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NEWSLETTER

An Entertainment Industry Organization

CALIFORNIA COPYRIGHT CONFERENCE

California Expands Artist Audit Rights

Michael R. Morris, Esq.

On July 15, 2004, California Governor Arnold Schwarznegger signed a new law (SB 1034, effective January 1, 2005) establishing a statutory right to a basic set of recording contract audit standards. SB 1034 affords recording artists some additional muscle to audit record companies in a sometimes elusive quest for unpaid royalties. However, there are many significant differences between the bill originally introduced by Senator Kevin Murray on February 21, 2003 and the law that was passed.

Proponents of expanding rights of recording artists can criticize the new law as a watered down version of a bill originally containing tough sanctions against record companies that failed to properly account. However, SB 1034 does introduce important provisions that should bolster the ability of artists to verify their earnings.

Let's first look at the background of SB 1034 and what the new law does provide. As widely reported by the press, Senator Kevin Murray (a former agent at the William Morris Agency) held hearings over the last two years on recording industry practices in his capacity as Chair of the Senate Select Committee on the Entertainment Industry (for extensive details on these hearings, check out Senator Murray's website). The accounting practices of record companies were closely scrutinized at these hearings, which covered the structure of recording contracts, recoupment practices, lack of penalties for royalty underpayment, restrictions on the right to audit, etc. Among Senator Murray's conclusions were that recording artists' contracts usually contained one-sided auditing clauses, that the cost to audit was prohibitively expensive for most artists, and to quote Senator Murray, there was, at the very least, a "purposeful neglect on the part of record company accounting departments," resulting in many artists being "routinely underpaid royalties they are rightfully due."

Not surprisingly, all five major record companies vigorously contested Senator Murray's conclusions, and the new law (like much legislation) is a decided compromise from the original bill. Yet, SB 1034 is a significant step in leveling the audit playing field between artists and record companies. Here's why:

1. **SB 1034 Supersedes Contractual Restrictions.** Notwithstanding any recording agreement restrictions or existing industry practices to the contrary, the provisions of the new law extend to all recording agreements subject to California law, and SB 1034 is drafted to apply to all record companies doing business in California. SB 1034 extends its rights to a royalty recipient" (someone who contractually furnishes services in the production of sound recordings and has the right to receive royalties under that contract) and affects "royalty reporting parties" (simply put, the labels liable to contractually pay royalties to the "royalty recipient").

50th Anniversary

The President's Corner

Michael R. Morris

This year the CCC proudly celebrates its 50th year. Our special anniversary newsletter (distributed tonight along with this newsletter) highlights but a few of the memorable events presented by the CCC, that have included evenings with luminaries ranging from music titans Quincy Jones, Frank Zappa and David Foster to industry leaders Les Bider, Jack Valenti, Clive Davis and Neil Portnow (now the president of NARAS), to name but a very few. Also included in the anniversary issue is a superb history of copyright law compiled by Neil Gillis and supplemented by CCC board member David Hirshland and a humorous article written by CCC board member Ed Arrow chronicling some of the more interesting CCC evenings throughout the years.

Speaking of luminaries, during the past 2 years, the CCC has flourished under the energetic and creative leadership of outgoing president Teri Nelson Carpenter, truly a "wonder woman." I've had the great personal pleasure of serving as vice president during Teri's presidency, and on behalf of everyone connected to

(*continued*)

President's Corner (continued)

the CCC, extend a big THANK YOU to Teri for her invaluable contributions to this organization.

Tonight, the CCC begins its 2004-05 year with our annual "Legal Eagles" music law panel, featuring Matthew Gerson, Kent Klavens, Michael Ostroff and Don Passman (a past panelist and good friend to the CCC). Ed Arrow will be lead moderator in this typically thought provoking discussion that will cover many business and legal issues of concern to all in these tumultuous, challenging - and exciting- times (illustrating how radical have been the technological and business changes affecting the music industry).

Finally, the CCC has flourished during the past 50 years because of people like you who are reading this column. If you are not already a member, I urge you to join CCC and help ensure that its next 50 years will be equally rewarding.

UPCOMING MEETINGS

Oct 19
"An Evening With Desmond Child
Nov 9
New Media & Games
December
Holiday Party

MEMBERSHIPS

The price of an individual membership is only $55 annually. Enjoy each dinner seminar at the special member rate of $28 (the non-member rate is $35). We also offer Corporate Memberships for $250 annually. Corporate Members can send up to 10 people to each dinner seminar at the member dinner price. In addition, each member can bring a guest at the discounted member rate. A Corporate Member can save $60 per meeting, with a potential savings of $480 for the year.

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While SB 1034 obviously affects recording artists and record companies, the definition of "royalty recipient" should also include and benefit record producers as well.

2. **Royalty Recipients Get Annual Right to Audit.** SB 1034 creates a statutory right in favor of recording artists to audit record companies once a year. Under this provision, the artist must request an audit within three years after the end of a royalty earnings period under contract, and a particular royalty earnings statement may not be audited more than once. Since recording contracts usually include an annual right to audit, codifying this right is hardly groundbreaking. But most recording contracts also attempt to limit the right to audit to two years (or even less) from the date a royalty statement is rendered for a particular period, and SB 1034's three-year audit period is more artist-friendly. However, this three-year audit window commences from the end of a royalty earnings period, so this right is only a modest improvement on the fairly standard two-year audit window found in most record contracts (which usually runs from the date a royalty statement is rendered, typically within 90 days after the close of an earnings period). Moreover, the three-year audit window under SB 1034 begins at the close of the earnings period, and is not suspended by a record company's failure to timely render a royalty statement. And recording agreements usually include an artist-unfriendly clause deeming a royalty statement to have been rendered and received within 90 days following the close of an earnings period (usually the prior six months in recording agreements) - even if the statement was never actually sent - unless the artist notifies the label of its failure to timely render that statement.

SB 1034's three-year audit period does not address a record label's failure to timely render a statement, and its clock starts running, regardless of whether a royalty statement was ever sent. (An original proposed, SB 1034's three-year period ran from when the royalty statement was actually received.) Accordingly, artists and their representatives should continue calendaring royalty statement dates and promptly notify labels of tardy statements.

3. **The Right to Choose an Auditor is Significantly Strengthened.** SB 1034 lets an artist engage a qualified royalty auditor to conduct an audit of a record company, notwithstanding that a particular royalty auditor may already be auditing that record label on behalf of other artists. Moreover, artists are now statutorily empowered to engage auditors on a contingency fee basis. Here's why these are important artist-friendly rights. Most recording agreements include a clause prohibiting an artist from hiring a royalty auditor if that auditor is already auditing the same label for another artist. The trade-off typically is that an artist wanting to hire a particular auditor already auditing the label for someone else would ultimately get to use the services of that auditor, but only after the auditor had finished the prior audit. In the real world, this usually hamstrung the artist if an auditor had more than a few prior audits of the same label lined up. SB 1034 lets an artist choose an auditor of the artist's choice, no matter how many other ongoing audits that auditor may be conducting for other acts signed to the same label. Since the number of good, experienced royalty auditors is limited, SB 1034's provision empowering an auditor to perform concurrent audits on behalf of several artists signed to the same label - regardless of what the recording agreement may say to the contrary - is an important, pro-artist development.

Equally artist-friendly is SB 1034's provision enabling artists to hire auditors on a "contingency fee" basis (it's called a "contingency fee" because the fee the auditor gets paid is contingent on the auditor finding unreported earnings). This means even if a recording agreement flatly prohibits contingency fee audits, auditors can agree to conduct audits on behalf of artists for a fee equal to a percentage of any recovery of unreported royalties. Some recording agreements include clauses prohibiting artists from hiring auditors on a contingency basis, and SB 1034's flat ban on this practice could - and was intended to - let more artists audit their labels by hiring contingency-fee auditors. Since many artists are otherwise too financially-challenged (i.e., poor) to hire auditors at hourly rates, this should be a welcome development for artists otherwise unable to afford an audit. But the new law was stripped of tougher provisions that would have sanctioned record labels failing to properly account for royalties. Let's look at what was deleted from SB 1034, as originally proposed by Senator Murray.

1. **Record Companies Failing to Accurately Report Royalties Don't Face Any Statutory Penalties.** Under

the original version of SB 1034, if an audit revealed that a record company failed to pay more than 10% due an artist in royalties, that label got penalized by having to pay the artist the costs of the audit, including auditor and legal fees, as well as interest on the unpaid royalties. In addition, the label would have gotten further sanctioned by having to pay three times the amount of royalties in excess of a 10 percent underpayment. For example, let's assume a label reported $100,000 in royalties and an audit uncovered additional royalties of $30,000. Under SB 1034, as first drafted, the label would have paid not only the $30,000 in unreported royalties, but also a penalty of $60,000, i.e. three times $20,000, representing the difference between the $130,000 in royalties that should have been reported and the penalty threshold of $110,000 (110% of the $100,000 actually reported). Moreover, if an audit showed that more than 20 percent due an artist in royalties had not been paid, then under Senator Murray's original bill, the artist would have been entitled to rescind (as in "get out of") the record contract.

2. **Artists Do Not Get a Statutory Right to the Label's Manufacturing Records, to Conduct Joint Audits with Other Artists or to Have Disputes Resolved by Arbitration.** SB 1034 originally entitled artists and their auditors to get a label's actual manufacturing and related records. Why is this important? Because an auditor's job would be greatly simplified by knowing how much product was actually made, what sales were unaccounted for, what the label characterized as nonroyalty units (i.e., "freebies" such as review copies, sales incentive free goods, etc.) and the label's physical and perpetual inventory. Labels have vigorously resisted contractual clauses requiring them to provide actual manufacturing and related records to auditors, and such records are rarely provided absent a lawsuit (where they can be court-compelled through "discovery"). Senator Murray clearly intended to strengthen an auditor's hand with this provision, which failed to become law (although access to manufacturing records should become a less pressing concern if - and when - purchases of physical product are significantly replaced by digital sales of music).

Also failing to make the final version of SB 1034 were provisions letting multiple artists on a label engage the same auditor to conduct an audit for all of them at the same time (relieving an auditor from making multiple, time-consuming trips to the same label), and a dispute-resolution section compelling mandatory arbitration of unresolved audit disputes (in lieu of prolonged - and usually more expensive - court litigation), with attorneys' fees being awarded if the arbitrator determined the record company owed royalties.

3. **SB 1034 Did Not Create a Fiduciary Duty in Favor of the Artist.** As originally drafted, SB 1034 incorporated a novel - and extreme - section making a label's contractual duty to pay royalties also a "fiduciary duty." What does that mean? In plain English, that provision would have created a moral right in favor of the artist (in addition to a contractual right) to receive a fair, timely and accurate royalty statement. This fiduciary duty would have created an obligation on the part of a record company to act in the best interest of the artist, in much the same way that a corporation's board member owes a fiduciary duty to shareholders (a similar duty is owed by an agent or lawyer to a client). Someone legally subject to a fiduciary duty is forbidden from engaging in conduct that is adverse or contrary to the interests of another. Had record companies been legally subjected to a fiduciary duty, they would be required to make truthful and complete disclosures to artists and be prohibited from obtaining an unreasonable advantage at the artist's expense (such as, to paraphrase Senator Murray, by withholding money rightfully due an artist unless the artist commenced an audit and/or sued).

Most contractual relationships do not give rise to a "fiduciary duty," but Senator Murray felt strongly enough about the unequal bargaining power between labels and artists, that he proposed legislation creating such a duty. If a record label breached this fiduciary duty by deliberately not paying royalties due, an artist would have had potentially powerful grounds upon which to sue. By breaching a fiduciary duty, a label would risk incurring a substantially greater judgment than the remedies normally available in an ordinary breach of contract lawsuit (including "punitive damages," which a jury could award to punish a defendant breaching this fiduciary duty). Senator Murray's attempt to incorporate a "fiduciary duty" into recording contracts was applauded by artists' representatives as a bold sanction against record companies that wilfully underpaid royalties. Conversely, it was repudiated by industry groups as being unfairly one-sided, since artists who deliberately withheld albums would only be subject to contractual damages, while a label potentially faced punitive damages in a breach of fiduciary duty suit. Given the extremely high standard of care imposed by a legislatively-mandated fiduciary duty and the fact that SB 1034 only singled out recording agreements within the entertainment industry (and not other groups with royalty participants, like movies, television, authors, etc.), it is not surprising that the fiduciary duty section was excised prior to SB 1034 becoming law.

Conclusion. In his "Recording Industry Practices Hearing Summary," Senator Murray commented that when confronted by accusations from auditors that all royalty statements underreported royalties due artists, the five major label conglomerates denied any wrongdoing, which reminded him of tobacco executives swearing before Congress that they did not believe tobacco was harmful to one's health. This may have been an extreme analogy. But if systemic underreporting of royalties has not exactly been declared a carcinogen, the endemic nature of the problem and the perceived lopsidedness of the relative bargaining positions of labels and artists was sufficient for California to pass a law incorporating new and material auditing rights into recording agreements of all labels doing business here. The more sweeping - and severe - provisions for royalty underreporting (such as treble damages, artist's right to rescind and breach of fiduciary duty) failed to make the final version of SB 1034. However, the passage of SB 1034, in conjunction with the heightened visibility of record industry accounting and contractual practices resulting from Senator Murray's hearings (and other state actions, such as the recent settlement between major labels and New York State Attorney Spitzer due to the labels' failure to pay nearly $50 million in purportedly "unclaimed royalties") should bode well for artists seeking a fairer royalty shake.

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Ninth Circuit's Grokster Decision Changes the Law of Secondary Copyright Liability

Ian C. Ballon

The U.S. Court of Appeal for the Ninth Circuit's decision in Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd. represents a dramatic break with governing precedent in the area of secondary copyright liability. In Grokster, the Ninth Circuit affirmed the trial court's ruling granting summary judgment for defendants based on the "decentralized" nature of the peer-to-peer ("P2P") networks at issue in that case. In so doing, however, the Ninth Circuit articulated new standards for imposing contributory and vicarious copyright liability that will make it more difficult for copyright owners to combat Internet piracy.

The Grokster case involved P2P networks that generate advertising revenue from users who can exchange media files with other users. As noted by the Ninth Circuit, evidence was presented that at least 90 percent of the files on the defendant services at the time of the lower court's ruling constituted infringing copies of protected music, motion pictures and television programs.

New Threshold Test and Time Component For Proving Contributory Infringement. To establish liability for contributory infringement, a copyright owner must show (1) direct infringement by a primary infringer, (2) knowledge of the infringement and (3) material contribution to the infringement by a defendant.

Under the reformulated test for contributory infringement articulated by the Ninth Circuit in Grokster, a court must first evaluate if the product at issue is capable of "substantial" or "commercially significant" noninfringing uses, as those terms were used by the U.S. Supreme Court in Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417, 442 (1984) (the "Sony-Betamax" case). If a product does not have substantial or commercially significant noninfringing uses, a plaintiff may show that a defendant had actual or constructive knowledge of infringement. By contrast, where a product has such legitimate uses, a copyright owner must demonstrate that the defendant, in the context of a P2P system, "had reasonable knowledge of specific infringing files and failed to act on that knowledge to prevent infringement."

In Grokster, the Ninth Circuit concluded that the defendants' services were capable of substantial noninfringing uses, notwithstanding the fact that, as noted in a footnote, plaintiffs had contended that, at most, only 10 percent of the files on defendants' services were noninfringing at the time the trial court granted summary judgment for defendants. The Ninth Circuit emphasized that the relevant inquiry focused on the potential for noninfringing use - not actual use - and also suggested (in a footnote) that 10 percent legitimate use was nonetheless substantial because it represented "hundreds of thousands of legitimate file exchanges."

In so ruling, the Ninth Circuit acknowledged that its interpretation of what constitutes a substantial or commercially significant noninfringing use is at odds with the Seventh Circuit's analysis in In re Aimster Copyright Litig., 334 F.3d 643, 651 (7th Cir. 2003), but distinguished that case on the grounds that no evidence was presented in Aimster that the Aimster product had any actual or potential noninfringing uses. The Ninth Circuit also side-stepped the question of whether the Sony-Betamax decision, which was drawn from the "staple article of commerce" doctrine in patent law, even applies to services, as opposed to products, preferring instead to refer to the defendants' services as "products."

In addition to raising the bar for proving secondary liability by requiring evidence of actual, rather than constructive, knowledge of direct infringement where a product is capable of substantial or commercially significant noninfringing use, the Ninth Circuit adopted the lower court's unprecedented temporal component for imposing liability. Where the "reasonable knowledge of specific infringement" requirement applies, the Ninth Circuit ruled that "the time at which such knowledge is obtained is significant." The Ninth Circuit agreed with the lower court that such knowledge could not be shown in Grokster because defendants had designed their systems so that they arguably could not prevent specific files from being exchanged and therefore, in the words of the lower court, plaintiffs' notices of infringement were "irrelevant" because they arrived when defendants did "nothing to facilitate and [could not] do anything to stop" individual acts of infringement. On similar grounds, the Ninth Circuit found that plaintiffs could not show that defendants' contribution to their users' infringement of plaintiffs' copyrights was material.

This unprecedented reformulation of the test for contributory infringement - that cause and effect occur simultaneously - encourages potential infringers to separate artificially their contribution to infringement (at which time they have "knowledge" under this test) from the point in time when an infringing copy is actually made.

Rejection of the "Turning A Blind Eye" Theory and Imposition of a Temporal Component For Imposing Vicarious Liability. With respect to vicarious infringement - which requires a showing that a defendant (1) had the right and ability to supervise the direct infringers and (2) received a direct financial benefit - the Ninth Circuit similarly adopted the trial court's analysis in finding that at the moment of infringement defendants did not have the ability to block access to individual users. In so ruling, the Court rejected the notion that liability could be imposed based on defendants' "turning a blind eye" to infringement - notwithstanding the Seventh Circuit's decision in Aimster and the Ninth Circuit's own prior decision in A&M Records, Inc. v. Napster, Inc. - because, in the Court's view, "there is no separate 'blind eye' theory or element of vicarious liability"; it is merely a concept subsumed in the tests for secondary liability. Under the reformulated test for vicarious liability, one who "turns a blind eye" to infringement - or in the words of the Seventh Circuit, engages in "ostrich like conduct" in developing a P2P system that it knows will be used primarily to exchange infringing material - can escape liability so long as it devises the system so that it cannot actually prevent any given file from being exchanged.

As with its ruling on contributory infringement, the Ninth Circuit's analysis of vicarious liability artificially separates cause and effect, allowing potential infringers to avoid liability if they construct systems, even with knowledge that they will be used primarily for infringing purposes, that do not allow them the ability to monitor or control individual files ultimately exchanged by users.

Impact of the Decision. It remains to be seen whether the Ninth Circuit's Grokster decision is the final word in this case or whether the decision is subjected to further scrutiny through *en banc* review or review by the U.S. Supreme Court.

The decision plainly helps companies or individuals who wish to profit from online services that they know will be used primarily for infringing purposes. However, as noted by the court in Grokster, the Ninth Circuit's analysis is at odds with the Seventh Circuit's decision in Aimster and may well not be followed in other circuits. In addition, the case arguably can be explained by the highly decentralized nature of the services at issue in Grokster, and therefore may not have bearing on cases involving more straightforward forms of online piracy.

The decision potentially benefits legitimate service providers such as AOL, by imposing a limitation from the Sony-Betamax case on the extent to which knowledge or control may be imputed to legitimate services used primarily for noninfringing purposes. While this clarification may be justified on policy grounds, its application to pirate services - those created primarily to profit from third-party acts of infringement - is troubling and, as a consequence, will make it more difficult for copyright owners to obtain relief in cases involving illegal "file sharing" over P2P networks in the Ninth Circuit.

Ian C. Ballon, an intellectual property litigation partner in Manatt's Palo Alto and Los Angeles offices, is the firm-wide co-chair of Manatt's Intellectual Property and Internet Practice Group, the author of E-Commerce and Internet Law: A Legal Treatise with Forms *(Glasser LegalWorks 2001 & Cum. Supp.) and Executive Director of Stanford University's Center for E-Commerce. Mr. Ballon wrote an amicus brief in the Grokster case on behalf of a group of organizations including the American Film Marketing Association, the Association of American University Presses, the Entertainment Software Association and the Video Software Dealers Association. The views expressed in this article, however, are solely those of the author. Mr. Ballon may be reached by e-mail at iballon@manatt.com.*

Pop Music Biz Quiz

Randall Rumage

With September's being a traditional back-to-school month, I thought it might be fun for the readers of the CCC newsletter to get a taste of what we all used to endure back during our school days - pop quizzes - only this one will be a pop "music biz" quiz, focusing primarily on digital music and copyright issues. Don't fret if you are a non-techie like me, as the answers are contained at the bottom of the test, and, besides that, there are no prizes! Even if you get a few of the answers wrong, maybe you will have learned a new bit of info along the way, as I have in compiling this quiz. So here it goes:

1. A few digital music services and outlets have teamed up with food service companies for co-promotions. Match the music with the food/beverage brand:

A. Sony Connect	1. Starbucks
B. AOL Music	2. Burger King
C. HearMusic	3. McDonald's

2. "Codec" stands for compressor/decompressor, and is an algorithm that allows audio and video files to be compressed on one computer and then decompressed on another computer. No digital audio player is equipped with all codecs because:

A. Some codecs require a licensing fee.
B. Some codecs are not shipped along with the player.
C. Some codec manufacturers make the codec available for download, or as part of a separate installation.
D. All of the above.

3. Which one of the following statements is FALSE?

A. Microsoft's Windows Media Player 9 is compatible with the Mac OS X system.
B. Apple's iTunes is compatible with Windows 98 and above.
C. The Windows Media Audio 9 codec is not supported on portable devices which run on earlier versions than Windows Media Player Version 6.4.
D. iPod's global hardware sales to date (since its launch in November, 2001) have exceeded 3 million units.

4. If you've transferred music tracks from your CDs onto your PC using Windows Media Player, and the format is unprotected, iTunes lets you convert them into which file format, so that you can listen to them in iTunes or on your iPod? (Hint: There may be more than one correct answer.)

A. AAC (Advanced Audio Coding)
B. Apple Lossless (which stores music at a very high quality but at about half the space of uncompressed files).
C. MP3
D. WMA
E. WAV

5. Apple's AirTunes and AirPort Express allow you to play your iTunes music wirelessly on your home stereo or powered speakers, whether you use a Mac or Windows PC, by delivering data at rates of up to 54 megabits per second. Last year, AirPort Extreme upgraded to the 802.11g wireless standard, which, percentage wise, is how much faster than the 802.11b standard used by many current wireless networking devices and the original AirPort?

A. 25% faster
B. 50% faster
C. 100% faster
D. 200% faster
E. 500% faster

6. The iPod and the iPod mini can transfer an entire album's worth of music in as little as:

A. 10 seconds
B. 60 seconds
C. 2 minutes
D. 5 minutes
E. 10 minutes

7. To obtain near CD-quality audio, MP3 requires a bit rate in the range of 128 to 192 Kbps. Microsoft claims that its Windows Media's WMA 8 file format achieves near-CD quality audio with a bit rate of only 64 to 96 Kbps. Therefore, if a CD that holds about 63 minutes in CD audio format can contain about 11 hours of songs in the MP3 format, how many hours of music at most can a CD hold using the WMA file format?

A. 5 1/2 hours
B. 22 hours
C. 11 hours (the same as the CD of MP3 files)
D. None. WMA files can't be stored on CD-R's or CD-RW's.

8. Which college recently introduced the Apple iPod First-Year Experience, in which 1,500 freshmen were given

iPods, and created a special website modeled on the Apple iTunes site, where students can download music and course content?

A. Harvard University
B. Berklee College of Music
C. U.S.C.
D. Duke University
E. University of Washington

9. Which of the following is true:

A. Duet was renamed Pressplay and was once owned by Sony and Universal, before being acquired by Roxio and renamed Napster.
B. RealNetworks recently offered downloads of $.49 per song ($4.99 per album) to promote its RealPlayer 10.5 digital media playback software and Rhapsody service.
C. Apple has objected to RealPlayer's software which contains a technology called Harmony allowing songs to be downloaded from Real's music store to be played on Apple's iPod devices.
D. MusicNet, whose shareholders include Bertelsmann AG, EMI Music, RealNetworks, Sony Music Entertainment and Time Warner, Inc. is a business-to-business provider, and does not sell on-demand music directly to end users.
E. All of the above.
F. A, B and C only.

10. A "dual session" music CD usually consists of: (a) a copy-protected "first session" which contains audio that can be played back by a consumer CD-audio player, and (b) the Digital Rights Management-enabled "second session" which embodies music, video, and/or other data that can be played back by the CD-ROM drive of a computer. Which of the following statements is FALSE?

A. The "first session" is not generally playable on a computer or portable device (like an iPod or MP3 player).
B. The "second session" allows consumers to transfer content to portable devices.
C. The "second session" can include artist interviews, bonus tracks, enhanced playback capabilities such as support for 5.1 surround sound through a PC.
D. Macrovision has entered into a license agreement with Microsoft to provide labels with the capability to design and produce "dual session" music CDs, with toolkits to allow content owners to create "send-to-a-friend" marketing programs, allowing consumers to send specific content from a CD for a "one time" playback, which then redirects the recipient to the website where they can purchase the content online.

11. Which song will go into public domain first?

A. A song that is NOT a work-for-hire which was written in 1978 (regardless when published) of which its last surviving composer dies in 2030; or
B. A work-for-hire written in 1980 which is first published in 2005, (regardless when the last surviving composer dies).

12. Which song will have a longer duration of U.S. copyright protection?

A. A song written in 1975 (assuming that it was copyrighted); or
B. A song written in 1955 (assuming that its copyright was renewed in 1983)

13. Let's say your dad wrote a song all by himself back in 1977, but failed to register its copyright, and it's not yet had a publication. Your dad died in 2000. The copyright will expire on December 31st of what year?

A. 2070 (i.e., life plus 70)
B. 2047 (70 years)
C. 2005 (at the end of the initial 28 year period, since he did not survive the renewal term)
D. 2052 (75 years)
E. 2072 (95 years)
F. None of the above. The song is ineligible for copyright protection since it is a pre-1978 work and was not registered.

14. Match the hardware device with the approximate number of songs it will hold:

A. iPod mini	1. 10,000 songs
B. iPod 20GB	2. 1,000 songs
C. iPod 40 GB	3. 5,000 songs

15. The U.S. Court of Appeal for the Ninth Circuit's decision in MGM vs. Grokster essentially affirmed that Grokster's peer-to-peer file sharing service was:

A. Guilty of contributory infringement;
B. Guilty of vicarious infringement;
C. Both A and B
D. Neither guilty of A nor B because Grokster designed its system in a way which neither: (a) monitors the exchange of files amongst its users, nor (b) prevents specific files from being exchanged amongst its users.

Answers:

1. A - 3 (Sony Connect recently featured Capitol Records' artist Houston and his single "I Like That" in a McDonald's promotion); B - 2; C - 1 - HearMusic, located in Santa Monica's 3rd Street Promenade, allows customers to create customized, personalized CD compilations while sipping a Starbucks cappuccino. Source: CNET News.com - September 7, 2004; Starbucks.com

2. D - All of the above. Source: Microsoft.com

3. B is false. iTunes is compatible with Windows XP and 2000 (not earlier versions). Source: Microsoft.com and MacNewsWorld - August 11, 2004

4. A and B Source: Apple.com

5. E. It's up to 5 times faster. Source: Mac.com

6. A. 10 seconds. Source: Mac.com. Using a FireWire 400 or USB 2.0, you should be able to fill a 40GB iPod in less than an hour.

7. B. 22 hours in the WMA 8 format. Source: microsoft.com

8. D. Duke University. Source: MacNews World - September 2, 2004 and duke.edu/ipod

9. E. All of the above is true. Source: internetnews.com, pcworld.com, musicnet.com

10. Trick question. All of the answers are true! Source: MacrovisionEurope.com and afterdawn.com

11. Trick question. U.S. copyright protection for each work will endure through the end of 2100. The copyright for the example A song endures for "life plus 70." The copyright for example B endures until the earlier of (a) 95 years from publication (i.e., 2005 + 95 = 2100) or (b) 120 years from creation (1980 + 120 = 2100). Source: U.S. Copyright Act

12. Trick question: neither. Both will endure for 95 years. Each song is a pre-1978 work which and remains protected for a total of 95 years (i.e., 28 (orig. term) + 28 (renewal term) + 19 (extended term) + 20 (Sonny Bono Copyright Term Extension) = 95 years).

13. B. 2047. Rule out answer A, as "life plus 70" applies to post-1977 works. Answer D is also incorrect, as 20 years has been added to terms otherwise consisting of 75 years. Answer E applies to pre-1978 works, but those which were copyrighted or published. The Sonny Bono Copyright Term Extension Act deemed an overall "clock" of 70 years beginning as of 1/1/78 to apply to pre-1977 works which were neither published or copyrighted before the 1976 Copyright Act went into effect on 1/1/78.

14. A = 2; B = 3; C = 1 Source: Apple.com

15. D. The Recording Industry Association of America (RIAA) condemned the ruling and expanded its legal efforts against illegal file sharers, bringing new copyright infringement lawsuits against hundred of individuals who have used a variety of peer-to-peer platforms, including eDonkey, Limewire, Grokster and Kazaa.

Stay tuned. The business keeps changing. If you discover any misinformation or misstatements herein, please contact me at Randall.Rumage@umusic.com.

Randall Rumage is V.P. of Business Affairs for Rondor Music International, Inc., a wholly-owned division of Universal Music Group.