

Proposed Law Will Hurt, Not Help the Online Music Industry

Robert Batchelder

A bill before the U.S. Congress would let companies hack peer-to-peer (P2P) networks to stop the illegal distribution of copyrighted music. But the music industry needs good Web business models, not misguided initiatives.

NEWS ANALYSIS

Event

On 29 July 2002, a denial-of-service attack ended against the Record Industry Association of America's (RIAA's) Web site. The attack lasted almost four days. On 25 July, RIAA endorsed a bill proposed in the U.S. House of Representatives (H.R. 5211) that would allow music companies to interdict the unauthorized distribution of copyrighted material by disrupting the operation of P2P networks and the computers connected to them. Music companies would avoid liability for these actions as long as they could demonstrate they own the materials being illegally distributed.

Analysis

The RIAA's support for this bill indicates the music industry's growing desperation. The industry successfully sued to stop Napster from distributing copyrighted music because Napster acted as a central index. Today's P2P technologies do not require a central index; they use anonymous, independently operated index servers that allow individuals anywhere in the world to exchange music files. These networks can operate autonomously even if the legal process stops their creators. Thus, P2P challenges the underpinnings of copyright laws and intellectual property protection and threatens the economics of the media industry.

Despite these legitimate concerns, they distract from the real issue — the inability of music companies to devise an effective business model for the Web. Their first instinct is to preserve established revenue and business methods at all costs. This approach positions the music industry as "digital Luddites" trying to thwart a threatening new technology.

H.R. 5211 likely won't achieve its objective:

- It has yet to enter the formal process of debate and approval that marks the U.S. legislative process.
- Civil liberties groups and privacy advocates will likely oppose the bill because it gives law enforcement powers to private parties without due-process requirements.
- It would likely be unenforceable outside of the United States and would run afoul of European laws and international treaties.
- Putting the law into effect would place the music companies in the position of attacking the very consumers they want to sell music to. The denial-of-service attack on the RIAA presages the level of resistance that would likely come from the Internet community if the bill became law.

Historically, mature industries adapt to business revolutions through a combination of law, technology and innovation that all parties accept — companies, government and the public. Achieving such a consensus will take a long time and will not come easily. Meanwhile, Gartner believes that the music industry's best chance lies with taking risks and developing innovative strategies that are more appropriate for the Web rather than backing ill-conceived legislation aimed at slowing the emergence of technologies that upset the status quo.

Analytical Source: Robert Batchelder, Gartner Research

Recommended Reading and Related Research

- “DivXNetworks: Video Swapping Traces MP3's Path” (TU-14-4800). Video ripping and file swapping via the Internet will steadily grow to attain the same popularity as audio file swapping — with substantial implications for the entertainment industry. **By Robert Batchelder**
- “Digital Rights Management Has Little Immediate Hope” (M-15-6440). DRM will probably never develop as a distinct market; rather, DRM capabilities will likely be integrated into larger offerings, such as enterprise software suites and home media servers. **By Mark Gilbert**

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