Record Industry NOT Singing Napster’s Tune

by Steven Richman, Esq.

If you watched your local news this summer you might have been surprised to see some of your favorite recording artists, such as Dr. Dre and members of Metallica. Instead of promoting their latest CD, these artists were speaking out about such things as copyright infringement and freedom of their music. Napster, and other sites like it, allow people to access music over the Internet in the form of MP3 files, for free. Several major record labels would be familiar with the Napster case, which they believe infringes on their protected music.

Along with their record companies, recording artists are up in arms over an online music service, which they believe is stealing their copyrighted protected music. Napster, and other sites like it, allow people to access music over the Internet in the form of MP3 files, for free. Several major record labels would like to see Napster shut down and are suing the online company.

What is copyright and what does this mean to me?

Copyright is a federal law that protects the way in which things are expressed. It does not protect an idea. For example, you can’t copyright the idea of a story about an evil empire controlling the galaxy, but you can copyright the screenplay for Star Wars. You can also copyright photographs, music, even patterns on clothing. Under the law, as soon as you express something in a tangible medium, that is, something physical that can be seen or heard, you have copyright protection. In order to obtain the full benefit of the copyright law and protect yourself further, you need to file certain papers with the Copyright Office in Washington, D.C.

When you have copyright protection, you also obtain the rights to what are called derivative works. For example, if you own the copyright to the Star Wars film, you also own the right to make a novel from it. And, if someone else is interested in making a novel from your copyrighted screenplay, he or she must seek your permission and agree to pay for the use of your material. In addition, when you own the copyright to something, you also have the right to stop other people from copying, or infringing on, your work.

How Napster works

Basically, Napster allows you to download MP3 music files, which produce near CD-quality sound, to your computer. Napster also has software that enables you to download MP3 music files from other people’s computers as well, effectively allowing you to share or trade music without having to buy it. The record companies sued Napster claiming that this

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The Bill of Rights: Part Two

Those legal eagles that were with us last year know that the Bill of Rights contains the first ten amendments to the U.S. Constitution. You read about and should be familiar with the first five amendments. For those just joining us, here’s a quick recap:

• First Amendment—guarantees your freedom of religion, freedom of speech and freedom of the press.
• Second Amendment—concerns the right of Americans “to keep and bear arms.”

• Third Amendment—deals with the obligation of giving rooms and meals to soldiers in private homes.
• Fourth Amendment—focuses on a right very important to you today—your right to privacy—and protects you against “unreasonable searches and seizures.”
• Fifth Amendment—gives protection to anyone charged with a crime by the state and establishes the right of each person to be presumed innocent of a crime unless and until proven guilty. This amendment also guarantees that no one accused of a crime can be forced to testify against himself or herself, and that no one can be placed in “double jeopardy”—which means to be tried twice for the same crime.

Protecting the rights of the accused

The next three amendments in the Bill of Rights—the Sixth, Seventh and Eighth Amendments—also protect the rights of persons accused of a criminal act. The Sixth Amendment guarantees the right to a speedy trial. Think how unfair it would be for an innocent person to sit in a jail cell for years waiting for his or her day in court. The Sixth Amendment also gives the accused person—the

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How Do I Get More
To obtain back issues call
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Since the Bill of Rights
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This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

In a legal case involving an action against the other party, you and your lawyer will have to decide whether you should bring a claim against that driver in court.
Napster’s Tune

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practice of trading was an infringement, or illegal copying of music to which the record companies held the copyright. The record companies did not contend that Napster itself was making illegal copies, but that it was liable for “vicarious” or contributory infringement. In other words, by enabling people to trade music on its site, Napster was allowing copyright infringement to occur with its knowledge and participation.

Napster argued that it was protected under the Digital Millennium Copyright Act (DMCA) of 1998, in which the courts updated copyright laws to include digital media and limit the liability of internet service providers for copyright infringement committed by its users. In May, the trial court decided that the standards of the Digital Millennium Copyright Act did not apply to Napster. This was the first loss for Napster.

What is fair use?

Once it was determined that Napster was not protected by the DMCA, the record companies sought an injunction, which is an order of the court that compels someone to do something or stops them from doing something. At this stage of the case, the motion was for a preliminary injunction, which means the court would have to believe that the record companies were likely to win after a trial, but that they needed relief now to prevent more damage. In this case, the damage was their loss of profits. The record companies argued that Napster encouraged users to trade music they did not own, which is not a fair use. Napster argued that people are allowed to copy music for personal use, just like when you use videotape recorders, which is a fair use.

As an example, if you buy a CD, under the law you are allowed to tape that CD so that you may listen to it in a car, on the beach, etc. You are allowed to do this because you paid for the CD once.

What did the courts say?

On July 26, 2000, a federal court trial judge in San Francisco granted the preliminary injunction and ruled that Napster could not continue to provide a site for the trading of copyrighted songs. The court found that what Napster was doing is not “typical personal use of music copies” and that people were getting music that would ordinarily cost them money for free. The next day, however, the appellate court overruled that decision and allowed Napster’s site to continue to operate until the lawsuit was decided.

In its brief submitted to the court, Napster argued that the Audio Home Recording Act (AHRA) protects them and their users. The AHRA contains a clause that protects those that make copies of music for noncommercial use, that is as long as you do not sell the copies you make for profit, then you are not infringing on anyone’s copyright. The brief goes on to note that Napster users’ one-to-one sharing (from computer-to-computer) show an accepted public distribution, an element necessary to prove copyright infringement. Napster further contends that the record industry wants to control a technology (the Internet) that it views as competition.

At press time, oral arguments, which simply means an argument given by an attorney before a judge on behalf of his or her client, in the Napster case were scheduled for October 2.

What do the artists say?

While some rock stars—like Jon Bon Jovi, Christina Aguilera and Alanis Morissette—have been vocal about Napster’s infringement, Dr. Dre and Metallica have actually brought their own lawsuits against the online company. Limp Bizkit, whose free summer concert tour was sponsored by Napster, and rapper Chuck D from Public Enemy are supportive of Napster and other sites like it. These and other pro-Napster artists, like Courtney Love and Ben Folds Five, view the sites as a way for up-and-coming new bands to get their music heard by a large audience.

What’s next?

While Napster and other sites like it may or may not have to pay large sums of money to compensate the record companies, the cases and the controversy continue. Many industry experts believe that regardless of the ultimate result in the Napster case, record companies will have to change the way they do business to accommodate the new technology of the Internet.

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The Run for the Presidency

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candidate it takes at least 270 electoral college votes out of a total 538 to elect the president. In our “winner takes all” system, the candidate who gets the most popular votes in a state gets all the electoral votes from that state. So, even if you only lose by one popular vote in a state like California, your opponent will still get all 54 of California’s electoral votes. Now you know why candidates tend to spend a lot of time campaigning in states with the most electoral votes. That’s how, the candidate, could get millions of popular votes in small states, but unless you get them in the big states with the most electoral votes as well, you could lose the election. In the elections of 1824, 1876 and 1888, that’s just what happened. John Quincy Adams, Rutherford B. Hayes and Benjamin Harrison, respectively, had fewer popular votes than the other candidate, but were all elected president because they had more electoral votes.

Now You’re 18 . . .

While you may not be voting in the November 2000 election, it won’t be long before you are old enough to cast your vote for a President of the United States. All that will be required is that you be 18 years old and a citizen of the United States. Although you’ll be able to vote when you’re 18, you will have to wait a little longer to run for president. You won’t get your turn to stand among the balloons and the confetti until you’re 35 years old, the minimum age for a United States president. And when you do make your run for the highest office in the land, here’s hoping you get both the popular and the electoral votes, Mr. or Ms. President!}

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Want to Vote

Facts About Voting and the Office of President

To prepare you for the day you are able to vote, here are a few interesting facts:

• For almost a hundred years, between 1788 and 1870, the right to vote in this country was limited to white men. In 1870, after the Civil War, the Fifteenth Amendment to the U.S. Constitution was passed giving the right to vote to citizens regardless of their race and color. Now all men who were citizens had the right to vote.

• Women had to wait (and campaign) for another 50 years—until 1920—when the Nineteenth Amendment was passed, limiting the president to serving only two terms.

• Grover Cleveland, born in Caldwell, N.J. in 1837, was the only President to serve two non-consecutive terms. He was elected in 1884, lost the election in 1888 to Benjamin Harrison and won the election of 1892. Cleveland died in 1908 at his home in Princeton, N.J.

• Your parents might not have been able to vote until they were 21 years old. In November 1971, the Twenty-Fifth Amendment lowered the voting age to 18.

• November 2000 will mark our 52nd presidential election. Either Albert Gore or George W. Bush will be the 43rd person to hold the office of President of the United States.

—Robert K. Glassner
When is a lie a crime? When is a lie a crime?

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In other words, if a friend committed a crime and you were questioned about it, you could not "take the Fifth" to protect your friend.

Taking back a lie

What if you make a false statement under oath and then wish to take it back? Would you still be subject to perjury charges?

If you've made a falsification and, before the termination of the proceeding you take it back, you will not be charged with perjury as long as the lie has not gotten to the point where it has caused irreparable harm, says Moczula.

"The idea," he notes, "is to encourage people to remedy a situation of lying."

He said, she said

You say one thing in court and another witness says you're lying. Can this result in a perjury charge?

No, it cannot, says Moczula. At a minimum, he says "you need more corroboration than one other person saying that [a piece of testimony] is not true." For example, you would need a number of people coming forward or some other kind of evidence.

Punishment for perjury

Perjury is considered a third-degree offense and carries with it a punishment of three to five years in jail for adults, says Moczula. While there is a separate grading system for juveniles, they may also be charged with committing perjury and mandated to serve time in a detention center if they are found guilty.

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