

Waves tackles the cracks

“Our client recently arranged for a representative to visit your studio. During that visit, our client’s representative was shown your studio computer...” If you’ve received one of these letters, you know what comes next. If you don’t, you need to read on right away, says *Gez Kahan*

It had been rumoured before, but the publicly accessible trail starts at 9:41pm Eastern Daylight Time on June 26, 2007 with the following posting on Craigslist, an American online network of classifieds, personals and forums:

“STUDIOS – TAKE CAUTION DURING YOUR STUDIO TOURS WITH ANYONE THAT TAKES A VERY STRONG INTEREST (sic) IN THE EXACT PLUG-INS YOU HAVE, AND WISHES TO SEE THEM ON YOUR SCREEN. ESPECIALLY IF THEY ARE ASKING ABOUT ‘WAVES’. THIS MAY BE A BOGUS CLIENT LOOKING TO REPORT YOUR COPYRIGHT INFRINGING SOFTWARE TO THE MANUFACTURER WITH THE INTENT OF FILING A LAWSUIT AGAINST YOU.”

The posting went on to tell the story of a Philadelphia recording studio engineer who showed cracked software to a potential client and received, instead of a session, a legal letter alleging copyright infringement for having unregistered plug-ins.

From there the thread was picked up by GearsLutz.com, with the topic having to date clocked up nearly 6,000 views and over 150 comments, most disbelieving to start with and now fairly evenly split between those who are outraged that anyone uses cracks commercially and those who are outraged



Michael T David of law firm ANDC

that Waves is taking legal action to stop them.

There’s probably scarcely a reader of this magazine who, hand on heart, can swear he or she has never used illegal software, whether it was a copy of a friend’s MS Word or a disk of samples and plug-ins ‘chucked in’ with a legit purchase of a digital recording suite. It’s somehow – like getting away with not paying tax – that’s seen as fair game.

Well, it’s no longer a game. And it’s a measure of how entrenched the practice has become that several people are crying foul at the methods used and the prospective penalties being sought while at the same time admitting that it’s a fair cop.

Having the Craic

Waves bundles are reputedly among the most widely pirated software in pro audio for a number of reasons. First of all, they’re pricey, and represent yet another outlay that hard-pressed studios might rather avoid. They also have a high reputation, which makes access to their functions desirable, not just for what they will do, but as a selling point to help attract clients. And the crack itself is quite a simple matter.

Unlike the iLok demanded by Pro Tools or Logic’s XS USB key, there’s no hardware dongle required to make Waves run on a computer – a proper licence is all. But Waves also needs to let the dog see the rabbit if it’s going to maximise sales opportunities, which it does by means of a time-limited demo version, downloadable from its website. It wasn’t long before some bright spark figured out that the time limit was based on the host machine’s internal clock – so a quick reset of date and time was all that was necessary to renew the demo period indefinitely.

Even hardened criminals know “the back door was open” is no defence against a charge of burglary, and to give them credit, none of the self-confessed (though understandably anonymous) users of the ‘demo reset’ wheeze has attempted to



By resetting your computer’s clock you can beat the software’s ‘lock’ – but is it worth the risk if you are in a professional studio?

excuse his behaviour. But all of them take exception to the way the evidence was obtained.

Having realised what was going on, Waves decided to use teams of agents to gain access to studios by pretending to be clients, persuading engineers to demonstrate the cracked software and secretly filming them as they did so – “entrapment”, “sting” and “burn” are the most used descriptions by those PSNE has spoken to who have been caught out this way. There is also uproar at the reparations the company’s enforcement agents are seeking, which are generally referred to as “extortion”, with “profiteering” a close second.

Both are matters on which the company gives no ground. PSNE has seen correspondence from Nelsons, a Nottingham-based firm of solicitors handling actions on behalf of Waves in the UK, quoting case law under which video evidence “obtained without the knowledge of those appearing in the video” was deemed admissible in court. Nelsons also quotes *Ravenscroft v Herbert* (1980) in support of its right to pursue wrongdoers for damages in excess of the list price for a licence.

Clandestine recordings are indeed allowable. Julian Heathcote Hobbins, senior legal counsel for FAST (the Federation Against Software Theft), explains that entrapment is not an offence under English law, and that covert operations are often the only way to catch wrongdoers. “There’s no real block against gathering evidence. If we have to put someone in under cover or do a test purchase, we do – if you didn’t, you’d never get anywhere in combating the problem.”

Damages, on the other hand, are a matter for the court to assess. “The

law says you’re entitled to the cost of the licence plus costs you’ve incurred in enforcing your rights,” he says, and notes that, “You never make money out of going to court – we want to work with the government to strengthen the penalties.”

There are also incentives, under English law, to seeking an out-of-court settlement under what are known as ‘Part 36 offers’ (see panel, p8) and Hobbins advises anyone who feels he might be guilty to seek independent legal advice and make such an offer as soon as possible.

In the US, Allied National, a debt collection agency is handling the Waves account. “We’re a collection agency based in Omaha, Nebraska offering a broad nationwide [US] platform,” says Michael T David, ANDC’s managing director. “We represent companies from all over the world who are looking for help in collecting what’s owed to them.”

“About a year ago we were contacted by Waves regarding piracy. They wanted representation in the States. Waves came up with a platform and we helped them in devis-

The Waves statement to PSNE

Because of the widespread abuse throughout our industry of the use of unauthorised software, Waves has begun an initiative known as BanPiracy to protect and enforce its copyrights. The focus of this investigation is on professional studios and production facilities which profit from the use of stolen software. Piracy is a serious issue threatening the entire audio software industry, not only for us, but for our loyal customers and our dealers as well.

Based on BanPiracy’s extensive research, we have learned that over 50% of all commercial studios are using stolen or “pirated” software, unlicensed content, and “cracked” applications – not just Waves, all audio software. This ultimately affects every software developer and content creator. And the problem is everywhere. If this kind of abuse continues, developers will be run out of business. And that means no more innovation, and no more new audio software. In fact, many small developers have already gone under.

It also affects the honest customers. Piracy gives illegal software users an unfair advantage. The fact is, paying customers are very frustrated by the thievery – people don’t like criminals stealing business from them. Neither do our dealers.

Our methods are entirely legal and ethical. The experts at BanPiracy have a lot of experience in the collection of damages as a result of software piracy. They are also very familiar with each country’s laws about pursuit and prosecution of these violators.

The problem of audio software piracy affects developers, manufacturers, customers, studios, dealers, engineers, and content creators worldwide. Waves is proud to be a part of the solution.

Gilad Keren
CEO
Waves