Will the Music Industry Sue Your Kid?

As Lawsuits Target Individuals, Music Swappers Weigh Options; Evaluating the Amnesty Offer

BY CARL BIALIK

This week's lawsuits by the record industry have raised concerns for the tens of millions of Americans who swap music regularly—and especially for parents who often have no idea what their kids are downloading in the privacy of their rooms.

The industry clearly hopes that the 261 lawsuits it filed will deter people from sharing or downloading copyrighted music. But just how vulnerable are you or someone in your family to being sued? Here are some of the basic questions and answers about who should be worried, and why.

What are my (or my kid's) chances of being sued? Slim. There are millions of people using the file-sharing services at any one time—including yesterday afternoon, a day after the lawsuits were announced. The industry has filed suit against fewer than 300 of them so far, though it says thousands more will follow.

The RIAA has targeted people who make available a large number of songs—typically more than 1,000—that are copyrighted by its member companies. The risk is lower if you are sharing only a couple of files, and zero if you're the kind of music swapper who only downloads, not uploads. (Downloading is basically taking a file from someone else's computer; uploading is making a file available to someone else for download.) Lawyers say that in most states, parents generally aren't liable for their kids' actions, as long as parents didn't knowingly allow them to break the law.

If I am sued, what will happen? People who are sued face potential penalties of between $750 to $150,000 per song downloaded. But analysts expect the RIAA to settle with most defendants for much less. Four university students who allegedly ran file-sharing services agreed to each pay between $12,000 and $17,500. Other settlements have been for as little as $2,000 or $3,000.

Should I seek amnesty from the RIAA? The industry is encouraging people who aren't yet under investigation to sign an affidavit promising to delete illegal copies of songs on their computers. In return, the recording companies promise not to sue over their past actions. You can get the affidavit on riaa.com.

The industry says it is following the honor system, trusting people who sign an affidavit not to share or download copyrighted music. However, if it spots subsequent violations, it may assess larger fines.

Critics of the offer warn that the RIAA Please Turn to Page D12, Column 4

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doesn't represent all copyright holders, so songwriters and independent musicians could use the affidavits to bring other lawsuits against you. A lawsuit filed against the RIAA yesterday in state court in San Rafael, Calif., attacks the amnesty program for that reason. In response, the RIAA says people don't need to reveal which songs they swapped nor their Internet names to obtain amnesty.

The amnesty program offers the most protection for those against whom the RIAA has evidence but hasn't yet begun formally investigating. If they sign the affidavit, the RIAA will agree not to pursue the investigation.

How could I be caught? To find the targets of the lawsuits, the record companies joined together and snooped on the popular file-sharing networks—or paid outside technology companies to do so. They used programs that scan file names to find out which file-sharers have the most available copyright-infringing files. Then investigators can record the time and date of any file sharing.

Using readily available software, they then got the computer's unique Internet Protocol address and the name of the Internet service provider. Investigators can subpoena Internet services to connect the IP addresses to the names of actual subscribers. !!!!

Is there any concern that the industry will go after downloaders and not just uploaders? Not much, at least in the short term. For one thing, it is much harder to track the biggest downloaders. That is because while you can easily see an entire directory of all uploaded files, people typically download one song at a time. Also, the main concern is getting people to stop uploading; the thinking is, this will deplete the file-sharing services' libraries and thus make them less attractive and drive people to legal, authorized services like Apple's.

Have people stopped file-sharing, so far? Some have, but many are still doing it.

BigChampagne LLC recorded a decline of about 15% over the summer, in line with typical drops during college recess. But the Beverly Hills, Calif., company, which monitors file-sharing for some record labels, says the sites have seen a resurgence in September, with some recording six-month highs in the past two days, after the RIAA announced the suits. Some universities are stepping up efforts to wean their students from their pirating ways as they return to campus, but such measures have had little effect in the past.

What, exactly, is illegal? It is illegal to share a copyrighted music file, under federal copyright law.

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