



A royalties plan for file sharing

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The Recording Industry Association of America has announced that it will soon bring its formidable legal forces to bear on the individuals who share copyrighted music files through the Internet.

Starting as early as mid-August, it expects to file "thousands" of lawsuits against people who make large numbers of songs available on peer-to-peer networks.

The RIAA is right about three things. First, under current copyright law, the behavior of the file swappers is illegal. Second, partly (although only partly) as a result of the ubiquity of file swapping, the music industry is in crisis. CD sales continue to decline, record company revenue is falling at an accelerating pace, and many music retailers are going out of business. Third, among the groups threatened by this crisis are the creators of music--the composers and performers.

The RIAA now takes the position that the only way to solve the crisis and protect the creators is to sue many individual file swappers, hoping that the threat of both civil and criminal penalties will prompt the millions of people worldwide who currently engage in this behavior to mend their ways. Its new strategy has many disadvantages and perils.

The proposed litigation campaign will be extraordinarily costly. It is likely to be ineffective--as file swappers use proxy servers, offshore Internet sites, and encrypted peer-to-peer systems to avoid detection. And it will further alienate the already disaffected community of music consumers. More importantly, better solutions to the crisis in the music industry are available. The more dramatic--but also the best--would be the establishment of a compulsory licensing system.

In brief, here's how such a system would work:

The creator of a recording would register it with the U.S. Copyright Office and would receive, in return, a unique file name, which would be used to track Internet transmissions of the work. The government would tax devices and services used to gain access to digital entertainment. The primary target of such a tax would be ISP access.

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Secondary targets would include CD burners, blank CDs, MP3 players, etc. Using techniques pioneered by American and European performing-rights organizations, a government agency would estimate the frequency with which each song was enjoyed by consumers. Revenue collected from the tax would then be distributed by the government agency to creators in proportion to the rates with which their songs were being consumed.

Once this alternative mechanism for compensating creators was in place, the old one would be dismantled. In other words, copyright law would be reformed to eliminate the current prohibitions on the reproduction, distribution, public performance, adaptation, and encryption circumvention of published music recordings.

The social advantages of such a system would be large. Consumers would pay much less for much more music. Creators would be fairly compensated--indeed, would earn more than under the current regime. The set of musicians who could earn a livelihood by making their work available to the public would increase sharply. And litigation costs

would decline dramatically.

To be sure, such a system is not yet ready for immediate implementation. Many technical and administrative issues need to be resolved before it could be launched. But several academics, programmers, and public-interest groups are currently working to address those issues.

The RIAA should join us. Instead of continuing to waste its money and credibility on an unwinnable war against the file-sharing masses, it should cooperate in the design of a solution to the underlying problem that would benefit all of the players in this drama.

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