



# Department of Justice

FOR IMMEDIATE RELEASE  
TUESDAY, DECEMBER 23, 2003  
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**STATEMENT BY ASSISTANT ATTORNEY GENERAL R. HEWITT PATE  
REGARDING THE CLOSING OF THE DIGITAL MUSIC INVESTIGATION**

***Investigation Reveals the Major Record Labels' Joint Ventures, pressplay  
and MusicNet, Have Not Harmed Consumers or Reduced Competition***

WASHINGTON, D.C. – R. Hewitt Pate, Assistant Attorney General in charge of the Department's Antitrust Division, issued the following statement today after the Department announced the closing of its investigation into the major record labels' pressplay and MusicNet joint ventures:

“The Division's substantial investigation of pressplay and MusicNet has uncovered no evidence that the major record labels' joint ventures have harmed competition or consumers of digital music. Consumers now have available to them an increasing variety of authorized outlets from which they can purchase digital music, and consumers are using those services in growing numbers.

“None of the several theories of competitive harm that the Division considered were ultimately supported by the facts. The Division found no impermissible coordination among the record labels as to the terms on which they would individually license their music to third-party services. The development of the digital music marketplace similarly belies any concerns that the record labels used their joint ventures to stifle the development of the Internet music marketplace and to protect their present positions in the promotion and distribution of prerecorded music in physical form.”

(Background information is attached.)

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**DEPARTMENT OF JUSTICE ANTITRUST DIVISION  
STATEMENT REGARDING THE CLOSING OF ITS INVESTIGATION INTO  
THE MAJOR RECORD LABELS' PRESSPLAY AND MUSICNET JOINT VENTURES**

Today the Department of Justice announced that it has closed the Antitrust Division's investigation of pressplay and MusicNet, two joint ventures formed by the major record labels to distribute music over the Internet. Pressplay began as a joint venture of major labels Sony Music Entertainment and Universal Music Group, but recently was sold to software supplier Roxio. MusicNet is a joint venture of major labels Warner Music Group, EMI Group, and BMG Music, as well as RealNetworks, an Internet media company.

The digital music world has changed dramatically since the Division opened its investigation in the summer of 2001. In significant part as a result of that change – most notably the emergence of new competitors and Sony's and Universal's sales of their controlling interests in pressplay – the concerns that led the Division to open its investigation have now diminished or disappeared. Consumers can now download individual songs from a growing number of competing digital music suppliers, each of which offers songs from the music catalogs of all five of the major record labels. Consumers also have their choice of subscription-based music services that, for a monthly fee, allow subscribers to browse hundreds of thousands of songs, to listen to "streams" of an unlimited number of songs of their choice, and to download the particular songs they want to "burn" to compact discs or transfer to portable devices.

In its investigation of pressplay and MusicNet, the Division focused primarily on two questions. First, did the joint ventures restrain competition among the major record labels on the terms on which they would license their music to digital music services not owned by the record labels themselves? Second, did the joint ventures allow the major record labels to impede the growth of the Internet as a channel for the authorized promotion and distribution of music, and thereby help the major labels solidify their central roles in the existing music market? Having answered both questions in the negative, the Division has closed the investigation.

Pursuant to the Division's policy on the issuance of investigation closing guidance, *available at* <http://www.usdoj.gov/atr/public/guidelines/201888.htm>, the Division is providing this brief explanation of its analysis of the record labels' joint ventures. This discussion is limited by the Division's obligation to protect the confidentiality of certain information that it found useful to its analysis. Like all of the Division's investigations, this one has been highly fact-specific, and many of the underlying facts central to the decision are not public. Consequently, readers should not draw overly broad conclusions regarding how the Division is likely to analyze particular collaborations or activities, or transactions involving particular firms, in the future. This statement is not intended to create or affect any party's rights or entitlements nor to bind the Division with respect to any future enforcement action.

## The Internet Music Marketplace

When the Division opened its investigation into the major record labels' joint ventures in the summer of 2001, the major record labels had authorized no Internet businesses to allow consumers to search a broad selection of their artists' music and to download selected songs. Millions of consumers instead downloaded software released by entities such as KaZaA and Morpheus, which then allowed them to make unauthorized copies of music files that other users of the same software stored on their computers. The music files that consumers obtained through use of the peer-to-peer file-trading software were typically stored in a file format called "MP3," which compressed songs into computer files that were small enough to be quickly and easily transferred over the Internet. The songs could then be played on a computer, transferred to portable MP3 players, or burned onto blank CDs that could be played by a user's home stereo, car stereo, or portable CD player.

Both joint ventures launched their respective Internet subscription music services in December 2001. At the time of its launch, pressplay (then jointly owned by Sony and Universal) offered to its subscribers music released by major labels Sony, Universal, and EMI. MusicNet (owned by Warner, BMG, EMI, and RealNetworks) offered music released by major labels Warner, BMG, and EMI. Although pressplay allowed its top-tier subscribers an opportunity to download a limited number of songs that were capable of being burned to CDs or transferred to MP3 players, its base subscription package permitted only "streams" and restricted or "tethered" downloads. And MusicNet only offered "streams" or "tethered" downloads. A stream allows the consumer to listen to a song without capturing the song file on his or her computer. To listen to the same song again, the consumer must request that the subscription music service deliver the stream a second time. A tethered download, in contrast, resulted in having the song stored on the subscriber's computer, but the file could not be transferred to portable devices or burned to a CD. The subscriber could listen to the tethered download only via the computer through which he or she had accessed pressplay or MusicNet. These services were widely criticized for their unappealing consumer offerings, and, not surprisingly, they attracted little consumer interest.

The digital music landscape is dramatically different today. The major labels have now authorized a number of entities – only one of which continues to be controlled by major record labels – to deliver the major labels' artists' music to consumers in a variety of different forms. Sales by these authorized digital music outlets have increased substantially in recent months, reflecting increasing consumer acceptance of the current offerings. Several different entities now offer, or have announced plans to offer, a broad selection of major label content that can be downloaded on an *a la carte* basis and transferred to portable devices or burned to CDs. Apple Computer and BuyMusic.com are among the entities currently operating *a la carte* download services, and a diverse group of additional companies including Amazon.com, MTV, Dell, and Microsoft are also reportedly considering services of their own.

In addition, Sony and Universal announced in April 2003 that they had sold pressplay to Roxio, a leading supplier of CD and DVD burning software. On October 9, 2003, Roxio, which had previously acquired the Napster trademark, launched an improved version of pressplay's

subscription service under the name Napster 2.0. Consumers can also subscribe to an improved version of the MusicNet service, or to subscription services offered by RealNetworks and FullAudio.

## **The Division's Analysis**

### *Reduced Competition in Licensing to Third Parties*

The Division closely examined whether the joint ventures diminished competition among the major record labels in the terms on which they licensed their music to third-party music services that sought to compete with the joint ventures. The Division initially was concerned that the licensing by the major record labels to their own joint ventures might provide the major record labels an opportunity to collectively establish the terms on which they would license to third parties. The joint ventures might also have permitted the exchange of competitively sensitive information relevant to each label's licensing considerations.

The Division's investigation of the licensing by the major record labels revealed no evidence that the major labels impermissibly established the terms on which they licensed their music to third parties. Not only did the terms of the licenses that the major labels granted to third parties vary significantly, but it is also apparent that each label adopted its own approach toward the distribution of its music by third parties over the Internet. Safeguards adopted by both pressplay and MusicNet to prevent the sharing of confidential information among their participants also appear to have succeeded in preventing the inappropriate exchange of information among the major record labels through the medium of the joint ventures. Moreover, Roxio's acquisition of pressplay from Sony and Universal has eliminated the possibility of any future information sharing or diminished competition between those two labels that might have been facilitated by their continued involvement in pressplay.

### *Suppression of the Development of the Internet as a Vehicle for the Promotion and Distribution of Music*

The major record labels own the copyrights in the sound recordings associated with over eighty percent of the prerecorded music sold in the United States in the past year. The major labels hold that position, and have maintained it over time, in part because they can promise to artists the resources and expertise necessary to effectively promote and distribute new music. Many believed, however, that by using the Internet, independent record labels or other entities could promote and distribute new music as effectively as the major labels, but at a much lower cost, making them more attractive to artists.

The Division considered in its investigation whether the major record labels used their joint ventures to suppress the growth of the Internet as a means of promoting and distributing music, in order to protect their present positions in the distribution of music on physical media, such as CDs. Proceeding collectively could have allowed the major record labels to explore the use of

the Internet to promote and distribute their music, without relinquishing control over the pace and direction of those activities.

The poor quality and restrictive nature of pressplay's and MusicNet's services at launch in December 2001 provided some support for this theory. As time passed, however, both joint ventures released improved and more consumer-friendly versions of their services, and the major labels licensed their music to a broader array of third-party music services that compete on price and features. Consumers can now download individual songs from broad music collections offered by at least five such services, and might soon be able to choose among a dozen suppliers. The Division concluded from those developments that the major labels are not impeding the promotion and distribution of music over the Internet.

### **Conclusion**

The Division has expended substantial time and resources examining the pressplay and MusicNet joint ventures to determine whether they posed a threat to competition and consumers of digital music. Because its theoretical concerns ultimately were not supported by the evidence, the Division has closed its investigation.