

THE WALL STREET JOURNAL.

© 1994 Dow Jones & Company, Inc. All Rights Reserved.

MARKETPLACE

September 9, 2003

The High Cost of Sharing

*Record Industry Files Suits
Against 261 Music Uploaders;
Move May Alienate Customers*

By NICK WINGFIELD
And ETHAN SMITH

SHARING PIRATED music over the Internet just became a lot more hazardous.

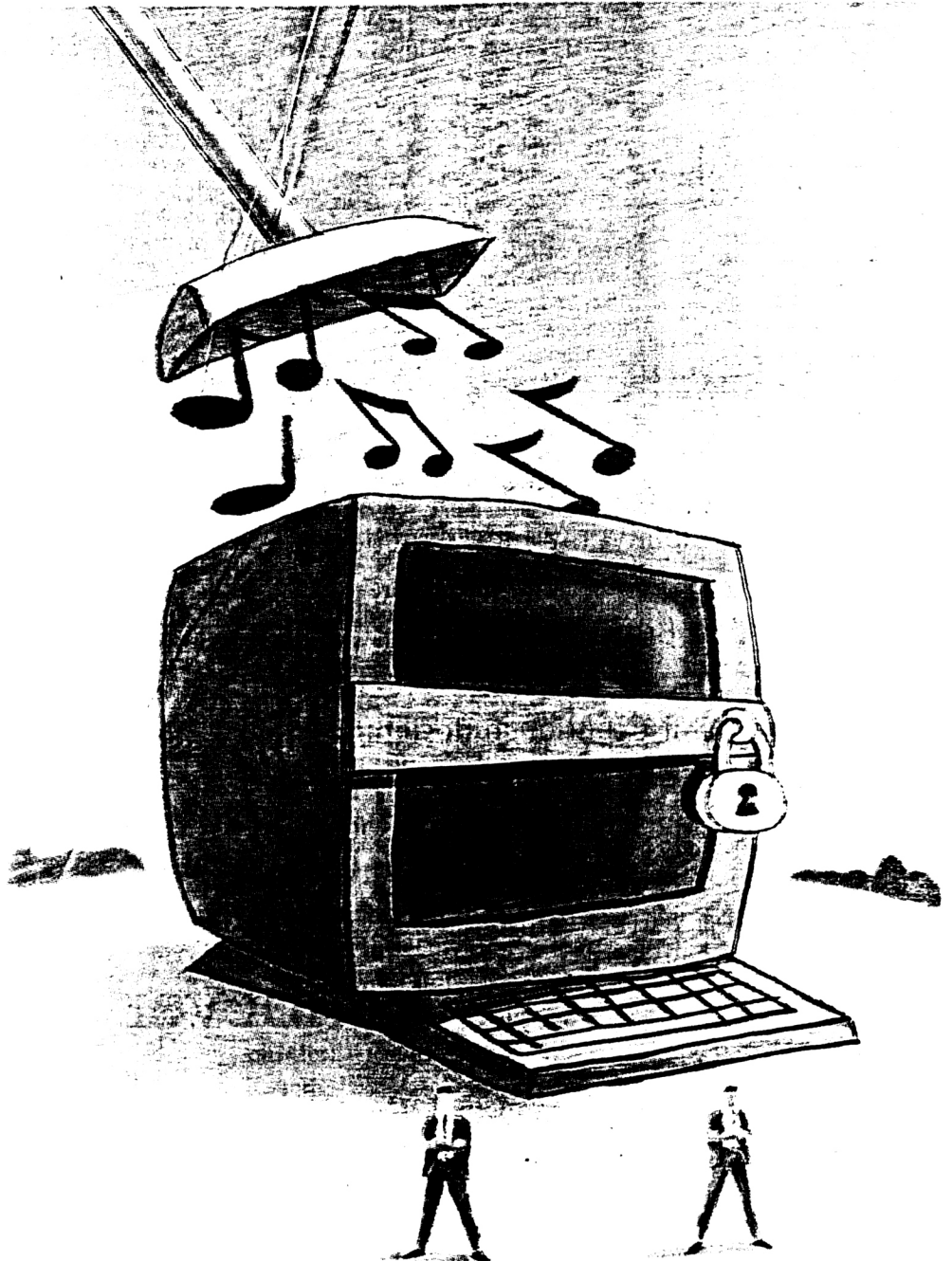
In a bold and risky move, the largest music companies made good on months of threats to crack down on users of file-sharing networks, filing separate lawsuits against 261 individuals in federal courts across the U.S. According to the Recording Industry Association of America, the suits target users with large libraries of pirated music—about 1,000 or more songs each—that they make available to others on the Internet through file-sharing programs like KaZaA, Grokster and Blubster.

The recording companies promised to file thousands more lawsuits against individuals swapping illegal copies of songs in coming months.

"Nobody likes playing the heavy and resorting to litigation, but when you're being victimized by illegal activity there is a time you have to stand up and take action," said Cary Sherman, president of the Recording Industry Association of America, the music industry's chief lobbying group.

The move switches the focus of the recording industry's legal assault from file-sharing companies to users of file-sharing programs, most of whom are avid music fans. The recording industry is counting on the lawsuits to discourage rampant music piracy online, which they blame for years of decline in compact disc sales. But opponents of the move believe the tactic could backfire, alienating music companies' customers.

The music companies offered some users what they described as an olive branch: an offer of amnesty under which individuals not currently under investigation must pledge not to share pirated music over the Internet. Us-



High Cost of Sharing: Record Industry Sues 261 for Uploading

Continued From Page B1
identities were sought by the RIAA.

The lists of plaintiffs in each of the lawsuits varied, but they included major recording companies like Vivendi Universal SA's Universal Music Group, Bertelsmann AG's BMG Music, AOL Time Warner Inc.'s Warner Music, EMI Group PLC and Sony Corp.'s Sony Music Entertainment.

The round of lawsuits caps a broad investigation that began in June, when music companies said they would begin tracking down heavy users of file-sharing networks. By using a file-sharing program online, anyone can easily determine how many files a particular user is making available to others.

Once the RIAA found the Internet protocol numbers for some of these users, the industry issued subpoenas to Internet service providers seeking the users' names and contact information. The RIAA's Mr. Sherman said the group settled a "handful of cases" against some users who were discovered in this way, and they were never named in lawsuits. He said those settlements were in the range of \$3,000 each, a smaller sum than the industry than the recording company says it will seek in later settlements or court verdicts.

It isn't clear whether individuals named in the lawsuits are actually the ones swapping pirated music. A teenager using a home Internet account registered in a parent's name, for instance, wouldn't be named. If a defendant prefers "the lawsuit to be amended to name the kid, that's fine," said Mr. Sherman. "But someone has to take responsibility."

The lawsuits are part of multi-pronged attack by the recording industry on music piracy involving the Internet. Music companies succeeded in getting a federal court to force music pioneer Napster Inc. to shut its service two years ago, but dozens of similar companies have cropped up in its place. In April, a federal judge in Los Angeles ruled against an effort by recording companies and movie studios to block the distribution of two file-sharing programs, Grokster and Morpheus, a ruling the plaintiffs are appealing. The judge found their were "noninfringing uses" for the file-sharing programs.

The recording industry got a more favorable ruling in a case involving Verizon Communications Inc., from which it

ers who sign an affidavit promising to delete illegal copies of songs on their computers and take other steps won't be sued for their past actions, the recording companies said. Critics of the offer, however, said users should be cautious about admitting their past deeds in writing since other copyright holders, such as movie studios or songwriters, could use the information against them. A recording industry spokesman said the affidavits won't be shared with other groups.

File-sharing companies said they don't believe the lawsuits will significantly diminish use of their software. "You'll get a very small percentage of users that get scared off by their storm-trooper scare tactics," said Wayne Rosso, the president of Grokster Ltd., a file-sharing company that has been sued by music companies. "However, the vast majority just don't care."

Recording industry executives didn't identify the individuals they are suing, adding that, in most cases, they know little about the defendants beyond their names and addresses. Almost a dozen lawsuits were filed in federal court in San Francisco, and about 70 were filed in federal court in New York. One complaint in the San Francisco court names Patrick Little of Daly City, Calif., as a defendant, alleging that he shared more than 1,700 files through a file-sharing program, including songs by Bob Marley, Tori Amos, 50 Cent and Red Hot Chili Peppers. Mr. Little couldn't be reached for comment.

Another complaint named Tom Burke of San Francisco, who allegedly shared more than 2,100 files on his computer through the Internet, including tracks by George Clinton, Blue Oyster Cult, Madonna and Mary J. Blige. Mr. Burke couldn't be reached for comment.

A lawsuit filed in Boston against Noor Alaujan, a 22-year-old Cambridge, Mass., resident, cited hundreds of songs that were allegedly downloaded illegally, including Eric Clapton's "Tears in Heaven" and Sade's "Somebody Already Broke My Heart." Ms. Alaujan didn't return phone calls.

Most defendants probably don't yet know they are subjects of litigation, says Glenn Peterson, a partner with the Sacramento, Calif., law firm of McDonough, Holland & Allen. He says it typically takes at least a day or two to get a summons issued and served to a defendant. He adds that his firm is representing someone with the Web moniker nycfashiongirl who is fighting to remain anonymous in the face of a music industry subpoena, and it has been contacted in recent months by at least 10 other people who learned their

Please Turn to Page B8, Column 6

sought to obtain the name of a file-sharing user. Some colleges are also starting to cough up the names of suspected file-sharers on their campus networks. Boston College, which had earlier tried to quash recording industry subpoenas, said Monday that it will surrender the names of three students to the record industry. Recording companies and movie studios have also stepped up attempts to make file-sharing more of a hassle by hiring companies to post bogus files that are labeled as songs but don't contain actual recordings.

The latest lawsuits target big "uploaders" of music—people who allow others to download music from their computers—not individuals who necessarily did the downloading. By striking at those who share their music, recording industry executives hope to reduce the amount of music that is available through file-sharing, eventually making the services useless.

Still, there is little agreement about whether the industry's tactics are having much impact on music piracy. The recording industry has cited data from research firm NPD Group that estimated the number of households downloading music from the Internet declined 28% to 10.4 million in June from 14.5 million in April, around the time music companies began publicizing a campaign to target individual file sharers.

Music companies have also been trying to wean music fans off file-sharing programs by licensing their songs to commercial music sites like Apple Computer Inc.'s Music Store.

But services like Morpheus, LimeWire and Grokster all report that usage of their services has grown, especially as students have returned from vacation. "I think a lot of the decrease was a summer phenomenon," says Marc Morgenstern, the CEO of Overpeer Inc., a company that posts fake music files on file-sharing networks for music-industry clients and others. "Now that they're back at school, they have bandwidth."

Some users don't seem to be paying much attention. Steven Johnson, an 18-year-old freshman at California State University, Los Angeles, said he thought many of his peers were too uninterested in news coverage to be aware of the suits. "I don't think they're concerned because I don't think they're aware that anybody could figure out who they are," Mr. Johnson said.

Mr. Peterson, the Sacramento lawyer, says few defendants have the necessary funds to fight the lawsuits in federal court, and fewer could pay the maximum possible judgments. As a result, he expects most will settle. "It's a high-stakes game of poker that very few people in the real world have enough money to play," he says.

—Don Clark, Carl Bialik and James Bandler contributed to this article.

Key Moments in the Online Music Battle

Here's a rundown of events in the recording industry's efforts to stop online music swapping.

- **May 1999** Napster file-sharing service founded by Shawn Fanning and Sean Parker.
- **Dec. 7, 1999** The Recording Industry Association of America (RIAA) sues Napster alleging copyright infringements and accusing it of being a haven for music piracy.
- **April 13, 2000** The heavy metal rock group Metallica sues Napster for copyright infringement and racketeering.
- **July 26, 2000** Federal judge grants the RIAA's request for a preliminary injunction and orders Napster to shut down, but the injunction is stayed two days later.
- **Feb. 12, 2001** Ninth Circuit says Napster must stop allowing music fans to use its free Internet-based service to share copyrighted material.
- **Oct. 2001:** The recording and film industries sue the companies behind the Grokster and Morpheus file-swapping services. The company behind KaZaA, file-swapping service is added to the suit later.
- **Sept. 3, 2002** Napster lays off nearly all its remaining employees. Announces plans to liquidate assets.
- **April 25, 2003** Court rules that Grokster and StreamCast Networks can keep distributing Internet file-sharing software, forcing music industry to intensify legal pursuit of individuals who distribute copyrighted works online.
- **May 2, 2003** Four university students who were sued for operating campuswide music-sharing programs reach settlements under which they will each pay between \$12,000 and \$17,500 to the recording industry.
- **July 18, 2003** RIAA issues hundreds of federal subpoenas demanding Internet service providers and some universities turn over names of users suspected of illegally sharing music.
- **July 30, 2003** SBC Communications unit Pacific Bell Internet Services files complaint alleging that many of the RIAA subpoenas were served improperly.
- **Aug. 8, 2003** U.S. District Court rules that MIT and Boston College don't have to comply with subpoenas seeking information about students the RIAA suspects of file-sharing.
- **Sept. 8, 2003** RIAA files 261 lawsuits against individuals it says have illegally used file-sharing software to distribute copyrighted music online, the first in what it says could be thousands of copyright infringement suits against individuals.

Source: WSJ Research