Build A Niche: Investigating Music Privacy
By Glenn Eiden

Music piracy has risen to epidemic proportions in the last five years. Current losses due to music piracy in the United States is estimated at over a million dollars a day and close to four hundred million each year. Worldwide, the loss to the music industry is in the billions. The music genre being illegally copied is not limited to contemporary English music artists, but also includes Latin, Indian and Arabic.

This article will explore the reasons behind the explosive growth in music piracy, how it is accomplished, who engages in the activity, identification of the different forms of music piracy, laws that address this illegal activity, and information on how private investigators can expand their practices by assisting in the fight against music piracy.

Legal music offered for sale today is produced at record manufacturing facilities. After creating a composition, the artist and record companies will have the music pressed, using a master. From the master, the manufacturing process can create thousands of music compact disks (CDs), currently the preferred format for physical music distribution.

With the recent advances in technology to reproduce music, and the reduced cost of this equipment, it is now possible for individuals to purchase the equipment and to mass-produce illegal compact disk recordable music. The blank compact disk recordables (CDRs) have also dropped in price, making the mass production of illegal copies extremely profitable. A CDR is a premade disk that can be purchased in quantities from numerous outlets; the music is then transferred from a legal CD into a digital music file and then downloaded or “burned” onto the blank CDR. The size of the illegal operation is then determined by two major factors: the number of “burners,” and the speed of the “burners” to transfer the digital music onto the CDRs.

Generally speaking, sound recording piracy is the illegal duplication and distribution of sound recordings. The illegal activity is defined by four specific acts.

1. **Piracy:** the unauthorized duplication of sound contained in legitimate music recordings.

2. **Counterfeiting:** the unauthorized duplication of the original graphics, which include the label and trademark, of the manufacturer.

3. **Bootlegging:** the unauthorized recording of a live performance (concert) or broadcast on radio and television.

4. **Online Piracy:** the unauthorized duplication of sound recording offered in environments, such as the Internet.
Common characteristics of illegal sound recordings include

- Graphics are blurry, with poor color quality.
- Price is approximately a third of the cost of a legal sound recording.
- Point of sale. The illegal recording will be sold at areas where legitimate recordings are not usually sold, including but not limited to swap meets, street vendors and flea markets.
- Packaging. The music recording will not contain liner notes.
- Format. The sound recording has been “burned” to a CDR format.

Laws

Anti-Piracy laws to address this illegal activity are in place at both the Federal and State level. Federal laws can be found under Title 17, USC, Section 101, which recognizes copyright infringement of a sound recording as a violation. Four additional federal laws to protect the artists and record companies are:

- Title 18 USC 2318, trafficking in counterfeit labels,
- 18 USC 2319, copyright infringement,
- 18 USC 2319 (A) unauthorized duplication of a live performance,
- 18 USC 2320, trafficking in counterfeit goods.

The laws have sentencing penalties up to 5 years in jail and thousands of dollars in fines. Additionally, smuggling, conspiracy and mail fraud can be charged, if warranted.

Individual states also recognize this activity to be illegal, under specific fraud statutes, and laws commonly referred to as true name and address (TN&A), or consumer fraud statutes.

While some of the less informed think copyright and trademark laws only protect the few and the wealthy, in fact there are many victims of music piracy who deserve and demand protection. Some of those victims are:

- Consumers, who are subject to poor quality, and non-returnable music disks;
- Artists, musicians, songwriters, and producers, who express their creative energy to produce music recordings, are denied their royalties, and fees;
- Retailers and distributors who lose sales because of music pirates;
• Taxpayers (you and me) because the music pirate evades the payment of both sales and income tax, which also hurts the state economy.

• Record companies are also affected by the music pirate. Approximately eighty-five percent of all sound recordings produced fail to make back their production costs. Therefore, the income derived from the fifteen percent of sound recordings that are successful are used to subsidize less profitable types of music, and to cover the costs of developing new artists.

It is the profitable recordings that the pirates copy, not taking any risks. The music pirate does not expend any money in advertising or associated promotional costs. The music pirate does not pay taxes. The music pirate brings nothing to the table except greed.

The Recording Industry Association of America’s (RIAA) Anti-Piracy Unit (APU) works with law enforcement and prosecutors to stem the flow of this illegal activity. As a trade association, the RIAA represents members who produce, manufacture and distribute approximately ninety percent of all legitimate recorded music created in the United States.

For more information on the RIAA, and the fight against sound piracy, visit their website at [www.riaa.com](http://www.riaa.com). Complaints of illegal activity can be directed to a toll free 1-800-BAD BEAT telephone number, or email to badbeat@riaa.com.

The International Federation of Phonographic Industries (IFPI) sets standards and monitors sound recording piracy at the international level with over one hundred fifty-seven countries participating. Inquiries to the IFPI can be made to Isabelle Betsy, Executive Administrator, at isabelle.betsy@ifpi.org.

Private investigators have also been involved in fighting music piracy. Many agencies have developed a specialty that has been both financially and professionally rewarding. However it is important to note that a successful prosecution of music pirates can be tricky and must involve cooperation on a number of levels. Therefore, it is essential that once music piracy is identified, the responsible RIAA Regional Director for that area should be contacted immediately to obtain further instructions on how to proceed.

Successful anti-piracy programs rely on detection and enforcement. Evidence of music piracy is usually first detected at various points of sale that include:

• **Flea markets**, both indoor permanent booths and open air spaces, should be checked, recording the booth number and identification of subjects and vehicles. A concealed videocamera will capture the sale, and subject for later positive identification.

• **Malls** traditionally have small specialty carts that will offer pirateatical music for sale. Recently, it has been found that the carts will have legitimate music CDs
on the racks. On the counter will be binders that will have a listing of all the illegal piratical music compilations. A compilation is a music CDR that contains the music of multiple artists. The piratical CDRs are maintained under the counter.

• **Small retail stores** have also followed this same modus operandi (MO), in the sale of piratical music.

• **Ethnic Festivals** have been found to contain booths operated by music pirates. These locations will traditionally be open only for several days. Therefore it is imperative that these events be identified in advance, with input from local enforcement who must take into consideration logistics, such as the size of the crowd, and the strain on personnel resources.

• **Street vendors** are extremely mobile, and move frequently due to police patrol, and volume of sales. High traffic pedestrian and motor vehicle traffic will determine the best chance of detecting these individuals. Many street vendors are aware when individuals get paid, so they locate themselves in close proximity to currency exchanges. In some climates that experience harsh winter weather, street vendors many disappear until spring, summer, and fall.

The objective of any investigation regarding music piracy is to identify and determine the location where the illegal product is being manufactured. Once the sale of pirated music is detected, traditional investigative techniques are utilized to “move up the chain” to identify the manufacturer or wholesaler. Those techniques include surveillance, undercover buys, trash searches, and informants. In the effort to develop probable cause for a search warrant, a trash run would be successful if blank CDR spindles, paper cut from around the insert cards, and damaged CDRs are recovered (one person’s garbage is another person’s probable cause).

Undercover buys should begin with small purchases, using an appropriate, suitable and legal pretext. Larger purchases can be negotiated in an attempt to identify the manufacturing source, and a large quantity buy/bust, if discreet, may have the cooperating subject lead the investigator back to the manufacturing source.

The proper use of cooperating subjects and informants is critical in the identification, and subsequent arrest and seizure, of large manufacturers, and wholesalers of piratical music. It is these types of cases that have the greatest impact on illegal sales, and generate positive media exposure, as well as being interesting, and rewarding prosecutions.

Although criminal action sends a strong message, and acts as a deterrent to the violator, other actions are not to be overlooked. The service of cease and desist (C&D) letters, voluntary surrenders, and civil lawsuits should also be utilized. Another effective enforcement technique is raids at flea markets and shopping districts where there are several sellers in the immediate vicinity of one another. These raids require prior
coordination with appropriate law enforcement officials, as well as meticulous planning. They are best coordinated by the RIAA personnel who have considerable experience in planning and executing them.

In numerous cases, violations involving sound piracy often result in the discovery of other violations of law.

On April 5, 2001, Randy Williamson pled guilty and was sentenced to seventeen and a half years in a Plainview, Texas jail for conspiracy and smuggling related to criminal copyright and trademark infringement. Williamson had masterminded a sophisticated manufacturing operation selling CDRs. Impacting the sentence was the discovery, during the search, of more than one hundred pornographic images of children. The Texas Department of Public Safety, the US Customs Service and the US Attorney’s Office conducted this investigation.

In April 2003, the US Custom Service Office of Investigations, in Chicago; and Senior Special Agent Perry Woo, in conjunction with the Cook County (Illinois) Sheriff’s Police Special Operations and Intelligence Unit, executed three federal search warrants on East Indian record establishments, and seized approximately 34,000 infringing sound recordings. Using an established formula of an approximate value of fifteen dollars for every displaced sale, there was an estimated loss to the industry of five hundred and ten thousand dollars. Judicial action is pending.

On May 16, 2001, IFPI Taiwan enforcement team seized seventy thousand piratical optical discs, forty-one firearms and eleven CDR burning towers. Seven individuals were arrested and charged with music piracy.

Music piracy is a serious crime. With the pressure of increased workloads on local and federal law enforcement agencies, it is incumbent upon the private sector, including agencies such as the RIAA and private investigators, to work together to develop appropriate cases for prosecution. In becoming acquainted with the problem and some solutions, today’s private investigator can both help provide a valuable public service and develop a niche service that will be both professionally and financially rewarding.

IF you like what you just read, this article is now part of a new NAIS training manual called PIRACY INVESTIGATION FOR PRIVATE INVESTIGATORS! You will love it! It covers the booming areas of Cable Piracy Investigations, Music Piracy Investigations, Motion Picture Piracy Investigations, Software Piracy Investigations and a lot more. Click here for review.

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