

Title:

Do You Download Music Over A File-Sharing Network?

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Summary:

It can be estimated that millions of people around the world share music over a file-sharing network. For this article, I am addressing the issue in America mainly because I am not aware of the laws in other countries. Do you think it is illegal to download music from file-sharing networks? What about music you already own? An important recent court decision will answer these questions directly and you might be surprised.

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Article Body:

It can be estimated that millions of people around the world share music over a file-sharing network. For this article, I am addressing the issue in America mainly because I am not aware of the laws in other countries. Do you think it is illegal to download music from file-sharing networks? What about music you already own? An important recent court decision will answer these questions directly and you might be surprised.

Recently the United States Court of Appeals for the Seventh Circuit heard a case against a Chicago woman, Cecilia Gonzalez. Many plaintiffs including BMG, Sony and others brought the case against her. Gonzalez allegedly had downloaded over 1,000 songs through KaZaA—although she admitted to only 30. Keep that number in mind, 30. Many, if not just about all, people who download files over a file-sharing network don't stop at one file. Thirty files can be reached in minutes to an hour without thought. In fact, it was alleged that Gonzalez downloaded 1,370 songs in just a few weeks, which is an average of 65 songs per day.

If you were caught downloading thirty songs over a file-sharing network, what would your defense be? Let's look at two specific common defenses and see how a court might react. I have selected two defenses that I feel are most common, because they not only appear in the court case I have referenced, but many

others I have surveyed would try to use them as their defense as well.

First Defense: I was simply trying out the songs to see if I liked them and then I planned to buy the ones I liked and erase the ones I don't. (Simplified: try-before-you-buy)

Judge Eastbrook, one of the judges hearing the Gonzalez case, pointed out that this defense is not valid because one had many avenues to hear music before purchasing. Eastbrook names iTunes, radio, internet radio, Yahoo! Music and others as ways to legally try before buying. If this was going to be your defense, you will lose.

Second Defense: I am only downloading music that I already own.

This seems like a great defense, at first. You already own the music and the law allows you to create a backup copy. Ah, but here is where it goes south. Downloading music you already own is not considered fair use under the U.S. Copyright Law and your action is therefore copyright infringement. See UMG Recordings Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349.

Furthermore, the try-before-you-buy scenario is really blown away by the fact that you no longer need to buy CD's in whole. iTunes really helped change the legal arena in this respect because a user can both sample songs at their leisure and purchase single songs. The ability to purchase single songs is the big one.

In the end, Gonzalez lost her case. The thirty songs, that would have cost \$29.70 at iTunes, will end up costing her \$22,500 in damages—imagine what it would be if the plaintiffs had pushed for a decision on all 1,370 songs. She was given the opportunity to settle for \$3,500 before going to court, which she declined—another bad decision. If you download music over file-sharing networks and are caught, what will be your legal defense?