

Classier Actions?

Mulling A Lawsuit Against ISPs

BY KEVON GLICKMAN

It is ironic that the quiet manager of one of the world's biggest rock bands is the one making the most noise about the increasingly deleterious effect the digital industries are having on the music industry by allowing consumers to use the companies' broadband Internet access to steal artists' recorded music that previously required payment. Call it cybertheft with a beat.

Longtime U2 manager Paul McGuinness, has emerged from the enormous shadow of his world-renowned band to put the digital industries on notice: Start taking responsibility for protecting the music you are distributing through your broadband access and share your enormous revenue with the content makers and owners through structured commercial agreements.

As a veteran entertainment industry attorney who has represented and helped launch the careers of such popular recording acts as the Fugees, Lauryn Hill, Rick Ross, Flo Rida and others, I applaud McGuinness for speaking out so forcefully on this issue, which poses the single biggest threat to the future of the entertainment industry.

The Philadelphia law firm of Bochetto and Lentz, with whom I am employed as special counsel, is in discussions with a coalition of songwriters, music publishers and independent labels to investigate and render an advisory opinion as to whether there may be a class action lawsuit against Internet service providers (ISPs), mobile phone makers and phone companies for allowing other people's music and intellectual property

to be obtained and traded illegally.

We have all heard the hollow arguments about the online swiping and swapping of music files and other forms of digital entertainment being "victimless crimes." Nonsense. Not only are the recording artists, actors, writers, directors and producers being robbed of income and royalties, but worldwide, online thievery of digital music, TV programs and feature films has resulted in the loss of corporate revenue and, accordingly, the loss of countless careers within the respective industries.

I imagine a cable company would not take kindly to a technologically savvy neighbor hooking up his whole neighborhood with free cable. Imagine if this same techno-savvy Robin Hood hooked up a whole city with free cable. Would the cable company stand idly by and say it's just a victimless crime? We know the answer.

What's particularly frustrating about the digital industries' unwillingness to curtail online theft of music, TV and film content is that there are at least six technologies in existence that make it easy to detect and stop the illegal trafficking of artist's creations. Yet not one single ISP is using this technology and will not use it until they are forced to through the courts.

The ISPs are the gatekeepers. They possess the technical ability to stop mass copyright violation, as they recently proved by halting the online theft and swapping of pornography. Since 2003, record labels have filed more than 28,000 lawsuits and tens of thousands of cease-and-desist orders against individual file sharers—with little impact. It is estimated that 19% of Internet subscribers

download music for free, and every time they do, they leave behind a digital fingerprint that can be easily tracked. It rarely happens.

Although the ISPs must take responsibility, they also need to understand that there are commercial partnership opportunities that would benefit artists and ISPs alike. McGuinness envisions a future business model in which music



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is bundled into an ISP or other subscription service and the revenue is shared among the distributor and the content owners. His instincts are right, but we're not close to a solution to online piracy. To paraphrase McGuinness' favorite band, we still haven't found what we're looking for. But for the sake of the entertainment industry, we have to keep searching.

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