

The Law - Unauthorized Copying is Against the Law

Copyright law protects the value of creative work. When you make unauthorized copies of someone's creative work, you are taking something of value from the owner without his or her permission. Most likely, you've seen the FBI warning about unauthorized copying at the beginning of a movie DVD. Though you may not find these messages on all compact discs or music you've downloaded from the Internet, the same laws apply. Federal law provides severe civil and criminal penalties for the unauthorized reproduction, distribution, rental or digital transmission of copyrighted sound recordings. (Title 17, United States Code, Sections 501 and 506).

What the Law Says and What it Means

Making unauthorized copies of copyrighted music recordings is against the law and may subject you to civil and criminal liability. A civil law suit could hold you responsible for thousands of dollars in damages. Criminal charges may leave you with a felony record, accompanied by up to five years of jail time and fines up to \$250,000. You may find this surprising. After all, compact discs may be easily be copied multiple times with inexpensive CD-R burning technology. Further, when you're on the Internet, digital information can seem to be as free as air. U.S. copyright law does in fact provide full protection of sound recordings, whether they exist in the form of physical CD's or digital files. Regardless of the format at issue, the same basic principal applies: music sound recordings may not be copied or distributed without the permission of the owner.

What the Courts Have to Say

A long series of court rulings has made it very clear that it's against the law both to upload and download copyrighted music without permission. It doesn't matter whether you're dealing with sound recordings, pictures, software or written text. The courts have consistently ruled that many peer-to-peer (P2P) programs and other unauthorized uploading and downloading inherently amount to copyright infringement and therefore constitute a crime.

Common Examples of Online Copyright Infringement:

- You make an MP3 copy of a song because the CD you bought expressly permits you to do so. But then you put your MP3 copy on the Internet, using a file-sharing network, so that millions of other people can download it.
- Even if you don't illegally offer recordings to others, you join a file-sharing network and download unauthorized copies of all the copyrighted music you want for free from the computers of other network members.

◦In order to gain access to copyrighted music on the computers of other network members, you pay a fee to join a file-sharing network that isn't authorized to distribute or make copies of copyrighted music. Then you download unauthorized copies of all the music you want.

◦You transfer copyrighted music using an instant messaging service.

◦You have a computer with a CD burner, which you use to burn copies of music you have downloaded onto writable CDs for all of your friends.

◦Somebody you don't even know e-mails you a copy of a copyrighted song and then you turn around and e-mail copies to all of your friends.

Do The Crime, Do The Time

If you do not have legal permission, and you go ahead and copy or distribute copyrighted music anyway, you can be prosecuted in criminal court and/or sued for damages in civil court.

◦Criminal penalties for first-time offenders can be as high as five years in prison and \$250,000 in fines.

◦Civil penalties can run into many thousands of dollars in damages and legal fees. The minimum penalty is \$750 per song.

The "No Electronic Theft Law" (NET Act) is similar on copyright violations that involve digital recordings:

◦Criminal penalties can run up to five years in prison and/or \$250,000 in fines, even if you didn't do it for monetary or financial or commercial gain.

◦If you did expect something in return, even if it just involves swapping your files for someone else's, as in MP3 trading, you can be sentenced to as much as five years in prison.

◦Regardless of whether you expected to profit, you're still liable in civil court for damages and lost profits of the copyright holder.

◦Or the copyright holders can sue you for up to \$150,000 in statutory damages for each of their copyrighted works that you illegally copy or distribute.

If you make digital copies of copyrighted music on your computer available to anyone through the Internet without the permission of the copyright holder, you're stealing. And if you allow a P2P file-sharing network to use part of your computer's hard drive to store copyrighted recordings that anyone can access and download, you're on the wrong side of the law.

Having the hardware to make unauthorized music recordings doesn't give you the right to steal. Music has value for the artist and for everyone who works in the industry.

What the Courts Have to Say About Illegal Uploading & Downloading & Copyrighted Sound Recordings:

"As stated by Record Company Plaintiffs in their brief, "Aimster predicates its entire service upon furnishing a 'road map' for users to find, copy, and distribute copyrighted music." ...We agree. Defendants [Aimster] manage to do everything but actually steal the music off the store shelf and hand it to Aimster's users." - Aimster Copyright Litigation. 01-C-8933, MDL # 1425 (Memorandum Opinion and Order, September 4, 2002).

"...they [Aimster] apparently believe that the ongoing, massive, and unauthorized distribution and copying of Record Company Plaintiffs' copyrighted works by Aimster's end users somehow constitutes 'personal use.' This contention is specious and unsupported by the very case on which Defendants rely." - Aimster Copyright Litigation. 01-C-8933, MDL # 1425 (Memorandum Opinion and Order, September 4, 2002).

"Napster users infringe at least two of the copyright holders' exclusive rightsNapster users who upload file names to the search index for others to copy violate plaintiffs' distribution rights. Napster users who download files containing copyrighted music violate plaintiffs' reproduction rights....[V]irtually all Napster users engage in the unauthorized downloading or uploading of copyrighted music . . ." - A & M Records v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).

"Although defendant [MP3.com] seeks to portray its service as the 'functional equivalent' of storing its subscribers' CDs, in actuality defendant is re-playing for the subscribers converted versions of the recording it copied, without authorization, from plaintiffs' copyrighted CDs. On its face, this makes out a presumptive case of infringement under the Copyright Act" - UMG Recordings, Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349 (S.D.N.Y. 2000).

...and Copyrighted Images:

"Distributing unlawful copies of a copyrighted work violates the copyright owner's distribution right and, as a result, constitutes copyright infringement. . . . [Unlawful distribution occurs where] [f]iles of [copyrighted] information are stored in the central system, and subscribers may either 'download' information into their[computers] or 'upload' information from their home units into the central files" - Playboy Enterprises v. Russ Hardenburgh, Inc., 982 F. Supp. 503 (N.D. Ohio 1997).

"[The Copyright Act] provides that an owner of a copyrighted work has the exclusive right to reproduce the work in copies . . . [and] to distribute copies of the work to the public [A]nyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright." - Playboy Enterprises v. Webbworld Inc., 991 F. Supp. 543 (N.D. Tex. 1997).

...and Copyrighted Software:

"Uploading is copying. Downloading is also copying. Unauthorized copying is an unauthorized use that is governed by the copyright laws. Therefore, unauthorized uploading and unauthorized downloading are unauthorized uses governed by the copyright laws" - Ohio v. Perry, 83 Ohio St. 3d 41, 697 N.E.2d 624 (Ohio 1998).

"The unauthorized copying of copyrighted computer programs is . . . an infringement of the copyright . . . [U]nauthorized copies . . . are made when such games are uploaded to the BBS [Bulletin Board Service] . . . [and] when they are downloaded to make additional copies by users" - Sega Enterprises v. MAPHIA, 857 F. Supp. 679 (N.D. Cal. 1994).

"'[C]opying,' for the purposes of copyright law, occurs when a computer program is transferred from a permanent storage device to a computer's random access memory. In this case, copies were made when the Sega game files were uploaded to or downloaded from [the defendant's] BBS [Bulletin Board Service]." - Sega Enterprises. v. Sabella, 1996 U.S. Dist. LEXIS 20470 (N.D. Cal. 1996).

...and Copyrighted Text:

"Defendant Free Republic is a 'bulletin board' website whose members use the site to post news articles to which they add remarks or commentary The Plaintiffs' [Los Angeles Times and Washington Post] complaint alleges that unauthorized copying and posting of the articles on the Free Republic site constitutes copyright infringement [P]laintiffs' motion for summary adjudication with respect to fair use is granted" - L.A. Times v. Free Republic, 2000 U.S. Dist. LEXIS 5669 (C.D. Cal. 2000).

"When a person browses a website, and by so doing displays the [copyrighted] Handbook, a copy of the Handbook is made in the computer's random access memory (RAM), to permit viewing of the material. And in making a copy, even a temporary one, the person who browsed infringes the copyright. Additionally, a person making a printout or re-posting a copy of the Handbook on another website would infringe plaintiff's copyright." - Intellectual Reserve, Inc. v. Utah Lighthouse Ministry, Inc., 75 F. Supp. 2d 1290 (D. Utah 1999).

When It Comes to Copying Music, What's Okay ... And What's Not:

Technology has made digital copying easier than ever. But just because advances in technology make it possible to copy music doesn't mean it's legal to do so. Here are tips on how to enjoy the music while respecting rights of others in the digital world. Stick with these, and you'll be doing right by the people who created the music.

Internet Copying

◦It's okay to download music from sites authorized by the owners of the copyrighted music, whether or not such sites charge a fee.

◦Visit our list of Legal Music Sites or Music United for a list of a number legal and safe sites where permission is granted and content is available for downloading.

◦It's never okay to download unauthorized music from pirate sites (web or FTP) or peer-to-peer systems. Examples of peer-to-peer systems making unauthorized music available for download include: Ares, BitTorrent, Gnutella, Limewire, and Morpheus.

◦It's never okay to make unauthorized copies of music available to others (that is, uploading music) on peer-to-peer systems.

Copying CDs

◦It's okay to copy music onto an analog cassette, but not for commercial purposes.

◦It's also okay to copy music onto special Audio CD-R's, mini-discs, and digital tapes (because royalties have been paid on them) – but, again, not for commercial purposes.

◦Beyond that, there's no legal "right" to copy the copyrighted music on a CD onto a CD-R. However, burning a copy of CD onto a CD-R, or transferring a copy onto your computer hard drive or your portable music player, won't usually raise concerns so long as:

◦The copy is made from an authorized original CD that you legitimately own

◦The copy is just for **your personal use**. It's not a personal use – in fact, **it's illegal – to give away the copy or lend it to others for copying.**

◦The owners of copyrighted music have the right to use protection technology to allow or prevent copying.

Remember, it's never okay to sell or make commercial use of a copy that you make.

Are there occasionally exceptions to these rules? Sure. A "garage" or unsigned band might want you to download its own music; but, bands that own their own music are free to make it available legally by licensing it. And, remember that there are lots of authorized sites where music can be downloaded for free. Better to be safe than sorry – don't assume that downloading or burning is legal just because technology makes it possible.

Enjoy the music. By doing the right thing, you'll be doing your part to make sure that the music keeps coming.

Can I legally copy music CDs for my friends?

The simple answer is NO, but you can legally copy your friend's music CD for YOUR OWN use.

To paraphrase the introduction to an early Copyright Board ruling:

On March 19, 1998, Part VIII of the Copyright Act came into force. Until then, copying any sound recording for almost any purpose infringed copyright. Part VIII legalizes one such activity: copying of sound recordings of musical works onto recording media for the private use of the person who makes the copy.

It does not matter whether you own the original sound recording (on any medium), you can legally make a copy for your own private use.

To emphasize this point, endnote 4 of an early Copyright Board ruling says:

Section 80 does not legalize (a) copies made for the use of someone other than the person making the copy; and (b) copies of anything else than sound recordings of musical works. It does legalize making a personal copy of a recording owned by someone else.

Note that the Copyright Act ONLY allows for copies to be made of "sound recordings of musical works". Nonmusical works, such as audio books or books-on-tape are NOT covered.

The wording of the Copyright Act gives rise to some very odd situations. In the 6 examples below, "commercial CD" means a commercially pressed CD that you would normally buy at a retail store.

1. If someone steals a commercial CD, steals a blank CD-R, and then copies the commercial CD onto the CD-R, they are a thief, but they have not infringed copyright.
2. You can legally lend a commercial CD to a friend, give him a blank CD-R, let him use your computer, and help him burn the CD-R which he can keep for his own private use.
3. You can legally copy a commercial CD, keep the copy, and give your friend the original.
4. You cannot legally make the copy yourself and give your friend the copy.
5. Your friends Alice and Benoit really like the new commercial CD you just purchased. Alice borrows it and makes a copy for her own use. She then passes the commercial CD on to Benoit, who makes a copy for his own use. Benoit gives the commercial CD back to you. This is all perfectly legal.
6. However, if Alice had copied the commercial CD, given it back to you, and passed her copy on to Benoit to make a copy for his own use, then copyright would have "probably" been infringed. There is some doubt here because Alice's original intent is important. In the strictest terms, her copy was no longer just for her private use. Pretty strange considering that the end result of examples 5 and 6 are exactly the same!