, Google, does not disclose advertising revenue for YouTube, and estimates among analysts range widely, from \$200 million to \$500 million a year.

However, in December 2008, the video site's inability to reach a fair agreement with Warner Music Group resulted in the record company pulling its music videos off of YouTube. In March 2009, YouTube pulled its music video streams from the UK after it failed to reach a licensing deal with PRS for Music (the UK licensing body.) On April 1, 2009, the same thing happened in Germany. Unable to reach an agreement with Germany's equivalent agency, GEMA, YouTube cut the music video feeds there too.

The situation has created a double-barreled risk for YouTube. Professionally produced music videos are some of its most-watched material; six of the top 10 most popular videos of all time are music videos. A long term financial solution for streaming songs and videos will not be resolved quickly. The stakes are high, and without legitimate streaming content, YouTube may find it hard to survive in the high-demand digital world.

Media Entertainment & Technology, April 1, 2009  
<http://metue.com/04-01-2009/google-gema-royalties-licensing-music-video/>

New York Times, March 22, 2009 (Tim Arango)  
<http://www.nytimes.com/2009/03/23/business/media/23warner.html>

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## **Quick BITS AND BYTES**

### **X-Flick Leaks: Origin Unknown**

In a case of unprecedented piracy, thousands of people watched a version of "X-Men Origins: Wolverine" online a full month before its scheduled theater release. The premiere of the film, starring Hugh Jackman, was set for May 1, 2009. However, its unauthorized premiere was held on April 1, 2009, when a pirated copy of the film leaked out online. The film's distributor, 20th Century Fox, said it did not know how the unfinished copy of the comic book adaptation was leaked onto the Internet. The copy was missing many special effects and included temporary sound and music. Nonetheless, it circulated widely online, even prompting some viewers to publish reviews, favorable and unfavorable, of the hotly anticipated film.

The troubling leak, which some people initially dismissed as an April Fool's Day prank, occurred at a time when media companies are working harder than ever to curtail digital piracy of content. Illicit recordings of films usually appear on the Internet shortly after their theater debuts, but leaks before the premiere dates are rare. Hollywood studios spend millions of dollars to track every step of the film production process to avoid such potentially costly leaks.

The studio said the F.B.I. and the Motion Picture Association of America (MPAA) were both investigating the film's premature distribution.

"The source of the initial leak and any subsequent postings will be prosecuted to the fullest extent of the law," the company said, adding "the courts have handed down significant criminal sentences for such acts in the past."

"Wolverine" star Hugh Jackman also weighed in on the pirated version of the movie: "I was heartbroken by it because there are a lot of people here in Australia and all over the world working on this film, and to have it out there in that way was very disappointing."

"Wolverine" is not the first film to receive an unintended preview on the Internet. Another superhero film, 2003's "Hulk," showed up as a download about two weeks before its release. But the major studios hoped they had learned enough since then to keep it from happening again.

New York Times, April 1, 2009 (Brian Stelter)

<http://www.nytimes.com/2009/04/02/business/media/02film.html?partner=rss>

MTV.com, April 8, 2009 (Josh Wigler)

<http://splashpage.mtv.com/2009/04/08/hugh-jackman-responds-to-x-men-origins-wolverine-movie-leak/>

## **Apple Says Jailbreaking is Illegal**

The Apple iPhone is currently the best selling cellular phone in the United States. Users of the phone have found that it is a completely 'closed' phone in that only applications from Apple's App Store can be installed on the phone. However, by 'jailbreaking' the iPhone, applications can be installed from other sources. This is desirable to those who want applications that have not been allowed into the App Store. Apple has now taken an official stance on jailbeaking, claiming that it is a breach of copyright.

As part of the 2009 DMCA rulemaking process, the Electronic Frontier Foundation (EFF) filed an exemption for iPhone jailbreaking, something which hundreds of thousands of iPhone owners have already done. There are several applications that require jailbreaking such as turn-by-turn directions, using the iPhone camera for video and laptop tethering.

However, jailbreaking requires modified versions of Apple's bootloader and operating system software, which are themselves a breach of copyright once the modifications are distributed to third parties. As such, Apple filed comments with the Copyright Office in February 2009, claiming that the practice of jailbreaking an iPhone is a violation of the DMCA and infringes on its copyright. Apple also informed the Copyright Office that the exception request by the Electronic Frontier Foundation (EFF) was not acceptable as the very act of jailbreaking the iPhone results in copyright infringement.

OS News, February 13, 2009 (Thom Holwerda)

[http://www.osnews.com/story/20977/Apple\\_iPhone\\_Jailbreaking\\_Is\\_Illegal](http://www.osnews.com/story/20977/Apple_iPhone_Jailbreaking_Is_Illegal)

## **2 Q 2009 (Second Quarter) BUSTS**

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

## **Software Pirate Serves Texas Time**

The U.S. District Court for the Northern District Court of Texas has sentenced 24 year-old Timothy Kyle Dunaway of Wichita Falls, Texas, to 41 months in prison for selling counterfeit computer software on the Internet in violation of criminal copyright infringement laws, particularly 17 U.S.C. Sections 506(a)(1)(A) and 2319. The software sold by Dunaway had a combined retail value of more than \$1 million. Dunaway was also sentenced to two years of supervised release and ordered to pay \$810,257 in restitution. The district court also ordered Dunaway to forfeit a Ferrari 348 TB and a Rolex watch purchased with illegal proceeds of the scheme. The district court issued the judgment of guilty and imposed the sentencing on February 17, 2009. Dunaway had pleaded guilty on October 30, 2008, to one count of criminal copyright infringement for selling pirated business software on the Internet.

According to court documents, from July 2004 through May 2008, Dunaway operated approximately 40 Web sites that sold a large volume of downloadable counterfeit software without authorization from the copyright owners. Dunaway admitted he operated computer servers in Vienna, Austria and Malaysia.

In addition to the penalties of restitution and 41-month imprisonment at a Bureau of Prison facility, the district court ordered that upon release from imprisonment, Dunaway shall be placed on supervised release for a term of two (2) years. During this period, Dunaway is prohibited from performing a variety of acts, including: installation of new hardware, performing upgrades, or effecting repairs on his/her computer system without receiving prior permission from the probation officer; accessing any service or use of any software which allows for direct peer-to-peer contact which may include chat rooms, file sharing, or other similar activity without permission from the probation officer; engaging in or utilization of any service which allows peer-to-peer file sharing or file transfer protocol activity; downloading, possession, and/or installation of copyrighted materials without permission of the probation officer; and, possession or use removable media configured with bootable operating systems.

LawUpdates.com, February 17, 2009

[http://www.lawupdates.com/summary/tx\\_court\\_sentences\\_dunaway\\_to\\_41\\_months\\_of\\_jail\\_term\\_for\\_selling\\_counterfei/](http://www.lawupdates.com/summary/tx_court_sentences_dunaway_to_41_months_of_jail_term_for_selling_counterfei/)

Read The Verdict: [http://www.lawupdates.com/pdf/postings/copyright/Judgment-USA\\_v.\\_Timothy\\_Kyle\\_Dunaway.pdf](http://www.lawupdates.com/pdf/postings/copyright/Judgment-USA_v._Timothy_Kyle_Dunaway.pdf)

## **WORLDWIDE PIRACY UPDATE**

### **ARGENTINA**

#### ***Infringing Forum No Mas***

Emep3.com.ar, the web forum that was used to distribute copyrighted files to more than 110,000 registered users in Latin America has been closed down. The forum was closed following an investigation by CAPIF, which represents the recording industry in Argentina.

CAPIF had notified the forum's operators of potential copyright infringement problems after its investigations found the site contained more than 130,000 posts linking to unauthorized music files. CAPIF contacted the site operator in early March

2009 and requested that he remove all links to infringing content. Ten days later, the whole forum was taken down.

The forum's users were mainly Argentines (73%) with Mexicans (7.4%) and Chileans (4.7%) also using the site. Emep3.com.ar was the 907th most accessed site in Argentina.

IFPI.org, March 17, 2009

Read the Press Release: [http://www.ifpi.org/content/section\\_news/20090317.html](http://www.ifpi.org/content/section_news/20090317.html)

## **BRAZIL**

### **Discografias Closed Down**

Music industry anti-piracy action led by industry trade association ABPD and the anti-piracy team APCM Brazil has resulted in the closure of the country's biggest distribution network for links to illegal music files.

The community, called Discografias (Recordings), was part of one of Brazil's largest and best-known social networking services, Orkut. This social network is controlled by Google Brazil and claims to have more than 60 million users. At the time of its demise, Discografias had nearly one million registered users and links to over two million music tracks.

In addition to Discografias, another five communities dedicated to specific music genres, such as soap opera soundtracks, movie soundtracks and compilations have also been shut down. Altogether, these five communities plus Discografias accounted for 1.3 million registered users.

Paula Rosa, director of ABPD, said: "The closure of the illegal file sharing network is a significant step in curbing online piracy in Brazil. The communities affected represented the largest user group in a social network dedicated to exchanging links for the purpose of illegal copying."

IFPI.org, March 17, 2009

Read the Press Release: [http://www.ifpi.org/content/section\\_news/20090326a.html](http://www.ifpi.org/content/section_news/20090326a.html)

## **CHINA**

### **Google Launches Free Music in China**

On March 30, 2009, Google launched free downloads of licensed songs in China, while sharing advertising revenue with major music labels in a market notoriously plagued by online piracy.

According to Google, one reason why the company previously lagged in China's mainland search market was because it did not offer music downloads, the missing piece to its strategy in a market where it trails leader Baidu.com. The service offers downloads of over 350,000 songs from Chinese and foreign artists, a number that is expected to rise to 1.1 million by mid 2009. Music from artists signed by Sony Music, Warner Music, EMI and Universal Music will be available on the service, which Google has no current plans to expand beyond China.

"This is the first serious attempt to start (monetizing) the online market in China. I can't over-estimate how important this is," said Lachie Rutherford, president of Warner Music Asia Pacific and Asia chairman of the International Federation of the Phonographic Industry (IFPI). The new service will attract users away from illegal

download sites because the music and service will be of a higher quality, said Rutherford.

Downloads of unlicensed music and videos are still rampant in China, the world's biggest Internet market by number of users. While Google dominates the global web search market, in China Baidu holds more than 60 percent of the market, more than double Google's share.

Wired.com, March 30, 2009 (Reuters)

[http://www.wired.com/techbiz/media/news/2009/03/reuters\\_us\\_google\\_china](http://www.wired.com/techbiz/media/news/2009/03/reuters_us_google_china)

## **HONG KONG**

### **Pay-For-Play Pirates Busted**

The Hong Kong Customs & Excise Department arrested three people in a major crackdown on software piracy prompting the Business Software Alliance (BSA) of Hong Kong to acknowledge recently ramped-up efforts by law enforcement authorities to safeguard intellectual property rights.

The customs operation, executed on March 18, 2009, was aimed at those computer shops that offer pre-loading of unlicensed software service for free to customers. For the first time, a computer shop in possession of 23 computers installed with suspected infringing software was found to be charging customers for playing online games at the shop. The charge was about \$20 for three hours.

In the operation, additional three sets of computers with infringing software were seized in test purchases by Customs officers posing as customers. Overall, customs officers seized 26 computers and 102 pirated disks of computer software. The total seizure value was about \$140,000. Three men, aged 21 to 36, were also arrested.

EDN Asia, March 19, 2009

<http://www.ednasia.com/article-19917-crackdownonsoftwarepiracythreearrested-asia.html>

## **SWEDEN**

### **New Law Slows Traffic in Sweden**

Internet traffic has dropped sharply in Sweden after a new law cracking down on online copyright violation went into force. Based on the European Union's Intellectual Property Rights Enforcement Directive, the new law makes it easier to prosecute file-sharers because it requires Internet Service Providers (ISPs) to disclose the information of suspected violators to copyright owners.

Statistics from the Netnod Internet Exchange, an organization that measures Internet traffic, suggest that daily online activity dropped more than 40 percent after the law took effect on April 1, 2009.

Some criticized the new law as overzealous and said it puts at risk Sweden's position as a leader in online technologies. "Half the Internet is gone. If this pattern keeps up, it means the extensive broadband network we've built will lose its significance," said Jon Karlung, chief executive of Bahnhof, a Swedish ISP.

Sweden has one of the highest Internet usage rates in Europe, but has also made a name for itself as a hub of illegal file-sharing. Twelve hours after the law came into force, five Swedish audio book publishers representing 15 authors filed a request to

find out details of a server suspected of containing more than 2,000 illegally downloaded works. In a separate case, four Swedes linked to one of the world's most popular file-sharing sites, The Pirate Bay, are on trial for copyright charges. A verdict is expected by May 2009.

WTop.com, April 3, 2009 (Louise Nordstrom, AP)  
<http://www.wtopnews.com/?nid=383&sid=1640975>

Visit Netnod IX: [www.netnod.se](http://www.netnod.se)

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