

# Music file sharing

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In the battle against music file sharers, the hottest legal battle going on now is between the Recording Industry Association of America and internet service providers (ISP) who will not provide them the names and addresses of music downloaders, according to Georgia State University e-commerce law professor Perry Binder.

So far, the courts have found that copyright infringement is illegal, and they found the Napster sharing set-up illegal. However file sharing may not be illegal, says Binder. The key difference between the current software and Napster is that Napster used a central server that users dipped into, thus the court said it facilitated infringement as a contributory copyright infringer.

On the other hand, according to Binder, most of the current file sharing programs do not have a central server. They give users the ability to share files with fellow computer users. So the courts have not ruled that that is infringement.

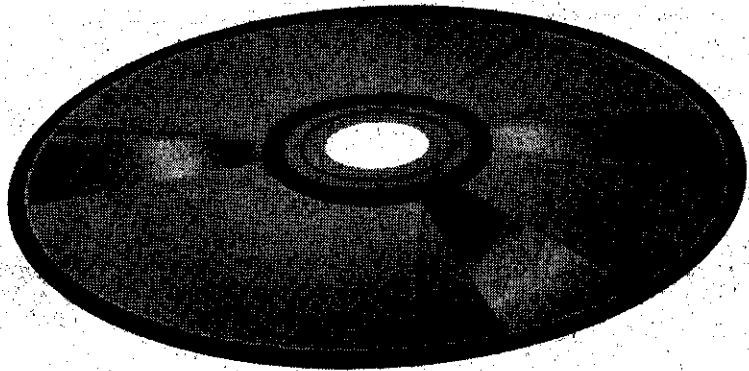
"Because of that, the record industry used a new fact," Binder said. "The RIAA lawyers used a software to identify the ISP addresses of public file sharers around the country. They picked out heavy users, tracked their ISP and served subpoenas on the ISP to get the names and addresses of users. Some ISPs have objected and appealed. Now that's the hot issue in litigation.

"The record industry is saying that if you are downloading from someone else, you yourself are a copyright infringer," Binder said. "There is a civil liability, and they have two ways to collect damages.

"One way is 'actual damages,' but that is extremely difficult to prove. The second is statutory damages.

If the record industry can identify each infringement, then they can get a specific amount of damage, according to Binder. The court could award anywhere between \$750 to \$150,000 per infringement. One file downloaded is one infringement, or 1000 songs downloaded could be one infringement.

To collect \$150,000 per infringement from every person



who shares files is not the intent of the record industry, according to Binder. The point of the lawsuits is in making an example out of heavy users to deter file sharing.

"They know they can't stop it," Binder said of the RIAA. "They are trying to contain it."

The future will see a multi-dimensional attack on file sharing and music copying from the music industry, believes Binder. First, the lawsuits are to convince the public that it's "not OK" to file share. Second, they will make more sophisticated software to prevent file sharing. Third, they will develop CDs that cannot be copied by computers or CD writers.

Most of those downloading music from fellow internet users who file share know it's illegal, but they use "cognitive dissidence" to justify their actions, according to GSU marketing professor Ed Rigdon.

Rigdon agrees that the music companies, by filing lawsuits against the most egregious file sharers, are attempting to drive casual users away from file sharing, while at the same time developing software and compact discs that make it more difficult to gain free music.

It's not difficult for most file traders to construct a rationale to make it not illegal when infringing on the copyrights of the music industry, Rigdon says. The music industry has been notorious for price fixing, and companies have actually paid fines in recent years for doing so. When the consumer purchases a CD, they get some good songs, and some bad ones.

"That's enough for people to construct a rationale to say 'what I'm doing, it's not wrong.' It's the whole 'big cor-

poration' thing."

There is a body of theory, according to Rigdon, that says that if challenge or a task is difficult, and you can achieve that task — you enter a state of "flow" similar to the "zone" that athletes talk about. When attempting to find something online, a song or a fact, a per-

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**not exactly illegal — yet**

son can enter that state when he finds what he is looking for — achieve the task. Record companies want to keep that from happening for file sharers, they want to prevent the casual "share ware" users from easily downloading music to prevent them from entering "the flow." Music companies want to make downloading music "just a pain."

File sharing is not evenly distributed across the nations' servers, according to Rigdon. If they shut down a few of the main 261 sources, it would make it much harder for people to get what they want. Plus, companies are embedding spyware into shared files, and some files are poor quality.

"They don't have to stop everybody, but they want to keep the casual person from saying 'I can download that song.'"

"It's illegal to steal hubcaps,

but there are still people out there doing that," Rigdon points out.

Rigdon says he doesn't see the record companies as being the bad guys in this fight, but the file trading software companies who pretend as if they are not about facilitating pirating — when they are. These compa-

nies have to make money, and do it in insidious ways, such as embedding spyware into their software and using pop-up ads. And, some of their headquarters are hiding out in obscure jurisdictions to make the company harder to sue. Kazaa, says the professor, has moved its corporate headquarters to Australia.