

COPYRIGHT - DOWNLOADING ILLEGALLY

Monday 14th November 2011

Please prepare for a short discussion of this topic with the rest of the class by reading and talking about the material provided in small groups.

You have been given the following articles to read in your group:

1. 'It's not a crime to download, say musicians', The Telegraph, March 2009.
<http://www.independent.co.uk/arts-entertainment/music/news/its-not-a-crime-to-download-say-musicians-1643217.html>
2. 'Has illegal downloading gone too far', The Guardian, April 2009.
<http://www.guardian.co.uk/music/musicblog/2007/apr/04/hasillegaldownloadinggonet>
3. 'Illegal downloaders 'spend the most on music', says poll' November 2010.
<http://www.independent.co.uk/news/uk/crime/illegal-downloaders-spend-the-most-on-music-says-poll-1812776.html>
4. 'Who benefits from extending the copyright term for sound recordings?' The Guardian, September 2011.
<http://www.guardian.co.uk/media/organgrinder/2011/sep/25/copyright-term-extended-music-recordings>
5. 'Premium rate service regulator to help combat pirated music sales' Out-Law.com, November 2011. <http://www.out-law.com/en/articles/2011/november/premium-rate-service-regulator-to-help-combat-pirated-music-sales/>

Some questions you may like to consider:

- Is there any value in protecting music any longer? What role does the Internet play in the dissemination of such materials?
- Do the moral objections hold up when so many people are doing this online?
- Should music just be free entirely to make this a non-issue?

1. It's not a crime to download, say musicians

Musicians including Robbie Williams, Annie Lennox, Billy Bragg, Blur's David Rowntree and Radiohead's Ed O'Brien said last night that the public should not be prosecuted for downloading illegal music from the internet.

The Featured Artists Coalition, which consists of 140 of Britain's biggest rock and pop stars, said at its inaugural meeting that companies such as MySpace and YouTube should be required to remunerate the artists when they use their music for advertising.

Bragg told The Independent that most of the artists had voted against supporting any move towards criminally prosecuting ordinary members of the public for illegally downloaded music.

The musicians will express their views to Lord Carter, who suggested that individuals downloading music illegally should be brought to justice.

While Lennox was not able to attend the meeting, she sent a message of support, as did Peter Gabriel, while David Gray, Fran Healy from Travis, Pink Floyd's Nick Mason and Mick Jones from The Clash turned up in support.

Bragg was speaking as a key member of the coalition, which was set up to give a collective voice to artists who want to fight for their rights in the digital world. It is pushing for a fairer deal for musicians at a time when they can use the internet to forge direct links with their fans. "What I said at the meeting was that the record industry in Britain is still going down the road of criminalising our audience for downloading illegal MP3s," he said.

"If we follow the music industry down that road, we will be doing nothing more than being part of a protectionist effort. It's like trying to put toothpaste back in the tube.

"Artists should own their own rights and they should decide when their music should be used for free, or when they should have payment."

The artists wanted to tell Lord Carter "that we want to side with the audience, the consumer".

O'Brien said it was a "defining time for the industry", adding: "A lot of the rights and revenue streams are being carved up, and we need a voice... I think all the major players want to hear what we have to say."

2. Has illegal downloading gone too far?

Last week, I received a promotional CD of *Ma Fleur*, the new album by Cinematic Orchestra, a group on the independent label Ninja Tune. Before I'd even played it (it's very good by the way), I was hooked by the blurb on the sleeve.

Usually, this is the bit of legal boilerplate where the label informs you that illegal downloading is outright gangsterism and anyone who practises it will be dragged outside to be shot like a dog, after which their head will be exhibited on a spike outside the BPI headquarters as a warning to others.

But this one is different. "Before you copy, burn or upload these recordings," it begins, "please take a moment to think about what you're doing and what you're not doing. You are not 'sticking it to the man'. You are not 'striking a blow against outdated copyright laws'. You are not 'liberating content from the corporations'. Nor are you 'promoting our records for us'. You are making it much harder for the musicians in Cinematic Orchestra to make anything like a living wage for creating the music which is good enough to give to friends and associates."

Whether this approach will work remains to be seen (last year, the electronic duo Matmos, accompanied each promo copy of their album *The Rose Has Teeth in the Mouth of a Beast* with a witty, handwritten Post-It imploring recipients not to upload it to a filesharing network, to no avail) but it raises sticky questions about the ethics of illegal filesharing. Of course, the easy answer is that all unlicensed downloading is copyright theft, ergo wrong, but that's not how many music fans think anymore. When an 18-year-old Northeastern University student called Shawn Fanning launched Napster, the first P2P filesharing software, in 1999, he triggered a sea change in the consumption of music.

Any qualms about the morality of taking gigabytes of music without paying were quashed by the industry's heavy-handed response. Famously, Metallica filed a lawsuit against Napster. Fronted by anus-faced drummer Lars Ulrich, it became a PR disaster, pitting a multimillionaire rock band against its own fans. I don't even like Metallica, but I was tempted to get Napster and download their entire back catalogue just to annoy Ulrich. Napster was forced to shut down its network in July 2001 and pay a total of \$36m to copyright owners, subsequently relaunching as a legal subscription service. But its Robin Hood reputation defined the moral battle lines for years to come. As new services such as Soulseek and Limewire sprang up, millions of music fans downloaded free music while telling themselves that the only people they were hurting were greedy executives and anus-faced drummers.

Now, as Ninja Tune say, many of the old justifications ring hollow, especially when it comes to independent artists. You want a hit track without having to buy the whole lousy album? Legal services such as the iTunes store offer ever-swelling libraries of individual tracks. You want to try before you buy? Many musicians offer free previews on their websites or MySpace pages. Filesharing raises the artist's profile? True, it can stoke demand for live shows, and for licensing to TV, movies and advertisers, but word-of-mouth promotion doesn't work if you're giving someone an album instead of just telling them about it. According to Ninja Tune's Will Ashon, who wrote the *Ma Fleur* text, the difference between an independent album losing money and breaking even can be as little as 1000 copies.

At the same time, filesharing has ballooned. I know passionate music fans with decent wages who have never paid for a legal download and haven't bought an album in years. It is a habit so established that they don't even think twice.

Of course, there are still many songs you cannot buy. Out-of-print albums such as Dennis Wilson's legendary Pacific Ocean Blue, not to mention countless lost B-sides, wouldn't be heard at all if not by illegal means. But I wonder how many filesharers discriminate in this way. How many will download some long-deleted EP track but not a new release, or a major-label megastar but not a struggling independent? At the same time, I wonder what it's like for an underground musician who sees his well-reviewed album remain in the red because most fans have taken his music for free.

I'm in the privileged position of receiving free copies of new releases for review (although I still buy plenty of other music) and I wouldn't be so self-righteous or, let's face it, so unrealistic as to suggest that shame-faced filesharers down tools, but it's time that those with an interest in independent music exercised some discretion.

I'll leave the last word to Ninja Tune: "By all means pirate the latest corporate spew from major label central. But don't pretend it's the same thing as copying this, because one day, when we're all gone and all that's left is two or three giant multinational conglomerates putting out lowest-common-denominator bollocks, you'll wish you hadn't."

3. Illegal downloaders 'spend the most on music', says poll

People who illegally download music from the internet also spend more money on music than anyone else, according to a new study. The survey, published today, found that those who admit illegally downloading music spent an average of £77 a year on music – £33 more than those who claim that they never download music dishonestly.

The findings suggest that plans by the Secretary of State for Business, Peter Mandelson, to crack down on illegal downloaders by threatening to cut their internet connections with a "three strikes and you're out" rule could harm the music industry by punishing its core customers.

An estimated seven million UK users download files illegally every year. The record industry's trade association, the British Phonographic Industry (BPI), believes this copyright infringement will cost the industry £200m this year.

The poll, which surveyed 1,000 16- to 50-year-olds with internet access, found that one in 10 people admit to downloading music illegally.

"The latest approach from the Government will not help prop up an ailing music industry. Politicians and music companies need to recognise that the nature of music consumption has changed, and consumers are demanding lower prices and easier access," said Peter Bradwell, from the think-tank Demos, which commissioned the new poll conducted by Ipsos Mori.

However, music industry figures insist the figures offer a skewed picture. The poll suggested the Government's plan to disconnect illegal downloaders if they ignore official warning letters could deter people from internet piracy, with 61 per cent of illegal downloaders surveyed admitting they would be put off downloading music illegally by the threat of having their internet service cut off for a month.

"The people who file-share are the ones who are interested in music," said Mark Mulligan of Forrester Research. "They use file-sharing as a discovery mechanism. We have a generation of young people who don't have any concept of music as a paid-for commodity," he continued. "You need to have it at a price point you won't notice."

The Digital Economy Bill, which will become law next April, sets out new measures to crack down on internet piracy. But these have generated criticism from internet service providers, who say they will be difficult to enforce.

Artists are also divided over the issue, with Lily Allen and James Blunt recently supporting the Government's stance, while the Latin pop star Shakira argues that illegal file sharing brings her closer to her fans.

This year Virgin Media and Universal Music plan to launch the first music subscription service allowing customers to download and keep unlimited tracks from Universal's catalogue for a fee of around £15.

4. Who benefits from extending the copyright term for sound recordings?

So finally the music industry has managed to get by with a little help from a few friends. Label bosses may not have succeeded in the battle to cut off the internet connections to homes of families whose teenage children illegally download a few Eminem tracks, but they have at last prevailed in a decade-long battle to persuade Brussels to increase the copyright term for sound recordings from 50 years to 70.

Songwriters and composers are already guaranteed royalties on their recordings for life plus 70 years. The new ruling by the EU's Council of Ministers means that, from 2013, artists of the 1960s who were not talented enough to pen their own music and garnered income only through performing the songs of others will no longer face losing their royalty this decade, but will keep receiving a payment until the 2030s.

The lead singer of this group is Sir Cliff Richard, who despite releasing plenty of 1960s hits, including Summer Holiday and Congratulations, penned only a handful himself. It has become a tradition to christen laws rectifying wrongdoing in the name of the victim. And so, the new regulation setting right this historic injustice was immediately baptised as Cliff's Law, in recognition of the perennial Bachelor Boy's tireless campaigning for the right to keep adding to his £50m fortune until, in the case of his later recordings, well after his 140th birthday.

In a careful lobbying effort, the record labels have claimed that their motivation for the change has not been to safeguard Richard, but the incomes of jobbing session musicians, such as Raphael Ravenscroft, who played the saxophone solo on Baker Street, and Sheila Bromberg, who played the harp on the Beatles' She's Leaving Home. Bromberg faced losing her royalty income for the song after 2017 and, as she says in a heartrending quote, helpfully supplied by the industry: "It may not be huge sums of money but to an OAP as I am, it is welcome."

In fact, there are only two groups of people who will receive huge sums of money as a result of an extended term: the record labels and the multi-millionaire mega-acts. According to one academic, professor Martin Kretschmer of Bournemouth University, even if you extended the limit to 95 years, the bottom 80% of performers would still take home less than £50 per year.

There is one reason alone for the industry's desperate scramble to amend the law: the impending expiry of the copyrights to a golden generation of musicians including the Beatles, the Rolling Stones and Bob Dylan, all of whose valuable back catalogues, under the old 50-year rule, would begin to drift into the public domain in Britain this decade.

That is the conclusion of Andrew Gowers, the former Financial Times editor who carried out the last serious investigation into term length, as part of a 2006 government review. Gowers says: "I believe the lobbying is built around a relatively small number of works from the time in question, like the Beatles, which are still selling. There are very few examples of that kind of lasting effect. It is ever clearer that artists and music companies earn the vast majority in the first couple of years of a work's release.

"This is the issue that never dies. It is a very well organised, small group of people in whose interest it is to extend the term. But it is the broader public who will pay. The costs of doing so are not so obvious but they are considerable."

The Gowers Review concluded that, given the fees owed by anyone who wants to make use of copyrighted music, extending the term "would increase costs for all businesses that play music, for example hairdressers, old people's homes, local radio and internet service providers. The impact of extension would therefore be felt throughout the economy."

Gowers says he wanted to reduce the term to around 20 years, but that it would have been politically undeliverable. "No one is going to be de-incentivised to make music," he says. "No one can say that the Beatles would not have recorded Love Me Do if they only got 30 rather than 50 years of rights for it. It is ludicrous."

The record industry says that the new change to the law will result in "tens of millions" of pounds in extra revenue over the next 20 years. The Gowers Review warned that "most of the increased revenue from term extension would come directly from consumers who would pay higher prices for longer".

Although there is an argument that anybody who wants to buy a Cliff Richard record deserves to be ripped off, British consumers already face a grim enough decade without any extra pressure on their purses – particularly when the chief beneficiaries have already made their millions.

5. Premium rate service regulator to help combat pirated music sales

The UK's regulator of premium rate services (PRS) will pass on details of copyright infringing websites to service providers under a new "proactive" arrangement with police and music industry representatives, it has announced. 02 Nov 2011

PhonopayPlus said that PRS providers notified of copyright infringing sites could be charged under the Proceeds of Crime Act (POCA) if they then subsequently made "arrangements" with operators of the illicit sites to help users pay for the pirated music.

"It is important to note that, if any provider has been put on notice that a service is illegal and either continues to provide, or subsequently provides, payment services to, or for, the site(s) in question, the provider may be criminally liable under Section 328 of the Proceeds of Crime Act," the regulator said in a notice to PRS providers.

Under POCA a person is generally guilty of an offence if they enter into or become concerned in arrangements they know or suspect "facilitate (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person".

Under the new notification scheme the City of London Police (CoLP) and the International Federation of the Phonographic Industry (IFPI) will inform PhonopayPlus of "any promotional material, including but not limited to websites" that is suspected of offering illegally copied music to be downloaded through "premium rate means", the regulator said. The information will then be passed on to individual PRS providers "to ensure they are aware of the potential risks of contracting with clients associated with such promotional material," it said.

To date PhonopayPlus has received notice of 24 infringing websites and police are currently investigating 38 other "unlicensed services", the regulator said. PhonopayPlus said it was taking the "proactive" step to notify providers of potential infringers because of the "risk" that copyright infringers would try to sell pirated music through PRS. It said Visa, Mastercard and PayPal were already working with CoLP and IFPI to prevent the sale of illegal content through their services. "Until relatively recently, pirated music downloads were almost exclusively paid for by consumers using credit cards," PhonopayPlus said.

However, following discussions between IFPI and CoLP and providers of credit card services, credit card companies have begun to identify and exclude merchants offering pirated music. There is therefore a risk that those who still intend to offer pirated music may now turn to PRS as a quick and easily accessible form of payment. While there is little evidence at present of pirated music being offered using PRS, PhonopayPlus has agreed to work proactively with the IFPI and the CoLP in order to prevent potentially criminal activity damaging the ongoing reputation of the overall PRS market," the regulator said.

Claire Smith, copyright law expert at Pinsent Masons, the law firm behind Out-Law.com, said that owners of copyrighted music could also sue some companies involved in operating PRS if those firms do not prevent customers paying for copyright-infringing content that they have been notified about under the UK's E-Commerce Regulations.

Under the Regulations a service provider is generally not liable for any copyright-infringing material accessed by users of its service if it "acts as a mere conduit, caches the material, or hosts the material".

In order to avoid any liability for unlawful material, the service provider must, upon gaining "actual knowledge" that the initial unlawful source has been removed or access to it has been disabled, act 'expeditiously' to ensure that the information is deleted from its cache or ensure that access to it is disabled.

Under the PhonopayPlus Code of Practice companies that provide a "platform" or "any other technical service" enabling consumers to access PRS services and companies that control or are responsible for "the operation, content and promotion" of PRS "and/or the use of a facility within the PRS" are considered to be subject to the rules set out in the E-Commerce Regulations.

Those companies that help PRS providers operate their services could also face investigation under the Code if the providers are found guilty of the POCA offence, the regulator said.

Under the Code PRS network operators, consumer platform providers, and those companies in control or responsible for the "operation, content and promotion" of the PRS are required to conduct a risk assessment of their involvement in the service. Those companies must "assess the potential risks posed" by entering into contracts for the provision, promotion, marketing and content of PRS which they help provide or facilitate "and take and maintain reasonable continuing steps to control those risks", the Code states.

Network operators and the consumer platform providers for PRS must also "perform thorough due diligence on any party with which they contract in connection with the provision of premium rate services and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances", according to the Code.

PhonopayPlus can issue a range of sanctions for breaches of its Code, including handing out fines and barring companies from being involved in helping provide PRS for defined periods.

The regulator said that it was "pleased" to be helping in the fight against copyright infringement.

"We are working with PRS providers and the trade bodies who represent them to make sure a clear message goes out – there is no place in the UK PRS market for illegal content that infringes copyright," Paul Whiteing, chief executive of PhonopayPlus said in a statement.

The IFPI, which represents 1400 artists and recording companies in 66 countries, said PhonopayPlus' "commitment" would make it difficult for copyright infringers to obtain payment for pirated music.

"Pirate websites hoping to use phone payment services as a replacement for the credit card facilities withdrawn from their sites will find they are unable to do so," Frances Moore, chief executive of IFPI said.

"These illegal business that rip-off artists, songwriters and record producers are finding it ever harder to continue to ply their lucrative trade," Moore said.

CoLP said that the "collaboration" would help "clamp down" on illegal file-sharers.

"By working in close collaboration we are making sure that payment avenues previously open to fraudsters to facilitate digital piracy are being blocked even before they have had the chance to exploit them," Detective Superintendent Bob Wishart of CoLP said.

"This proactive approach also sends out a clear message that copyright infringement will not be tolerated in this country," Wishart said.