

The day the downloads died?



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By Barbara Taormina
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Boston -

Odds are better than even that Jammie Thomas won't buy a CD again for the rest of her life. Even if she can get past the bitterness of being sued by the Recording Industry Association of America for illegally sharing music over the Internet, the single mother of two might not have a lot of spare cash.

A Minnesota jury last week found Thomas guilty of copyright infringement and ordered her to pay \$220,000 for 24 songs she shared on Kazaa, a file sharing network that lets users swap their music and videos online. Thomas now owes \$9,250 apiece for the songs by Bryan Adams, Vanessa Williams and Journey.

The RIAA, an umbrella organization that represents most major record labels and distributors, did a little laid-back gloating over the victory, the first actual jury verdict after years of fighting online piracy.

"This does send a message, I hope, that downloading and distributing our recordings is not OK," said Richard Gabriel, a lawyer for the music companies. But it's not clear who exactly got the message.

Thomas has announced she plans to appeal the decision and her Web site, freejammie.com, has already racked up \$10,074 in donations to continue the fight in court. In a short YouTube video, she says her goal is to show the RIAA that she's not backing down.

"I am still here and I will be a thorn in their sides for the rest of my life for what they did to me and thousands of other people," says a soft-spoken Thomas as she holds up a sign that gives her new Web site address.

Meanwhile, the millions of Americans who upload and download music every day using services like Bearshare, LimeWire and Morpheus — well, they're still uploading and downloading.

"It's sharing, like borrowing someone else's CDs," insists Amy, a 19-year-old student at North Shore Community College who has a Zune loaded with music courtesy of LimeWire. And Amy isn't really concerned that the RIAA might someday track her down and force her to pay up.

"I'm not worried about it," she says. "I don't really think that will happen to me. Isn't that what everyone my age thinks?"

Well, not everyone. The roughly 26,000 people who have already received notices from the RIAA probably aren't feeling quite that invincible. Many of those cases have already been settled out of court for fines that generally range from \$1,500 to \$5,000.

Some have questioned the RIAA tactics, insisting they are strong-arming their own customers. One of the association's biggest targets has been college campuses where cash-strapped and tech-savvy students often turn to their computers for their music.

Others suggest the recording industry itself is partially responsible for the illegal downloading frenzy because of its failure to keep up with new technologies. And many complain about the music. Too many recent CDs have a couple of good tracks and 30 minutes of banal B-side filler that only the most die-hard fans of a group or artist can love.

But that's neither here nor there, according to the RIAA — they claim they've lost around \$12 billion and about 71,000 jobs because of online pirates. And they say the Thomas case is just the beginning. They've already sent out a new batch of pre-litigation letters to 22 colleges across the country, including MIT and UMass-Amherst and Boston. The association has also filed 24 new copyright infringement lawsuits against students who have ignored letters inviting them to settle cases.

As the RIAA puts it, downloading songs without permission is — plain and simple — stealing, and they intend to go after as many people as it takes to stop it — or at least slow it down.

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Illegal? Who knew?

One of the first things you notice when you log onto Bearshare, a popular site for trading music files, is a small stamp with the message "Legal P2P." And again, in its FAQ section, Bearshare assures users they won't end up in court if they download the file-sharing program.

And they're right. There isn't anything wrong with peer-to-peer file sharing programs that allow users to swap their stuff online. With Bearshare, every user has a library folder and you can download things from any and all of the hundreds of thousands of folders in the network.

Meanwhile, if someone wants what you've got in your library, they select it and you immediately start uploading your files. So far, so good. But it's what they're swapping that's the problem.

Antoinette Giugliano, a Beverly lawyer who specializes in copyright and patent law, says a lot of people simply don't make the distinction between what's legal and illegal to swap.

"There's a difference between the programs and the end users," says Giugliano. "The programs are legal and you can share your own music, your home videos, lots of things." But you can't share music files protected by copyrights.

But other critics watching the Thomas case say it's the definition of sharing or distributing that may be her strongest card in an appeal. Even if she did have a library, or a folder of songs on Kazaa, there's no evidence that anyone came along and downloaded them — no evidence that she distributed copy-written material.

The RIAA won this round with Thomas based on the notion that she made the songs available online — they didn't have to prove anything beyond that. Several courts and judges in other cases have already ruled that you have to prove copying, or in this case, uploading took place before you can prove copyright infringement.

With that in mind, some P2P users are careful to move or hide their files so they can't be uploaded by other users, and a lot of programs give you the option of blocking others within the network from reaching into your files. But the vast majority feel that P2P is a share and share alike world — which is, of course, what makes it all work.

Giugliano, who represented a couple of local people several years back during one of the RIAA's earlier assaults on illegal downloaders, says you really have to look at who's using the P2P networks.

"A lot of these people are high school kids who have no idea about what they're doing," she says.

But a failure to be conversant on the latest intricacies of copyright law isn't going to win any hearts at the RIAA. The association has sued 13- and 14-year-olds along with a dead 83-year-old grandmother.

Still, a lot of people, teens included, have a small voice in the back of their heads that tells them something isn't quite right with downloading music. Everyone knows there are sites like iTunes and

Amazon where you can pay 99 cents or less for a song and listen without worrying. Ultimately, however, economics seems to win out.

"Why would I pay for something I can get for free?" asks Mark, a 17-year-old from Gloucester who has downloaded hundreds of songs. He's heard of the Thomas case but really didn't pay much attention, and he says it's not enough to stop him from hitting LimeWire a couple times a week .

Jen, another student at North Shore Community College, says she's also downloaded hundreds of songs and the Thomas case isn't going to change anything. And she doesn't feel guilty about it.

"Whoever paid for the music initially put it on the Internet to share, so why shouldn't I take it, and why would I pay?" she asks.

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Big losses?

In its heyday, Mystery Train was a chain of used records stores throughout the state with shops in Cambridge and Amherst. But over the years, most of the stores have been sold and these days, owner Jack Evans is happy running just one huge place in Gloucester.

Evans doesn't think the trend of downloading music has really affected his business much.

"I'm not like a regular record store," he says. "I'm not trying to sell new stuff. Most of the people I deal with are people who collect music. They want to own the physical product."

And in fact, even on a chilly Monday morning this week, there were plenty of people browsing through bins of old vinyl and checking out racks of used CDs.

Still, Evans feels that overall, downloading has changed the music industry. "I would have to say there are people who just don't buy music anymore," he says.

And that's what's so troubling to the RIAA. They say the financial hit they've taken from illegal

downloading is huge. They estimate it's about \$12 billion — others have slightly different numbers, but they're all pretty high.

But a lot of RIAA critics say the numbers aren't real. They argue that not every illegal download can be tallied as a lost sale for the recording industry.

And a lot of P2P users say they would take a pass on many songs if they had to pay.

"I download a lot of songs just to hear them," says Amy. "And a lot of times I never listen to them again."

But does downloading keep Amy out of record stores?

"Not at all," she says. "I still buy CDs. If I really like the person or the band I want to have the CD."

Still, Evans believes that downloading music, both legally and illegally, has changed music consumption.

"It's almost like it was back in the '50s," says Evans. "In those days, singles were the main format. Albums with a theme and an idea were something that started more in the '60s. In a way, we're going back."

No doubt iPods and Mp3 players that hold 500, 1,000 or 15,000 songs seemed geared towards quick switches, singles and short attention spans.

"You can put 10,000 songs on a iPod," says Paul Bazylnski, who works at the Record Exchange, another used record store that has been drawing customers and collectors to Salem for more than 30 years. "How do you listen to 10,000 songs?"

Like Evans, Bazylnski caters to music aficionados who want the real thing, so it's a little hard to gauge the impact of illegal downloading on business. But he agrees that downloading has changed music culture.

Both Bazylnski and Jimmy Beaudry, who also works at the store, say they remember the days when it was a big deal to see a new album by Dylan or the Beatles.

"It was like Christmas," says Beaudry. But those were the days when you actually sat down and listened to an album start to finish. Nowadays, music is fast, portable, something that's on in the background.

And Evans says there may be still another reason that people are shifting from buying CDs to downloading singles.

"Some people would say it's because the music just isn't of a high enough quality anymore," says Evans. And most music fans have paid out \$15 for a CD that ends up having just one or two songs worth playing. That may be because, with so many choices out there, artists feel compelled to keep releasing CDs even if they don't have 45 minutes worth of good music to justify the release.

Of course, musicians might disagree with that. But even many of them seem to have mixed feelings about illegal downloading.

Salem's Barrence Whitfield, singer extraordinaire, says on one hand the Internet has allowed new bands to grab a lot of attention and exposure that they wouldn't have gotten through the traditional route of recording, releasing and selling CDs.

Still, Whitfield says he'd like to be paid when someone downloads his music. But the fact of the matter is, artists don't really make that much money on recordings. The lion's share goes to the record companies with their sound engineers, their mixers and their promoters.

"The artists who make the music don't make money on the recordings," says Whitfield.

Although that's been a long-standing complaint against the recording industry, this week the British rock band Radiohead struck back in a big way. On Oct. 10, they unveiled their new 10-song album, "In Rainbows" on their Web site and fans were welcomed to download it and pay either nothing or whatever they thought the music was worth.

Early reports say the majority of fans were kicking in about \$10 each for the album — not bad, since the band effectively cut out the middlemen in the recording industry.

Other big name bands like Oasis, Jamiroquai and the Charlatans say they are now also considering a Radiohead type release of their music.

Those statements had to have been a huge buzz kill for the RIAA after winning so big with Thomas. If that's the trend in the making, than Radiohead may have whacked out the first notes in the death knell of both the RIAA and the P2P file sharing networks — they may both eventually become obsolete.

But in the meantime, what's a music fan with 10,000 slots on an iPod supposed to do? Download and pay, or share files and hold his or her breath hoping the RIAA never finds them?

Giugliano, the copyright lawyer from Beverly, says it's better to play it safe and avoid any potential heartbreak.

"Don't do it, don't download songs illegally — just buy the music, just pay for it," she says. "That way, you can sleep at night."

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