

# The content tail wags the IT dog

Without hardware and software, there would be nothing for digital media to be created on, or used with. And yet the content industry attempts to tell the far larger IT industry what it can and cannot do.

Daniel James

**T**he content industries have conspicuously failed to create a business model based on paid content over public IP networks, but still cling to the idea that those networks were created for just that use. Any software or system which might interfere with this theoretical paid content business is considered not just heretical, but probably criminal. The music and movie consortia have turned the transition to network distribution into a “with us or against us” battleground, with most of their customers fighting for the wrong side.

## RIAA, copyright and file sharing

In a networked world, we would be lost if we couldn't find data on other computers. But four college students in the US have recently been made painfully aware that the mere act of searching and indexing networks can now be considered 'contributory copyright infringement'.

---

In a networked world, we would be lost if we couldn't find data on other computers. But four college students in the US have recently been made painfully aware that the mere act of searching and indexing networks can now be considered 'contributory copyright infringement'

---

Without warning, they were sued by the Recording Industry Association of America for damages of up to US\$150,000 per song discovered on the campus LAN.

Their crime was to have hosted search tools which indexed the files made available to guest users by fellow students - whether those files were music, or college coursework.

Of course, they weren't the only people running search engines on their respective campuses - any copy of Microsoft Windows includes SMB search tools which can perform the same function. The prosecution of these four individuals seems designed to create an example; to let the general public know that the content industry will go to any lengths, no matter how vindictive, unpopular or impractical, to defend the paid content dream.

Faced with a potentially bankrupting legal action, the students settled out of court for between US\$12,000 and \$17,000 each. Some of the students have asserted that they still don't believe they have done anything wrong, while being constrained by the terms of the settlements as to what they can say in public. Although these sums are tiny compared to the original damages claims and would hardly cover the RIAA's legal fees, they represent the college savings of these four people. The RIAA has indicated that it will be pursuing more individuals for damages, and that the sums it is prepared to settle for will only get higher.

Never mind that an index of SMB shares on a particular LAN is an equally useful aid to institutions attempting to discover copyright violations as it is to the freshman who wants to hear the new Madonna album before he buys it. Never mind that the RIAA has exploited technological ignorance in its attempt to equivocate these college search engines with Napster, which was supposed to be a profit making company.

By extracting multi-thousand dollar tributes from individuals who haven't made a penny from the sharing of

### Textbox 1: Get your money for nothing...

Faced with a failing business model? Can't keep up with technology, or shift the units like you used to? If you've got nothing left to lose, why not try the secondhand ideas business?

The SCO Group (the company formerly known as Caldera, not the original proprietary-UNIX-on-Intel Santa Cruz Operation) recently compared Linux developers and users with peer-to-peer music sharers. In the infamous "Letter to Linux Customers" - not that SCO ever had very many Linux customers - CEO Darl McBride wrote: "Similar to analogous efforts underway in the music industry, we are prepared to take all actions necessary to stop the ongoing violation of our intellectual property or other rights."

In fact, SCO/Caldera was doing much worse business than most of the music industry until it decided to make source code licensing a mainstay of its revenue stream. The company was losing millions of dollars each quarter like the dot-com operation it is - until the SCOSource initiative was launched. Now it has reported a net income of US\$4.5 million for the quarter to April 30, 2003 on revenue of \$21.4 million. SCOSource was said to be responsible for \$8.3 million of that revenue.

This model of licensing inherited 'intellectual property' is also a potential saviour for the recording industry. If actually producing and distributing new music is no longer profitable enough to interest the major labels, they could simply re-hash old material - by starting a 1980's revival, for instance. In this analogy, the SCO source code licensed from Novell would be the back catalogue of Dire Straits; very popular in its day, but few people would admit to keeping a copy around now.

Having first made sure that the copyright signed over by artists was extended for long enough to extend past the furthest profit forecasts - say, the artist's death plus seventy years - the same old rubbish could be recycled for each new generation of music consumers. Why hasn't the music industry thought of this already?

copyrighted work, the RIAA has blown apart its rationale for legal action - that of the artist as the victim. It provides evidence that the content industry really does feel more threatened by new forms of network distribution than it does by illegal counterfeit CD and DVD pressing plants. We haven't yet seen individuals given punitive fines for advertising car boot sales, or sign-posting street markets where counterfeit merchandise might be available.

### Where are the thieves?

Where might the principle of "contributory infringement" end? Once again, as in the deCSS cases brought by Hollywood, exercising the right to create a link from one machine to another across a network has suffered from legal intimidation. An open IT system has the potential for as many abuses of copyright as it has for creativity, not just within the operating system but from the hardware to the network and the unfettered blank media. But we probably won't see the RIAA take the IT companies, telcos and consumer electronics manufacturers who make file sharing possible to court. In the essay Content is Not King, Andrew Odlyzko

pointed out that only a minority of the value of public networks consisted of copyrighted, professionally produced 'content'. If we attempt to illustrate this point by comparing annual revenues across the industries, we discover there are probably several IT companies which each have greater annual revenue than the entire global music industry.

---

Once again, as in the deCSS cases brought by Hollywood, exercising the right to create a link from one machine to another across a network has suffered from legal intimidation.

---

According to the International Federation of the Phonographic Industry, the international counterpart to the RIAA, recorded music sales worldwide were down 7% to US\$32 billion in 2002. Gartner estimates that the global expenditure on IT products and services in the same year was also down, which might suggest economic conditions rather than nefarious students as

the cause of music industry woes. Including telecommunications, the figure for global IT spend in 2002 was \$1.521 trillion, of which \$556 billion was for IT services alone.

---

**The Soviet Union managed to control the creative technologies to the extent that dissidents had to make 'samizdat' copies one at a time, by hand**

---

The global media companies which make up the content industry have a well organised publicity and lobbying machine, which has so far been able to lead the public debate on how media and IT networks should converge. Accordingly, people who listen to music on computers are thieves, while those who listen to the same music on radios are true fans. That there is less and less difference between computers and radios seems not to matter. The spin on IT perpetuated by the content industry has also lead to statements that every CD-R sold represents a lost album sale. Have these people not heard of data backups?

## Striking back

Every time a music or film industry spokesperson appears in the media to call for tighter controls on technology, there should be a rapid rebuttal from a technologist. When the vested interests of the content industry claim to be defending the artist in front of a political committee, there should be someone there sticking up for the long-established rights of everyone else.

---

**It's up to the IT industry to educate the public and politicians of the real value of open systems.**

---

The Soviet Union managed to control the creative technologies to the extent that dissidents had to make "samizdat" copies one at a time, by hand - turning the distribution of ideas back to what it had been before Gutenberg. Given the opportunity, the content industry would love to limit powerful and versatile general-

purpose computing to selected and approved individuals who could be trusted to respect the rules laid down by the owners of culture. It may seem an extreme comparison, but both the Soviet regime and the content industry have attempted to outlaw unencumbered copying machines.

It's up to the IT industry to educate the public and politicians of the real value of open systems. The music business is small compared to the industry it seeks to dominate. And yet, if it can get enough political support, it may end up doing just that.

## Bibliography

- [1] Content is Not King, [http://firstmonday.org/issues/issue6\\_2/odlyzko/](http://firstmonday.org/issues/issue6_2/odlyzko/)
- [2] Global sales of recorded music down 7% in 2002, <http://www.ifpi.org/site-content/statistics/worldsales.html>
- [3] 2002 Worldwide Hardware and Software Product Support Market Size and Forecast, <http://www4.gartner.com/DisplayDocument?id=383387>
- [4] An analysis of the RIAA's complaint against Daniel Peng, <http://barillari.org/papers/peng/peng.html>
- [5] Daniel Peng's site, <http://m-net.arbornet.org/~danpeng/>
- [6] Jesse Jordan's site, <http://www.chewplastic.com/>

## Copyright information

©2004 by Daniel James

Here are the article's license, effective now:

You may not reproduce or retransmit the materials, in whole or in part, in any manner, without the prior written consent of the author.

## About the author

Daniel James is a freelance technology writer.