

October 21, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Digital Audio Broadcasting Systems and
Their Impact on Terrestrial Radio Broadcast Service
MM Docket No. 99-325

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Recording Industry Association of America, Inc. ("RIAA"), through undersigned counsel, hereby submits the attached material in support of its position that the technology to permit the programmed, automatic recording of selected material broadcast by digital radio stations is currently available and that the public will purchase and use equipment which permits them to engage in such automated recording if the Commission authorizes digital terrestrial radio without content protection rules.

1. An article from the September 9th DIGITAL MUSIC NEWS discussing the proliferation of software that permits consumers to record digital radio and music streams. These include such recording tools as TimeTrax, StationRipper, TotalRecorder and ReplayRadio. As the article notes:

These recorders can capture any digital signal, whether transmitted from satellites, broadcast towers, or from on-line music services. And many of these applications take the art of recording to the next level, neatly categorizing songs into folders for later listening. (emphasis added)

2. Copies of material from the website for TimeTrax explaining the capabilities of its software, including the ability to record individual songs. As noted in the description of the features:

TimeTrax records individual songs. Instead of being left with one large MP3 file containing an hour's worth of

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music, TimeTrax divides it up into individual named MP3 files, each containing precisely one song. Each MP3 file is named with the artist and song name, and its ID3 is written with the same information. Leave TimeTrax recording overnight, and in the morning you will end up with a directory of MP3 files, each cut and edited for you! (emphasis added)

While TimeTrax is designed to work with XM's satellite radio service, there is no technical reason why this technology cannot be adapted to permit the same functionality for terrestrial digital audio transmissions. The sophisticated capabilities of the TimeTrax software are precisely the capabilities RIAA indicated in its Comments would be available and would permit unfettered and unauthorized duplication of sound recordings.

3. An article from the August 30th edition of CNET News.com indicating that XM Satellite Company has ceased marketing its PCR device as a result of piracy concerns related to consumers' use of the PCR in conjunction with the TimeTrax software.

4. An article from the October 6th Wall Street Journal describing the features of radioShark, a device that allows consumers to record on a programmed basis material broadcast by terrestrial radio stations and to send those recordings to a play list on Apple's iTunes music software. As indicated in the article, the device allows listeners to record automatically and to play back material that has already been broadcast. While this device does not have many of the features that RIAA is concerned will be offered by means of a TimeTrax-like device, the availability of radioShark clearly indicates that the consumer electronics industry is moving toward producing more sophisticated devices like TimeTrax. Indeed, the author notes that if radioShark were smarter, it would be "sensational."

ARNOLD & PORTER LLP

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If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,

Theodore D. Frank 

Theodore D. Frank
Counsel for Recording Industry Association
of America, Inc.

Enclosures

cc: Steven Broeckaert, Esq.
Ben Golant, Esq.
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Ms. Susan Crawford
Ms. Ann Gallagher

digital music news

Paul Resnikoff, Editor

Wednesday, October 20, 2004

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Stream Recorders: Another Piracy Black Cloud?

DATE: SEP, 2004 (90904)

Few people would ever contemplate taping music from their FM radio, despite its popularity in the past. Today, there are new tools for capturing online music in the form of digital broadcast recorders. A flood of new applications now allow music fans to record (or copy) internet streams directly to a PC hard drive. On the street, this form of piracy is called "stream-to-disk".

The list of recording tools is dizzying. TimeTrax, StationRipper, TotalRecorder and ReplayRadio are just some of the most popular downloads among those eager to record digital radio and music streams. Many of these programs are free, with others retailing for about the price a CD.

Just how onerous is the trend? Some view digital broadcast recorders as an emerging threat more destructive to the recording industry than P2P. These recorders can capture any digital signal, whether transmitted from satellites, broadcast towers, or from on-line music services. And many of these applications take the art of recording to the next level, neatly categorizing songs into folders for later listening.

The trend could soon spell trouble for bundled university music services as well. Industry players like Napster have offered cheap streaming subscription plans to college campuses across the country, with many programs starting this fall. Pilot programs already indicate a reluctance by students to pay for downloads, with streaming audio providing a discovery tool and good background listening. But layer in recording software, lots of free time, and little money to spare, and a dangerous cocktail emerges.

Students could soon exploit reduced-rate subscription music services like Napster to build large illegal libraries, all for student fees of few bucks per month. The labels understand this threat and have plans to remedy the recording loophole. The RIAA has been active, proposing new regulations with the FCC and sponsoring new legislation in Congress to protect against this new piracy front.

The MPAA is also watching, as the recording danger could soon spread to the movie industry. TiVo recently announced a partnership with NetFlix to launch a video-on-demand download service. But that new functionality opens the door for new recording applications to amass large digital movie collections, propelling a piracy threat that has been looming for some time.

This fall will be an important test period for universities. Napster and others clearly remains vulnerable, though just how active students will be with recorded streams is unclear. But another piracy wave would be an odd *déjà vu*, as college campuses

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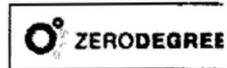
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helped propel the first Napster revolution just a few years ago.

Story by Digital Music News analyst Walter Hough.

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Todd Beals

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Record songs from XM satellite radio directly onto your PC in MP3 format!

TimeTrax is a sensation! As featured in USA Today, Yahoo , CNet, ZDNet, Slashdot and hundreds more!

TimeTrax is a software application for XM Satellite Radio. With TimeTrax, you can tune into over 120 digital audio satellite channels, featuring music, talk, comedy and news and record the broadcast onto your PC's hard drive in WAV or MP3 format. TimeTrax is easy to use and includes a 10-event scheduler that allows you to 'time shift' programming: Is there a concert being broadcast at 2:00 am that you really want to hear? No problem, use TimeTrax to record the concert and listen to it at your convenience! Your favorite talk show on during work hours? Using TimeTrax, you can listen to it when you get home!

If you own a compatible XM radio, you can purchase the software for \$34.99. If not, you can purchase the TimeTrax Complete package that includes everything you need to be up and running for only \$99.99 (TimeTrax Complete includes TimeTrax software license, TimeTrax adapter for XM Direct and an XM Direct Radio).

More than just a digital recorder, TimeTrax records individual songs! Instead of being left with one large MP3 file containing an hour's worth of music, TimeTrax divides it up into individual named MP3 files, each containing precisely one song. Each MP3 file is named with the artist and song name, and its ID3 is written with the same information. Leave TimeTrax recording overnight, and in the morning you will end up with a directory of MP3 files, each cut and edited for you!

TimeTrax doesn't guess when songs end - utilizing information in the satellite data stream, it cuts songs perfectly, ensuring your MP3 files are **perfect, complete songs, from start to end!** (Sometimes radio broadcasts fade songs into one another and sometimes DJ's chatter over intros. We of course can't control this, and you will hear these types of things in your recordings from time to time.)

Using the **PerfectTrax**® technology built into TimeTrax, TimeTrax will record only complete songs. If recording is started or stopped partway through a song, that song will not be saved to disk. This way, you know that any songs that are recorded are complete and uncut.

Using the **BackTrax**® technology, TimeTrax can record songs after they have started playing! If you hear a song you like, press the record button any time during the song, and the entire song will be recorded! technology, TimeTrax can record songs after they have started playing! If you hear a song you like, press the record button any time during the song, and the entire song will be recorded!

The built-in Grab/Kill technology within TimeTrax allows you to record only those artists or songs you want, while making it easy to add to your list of favorites! Or, if you wish, add artists or songs to your Kill list, to make sure you never record them

TimeTrax also intelligently does not record advertisements, announcements and station promos. This feature can be customized by the user to make sure you get the TimeTrax experience that you want.

For a complete listing of the features of TimeTrax, please review the Version 2.5 Documentation.

At this time, TimeTrax works exclusively with XM Satellite Radio. It works with the XM PCR and the XM Direct. To use the XM Direct, you must purchase the TimeTrax Adapter.

An XM Radio subscription is required to use Timetrax. The price of the XM Radio subscription set-up and monthly fess IS NOT INCLUDED in your purchase price of Time Trax products. Click here to view XM's website and to learn more about subscribing to XM Satellite Radio. If you do not already have an XM account, purchase your Timetrax products first. You will need your radio ID to provide to XM.

Internet access is required to register the software.

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Monday, August 30, 2004

XM Radio pulls PC hardware amid piracy concerns; Internet radio station yanks recording software and tuner unit, creating premium eBay market.

Paul Festa

Owners of a controversial PC radio receiver are making a killing selling their units on eBay following the unit's discontinuation over music piracy concerns. Before being quietly discontinued this month, the XM PCR was one of several hardware devices sold by XM Satellite Radio to give its more than 2 million subscribers satellite radio reception. In conjunction with a third-party software title called TimeTrax, however, the PCR let listeners download songs to their personal computers. Since XM discontinued the PCR, units have fetched steep premiums on eBay. The device, which retailed for about \$50, is getting bids of more than \$350 in recent auctions, with sellers advertising the unit as "discontinued" and "rare."

XM declined to confirm the discontinuation of the PCR.

"We don't comment on when products are being discontinued or not," company spokesman Chance Patterson said. "It's just a matter of policy."

But a source close to the company confirmed the discontinuation, as did a distributor of XM hardware.

"We put in an order on August 18th, and they never filled the order," said Ryan Morris, owner and site administrator of St. Louis-based XMFan.com. "Then they contacted us and said they'd discontinued the XM PCR."

The demise of the PCR comes as the recording industry battles music copyright threats on multiple fronts. Record companies, which have repeatedly filed lawsuits against people who use file-sharing programs such as eDonkey, Grokster, Kazaa and LimeWire, recently lost a crucial battle, when a federal appeals court ruled that file-swapping software programs were legal.

After years of battling file-sharing networks and individual file swappers, the recording industry found a new nemesis in TimeTrax.

Sold by Scott MacLean, an independent programmer in Bolton, Ontario, through his NeroSoft Web site, the TimeTrax software lets people with a PCR capture songs, artist and title information from the radio.

XM said that whatever its plans for the PCR, the company is working to stop TimeTrax.

"We continue to pursue appropriate options related to TimeTrax, including any legal or other options," company spokesman Patterson said.

With respect to the PCR, Patterson stressed that sales of the unit made up a tiny fraction of the company's business, half of which comes from pre-installed tuners on automobiles.

Distributors and subscribers alike have speculated that the withdrawal of the PCR from the market was a direct consequence of the TimeTrax controversy. A source close to the company agreed that the TimeTrax situation had influenced the withdrawal of the hardware.

Listen, don't keep

The Recording Industry Association of America, or RIAA, has been paying close attention to XM Radio, especially after TimeTrax gained a following and media coverage.

"We are very concerned about a variety of technologies that essentially transform performances into music libraries," RIAA spokesman Steve Marks said. "We have communicated our concerns to XM and other broadcasters and Webcasters, (and told them) that we'd like to work together with them to address technologies that hijack these performances."

Marks said the RIAA wasn't behind the discontinuation of the PCR.

"We've raised the concern generally," he said. "They've obviously decided to take this action on their own. We've identified for them the potential problems."

Digital radio stations are in a tough spot between the recording industry, from which they license music, and subscribers, who want maximum flexibility in exchange for their monthly fees.

In response to that demand, XM has promised a 30-minute rewind feature on some of its receivers but declined to say when either its subscribers or satellite radio listeners generally could expect to find TiVo-like recording and playback features on the market.

Now subscribers are paying extra for what has become an eBay collector's item, and distributors are wistful about the craze.

"It sucks for us, because over the past week, there's been so much interest in the PCR," Morris said. "Everyone wants one right now."

---- INDEX REFERENCES ----

COMPANY: XM Satellite Radio Holdings Inc (XMSATS); eBay Inc (EBAYUS)

NEWS SUBJECT: (Copyright (C134); Regulation/Government Policy (C13);

Corporate/Industrial News (CCAT); Intellectual Property (CGYMTR); Content Types (NCAT); Factiva Filters (NFACT); FCP Industry News Filter (NFCPIN))

INDUSTRY: (Broadcasting (I97411); Retail (I64); Etailing (B2C) (I656000301); Diversified Holding Companies (I8396); Business/Consumer Services (IBCS); E-commerce (IECOM); Internet/Online Services (IINT); Media (IMED); Online Auctions (IONLAUC))

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Wednesday, October 6, 2004

The Mossberg Solution: 'TiVo' for Your Radio

By Walter S. Mossberg

TIVO, THE DIGITAL RECORDER for television, has become such a cult item that folks use it as a verb -- "I'll have to TiVo the Red Sox game on Tuesday." Its fans predict it will replace the VCR as a way to do video "time-shifting" -- to record a TV show so you can watch it at a more convenient time. But what about radio? Is there a way to time-shift radio? This week, my assistant Katie Boehret and I reviewed a new device that aims to do just that. It's the radioShark, from Griffin Technology, and it acts as a sort of TiVo for radio.

The \$70 radioShark, so named because it looks like a shark's fin, attaches to your PC or Mac via the USB port and enables your computer to play live AM or FM radio using radioShark software. Like a TiVo, radioShark allows you to pause, rewind or fast-forward live programming.

But the best part is that you can record songs or talk radio from this live feed. You can play your recordings back within the radioShark software, or send those recordings straight to a play list on Apple's iTunes music software. From there, you can even transfer the recordings to an iPod.

Overall, we found the radioShark to be a good idea, but it lacks some of TiVo's smart features. Because it doesn't have program schedules like TiVo does, you can't look through a list of upcoming radio shows to learn what will be on when, what specific song will be played, or which talk-radio topic will be discussed. By contrast, TiVo's schedule grid makes it a cinch to plan your recordings ahead of time.

Also, radioShark can't determine where a song or program ends and another begins. Once programming has been recorded, you can use editing software to trim away parts of a recording that you don't want, but this is a pain. And nothing in radioShark's software automatically labels a song with title and artist information; you must enter that data yourself.

Katie and I tested the radioShark on Apple Computer's new iMac G5 running Mac OS X and a Dell Dimension computer running Windows XP. The radioShark device is appropriately named -- its fin shape and three gill-like glowing LED lights give it just the right combination of fishy coolness. And because it is white, this dorsal fin looks handsome swimming alongside most Macs that are also white, especially the new G5.

RadioShark took just a few moments to set up. After installing the product's

software, we plugged the Shark into a USB port on each computer and watched as the three gills on its fin lit up in blue, indicating that it is plugged in. A static sound emanated from each machine's speakers, but this noise went away once we tuned the radio into a station.

The main screen of radioShark's software consists of a small rectangle with a clear display in the center that tells you what station is tuned in, such as 90.9 FM. A ruled line running across the top, which you can adjust with the mouse, mimics a manual radio tuner. Volume can be adjusted on a slide bar below the station numbers. Three click-on buttons line the left and right of the station display -- band, seek and record to the left, and sched, EQ and TS to the right.

Katie and I first clicked on the "sched" button, which opened up another small window. Within this screen, you can schedule the date, time and station for recording a radio program. I set the radioShark to record a sports talk show, the "Dan Patrick Show" on ESPN Radio, and I muted the sound while it was recording. Whenever the Shark records, its blue gills turn red, serving as an eye-catching reminder that you're recording. The show recorded without a hitch, and I listened to it later on the same day.

The "TS," or time shift, button allows you to play or record content that has already been broadcast by going back in time. The Shark keeps a continually updating chunk of back content stored in a "buffer" -- the default is 30 minutes' worth. Pushing the TS button opens a tiny window that indicates the progress of that stored content. To go back in time, you drag the time-shift progress bar back. This will let you, for instance, start listening at the beginning of a talk show that was already in progress.

To change the default amount of back content in the buffer, you can go into the "preferences" menu and set it for more or less time.

Katie tested time shifting while listening to a country radio station. A song that she had heard once or twice came on, and she dragged the time-shift progress bar back to the start of the song and started recording. This worked fine, until it came to naming the file.

All recorded content goes to a "Recordings" list, where you can name each recording as you choose. But Katie didn't know the name of the song or the artist. Without that information, the Shark names each file with unhelpful titles: "Recording 1," "Recording 2," etc. Even if you do know the song's title, as Katie did for some other songs, you have to type in this data. We wish radioShark had some way of doing this automatically.

Another time, Katie recorded two songs in a row in the same recording, but radioShark has no way of marking or dividing those two tracks from one another. So she had to listen to, or fast forward through, the first song to get to the second.

The sound quality for all of these recordings was on par with normal radio sound quality, nothing more or less. We had occasional trouble with the radioShark's antenna reception, and had to move it closer to my office window for the best results.

After transferring some songs to iTunes, we compared them with the same songs

downloaded from Apple's iTunes music store. The radio recordings were, as expected, inferior. But they were free, while the downloaded songs cost 99 cents each. The files radioShark creates aren't encrypted, and contain no technical barriers that would bar them from being shared.

Historically, copyright laws have allowed the recording of broadcasts for personal use. But radioShark users who share files could run into legal problems, given the new, stricter laws on digital copyrights, and the recent willingness of media industries to sue over such things.

If radioShark were smarter, it could be a sensation. For now, though, it's more of a curiosity, or a tool for radio enthusiasts with a good sense of station schedules and time to invest.

With reporting by Katherine Boehret

E-mail me at Mossberg@wsj.com.

(See related article: "Radio Goes Digital --- Stations Improve Sound Quality To Compete With Satellite; Upgrading Your Boom Box" -- WSJ Oct. 6, 2004)

---- INDEX REFERENCES ----

NEWS SUBJECT: (New Products/Services (C22); Pricing (C314); Science/Technology (GSCI); Review (NRVW); Marketing (C31); Corporate/Industrial News (CCAT); Political/General News (GCAT); Content Types (NCAT); Factiva Filters (NFACT); FCP Industry News Filter (NFCPIN))

INDUSTRY: (Broadcasting (I97411); Radio Broadcasting (I9741105); Software (I330202); Electronic Consumer Goods (I3454); Consumer Products (ICNP); Computers/Electronics (I3302); Computing (ICOMP); Electronics (IELEC); Media (IMED))

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