

BRAD KING GEAR SEP 25, 2002 2:00 AM

Kazaa Taunts Record Biz: Catch Us

The Kazaa file-trading network, reportedly 120 million strong, is establishing worldwide reach -- and offices around the globe. For now, there's little U.S. media companies can do about it. By Brad King.



IN A WAR with media conglomerates hoping to shut down its Kazaa file-trading service, Sharman Networks has flipped the familiar slogan, "think globally, act locally."

Despite an ongoing American copyright-infringement lawsuit, the Australian company has so far evaded the international recording industry's attempts to shut down Kazaa by setting up operations around the globe. It has offices in the United States, the South Pacific island nation Vanuatu and the Netherlands.

On Monday, Italian ISP Tiscali agreed to advertise its broadband services through Kazaa.

The agreement could make the recording industry's attempts to shutter Kazaa that much more difficult because individual countries are responsible for regulating the Internet within their borders. Stronger ties between ISPs and file-trading companies could bolster Kazaa's defenses.

The international recording industry, however, was quick to condemn the move.

"I am shocked that Tiscali ... believes that by entering into an agreement with an unauthorized service it will promote the development of legitimate online offerings," said Jay Berman, chairman of the International Federation of the Phonographic Industry, a global music industry organization. "By subsidizing Kazaa, Tiscali is jeopardizing the development of legitimate online services, and it is important that Internet service providers everywhere understand this."

Berman's words have more bark than bite. International copyright laws vary widely, and courts outside America have not been particularly aggressive about prosecuting companies distributing file-trading software.

The World Intellectual Property Organization hoped to stop this type of nation hopping when it enacted the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Each outlines in very broad terms the type of copyright legislation countries should adopt.

However, many of the world's largest economies, including Italy and the rest of the European Union, didn't sign on, which means they are free to draft -- or not draft -- whatever legislation they choose.

On top of that, some lawyers contend the treaties don't apply to companies distributing peer-to-peer software.

Napster was knocked offline because it provided the software that its 70 million members used to share music. The concept is called "contributory infringement," but it doesn't exist in many countries -- and the WIPO treaties won't change that.

"Many countries don't have a version of contributory infringement, and the treaties don't make any mention of it, so it's hard to imagine that they will have any real effect on any file-trading networks," said Jonathan Band, an intellectual property lawyer with the Washington, D.C., branch of Morrison & Foerster.

That makes it less likely Kazaa will meet the same fate as Napster because if Sharman Networks gets run out of one country, it can simply relocate its headquarters to a place like the Netherlands, where a Dutch appeals court ruled that distributing software didn't amount to copyright infringement.

"The record companies can go after Kazaa in any country, but in a country like the Netherlands, the record industry went in to court with a theory and they lost," Band said. "(In the Netherlands), it's not contributory infringement to distribute their software."

For now, Sharman Networks remains safe at home. The Australian recording industry hasn't filed any lawsuits against the company.

Even as the U.S. recording industry continues its global pursuit of Kazaa, it must also cope with the growing perception that peer-to-peer networks encourage broadband use in America.

Economists at the Brookings Institute estimated that widespread broadband would increase the gross domestic product by \$500 billion, according to [a study](#) released by the [U.S. Department of Commerce](#). But consumers have been slow to adopt costly high-speed access, citing its lack of relevance to their lives.

"A majority of consumers will sign up for broadband when value-adding applications and services are readily available, easily understood and offered at reasonable prices," the study reported.

Consumers cited telecommuting and online video games as two important factors in their decision to sign up for broadband access. But the most compelling service, the study found, is the ability to download movies and music.

So far, such services have only been available through the very file-trading networks the entertainment industry has tried to quash.

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