

The Pirate Bay trial – IFPI Chairman John Kennedy outlines the damage to the music industry

Stockholm, 25th February 2009

John Kennedy, Chairman and CEO of IFPI, has given evidence in the trial of The Pirate Bay, in Stockholm, outlining the “significant damage to the music industry as a whole” that the unauthorised service is causing.

He said The Pirate Bay had eroded legitimate music sales, harmed the environment for legitimate services, damaged the marketing plans of music companies and disrupted the flow of investment into new music.

Kennedy said The Pirate Bay harms music copyright holders in a number of distinct ways. It deters people from buying music online, as well as new ventures and retailers wanting to enter the digital music market. There are also the wasted costs of marketing and of developing new artists, and a range of other costs, such as engineering and production.

John Kennedy has worked for 30 years in the music business. He has headed record companies in the UK and internationally, latterly as President and COO of Universal Music International. He also produced the ten Live 8 benefit concerts in 2005 with Bob Geldof and Harvey Goldsmith. He has headed IFPI, which represents some 1400 record companies across the world, since 2005.

Giving evidence to the court, Kennedy said The Pirate Bay had grown to become the number one source of illegal music, following successful court actions against two previous high profile unauthorised services, Grokster and Kazaa. He said the migration of the legitimate music business from the physical to the digital environment had created “wonderful opportunities but also great threats.” More music is now being consumed than ever before, but less is being paid for. The simple proposition, Kennedy said, is that it is very difficult for new business models to thrive if they are competing with unauthorised free music.

Asked about the compensation claims of the music companies against The Pirate Bay defendants – totalling €2.1 million in respect of a sample of 23 titles – Kennedy said they were “justified and maybe even conservative because the damage is immense.”

He said that typically record companies invest as much as 20 per cent of their turnover in developing artists – investment which is funded by legitimate sales of recordings. Kennedy gave insights into the way music companies invest their revenues, describing how legitimate revenues are divided between costs such as artist royalties, studio producers, songwriters, music publishers, recording costs and the spend on marketing and promotion. “The music industry has become very good at delivering a constant supply of new music, and the music charts change around the world on a weekly basis. There is a continual demand for new music and the record companies have a very sophisticated way of finding new artists.”

He described the damage done to this business when music is made available via The Pirate Bay before its official release date. “In any industry when you are bringing a product to the market there is a critical stage at which you choose to make your connection with the public – it’s a particular stage at which you launch your product. And all the marketing spend, particularly in the music industry, is designed to make an impact, particularly in week one after release.”

When material is made available on The Pirate Bay it hurts the legitimate sales of the music and creates a damaging impression of underperformance, Kennedy said, citing the Swedish market as an example. “If you lost 1000 sales in week one, your recording, instead of going into the charts at number five, would go in at number 20. If you aimed at number 10 - which is good for a new artist – you could fall to number 75 and if you had aimed at number 20 you may not make the chart at all.”

Kennedy said the sharp plunge in music sales over the past few years was in itself evidence of the impact of services such as The Pirate Bay. CD sales fell 38 per cent between 2001 and 2007, a period which saw a very sharp rise in the levels of unauthorised file-sharing. Despite the growth of legitimate online services, they have not offset the overall decline in music sales, he said. Music fans, particularly the younger demographic, had got used to taking music from illegal sites and the legitimate digital services were struggling to compete with free.

Kennedy said the majority of research confirmed that unauthorised file-sharing is damaging legitimate sales. Questioned on whether he thought concert revenues could become the alternative revenue streams for artists, he emphasised the vital importance of recording music to the career of most artists. “If you look at the most successful artists in live performance, every one of them has needed successful recordings to launch a successful live performance career. If you’ve sold 21 albums and been a success you can sell a lot of concert tickets.”

Kennedy made a clear distinction between the functions of The Pirate Bay and general search engines such as Google. If you type ‘Coldplay’ into Google, there will be 40 million results, made up of press stories, links to legal download stores, concert reviews and a multitude of different links. If you go to The Pirate Bay you will get less than 1000 results, all of which will give you access to illegal music, illegal movies and artwork.” He said that Google, unlike The Pirate Bay, has been working cooperatively with the music industry on a daily basis, helping curb the supply of copyright infringing content.

Kennedy pointed to the explicit global ambitions of The Pirate Bay service which boasted 22 million users, one million visits a day, distribution of 1.6 million BitTorrent files and over half of all BitTorrent traffic around the world. He said this does substantial damage to the legitimate music market, particularly in the form of pre-release music. The longer the unauthorised copies are made available before the official launch date, the greater the damage done.

Asked if people who acquired music from The Pirate Bay would have bought it legitimately, Kennedy said it was “common sense” that if they had not been able to get music for free then they would have bought it. Consumer research supported this – “that’s what consumers tell us when we ask them.”

Questioned on research that has been done into the impact of unauthorised file-sharing, Kennedy pointed to five studies which found a causal link between falling sales and unauthorised file-sharing. They included US Professor Stan Liebowitz in 2007 who concluded that the decline in sales had been wholly attributable to illegal file-sharing. A single study in 2004 which had reached a different conclusion, arguing that file-sharing helped promote legitimate sales, "did not hold up under examination" according to a subsequent appraisal by Liebowitz.

For further information contact:

IFPI London - Adrian Strain or Alex Jacob

Tel: +44 (0)20 7878 7935

Email: press-office@ifpi.org

© IFPI. All rights reserved.
[Terms of Use and Privacy](#)