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The RIAA: "The Piracy Rate Is Growing"

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As the Web grows and more homes get broadband access, the record labels stand to be the biggest losers. The digital revolution has pushed tunes from plastic to PC hard drives, where they can be shared with thousands of others via free file-swapping systems such as Gnutella and KaZaA. The five largest U.S. record labels and their trade organization, the Recording Industry Association of America (RIAA), claim that rampant Net piracy helps explain consecutive 5% dips in the dollar value of worldwide music sales in 2000 and 2001. But so far, efforts to use the courts to quash music piracy have largely failed -- though the music industry did succeed in crippling Napster, the most famous site for sharing music files over the Web.

Still, the labels concede that their future is on the Net, where distribution costs are low. Thus, at the same time the industry is trying to stop piracy, it's also trying to cash in on music sales over the Net. BusinessWeek Online Technology Editor Alex Salkever recently talked to Cary Sherman, RIAA senior executive vice-president and general counsel, to get his take on what the future holds for the music business and the Net. Here are edited excerpts of their conversation:

Q: Could you please give us the RIAA point of view on why copyrighted materials in the digital realm should be more tightly controlled, and what the implications are for society and business if they aren't.

A: Digital technology opens up all sorts of opportunities for new delivery options. But it also opens up the threat of uncontrolled piracy because creative works can be converted to bits that can be copied endlessly and distributed globally with the touch of a button. If we are to realize the benefits of digital technology, we have to

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avoid the adverse effects of uncontrolled piracy. We have to give consumers the uses they want for a satisfying music experience, but we have to do that without simultaneously giving away the right to worldwide distribution.

The failure to bring piracy under control could kill the opportunities of the Internet. What business can invest in the content and infrastructure required to give consumers new choices if pirated versions of the same content are available for free? It's true for music -- and it will be true for other forms of creative content. That's why everyone has a stake in providing some sort of balanced solution.

Q: Would the members of the RIAA be happy with some "noise level" of piracy as long as it didn't destroy their business models?

A: No record company expects to have a piracy-free world. It is the nature of intellectual property to always have some level of piracy. The key is finding that balance. Record companies may have rights against copying, but they have never sought to enforce those rights against consumers. They have been ready for consumers to undertake the kinds of uses that make their music experiences enjoyable...as long as they still come back as customers!

That's the balance we're talking about -- something that allows consumers to enjoy the experience but avoids the mass copying and widespread distribution that kills the market.

Q: From a legal standpoint, what should be done to help bring that balance about?

A: We're big believers in the marketplace. We think that anytime you write something into the law you risk having unintended consequences. The marketplace, on the other hand, allows businesses and their customers to respond to their needs and desires in real time. Companies will have the ability to see what's working and what isn't working. That's the best way to find the sweet spot between the needs of artists and labels and their customers.

Q: Hasn't the RIAA expressed some support for the idea of putting hardware controls on digital information, as proposed in the bill [the Consumer Broadband Protection Act] introduced recently by Senator Hollings? (See BW Online, 3/27/02, "Guard Copyrights, Don't Jail Innovation.")

A: Actually, what we said when the Hollings legislation was introduced was that the bill was important because it called attention to a serious problem that needed fixing, and that we support voluntary marketplace negotiations to arrive at open standards to address the issue. Now, we also recognize that marketplace solutions can only emerge when the marketplace is working, and we expressed concern that the marketplace may not be working here. The challenge we have is to make the marketplace work and avoid the need for government intervention.

Q: Now that the labels have subscription services up and running on the Web, are

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A: I don't think that any content company can feel comfortable with the online marketplace so long as 99% of downloaded content is pirated. Most of the music downloads happen without the authorization of the creators. The piracy rate is growing rather than contracting. It's very hard to see how legitimate businesses can compete in that environment.

Q: How does the RIAA envision music e-commerce developing over time?

A: I think we're going to see a lot of experimentation in the months ahead, and I think it would be a mistake to draw conclusions about the long-term success or failure of e-commerce initiatives based on their initial rollouts. We're really at version 1.0 of the online music business. Many more versions are yet to be seen.

Q: What strategies might be useful in getting people to pay for copyrighted content?

A: Everybody thinks we have to offer certain givens: reliability, security, ease of use. No one is going to gravitate to systems that aren't better than the free download sites. Beyond that, no one knows what will convert a consumer who downloads music for free into a paying customer. Is it the cover art or video footage? Is it packaging it with some alternative kind of entertainment?

And, of course, we know the prices have to be reasonable. Unfortunately, that means free to some people, but maybe we can support a model that "feels" like free. That's what the subscription model is all about. However, figuring out how to do all this without killing the rest of the industry that still relies on sales of physical product makes it very challenging.

Q: Well, in the Digital Age, no one thinks of music as something you need to go the store to buy.

A: Of course you're right about that. That's also our opportunity. We can now offer and package music in all sorts of new ways. Wouldn't it be wonderful if you could rent a portfolio of music for a weekend for a party? You could have a choice of 1,000 songs of some particular genre, just for that weekend. There are so many new ways that consumers could use music that weren't there before. We're just at the beginning of these initiatives.

Q: How can we account for "fair use" [the idea that people who buy copyrighted materials have certain rights to copy them or use them on multiple platforms] while, at the same time, enforcing copyrights more strictly?

A: I think there's a lot of unfair use right now. That's the problem. The alarmists refer to concerns about fair use on the theory that all future content will be locked up and will only be made available on a pay-per-use basis. There's simply no evidence to support that kind of fear. If anything, the concern goes the other way. The content made available is completely uncontrolled, and there might be no

CDs will be around for decades more, since there are hundreds of millions of CD players in the world. That ensures there will always be fair use. Our problem now is to bring the unfair use under control so that legitimate business models can survive and consumers can get the kind of choices that will come from enabling new business models.

Q: What about some of the new copyright-protection systems that labels are putting on CDs so you can't play them in a computer? Doesn't that violate fair use?

A: The U.S. companies that have talked about protecting their CDs have also talked about putting so-called second sessions on the same CDs so that the same music or even more music will be available for playback on computers. At least in the U.S., the labels recognize that a lot of consumers listen to their music on computers. So nobody is talking about preventing playback on computers.



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