

Court Supports Portable MP3 Player

By Bob Egelko Associated Press Writer

Tuesday, June 15, 1999; 7:10 p.m. EDT SAN FRANCISCO -- A handheld device that can download high-quality digital music files from the Internet and play them at home does not violate a federal music piracy law, a federal appeals court ruled Tuesday. The 3-0 decision by the 9th U.S. Circuit Court of Appeals is a defeat for the recording industry, which tried to stop distribution of the Rio portable MP3 player. But after losing the first round in court last year, the industry has tried to adjust to the new technology and is developing its own version of the device.

The Rio, which sells for \$119, plugs into a computer and takes only minutes to transfers MP3 files, using software that compresses and stores digital versions of CD recordings. Users can download near-CD-quality music from any one of the many MP3 Internet sites into personal computers for replay or, with widely available software, transfer it to another computer. The Recording Industry Association of America, representing major record companies, contended the Rio was made for the illegal pirating of copyright music and could drain away billions of dollars in royalties from artists and publishers.

U.S. District Judge Audrey Collins of Los Angeles denied an injunction last fall that would have prohibited distribution by the manufacturer, Diamond Multimedia Systems. The appeals court not only upheld Collins but also found that the Rio was not covered by the anti-piracy law invoked by the association. The Audio Home Recording Act of 1992 prohibits only devices that make copies from digital music recordings, said the opinion by Judge Diarmuid O'Scannlain. He said the Rio makes its copies from computer hard drives, not digital music recordings. Andrew P. Bridges, a lawyer for San Jose-based Diamond Multimedia, said the ruling should end the lawsuit.

The Recording Industry Association of America is reviewing the ruling and hasn't decided whether to appeal further, said spokeswoman Alexandra Walsh. "We filed this lawsuit because unchecked piracy on the Internet threatens the development of a legitimate marketplace for on-line music, a marketplace that consumers want," the association said in a statement. "Fortunately, the shared interest in such a marketplace has overtaken the lawsuit." One recording industry venture, called the Secure Digital Music Initiative, seeks to create an encrypted version of MP3 that would be immune from illicit copying.

Participants hope to unveil a Walkman-like digital stereo alternative to the Rio by Christmas, followed by other types of players that could distinguish between approved and unapproved copies. Diamond Multimedia also plans to provide a security device in a future version of the Rio. "I think the case was going to die a quiet death anyway," said Mark Hardie, a senior analyst of entertainment industry

technology for Forrester Research in Cambridge, Mass. He said the Recording Industry Association is no longer arguing that digital devices will undermine copyright protection. A handful of labels in major record companies have even released their own MP3 products, ``even though last year they stood together arm-in-arm on a stage in New York swearing MP3 was the devil incarnate," he said. The case is Recording Industry Association vs. Diamond Multimedia, 98-56727.

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