

INTERNET CAFES – ARE YOU AND YOUR CUSTOMERS DOING THE RIGHT THING?

The internet is fast becoming a major source of music for consumers – but are you and your customers obtaining music legally online? This guide has been created to educate you on the dos and don'ts of getting music online, as well as the possible implications for your business if you allow copyright theft to take place in your internet café.

Some simple facts

What's copyright?

When someone creates a piece of music (or a piece of text, a graphic, a photo, a film or anything else that is protected under copyright laws), a whole system of legal rights and obligations comes into play. These rights and obligations outline what someone can and can't do with the material.

Who owns the copyright in a piece of music?

There is generally more than one owner of copyright in any given musical track. The composer who wrote the music owns copyright in the musical works. The lyricist who wrote the lyrics owns copyright in the literary works. The artist who performed the music owns copyright in a sound recording of their live performance. Finally, the maker of the recording (typically a record company) owns copyright in the sound recording.

What rights do the copyright owners have?

The copyright owners (i.e., the owner of the work and the owner of the recording respectively) have a number of exclusive rights, including the right to:

- make copies of the tracks;
- perform the music in public; and
- communicate the tracks to the public.

How do I know if I am doing the right thing?

Is it illegal for me or my customers to download music from the internet?

The basic legal principle is that you cannot copy or distribute music including from the internet without the permission of all relevant copyright owners. There are a number of legitimate download sites in Australia such as iTunes, which are listed on the MIPI website under "Links". If you are unsure of whether a particular website is appropriately licensed, you can contact MIPI.

What about downloading music through file sharing e.g., Limewire or Bittorrent?

Unless authorised, the vast bulk of peer-to-peer (P2P) file sharing of music is considered as illegal copying and transmission of copyright material. Not only is it illegal, but this activity hurts sales of music and the livelihoods of people in the music business.

What if my customers download music from a site overseas where the law might be different?

Internet activities of this sort typically involve acts of copying, transmission, or distribution in both the 'receiving and sending' countries and laws of each will apply. Be aware that if your customers download music files to PCs located in your internet café in Australia, without the copyright owners' permission, they may be committing an infringement of copyright under Australian law.

Can I download music on to my server for my customers to access?

Generally, no. For the reasons set out above, downloading through P2P file sharing is generally illegal as is the subsequent distribution of that music to your internet café customers. Even if you have legitimately downloaded music from a legitimate download site in Australia such as iTunes, that music is only to be used for your private use and cannot be accessed by customers in your internet café.

Can I be held liable for the activities of customers who use my internet café to illegally obtain music?

Yes, if your customers are engaging in copyright infringing activities such as illegally downloading music from the internet or from your internet café's servers then you, your company and/or its directors may be held liable for authorising the copyright infringement.

What are the penalties for music piracy?

Music pirates can be fined up to \$60,500 and imprisoned for up to 5 years for each offence. For companies the fines are up to \$302,000 for each offence. The police can also issue an on-the-spot fine of \$1320 and seize pirate music and devices, including computers and servers used in the commission of the crime. The police can also take action to obtain any proceeds of crime. In December 2007, the Australian Federal Police raided a Sydney inner city internet café for allegedly having copies of infringing music and movie files. In November 2008 the café was fined \$82,000 plus court costs and ordered to forfeit its computers and servers.

Are there other reasons to be wary of allowing illegal music at your internet café?

There are a number of other reasons as to why you should think twice about allowing illegal music at your internet café:

1. **viruses and spyware:** illegal websites and file sharing networks are notorious sources of viruses that can crash individual computers and spread through your internet café network. They may also be sources of spyware that reports on computer usage, delivers advertising or unsolicited files;
2. **compromised network security:** illegal file sharing software typically demands an open port between the user's computer and the internet and severely undermines network security and firewall integrity. In addition, there are security and privacy concerns for your internet café business as files may be inadvertently shared and whole hard drives unknowingly made accessible to file sharers; and
3. **resource drain:** illegal file sharing uses up gigabytes of servers and hard drives, plus precious and expensive internet bandwidth.

What can you do to make sure that users in your internet café don't engage in copyright theft?

- √ set a customer policy that clearly explains to users that the unauthorised copying and distribution of someone else's music is copyright theft which your internet café does not support;
- √ take copyright inventories to audit certain types of copyright material on your internet café servers. Music files are generally 3-5 megabytes in size, stored in .mp3, .wma or .wav format and stored in /my music or shared directories;
- √ regularly delete copies of unauthorised music from your internet café servers and any devices;
- √ control file-sharing by banning unauthorised file sharing software and using the Digital File Check program (available at www.mipi.com.au) to find and remove it;
- √ set firewall rules that screen out infringing files and illicit services, for example through blocking particular internet addresses, ports or protocols on which file sharing often occurs;
- √ watch traffic levels for internet café users that are hogging bandwidth; and
- √ maintain up-to-date anti-virus and spyware software to screen rogue files that contain viruses, spyware or other damaging materials.

Respect copyright in music

Stealing music is the same as stealing anything else. It is illegal and the consequences are real, for artists, songwriters, and for the future of music. Unauthorised copying or downloading from the internet has a major effect on the music industry. And it's not free at all – it is the musicians, artists, sound technicians and all the other people involved in the music industry who are paying the price with less music being sold. People's livelihoods are affected. Further, as a result of piracy there is less money to be invested in new talent, which ultimately means less new music will be available.

Need more information?

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