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Cover Story 7/14/03
A Nation of pirates
Panicked by digital plunder, the entertainment industry fights back

By Kenneth Terrell
The raging green monster has broken loose. In a rampage, it tears across screens around the planet, its digitally animated fury leaving a trail of damage estimated at billions of dollars. The mightiest forces of the U.S. government fail to corral it. A marvel of technology, it lures ever more devotees. No, it's not the Hulk, eponymous star of Universal Pictures' faltering blockbuster. That green goliath may be formidable enough to fight an army to a standstill, but even his superhuman strength couldn't stop a more insidious enemy: digital piracy. Two weeks before the film arrived in theaters, a version already was circulating online, available free to users of popular file-trading software.

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Piracy has become a national pastime. It's no longer just college kids trading the latest hit by rockers Radiohead or the rapper 50 Cent. Cunning technology, antiquated laws, and growing public disdain for footing the costs of traditional retail business have combined to create a potent cocktail that has Internet users everywhere tipsy on bootlegged bounty. Every day, ordinary people download billions of files: blockbuster movies, cable TV shows, music, video games, software, and nearly every other kind of copyright-protected material available in digital form. The process is seductively simple. Just install the software, available free from a Web site, type the name of the desired file into its search engine, pick among the choices accessible for download, and in minutes to hours--depending on file size and connection speeds--you can find a copy on your hard drive.

After years of trying to curtail this behavior, only to see it expand exponentially, the entertainment industry is launching a new offensive. Having failed to quash the technologies, it is going after the pirates themselves. It vows to bring lawsuits--hundreds of them to start--against people who offer to trade copyrighted materials. Says Cary Sherman, president of the Recording Industry Association of America: "These people are stealing, plain and simple."

This unprecedented tactic could target millions of people--possibly someone in your own home or office--with stiff penalties. It's just the latest turn in a high-stakes struggle. As content becomes divorced from products like CDs and videotapes, its creators need new ways to control and charge for it. How industry, consumers, and the courts adapt to this new reality will determine the shape of digital entertainment and intellectual-property law for years to come. "It ultimately comes down to legislative and regulatory control," says Lee Black, an analyst with the Jupiter Media research group. "And that doesn't necessarily move at the pace of technological change."

Almost three years after U.S. District Judge Marilyn Hall Patel shut down Napster, the pioneering service that introduced more than 20 million people to the illicit thrills of skipping record stores, piracy is bigger than ever. Kazaa, the trading software that is Napster's most popular heir, has been downloaded more than 230 million times worldwide, and the phenomenon now goes well beyond music. Long transfer times had limited the popularity of trading movies over the Internet, but broadband connections are changing that. An estimated

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400,000 to 600,000 copies of films are traded digitally every day, according to Jack Valenti, president of the Motion Picture Association of America.

The movie industry estimates that Internet swapping costs it more than \$3.5 billion a year worldwide. Record companies are also claiming huge losses. While the sagging economy and the lack of an exciting pop-music trend bear some responsibility for the industry's 26 percent decline in CD sales since 1999--a \$4.3 billion drop--digital piracy undoubtedly plays a role.

Shriveled royalties. Many pirates have little sympathy for the big companies, but the record labels are not the only ones hurt. Songwriters, who traditionally have relied on the sales of hit records to provide income for years after they topped the charts, have watched their job's version of a pension plan shrivel up. "My royalties have literally been cut in half by this thing," says Lamont Dozier, a member of the Motown songwriting team that penned dozens of Top 20 tunes including the Supremes' "Stop! In the Name of Love" and the Four Tops' "I Can't Help Myself (Sugar Pie, Honey Bunch)." "It's really taken a toll on my situation."

Piracy is also pinching independent record stores. As bootlegging has spread, these retailers--unable to lure customers by offering bargains on household gadgets or slashing CD prices as stores like Best Buy and Wal-Mart do--have watched their customer base dwindle. "I've never seen a more horrible time," says Ron Liest, whose family has owned Stedeford's Records on Pittsburgh's North Side since 1964. "We were just joking that maybe we should sell Krispy Kremes," says Liest, whose store specializes in rhythm and blues, rap, and other urban styles of music. Independent retailers often champion up-and-coming artists, and their decline could mean a loss of diversity in music.

Yet the convenience and anonymity of file sharing have made it a remarkably guilt-free form of plunder. In effect, the masses of Americans have joined the previously small chorus of hard-core hackers in chanting the credo "Information wants to be free." "For all practical purposes it is stealing music, but I have no moral qualms about it," says Vik, a 21-year-old college senior from Baltimore who uses Kazaa. "When you can get free music, it's hard to resist."

This frenzy of trading draws its strength from the theory of "six degrees of separation"--the notion that only a relatively few steps are needed to link you to any other person in the world. With hundreds of millions of PCs plugged into the Internet at any given moment, chances are high that at least one of them has a digital copy of that rare Bruce Springsteen live recording or missed episode of *Sex and the City*. Your computer just needs an efficient way of asking other PCs where that particular file can be found. That's where a peer-to-peer software program--such as Kazaa or LimeWire--comes in. It forwards your search request to other computers on the network, each of which searches its hard drive for the file you want. If it's there, that computer establishes a direct connection to yours and begins transferring the tune or video. If not, the computer forwards your request to other PCs. By going out just a few degrees--most peer-to-peer services set the range at seven--your computer can network with about 10,000 other PCs and access a million files. Typically the search locates a copy of the desired file within minutes.

Elusive prey. When Napster introduced mainstream Web users to bootlegging three years ago, the solution appeared simple to the companies and the courts: Shut it down. Napster was an easy target because it kept its members' names on its corporate central servers, in effect acting as a direct matchmaker for every tune traded. Its successors, however, are decentralized. Their trading networks could continue to run even if their Web sites were shut down completely. And the chances of that happening have dwindled. The Recording Industry Association of America has sued several similar file-trading networks, including Grokster and Morpheus. But in April, U.S. District Judge Stephen Wilson ruled that the companies aren't responsible for the way members use their software.

Two other major lawsuits filed by the RIAA pointed to a new strategy: targeting users. In May, students on several campuses agreed to pay up to \$17,500 after the RIAA sued them for setting up file-trading networks on their campuses. And last month, the court forced Internet service provider Verizon to reveal the names of four of its customers the RIAA believed were engaged in piracy.

Now the industry is taking on pirates one-on-one. On June 25, the Hulk had his

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revenge when Kerry Gonzalez, a 24-year-old insurance underwriter from Hamilton, N.J., pleaded guilty to one count of federal copyright infringement for making that digital copy of the movie available online. Gonzalez told a magistrate judge in Manhattan how he borrowed a preview tape of the film from a friend who worked for an ad agency and distributed it through a chat room. Gonzalez was ultimately undone by a security ID number tagged to the video on the tape. Free on bond until his sentencing in September, he could face three years in prison plus a \$250,000 fine.

That same afternoon, the RIAA announced that it is preparing to file hundreds of civil lawsuits against the most prolific pirates later this summer, seeking damages of as much as \$150,000 per song. By logging into the file-sharing networks, RIAA agents are tracking down the Internet addresses of members who are offering music to others. The association then plans to subpoena each computer's real-world address from the appropriate Internet service provider. Sherman says the RIAA initially will pursue people who maintain large catalogs of music on their computers and allow others to download files. "The more files you offer to download, the bigger target you make yourself," he says. "But that's only the beginning. We intend to keep filing lawsuits on a regular basis until people get the message."

The strategy could easily misfire, say critics. Because it would target the person registered to the Internet account, parents could be sued for their children's downloading, and roommates could be sued for other roommates' activities. That would further dim an already negative view of the industry among many peer-to-peer users. "When you go out and buy a CD, it's \$5 more than it was a few years ago," says Mark, a college student from Geneva, Ill., who uses Kazaa to download live Bob Dylan shows. "I can't afford to quench my [music] habit because it's too expensive." Given the mores of the digital world, says Alan Davidson of the Center for Democracy and Technology, "the penalties seem to be disproportionate to the offense."

Technologically, too, the strategy may be a loser's game: Developers--who call themselves "P2P soldiers"--are already planning next-generation peer-to-peer programs that completely mask user identities or dice up the delivery of files so that they cannot be identified or traced easily. "The new goal in P2P is true security and identity masking," says Jorge Gonzalez, cofounder of zeropaid.com, a file-trading portal.

Material girl? Trying to digitally outsmart the bootleggers has had embarrassing results in the past. Hackers foiled Sony's expensive CD-copy-control technology by drawing around the edges of the disks with a permanent marker to hide key data. This spring, pop star Madonna tried to booby-trap peer-to-peer networks by loading an obscenity-laced tirade masquerading as files of songs from her new CD. Bootleggers retaliated by hacking her Web site and making the tunes on sale there available free.

Finding a legal--and profitable--way to give people what they want could be a better solution. Even if the lawsuits work, says Josh Bernoff of the Forrester Research technology consulting firm, "[the industry is] still going to have to create legitimate alternatives." After several failed attempts to launch music download sites, record labels have found their first hit with Apple's iTunes. The service, which offers more than 200,000 selections at 99 cents per download, has sold more than 5 million songs in its two months online. Unlike earlier services, iTunes allows users to transfer their digital music files to other devices such as MP3 players, charges no subscription fee, and offers unique features such as 30-second previews of songs before the user is charged for a download. "New and very effective," file-trader Gonzalez calls it. The music industry has also lured some CD buyers by packaging new-release CDs with bonus DVDs full of extras, including music videos by the artist.

But ultimately, the creative industries may have to adapt to a new role in which they act more as publicists and less as distributors, perhaps earning a percentage of the artists' revenues. "Record labels will have a promotional role," says Bernoff. "They will be like agents in a lot of ways, where they help artists to get big." Trouble is, today's pirates may not want to pay more than a song for that service.

With Seth Rosen


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