Taking on record companies

By TIMOTHY O'CONNOR

WHITE PLAINS — Patricia Santangelo is in many ways the embodiment of the suburban mom.

She is the mother of five children, ranging in age from 6 to 19. She is divorced, living in Wappingers Falls after growing up in Yorktown and Putnam County. At 42, she works as a property manager for a real estate company and is trying to get her own business off the ground.

What she is not, is someone expected to be at the center of the nearly 2-year-old war between record companies and online music file sharers.

But that's exactly who she has become.

Santangelo was sued by several record companies in U.S. District Court in White Plains in February. The record companies said Santangelo's home computer and Internet account were used to illegally trade copyrighted song files. The record companies say people like Santangelo are destroying the multibillion-dollar industry.

Record companies have filed about 13,300 similar federal lawsuits against Internet users across the country since September 2003. Nearly 3,000 of those lawsuits have been settled. The offending music traders have agreed to pay an average of $4,000 to $5,000 and promised not to illegally download copyrighted songs anymore.

None of the cases has gone to trial.

That may change. And it may change with a soccer mom who said she would rather pay a lawyer's fees than give in to what she calls intimidation tactics by the record companies to get her to settle.

"I am still nervous about the whole thing," she said. "I just got so aggravated about how threatening they were."

The risk she is taking is that, if she loses, she may wind up paying much more than the $7,500 the record companies initially wanted from her to settle the case.

The offer came through the Recording Industry Association of America's settlement center, which was designed to facilitate Internet users' paying penalties to the record companies before they were sued. Santangelo said the settlement center bullied her, trying to get her to accept a settlement offer.

"I didn't do anything wrong," she said. "Why should I pay them?"
She never used the Kazaa program — one of the networks that facilitates file sharing — that was downloaded onto her computer, she said. She didn’t even know what it was before she was sued, she said. The Kazaa account name in the lawsuit belongs to a friend of her children's, not to her or anyone in her house, she said.

Opponents of the record companies' lawsuits have said they hoped someone would challenge the companies' tactics in court rather than settle.

"If this particular woman is willing to go to trial, that's something new," said Jason Schultz, a staff attorney with the Electronic Frontier Foundation, a digital rights advocacy group that opposes the lawsuits. "The threat is so great that most people don't even risk it."

The record companies say the law is clear and on their side: If you download copyrighted songs on the Internet without compensating the songs' owners, you're stealing.

Jonathan Lamy, a spokesman for the RIAA, an umbrella group that represents the record companies, pointed to the U.S. Supreme Court's characterization of illegal online song trading as "garden variety theft."

"Just as we must hold accountable the businesses that encourage theft online, individuals who engage in illegal downloading must also know there are consequences to their actions," he said in an e-mail. "The toll from online theft is devastating."

He said the record companies have "ironclad evidence" Santangelo's home computer and Internet account were used to illegally download music.

But whether that evidence is strong enough to stand up to judicial scrutiny still is a question two years after the first suits were filed. Few of the lawsuits have gone beyond the preliminary stages.

Santangelo's lawyer, Morlan Ty Rogers, who works in New York City and grew up in Sleepy Hollow and Ossining, said no one has challenged the "boilerplate" language of the lawsuits, adding that the record companies don't have enough evidence to bring their claims to court.

"Many of these lawsuits have been brought against people who are simply the names on the Internet account," Rogers said. He said that's not good enough to sustain a lawsuit. The companies have sued unsuspecting mothers, fathers, grandparents — people who have only grudgingly made the switch from vinyl albums to compact discs.

"It's really surprising" no one has attacked the record companies' basis for the lawsuits, he said, "because the record companies' claims are actually very weak."

Joseph Singleton, a Beverly Hills, Calif., lawyer who has defended about 15 clients in such lawsuits, said he has had clients who would have been perfect to challenge the lawsuits. But they settled because, even though they didn't do anything wrong, a loved one may have illegally downloaded the music files. Most of his clients have settled. The record companies have dropped suits against a couple of others. Still others challenged the lawsuits but didn't survive the hurdle of summary judgment.

"You can't go in and simply say, 'So what? I did it, there's nothing wrong with it,' " he said. "Those people will lose."

But, he said, record companies are suing people who made songs available to others, whether or not there is any proof they ever illegally copied a
song.

"You cannot have copyright infringement if you don't copy," he said.

Santangelo said she feels as if the well-heeled record companies are picking on a single mother.

"Why are they going after people like me?" she asked.

A judge, and perhaps down the line a jury, may have to answer that question.

Santangelo's lawyer, Rogers, whom she retained several weeks ago, has filed a motion to dismiss the lawsuit, saying it fails to properly state a claim. The record companies have responded that the suit makes a valid claim against Santangelo. U.S. District Judge Colleen McMahon will decide the issue.

McMahon already has had a glimpse of the case from a conference May 6, before Santangelo had a lawyer. The judge told Santangelo she should get an attorney. She told the record companies' lawyers that the settlement center was no longer to be involved in the case.

"I would love to see a mom fighting one of these," the judge said.