

Download Uproar: Record Industry Goes After Personal Use

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Despite more than 20,000 lawsuits filed against music fans in the years since they started finding free tunes online rather than buying CDs from record companies, the recording industry has utterly failed to halt the decline of the record album or the rise of digital music sharing.

Still, hardly a month goes by without a news release from the industry's lobby, the Recording Industry Association of America, touting a new wave of letters to college students and others demanding a settlement payment and threatening a legal battle.

Now, in an unusual case in which an Arizona recipient of an RIAA letter has fought back in court rather than write a check to avoid hefty legal fees, the industry is taking its argument against music sharing one step further: In legal documents in its federal case against Jeffrey Howell, a Scottsdale, Ariz., man who kept a collection of about 2,000 music recordings on his personal computer, the industry maintains that it is illegal for someone who has *legally* purchased a CD to transfer that music into his computer.

The industry's lawyer in the case, Ira Schwartz, argues in a brief filed earlier this month that the MP3 files Howell made on his computer from legally bought CDs are "unauthorized copies" of copyrighted recordings.

"I couldn't believe it when I read that," says Ray Beckerman, a New York lawyer who represents six clients who have been sued by the RIAA. "The basic principle in the law is that you have to distribute actual physical copies to be guilty of violating copyright. But recently, the industry has been going around saying that even a personal copy on your computer is a violation."

RIAA's hard-line position seems clear. Its Web site says: "If you make unauthorized copies of copyrighted music recordings, you're stealing. You're breaking the law and you could be held legally liable for thousands of dollars in damages."

They're not kidding. In October, after a trial in Minnesota -- the first time the industry has made its case before a federal jury -- Jammie Thomas was ordered

to pay \$220,000 to the big record companies. That's \$9,250 for each of 24 songs she was accused of sharing online.

Whether customers may copy their CDs onto their computers -- an act at the very heart of the digital revolution -- has a murky legal foundation, the RIAA argues. The industry's own Web site says that making a personal copy of a CD that you bought legitimately may not be a legal right, but it "won't usually raise concerns," as long as you don't give away the music or lend it to anyone.

Of course, that's exactly what millions of people do every day. In a Los Angeles Times poll, 69 percent of teenagers surveyed said they thought it was legal to copy a CD they own and give it to a friend. The RIAA cites a study that found that more than half of current college students download music and movies illegally.

The Howell case was not the first time the industry has argued that making a personal copy from a legally purchased CD is illegal. At the Thomas trial in Minnesota, Sony BMG's chief of litigation, Jennifer Pariser, testified that "when an individual makes a copy of a song for himself, I suppose we can say he stole a song." Copying a song you bought is "a nice way of saying 'steals just one copy,'" she said.

But lawyers for consumers point to a series of court rulings over the last few decades that found no violation of copyright law in the use of VCRs and other devices to time-shift TV programs; that is, to make personal copies for the purpose of making portable a legally obtained recording.

As technologies evolve, old media companies tend not to be the source of the innovation that allows them to survive. Even so, new technologies don't usually kill off old media: That's the good news for the recording industry, as for the TV, movie, newspaper and magazine businesses. But for those old media to survive, they must adapt, finding new business models and new, compelling content to offer.

The RIAA's legal crusade against its customers is a classic example of an old media company clinging to a business model that has collapsed. Four years of a failed strategy has only "created a whole market of people who specifically look to buy independent goods so as not to deal with the big record companies," Beckerman says. "Every problem they're trying to solve is worse now than when they started."

The industry "will continue to bring lawsuits" against those who "ignore years of warnings," RIAA spokesman Jonathan Lamy said in a statement. "It's not our first choice, but it's a necessary part of the equation. There are consequences for breaking the law." And, perhaps, for firing up your computer.

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