

COMPETITION

Why the Recording Industry Really Stopped Suing Its Customers

by David Silverman

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The RIAA (Recording Industry Association of America) has announced that they're going to stop suing people for pirating music on P2P networks. For people under 30 years old, this has been the cause of much rejoicing. For those over 30, it may come as a surprise that the record companies were suing random individuals for sharing MP3s in the first place.

So they've stopped suing customers. Does this mean the beginning of music companies singing (and file sharing) barbershop harmonies with the likes of BitTorrent, Limewire and Kazaa?

To find out, the first question must be: what did the RIAA hope to gain from the lawsuits in the first place? It couldn't have been for the financial gain. Not only did they lose as often as they won, but many of their intended victims didn't even bother to show up in court. It wasn't for the artists. Musicians weren't seeing any benefit and wondered aloud what happened to the money that was collected because it certainly wasn't sent to them.

The intended goal then was just one: frighten the general public into not copying music. As an example, witness the threatening remains of the filing sharing site eDonkey:

If you steal music or movies, you are breaking the law.

And then it tells you your IP address has been logged.

So is the RIAA stopping lawsuits because it wasn't achieving that goal? Hardly. Or rather, in 5 years and over 35,000 lawsuits, it hasn't gotten anywhere near frightening people away from file sharing. It's been estimated that tens of millions of people are exchanging illicit files at this moment.

And this moment.

And now, too.

Nabbing a fraction of a percent of the offenders might be worthwhile if that didn't include the children, computer-less, homeless, and dead people that they sued. To be blunt, the lawsuits were unabashedly ineffective, counterproductive, and, an PR morass that make La Brea look like a sticky mud puddle. They wiped out college savings accounts, attempted to get elementary school students to rat on their parents, and descended on parking attendants with full SWAT team armor. The only way for the RIAA to make worse PR for the music industry would have been to threaten to wipe out the hard drives of every person who's got an MP3, any MP3, because it might be an illicit copy of "The Night They Drove Old Dixie Down" – oh wait, they did that too.

At every turn, RIAA lawyers argued that such mistakes paled in comparison to the damage done to their corporate clients – billions of allegedly lost dollars – as if every downloader would have purchased the song if P2P didn't exist. Hey, so their tactics didn't distinguish between felons and bystanders. In their defense, they said, "When you fish with a net, you are going to catch a few dolphins." With Ziploc-tight reasoning like that, it would seem that nothing would ever stop their lawsuit juggernaut.

Which is why they never intended on stopping.

The Stupidity Express was brought to its final stop for one powerful reason: money. They ran out of it. Lawsuits are expensive, and with the financial crisis combined with the fall in recorded music sales, the record companies (Warner, EMI, Sony, etc.) who fund the RIAA have been cutting back on their contributions and threatening to erase the organization completely.

The truth is, even with falling sales the record companies haven't accepted the reality that music copying is here to stay. As an example, in the same paragraph that the RIAA stops threatening you personally with lawsuits, they switch to threatening your Internet connection. The RIAA won't sue you, they'll sue Comcast for not being vigilantes of copyright. The logic here is that they can launch fewer lawsuits, save some cash, and still stop you from BitTorrent-ing "Tiny Bubbles." Which is just as stupid.

It would be easy to stand back from the fray and say that the record companies should be smarter and figure out how to change their business model to adapt. But for anyone who's ever worked in a corporation, with its hierarchy, politics, and rewards for immediate results knows that calling the established practices (and therefore your bosses) wrongheaded usually leads to working in a cubicle in the satellite office in Reseda.

That's why it's better for the average record exec to suggest that MP3 players be taxed to make up revenue shortfalls. Or that putting the Beatles or AC/DC on iTunes is wrongheaded – as if that will keep people buying albums. Or to use a tried-and-true strategy for falling profits: raise the price of CDs and downloads. In this, the real world, the record companies can and will try to use everything – even the law – to halt technology, rather than change themselves. Even if it seems insane to the rest of us.

What happens next is what happens to all companies beholden to technology. Railroad eclipsed by trucks. Radio relegated to top 40, oldies and edge-of-the-dial Pentecostals by television. The worldwide transport of blocks of ice evaporated by home refrigeration. Whale oil, buggy whips, petticoats, stone axes, and so on.* All were responsible for wealth ranging from the mansions of Newport to the best burial mound on the Steppe at one time, and now are all equally dead and gone.

At the moment, record companies are still making some people rich enough to buy gold coffins and as long as that's true, the end of RIAA's lawsuits isn't about music companies embracing digital. It means business as usual, as they try to keep an old way of business and its obsolete technology on life support. Maybe someday, someone will figure out how to keep music and commerce together and alive, but that day isn't today.**

*This is a bronze age orientation sketch by Mitchell and Webb for two stone age workers. Favorite quote: "Smelting may be fine for the lads."

**As mentioned previously in this blog, one of the people hoping to do that is me, with my startup Jamseed. And one of the things I have going for me is being an outsider and not caught up trying to preserve the past.




David Silverman has had ten careers so far, including entrepreneur, executive, and business writing professor. He is the author of *Typo: The Last American Typesetter or How I Made and Lost 4 Million Dollars* and of the April 2011 HBR article, *Synthesis: Constructive Confessions*.

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