

DOWNLOADING MP3s:

FREE OR CRIME SPREE???

"If a new technology has a single present or potential legal use that is of social or commercial importance, then there cannot be a bar against the use of that technology."

- Napster sources, in 2000.

"Napster is not a technology. It is a business created to facilitate the anonymous theft of music."

- Sources at the Recording Industry Association of America (RIAA) in 2000.

"Theft is theft, but in this country we don't cut off your arm or fingers for stealing," said Sen. Norm Coleman, R-Minn., who was a rock roadie during the 1960s.

So much ripping – the system is torn.

What gives you the [Copy] right?

It's only wrong if you get caught!

Summary:

When considering the downloading of music over the internet, various opinions and issues tend to collide. One side of the argument claims that files, including MP3s transferred over the internet are public access and legal. The same group declares that the price of CDs push consumers to seek alternative forms of media for their music, in order to “stick it to the man”. The other side (where most musicians would be found), rally against the idea that “ripping” the music is illegal and causes musicians to suffer financially. Many musicians claim that regardless of the fact that copyright laws are being broken, no compensation and consideration for the artist occurs, or if so, it’s on a rare basis. Arguments dealing with the sharing of electronic music (like MP3s) via the internet are justified by other opposing sides. A major issue at the core is that both sides have studies and data to justify their arguments; yet no one side is clearly the victor. So what’s right, wrong, and just plain illegal?



Case Studies:

Napster is caught in the net The most publicized example of rampant ripping to date is the RIAA and Napster battle. In the summer of 1999, a website, www.napster.com, was launched in the US - and the global music industry was changed forever.

Napster's offering of this 'peer-to-peer' technology was strongly condemned by the Recording Industry Association of America (RIAA), a trade group representing the world's biggest record labels, Universal Music, Sony Music, Warner Music, EMI Group and Bertelsmann AG (Greenman, 2003).

RIAA alleged that Napster was engaging in or assisting others in copying copyrighted music without payment or the express permission of the rights of owners. RIAA also claimed that Napster would significantly harm the sales of the recording industry. In December 1999, the Recording Industry Association of America RIAA, on behalf of every major record label in the music industry, initiated legal actions against Napster for the following copyright infringements on the plaintiffs' exclusive rights for reproduction and distribution of their copyright works:

1. Napster users were directly infringing the plaintiff's copyright.
2. Napster was liable for contributory infringement of the plaintiff's copyright.
3. Napster was liable for vicarious infringement of the plaintiff's copyright.

Napster did not dispute the allegations of direct infringement by its users. Therefore in the late spring, the court held that at least some of Napster's users were direct infringers through their activities of reproducing and distributing copyright music without permission (Greenman, 2003).

The court held Napster liable for vicarious infringements as it retained the right to block a user from accessing the network. The retainment of this right

showed Napster as a company knowing disregarding their abilities to control infringing activities. However, Napster failed to wield this right for this purpose, Napster was found to rely on the infringing activities of its users as a major attraction for the use of the system. Considering that Napster's financial viability related directly to the size of its user base, the court found that Napster obtained direct financial benefit from the infringement of users.

Napster unsuccessfully argued four defenses to the allegations made against them. The District Court ordered Napster to monitor the activities of its network and to block access to infringing material when notified of the materials location. Napster was unable to do this and consequently shut down its service in July 2001. Due to the outcome of the case, Napster eventually declared bankruptcy in 2002 and sold its assets despite having already been offline since the previous year. The Napster trademark was sold to Roxio and a new subscription service using the name was launched in October 2003.

(Alderman,2001)

Schools target students Many demands, including those from the RIAA, have lead to federal fines and trails involving average citizens that happen to have thousands of "illegal" downloads on their computer. No PC user is exempt, college students, adults at work, everyone is at risk for spending a day in the courtroom. The National University of Singapore (NUS) fined 20 students \$200 each, while Nanyang Technological University (NTU) fined at least five; the push for repercussions has increased and may result in more and more lawsuits in the future (Cloonan and Garofale, 2002).

Educational Importance:

So why should you as a citizen and specifically, someone in the Wheaton College Community, be aware of the history, ethical, unethical, pros, cons, and risks of downloading

music files off the internet is long? You are one of hundreds and even thousands of students on a campus and as a result of

"Theft is theft, but in this country we don't cut off your arm or fingers for stealing," said Sen. Norm Coleman, R-Minn., who was a rock roadie during the 1960s.

so many students embracing musical downloads via the internet college servers are encountering problems (RollingStone, 2005). Some of the downfalls you could come upon are: lawsuits and viruses imbedded in some files that destroy entire computer systems. College campuses have connected networks which can result in a clogged system- meaning entire days when internet access is unavailable because technicians need to clean the server due to an overload of MP3 files that slow the network's functions. This possible service back-up alone is not enough motivation for download deterrence. As a result of NUS and NTU being able to locate students who were pirating music and fine them meant this process could be exercised at any University. The National University of Singapore (NUS) fined 20 students \$200 each, while Nanyang Technological University (NTU) fined at least five. Lingering rumors of devices that track a

particular PC's location and who the operator is deter some users from downloading music, but not the majority.

The strongest argument why college students should be informed and concerned about downloading ripped MP3s is it's illegal. This factor is overlooked and minimized, but the reality that downloading MP3 files over the internet from a free service is punishable by law should weigh heavily on computer users. When musicians are in an uproar claiming they're losing a bundle money daily, the statement that downloading music is not hurting anyone is no longer valid.

My Two Cents:

On average, I download about a dozen songs per week onto my computer. I listen to them, place them on my Ipod, or forget I even have them. I hate buying CDs because I never enjoy an entire album and paying \$16 for something I'll forget about in a month is not appealing to me. Regardless, if I don't go to a store and physically buy CDs, I pay for every song I download. I pay for a server that I can download from and share files with only paying members. The fight about "stealing this and burning that" I believe is still happening because the mindset of a computer user is- if it's on the web and I pay for the internet, I'm entitled to download, copy or rip anything I please. My opinion towards downloading music over the internet is continually changing; I have yet to set my feelings in stone. One question I continue to ask is 'If downloading and copying music files is illegal, than why are so many companies like Apple and Sony

coming out with devices that play those very songs (i.e. Ipods, plain CDs to burn files onto etc.)?

Must know words in the MP3 world:

* **Brick-and-Mortar** : traditional, Refers to traditional, physical, as opposed to digital, structures and vehicles-factories, warehouses, trucks, and retail outlets. A brick-and-mortar company is one with little or no significant Web presence. (<http://www.marketconscious.com/dict.htm#b>).



* **Copyright infringement**- the unauthorized use of copyrighted material in a manner that violates one of the copyright owner's exclusive rights, such as the right to reproduce or perform the copyrighted work, or to make derivative works that build upon it. For electronic and audio-visual media, unauthorized reproduction and distribution is often referred to as piracy or theft (an early reference was made by Alfred Tennyson in the preface to his poem "The Lover's Tale" in 1879 where he mentions that sections of this work "have of late been mercilessly pirated".) (http://en.wikipedia.org/wiki/Copyright_infringement).

* **Digital Distribution**- Digital distribution is the distribution of some form of intellectual property digitally instead of over more standard means. This means, for instance, getting a book over the internet in a digital format instead of buying a physical book. (http://en.wikipedia.org/wiki/Digital_distribution).

* **Digital Rights Management (DRM)**- Any technology used to protect the interests of owners of content and services (such as copyright owners). Typically, authorized recipients or users must acquire a license in order to consume the protected material—files, music, movies—according to the rights or business rules set by the content owner.

(<http://www.microsoft.com/security/glossary.msp#d>).

* **Disintermediation** -The process of bypassing functions between the original supplier and the customer. These functions are usually in marketing and distribution, where digital content can be delivered electronically, or where customers can find information themselves. (<http://www.intoweb.co.za/it-terms.php?letter=D>).

* **Intellectual Property**- the legal rights associated with inventions, artistic expressions and other products of the imagination (e.g. patent, copyright and trade-mark law.) (<http://pewagbiotech.org/resources/glossary/>).

* **MP3**- MP3 is an acronym for MPEG-1 or MPEG-2 audio layer 3. MP3 is the file extension for MPEGaudio layer 3. Layer 3 is one of three coding schemes (layer 1, layer 2 and layer 3) for the compression of audio signals. Layer 3 uses perceptual audio coding and psychoacoustic compression to remove all superfluous information (more specifically, the redundant and irrelevant parts of



a sound signal. The stuff the human ear doesn't hear anyway). It also adds a MDCT (Modified Discrete Cosine Transform) that implements a filter bank, increasing the frequency resolution 18 times higher than that of layer 2.

(http://www.ucla.cyberstuff.net/glossary_digital_media.htm).

***RIAA**- [Recording Industry Association of America](http://www.riaa.com). -is the trade group that represents the U.S. recording industry. [RIAA members](#) create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. The RIAA is comprised of hundreds of companies like jive, Warner Bros. and Virgin; also on the list of members, are multimillion-dollar groups like MTV.

(<http://www.riaa.com/about/members/default.asp>).

* **Ripping**- the process of copying the audio and/or video data from one media form, such as Digital Versatile Disc (DVD) or Compact Disc (CD), to a hard disk. While the original media is typically digital, the extraction of analog media such as VHS video or vinyl records to a digital format can also be referred to as "ripping" by extension. The copied data, called "rips", are usually encoded in a compressed format such as FLAC, MP3, WMA or Ogg Vorbis for audio or MPEG-2, MPEG-4 or DivX for video in order to conserve storage space.

(<http://en.wikipedia.org/wiki/Ripping>).

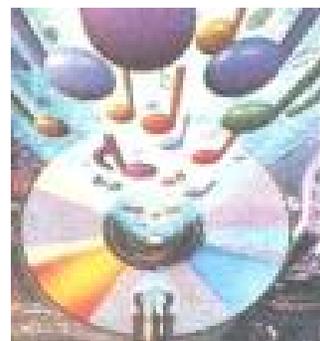
* **Sharing**- the practice of making files available to other users for download over the Internet and smaller networks. Usually file sharing follows the peer-to-

peer (P2P) model, where the files are stored on and served by personal computers of the users. Most people who engage in file sharing are also downloading files that other users share. Sometimes these two activities are linked together. File sharing is distinct from file trading in that downloading files from a P2P network does not require uploading, although some networks either provide incentives for uploading such as credits or force the sharing of files being currently downloaded. (http://en.wikipedia.org/wiki/File_sharing).

Hot Quotes:

* “ Since its beta launch just a few months back, the site has become a phenomena, particularly on college campuses, as music fans swap and download thousands of music titles at will for free. Since most are not authorized by artists or labels (i.e. ripped illegally), it wasn't much of a surprise when the Recording Industry Association of America sued Napster for across the board copyright infringement.” Eric Boehlert, a *Rolling Stone's* writer discussing Napster, March 18, 2000.

* “ Napster is robbing me blind,” complained Sapp. Black Crowes lead singer Chris Robinson became upset during the Silicon Alley 2000 conference when his



panel discussion turned towards Napster, which he railed was ripping him off. At

the same time, rapper and label founder Puffy Combs has complained that Napster "abuses artists and that it should show more respect". (Artists to Napster)

* " I'm sorry; when I worked 9 to 5, I expected to get a f—king paycheck every week. It's the same with music, I expect to get rewarded for that. I work hard...and anybody can just throw a computer up and download my s—t for free". The take on downloading music via the internet by musical artist known as Eminem. (Alderman,2001)

* "73 percent of students who download MP3s reported that they still bought either the same number of CDs or more", results of a study conducted by the Norman Lear Center at USC in 2000 (Cloonan and Garofale, 2002).

* "On average, over 9% of the over 175,000 PCs examined contained at least one file-sharing program," The statistic from a study that checked employee computers in various business. (Gal, 2005).

References:

- Alderman, John (2001). *Sonic Boom: Napster, MP3, and The New Pioneers of Music*, Perseus Publishing, Cambridge: MA, Pages 69-78.
- Cloonan, Martin and Garofale, Reebee (2002). *Policing Pop*, Temple University Press, Philadelphia: PA, Pages 23-47.
- Gal, Tsvi (2005), The IP war- Apocalypse or Revolution?. *Communications of the ACM*. Retrieved on October 3, 2005. Pages 39-46.
- Gross, Daniel (2004), Does a Free Download Equal a Lost Sale? *The New York Times*. November 21,2004 Sunday. Economic View Pg 4.
- James, Rebecca. Cornell Extends Napster Pact. *The Post- Standard*. September 12,2005 Monday. Pg B6.
- Lam, Calvin and Tan, Bernard, The Internet is Changing the Music Industry. *Communications of the ACM*. Retrieved on October 3, 2005. Pages 62-68.
- Raysman, Richard, Computer Law; Copyright and File-Sharing: Identifying Anonymous Defendants. *The New York Law Journal*. July 14,2004 Sunday. News; Vol. 8; Pg3.

-----Web References-----

- Arguments For and Against MP3 File-Sharing by Musicians and Music Listeners, <http://www.stormloader.com/mnd/FIS/napster.html> , First Retrieved on September 4, 2005.
- Artists to Napster: Drop dead!, http://archive.salon.com/ent/feature/2000/03/24/napster_artists/print.html, First Retrieved on September 12, 2005.

End of an Era,

<http://www.cnn.com/2003/TECH/09/17/hln.wired.end.era/index.html>,

First Retrieved on September 15, 2005.

Guernsey, Lisa, *NEWS WATCH; MP3- Trading Service Can Clog Networks on College Campuses*. NY Times Jan. 20,2000. Retrieved from

<http://tech2.nytimes.com/mem/technology.html> on October 3,2005.

Greenman, Catherine (2003), *Taking Sides in the Napster War; With Copyright Laws at Issue, Sites Battle for the Ears and Minds of Music Lovers*. NY Times August 31,200. Retrieved from

<http://tech2.nytimes.com/mem/technology.html> on October 3,2005.

Napster Remains King of MP3 Swapping,

http://www.rollingstone.com/news/story/_/id/5924306 , First Retrieved on September 10, 2005.