

THESE CHAINS DON'T BIND

The RIAA's heavy-handed tactics are doomed to fail.

By Peter K. Yu

The recording industry could learn a great deal from the mistakes of the United States government in its pursuit of Chinese IP pirates. Only a decade ago, the U.S. copyright industries lobbied the government to use strong-armed tactics to coerce China into protecting IP. At the time, U.S. industries were losing about \$2 billion annually to piracy in China. To protect its businesses, the U.S. government adopted a coercive policy. It threatened China repeatedly with economic sanctions, trade wars, non-renewal of most favored nation status, and opposition to China's entry into the World Trade Organization.

The U.S.'s efforts resulted in a cycle of futility, which began with trade sanctions from the U.S., followed by countersanctions from China and an eleventh-hour IP agreement. Although IP protection initially improved, the problem soon revived. The U.S. fostered resentment among the Chinese people, and made the Chinese government more reluctant to adopt Western intellectual property law reforms.

By the mid-1990s, it had become obvious that the U.S.-China IP policy was ineffective, misguided, and self-deluding. The coercive tactics had created disastrous—and perhaps unintended—consequences that spilled over into other areas, such as international trade, human rights, civil liberties, and the rule of law. The Clinton administration lost support from the American business community and soon backed away from its policy.

The recording industry is making the same mistakes today. Instead of bringing file swappers into the fold, the industry has antagonized consumers by fighting battles everywhere—against legal scholars, college researchers, universities, students, cryptographers, technology developers, civil libertarians, hackers, and, ultimately, its own customers. Most recently, the industry sued 261 individuals who illegally downloaded and distributed a large amount of copyrighted music.

Today, the Recording Industry Association of America's tactics have alienated its major supporters, just as the Clinton administration alienated the U.S. business community a decade ago. The RIAA initially was able to solicit support from the computer and consumer electronics industries for the 1998 Digital Millennium Copyright Act, but these groups soon expressed regret and disappointment over the development and interpretation of the DMCA. Even Congress, known for being protective of the entertainment industry, is losing patience. Most recently, Senator Norm Coleman of Minnesota called for congressional hearings to investigate the industry's enforcement tactics and to examine whether the RIAA, in its pursuit of individual pirates, abused the DMCA's subpoena powers.

Although the RIAA intends to coax offenders into submission, its actions will eventually drive pirates underground. Already a variety of technologies exist that enable users to hide their identity. Freenet software (freenet.sourceforge.net), for example, allows file swappers to encrypt download requests, making it difficult for others to determine where and how a file was obtained.

It is high time that the recording industry reassesses its enforcement strategy and thinks hard about its long-term goal. If the industry fails to do so, then it will soon find itself sing the blues.

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