



6-22-2010

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Recommended Citation

Matthew Hofmeister, *RIAA and Online Piracy: Why Bundling Access to Digital Music with Other Products and Services Would Give the Industry Greater Control over Downloading*, 30 Loy. L.A. Ent. L. Rev. 565 (2010).

Available at: <https://digitalcommons.lmu.edu/elr/vol30/iss3/6>

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THE RIAA AND ONLINE PIRACY: WHY BUNDLING ACCESS TO DIGITAL MUSIC WITH OTHER PRODUCTS AND SERVICES WOULD GIVE THE INDUSTRY GREATER CONTROL OVER DOWNLOADING

I. INTRODUCTION

Digital music piracy has become nothing short of a national pastime for youths in the United States. It is estimated that ninety-six percent of people between the ages of eighteen and twenty-four have illegally copied music in some form and that youths' MP3 players contain around 800 illegally copied songs on average.¹ Yet, while the digitalization of music may seem to be little more than a harbinger of lawsuits, lost profits, and policy struggles, music companies' global revenues from digital music sales in 2008 reached a new high of \$3.7 billion.² A legal digital music market led by online stores like iTunes and AmazonMP3 has emerged. Music downloads are not an inherent evil, nor will they forever harm the music industry because of lost CD sales. Rather, downloads could be highly profitable for the music industry, even if the industry was only able to collect money from the remaining five percent of legal music consumers.³

In 2003, the Recording Industry Association of America (RIAA), the representative of the major United States record labels,⁴ began attacking online music piracy by filing mass lawsuits against individuals who allegedly transferred music illegally.⁵ Five years and 35,000 lawsuits later, this approach proved to be inefficient: costs were high, negative publicity

1. Dan Sabbagh, *Average Teenager's iPod Has 800 Illegal Music Tracks*, TIMES (LONDON), June 16, 2008, at 13 (referencing Michael Filby, *File-Sharers: Criminals, Civil Wrongdoers or the Saviours of the Entertainment Industry? A Research Study into Behaviour, Motivational Rationale & Legal Perception Relating to Cyber Piracy*, 5 HERTFORDSHIRE L.J. 2, 23 (2007), available at http://www.herts.ac.uk/fms/documents/schools/law/HLJ_V511_Filby.pdf).

2. INT'L FED'N OF THE PHONOGRAPHIC INDUS., IFPI DIGITAL MUSIC REPORT 2009 4 (2009), available at <http://www.ifpi.org/content/library/DMR2009.pdf> [hereinafter DMR 2009].

3. *Id.* at 3 (stating that ninety-five percent of all music downloads today are illegal).

4. See RIAA: Who We Are, <http://www.riaa.com/aboutus.php> (last visited Jan. 4, 2010).

5. Sarah McBride & Ethan Smith, *Music Industry to Abandon Mass Suits*, WALL ST. J., Dec. 19, 2008, at B1.

marred the industry's image, and it did not sufficiently deter piracy.⁶ In light of this, the RIAA announced in December 2008 that it was ending its mass suit approach in favor of agreements in principle with Internet Service Providers (ISPs), whereby ISPs will suspend or terminate Internet users' service after repeated RIAA notices of alleged piracy.⁷

While the logistics of this strategy remain to be seen, Part II of this Note argues that it will not achieve its desired effect on the digital music market and may not even be legal insofar as it unreasonably restricts users' access to legal online content. Part III argues that the RIAA should shift its focus to widespread licensing agreements with ISPs and other retailers whereby digital music downloads and streams are either bundled with other products and services or sold as separate subscriptions. This strategy would compel ISPs and retailers to compete to acquire licenses and to offer consumers the best deals because, as examples in Europe reveal, products and services inclusive of access to music are more desirable to consumers.⁸ This competition would in turn make licensing more profitable for the RIAA and make legal digital music a more appealing and affordable alternative to piracy.

II. THE RIAA'S FLAWED NEW DEAL

A year has now elapsed since the RIAA disclosed its new antipiracy strategy and yet there are still no formal ISP collaborations in place.⁹ Although major ISPs like Comcast, AT&T, and Verizon now send warning notices to alleged infringers, none have bound themselves to restricting Internet access after a certain number of warnings.¹⁰ Many have even publicly refused to do so without a court order,¹¹ and understandably so. There are a plethora of reasons why ISPs should not systematically restrict users' Internet service pursuant only to RIAA infringement allegations. This Part first sets the stage for an analysis of the RIAA's new ISP collaboration plan by noting how the RIAA detects online music piracy. It then argues that the new plan should be scrapped because RIAA infringement allegations are often unfounded, are insufficient grounds for

6. *See id.*

7. *Id.*

8. *See* DMR 2009, *supra* note 2, at 6–10 (noting how ISPs and retailers have profited from bundling access to music with their products and services).

9. *See* Greg Sandoval, *A Year Out, Where's RIAA's Promised ISP Help?*, CNET NEWS, Dec. 23, 2009, http://news.cnet.com/8301-31001_3-10420803-261.html.

10. *Id.*

11. *Id.*

restricting users' Internet access, and are inefficient means for deterring piracy absent a more expansive and affordable legal digital music market.

A. Detection of Online Piracy

Online music piracy usually occurs on peer-to-peer networks (P2Ps),¹² which are applications enabling Internet users to search for and download songs from other users' shared music libraries. Companies such as Media Sentry developed software to track this process and are hired by the RIAA as private investigators.¹³ The software searches for songs on a P2P network and compares the data "fingerprints" of the files in the results list to the fingerprints of copyrighted songs in its database.¹⁴ Matches indicate that copyrighted songs are being made available for download without permission.¹⁵

Though P2P users' actual identities are hidden, upon locating a copyrighted song being made available for download, the software can identify that user's Internet Protocol (IP) address and, in turn, his or her ISP.¹⁶ If the RIAA wants to sue that individual for copyright infringement insofar as he or she infringed the copyright holder's exclusive right to distribute the work,¹⁷ it must ask the ISP to disclose the actual identity of the user with that IP address.¹⁸ Alternatively, the RIAA can have the ISP take down the infringing content as provided under the Digital Millennium Copyright Act of 1998 (DMCA).¹⁹ Under its new plan, the RIAA would instead have ISPs forward warning notices to alleged infringers.²⁰ Pursuant to contractual RIAA-ISP agreements, ISPs would restrict users' Internet access after approximately three RIAA warnings.²¹ Agreements would

12. INT'L FED'N OF THE PHONOGRAPHIC INDUS., DIGITAL MUSIC REPORT 2008 19 (2008), available at <http://www.ifpi.org/content/library/dmr2008.pdf> (stating that "P2P file-sharing still accounts for the large bulk of digital piracy").

13. See Catherine Rampell, *How It Does It: The RIAA Explains How it Catches Alleged Music Pirates*, CHRONICLE HIGHER EDUC., May 13, 2008, available at <http://chronicle.com/article/How-It-Does-It-The-RIAA-Ex/786>.

14. See *id.*

15. See *id.*

16. See *id.*

17. 17 U.S.C. § 106(3) (2002).

18. See Rampell, *supra* note 13.

19. U.S. COPYRIGHT OFFICE, DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998: U.S.

COPYRIGHT OFFICE SUMMARY 11 (2008), available at

<http://www.copyright.gov/legislation/dmca.pdf> ("Upon receiving proper notification of claimed infringement, the provider must expeditiously take down or block access to the material.").

20. See McBride & Smith, *supra* note 5, at B1.

21. *Id.*

likely include some sort of appeals process or ISP review of allegations.²²

B. *The Inaccuracy of RIAA Infringement Allegations*

One problem with the RIAA's enforcement methods stems from the difference between making music available and actually distributing it.²³ Whereas the software used by RIAA private investigators in recent years only detects that copyrighted songs are being made available, i.e. copies of a song appeared in a P2P search for the song title, the Copyright Act only states that copyright holders have the exclusive right to *distribute* their work.²⁴ The plain-language meanings of "making available" and "distributing" indicate that proof of the former does not equate to proof of the latter. Therefore, P2P users are arguably not liable for infringement simply by making copyrighted music available for download. Realistically, of course, P2P users almost certainly intend to, and do eventually, distribute the music they make available. Courts have been inconsistent in their analysis of the legal distinction between "making available" and "actually distributing," but today require more than just proof of copyrighted music being made available.²⁵ Thus, RIAA warning notices may not be an adequate legal basis for restricting users' Internet notice due to this evidentiary pitfall in the detection process.

It may well only be a matter of time before RIAA private investigators develop more sophisticated software that resolves this pitfall, but there remain numerous other barriers to accurate, efficient, and legally sound RIAA infringement allegations.²⁶ The RIAA is not an impartial party, and its detection system must be very expensive.²⁷ IP addresses

22. See Sandoval, *supra* note 9.

23. See John Eric Seay, "Hang 'Em High": Will the Recording Industry Association of America's New Plan to Posse Up with Internet Service Providers in the Fight Against Online Music Piracy Finally Tame the Wild Internet?, 16 J. INTELL. PROP. L. 269, 276 (2009) (noting the legal distinction between making music available and actually distributing it).

24. 17 U.S.C. § 106(3) (2002).

25. See *Capitol Records Inc. v. Thomas*, 579 F. Supp. 2d 1210, 1218 (D. Minn. 2008) (holding that infringement requires proof of actual distribution because Congress did not include "offer to distribute" language in the Copyright Act); *Atl. Recording Corp. v. Brennan*, 534 F. Supp. 2d 278, 281–82 (D. Conn. 2008) (affirming actual distribution standard). *But see Elektra Entm't Group, Inc. v. Barker*, 551 F. Supp. 2d 234, 243 (S.D.N.Y. 2008) (finding that offers to distribute copyrighted music for the purposes of further distribution may be enough to constitute infringement).

26. See generally Seay, *supra* note 23, at 276–79.

27. See David, Researchers Get MPAA/RIAA to Bust a Printer for P2P File Sharing, AUDIOHOLICS ONLINE A/V MAGAZINE, June 16, 2008, <http://www.audioholics.com/news/industry-news/researchers-mpaa-riaa-printer-p2p-file-sharing>.

change, and people share computers. Additionally, copyrighted works can be transferred for various fair uses such as for criticism and personal use.²⁸ In determining whether use of a copyrighted work is infringing or fair, courts apply a complex, four-factored, and fact-specific analysis that cannot be replicated by software.²⁹ Admittedly, likely few P2P transfers are fair uses, but the RIAA's over-enforcement of antipiracy measures due to unawareness of the purpose of such uses is well-documented.³⁰ Even if the RIAA's new plan included an appeals process allowing users to assert a fair use defense, copyright holders are not entitled to decide whether others' uses are fair,³¹ and anything short of judicial adjudication raises serious due process questions.³²

C. Network Neutrality Violations and the FCC

ISPs might subject themselves to liability by restricting Internet access at the RIAA's behest because, in light of the flaws of the RIAA's detection system, doing so may not constitute "reasonable network management" under the FCC's Internet Policy Statement.³³ Though the DMCA indemnifies ISPs from liability if they take down allegedly infringing content pursuant to an RIAA notice,³⁴ this will likely not protect ISPs in the context of restricting Internet access.³⁵ Users should be able to access and download any legal websites and applications of their choosing without undue interference.³⁶ The FCC, the government agency charged with monitoring Internet policies in the United States, preserves this policy by prohibiting ISPs from discriminating against certain types of online content.³⁷ In 2008, for example, the FCC forced Comcast to end a practice

28. See 17 U.S.C. § 107 (2002).

29. *Id.*; see also *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 547–67 (1985) (applying an extensive analysis of the four fair use factors).

30. See Michael P. Murtagh, *The FCC, the DMCA, and Why Takedown Notices Are Not Enough*, 61 *HASTINGS L.J.* 233, 256 (2009).

31. See *id.* at 252.

32. See *id.* at 257.

33. In re Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 20 F.C.C.R. 14986, 14988 (2005) [hereinafter *In Re Matters of Appropriate Framework*].

34. See U.S. COPYRIGHT OFFICE, *supra* note 19, at 11.

35. See Murtagh, *supra* note 30, at 271–73 (arguing that RIAA-ISP collaborations fail under the FCC's Internet Policy Statement).

36. See generally *In the Matters of Formal Complaint of Free Press and Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications*, 23 F.C.C.R. 13028 (2008) [hereinafter *Matters Against Comcast*].

37. See *id.*

of terminating of P2P users' connections by poisoning packets of data on the network.³⁸

"Reasonable network management" constitutes an exception to this network neutrality principle.³⁹ ISPs can manage the flow of Internet content if their policies "clear a high threshold[,] . . . further a critically important interest, and [are] narrowly or carefully tailored to serve that interest."⁴⁰ Comcast's policy did not distinguish between legal and illegal content with sufficient accuracy,⁴¹ nor will the RIAA's new plan because users may lose their increasingly important Internet access due to an RIAA mistake or fair use. Thus, while an interest in preventing copyright infringement is paramount, the RIAA's flawed detection measures likely preclude ISP restrictions on Internet access from being narrowly tailored to achieve that interest.

D. Unlikelihood of Deterrence

Warning letters and threats of restricted Internet access will not deter piracy because such efforts further drive user demand for undetectable illegal downloading.⁴² For example, open-source IP filters hinder detection of P2P users' identities and are free and readily available for download online.⁴³ The demand for such anti-detection capabilities will likely only increase in proportion to the strength and frequency of RIAA detection measures and warning letters, because such efforts, at best, only address one of two distinct and critical realities in the music industry today.⁴⁴ The appeal of online music piracy likely stems from two common beliefs: (1) buying music is too expensive;⁴⁵ and (2) illegally downloading it is easy

38. *Id.* at 13028, 13031, 13061.

39. *Id.* at 13028; In Re Matters of Appropriate Framework, *supra* note 33, at 14986, 14988 n.15.

40. Matters Against Comcast, *supra* note 36.

41. *Id.*

42. PhoenixLabs.org, PeerGuardian 2, <http://phoenixlabs.org/pg2> (last visited Jan. 4, 2010); Freewavegenius.com, PeerBlock: Avoid Detection When Downloading From Torrent Or P2P Networks, <http://www.freewavegenius.com/2009/11/16/peerblock-avoid-detection-when-downloading-from-torrent-or-p2p-networks> (last visited Jan. 3, 2010).

43. *See, e.g.*, PhoenixLabs.org, PeerGuardian 2, <http://phoenixlabs.org/pg2> (last visited Jan. 4, 2010) (sharing an open-source IP filter).

44. *See, e.g.*, Christopher Null, *Study: Digital Music Is Too Expensive*, YAHOO! NEWS CANADA: THE WORKING GUY, http://ca.tech.yahoo.com/blogs/the_working_guy/rss/article/4287 (last visited Mar. 5, 2010); Robb Schultz, *Illegally Downloading Music: Opinions From Juanita College Students In Pennsylvania*, YAHOO! ASSOCIATED CONTENT, June 20, 2009, http://www.associatedcontent.com/article/1812204/illegally_downloading_music_opinions.html.

45. *See, e.g.*, Null, *supra* note 44.

and low-risk.⁴⁶ While detection measures and warning letters might combat the latter problem, it does not address the former. To that end, the RIAA needs to make legal digital music a more flexible, affordable, and expansive market; only then will downloading music illegally become less appealing than paying for it. Part III explores one such means for doing so.

III. WIDESPREAD LICENSING AS A VIABLE ONLINE MUSIC PIRACY SOLUTION

Part II revealed why RIAA-ISP collaborations under the new plan—should an ISP ever agree to one—will be unsuccessful and litigious in combating online music piracy. The efficient detection and deterrence of illegal music transfers would continually be hampered by, *inter alia*, cost, the fair use doctrine, network neutrality concerns, and anti-detection technologies. This section proposes that deterrence efforts be maintained to some degree, but that the RIAA otherwise shift the focus of its anti-piracy strategy to widespread licensing to ISPs and retailers. The competition between licensees that such a strategy would promote would make licensing more profitable for the RIAA and would, in turn, give customers a wide array of appealing and affordable alternatives to illegal downloading.

A. ISP Licenses

RIAA-ISP licensing agreements could greatly benefit both parties involved because they are attractive alternatives to piracy that create competitive advantages for the ISP by making its broadband service more desirable to consumers.⁴⁷ An ISP is in a great position to market legal digital music downloads to the millions of users already subscribing to its broadband service. Downloads from a catalog of licensed songs can be bundled with Internet service, making them easy for the ISP to market and easy for consumers to purchase and use.⁴⁸ RIAA-ISP licenses are also promising because users who are satisfied with their Internet service will likely regard the ISP as a more trusted and reliable seller of music downloads than online stores and websites with which they have not previously done business.

Finally, ISPs can bundle music downloads in a variety of ways, i.e. by

46. See, e.g., Schultz, *supra* note 44.

47. See generally DMR 2009, *supra* note 2, at 4 (identifying ISP licensing of music catalogs as a positive new trend in the entertainment industry).

48. *Id.* at 8.

limited downloads as part of their standard Internet service or unlimited downloads for an extra fee, which will promote healthy competition between ISPs and online stores. The ISPs that market the most attractive deals will retain more of their current Internet subscriber base, draw new subscribers, and tap into digital music stores' revenue streams. This competitive market would boost demand for music licenses to the RIAA's benefit. It would also provide consumers with a host of affordable music services from which to choose, thereby making piracy less popular.

European ISPs began licensing and bundling music downloads in recent years and the results have been dramatic.⁴⁹ In April 2008, Danish ISP TDC began offering free, unrestricted access to its catalog of over two million songs to its mobile and broadband subscribers.⁵⁰ Since then, monthly subscriptions have soared and the rate at which subscribers have left for competitors has plummeted.⁵¹ TDC now offers its customers an array of other bundled music download services.⁵² French ISP Neuf Cegetel began offering similar music access services in 2007 and has reported a marked increase in broadband subscriptions.⁵³ Today, other ISPs in France, the United Kingdom (UK), Finland and Sweden also license and sell music, with some services being bundled to Internet service.⁵⁴ These examples indicate that the alignment of ISPs and the entertainment industry offer limitless business potential. The United States should and very well may be following suit in light of the recent Comcast-NBC merger.⁵⁵

B. Licensing to Retailers in Related Markets

The RIAA should also strive to license music collections to retailers in related markets for many of the same reasons.⁵⁶ The RIAA's digital music catalogs could then be marketed to consumers through sales of devices like cell phones, MP3 players, and laptops. Here again retailers could gain a competitive advantage by bundling music services with their products and services. This further strengthens and diversifies the

49. *Id.* at 8-9.

50. *Id.* at 9.

51. *Id.*

52. See Charles Ferro, *Mobile Smorgasbord*, BILLBOARD, Nov. 15, 2008, at 19.

53. DMR 2009, *supra* note 2, at 8.

54. *Id.* at 8-9.

55. David Goldman & Julianne Pepitone, *GE, Comcast Announce Joint NBC Deal*, CNNMONEY.COM, Dec. 3, 2009, http://money.cnn.com/2009/12/03/news/companies/comcast_nbc/index.htm.

56. DMR 2009, *supra* note 2, at 7.

competitive market for digital music, giving consumers still more options and the RIAA even greater control over revenue streams by being able to dictate license pricing with retailers from various industries. Nokia and Sony Ericsson both now sell mobile phones bundled with music downloading services in the U.K. and Sweden, respectively.⁵⁷

C. Online Store and Radio Station Licenses

The RIAA should continue to license digital music to stores and radio stations like iTunes and Pandora, services that are already helping the legal music market expand.⁵⁸ Though the widespread licensing scheme this Note advocates would threaten the sustainability of some of them, the current digital music market does not offer consumers a sufficiently broad range of attractive alternatives to illegal downloading. Whereas the current legal market offers access to music primarily by streaming it on radio stations or buying it from stores a la carte, extensive licensing to ISPs and other retailers gives consumers a much-improved selection of music services, thus diminishing the appeal of piracy.

D. Comparative Advantages of a Widespread Licensing Policy

Whereas the RIAA currently only profits from roughly five percent of music downloads,⁵⁹ it could obtain much greater control over downloading via widespread licensing to ISPs and other retailers. As previously discussed, the market for legal downloads would surge because competition between retailers from various industries would provide consumers with a host of more affordable and flexible music access services.⁶⁰ The RIAA for its part would likely experience increased licensing revenues and increased control over various markets by dictating licensing terms. This solution frees both the RIAA and ISPs of the legal issues and negative publicity that would surround restrictions of users' Internet access. It would also make notices of alleged infringement—the RIAA can of course still sue for infringement if it so chooses—more of a deterrent because users would have various new and affordable alternatives to piracy.

Some European nations are moving toward either having a

57. *Id.* at 8-9.

58. *See generally id.* (noting the positive effect online music stores like iTunes are having on the digital music market).

59. *Id.* at 5 (stating that ninety-five percent of music downloads are illegal).

60. *See supra* Part III.A-C.

government body monitor online piracy⁶¹ or forcing ISPs to take a more active role by implementing their own anti-piracy technology.⁶² These alternatives could be improvements to the RIAA's new plan insofar as RIAA infringement allegations would be relied on less when taking action against users. However, many of the same barriers to accurate detection would remain—*i.e.*, fair use, network neutrality, and demand for anti-detection technologies. Both systems would likely further alienate digital music consumers if not Internet subscribers altogether, and both would force either taxpayers or ISPs to pay for anti-detection measures when it should be the industry that does so.⁶³

Others propose collective licensing schemes in which Internet users pay a small monthly rate for the right to access music, however they choose, without risk of punishment.⁶⁴ Proceeds are then distributed to artists in proportion to “how often their music is downloaded.”⁶⁵ The digital music market has (hopefully) not reached a point of desperation where such last resorts are needed, a point where online music piracy is decriminalized and artists are essentially paid to forfeit all ownership rights to digital versions of their works. Decriminalizing the illegal downloads would also damage or altogether destroy the current legal digital music market, *i.e.* iTunes.⁶⁶ Finally, if the RIAA and ISPs are so incapable of detecting and filtering out illegal music downloads such that they should simply resort to decriminalizing piracy, it is unclear how they would nonetheless be able to track downloads with enough accuracy to distribute proportionate shares of the licensing proceeds to artists.⁶⁷

61. Greg Sandoval, *France Adopts Three-Strikes Law for Piracy*, CNET NEWS, Oct. 22, 2009, http://news.cnet.com/8301-31001_3-10381365-261.html.

62. Andre Yoskowitz, *UK Government To Adopt 'Three Strikes' Internet Piracy Bill*, AFTERDAWN.COM, Oct. 28, 2009, <http://www.afterdawn.com/news/archive/20127.cfm> (reporting on a new UK bill forcing ISPs to implement a “three strikes and you’re out” policy).

63. *France: Second Version of the Three Strikes Law is in Place*, EUROPEAN DIGITAL RIGHTS, Nov. 4, 2009, <http://www.edri.org/edriagram/number7.21/hadopi-2-adopted-final>.

64. See Seay, *supra* note 23, at 293. (supporting a voluntary collective licensing scheme).

65. *Id.*

66. Although only eight percent of American teens have a moral objection to downloading illegal music, decriminalizing illegal music downloads would wipe away this moral objection and may encourage more illegal downloads from both people who have and do not have moral objections. Marlize van Romburgh, *Respect Talent: Don't Steal Your Entertainment*, MUSTANG DAILY, May 3, 2009, <http://mustangdaily.net/value-the-valuable-don't-steal-your-entertainment>.

67. Christian L. Castle & Amy E. Mitchell, *What's Wrong with Music Licensing?*, 26 ENT. & SPORTS LAW 3, 7 (Fall 2008) (“If an ISP can identify the sound recordings on p2p systems enough to sample [to distribute licensing proceeds to artists], the ISP likely can identify the tracks enough to block and filter.”).

IV. CONCLUSION

Illegal music downloading will not be halted by a plan revolving around ISP restrictions of Internet access pursuant to repeated RIAA infringement allegations.⁶⁸ The efficient detection and deterrence of illegal music transfers would continually be hindered by, among other things, cost, the fair use doctrine, network neutrality concerns, and anti-detection measures like open-source IP filters.⁶⁹ The RIAA will not be able to smother the illegal digital music market unless and until it couples its deterrence efforts with more flexible, affordable, and pervasive access to its digital music collections. Only then will users have attractive alternatives to illegal music downloading.⁷⁰ This expansive legal digital music market can best be promulgated by engaging ISPs and retailers in licensing agreements whereby music access services are either conveniently bundled with other products and services, or offered as a subscription service.⁷¹ Bundling would render those products and services more desirable, thus presenting retailers with various possible competitive advantages.⁷² The competition between licensees that this would promote would in turn make licensing more profitable for the RIAA and give customers an array of appealing and affordable alternatives to illegal downloading.⁷³ This, coupled with deterrence efforts such as notices threatening judicial action, would finally give the RIAA the upper hand in its war on online piracy.⁷⁴

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68. *See supra* Part II.D.

69. *Id.*

70. Michael Geist, *Pollara Changes Its Tune on Music Downloading*, MICHAEL GEIST BLOG, Jan. 6, 2010, <http://www.michaelgeist.ca/content/view/4664/125>.

71. DMR 2009, *supra* note 2, at 8.

72. *See supra* Part III.A.

73. *See supra* Part III.A.

74. *E.g.*, DMR 2009, *supra* note 2, at 5.