



The Road To Black Monday

By Alan Wallace

Piracy and Webcasting led most of the discussions and keynotes for this year's Jupiter Plug-In, a conference dedicated to the embattled, ever-merging entertainment and technology industries. It also seemed to be a platform for continuing misinformation from the Recording Industry Association of America (RIAA).

The keynote speech by RIAA Chairman/CEO Hilary Rosen included comments that surprised many of those in attendance. For instance, in discussing the computer firm Gateway, Rosen stated that, shortly after Gateway's music advertising campaign, Gateway closed its record label. A bewildered Brad Shaw, Gateway's senior VP of marketing, said in a speech the next day that, not only was he surprised to learn that the Gateway record label had closed, he was not aware that the company had ever had one (they didn't, although they feature a partnership with eMusic).

Similarly, Rosen blasted "the guy from Beethoven.com" (presumed to be its spokesperson, Kevin Shively), when she stated that, during a U.S. Copyright Office hearing, Beethoven.com argued that it should not have to pay a performance royalty to record labels because terrestrial radio had an exemption. In a later interview, Shively denied ever having made such comments during the hearing and was shocked to learn what had been attributed to him.

With such misinformation presented to educated industry professionals at the Plug-In conference, you wonder what is said behind closed doors in Capitol Hill. Evidently (and fortunately), not everyone on the Hill is falling for the RIAA rhetoric. The day before Rosen's speech, Congressman Rick Boucher (D-VA) provided an uplifting keynote,

highlighted by his plan with Rep. Jay Inslee (D-DC) to help protect the nascent Internet Radio industry by introducing the "Internet Radio Fairness Act." After that appreciated speech, many in the audience were surprised at the following day's comments from Rosen, who forcefully discounted the bill and indicated that the IRFA had no chance to pass.

Whose Interests Are Paramount?

Ironically, in the week leading to the conference, musical star Michael Jackson rode a New York City tour bus to the Sony building, suggesting that it was the only way he could see Sony's offices; and singer Janis Ian said that when the record companies suggest that they are looking out for her financial interests, she holds onto her wallet. Yet, the RIAA, while representing the interests of the "Big Five" record labels, says it wants to protect artists with a high Digital Sound Recording Performance royalty rate ("CARP rate") to be paid by webcasters — even though many have already closed their doors, and many others are likely to file for bankruptcy protection. The RIAA says that, if it provides Internet radio a platform equal to that of terrestrial radio, which is without a performance royalty, it would then be subsidizing the fledgling Internet Radio industry.

Recently, John Simpson of Sound Exchange suggested that webcasters could now be blamed for the expression "you can get it for a song" — but wasn't it the record companies' record clubs that invented the concept of "13 albums for a penny"? Webcasters have not asked for a subsidy or even "13 albums for a penny." They want a working relationship that

would allow them to promote and sell music with royalty payments that are as fair as agreements already negotiated with such songwriters' performing rights organizations as ASCAP, BMI and SESAC.

Some record companies are helping Internet Radio grow. Artemis Records, home of Steve Earl, Graham Nash and Rickie Lee Jones, agreed to issue licenses to Internet Radio for one year for the master use of songs by all Artemis recording artists. Chairman and CEO Danny Goldberg and President Daniel Glass have stated the company will waive the royalty payments for one year, beginning August 1, 2002.

Although some people wonder what to expect of fees after that date, Goldberg said, "In allowing free use of our catalog at this early stage, we hope to stimulate the Internet radio format. Both Daniel Glass and I feel it to be an incredibly worthy marketing and promotional tool."

Vincent Peppe, director of licensing for classical record label Naxos of America Inc., is also reviewing company views on Internet radio. In an exclusive interview with *Streaming* magazine, Peppe said, "I believe that, first and foremost, the DMCA rates should reflect the true value of music to the webcasting community. At the same time, I believe that progressive record labels will consider granting reduced royalty rates to those webcasters that demonstrate their support of those labels and their artists."

Peppe also said: "Naxos understands that many webcasters are small operations run by independent, self-funded individuals who are passionate about unique music and committed to making it available to a wider audience.

Our label was founded by Klaus Heymann, an entrepreneur who for 15 years has been dedicated to a novel idea: making outstanding classical performances available to CD collectors at a reasonable price. Therefore, I believe that Naxos and webcasters may share some common ground. We are keeping the lines of communication open."

Last month, the California senate held a hearing focused on the "Accounting Practices of the Recording Industry." An internal RIAA memo — "leaked" to the press after the hearing — stated that the RIAA felt that they were not treated fairly and that they were cut off. A spokesperson for State Sen. Kevin Murray (D-Los Angeles) responded that RIAA representatives said they were leaving to catch a flight, and that, even though the session concerned accounting practices, RIAA failed to bring an accountant.

Appealing For Help

Twenty-three webcasters, including Live365, Radio Free Virgin, AOL, Listen.com, Beethoven.com and RadioIO have filed an appeal of the royalty ruling by the U.S. Copyright Office.

According to John Jeffrey, executive vice president of corporate strategy and general counsel for Live365 Inc.: "The appeal that has been filed will take too long to matter to most of the independent Internet radio stations. ... Unless the US Congress intervenes and

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changes the law through the Internet Radio Fairness Act or similar legislation by October 20, the fees will be due, and the damage will have been done for most of the webcasters."

Jeffrey says that October 21 will be "Black Monday for the independent voices of Internet Radio," and he predicts that: "The content you may find in late October may be very different than what you can find on your computer now."

The RIAA also filed an appeal, contending once again that the rate is not high enough.

As Rep. Inslee observed, "The fact that all parties have appealed this decision demonstrates clearly that the standard used to determine royalty rates is not working, and Congress must act expeditiously to correct it."

"Webcasters are what every artist not in the Top 20 needs," said Jon Potter, executive director of Digital Media Association (DiMA). "What's ironic is that the very labels who complain that they 'need' to pay independent promoters to get songs played on terrestrial radio stations are trying to stop

the best alternative. With fewer opportunities for artists to be heard, how can the RIAA claim that their actions are in the best interest of the artist?"

"If the RIAA's preference for the original CARP decision prevails," Potter continued, "it could severely dampen the growth of the Internet as a medium for music broadcasting. Internet radio is the only broadcast medium that artists have to receive compensation for their work. Undermining Internet radio, which is what prohibitively high royalty rates would do, is shortsighted and bad for the artists, bad for consumers, bad for webcasters, and even bad for the labels.

"Congress erred when it created the 'willing buyer/willing seller' standard for determining rates, and we will continue our work to change the standard and ensure that we have a 'fair but not free' Internet royalty rate."

Wouldn't it be nice if the willing buyer could find a willing seller? ☉

Alan Wallace, formerly senior vice president of communications for Live365.com, may be contacted via his website, www.alanwallace.com/business.



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