UPGRADE

Music industry aims to send in radio cops

By Hiawatha Bray | November 15, 2004

You can learn a lot from writing a newspaper column, especially when a reader calls in to say that you're wrong. I've just received a revealing critique that foreshadows a nasty new escalation in the battle over our digital rights.

It all began with a recent column about software that lets Internet users record incoming audio streams. There are thousands of these Internet radio stations, featuring everything from 1940s radio dramas to klezmer music. Millions of people worldwide listen to Internet audio, but many don't realize how easy it is to record the stuff. With the right software, you can program a PC to connect to a favorite stream and copy it to your hard drive.

Given the indifferent quality of most Internet audio, few serious music lovers would add these recordings to their libraries. But a few stations broadcast at 160 kilobits per second or higher, resulting in audio that's as good as those popular MP3 music files we all love to collect. So it's possible to build up a library of decent-quality music simply by capturing these Internet streams. It's easy, it's fun, and it's legal, as long as you don't share your recordings with others. That's because the law recognizes your right to make copies of audio or video programs for personal use.

Except it doesn't. At least, that's the claim of Steven Marks, the top lawyer for the Recording Industry Association of America, the trade group representing the big record companies. Horrified by my article, Marks contacted me to declare that making a music library from captured Internet music streams is just as illegal as downloading pirated MP3 tunes over a file-swapping network.

"It is not legal for anybody to make a copy of something they don't own," Marks said. You can legally make MP3 copies of CDs you've purchased, said Marks, because you paid for the disk and can do what you like with it. But you never paid for the music on the radio, and so you have no right to copy it.

What about the 1984 Betamax case, in which the US Supreme Court upheld our right to record TV programs? Marks replied that people have a right to record TV shows in order to watch them later, but the Supremes did not grant the right to create a permanent library of favorite shows. In other words, people who've taped and saved every episode of "Seinfeld" or "Sex and the City" are thieves.

Marks applied the same logic to Internet audio. It might be OK to record the Internet broadcast of a favorite opera, so you can listen to it next week. But once the fat lady sings, you're legally obliged to press the delete button.

Sounds nutty, yes? After all, there's no way the record industry can enforce its opinion. You can copy Internet audio in total secrecy. It's not like the file-swapping systems, where each user leaves a digital fingerprint on the Internet, so the record companies can identify and sue them. Behind closed doors, you can record whatever you like, with nobody the wiser, unless the music companies assign a cop to watch every computer in every home.

That may be just what the record industry has in mind, to judge by its discussions with the Federal Communications Commission over a new kind of radio broadcasting.

It's called "high-definition radio," digital broadcasting that relies on some currently unused chunks of the FM frequency band. A handful of stations offer these broadcasts, and a few radios are capable of receiving them. Music producers are terrified that listeners will be able to make high-quality music recordings simply by copying the digital broadcasts. So they're demanding that the FCC order the high-definition radio broadcasters to add a "broadcast flag," an antipiracy system similar to the kind mandated for high-definition television broadcasts. In addition, all high-definition radio receivers would
have to recognize the broadcast flag and limit the listener's ability to make copies.

So your high-definition radio would contain a built-in piracy cop that would prevent your copying the songs broadcast over the air. You might be allowed to record all of the music a station plays between noon and 4 p.m. But if you tried to make copies of each individual song, the broadcast flag technology would prevent it. It doesn't matter that the copies are for your personal use only, said Marks. If you want a permanent copy of the song, you pay. No exceptions.

The FCC is even now deciding whether to approve the limits on high-definition radio broadcasting. If the music companies get their way, Internet radio will be their next target. As more of us get broadband connections, Internet broadcasters will jack up their stream quality, delivering sound as good as any CD recording. Consumers will eagerly copy these streams, engaging in a practice most of us have long considered as legal as breathing.

To prevent this, the music industry begins by asserting that there has never been a right to copy Internet audio. Next comes the effort to require built-in audio anti-copying chips in all computers. Similar efforts in Congress were met with outrage and derision, but the record moguls hope for a friendly reception from the unelected commissioners of the FCC.

In essence, the music companies want to control the design of all future home computers. It's been their fondest hope for years, but I never understood the scope of their ambitions until I got Marks's phone call. He intended it as a correction. I consider it a warning of yet another threat to our right to listen as we like.

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