

## Roxio to Acquire Assets of Napster

### **BACKGROUND:**

Once the darling of the technology world with 80 million registered users, the revolutionary software allowed people to use the Internet to do what they had done for years in neighborhoods, schoolyards and concert venues: They swapped music. Within months of its release, Napster was the Internet's killer application.

In 1998, long before the lawsuits and the international furor, Napster was just an idea in a young college student's head. Fanning, then a 19-year-old freshman at Northeastern University in Boston, wanted to solve a problem his roommate was having. Back then, downloading music required people to search for websites where songs were posted. Most were unreliable. Links broke. Traffic spikes slowed download times.

So Fanning wrote a simple program that would search and index music files. By aggregating all the websites in one place, this allowed music fans to easily sift through hundreds of sites. (Incidentally, there was another file-trading service called the ScourExchange, but it never achieved the popularity of Napster.)

Fanning began bouncing ideas for Napster off Sean Parker, whom he met using Internet Relay Chat, when they were beta-testing a program with a few friends in the summer of 1999. Something happened: The simple download was a hit. Word of mouth spread news of the new killer app. It was a music aficionado's dream. Media outlets began to hear rumblings about this new software product.

Moving quickly, Fanning's uncle, John Fanning, raised seed money and moved the dynamic duo to the Bay Area, the epicenter of the digital revolution. Here, Uncle John believed, the trio would turn the world upside down. Meanwhile, 3,500 miles away in Washington, there was a problem brewing in the headquarters

of the Recording Industry Association of America, a trade organization that represents the five largest music labels. Along with its sister organizations around the world, the RIAA was already forming a plan to take down sites posting MP3 music files.

That was the big problem then: Regular Janes and Joes, sitting in basements, putting up websites with lots of music files there for the taking. But as Napster emerged into the Internet consciousness, shutting down millions of sites became irrelevant. Once enough people had Napster on their computer, the number of files being traded would reach the billions.



The RIAA launched its ill-fated legal action in December 1999. Although the RIAA eventually accomplished its goal of serving Napster with a copyright infringement lawsuit, Napster still turned into a nationwide phenomenon: Not only was it simple to use, it now was easy to find as well. The network grew almost exponentially and the more people who signed on, the more music there was available.

It was a fabulous time for Napster. The boys had an interim CEO in Eileen Richardson and a team of programmers and executives, many of who left the music industry to work for the startup. But the spotlight smacked the Napster founders directly in the eyes, leaving them blinded. Richardson, a gregarious woman, had a chance to circumvent the RIAA's legal action. Instead, she and her minions repeatedly told anyone who would listen they would run Napster with or without the record labels. Those statements, made so early in the days of file trading, set the tone for the contentious relationship between the technology industry and the entertainment industry in countless other legal -- and philosophical -- fights.

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With the RIAA bearing down on Napster, the open-source community kicked into action in early 2000, led by AOL's Frankel who released Gnutella, a new file-trading application, into the world. Now, anyone with a computer and some programming skills could create their own version of Napster. Gnutella proved that file trading was more than just Napster. That got executives at Bertelsmann, a German media conglomerate, thinking. The company offered Napster millions of dollars to develop a secure distribution system. Over the next year, Bertelsmann poured \$85 million dollars into the company, even as its music division fought to shut the service down.

Innovative technology companies had felt safe since 1984, when the Supreme Court ruled that people could record television and movies in their homes. For 15 years, new devices from digital tapes to personal computers that allowed people to record and share information were shielded from legal action. Napster changed that thinking. Media companies successfully argued in federal court that laws governing analog taping devices -- VCR --shouldn't apply in a digital age, when copies suddenly became perfect replicas.

Ninth Circuit U.S. District Judge Marilyn Hall Patel, the forceful judge presiding over the Napster imbroglio, was one of the first magistrates to come down against the technology. Patel's rebuke in July 2000, in which she called Napster "a monster," issued the first of two injunctions that shuttered the service. Her destruction of Napster's defense, which used some of the Sony Betamax arguments, left the technology industry aghast.

For the second half of 2001, Napster executives debated and tinkered with their new, secure file-trading network. They even launched a private beta test in January. By all accounts, the architecture was coming along nicely, but the major labels were still not convinced the system would work. But no deal was struck, in large part because the labels already launched two music services themselves, Pressplay and MusicNet.

With no file-trading network, no music licenses and no money, Napster faded from the

collective consciousness. Kazaa, Morpheus, BearShare and Gnutella replaced Napster as the file-trading sources of choice.

By February 2002, Bertelsmann was willing to pony up \$20 million to buy Napster, thanks to Hilbers, a former Bertelsmann executive. With the smell of money in the air, internal politics ripped the company apart. John Fanning organized a coup, trying to oust former CEO Hank Barry and John Hummer, the venture capitalists who initially funded the company with \$12 million. The fighting continued through early spring, with Fanning eventually filing a lawsuit to have Barry and Hummer dismissed from the board of directors. The suit was thrown out of court, but the damage was done. Bertelsmann began to back away from the deal, although Hilbers had put together one last offer. On Tuesday, the board voted to reject the Bertelsmann sale.

Within hours of the decision, Hilbers turned in his resignation, followed closely by Shawn Fanning and other senior executives. As the carnage mounted, Barry called the employees, letting them know they could leave and collect some severance money or take unpaid vacation and pray that somehow enough money would materialize to keep Napster afloat. Napster filed for bankruptcy in November 2002.

### **STORY:**

In a new twist in the entertainment industry's ongoing war against Internet file-sharers, two renowned songwriters and two independent music publishers have sued the German media giant Bertelsmann AG for \$17 billion for allegedly helping the once phenomenally popular Napster song-swapping service stay in business.

The suit, *Lieber v. Bertelsmann* was filed in Manhattan federal court last week. It seeks class action status for about 160,000 songwriters and their publishers who were allegedly damaged by Napster's service facilitating free online copying of songs in violation of federal copyright law. The lawsuit, which is based heavily on evidence arising out of Napster's bankruptcy proceedings

last year, contends that starting in October 2000, Bertelsmann not only infused about \$85 million into the struggling company but also exercised significant power and control over its operations. Without Bertelsmann's involvement, the lawsuit claims, Napster would have closed its doors a year before the court ordered it to close in July 2001.

The named plaintiffs in the case are Jerry Leiber and Mike Stoller of the Lieber & Stoller songwriting team, who wrote such classic hits as "Hound Dog," "Jailhouse Rock" and "On Broadway." Frank Music, one of the music publishers, licenses such songs as "Unchained Melody," and Peer, the other publisher, controls the copyrights for "Walk Like an Egyptian," and "Blue Moon of Kentucky."

The Bertelsmann filing is just the latest in a string of lawsuits for contributory copyright infringement brought by the songwriters against Internet file-swapping services. The legal case against Bertelsmann is similar to the earlier one against Napster, charging the company with contributory copyright infringement for helping users find music it knew to be protected.

When it first invested in Napster, Bertelsmann publicly stated that its loan would be used to create a file-swapping system that complied with copyright law. Instead, the plaintiffs allege, much of the initial \$50 million went toward Napster's operating costs.

A document produced in the bankruptcy proceeding shows that a Bertelsmann task force recommended that instead of pressuring Napster to stop allowing illegal file-swapping, Bertelsmann should keep Napster operating in its existing infringing form to keep its customer base intact, while Bertelsmann worked on building the new, legitimate company.

The suit alleges that Bertelsmann management adopted the plan and directed Napster to continue operations accordingly. The complaint alleges. "Bertelsmann intentionally prolonged the massive infringement of plaintiffs' copyrights by Napster users to maximize the value of Napster for Bertelsmann." Copyright experts

said that the suit will hinge on Bertelsmann's level of involvement in operations.

The \$17 billion in damages sought derives from the maximum statutory penalty of \$150,000 for each of the more than 100,000 copyrighted works allegedly infringed on. None of the music labels have joined in the lawsuit yet, although the *Financial Times* has reported that EMI, the world's third largest music company, is considering it.

The songwriters have also sued several of the other song-swapping services that have flourished in the wake of Napster's demise, including Morpheus, Kazaa, Grokster and Aimster, for copyright infringement. These cases are pending. A Chicago federal court has preliminarily enjoined Aimster (now Madster) from operating its service.

#### **SIGNIFICANCE:**

Napster, the pioneering online music service, is getting another lease on life with the launch of a legal, subscription-based music business. Roxio Inc., which bought Napster's name and intellectual property for \$5 million at a November bankruptcy sale, said it is in discussions with the five major music labels to provide content for the online service. Best known for its CD-creation and digital media software, Roxio also hired Napster founder Shawn Fanning month as a consultant to the service, said spokeswoman Kathryn Kelly.

But the new Napster won't be based on the famous file-swapping technology that, boasting 60 million users at its height, upset the record labels and doomed the company in a sea of copyright infringement litigation. "Before it launches, it will have to be legal," Kelly said. "And it will be top-tier content, not unheard-of bands you see now with most of the subscription services."

Though Roxio will keep the well-known Napster name, it hopes its negotiations will go farther since it is unencumbered by the litigation, Kelly said. Also, Chris Gorog, who became Roxio's chief executive in 2000, was previously an executive at Universal Studios.

## OPRAH'S BOOK CLUB IS BACK

--Oprah is back in the business of book recommendations, 3-5 times a year...—

### **BACKGROUND:**

During her book club's six years, she recommended 48 books, and all became best sellers. She interviewed the authors on her show and invited readers to discuss the books on the show. She began the club in September 1996 with *The Deep End of the Ocean* by Jacquelyn Mitchard. Later selections included *She's Come Undone* by Wally Lamb and *Sula* by Toni Morrison.



She called a timeout in April 2002: "It has become harder and harder to find books on a monthly basis that I feel absolutely compelled to share." Many media outlets, including NBC's *Today* and USA TODAY, began clubs to fill the void. None has come close to her effect on sales.

The Association of American Publishers is the national trade association of the U.S. book publishing industry. AAP's approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller publishers.

### **STORY:**

Media mega-star Oprah Winfrey's announcement that "I'm back in the business of recommending books...but with a difference," drew a standing ovation from an audience of America's leading publishers at a dinner in Washington last night. Speaking to members of the Association of American Publishers (AAP) and a number of distinguished guests, Oprah, who was in town to receive the "AAP Honors," the Association's highest award, told the assembly that the new book club will focus on literary classics because "I cannot imagine a world where the great works of literature are not read." Her

hope, she said, is that "The Oprah Winfrey Show" will "make classic works of literature accessible to every woman and man who reads."

The new club is tentatively titled, "Traveling with the Classics," and selections will be made three to five times a year. Oprah discussed how each show will originate from a site connected with the selection—the author's birthplace, the book's setting, or some other relevant locale. Oprah.com will feature a companion study guide to provide support for readers. Speaking lovingly about the "slow, sensual art of reading," Oprah said that reading "is my favorite gift to myself." Shakespeare, Steinbeck and Hemingway are the authors she's reading now and will likely make the list.

She's not limiting her selections to American authors, and she's not telling what the first pick will be. She's saving that announcement for her syndicated TV show. Selections will be made three to five times a year.

For more information on Oprah's Book Club visit:

<http://www.oprah.com>

### **SIGNIFICANCE:**

Her determination to inspire audiences with her own passion for books has earned Oprah a special place in the publishing world. "She urged viewers to celebrate books, to read them and talk about them, and she created a buzz never before seen in the industry," said Jane Friedman, President and CEO of HarperCollins Publishers and the newly elected chair of the AAP. AAP President and CEO Pat Schroeder, a friend since her days in Congress, called the new book club format "a wonderful way of drawing people into the world of books and making them readers for life. If that doesn't make publishers stand up and cheer, I don't know what will." Another reason for the publishers to cheer is that an Oprah recommendation guarantees a top ten bestseller.

**NOTE:** Oprah's media empire grew steadily stronger last year, and she made the Forbes list of billionaires this year with a net worth of \$1 billion. Also, a half sister of Oprah Winfrey was found dead at her suburban Milwaukee home. The body of Patricia Lloyd, 43, was discovered by her husband, Kenny, early Wednesday.

## SPORTS:

## Alinghi Wins the America's Cup



Alinghi won Race Five of the XXXI<sup>st</sup> America's Cup Match in Auckland on Sunday and, for the first time in its 152-

year history; the America's Cup is going back to Europe.

Ernesto Bertarelli's Swiss Alinghi Team swept away Team New Zealand in five consecutive races, becoming the first Challenger to win the America's Cup on its initial attempt. With his 14<sup>th</sup> America's Cup win, Alinghi skipper Russell Coutts broke Dennis Conner's record of 13 America's Cup race victories, adding the five wins of 2003, to the nine he earned with Team New Zealand in the 1995 and 2000 campaigns.

Coutts has also now equaled the legendary Charlie Barr and Harold Vanderbilt by winning three consecutive America's Cups.

The Hauraki Gulf delivered conditions America's Cup aficionados had hoped for, and Sunday's race was sailed in ideal weather, with a steady 12 to 15-knot Northeasterly, blue sunny skies, and fair weather providing an idyllic backdrop for the drama on the water.

As they have throughout the 2002/2003 America's Cup season, the Alinghi Team turned in a dominant performance, winning the start, and converting that early advantage into a solid lead that they protected ferociously.

Team New Zealand tried everything they could to break through, but the black boat continued to be plagued by gear failure, breaking a spinnaker pole on the second run. In the end, Alinghi was too strong, and deserving of the most prestigious trophy in the sport.

The Alinghi Team has announced it will hold a press conference on Tuesday afternoon to reveal details of the XXXII<sup>nd</sup> America's Cup.

## ENTERTAINMENT:



## The Silverado Squatters

By Robert Louis Stevenson



Classic, beautifully written account of Robert Louis Stevenson's sojourn in Calistoga, California, wonderfully evoking the late-nineteenth-century wine country.

In July of 1879, Robert Louis Stevenson received word that his future wife's (Frances Osbourne's) divorce was almost complete but she was seriously ill. Dropping everything he left Scotland and traveled to Monterey in California becoming very ill along the way.

Penniless, in broken health, and his writing career in tatters he was nursed back to health by his doctor, his nurse, and his future wife. His father then provided him money to help and he married. Still too weak to undertake the journey back to Scotland, he spent an unconventional honeymoon in a shanty in a derelict mining camp.

This is his story of their time in the shanty. Other tales of his quest appear in "Essays of Travel" and "Across the Plains." Stevenson describes traveling by ferries, trains, and carts to Calistoga, where he meets a curious collection of characters who had remained in the region after the shutdown of the unprofitable mine. He describes an area full of eagles, grizzly bears, and rattlesnakes — different from the landscape today.

Stevenson's account is a delightful travel story that provides a rare and vivid look at the flora and fauna, and above all the people, of an extraordinary period in the American West.

ROBERT LOUIS STEVENSON (1850-1894) was born in Scotland. He began his literary career as a travel writer with *An Inland Voyage* (1878) and *Travels with a Donkey in the Cévennes* (1879). He went on to write such classics as *Kidnapped*, *A Child's Garden of Verses*, and *The Strange Case of Dr. Jekyll and Mr. Hyde*.

**WHO YOU NEED TO KNOW:***Mister Fred Rogers*

Day after day for more than three decades, Fred Rogers put on a zip-up cardigan and sneakers and gently invited millions of children to be his neighbor. Rogers died Thursday after a bout with stomach cancer at his Pittsburgh home, leaving generations of people who grew up watching him in mourning. He was 74.



Rogers was born in Latrobe, 30 miles southeast of Pittsburgh. Early in his career, he was an unseen puppeteer in "The Children's Corner," a local show he helped start at WQED in 1954. In seven years of unscripted, live television, he developed many of the puppets he used later.

He studied early childhood development at the University of Pittsburgh and was ordained a Presbyterian minister in 1963 with a charge to continue his work with children and families through television. That same year, Rogers accepted an offer to develop "Misterogers," his own 15-minute show, for the Canadian BC.

In 1968, "Mister Rogers' Neighborhood" began distribution across the country through National Educational Television, which later became the Public Broadcasting Service. Through the years, Rogers dealt with topics ranging from anger and anxiety to death and divorce. He taught children how to share and even why they shouldn't fear taking a bath by assuring them they would never go down the drain.

He would talk to viewers in a slow, quiet voice and introduce them to other characters and to guests such as cellist Yo-Yo Ma and trumpeter Wynton Marsalis. Then he would take his audience on a magical trolley ride into the Neighborhood of Make-Believe, where puppet creations — including X the Owl, King Friday XIII and Daniel Striped Tiger — would interact with each other and adults. The final episode was taped in December 2000 and aired in August

2001, though PBS affiliates continued to broadcast old episodes.

The show won four Emmys, and Rogers won another for lifetime achievement. He received a Peabody Award in 1993 and the Presidential Medal of Freedom in July 2002. In 2002, Rogers helped President Bush launch a reading program.

Rogers was diagnosed with cancer last December and had surgery in early January, but his health declined in the past two weeks. Rogers is survived by his wife, Joanne, a concert pianist; two sons; and two grandsons. One of his sweaters hangs in the Smithsonian Institution.

**THIS WEEK IN HISTORY:**

**March 3, 1918**

**Russia Makes a Separate Peace**

Bolshevik Russia signs the Treaty of Brest-Litovsk with the Central Powers, abandoning the Allied war effort and granting independence to its Polish and Baltic territories, Ukraine, and Finland.

Russia's disastrous involvement in World War I was a primary factor that led to Vladimir Lenin's successful Marxist revolution in November 1917. In December 1917, Germany agreed to an armistice and peace talks with Russia, and Lenin sent Leon Trotsky to Brest-Litovsk in Belarus to negotiate a treaty. The talks broke off after Germany demanded independence for Russian holdings in Eastern Europe, and in February 1918 fighting resumed on the eastern front. With German troops advancing on St. Petersburg, Lenin authorized the signing of the Treaty of Brest-Litovsk on March 3, 1918.

German leaders hoped that the formerly Russian territories would fall under their sway, but in November 1918 an armistice ended World War I, dooming Germany to demilitarization and Allied domination. In 1919, Soviet Russia regained the Ukraine in the Russian Civil War and in 1939 seized parts of Poland, and in 1940 the Baltics, following the signing of the Nazi-Soviet nonaggression pact.

## FEATURE:

*A Story of  
Pettrified Wood*

Imagine that you are in a grove of redwoods, some millions of years ago, with strange creatures scurrying around under a dense growth of trees and ferns. Smoke has been sighted coming from the towering volcano to the northeast, and a few earthquakes have rumbled



through the forest in the past days, but nothing else is unusual. Suddenly, a puff of smoke arises from the side of the volcano, growing larger and larger in seconds and towering upward, shooting streamers of ash and bombs of lava outward.

A thundering noise starts, slowly at first then deeper and deeper as the cloud rises. A shock accompanies the sound and you realize that the cloud is moving down the slope, faster than an avalanche. A wind starts also and the trees lean towards you, away from the oncoming cloud. You hear cracking of tree trunks and limbs are falling all around. You feel and smell hot sulfurous gas. Suddenly things around you start bursting into flame. The sky darkens and you are blasted by the wind and tiny shards of ash. Trees are leaning toward you, cracking at the base and crashing to the ground. In an instant, all is hot, flames surround you and the forest is laid out on the ground, trunks pointing towards the volcano. The wind slows down and a fine rain of water and ash follows the cloud. Small and large fragments of cooling lava fall from the sky, burying the trees with a blanket of ash.

Then all is still, the violence of the explosion gone, and more ash is falling, smaller now, from a high cloud from the rumbling distant

volcano. For days and weeks, the eruption continues, with more layers of ash burying the prone forest. Streams erode the surface, depositing gravel in their channels. Glassy lava flows erupt from domes of sticky lava. For perhaps a million years, more eruptions lay down ash, lava flows and ash with glass so hot that it is welded into hard layers.

Time passes and you remain buried with the rotting logs of the forest. The ground is now saturated with water containing dissolved silicon and oxygen, or silica, from the overlying ash. This silica is present in molecular form, as any submicroscopic particles which are carried down by water through the ash toward the buried forest. One by one the molecules of silica replace the molecules of the wood, turning wood to solid silica, solid quartz, and solid stone.

Slowly, over a million years, the mountains are pushed upwards; the Coast Range is built, by pressures along the San Andreas Fault to the west. The flank of the volcano starts to erode and rivers and countless streams wash broken rock into adjacent valleys and to the sea. Steams cut deeper and deeper until the forms of the volcanoes are gone, mere stumps of their former selves. You watch the landscape change to rugged hills and a high mountain forms to the east on the hard remains of welded ash flows. Native Americans roam the woods and start to pick up the stone remains of trees to use as tools.

Settlers come and build cabins, noting and collecting the stone wood as a curiosity. Some unearth whole trees and become guardians of this natural wonder. They charge people admission to view the petrified trees. Robert Louis Stevenson writes about them and the trees. The distinguished scientist O.C. Marsh takes samples back to Yale University for study. The area develops as a public attraction. Soon people from all over the world are flocking to see this unique area.

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*Excerpted from the work "Volcanoes in Eruption" by Terry Wright, PhD. Visited by Robert Louis Stevenson and immortalized in the book Silverado Squatters.*

*Quote of the Week:*

You can't wait for inspiration; you have to go after it with a club. -Jack London

*Fact of the Week:*

Oprah's name was supposed to be Orpah, from the bible, but it was misspelled on her birth certificate.

*Word of the Week:*

caduceus (ka\*du'se\*us) *n.* Mercury's rod, a winged rod entwisted with two serpents, in modern times used a physician's symbol.

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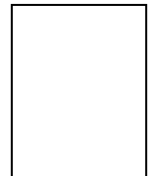
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