

Illegal Music Downloads: When It's Not Nice to Share

*Ted Gentry, Member
Wyche Burgess Freeman & Parham, P.A.*

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As parents, we spend a lot of time teaching our children to share. But if their generosity extends to copyrighted music and other works, sharing can turn out to be a bad – and costly – habit.

Sharing a music download with a few friends seems like an innocent thing to do, but there can be real problems that involve breaking the law.

This sort of file-sharing is an infringement of the copyright on that music. It's illegal. We've created a system of copyrights in this country to allow musicians – and other artists – to capture the value of the works they create.

Even the occasional sharing of music impacts the revenue of a very large industry.

Research tells us file-sharing is not just an occasional event. The Wall St. Journal recently reported that album sales dropped from 656 million albums in 2003 to only about 500 million in 2007. That's reduced revenue of hundreds of millions. The music industry is very concerned about its ability to be paid for the music it produces.

The average teenager doesn't think about the harm that's inflicted on an artist when downloading a shared file.

The vast majority of folks who are engaged in illegal file-sharing would not shoplift a candy bar from a convenience store – or a CD from a record store. So why are they so willing to break the law and steal music? There may be more than one answer: first, I think a lot of people may not understand that what they're doing is illegal; I have teenaged daughters, and I think it's common for kids of that age to burn CDs for one another with downloaded music. They have no idea that those copies are illegal. (Mine understand now, so I'm constantly being asked hard questions about where the line on illegal copying is drawn.)

Another reason this sort of copying is common is that the copier may think what they're doing is private, so they won't get caught; and third, it's so easy and tempting to copy music. If you think about it, 20 years ago no one had the technical ability to copy an LP; if you tried, the quality would be lousy. Today, all it takes is the click of a mouse to get a perfect copy of most music.

The music industry has responded to file-sharing by going to court.

The strategy of the music industry for the past five years has been mass litigation. The industry sued thousands of people – many of them students – for infringement. I've learned a lot about these suits through my work for colleges, because many of the suits are aimed at college students.

Successful litigation became a public relations nightmare for the music industry.

The industry was clearly right on the law in most of these cases, and so they got settlements or verdicts. And because the Copyright Act contains a \$750 per infringement minimum penalty, some of the numbers were quite frightening. In fact, the industry got exactly the kind of verdict they wanted, when in 2007 they obtained a \$220,000 verdict against a student who downloaded 2 dozen songs. The day I read about that, I made sure to have a meeting with my kids about sharing music!

In general, the music industry's litigation strategy was a public relations nightmare. And it didn't really do that much to stem the tide of downloading. So the industry has announced it's going to take a different approach. Instead of mass suits, the industry is in negotiation with internet service providers (ISPs), to cut deals under which the ISPs will inform users that their downloading activity has been detected. If the downloading continues, the ISPs may even suspend service to the infringers. There are also some efforts to include a so-called "watermark" in purchased music, so that the original purchaser can be identified if the music shows up in an illegal download later.

Of course, it's too early to determine whether this strategy will be more successful than the course of litigation, but the new strategy does have some advantages. It could remove the feeling of anonymity that encourages illegal file-sharing. It may also be that the fear of losing internet access is more real for many users than the remote possibility of a money judgment. And the new strategy could be more effective in educating file-sharers who have pure hearts, but genuinely don't know they're violating the law, and will stop when they're told that.

File-sharing penalties are frequently directed to college campuses

There are a couple of aspects of file-sharing that are of particular interest to college students and their parents.. First, the music industry has begun negotiating with some colleges to allow all students to download music without additional charge, in exchange for a campus-wide licensing fee to be paid by the college to the industry. That would be a very interesting change in the way things are done.

Second, college students need to remember that they are subject to college disciplinary policies. Stealing will be a violation of an honor code, even if what you're stealing is electronic music. So even if the industry isn't bringing a lot of new suits, there's still a risk of punishment if you're caught illegally downloading music.

And third, the industry may still bring some suits – so remember that \$220,000 verdict. It's cheaper to pay 99 cents to download legally.

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J. Theodore Gentry	(864) 242-8270	tgentry@wyche.com
Frank S. Holleman, III	(864) 242-8340	fholleman@wyche.com
Patricia S. Ravenhorst	(864) 242-8375	pavenhorst@wyche.com