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MUSIC & ENTERTAINMENT INDUSTRY
EDUCATORS ASSOCIATION

Journal of the
Music & Entertainment Industry
Educators Association

Volume 9, Number 1
(2009)

Bruce Ronkin, Editor
Northeastern University

Published with Support
from



MIKE CURB COLLEGE of
ENTERTAINMENT and MUSIC BUSINESS

BELMONT
UNIVERSITY

What Do University Students Really Think About Copyright Issues? A Look at Student-Designed Guidelines for Copyright Compliance

Theodore J. Piechocinski
Indiana State University

It is a rare occurrence when a social phenomenon comes along that has immediate, widespread, and significant effect. Often these bolts of societal lightning come to be identified by a single word, invoking strong emotions covering a gamut of reactions to the phenomenon. In the 1950s, the mere utterance of “sputnik” came to typify a national unified quest for technological advancements in outer space. Even today, years after his death, the evocation of “Elvis” can instantly transport people to different times and places in their lives in relation to that paean of Tupelo.

In the late 1990s, another mono-monikered meteor struck society in general, and the music industry in particular, when “Napster” emerged from the programming skills of a bored, music-loving college student.¹ Napster, a free software program making peer-to-peer sharing of digital music files incredibly easy, quickly became synonymous with *free music*. It ushered in a new era in which technological advances joined forces with consumer demands in a strong and unprecedented way. The ease of sharing did not discriminate between authorized downloads and unauthorized downloads of copyright-protected materials. The Napster web site and software quickly became synonymous with the biggest means of illegal copying ever seen (to that point) in the world music industry.

The speed with which Napster’s usage spread to university students, particularly around the United States and the Western world, was unprecedented. Napster became, in a sense, a community of millions linked by computer indices of like-minded (i.e., they all liked the idea of free music) music lovers. The lure of *free* had an aphrodisiac-like effect whereby users were driven to do one thing—acquire music via Napster. University students were in the perfect position to make best use of this phenomenon because, being cradled in academic communities where technological advancements in computing, coupled with sophisticated IT systems and servers, resulting in strong, available pipelines, they had entered the digi-

tal music equivalent of a candy store.

Headlines and newspaper articles over the past several years have eagerly conveyed reports of rampant illegal downloading on college campuses across the United States. When the RIAA started significantly increasing the numbers of cease and desist actions as well as full-fledged lawsuits against specific students (and a host of other targets, among them grandmothers and children), there arose even more of an impression that students seemed to be doing more illegal downloading than they were doing class work. There was a pervading sense that college students were running amok with illegal downloading activities, which, in fact, they were. Copyright issues, it seemed, were far from students' minds.

But, what do today's university students *really* think about copyright issues—not in a theoretical sense but, rather, in ways that impact their lives every day as students, music lovers, and consumers? The offering of a copyright course within our university's music business program provided a timely opportunity to explore this question. As a regularly rotated course offering designed primarily for music business students, but open to all university students, it was intriguing to design and present a music copyright course in a way that challenged students to study and think about the topic in ways that did, indeed, impact them every day. With this focus, the course came to be presented as *Copyright in the Age of Napster*. The makeup of the class was diverse, including students majoring in Music Business, English, and Business. While the class entailed a normal immersion in copyright fundamentals and major cases,² the majority of time was spent discussing the relation between fundamental concepts and case law and how these issues related to the students on a daily basis. As with all pedagogic efforts, it is when the connections are made between theory and practice that real insight and growth takes place.

Within the context of the copyright course, there was a concerted attempt on the instructor's part to avoid using the class as a bully pulpit for any single line of thought regarding copyright compliance, e.g., the laws are immutable and should be treated as such until they are changed or, conversely, the copyright laws are grossly out of touch with current lifestyles and, therefore, need not be given special credence on university campuses. Class discussions were extremely lively with the only significant guideline being that, "because that's what I think" (or the like) was not deemed a sufficient enough basis for making an argument. Students had to dig deeper and intellectualize rationale for their statements or argu-

ments. Additionally, during the course of the semester, students were assigned to debate an aspect of the issue of downloading copyrighted music without paying for the songs. Students randomly picked the sides of the argument they would present and then, after arguing their initial positions, had to switch sides. In these ways, students had to consider other points of view rather than simply rely on “gut” reactions borne of their own preferences and histories.

Beyond studying the fundamentals, mechanics, and underlying principles of copyright and copyright-related topics, there is, of course, a definite subjective element to many aspects of copyright and intellectual property. For example, while the determination and analysis of what “fair use” is in a given situation begins with Section 107 of the United States Copyright Act, a final decision invariably depends on a subjective interpretation of the facts involved as applied to the multi-pronged guidance contained in the law. Similarly, an objective evaluation of students’ progress in the subjective nature of copyright study is also, then, inherently difficult. It was, therefore, a challenge in this class to devise a way to determine the extent to which the students “got it,” i.e., did they gain knowledge, wisdom, and broader insight from having participated in the class? Since much of the coursework and ensuing discussions can best be described as falling into the realms of case study, problem-based, and similar academically-cherished “critical thinking” categories, the choice was made to develop a final project by which the students’ evolution of thought could be exercised and memorialized. Thus was born the final *Copyright Credo* project. It should be made clear that what follows, then, does not purport to present traditional research results based on analyses of empirical or statistical data. This piece represents the results of an approach to exciting today’s students—to invite them to take ownership of future actions as consumers and professionals within the music industry. It is about a discussion of an interesting and valuable class exercise.

The Final Class Project: The College Copyright Credo

The parameters set out for the students in their final class project were relatively straightforward. Using their knowledge and insights gained from class, balanced with the reality that they were/are members of a demographic (i.e., university-aged young adults) that greatly enjoy the discovery and accumulation of contemporary pop, rock, and various other multi-genred music categories, they were directed to develop a set

of guidelines and suggestions regarding the usage and acquisition of copyrighted digital music. No predetermined number of guidelines was prescribed. If anything, there was an effort to veer away from “ten commandment” types of a final product. Once this broad outline was presented and discussed, the students were left to discuss, develop, and draft the guidelines collectively, but independent of any instructor prodding or coaching.

Subsequent class discussions explored the students’ ideas with probative questions to help clarify and solidify their thoughts. The instructor was careful to avoid judgmental remarks because, this project being an airing of students’ contemporary thoughts, it was felt most important to preserve their intent. Therefore, influence wasn’t unduly exerted to alter the substantive nature of the resulting guidelines. Instructor input regarding the guidelines was most forthcoming on matters of grammar, continuity, or syntax. No attempt was made to steer the students to a different ordering of the guidelines, or to sway their thinking about the relative value of one point’s inclusion over the exclusion of another that might have been considered. The resulting eight guidelines, which came to be identified as the *College Copyright Credo*, are a formulation of what these particular university students believed to be valid, viable points which other university students and, indeed, universities and lawmakers could use to develop efforts to make the public aware of, and more deferential to, U.S. copyright laws. If nothing else, they serve as fodder for discussion by others and, one would hope, a catalyst for additional strategies and thoughts about this important area. What follows are the eight guidelines developed by this class of music copyright students, some brief explanatory comments about the students’ rationale for each guideline, and some instructor critiques regarding the efficacy and viability of the guidelines.

- 1) COLLEGES AND UNIVERSITIES SHOULD BE ACTIVE IN EDUCATING THE STUDENT BODY ABOUT COPYRIGHT LAW BY EXPLAINING WHAT IS AND WHAT ISN’T LEGAL IN REGARD TO FILE SHARING.

On university campuses across the country, students are inundated with information and meetings concerning a vast array of topics. “Information overload,” like over-stimulation, can lead to a sensory shutdown or numbness to further information or stimulus. Today’s university students quickly develop and hone skills for discerning that which is most immediately necessary for their attention, thus leaving much left undone

or unattended in their wake. Therefore, attempts at disseminating copyright-related information must take their place along myriad other campus activities striving for similar attention. To simply schedule general student programs concerning copyright awareness and compliance would not produce optimum attendance on any campus when competing with presentations ranging from athletics and student government to outside speakers and safe sex talks.

Perhaps this well-meaning and practical suggestion for increased education about copyright issues can, and should, be addressed within the context of classroom teaching. Today's copyright issues regarding free access and digital availability are timely ones for society and the music and entertainment industry. The proliferation of the internet has certainly altered the landscape by which information and data are accessed and, with much of that intellectual property being copyright protected, these issues are ripe for discussion on campuses, whether in classrooms, faculty meetings, libraries, or the ever-present coffee shops. But, such discussions need to begin in the classroom. Education about copyright is important and opportunities for it can and should be integrated into most learning opportunities.

This suggested additional emphasis in the classroom is really not unreasonable; in fact, most universities and their faculties already pay great heed to a copyright-related issue: plagiarism. Universities and their faculties place increasingly greater attention on ferreting out plagiarism and in punishing those transgressors. Plagiarism, the purloining of materials written or produced by others, is an example of the most basic form of copyright infringement: copying. Great pains (including university-wide deployment of sophisticated software³ to uncover falsified works) are taken to find those who copy the works of others. It would be a great step forward in the education of faculty members to have professors broaden their already sensitive care to detect plagiarism and help them realize (and pass on to their students) that other forms of unauthorized copying are just as insidious. Through integration of information to the faculty in campus sessions and departmental discussions, universities could go far in bringing greater insight and copyright respect to students. All universities have copyright policies in their operational papers and manuals, but only through discussion and broadening of faculty (and staff) understanding of copyright and intellectual property issues, can a more thorough integration of understanding and concomitant compliance take place. The copyright

class guideline is certainly on the mark and correct in asserting that copyright compliance and education must begin with those who teach.

- 2) COPYRIGHT LAW SHOULD BE REVIEWED BY CONGRESS AT MOST EVERY TEN YEARS, ADJUSTING THE LAW ACCORDINGLY TO NEW TECHNOLOGIES AND REFLECTING DECISIONS MADE BY THE COURTS.

It is no revelation that laws are most often *reactive* to changes and new possibilities brought by technological advances. Courts, it is well established, do not issue opinions based on speculation or hypothetical situations or (in anticipation of such circumstances presenting themselves from technological possibilities) do not issue proactive decisions. Therefore, without actual controversies brought to them, courts cannot foment law. Conversely, the United States Congress has historically moved very cautiously and slowly with regard to timely copyright amendments and, certainly, overhauls to copyright laws. The last major restructuring of the entire body of copyright laws was enacted in 1976 following some ten years of discussion, positioning, hearings, and passage. Thus, this last thorough review took place at a time when ubiquitous internet availability and digital delivery of virtually all types of mediums (especially literature, music, movies, and television programming) was barely more than an experimental possibility.

During the years subsequent to 1976, there have been significant pieces of Congressional legislation regarding technological developments and the resulting ramifications to ownership, liability for infringement activity, and responsibility for usage. Some of the most significant have been the Digital Performance Right in Sound Recordings Act of 1995, the Digital Millennium Copyright Act of 1998, The Sonny Bono Copyright Term Extension Act of 1998, and the TEACH Act of 2002, among others. These, and similar, legislative efforts have most definitely helped define the sandbox, as it were, in which those who play and work with intellectual property define their worlds as it pertains to the development and usage of intellectual properties. But, even under these circumstances, technology outpaces the development of reactive laws for both the protection of copyright owners' rights and the defining of parameters through which the general public can enjoy the benefits of intellectual properties in developing other usages.

A mandated Congressional review every ten years of the complete

body of U.S. copyright law is rather improbable. The body of copyright laws has been shown to be, perhaps more than any other body of laws related to a singular aim, an evolving set of parameters alive and reactive (eventually) to current concerns and technological advances. Laws will always lag behind developments, whether technological or societal. With the last extensive overhaul of copyright laws having occurred over a ten-year period ending in 1976 (and taking effect in 1978), perhaps such a broad review will be forthcoming in the next ten years, but to mandate such review, as such, would be impracticable.

- 3) ANONYMOUS IS NEVER ANONYMOUS. YOU ARE BEING WATCHED, AND THEY KNOW WHAT YOU ARE DOWNLOADING. IF YOU ARE PARTICIPATING IN ILLEGAL DOWNLOADING, THEY WILL CATCH YOU.

This was one of the most illuminating guidelines that the students in the copyright class saw as significant. It is telling in that it indicates how well today's university students realize the extent to which their computer-related activities are monitored and are, therefore, traceable.

University campuses embrace two poles of interest regarding the use of technology and the internet. On one end of the spectrum, campuses tend to enjoy the benefits of constantly updated and well-maintained IT systems. Particularly due to the amount and sophisticated depth of research and data transfer taking place on any given campus, systems typically tend to be among the most up-to-date available. This general systems sophistication also makes it possible for universities to closely monitor system usage both in terms of quantity and size of outside files accessed and downloaded by students. At the other end of the spectrum, the same sophistication that makes campus computing capabilities so tremendous is also the same sophistication that allows for close monitoring and policing of those students who use technology in unauthorized ways. While specific tools and threshold limits vary, university IT systems can be configured so that certain access and download activities trigger an investigation. For instance, the digital transfer of files of a certain size,⁴ or the repeated downloading of sizeable web-based digital files can trigger such university IT attention. Further investigation of student computer hard drives substantiating the unacceptable downloading of copyright-protected material can result in the suspension of a student's access to the internet. The point is, today's students are well aware of these university monitoring policies.

They know that, should they get caught in downloading copyright-protected materials, their privileges and access will be suspended. Yet, despite this knowledge, students still do, of course, continue to roll the dice as to whether or not they will get caught.

It is interesting that the class's attitude exhibited in this guideline, recognizing that computer/internet usage is monitored, yet continuing to engage in unacceptable activities, reflects society, in significant ways. From an early age, carrying into our adulthood, we learn lessons of risk vs. reward, i.e., is the risk of harm (punishment, pain, humiliation, etc.) worth the potential benefit/reward (acquiring free goods, avoiding traffic violations, etc.)? In this context, it is perfectly understandable why university students would consider the illegal acquisition of copyrighted materials despite the real risks of discovery and subsequent civil and criminal consequences. So, while students in this particular copyright class fully recognized the realities of university IT monitoring and the consequences of violations regarding unauthorized downloads, balanced with the perceived risk/reward benefits of downloading, they deemed it important to remind readers that computer monitoring is a strong reality in today's computer network environments. With no moral rationale blatantly exhibited, the guideline serves as a simple warning: let the abuser beware.

- 4) IN GIVING CONSUMERS ACCESS TO COMPLETE WORKS BY WAY OF A TIMED RENTING OR LENDING PROGRAM (WITH THE OPTION TO BUY), PUBLISHING COMPANIES MAY BE ABLE TO STIMULATE MARKET GROWTH BY ENABLING STUDENTS TO "TRY BEFORE THEY BUY."

With regard to class suggestions for a more "perfect" world in which consumers can get what they want while copyright laws remain intact and viable, this particular guideline might be somewhat naïve. But, that said, it is a worthy comment in that it reflects an underlying recognition of the ultimate importance of the value of copyright. In today's internet marketplace, especially including record company web sites, access to audio excerpts or full tracks in a streaming format is quite common. This ability to sample before buying is certainly not a new concept. Even in the earlier days of record stores, the listening booth, in which a customer could sample a product before purchasing it, was a popular marketing tool.

These "test drives" are extremely popular and have become strong expectations in many areas of our consumer lives, whether entertainment-

related or otherwise. Examples such as buying cars, food sampling, even “test driving” relationships by a period of cohabitation have become common occurrences. Rarely do we buy a piece of clothing without first trying it on to assess its fit. Why then, as consumers of entertainment-related products, shouldn’t we demand the opportunity to sample audio tracks before we commit to purchasing a single or album? To purchase an album⁵ simply because we are attracted to its cover art, without any idea or regard for whether or not we are intrigued by the sounds contained in the product, would be most unusual today (unless we are a devoted fan of such rapacity that we will buy anything an artist puts out, good or bad...why else would we consider buying a necktie marketed under the signature of Jerry Garcia?), so we have come to expect the opportunity to sample tracks before we purchase an album.

But, actually making such samples available as full downloads, even if they disappear after a certain trial period, would prove difficult for record companies. While some legitimate web sites such as pandora.com, lastfm.com, and lala.com, among others, offer opportunities to sample artists’ full audio tracks and videos in a streaming format, actual downloading (i.e., residential on individual computer hard drives) remains a rarity. In comparison, although a significant number of commercial software applications do contain built-in code that makes a program accessible during a “trial” period and then disables or makes the software impracticable or ineffective if the purchase of the product is not completed within the trial period, it is generally too cumbersome and unwieldy an approach to effectively attach to audio products.

In effect, with so many retail and web site outlets available by which at least streamed excerpts of every track of an artist’s album are available, a trial period as suggested by students has become common, albeit not typically to the full-track, downloaded extent envisioned.

5. WITH REGARD TO P2P FILE SHARING, COPYRIGHT GUIDELINES SHOULD BE ADJUSTED TO INCLUDE CIVIL LIABILITY FOR COMPANIES WHO HAVE INTENTIONALLY STRUCTURED THEIR BUSINESSES TO AVOID SECONDARY LIABILITY FOR COPYRIGHT INFRINGEMENT.

This guideline is, at first glance, a direct reflection of the *Napster* litigation.⁶ A major point of the *Napster* controversy was the fact that, while the *Napster* web site did not, in itself, contain unauthorized digital files,

it did maintain a centralized index by which user members could locate a fellow Napster member whose computer hard drive contained a desired digital file. But, the fact (among many others) that Napster took an active part, by maintaining the indices for locating desired files, helped the courts conclude that the Napster web site and software was considerably more than a passive observer in the peer-to-peer activities that allowed millions of Napster users to download illegal and unauthorized digital music files. But for Napster's facilitation of the peer-to-peer exchange of digital music files, such usages would not have occurred (at least not in quite the same form).

The next generation of peer-to-peer software facilitation was represented by the *Grokster* case.⁷ After being sued by a number of major motion picture production companies for facilitating copyright infringement and enabling direct infringements to occur by Grokster users, part of Grokster's defense relied on its claim that it was different from Napster. Among the significant ways in which it claimed to be different was the claim that Grokster intentionally provided no centralized index by which one peer-level computer user could locate another peer-level computer that had the song or other digital file desired. Instead, peer-level computers directly sought out (through Grokster software), located, and accessed the digital files they desired. While Grokster provided no Napster-like indexing server capability, thereby acting as an intermediary, the Court found this distinction to be negligible since Grokster, as an entity, was still capable, in fact, of determining which song/content files were resident on individual computers obtained through Grokster software.⁸

The *Napster* case never actually proceeded to trial on the full merits of the parties' positions. While analytically detailed and compelling regarding discussions of the issues of secondary liability for copyright infringement, the *Napster* opinion was, in fact, only reflecting the direct action then at hand, namely deciding whether or not injunctive relief was appropriate to shut down the activities of the Napster web site. In comparison, *Grokster*, from federal district court to federal court of appeals, and, finally, to the U.S. Supreme Court, dealt with the procedural issue of whether or not the summary judgment granted in favor of Grokster by the district court and upheld by the court of appeals was proper.⁹ Ultimately, the Court remanded the case with the direction that, rather than Grokster's motion for summary judgment being in order, it was more correct that, considering the analysis of the secondary copyright infringement and in-

ducement issues, the plaintiffs' (nominally represented by MGM) own motion for summary judgment was in order.¹⁰

Grokster is, then, markedly more significant than *Napster* in that the *Grokster* courts had the opportunity to hear and actually decide the most compelling issues, including, perhaps most importantly, that of secondary/indirect copyright infringement and copyright inducement liability for a company that facilitated unauthorized copyright infringement. That the Supreme Court had the chance to address and speak definitively to the issues (which it had not done in *Napster* since that case had not been heard by the Supreme Court) allowed a much-needed opportunity to clarify and define the line between technological innovation and copyright infringement. "One who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." *MGM v. Grokster*, 545 U.S. 913, 919 (2005).

Students found the *Grokster* decision compelling, which is directly reflected in this fifth guideline. While subsequent litigation hasn't allowed enough opportunity to determine the full extent of *Grokster* and, in particular, the level of facilitation that will mark the point at which a company's activities might tip toward a level of secondary liability or inducement to commit copyright infringement, the case certainly has put software and web site-based companies on notice. In this way, the student guideline regarding civil liability for actions that disregard or circumvent the authorized downloading of copyright-protected material has largely been realized. How far courts are willing to press such liability without impeding legitimate technological or commercial advances in sharing digital files remains to be seen, but, for the moment, a path of testing and challenge does exist. Time will tell as to the extent of this substantial weapon in the arsenal of copyright protection.

6. AN ONLINE DATABASE SHOULD BE PROVIDED OF THOSE ARTISTS WHO WAIVE PRIVILEGES TO THEIR COPYRIGHTED WORKS.

Anyone who has engaged in any degree of copyright status searches, either through hard copy archive searches or through internet-based means, knows that, at best, such searches are sometimes unreliable and difficult to ferret out. There is no centralized mechanism, a clearinghouse, as it were, that makes searching a one-stop or definitive proposition.

Due to the sometimes contradictory actions of artists, the public may be somewhat confused about the role of copyright protection and, conversely, the value that songs and recordings have as true commercial assets. For years, many significant artists have encouraged audiences to make recordings of live concerts for the audience members' personal use and enjoyment. However, selling bootleg copies of such live recordings has not been met, universally, with as much encouragement. Similarly, some artists have attempted to boost recognition in the public's eye by offering free downloads of selected tracks or, in some cases, the opportunity to make unlimited digital copies of purchased CDs. Some ploys have gone so far as to include a blank CD along with the commercially purchased CD thereby promoting and inviting the dissemination of digital copies of the CD to other interested consumers.¹¹ Such waivers are inviting and enticing, but almost invariably include restrictions as to tracks, albums covered, and the like. Hence, from a consumer standpoint, confusion might ensue, i.e., why is it allowable to record or copy sometimes but not others?

While there are numerous web sites reflecting endless personal interests, there is no collective site that purports or attempts to be a gatherer of information listing artists or their offerings that are available with waivers of any copyright protections. There certainly exist scores of web sites and other resources for specific artists that are maintained or authorized by the artists or their record labels or publishing companies. In some cases, there are web sites devoted to whole genres of music. On many of these web sites one can find information about accessing digital files where, to some extent, permission for free access has been granted.

Were a single, one-stop clearinghouse web site dedicated to collecting data about copyright-waived materials to exist, it would have to contend with a significant drawback: it could potentially face liability for encouraging illegal or unauthorized behavior if the information it provided turned out to be false or, as could certainly happen at the artist's (or, more correctly, their publisher's or record company's) whim, the material in question were no longer in a waived status of copyright protection. For instance, artists' waivers of any copyrights or privileges, allowing fans the opportunity to access what might otherwise be illegal downloads can, generally, be withdrawn whenever the artist (or ultimate rights holder) wishes to do so. It would be extremely difficult to maintain a single source that hoped to give accurate information as to the status of an artist's output that purported to waive copyright restrictions or protections, in whole or in

part. It would be especially hard to imagine such a clearinghouse vehicle that performed its publicly available function without hopes or plans for any remuneration for its efforts. If the point of copyright-waived materials is to get something for free (which lies at the heart of *all* copyright infringement activities, at some level), then it would be illogical for a web site to gather the information, maintain its accuracy with some modicum of faith in its reliability, and then charge a fee for its usage.

Although the commercial viability of such a clearinghouse web site might be impracticable (mostly for reasons of potential liability), a solution might come from an intrepid and enterprising non-profit entity. Of course, much attention would have to be paid to strong prefatory caveats so that there existed an understanding (arguably, at least) that the information given on the site should not be seen as definitive or totally reliable. Further statements would need to provide that the information offered guaranteed no definitive legal authority regarding the completeness, correctness, accuracy, or updated reliability of the information presented.

Similar problems exist with public domain (PD) materials. While a large portion of the material on PD web sites¹² is without doubt truly in the public domain, there is considerable material that one might think is PD, but is not, and vice versa. Only when one has dug into a particular situation and investigated it, can there be the truest level of confidence that a certain piece is PD.

While copyright waivers do occur, they hold no particular shape or pattern. They happen when they happen. It would present a Herculean administrative task for a single entity to attempt to maintain accurate, complete, and up-to-date information on artists who have allowed such waivers.

7. WITH THE AID OF CONGRESS, THERE SHOULD BE A LIST OF ALL REGISTERED WORKS AND THE DATES THEY PASS INTO THE PUBLIC DOMAIN.

The U.S. Copyright Office has made tremendous strides in making its records accessible via the internet. Its web site, www.copyright.gov, undergoes constant updating and expansion. Plentiful tools are provided to assist the public in the investigation of copyright status. Tutorials and circulars about investigating copyright status¹³ are easily accessed on the Copyright Office web site. But the site currently limits entries to those

registered after January 1, 1978. Even at that, the records contained in the online catalog number in excess of twenty million entries. So, it is immediately evident that it would require a gargantuan amount of additional effort and resources to have the Copyright Office accurately track the status of copyrights as suggested in this student guideline.

The students' intent in having the ultimate keeper of records, the U.S. Copyright Office, serve as the arbiter of the definitive date at which a work becomes public domain is, to a degree, a logical one. Through continued technological advances in digital record keeping and archiving, it might someday be feasible. In the meantime, copyright status investigation remains a devilish and sometimes frustrating enterprise. The variables in copyright ownership and control are, from the outset, monumental. Investigation in copyright transfer status, reversionary status, split copyright ownerships, and publishing company acquisitions and record keeping represent just the opening gambits in unraveling current copyright status issues. Add to that the particular complexities of registrations dating from the years 1923–1963 and 1964–1977 (when continuing copyright protection depended on certain notice and renewal¹⁴ requirements) and it is easy to see how difficult a task it would be for the Copyright Office to undertake and warrant such definitive and binding functions. Interestingly, for those who hold or control copyrights that may have indeed lost their protection due to the requirements needed for extended coverage during the period 1923–1977, there might even be a natural desire to leave copyright status searches murky and challenging. If this were done, these holders could maintain the perception that their held copyrights were indeed, still valid (and not in the public domain).

Assuming that the Copyright Office could or would take on the task of definitively establishing the date at which a work loses copyright protection and becomes part of the public domain, there would be, as discussed regarding the previous guideline, the question of liability if, in fact, information or conclusions arrived at and posited as definitive, turned out to be incorrect. This could, without safeguards or understood and accepted caveats fully in place, dampen the overall effectiveness of the Copyright Office's functions. Perhaps there is more credence in the students' guideline suggestion if private, commercial enterprises, rather than a governmental office, took it upon themselves to establish a vehicle by which investigations of copyright status could be more easily handled, managed, and accessed. As technology continues to allow for tremendous leaps in

archival search capabilities, perhaps the next decade will indeed show that the suggestion is much more workable than it currently appears to be.

8. IF YOU'RE GOING TO USE IT, DON'T GET CAUGHT. YOU HAVE BEEN WARNED!

Succinct and pragmatic, as university students can be, this guideline hardly requires amplification, explanation, or enhancement. Everyone who has ever taught, dealt with copyright materials on behalf of an artist, discovered an audio treasure that is out of print, had children of any age who enjoy recorded music, or worked in a business affairs situation, has dealt with the temptations of acquiring copyrighted materials at no cost. In approximately the previous ten years, the unauthorized acquisition of digital music, either through ripping or through downloading, has become extremely easy to do. In the print music world, similar problems have existed since the development and ubiquitous affordability of high quality photocopying machines. Whether one is a music educator, a working musician, or even a church choir director, the temptation to acquire music through unauthorized or illegal means is great, resulting in a constant struggle for education and compliance by those who control copyrights or make their living by using copyrights in authorized ways.

Until the public truly grasps that there is a direct connection between the selling of music and the continued availability and production of more music by more artists, it is the temptations and the risks of being caught versus the rewards of getting copyrighted materials for free that will continue to vex rights holders. The copyright class students recognized this connection while at the same time acknowledging the continuing reality that consumers will make choices to acquire in an authorized or unauthorized way based on many individualized factors—some legitimate and some far from it.

Conclusion

Free is tough to fight. As consumers, regardless of our socioeconomic status or positions in our schools, business, and communities, we all love to get something for nothing—especially if we truly place a value on those things. In our lives as music business professionals and as music fans, we all hold music in great regard. While we can understand emotionally the value of free acquisition and why those around us might have little

or no qualms about acquiring digital music files in an unauthorized way, we realize intellectually that the assets of music and entertainment are as valuable as any other good that can be traded or sold. As such, they need to be protected as much as any other company's assets.

Educators, consumers, parents, and industry professionals must be vigilant and press forward with copyright law educational efforts. This is especially important for university students, some of whom will become employees, employers, and entrepreneurs in the music and entertainment industry. It is most intriguing to observe their opinions, growth, and insights into the connections between asset protection and the continued viability of artistic growth. Having university students compile this group of copyright guidelines was both rewarding and eye-opening. The *College Copyright Credo* was a valuable exercise; it was also a creative way of constructing a lasting monument to the students' thoughts and insights during this specific moment of their intellectual development. For this particular time and place, the power of taking ownership in devising moral, ethical, practical, and legal solutions to these problems of copyright compliance was valuable for these students to experience. Healthy, vibrant, and open discussion, rather than lecturing (or browbeating) is a tremendously valid way to lead students towards growth and insight, especially in the area of copyright. To revisit a similar project with future groups of students will be particularly interesting for the sake of comparing attitudes. As technology progresses and data acquisition becomes even easier, copyright compliance will become an increasingly challenging issue. Individual convictions will continue to be key assets as we seek a resolution to this pervasive problem. This assignment has helped foment an awareness and sensitivity to the issue that will serve the students well—both now, and in their future as business professionals and leaders.

Endnotes

- ¹ Shawn Fanning, while a student at Northeastern University, developed Napster around 1998; the name derives from his childhood nickname.
- ² While not wanting to get bogged down in extreme amounts of case reading, the major cases read, analyzed, and discussed were *Sony v. Universal*, 464 U.S. 417 (1984), *A&M Records v. Napster*, 239 F. 3d 1004 (9th Cir. 2001), and *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005).
- ³ Some of the programs and services gaining increased campus recognition and usage are: Turnitin.com, Glatt Plagiarism Screening Program, WCopyFind, IntegriGuard, and MOSS, among others.
- ⁴ There is no universally accepted university standard, i.e., size, of downloaded files, etc. by which activities might be flagged for investigation. Each institution determines its own threshold of concern and subsequent action.
- ⁵ The usage of “album” should be viewed as synonymous with “CD” (which, in itself, is also a somewhat archaic term) or, even more specifically in light of digital sales, the sales equivalent of ten digital tracks sold.
- ⁶ *A&M Records v. Napster*, 239 F. 3d 1004 (9th Cir. 2001).
- ⁷ *MGM Studios v. Grokster, Ltd.*, 545 U.S. 913, 921 (2005).
- ⁸ *Grokster* at 922.
- ⁹ *Grokster* at 927.
- ¹⁰ *Grokster* at 941.
- ¹¹ For example, see Eisbrecher’s CD, *Eisbrecher*.
- ¹² <http://www.pdinfo.com/index.php> is a site that gives useful background information about the investigation of public domain copyright status as well as a good listing of songs that are PD; but, as is necessary, the site is also rife with caveats regarding overall reliability about the information presented.
- ¹³ <http://www.copyright.gov/circs/circ22.pdf> and <http://www.copyright.gov/circs/circ23.pdf> are very good places to start.
- ¹⁴ Works created from 1923 to 1963 could enjoy a full protection of 95 years if there had been proper notice included on the work and if proper renewal had been effected, as needed. Otherwise, the work could, in fact have fallen into the public domain. Works created

from 1964 to 1974 automatically gained extended protection for a total of 95 years if proper notice had been attached.



THEODORE J. PIECHOCINSKI, J.D., Associate Professor and Director of the Music Business Program at Indiana State University, holds a Juris Doctor degree from the Cleveland-Marshall College of Law, an M.M. in saxophone performance from New Mexico State University, and a B.S. in music education from the University of Missouri-Columbia. He has worked as an Assistant Director of Law for the City of Cleveland, Ohio and, for many years within the music industry, as Senior Vice President of Cherry Lane Music Company; President of MusicExpresso, a revolutionary, online publishing company; Vice President for Marketing and Business Affairs for Ludwig Music Publishing Company; and Director of Business Affairs for The FJH Music Company. In addition, he served three years as instrumental music director at Homestead High School in Ft. Wayne, Indiana. Prof. Piechocinski has published numerous articles and spoken to many groups across the country on issues of music copyright law, employment law, contracts, the music industry, and the business of music education.