

RIAA sues XM over recording device

May 17 2006

XM Satellite Radio is prepared to fight a lawsuit from the Recording Industry Association of America regarding the recording of satellite radio onto electronic devices.

The suit, filed Tuesday in federal court, claims that XM's Inno receiver, which has the ability to record songs off XM stations and save them, essentially constitutes a music-downloading service and is a "massive wholesale infringement."

XM, which has pledged to battle the suit, says that using the Inno to record from XM radio is no different from using a tape recorder to record off of terrestrial radio, a legally protected practice.

"These are legal devices that allow consumers to listen to and record radio just as the law has allowed for decades," XM spokesman Chance Patterson said in a released statement. "The music labels are trying to stifle innovation, limit consumer choice and roll back consumers' rights to record content for personal use."

The RIAA responded in a news release, saying that the Inno's function goes beyond the previously made agreements between XM and the record labels.

"We want to work with our various partners to offer fans an extraordinary music experience in a variety of different ways," the RIAA said, "but everyone must play by the same set of rules and fairly compensate labels, artists, songwriters and publishers."

The RIAA noted its past work with both XM and its rival Sirius Satellite Radio.

"From the outset, we understood the mutual benefits of digital broadcasts," the RIAA said.

"In fact, we provided them with a major price break in our initial licensing agreement to help the industry get off the ground," it added. "That agreement has made it possible for satellite radio to grow."

Patterson said he believed the lawsuit is connected to the RIAA's ongoing negotiations with XM in regard to a new licensing agreement.

"This is a negotiating tactic on the part of the industry to gain an advantage in our private business discussions," he said.

Patterson noted that XM already pays more in digital-music broadcast royalties than any other entity.

Sirius's S50, like the Inno, can record audio from Sirius stations. However, Sirius reached an agreement with the record labels last month -- the terms of which are not known -- and avoided suit.

Ryan Saghir, satellite-radio expert and blogger at Orbitcast.com, said he believes the suit to be a negotiation ploy as well. He noted that in the suit the RIAA asks for \$150,000 for every song that gets copied by an Inno player from XM Radio.

"How exactly are they going to track that?" he asked.

Saghir said the lawsuit probably won't hold up, given that recording music off of terrestrial radio is already legal.

"The only difference is it's digital audio," he said. "It's just like recording off the radio with a tape recorder. The user is controlling the 'record' button."

The RIAA has taken a hard line in negotiations, first offering cheaper licenses to the satellite-radio companies but then raising its asking price, Saghir said. He added that he's heard that the RIAA wants as much as \$1 billion from XM for licensing rights through 2011.

"They see XM and Sirius as being ... possibly a threat to CD sales," he said. "It's a pre-emptive strike."

"They don't want to be caught off guard like they were in the 90s with MP3 downloading services," he said.

However, much like their late actions against MP3 services, the recording industry might be hurting itself with its actions against XM, Saghir said.

"There's no other method to expose people to back-catalog music and artists -- the ones that would benefit the most from extra exposure -- and now they are suing them," he said. "It's just another case of the RIAA biting the hand that feeds them."

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