

NEW YEAR, NEW CATCH-22: WHY THE RIAA'S PROPOSED PARTNERSHIP WITH ISPS WILL NOT SIGNIFICANTLY DECREASE THE PREVALENCE OF P2P MUSIC FILE SHARING

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I. INTRODUCTION

In 2003, the Recording Industry Association of America (RIAA) launched its user litigation initiative, which instituted lawsuits against individuals who used peer-to-peer (P2P) file sharing software to download copyrighted digital music files online.¹ By 2008—nearly five years and approximately 35,000 lawsuits later—many critics asserted that the RIAA litigation plan “did little to stem the tide of illegally downloaded music.”² For example, one report conducted by the NPD Group found that 19% of Internet subscribers in the United States downloaded copyrighted music using P2P services—only 1% less than the 20% reported when the RIAA first began its campaign.³ Further, the number of files shared on P2P sites increased in 2008.⁴

In mid-December 2008, the RIAA announced that it had not initiated any new lawsuits since August 2008 because it had decided to end its user litigation campaign against consumers.⁵ While the RIAA will continue

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1. Susan Butler, *Casting the Net: The RIAA Provides an Inside Glimpse into its Battle Against Illegal File Sharing*, BILLBOARD, June 14, 2008, at 10.

2. Sara McBride & Ethan Smith, *Music Industry to Abandon Mass Suits*, PITT. POST-GAZETTE, Dec. 20, 2008, at C8.

3. Butler, *supra* note 1.

4. Antone Gonsalves, *RIAA Taps ISPs to Fight Illegal Downloads*, INFORMATION WEEK, Dec. 19, 2008, <http://www.informationweek.com/story/showArticle.jhtml?articleID=212501507>.

5. Editorial, *A New Tune: Lawsuits Against Music Pirates Too Often Miss Their Mark. So the Major Labels Are Changing Tactics*, L.A. TIMES, Dec. 20, 2008, at A30 [hereinafter *A New*