

THE LEGAL



WINTER 2004

Understanding the Law May Change Your Tune About Downloading Music

by Cheryl Baisden

Chances are you know better than to walk out of a store with a CD of your favorite band stuffed in your jacket pocket. Everyone knows that is a form of stealing that can land you in jail. But what you may not know is that downloading music from the Internet can be considered stealing too, and the penalties for doing it can be just as severe.

"Downloading music from the Internet is like being a member of a bad gang," said Ronald S. Bienstock, a lawyer who works with musicians and other artists.



"You may not think it will happen, but someone's going to get hurt. And the best thing for you to do is to not join, or get out fast if you're already involved."

While it may seem like a victimless crime, there are plenty of people who get hurt when you download your favorite 50 Cent or Linkin Park song, Bienstock explained. Everyone involved in the production and distribution of the song, from the musicians and record companies to the sound technicians and music stores that sell the CDs, loses money when you participate in free downloading.

"Downloading costs the recording industry millions of dollars every year," said Bienstock. "People think they're just taking a song here and a song there and it's not really hurting anyone since it's such a little thing. But it's really a big thing, and it hurts everyone."

The International Federation of the Phonographic Industry estimates the recording industry is losing \$4.3 billion a year because of downloading.

According to the Recording Industry Association of America (RIAA), record companies pay people like Justin Timberlake and Christina Aguilera an advance (money just for recording their songs) and expect to make that money back as well as a profit when people go out and buy their CDs. That's how the record companies can afford to pay the sound technicians and background musicians, and how they cover the cost of actually manufacturing and distributing the CDs. The recording artists also receive royalties whenever a CD is sold. If people download the music for free, the record companies lose

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Out of Shape? Blame McDonald's

by Roberta K. Glassner, Esq.

Five days a week, 19-year-old Jazlyn crossed under the golden arches twice a day to eat an Egg McMuffin for breakfast and a Big Mac, super-size fries and an apple pie for dinner. Jazlyn is 5-foot-6 and weighs 270 pounds. Every day, 14-year-old Ashley ate McDonald's Happy Meals during lunch breaks and before and after school. She is 4-foot-10 and weighs 170 pounds.

Last year, the two overweight teens took McDonald's to court, claiming that the fast food chain had caused their obesity and related health problems.

The lawsuit

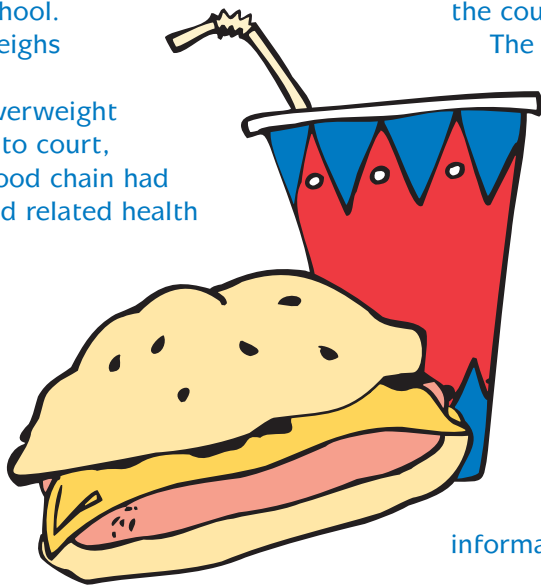
The lawsuit filed on behalf of the plaintiffs, Jazlyn and Ashley, against the defendant, the McDonald's Corporation, contained three charges. The first charge was

"misleading advertising" which the plaintiffs claimed led them to believe McDonald's food was healthy. The second charge also dealt with advertising, but this time with "deceptive advertising." The teens claimed McDonald's ads did not disclose the actual fat content in its foods. The third charge was that McDonald's did not provide complete nutritional and fat information about its foods in all of its 13,000 restaurants across the country.

The basis of the teens' lawsuit was that McDonald's advertising had misled them to believe its food was nutritious and deceived them into believing the food was not fattening. As a result, after eating a steady diet of McDonald's food, the plaintiffs claimed they both put on an exceptional amount of weight and suffered damaged health.

McDonald's denied all three charges. Calling the lawsuit "senseless" and "baseless," Walt Riker, the company's spokesman, stated McDonald's had never misled its consumers, 20 million daily, about its food in any way.

"McDonald's continues to be a leader in providing customers with nutritional information about our food through in-store brochures,



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Cameras in the Classroom: Snooping or Security

by Phyllis Raybin Emert

Imagine a world such as the one in George Orwell's classic, futuristic novel, *1984*, where your every move is scrutinized and every conversation overheard.

That is the reality today in some schools around the country, where video surveillance equipment is being used in the name of security to curb vandalism and violence. The controversy surrounding cameras in the classroom involves school safety versus privacy for teachers as well as students.

According to *The New York Times*, nearly 1,000 new public

schools opened in 2002 and 75 percent of them were equipped with surveillance cameras. Schools in California, Virginia, Maryland, New York and New Jersey have all installed or will install camera systems to keep schools and students safe.

In the Biloxi, Mississippi school district, one of the first districts in the nation to install cameras in the classroom, the circular domes on the ceiling might be mistaken for light fixtures or a fire alarm system. They are actually digital web cameras that record images onto a computer hard disk. School administrators and security personnel can then access the



Internet and monitor students and teachers.

Gone are the days of getting away with throwing spitballs, dozing in class, starting a fight or using a cheat sheet. The students in all public schools in this Mississippi school district are now

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Foundation school-based programs.



money and can't afford to produce more music, and the recording artists don't get their royalties.

"One excuse people use for downloading is that CDs cost too much," Bienstock noted. "But it costs the company money to make them, and if you don't pay for the music someday there may not be any, or prices will be *really* high to try to make up for what they lose when people steal music by downloading it."

According to an article published in *Newsweek*, some recording artists are not bothered by the downloading of music because they feel it could potentially boost their concert sales, making them more popular with consumers. However, Bienstock points out that illegal downloading also makes it harder for recording companies to produce new music.

"Some of the money you spend for a CD goes to producing music from new artists, people you don't know yet, who could become some of your favorites if you have the chance to hear them," said Bienstock. "If there's no money coming in, there won't be new music going out."

Lawsuits stop the music for some

Downloading music from free websites like KaZaA, Grokster and iMesh is considered **copyright infringement**, which means that you used something that belonged to someone else without paying for it. And since you are breaking the law, it can mean trouble.

In September, 261 people around the country, from a 12-year-old student to a grandmother, were charged with illegally downloading music. In lawsuits filed against them by the RIAA they could be fined up to \$150,000 for each song they downloaded from the Internet.

Last April, the RIAA decided to sue several college students who operated song-sharing Web sites, including one student at Princeton University. The lawsuits demanded each student pay \$150,000 for every song they offered on their Web site. All the students have settled their cases out of court, each agreeing to pay RIAA a total amount ranging from \$12,000 to \$17,000.

One New Jersey Mom fights back

A Rockaway Township mother is not taking the copyright lawsuit against her lying down. According to an article in *The Star Ledger*, Michele Scimeca is countersuing Sony Music Entertainment Inc., UMG Recording Inc. and Motown Record Co. L.P. for unspecified damages. The complaint filed with the U.S. District Court in Newark cites

federal racketeering laws as the basis of her lawsuit. Essentially, racketeering is the practice of acquiring money illegally, whether through fraud or intimidation. Scimeca's suit claims that in their lawsuits the recording industry is using "scare tactics that amount to **extortion**." Scimeca is accused of sharing 1,400 copyrighted songs on the Internet.

Most recent lawsuits

The music industry was dealt a blow in December when a federal appeals court ruled against their tactics of using a special copyright **subpoena** to force Internet service providers to disclose the names of their patrons. That ruling did not stop the RIAA in January 2004 from filing three lawsuits in New York and one in Washington, D.C. that included 532 file sharers, the largest number to date. Because of the court's restrictions, the new lawsuits are classified as "John Doe" lawsuits, allowing the RIAA to sue these people without knowing their identities. The 532 people are currently protocol numbers maintained by their Internet service providers until the courts grant RIAA's request to make the Internet companies reveal their subscribers' names. The people targeted for this recent wave of lawsuits each posted 800 or more music files for sharing, according to the RIAA.


Despite the bad publicity generated from suing 12-year-olds and grandmothers, music industry officials point to the fact that U.S. file sharing has decreased as a result of these lawsuits. RIAA Chairman Mitch Bainwol told *The New York Times* that 2003 CD sales were only down two percent from 2002, which is a much lower margin than expected.

If it's free, it's not legal

So if downloading songs can get you in so much trouble, why do they sell MP3 players, CD burners and special software designed to help you copy music?

All of this equipment has legal as well as illegal uses. It is perfectly legal for you to buy a CD and then make a copy of it for your own use. This is called **fair use**. You may also legally download music from Web sites like iTunes, where you pay a fee for each song you copy for use on your MP3 player.

"What you have to remember is that if it's free, it's not legal," said Bienstock. "Don't think of it like

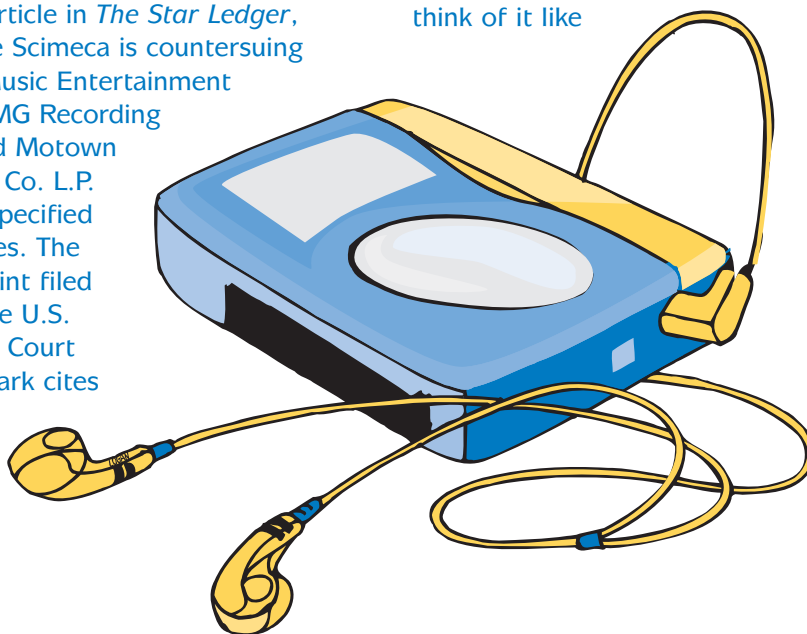
you're just taking something from some big company that won't know the difference, because they may just find out who you are and go after you," he said. "And it's not just some faceless company that's getting hurt, it's all of those people who you love, who are on the posters on your walls. Those people suffer when you download too. Bottom line — if you love the music, buy the music." 

Who Do You Download?

There are Web sites, such as iTunes, which allow you to legally download music from the Internet. On December 15, 2003, iTunes celebrated its 25 millionth downloaded song, since launching in April 2003. What was the 25 millionth song purchased? — Let It Snow! Let It Snow! Let It Snow! by Frank Sinatra.

According to *Forbes*, "Hey Ya!" by Grammy-winning group Outkast was the most downloaded song in 2003, with more than 110,000 downloads for the year. As for what artists are downloaded the most, below is a list published by *Newsweek* in its September 22, 2003 issue of the 50 most downloaded artists. Is your favorite listed?

1. Eminem
2. 50 Cent
3. Nelly
4. R. Kelly
5. Jennifer Lopez
6. Jay-Z
7. Christina Aguilera
8. Lil' Kim
9. Ludacris
10. Justin Timberlake
11. Linkin Park
12. 2Pac
13. Mariah Carey
14. Ja Rule
15. Sean Paul
16. Beyoncé
17. Kid Rock
18. Fabulous
19. Ashanti
20. Black Eyed Peas
21. Chingy
22. Nas
23. Good Charlotte
24. The Beatles
25. P. Diddy
26. Madonna
27. Ginuwine
28. Usher
29. Avril Lavigne
30. Dave Matthews
31. DMX
32. Faith Hill
33. 3 Doors Down
34. Aerosmith
35. Pink
36. Baby
37. Metallica
38. B2K
39. Simple Plan
40. Michelle Branch
41. Dixie Chicks
42. Kelly Clarkson
43. Evanescence
44. Elton John
45. Britney Spears
46. Busta Rhymes
47. Coldplay
48. Tim McGraw
49. Santana
50. Red Hot Chili Peppers



our Web site and toll-free customer telephone number," Riker said in a statement.

In a press interview, McDonald's lawyer Bradley E. Lerman said, "The understanding of what hamburgers and French fries do has been with us for a long, long time."

Lawsuit attracts opposition and support

As you might expect, the news of an obesity lawsuit against McDonald's created an immediate and strongly divided reaction. There were those who thought the suit was ridiculous. And, there were those like doctors, nutritionists and public health advocates who believe that the fast food industry plays a major role in serious obesity and health problems, like diabetes, among children in this country.

Samuel Hirsch, Jazlyn and Ashley's attorney, said in an interview that McDonald's billion-dollar advertising lures children into overeating fat-rich foods that are inherently bad for them.

"Young individuals are not in a position to make a choice after the onslaught of advertising and promotion," Hirsch said.

While McDonald's and other fast food companies "are not totally responsible" for the overweight epidemic among children, "they certainly should bear some of the responsibility," said John F. Banzhaf III, a nationally-known public interest law professor at George Washington University Law School who pioneered legal action against tobacco companies and is doing the same with the food industry in the fight against obesity.

Those who thought the lawsuit absurd pointed out that many Americans are overweight for reasons other than food. In today's world, we walk less, exercise less and play games on a computer instead of a ball field.

"People don't go to sleep thin and wake up obese," McDonald's attorney Anne G. Kimball observed.

Still, those concerned about the relationship between fast food and this country's weight problem are alarmed by the statistics on obesity. According to the Centers for Disease Control, approximately 34 percent of U.S. adults are overweight and about 30 percent (59 million people) would be classified as obese. Studies have also shown that obesity is second only to smoking as the leading cause of preventable deaths in the U.S. Obesity among children, the CDC says, is 15 percent or triple what it was 20 years ago.

Reacting to these statistics, critics of the fast-food industry have proposed that the government should require warnings of health risks on French fry containers and burger wrappers, just as it does on cigarette packs. Others have proposed that laws should be passed to place a "fat tax" on fast foods.

In fact, according to a report in *The Washington Post*, New York state Assemblyman Felix Ortiz proposed several anti-obesity bills that would tax not only foods but movie tickets, video games and DVD rentals, all of which Ortiz claims can be blamed for America's **sedentary** lifestyle. New York is not the only state to introduce such legislation. According to the National Conference of State Legislatures, state lawmakers filed over 140 bills related to obesity last year, double the amount from the year before.

In direct contrast, the federal government recently introduced the Personal Responsibility in Food Consumption Act. Approved by the U.S. House of Representatives Judiciary Committee in January 2004, the Act would provide the food industry with legal **liability** protection from frivolous obesity-related lawsuits.

"This legislation will put a stop to these ridiculous, frivolous lawsuits that threaten American jobs and raise food prices for schools and the public," said House Judiciary Committee Chairman F. James Sensenbrenner.

"Unlike Ralph Nader, I don't consider the double cheeseburger, 'a weapon of mass destruction' that must be dealt with like we deal with terrorists' dirty bombs. It defies common sense to hold the food industry monetarily responsible for the overindulgence of its consumers," he said.

The lawmakers cited a recent Gallup Poll, which stated "89 percent of Americans oppose holding the fast-food industry legally responsible for the diet-related health problems of people who eat that kind of food on a regular basis." The Personal Responsibility in Food Consumption Act is currently awaiting consideration in the U.S. House of Representatives. Similar legislation is also being considered in the U.S. Senate.

The right to sue

No matter what you may think of the merits of the McDonald's obesity lawsuit, under our system of justice one of our great constitutional protections is the right to seek **redress** for wrongs committed against us. The Seventh Amendment of the Bill of Rights entitles all who believe they have been injured by the acts of another or the failure of another—to file a lawsuit and seek **compensation** for that injury.

Not everyone who files a lawsuit, however, is successful. And, not every suit filed goes to trial. For a lawsuit to succeed, a plaintiff's claim must first meet specific legal requirements. In the McDonald's case, for example, the teenage plaintiffs first need to establish that the defendant had a **legal duty** toward them. If the plaintiffs establish that duty, they next need to prove that the defendant had somehow **breached**, or failed to fulfill that duty. Finally, the teens need to convince the court that as a result of McDonald's breach of its duty to them, they were harmed or injured.

The judge decides

McDonald's claimed that Jazlyn and Ashley's lawsuit was nothing more than "an attempt to cash in on the Golden Arches" and filed a motion to have the suit dismissed by the court. On September 4, 2003, the attorneys for both sides appeared in U.S. District Court before Judge Robert W. Sweet to argue McDonald's **motion to dismiss** the case.

In his decision, Judge Sweet ruled that Jazlyn and Ashley had failed to meet the legal standard known as **causation**, which would be the connection between McDonald's and the girls' obesity and related diseases. Judge Sweet found too many unanswered questions in the plaintiffs' case for him to determine that McDonald's food had been a substantial cause of their obesity.

While the judge found the information about how often the teens ate at McDonald's to be helpful, it was not enough to establish causation. Judge Sweet ruled that the plaintiffs had failed to eliminate other factors that may have played a role in their weight and health problems, including what else the plaintiffs ate, how often they exercised and their family history.

The judge ruled that the plaintiffs also had failed to meet another legal standard. To prove McDonald's advertising was misleading or deceptive, the plaintiffs needed to show "that a reasonable consumer would have been misled by the defendant's conduct."

In his decision, Judge Sweet found no evidence of advertising by McDonald's that its menu featured either health foods or low-calorie foods. While the plaintiffs had shown that McDonald's advertised its food as delicious, they had presented no evidence of misleading claims that its food was also nutritious.



Judge Sweet wrote, "The plaintiffs have made

no explicit allegations that they witnessed any particular deceptive advertisement and they have not provided McDonald's with enough information to determine whether its products are the cause of the alleged injuries."

Since Jazlyn and Ashley failed to meet the legal requirements for the lawsuit to go forth, Judge Sweet dismissed the case against McDonald's saying, "because the plaintiffs have failed to prove both that McDonald's caused the plaintiffs' injuries and that McDonald's representations to the public were deceptive, the motion to dismiss the complaint is granted. If a person knows or should know that eating copious orders of super-sized McDonald's products is unhealthy and may result in weight gain, it is not the place of the law to protect them from their own excesses."

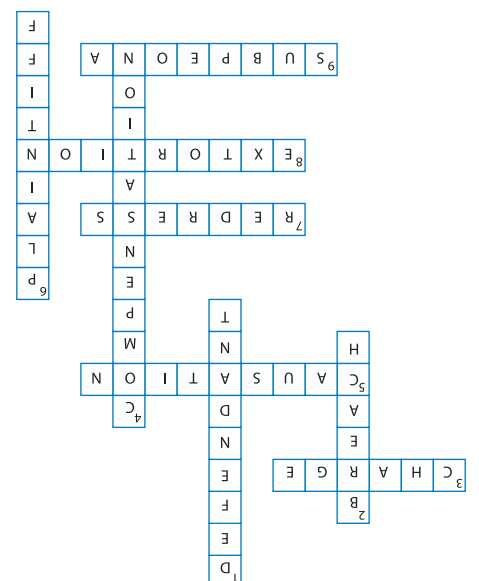
Keeping healthy

Perhaps responding in part to the obesity lawsuit and in part to the national concern with weight, the fast food industry today is on the defensive. Jazlyn and Ashley lost their lawsuit, but they may have made McDonald's rethink its menu. The fast food chain just launched a menu of food choices lower in fat and carbohydrates in 650 restaurants throughout New Jersey, New York and Connecticut. McDonald's Real Life Choices program allows customers to special order their same favorite foods without the sauce, mayo, dressing, butter or bun. Customers may also request that their food be broiled or grilled instead of fried.

Burger King has also introduced a new low-fat, low-carbohydrate, low-calorie menu for its patrons, including a burger wrapped in lettuce instead of a bun. Other chains like Subway offer low-carbohydrate choices as well.

So, while Jazlyn and Ashley may have lost their battle, the war over fast food versus nutrition still rages on. 🍌

CROSSWORD PUZZLE SOLUTION



Snooping or Security CONTINUED FROM PAGE 1

subject to instant replay when it comes to discipline problems, so lying isn't an option.

School violence justify cameras

You can hardly pick up a newspaper or turn on the nightly news without hearing about violence in our nation's schools. Ever since the school shooting incident at Columbine High School in 1999, newspaper headlines would lead the public to believe that there are more incidents of violence in our schools today than ever before. Some argue the increased violence in schools justifies the need for increased security and cameras in classrooms.

On the counter side however, in a 2001 article, *U.S. News & World Report* stated that the murder rate for juveniles was the lowest since 1966, and "the odds of being killed in school are less than 1 in 2 million." According to *New York Times Upfront*, a news magazine for teens, more people die from being stung by bees than from being shot in school.

Eye on West Milford, NJ

According to Robert Gilmartin, superintendent of the West Milford school district, camera surveillance systems have been installed in his district at school entrances for the protection and safety of the students. All campus visitors are screened and properly identified. At the high school, there are also cameras in the hallways, stairwells, the cafeteria, the exterior of the building and on some buses. There are, as yet, no cameras in the classrooms.

Gilmartin supports a student's right to privacy, but believes that cameras are necessary in the common areas of the schools to protect property and the general safety of the student body, which he says "takes precedence over privacy." However, he does not believe cameras in the classroom are necessary.

Pointing to the benefits of security cameras, Gilmartin recalled a recent incident at the high school where a classroom door lock was vandalized.

"I looked at the security camera records and was able to observe and identify the person who committed the act of vandalism," he said. "Camera records are only checked as part of a specific investigation," Gilmartin added.

Gilmartin believes that limited forms of surveillance systems may be a trend in the future for schools, but the question of affordability and cost-effectiveness for each district will be a factor.

Going too far

At Livingston Middle School in Overton County, Tennessee, cameras have even invaded the privacy of the locker room. A camera was placed in both the girls' and boys' locker rooms because school administrators were concerned that students were sneaking out of gym class. Although the cameras were pointed at the doors leading outside, the wide-angle lens picked up the images of more than a dozen 10-to-14-year-old students changing their clothes.

The pictures of children undressing were accessed over the Internet nearly 100 times by non-authorized people because the school did not change the access codes from the original factory settings. Parents of the students, angry over the loss of privacy for their children, filed lawsuits in federal court against the Overton County School Board for several million dollars in damages. The case is still pending.

What about the right to privacy?

While the Tennessee case is extreme, it does raise the question of privacy for both students and teachers. Some teachers and civil rights organizations have questioned whether in the quest to make schools safer, school administrators are going too far by invading the privacy of students with cameras and other

security devices. Some even ask whether students have any privacy rights at all.

According to David Rubin, a Metuchen attorney who specializes in school law, students (and teachers) have privacy rights, but classroom activities are not considered private and are

sometimes observed by administrators or parents.

"Cameras themselves are not violations of the law unless they invade the private space of an individual," Rubin explained. "There may be an educational concern about cameras, but not a legal one," he added, "unless the camera recordings are used for purposes other than school security, and accessed by unauthorized people."

In most privacy cases at the state or federal level, there is a general agreement by the courts that students in a school setting have less privacy rights than when they are outside of school.

What some teachers think

Some teachers believe the use of surveillance cameras in classrooms helps improve student behavior and raises test scores. Others feel they are an invasion of the teacher-pupil relationship and are concerned about the camera's effect on children. Some instructors wonder if the cameras might eventually be used to judge their own teaching methods.

In an Associated Press article, Maryann Graczyk, president of the Mississippi American Federation of Teachers, said that she is "worried about how the cameras would affect teacher rapport with students." Melissa Anderson of the National Education Association told *USA Today*, "...If the watching [of Webcams in the classroom] results in a constant stream of complaints about teachers and their style [and] presentation of material, then it could be an interference."

Steve Lilienthal, director of the Free Congress Foundation in Washington, D.C., worries about what camera surveillance is teaching students. He told *The New York Times*, "putting cameras on children trains them to believe



breach — breaking a legal obligation.

causation —in negligence cases, being the cause of something.

charge —in legal terms, an accusation.

compensation — something offered or awarded to the plaintiff to put him or her back in the position he or she would have been in had the error or wrong not been committed.

copyright infringement — using any previously published material without the author's permission.

defendant — in a trial, the person who is accused of a crime or wrong doing.

extortion — to obtain property or money by the use of violence, threats or intimidation.

fair use — in this case, typical personal use of music.

legal duty — an obligation requiring conformity to a certain standard of conduct in the protection of others against risk.

liability — an obligation of responsibility for an action or situation, according to the law.

motion to dismiss — an application made to a court to discharge a lawsuit without further consideration such as a trial.


obesity — the condition of being extremely overweight.

plaintiff — person or persons bringing a civil lawsuit against another person or entity.

redress — satisfaction for a wrong committed.

sedentary — accustomed to sitting in one place.

subpoena — a written command to appear before a court to give testimony.

that being watched every minute of the day is okay. They should be teaching them to behave not because a camera is on them, but because it's the right thing to do." 

CROSSWORD PUZZLE

ACROSS

- 3 in legal terms, an accusation.
- 5 in negligence cases, being the cause of something.
- 7 satisfaction for a wrong committed.
- 8 to obtain property or money by the use of violence, threats or intimidation.
- 9 a written command to appear before a court to give testimony.

DOWN

- 1 in a trial, the person who is accused of a crime or wrong doing.
- 2 breaking a legal obligation.
- 4 something offered or awarded to the plaintiff to put him or her back in the position he or she would have been had the error or wrong not been committed.
- 6 person or persons bringing a civil lawsuit against another person or entity.

