

[MUSIC PLAYING]

**MICHAEL W.  
FLYNN:**

Hello, and welcome to *Legal Lad's Quick and Dirty Tips for a More Lawful Life*. But first, a disclaimer. Although I am an attorney, the legal information in this podcast is not intended to be a substitute for seeking personalized legal advice from an attorney licensed to practice in your jurisdiction. Further, I do not intend to create an attorney client relationship with any listener.

Today's topic is file sharing and downloading on the internet. Millions of Americans download media files via the internet. But when are these downloads legal and when are they not? The quick and dirty tip is that if you would normally have to pay for it at your local Borders or Barnes Noble, you must also pay for it on the internet. You may not download it for free.

Under federal law, artistic works such as songs movies, books, and photographs can be copyrighted. Once the work is copyrighted, the creator of the work gets a number of rights, including the exclusive rights to copy and distribute it. For example, U2 wrote and recorded an excellent album titled *The Joshua Tree*, they copyrighted their songs and the artwork used on the CD. Then you buy it. You can listen to the album, use the songs in a mix CD or playlist on your iTunes, et cetera, but you cannot make 100 copies and sell them on the street corner because you are infringing on U2's right to do so. They made the album and copyrighted it, so they get to control its distribution.

The same idea applies to the internet. You can buy *The Joshua Tree*, burn it to your computer, and listen to it. You cannot then charge people \$1 each to download a song from you. Under the No Electronic Theft Act, you cannot give the song away for free either. You are again doing things that only U2 has the right to do-- copy and distribute.

And this brings us to file sharing programs. File sharing programs are computer programs that let users grant public access to a folder on their computer. So I could put in my public folder photos from my vacation to Hawaii, a short film I created and copyrighted, and the songs from *The Joshua Tree*. Then other users in the network could download the files to their own computers.

Let's look at each in turn. My vacation pictures are fine because they are not copyrighted. I can share them with anybody I want, and anyone can distribute them to anyone else.

The short film I created is slightly different. Assuming that I own all the copyrights to it, I have rights to the film and can control how I distribute it. I have the right to post the film and you can download it because I chose to make the episode downloadable for free. But you do not have the right to redistribute the film by posting it on YouTube. If you downloaded the film and then sent the file to your dad, you are technically infringing on my copyright. This is true, even though I do not charge you for the file.

U2's album is a pretty straightforward example. Once I put the copyrighted songs up, I am distributing them. And anyone who downloads the song is effectively stealing it from U2 for the purposes of copyright law. This is true regardless of the number of songs I put up, the quality of the recording, and whether one person or a million people download the song.

To use the Borders analogy, I could not burn 100 copies of U2's album and sell it to Borders because only U2 has the right to do that. You would be stealing from Borders if you walked into the store and took the album without paying for it. Both of us are breaking the law and can face penalties.

The penalties for copyright infringement range considerably. For willful commercial infringement, the penalty can be as high as six months in prison and \$250,000 in fines. Initially, the government and copyright holder sued only the makers of file sharing programs, such as Napster and Grokster.

But copyright holders have been cracking down on individual users too. On September 8, 2003, the Recording Industry of America, RIAA, the trade group that represents the US recording industry, filed 261 lawsuits against individual file sharers. Among the 261 people targeted, four were college students who settled their claims for \$12,000 to \$17,500. That campaign has escalated recently, and on February 28, 2007 the RIAA launched a new campaign against illegal file sharing against 400 students on 17 university campuses.

These suits pit the central goals of copyright against each other. On one hand, we want artists to be able to maintain exclusive control over how they promote, distribute, and sell their work, so that they have an incentive to create something that is unique and inspiring. On the other hand, we want the public to be able to access the music. And the internet is a truly remarkable tool for doing so.

For two disparate views on how the problem should be solved, please visit the RIAA's website

at [www.riaa.com](http://www.riaa.com), and the Electronic Frontier Foundation's website at [www.eff.org](http://www.eff.org). In the end, the quick and dirty tip is to be very careful with file sharing programs. Many listeners might be infringing on copyrights unintentionally by posting their music files in their public folders. To ensure that you do not unintentionally commit copyright infringement, please visit the EFF's tips page. The safest option is to purchase music legally, either at a music store or online. iTunes is an excellent option, where users can buy individual songs for \$0.99. For a list of other sites where you can buy music, please visit the RIAA's website.

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You can send questions and comments to [legal@qdnow.com](mailto:legal@qdnow.com), or call them into the voicemail line at 206-202-4LAW. Please note that doing so will not create an attorney client relationship and will be used for the purposes of this podcast only. Legal Lad's theme music is "No Good Layabout" by Kevin McLeod

**MAN:** You ever have one of those days where everything goes right? First, I get the best parking space at work. Tonight, I have a date with the very lovely Rachel, and today I gave a killer presentation in Sydney, finalized a contract in London, and demoed our new product in Boston online from my desk with WebEx. WebEx lets me take meetings and give presentations from my desk. I just talk to clients on the phone, and they watch what's happening on my desktop from their desktop. So I can travel the world and still be here for my date tonight with Rachel.

**ANNOUNCER:** Travel less, meet online. Go to [webex.com](http://webex.com) and try WebEx free. Just click the radiographic and enter promo code Cisco to get a free trial and a free webcam too. Remember that code, Cisco, to qualify for the free webcam. WebEx, now part of Cisco, and used by more than 5 and 1/2 million people every month.

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