

File Sharing: What you should know

August 2009

Over the past few years, the recording, motion picture, and software industries have become increasingly aggressive in their campaign against peer-to-peer file sharing. The Recording Industry Association of America has filed lawsuits against some 26,000 alleged file sharers to date and is now targeting college students specifically—including people who allegedly had shared a single copy of a single song. The Motion Picture Association has sued many thousands more. The Entertainment Software Association recently began a similar campaign of its own.

Most of these lawsuits are being settled outside of court, typically for payments in the range of \$3,000 to \$5,000 each, but the potential liability is significantly greater. In October 2007 the first lawsuit went to trial and the RIAA won a judgment of \$222,000 against a woman who had shared just 24 songs. On appeal this past June she was slapped with a larger judgment of \$1.92 million. Even that was a “bargain”—under applicable law, the amount of damages that can be awarded against an infringer can run as high as \$150,000 for *each* work infringed; there can be criminal penalties as well.

The RIAA, MPAA, and ESA determine whom to sue by actively monitoring file-sharing networks and then issuing subpoenas to ISPs for the identities of the file sharers they find. UTM has not yet received such a subpoena, but it has received a number of infringement notices, warnings that we are being watched and which often are precursors to subpoenas and lawsuits. The campus would have no choice but to comply were it to receive one.

These tactics may seem misguided and heavy-handed, but the RIAA, MPAA, and ESA are correct that most file sharing constitutes copyright infringement. While it generally is accepted that “space-shifting” is “fair use”—ripping an MP3 from a CD you already own for your own personal use on your own computer or MP3 player—the courts have held that it is *not* legal to share that MP3 indiscriminately over the Internet or even with one other person. The technology may make it easy for you to do so, you may not be charging anything, you may be “publicizing” the artist in the process, and the music or movie, and software industries’ business practices may themselves be worthy of debate, *but* none of those justifications is a viable defense to a copyright infringement suit under current law.

In addition, illegal file sharing is also a violation of campus computer use policy. While UTM does not actively monitor its networks, it will respond to violations that come to its attention, and repeat infringers will be deprived of campus network access.

Points to ponder

- A copyright owner’s exclusive rights include copying and distribution, the very functions at the heart of file-sharing
- Intent is irrelevant to legal liability—the courts enforce a very strict liability
- “‘Innocent’ infringement is infringement nonetheless.” [17 U.S.C. § 504(c) (1988)]

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