

It's simple: theft of music is wrong
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How many people would walk into a car dealership and steal a car. Most people do not engage in such conduct. They view it as wrong and unacceptable because it is contrary to generally accepted societal norms. Why then will the same people freely steal copyrighted music via the Internet. Is this dichotomy a function of wrong-headed intellectual property law that unjustifiably extends property protection to things that should be in the public domain. This argument is raised by many individuals who justify downloading music from the Internet in lieu of paying for it.

Intellectual property laws, which include Copyright law, are premised on the notion that economic incentives must be provided to individuals to encourage creativity which ultimately benefits society. In our market economy few people would engage in creative, or other endeavors, absent at least the potential for remuneration. Even if individuals desired to create merely for the sake of the creative process, they need compensation to provide for the necessities of life. Furthermore, it takes money in addition to time to create things. Why should Internet users get a free-ride by downloading and listening to music they have not purchased. Why shouldn't they be expected to shoulder some of the cost to create the music. One reason may be that Internet users don't view their actions as costing anyone money. Additionally, they view it as an entitlement like taking a pen from work or using an office phone for a personal phone call.

Many Internet users advance the theory that they are justified in freely taking music from the Internet because the music industry charges too much for CD's. This is an odd argument to make in a country which champions the concept of private property. The most basic right a private property owner has is the right to control access to and use of his property. It is up to the property owner to decide who will use his property and at what cost. Therefore, a music owner should be allowed to control his music which is his intellectual property. Failure of the law to support a property owners choices undermines a basic value of our legal system which is to protect the property rights of individuals. Members of the public do not have the right to steal property if they feel the price is too high. A contrary approach would allow motorists to respond to high gas prices by stealing gas. This is not to suggest that business enterprises should be allowed to engage in anti-competitive conduct such as price fixing or monopolistic market manipulation. However, the remedy for such conduct are antitrust and unfair competition laws like those recently asserted against Microsoft.

The need to protect intellectual property, such as music, must be balanced against making certain the law does not hinder development of the Internet as an economic enterprise. If it hinders development it will be ignored. This promotes lawlessness which is counterproductive since it creates an unstable business environment which increases the risk associated with long term capital investment in Internet related enterprises.

The law could be amended to provide for compulsory licensing of music with the government setting reasonable royalty rates. To some extent this has already been done with regard to cable television. Despite the surface appeal of this approach, compulsory licensing of music seems contrary to private property rights. A property owner typically has dominion over his property. Compulsory licensing significantly dilutes that dominion. An alternate approach would involve levying an excise tax on computers and computer equipment. The revenue could be distributed to music owners as compensation for third party use of their music on the Internet.

Marketplace solutions, in lieu of changes in the law, are another option. For example, inability of copyright owners to obtain adequate compensation for use of their music led to the creation of ASCAP and BMI which engage in blanket licensing of copyrighted musical works to radio stations and business enterprises. Although not perfect, this arrangement provides an efficient method of compensating music owners without hindering distribution and use of such music. From an economic perspective it can be argued that this voluntary arrangement is successful in light of its widespread acceptance. This voluntary blanket licensing model could be extended to Internet music sites such as Napster and MP3.com.

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