

# ***Educators and Intellectual Property in the Digital Age***

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# SPEED BUMP



***“Digital technology has changed the world to the degree where intellectual property is quickly becoming one of the most important subject and information areas for the future, especially in the arts and education. This will have a profound effect on us all as creators, users, educators, and consumers.”***

***“If you are in the business of selling words, music, or pharmaceuticals and you are not worried about protecting your intellectual property, you are not paying attention.”***

***The World is Flat, by Thomas Friedman***

***"Word are things. Copyright is a specialized form of property law that recognizes that works of original expression belong to the person who created them. Today that doesn't seem very remarkable; we hardly give it a thought."***

***Copyright and Authors, Givler, 2003***

***"Copyright is neither simple nor self-evident. Copyright is also neither inherently good nor inherently evil. But even the most casual observer can see that something is wrong with copyright. Today's copyright laws and traditions are dissonant with modern culture and technology, and the dissonance has become more and more apparent in the past few years."***

***Copyright: It's For the Public Good, Ewing, 2004***

# Copyright: Early History

## *The U.S. Constitution, 1787*

*Article I, Section 8, Clause 8 . . . "the Congress shall have power . . . to promote the progress of science and useful arts, by securing for **limited times** to authors and inventors the exclusive right to their respective writings and discoveries."*

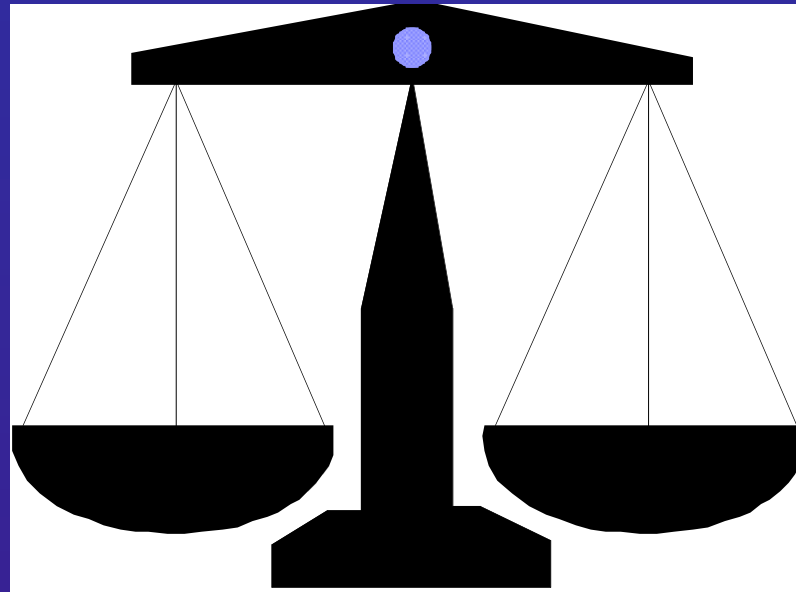
# About Copyright: Basics

- ✓ *Purpose*
- ✓ *The Right to Copy*
- ✓ *What Is and Isn't Protected*
- ✓ *Qualitative/Quantitative*
- ✓ *Copyright Timeline*
- ✓ *Registration*

# Basics: Purpose

## A Balance of Rights

*artist*  
*creator*



*public*  
*user*

# Basics: The Right to Copy

## The 6 rights of copyright

- 1) *Right to reproduce*
- 2) *Right to distribute*
- 3) *Right to publicly perform*
- 4) *Right to display*
- 5) *Right to prepare a derivative work*
- 6) *Right to digitally perform sound recordings*

# Basics: What Is and Isn't Protected

- *What IS copyright-able?*
  - *words*
  - *melody*
- *What IS NOT copyright-able?*
  - *anything that is not SUFFICIENTLY ORIGINAL, including titles, names, harmony, chord progressions, rhythm, names, short phrases, slogans, lettering, coloring, lists, forms, ideas, methods, systems, processes, concepts, principles, etc., possibly even words and melody!*

# Basics: Qualitative/quantitative

- *What constitutes a 'work'?*
- *There is no specific (minimum/maximum) number of words, lines, or notes that may safely be taken, used, borrowed, shared, etc. without permission.*

# Basics: Copyright Timeline

- A.** *Work is created and 'fixed' in a tangible medium*
- B.** *Work is 'published' ('fixed' and 'permanently parted-with')*
- C.** *Work moves into the Public Domain*



*Duration = life of the author plus 70 years*



# Basics: Registering a Work

*Registering a work affixes the date of registration and the claim of year of origin. Six months, or so, following mailing of the form, you'll receive a card with a registration number identifying your work. That does not mean that the Library of Congress is certifying that you own the copyright. It merely means your claim is registered.*

- *Obtain the form*
- *Complete the form*
- *Attach a copy of work*
- *Send in your check*

# Using Copyrights: The Balance

- *arrangements*
- *recordings*
- *student performances*
- *sampling*
- *copying*
- *downloading/burning*
- *other licenses/uses*

# Copyrighted Works: arrangements

- *disputed process*
- *writing arrangements*
  - *using or selling*
  - *adapting the work to ensemble (level and nature)*
  - *permission (necessary?)*
- *buying arrangements*
  - *making backup copies*

# Copyrighted Works: recordings

- *Recordings of student ensembles*
  - *for archival/educational purposes only*
  - *for sale (distribution) to public (must be licensed)*
  - *mechanical license*
  - *securing copyright (SR)*
  - *writing arrangements for the recording*

# Copyrighted Works: performances

- *All public performances must be licensed*
  - *annual 'blanket license' with ASCAP, BMI, SESAC*
  - *some elementary, middle, and high school events are exempt*
- *venue holds license (not performers)*
- *most often, when you rent the music for a musical theater/dramatic work, the performance license is included*
- *all performances at a school are covered, most under 'fair use', some under the performance license*

# Copyrighted Works: sampling

- *no amount of digital sampling is legal, unless permission is granted*

# Copyrighted works: copying

## *Photocopies and analog/digital copies*

- *Copies can not be made to avoid purchase*

# Copyrighted Works: Fair Use

## *Fair Use Doctrine (unclear and very limited)*

- *must be for non-commercial/non-profit use*
- *amount and substantiality of the work*
  - *no more than 10% of entire work*
  - *copy cannot constitute a performable unit*
- *the effect of the use upon the potential market for, or value of, the work*
- *photocopy must include credit*
- *copies can only be made for a regularly scheduled class as part of the stated syllabus/requirements*
- *recordings must be collected at the conclusion*
- *is the use 'transformative'*

**\*There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.**

# Copyrighted works: other uses/licenses

*ALL uses of copyrighted music must be licensed, or used by permission*

- *Theatrical productions*
- *Internet broadcast*
- *Videos/DVDs*
- *Advertising*

*How do you create economic and business models faster than the old ones are being destroyed?*

*How do we, as a society, protect one of the most fundamental and critical components (arts), while encouraging another (technological advancement), both of which define us?*

*What role do education, ethics, and morals play in the discussion?*

# Good Web Resources for Copyright Information

- **National Academy of Recording Arts and Sciences**  
(click on “What’s the Download”)  
<http://www.grammy.com>
- **US Copyright Office**  
<http://www.copyright.gov>
- **Copyright Clearance Center**  
<http://www.copyright.com>
- **MENC (Music Educators National Conference)**  
**Info for Educators**  
<http://www.menc.org/copyright/>

# Article on Copyright

TAKING CARE OF BUSINESS

## Copyright Questions And Answers

*Getting Money, Getting Credit*

by Marc Dicciani

**P**art of my role as director of the school of music at the University Of The Arts is to teach music business classes. The subject of copyrights is a major element of those classes.

Students in my classes (and also musicians I meet at clinics, lectures, and out in the workplace) frequently ask me what a copyright actually is. Who owns and controls it? And who is entitled to earn income from recordings, performances, and arrangements of songs?

I get two questions specifically from drummers: "Why are the rhythms and fills that I create not considered part of the composition of a song that can be copyrighted?" and

"When my band creates original songs, we all contribute parts. But I'm told that since I didn't write the words or the melody, I'm not entitled to any money from the song. How can this be?"

Drummers (along with other instrumentalists, and even singers) are often shocked when they read songwriting credits on a CD and discover that their name isn't included. That upset is heightened when they realize that they're not going to be receiving any money from the mechanical licenses of the songs when the CDs sell, or from the performance revenue when the songs are played on the radio or TV.

To better help you understand the ins and outs of copyrights, this article will examine what can be copyrighted, who is entitled to income from a copyrighted song, and what you can do to protect yourself and/or earn compensation for your contribution. As we begin, remember that copyright law is complex, and many facets can be confus-

ing. You should supplement what you learn from this article with your own research. (More about that later.)

### Defining Terms

A copyright is a form of ownership of certain kinds of creative works (also called intellectual property), including songs. It's usually given to the individuals who created those works. In short, it is the control of the exclusive right to make copies of a song, and, effectively, to make money from that song. The purpose of copyright law is not just to protect the authors of these works, but also to balance their rights with those of the general public.

Rights of the public, you ask? Yes! Once a work is made available to the public (through a recording, for example), ordinary citizens have certain rights to listen to, perform, and even record that music. However, they usually must pay fees to the copyright owners when a song is recorded and sold, and when it is performed. That's the balance that the law aims to provide.

### What Is And Isn't Covered

Generally, songs contain lyrics, melody, harmony, and rhythm. Federal statutes most often afford protection to the two most widely identified of these components: melody and lyrics. Copyright attorneys say that there are good reasons for this. Melody and lyrics are the only parts of a song that survive over time, remaining consistent through a variety of performances and recordings in many different styles and genres. Also, those two parts constitute a completely performable unit by a single individual. That is, one person can sing the words and melody with no accompaniment. (Or, in the case of an instrumental version, one person can play the song on a solo melodic instrument.)

The same defense cannot be made as strongly for harmony and rhythm within a song. No matter how recognizable those components may become, they are still considered accompaniment. They're part of the arrangement, not part of the

# Copyrighted works: downloading/burning

## *Effects of Illegal Downloading*

- *By more than a 2 to 1 margin, consumers who say they are downloading more also say they are purchasing less*
- *Thousands of record company employees have lost their jobs, and companies have trimmed their rosters of lower selling artists (Billboard)*
- *Since 2000, CD sales have skidded 15% (Nielsen Soundscan) and revenues are down 30%. Over the past year alone, sales have dropped 7% (NYTimes)*
- *Declines are due to a confluence of additional factors, including consumer dissatisfaction, industry focus on sales (v. quality), piracy, over-pricing, homogenization of styles/artists due to mega-company oligopoly, and entertainment competition*
- ! *The marketplace of ideas is slowing. The creative community's incentive to commit to a career in musical development is lessening*

# ***Some Numbers***

- **More than 2.6 billion files illegally downloaded per month**
- **Counterfeit and pirated goods cost the US economy \$250 billion per year**
- **20% of all software in the US is pirated**
- **65% of students believe they should not be charged to download music/movies on the Internet**
- **46% believe nobody is harmed or loses money when music/movies are downloaded for free**
- **Average monthly usage of file-swapping services is at an all-time high in the United States, with more than 8 million monthly users (*Big Champagne, April 2005*)**
- **53% of Internet users think companies who own and operate illegal P2P networks are responsible for their users' actions, compared to 18% of users who believe individual file-sharers are an appropriate target. (*Pew Internet and American Life, March 2005*)**

# ***Some Numbers***

- **“Music copied onto recordable CDs is becoming a bigger threat to the bottom line of record stores and music labels than online file-sharing” - Mitch Bainwol, Chief Executive for the Recording Industry Association of America (*RIAA*)**
- **‘Burned’ CDs accounted for 29 percent of all recorded music obtained by fans in 2004, compared to 16 percent attributed to downloads from online file-sharing networks (*NPD Group*)**
- **About half of all recordings obtained by music fans in 2004 were due to authorized CD sales and about 4 percent from paid music downloads**
- **Copy-protected CDs will become more prevalent**
- **Album sales in the North America are down about 7 percent this year compared with a year ago (*Nielsen SoundScan*)**
- **Yet, the recording industry has seen a lift from online music sales, which when factored in with album and sales of CD singles increased overall music sales through July to 21 percent over last year**
- **Worldwide retail sales fell 1.9% in the first half of 2004 as compared to 2005, to \$13.2 billion - mostly due to a 6.3% drop in revenue from CDs, cassettes and other physical media to \$12.4 billion. Consumers bought 915 million physical albums, down 6.6% (*USA Today*, 10/05)**

# ***Some Numbers***

- **More than half a million students at nearly 70 colleges and universities now have access to legitimate music download services, according to a report given to Congress on Wednesday by a joint entertainment industry-university task force (*Hollywood Reporter*, 9/05)**
- **China must shut down pirate music factories and jail the perpetrators if it is going to keep its promise to address the \$250 billion-a-year problem, according to a top music industry trade group - Int. Fed. Of the Phonograph Industry (*Reuters*, 9/05)**
- **On Thursday, Sept. 29, the RIAA filed lawsuits against 757 people it claims used online file-sharing networks to illegally trade in copyrighted songs. This brings the total copyright infringement lawsuits filed against individuals to 14,800 (*Reuters*, 9/05)**
- **The market for music downloads and other digital forms of music has tripled in a year, helping offset a continuing decline in sales of CDs and other physical formats. The IFPI estimated that digital music sales totaled \$790 million in the first half of this year, equivalent to 6 percent of industry sales, compared to \$220 million in the same period a year earlier. Recorded music sales fell 1.9 percent to a retail value of \$13.2 billion in the first half of 2005, compared to \$13.4 billion in the same period of 2004. (*Associated Press*, 10/05)**

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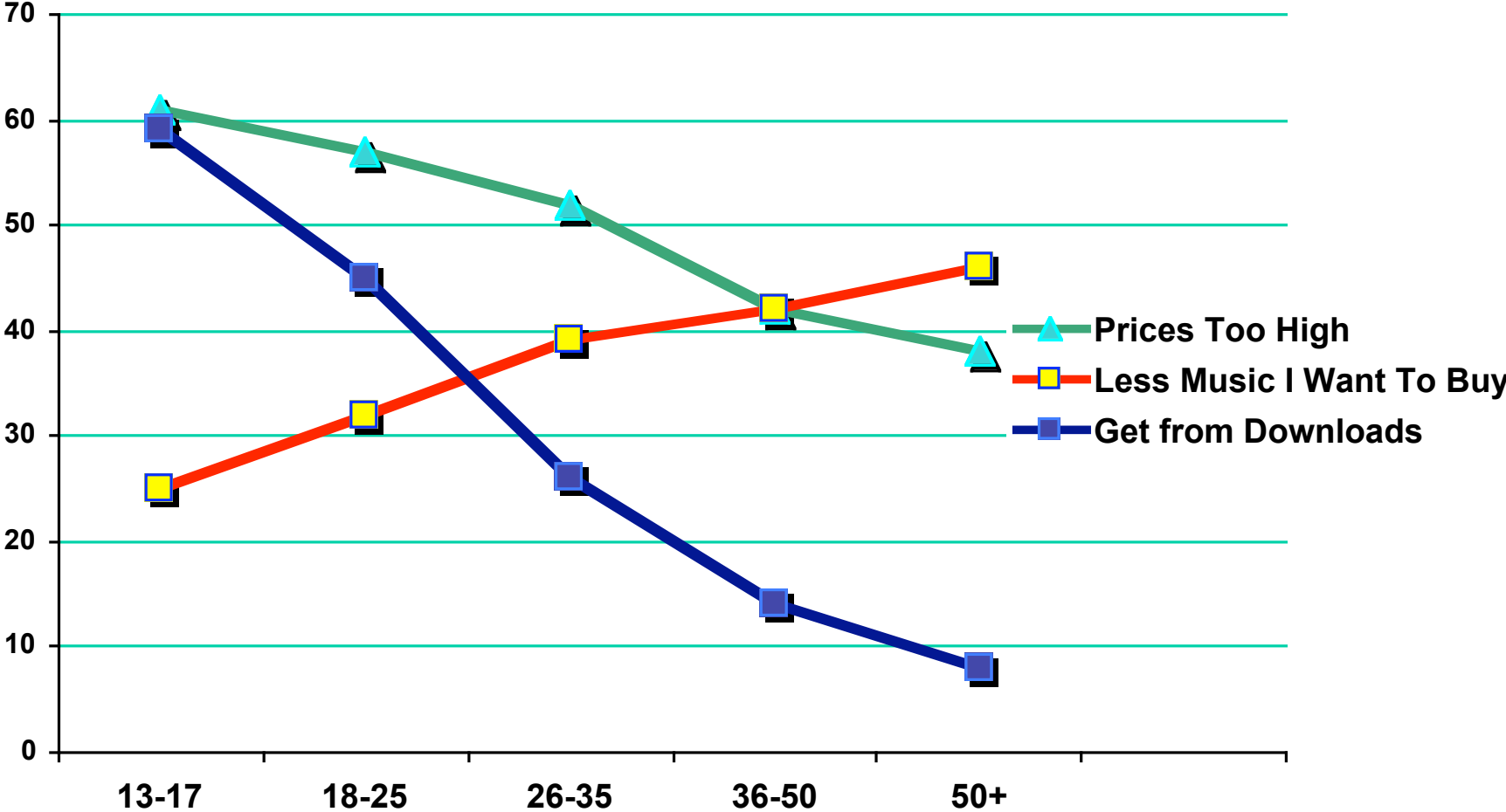
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**Price/Downloading is cited for cutbacks by younger groups;  
older buyers claim there is less they want to buy.**

**Why did you buy less music this year?**

(% respondents citing these reasons...)



Source: NPD MusicWatch P2P Study, Fall 2002- Among buyers who reported purchasing less in P12 months