

## Recording industry misses beat in battle against file sharing

Doug Bandow

WASHINGTON—The recording industry seems to believe all that is good and wonderful in the world have no greater enemy than peer-to-peer file-sharing technologies. Thus explains the Recording Industry Association of America's campaign to sue grandchildren and grandparents who violate copyrights by swapping songs.

The association is within its rights to challenge lawbreakers, no matter how minor. Not legitimate is its lobbying campaign to shut down the P2P (peer-to-peer) business. Ultimately individuals, not technologies, such as the KaZaA Media Desktop, are to blame for copyright violations.

Copyright-cheaters have been around since copyrights were created. New technologies—photocopiers, tape recorders, VCRs, DVDs and P2P software—have simply made it easier to illicitly copy protected works.

Industry has occasionally demanded heavy-handed restrictions on and even prohibitions of technological innovation, but more often has worked to increase awareness of and compliance with the law. Firms also have cut prices and developed new markets, such as Apple's iTunes Music Store, which charges for music online.

However, the association blames a one-third decline in music sales over the last three years on file-sharing. In contrast, Forrester Research places the drop at about 15 percent, only a third of which can be attributed to file sharing.

Still, old-fashioned enforcement has its place. Of course, the association's efforts might antagonize potential customers.

And the campaign might be doomed over the long term. After all, we live in a downloading culture, observes Katie Hafner of the New York Times.

Moreover, some systems already try to shield their users from outside prying eyes. Further, programmers are working to improve their file-sharing software through use of encryption, among other techniques. Nevertheless, the association is entitled to try.

But large recording firms have not stopped trying to enforce the law. They want to destroy a technology simply because it is used by some cheaters.

The recording industry might be able to build a case if the technology served no function other than criminal. Yet, explains American University law professor Peter Jaszi, "It's far too early in the day to conclude that everything everyone does with peer-to-peer, even when it comes to copyrighted MP3 files, is conclusively infringing."

Even now, P2P is used to share government publications and private works in the public domain or where the copyright holder has granted permission. The potential is vast for file sharing to further improve computer communication and networking.

"Music was just the first killer app, but I think it will be the first of many," said Lance Cottrell, president of a software firm.

The recording industry also might be justified in targeting technology designed to facilitate lawbreaking. For instance, the old Napster maintained a directory of users whose files were being shared. That is not the case with technology like KaZaA (the most popular file-sharing software), Gnutella, Grokster, iMesh and Morpheus, where there is no central server.

Unable to win its case on copyright grounds, the recording industry has resorted to demagoguery, claiming that P2P technology promotes child pornography. Andrew Lack, President of Sony Music, says "P2P stands for piracy to pornography."

It's a ludicrous argument. The National Center for Missing and Exploited Children says that P2P accounts for just two percent of referrals regarding child pornography, compared to 77 percent for Web sites.

Indeed, as Alan Morris, executive vice president of Sharman Networks Ltd., recently told the Senate Judiciary Committee, some porn merchants create sites to take advantage of misspellings, such as dinseyland.com, “so that individuals making common typing mistakes, including children, would be connected to advertising sites, including those for pornographic materials, from which they could not easily exit.”

And even the most casual e-mail user is deluged with invitations to watch the most carnal activities.

Nor is P2P particularly useful for pedophiles. Explains Morris: “To make their ‘collections’ publicly available on P2P is counter to their cloak of secrecy. Law enforcement agencies quickly picked them off and so they retreated back to their sordid encrypted sites, news groups and the like.”

Moreover, the recording industry has little credibility in campaigning against pornography. Many pop songs are littered with soft-core references to casual sex; gangster rap glories in degrading and destructive lyrics. When the Federal Trade Commission reviewed 55 different recordings with explicit content labels, it concluded that all 55 included teens in their target audience.

The best answer to Internet pornography is the same as to salacious music lyrics: parental involvement. Family filters can help. But legislating against P2P technologies would have no appreciable effect.

Human beings are enormously creative; unfortunately, that creativity can be used for ill as well as good. So it is with the Internet. To protect freedom while ensuring responsibility, punish the sinner, not the technology.