



'Digital Rights: Facing the Music'

In a recent Law Society Gazette article, music and litigation partner Simon Baggs and music and technology partner Alexander Ross outlined some of the measures available to help the music industry protect their digital rights in the face of illegal downloading.

The article highlighted the differences in the approach to dealing with the problem in the UK in comparison with the US approach. The UK has taken a less aggressive approach with the BPI having brought 150 legal actions against individuals, which were settled for approximately £2,000; in comparison, the US has seen some 20,000 cases brought, including some high profile prosecutions of individuals which resulted in significant fines. Simon Baggs stated, "The UK has generally favoured education, and the primary motive in taking cases against individuals has been just that." He explains that the focus of the approach has been about "raising profile as a result of the cases in the hope that people under the threat of being sued would change their behaviour".

The recent raid on the suspected international music piracy website OiNK was given by Simon Baggs as an example of the clear message being sent to those involved in closed network file-sharing that "the powers of enforcement will be brought to bear on them, including criminal sanction".

The article considered the role of PRM, the legal and technical measure developed by the industry to protect legitimate online rights. Alexander Ross said, "The music industry appreciates that the public generally recoils from DRM ... Nonetheless, it must be able to protect its core product".

The appeal of DRM-free music is acknowledged. The article refers to one online music store which does offer its music DRM-free and which has attracted many of the indie labels and 300,000 subscribers Europe-wide. Alexander Ross notes that the DRM-free status is one of the reasons why the majors won't licence it at the moment but that the prospect of DRM-free music is an attractive route to the market for independent label.

The role which ISPs may have in policing web users in the long term is considered in the light of the Belgium court's ruling in Scarlet, whereby an ISP was given a deadline within which to install effective filtering technology for peer-to-peer technology on its network. Commenting on the sophistication of the technology, Simon Baggs noted, "Whether it is effective is a question of whether or not the ISP then stops them".

For further details see the Law Society Gazette (2007) LS Gaz, 29 Nov, 21.