

# Music Industry Intensifies Hunt For File-Sharing Abusers

## In-House Counsel Get Caught In The Crossfire

BY KAREN MURPHY

THE RECORDING Industry Association of America (RIAA) has a message for users and developers of peer-to-peer (P2P) networks: It's mad as hell and isn't going to take it anymore.

Although the battle between the RIAA and P2P network developers and their users over the illegal downloading of copyrighted music and other creative works has been simmering since the courts shut down Napster more than two years ago, the RIAA recently stepped up its rhetoric. In mid-summer, it threatened to file hundreds of lawsuits against users of the latest crop of Napster clones—P2P networks such as Kazaa, Grokster and Morpheus.

What prompted this sudden intensity? Was it Grokster's April 2003 win in federal court that pushed the RIAA over the edge? [see "Grokster Stings Recording Industry In Federal Court," July, p.31] Although Grokster President Wayne Rosso is giddy over his unexpected win, industry observers such as Mark Lee, an IP litigator at Manatt Phelps Phillips, expect this decision to be overturned on appeal.

"Most courts, including the 9th Circuit in the Napster case, and the 7th Circuit in the Aimster case, have found developers liable," Lee says. "Grokster is the only reported decision to rule in favor of developers, and that lower court decision is on appeal."

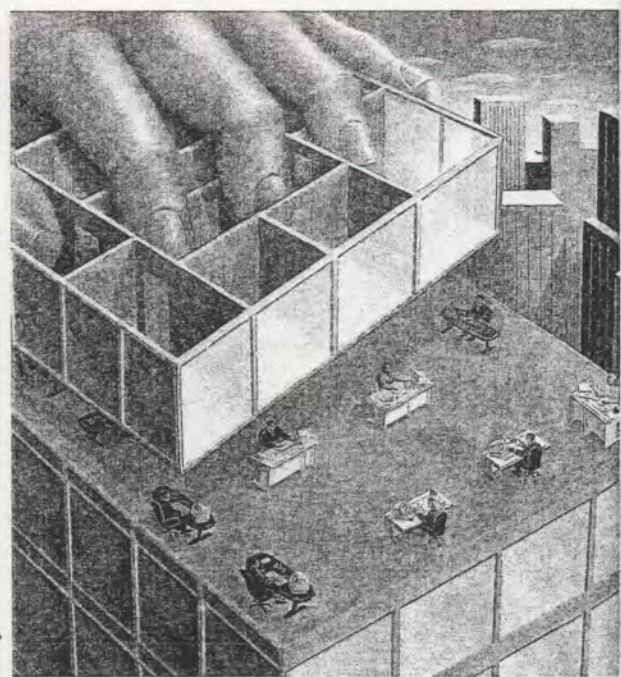
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**There is no question now that the massive infringement these systems facilitate is preventable and, at the end of the day, we think the courts are going to agree that if it is a preventable infringement, you damn well have an obligation to prevent it.**

—Steven Fabrizio  
Partner  
Jenner & Block

Allen Baden, a partner from the Silicon Valley office of Kenyon & Kenyon, agrees, adding Grokster has "changed the focus of the RIAA's legal tactics."

"Based on the hundreds of individual lawsuits and their outcomes, both the RIAA and file-sharing services will be trying to hit a moving target to stay one step ahead of the game," Baden says. "There



may be equilibrium at some point in time—an amount of copyrighted material the music industry will allow to be freely distributed rather than absorbing the costs to pursue lawsuits and enforce these copy-

rights—but that middle ground is likely far from being reached."

Whatever the reason for the RIAA's intensified activity, the battle lines are clearly drawn, and corporations will find themselves caught in the crossfire as the RIAA hunts down the most flagrant abusers.

"The theory of vicarious liability by which a company is held liable for the misdeeds of their employees is well-established in our jurisprudence," says Matthew Oppenheim, RIAA senior vice president, business and legal affairs.

## TECHNOLOGY

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[www.casesoft.com](http://www.casesoft.com)

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[www.franchiselaw.blogspot.com](http://www.franchiselaw.blogspot.com)

**PICTURE YOUR PASSWORD**  
Pointsec Mobile Security, a provider of security solutions for mobile computing devices, is offering an alternative to traditional passwords. PicturePIN, replaces traditional passwords with a sequence of graphic symbols that appear on the log-in screen. Users can use the matrix of symbols to create a mnemonic story or phrase incorporating between four and 13 symbols. One example, "Women Love Flowers Daily," would use the face of a woman, a heart, a flower and a sun.  
[www.pointsec.com](http://www.pointsec.com)

**Everybody's Doing It**  
A study titled "Corporate Peer-to-Peer Usage and Risk Analysis" released in July by Canada-based AssetMetric Research Labs offers an alarming statistic: P2P software has been installed at least once in 77 percent of the 560 companies it surveyed.

If that information doesn't cause concern, consider the \$1 million out-of-court settlement the RIAA reached in April 2001 with Arizona-based Integrated Information Systems (IIS). In that dispute, the RIAA alleged IIS was running a dedicated server permitting its employees to access and distribute thousands of infringing MP3 files over the corporate network. A press release posted on the IIS web site says the company didn't "admit to any wrongdoing in the settlement," but claims it settled out of court to avoid litigation.

"Corporate legal departments need to recognize the risk of liability presented by their employees' use of computer systems and software," Baden says. "They should keep in mind that the improper use of file-sharing services and tools provides a valid basis for disciplinary action, along the same

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ines as other inappropriate computer usage, such as the viewing and downloading of pornography or the distribution of hate e-mail."

To avoid a fate similar to that faced by IIS, corporations should consider taking steps outlined in RIAA's brochure, "A Corporate Policy Guide to Copyright Use and Security on the Internet." The RIAA, in conjunction with the Motion Picture Association of America, recently distributed this brochure to companies throughout the United States. (A brochure similar to the one the RIAA recently distributed can be found on the

International Federation of the Phonographic Industry web site—[www.ifpi.org](http://www.ifpi.org)—under "Publications").

Besides recommending that corporations establish a copyright compliance officer, the brochure also suggests employers regularly audit their systems to find unauthorized materials (see "Get Some Help," below).

"Corporations and corporate managers should be naturally aligned with the content community to stop [illegal downloading]," says Steven Fabrizio, a partner with Jenner & Block and the former senior vice president, business and legal affairs for the RIAA. "It is not good for them as well. Think about the waste of time and system resources when employees spend their days

on Kazaa or Morpheus or any of the Napster wannabes."

Encyclopaedia Britannica Inc. is one company that has been proactive in the fight against copyright infringement since the early 1990s.

"I don't think it will get to the point where corporations are being routinely hauled into court," says William Bowe, executive vice president and general counsel for the Chicago-based company. "Our aim at Britannica is to be a good corporate citizen and do everything reasonable to prevent copyright infringement under our roof."

According to Bowe, Britannica regularly scans its network to pinpoint illegal files.

"If we find anything suspicious, we

delete it," he says. "That is unless the owner can show it has a legitimate business purpose or the content falls under fair use. We take this obligation very seriously, and employees understand that theft of intellectual property won't be tolerated."

Fabrizio agrees.

"If corporations and universities took the steps they should be taking, the problem would be much less significant," he says. "The technology has come a long way since Napster was first launched. There is no question now that the massive infringement these systems facilitate is preventable and, at the end of the day, we think the courts are going to agree that if it is a preventable infringement, you damn well have an obligation to prevent it." 4

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## Protect Yourself

## RULES TO LIVE BY

In its brochure, "A Corporate Policy Guide to Copyright Use and Security on the Internet," the Recording Industry Association of America (RIAA) advises corporations to:

- > Set a clear policy against copyright theft
- > Audit their systems for unauthorized copyrighted material
- > Delete all unauthorized copies of copyrighted material
- > Take security precautions against further violations
- > Designate a copyright compliance officer

In July the RIAA, as well as the Motion Picture Association of America, sent the brochure to every Fortune 100 company. If you would like a copy, you can reach the RIAA at 202.775.0101 or online at [www.riaa.org](http://www.riaa.org).

## GET SOME HELP

The following companies offer services to protect corporate networks from unauthorized use of copyrighted materials. An expanded version of this list is available at [www.musicunited.org](http://www.musicunited.org).

Allot Communications  
952.944.3100  
[www.allot.com](http://www.allot.com)

Audible Magic Corp.  
408.399.6405  
[www.audiblemagic.com](http://www.audiblemagic.com)

Packeteer Inc.  
408.873.4400  
[www.packeteer.com](http://www.packeteer.com)

Sitara Networks  
978.436.9111  
[www.sitaranetworks.com](http://www.sitaranetworks.com)

Websense Inc.  
858.320.8000  
[www.websense.com](http://www.websense.com)

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Electro Scientific Industries, Inc.  
Fujitsu Limited  
Invitrogen Corporation  
Kaiser Permanente  
Macronix America  
Medtronic, Inc.  
Mitsubishi Electric Corporation  
Novell  
OMRON Corporation Healthcare  
Scantibodies Clinical Laboratory, Inc.  
Stanford University  
Syntron Bioresearch Inc.  
Target Therapeutics  
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