

The development and adoption of the MP3 format has created a very real threat to the viability of e-commerce in music over the Internet.

What is MP3?

MPEG -1 Audio Layer III (known as MP3) is a format or set of standards for the compression and decompression of digital audio files. To create an MP3 file, a person merely has to insert a music CD into the CD-ROM/DVD drive of their computer and run an MP3 software programme which 'rips' the audio signals into a compressed form without a great loss of sound quality. A single music track on a CD will usually contain about 40 MB of data and, using a variety of techniques, MP3 compresses this data down to a file of about 4 MB. With such a small file size, music can be sent across the Internet relatively quickly or can be stored taking up far less space on a hard drive or recordable CD (CD-R) than it would have in its original size.

MP3 itself is a public domain format. This means that it is readily available for free and anyone can use it. Listening to compressed MP3 files requires an audio player software package that can decompress and play the file. These are widely available, often for free. In most cases, the software necessary to compress the audio file is actually included in a package with the audio player software. A digital processor (chip) that can run the audio player software and decompress the file is then necessary. A normal PC can do this or there are portable MP3 players such as MPMan and Diamond Multimedia's Rio.

One important point about MP3 is that it contains no rights management software. Using MP3, one can rip any CD any number of times, send the tracks to anyone else or make the tracks available on a web site without the owners of the copyright knowing anything about it (the Moving Picture Expert Group last year began work on a new MPEG standard, MPEG 21 Multimedia Framework, which will integrate rights management software code).

Does this mean that MP3 is illegal?

MP3 software is not in itself illegal. Ripping the music on a CD without the permission of the copyright owners (the author of the song, the record company and the performers) is illegal when this is done for the purposes of sending or selling copies to other people or making the MP3 file you create available through music file sharing systems such as Napster.

What is Napster?

Some Internet entrepreneurs have used the fact that the MP3 standard contains no rights management software to create systems for music file sharing.

The initial file sharing systems were fairly straightforward in that people uploaded the MP3 files that they created from their CDs to a huge hard disk or database which could be searched and from which other people could download selected music files to their own computers. MyMP3.com is an example of this kind of site. It had tens of thousands of MP3 files available for download for free but has recently been prevented by the American Courts from offering copyright material for download without the permission of the copyright owners.

Napster is an example of a more complex file sharing system. It is based on a protocol developed by an American College student whereby MP3 files on a computer hard disk can be made 'visible' to other people. The owner of the hard disk just has to tell some central entity, in this case Napster, that a music file called 'X' can be found at address 'Y'. People looking for a song such as 'Yesterday' by the Beatles go to the central entity, make a search for 'Yesterday' and are given a list of places to go and download that song in MP3 format which can be decompressed using the Napster audio player software which is available for free.

Napster became a huge success in a short space of time and some other similar systems have also become very popular. In September 2000 the International Federation of Phonographic Industry estimated that there were 25 million infringing copies of recordings available in file swapping systems of this kind and that over 3 million tracks were downloaded from these services each day.

The Record Industry Association of America took Napster to Court in the US for facilitating copyright infringement. Their action was successful but has been appealed and a stay on the order which would have effectively closed Napster down has been granted. While this stay has been in place, BMG, Westlife's record company, and one of the largest media groups in the world, has negotiated an investment deal with the owners of Napster which will allow some or all of the recordings on their record labels to legally be made available on Napster in return for a share of a membership/subscription fee which Napster soon plans to introduce.

What is wrong with file sharing systems?

Making the music on your CDs available via file sharing systems such as Napster is illegal. Ripping an MP3 file from a CD is also an illegal activity in many countries as it infringes the right of the copyright owner to prevent reproduction or copying of the CD.

More important, however, is the effect that using file-sharing systems will have on the development of legitimate e-commerce in music. After all, why should consumers pay to download music when the same songs are available from file sharing sites for free? Some people say that this is how it should be, that bits are bits and that content should be free' However, if this the case, how will artists and record companies survive?

Does copyright law apply to these systems?

Yes. The new Irish Copyright Act specifically prevents the "making available" to the public of copies of the work, without the consent of the copyright owners, by wire or wireless means, in such a way that members of the public may access the work from a place and at a time chosen by them (including the making available of copies of works through the Internet).

The Act also provides authors, performers and record companies with the exclusive right to authorise or prohibit the reproduction/copying of their works. Making an infringing copy of a work is a primary infringement of copyright while providing the means for making infringing copies or dealing with infringing copies are secondary infringements. Both primary and secondary infringements can be criminal offences, which on conviction carry very severe penalties including fines of £100,000 and/or prison for up to 5 years. If I upload music from a CD that I own or make it available from my own computer, am I breaching copyright?

Yes. It is important to remember that just because you own a CD doesn't mean that you own the music. It is a matter for the copyright owners to decide how their music will be heard, reproduced or distributed. You cannot make music available to members of the public without their permission. If you operate a site which includes MP3 files taken from CDs without the permission of the copyright owners you are also infringing copyright. A disclaimer does not protect you in this regard.

What if I just 'stream' or play music on my computer?

In most cases, this is still an infringement of copyright unless the stream is coming from a radio station or promotional site that has the permission of the copyright owners to make the music available.

BAND TIPS: MUSIC, THE INTERNET AND THE LAW



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The Music Industry Group is not opposed to MP3 per se and welcomes the development new ways of distributing music which are not based on the sale of physical objects such as vinyl records or CDs. However, the members of the group do oppose the violation of authors and producers rights.

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