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If you have any questions about online safety, privacy or security, ask cyberlawyer, Parry Aftab  
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## Talking to Your Children About Downloading Music – A Parent's Guide

By Parry Aftab, Esq.

Parenting is tough enough. We need to balance work, home and parenting. We need to be the math tutor, grammar expert and able to paint the backdrops for the school play. We have to bake (or fake it by buying ☺) cookies and cupcakes, and do science projects last minute.

We also need to be up-to-date on technology, the Internet and safe surfing, when we can't even set the clock on our VCRs. And now, we are facing subpoenas and lawsuits for what our children are doing online! Without hiring copyright lawyers, how do we address the issues with our children? How do we figure out what our kids can and can't do with music online? And how do we answer their questions. Or our own? Hopefully, this guide will help.

It's not easy, but our job as parents to teach our children the difference between right and wrong. Even if we disagree with the laws, piracy is wrong. And downloading and sharing music online is piracy.

This guide is designed to help you understand the issues, and how to talk with your kids about downloading music. You may have additional questions we haven't addressed. If so, visit [WiredSafety.org](http://WiredSafety.org) for updates to this guide at "Ask Parry" or if you still haven't found an answer to your question, ask Parry yourself (at [askparry@wiredsafety.org](mailto:askparry@wiredsafety.org)).



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## First, Figure Out What Your Kids Are Doing Online

Are your kids downloading music online? Ask them. It's amazing how many people write Parry asking her how to find out what their kids are doing online. It's sad that they feel they need technology or special advice to find out what's going on in their own homes, by their own children.

It's up to you to get them to open up. Let them know you will not over-react or punish them for doing it. This is too important for them to be afraid to be honest with you. Explain to them that you know that everyone is downloading music without paying for it. But make sure they understand that some things are wrong, even if everyone is doing them. It should be your values that become their family values. Your voice should be the one they hear. You should be the one they turn to with questions and for help. The fact that they understand more about technology than we do doesn't change the fact that we are still the parents.

And as parents we need to make sure that we load the filter between our children's ears with what it takes to make the right decisions in life. This is just another right decision.

Start by asking them if they download music, or listen to it online. Understand what they are doing. Check out the software they have been using, and the sites they are accessing to download or listen to music. Do it with them. Check the settings. See if you are sharing files on your computer with others online. Your children may not even realize that they are sharing music files.

If your children are twelve and older, but claim not to be downloading music, ask if their friends are downloading it on your computer. If the answer is "no," check your computer for any P2P technology and any folders marked "shared files." They may not feel comfortable enough to tell you what they are really doing. You can buy filtering software products that will prevent your children from accessing the P2P networks or downloading the software. CyberPatrol and Cybersitter are two examples of software that can be configured to block access to the P2P networks.



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## What to Expect and How to Address the Issue

Expect some hard questions. Also expect some questions you won't be able to answer. If they ask why the law is the way it is, most lawyers couldn't answer that one. They would blame it on the legislators, who would in turn blame it on the lawyers. ☺ It's a good time to resort to the tried-and-true response our parents and grandparents before them used – "Because Congress says so!" ☺

Now you're ready for the more serious discussions. Make sure you know what you will say before you start the discussion. From your perspective, what's right, what's wrong and does it make a difference if no one knows you are doing something wrong? Be prepared to deal with the fact that you may have been downloading music as well.

Recently we were speaking to a group of scouts who seemed shocked to learn that downloading music and videos is illegal. One young scout piped up, explaining that her dad always downloads the latest Disney video for her to watch. She couldn't believe that her father had committed a crime in doing so. She could barely contain herself, waiting until the meeting was over so she could confront him. The younger the child the more shocked they will be to discover that you have been breaking the law. Be prepared to answer sticky questions here. Perhaps explaining that no one really understood it was illegal until recently is a good way out. (If all else fails, blame it on the lawyers. ☺)

And check to see if a subpoena has already been issued for you or your kids. (Visit [www.eff.org](http://www.eff.org) for their subpoena search page. Are you going to set different rules for your children than you are setting for yourself? Even if you stop your children, are you going to risk continuing to download music yourself, hoping you won't get caught? If so, are you going to be open about this choice, or try to hide it? (It's unlikely your kids won't discover the P2P software application on your computer and the contents of your shared folder.)

Decide ahead of time what your rules and choices will be. Then make sure that you have solutions available. Will the rule be no more music downloads, period? Or will the kids be given the opportunity to download music from pay sites? What about giving them access to Amazon to buy CDs online? Or agreeing to visit the local music stores once in awhile? Or borrow their friend's CD to listen to. Find some good streaming sites online and Internet radio sites that would allow the kids to listen without having to download the music. And decide whether you will use software to try to enforce your rules, or whether you will trust your children to follow them.



## Explaining the Underlying Reasoning to Your Kids

While it may be tempting to just tell them not to do it, without explaining more, it is usually more effective to get them to buy-into the decision. To make the issue more real to the kids, explain how many people are impacted by what they do. Don't expect them to be shocked by the thought of someone plagiarizing their own content, though. A recent New York Times article quoted a young boy who when asked by his mother how he would feel if a famous rock artist plagiarized and sang his song without paying him for it. Instead of reacting as his mother had expected and hoped, he said it would be really cool to have his song performed by someone famous. So, don't expect them to sympathize with the money-motives.

Instead, talk about plagiarizing a book report, or copying a video. These examples are more real to them. Then talk about the responsibility of famous brands and responsible companies to safeguard their products and maintain product quality standards. Discuss some famous brands and how they are owned by certain companies and are protected. (Would another restaurant's food taste the same as McDonald's if it used golden arches over its restaurant?)

Then talk about the lack of product quality on P2P. Many song files on P2P are contaminated with viruses and other malicious codes, and many are incomplete and low quality copies of the real recordings. Explain that the recording industry has to guarantee the quality of their products. Ask your kids how often they have had problems with the downloads, and ask them to share some horror stories they have heard about corrupted files and viruses from P2P. Ask them if it's worth it. Are your children worried about getting caught? Did they even realize that they were breaking the law?

Also, ask them to name a few famous recording artists (ones they like are better than others). Ask them how they think the recording artist is paid by the record company. Explain how many different entities and other people are involved in the making of a CD...the recording artists, the song writers, the arrangers, the backup singers, the band, the graphic artists for the album cover, the public relations and advertising agencies, the production company, the editors, the retailers, the shippers, the jewel case manufacturers, the printers, the CD manufacturers, etc. Then share how many people are employed by those companies and how their families rely on their income to live.

While few children can understand how their one pirated song can impact the entire industry and their employees (and may not appreciate the impact one pirated song has on Madonna's millions), explain that it is estimated that 2.6 billion songs are downloaded each month. So, it's not just their one download (and few kids will claim that they have only downloaded one song).

Some blame the pirating for the fact that one-third of the music retailers in the United States have shut their doors over the last few years. While they may not be sympathetic to Sony's losses, or Eminem losing a few royalty dollars, they may be sympathetic to the families of those retail employees. It is reported that the \$40 billion music industry has been reduced to \$26 billion between 2000 and 2002. While certainly not the only factor, music downloads have contributed to that reduction.



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## Understanding Music and the Internet

The Web was first launched in 1993. Since then, it has been getting faster and faster, allowing us to download bigger files in shorter periods of time. This is particularly significant when dealing with large audio and video files. Downloading them took forever until MP3 and other compression-technologies were developed. When the music was put into these compressed formats, transferring music files became much faster and therefore more practical. Broadband access (cable and DSL) has speeds of up to a hundred times that of dial-up access. When coupled with MP-3 compression technology, broadband has changed how we access and enjoy music and videos online. What was an hour download only a few years ago now takes minutes or even seconds.

The earlier music sites, MP3 and Napster, allowed people to upload music files and store them at a central site. Then others could search for a particular song and download it from the site. These sites were sued by the music industry, and were shutdown for facilitating copyright infringement.

Around the same time, the large recording industry members began cooperating on sites that charged subscription fees for listening or downloading music. But the consuming public had already begun to expect free music downloads and resisted paying for music online, in any form. In seeking new technologies that were less vulnerable to copyright lawsuits, users turned to P2P.

P2P (or peer-to-peer) allows your computer hard drive to act as a server for someone else to access files stored on your computer. It bypasses the need for a centralized network that stores the content for all users by connecting your computer to someone else's directly. MP-3 and Napster met their doom by allowing their users to upload music to their site for others to download. Since they hosted the content, much of which was being infringed, they had direct liability to the copyright owners of the content they hosted. They also were deemed to be contributing to the infringing activities.

When P2P is used, there is no central host. Each individual computer is the host for a particular download. When the software is installed, each user can choose whether they will only download from others, or allow others to also reach into their computer and download from them.

Our children need to understand that downloading and sharing music files online is against the law. Even though everyone is doing it, we should be teaching our children to respect the property of others. Our children know that we would react strongly to their shoplifting something from the department store. They need to know that, in most cases, downloading and sharing music online are no different from that shoplifting example. Stealing is stealing.



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## What should you do if you receive a letter or subpoena from the RIAA?

Don't panic. Individuals served can obtain free legal help. The Subpoena Defense Alliance (a group formed by the Electronic Frontier Foundation, the US Internet Industry Association and other advocates) has pulled together a list of law firms willing to assist those served with RIAA cease and desist letters and lawsuits. You can find that information, and lots of other valuable information, at [www.subpoenadefense.org](http://www.subpoenadefense.org).

Even if you don't want to dispute the suit, you should reach out for legal advice before you proceed.

## So, what can you do to stay on the right side of the law and off the RIAA's subpoena list?

Downloading music online is generally illegal. While there may be arguments that owning the CD and downloading a song you already own may not be illegal, or sampling a song before buying a CD may be perfectly legal, these legal issues are still undecided and may be risky. So, the best advice is to buy music you download and don't share it with others.

Bottom-line, pirating music is illegal. The only way to stay out of trouble, with certainty, is to never do it. Everything else carries a risk. How much of a risk you are willing to take is up to you. And so is how you explain it to your kids.



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## And Now for the Really Boring Stuff...the Law

### Parry's Primer on Copyright Infringement Online

The U.S. Copyright Act protects "original works of authorship fixed in any tangible medium of expression." This protection doesn't extend to "ideas" or facts contained in a work, but only to the "expression" of ideas or facts contained in the work.

Copyright law protects eight categories of works: literary (including software programs); musical (including lyrics); dramatic (including any accompanying music); pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. The Copyright Act prohibits others from reproducing, adapting, and publicly distributing, performing, or displaying copyrighted works without the copyright owner's permission.

To prove an infringement, the copyright owner must show (1) that the infringer had access to the copyrighted work, (2) that the copy is "substantially similar" to the copyrighted work, and (3) that one of the protected rights has been implicated by the infringer's actions.

The infringement can occur directly, contributorily, or vicariously.

A person directly infringes a copyrighted work by either reproducing, adapting, publicly distributing, performing, or displaying, or importing it (we'll refer to all of these things, from time to time in this article, as "copying" to make it easier to discuss). Direct infringement is a strict liability tort: the infringer doesn't have to know that he is infringing or intend to infringe. He doesn't even need to know the work is copyrighted. Simply by copying the work the person is liable for copyright infringement. People who download music are directly infringing on the copyright.

Someone contributorily infringes when he provides substantial assistance for the infringement. He must know (or should have known) that the work is copyrighted. Vicarious infringement occurs when the vicarious infringer receives a direct financial benefit from the infringement and has the right and ability to control the infringer. These indirect infringement claims were used to shut down Napster and are being used to try and shut down P2P networks. (Arguments have been made that the ability to terminate a user's account with the P2P network for violating the network's terms of use, and its selling ads for the site satisfy the test for vicarious infringing.)

A copyright owner can recover actual or, in some cases, statutory damages (which can be as high as \$150,000 per infringement in some cases) from an infringer. In addition, courts have the power to issue an injunction to prevent or restrain copyright infringement and to order the impoundment and destruction of infringing copies. In some cases copyright infringement may also be criminal, exposing the infringer to possible jail time and fines.



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# Criminal Copyright Infringement and Children

## The No Electronic Theft Act

The No Electronic Theft Act, or NET, was signed into law by President Clinton in December 1997. It was the first of a series of laws designed to beef up copyright enforcement, especially against kids.

Until the enactment of the NET, in order for someone to be prosecuted for criminal copyright infringement, there had to be a profit motive. The copyright holders were worried about kids who were pirating games, software, music and videos and traded them with others. The NET was designed to fill certain gaps in the U.S. Copyright Act, as it relates to online copyright infringement and use of copyrighted materials online. It allows criminal enforcement against people who have no profit motive in the infringement, such as teens who exchange computer codes for music, each acquired without license. The NET added three important provisions to the Copyright Act:

First "financial gain" was redefined to include the receipt of anything of value, including the receipt of other copyrighted works.

Prior to the enactment of the NET, a case called U.S. v. LaMacchia set the standards for receipt of value. La Macchia was a computer bulletin board operator who published copyrighted works online. Because there was no profit motive, the court had to dismiss the criminal action for copyright infringement. (The law, prior to the NET amendment required a profit motive before anyone could be criminally prosecuted for copyright infringement, although they could be civilly prosecuted even if no profit motive existed.) The addition of the definition of financial gain to include "anything of value" now allows criminal prosecution of online copyright infringement, even by people sharing copyrighted software or games online. It was designed to address the problems identified by software manufacturers and publishers of copyrighted work, which is commonly infringed online, in particular the infringement by teenagers.

Second, the NET criminalizes the willful reproduction or distribution (during a 180-day period), through electronic or other means, one or more copies of a copyrighted work with an aggregate retail value of more than \$1,000.

This means that even if there is no profit motive and no receipt of anything of value, even other software or copyrighted material, someone can be criminally prosecuted if the total retail value of the reproduction or distribution exceeds \$1000. (This applies even if someone merely sends several copies of pirated software to friends online)

Third, the NET extended the statute of limitations on criminal copyright infringement from three to five years and increases the penalties and fines for criminal copyright infringement, generally.

While the prosecutors are not rushing to file criminal copyright actions against kids, parents and their children need to understand that downloading music in large enough quantities may be more serious than subjecting them to lawsuits. It may subject them to criminal prosecution as well.



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## A Message from Jennifer, age 14, New Jersey

"Everyday kids are sending lots of e-mails and instant messages. Most of the time they are just to talk with your friends. Sometimes though, some kids take it too far. They send nasty messages to each other, and sometimes even threaten each other.

A few years ago, in New Jersey, an eleven-year-old girl sent a death threat message to some other kids in her school. The parents of those kids contacted the police, who contacted the FBI in New Jersey. We spoke with the FBI agents who served the search warrant, and this is what they had to say.

"When I went through FBI training, I never thought I would be serving a search warrant on an eleven year old girl!" says the FBI agent. (The rules governing interviews with undercover agents of the FBI require that we don't give out their names.) "I have been involved in investigating Internet-related crimes for several years, and am sad that so many children are abusing the Internet/ Most don't realize that sending a threat online to another child they know is a serious crime."

While nothing serious happened to that girl, after they looked into everything, the FBI has seen more and more crimes and Internet abuses being performed by kids and teens. A few years ago, the copyright laws were changed to catch kids and teens who were trading pirated software and other copyrighted computer games. Before the laws were changed, according to WiredKids' Executive Director, cyberlawyer Parry Aftab, the criminal copyright laws required that someone receive money in exchange for the pirated materials.

After the recent updates, she said, "Now children and teens can be charged with criminal copyright infringement if they receive anything of value in exchange for the sharing of the copyrighted content. For example, if one teen exchanges a pirated videogame for a pirated software application, s/he has received something of value, and can now be charged with criminal activity."

Parry explained that she doesn't think that prosecutors would be chasing kids and teens to arrest them, but recent enforcement actions by the recording industry may lead the way in charging kids and teens with copyright crimes.

We think that kids and teens need to know more about online laws, and what they can and can't do online without getting into trouble. We will be writing more about kids and cyberlaw at [wiredkids.org](http://wiredkids.org) and [wiredteens.org](http://wiredteens.org).

So, be careful before you send a mean e-mail to someone or steal games online. You may find the FBI at your front door!"

Jennifer wrote this a few years ago, before the RIAA recent actions. Other teens are now preparing a teen-to-teen guide on downloading music. Check back at [WiredKids.org](http://WiredKids.org) and [WiredSafety.org](http://WiredSafety.org) to see when it's available.



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## Ask Parry! Excerpt

Dear Parry:

*I have over a thousand music files on my computer, but I didn't get them from file sharing agents such as Napster, Kazaa, or any of the rest. I go to sites that offer Internet radio and or invite the public to listen. I then record these off of the desktop or through a hardlines mp3 encoder. There is no way short of going into my home to even know I have these files. I wrote the FCC and asked them if this was illegal they told me to reread the copyright law (I got the impression they didn't want to spend the time explaining the legalize to me or didn't know themselves). Instead of recording off the radio I record off public Internet sites. Is this wrong?*

Dear Music Downloader:

I know it's hard to understand how what we used to do with the radio is now illegal when we do it online. It was illegal then too, but no one did anything about it. When we used to tape music from the radio, the quality was never good enough and it was too time consuming for the practice to really affect the music industry's bottom line. With digital music the quality is very good and no one has to wait for the song to be played on the radio and hit the "record" button at exactly the right moment to catch the whole song to record hundreds, even thousands of songs.

While we may question the extent of the lost revenues, there is no question that music downloads have adversely affected the recording industry. That means they are willing to enforce their rights, no matter how much it costs them. And since we leave a trail of cyber-breadcrumbs behind us whenever we surf, finding those who are downloading the music is easier than finding those of us who taped the music off the radio.

I suggest you read the "Frequently Asked Questions" section of our Talking to Your Children About Downloading Music – A Parent's Guide to understand more about the law and what we can and cannot do legally with music online.

Good luck,  
Parry



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## Frequently Asked Questions

Here are some of the most frequently asked questions I have received:

Q: Can you download music online to hear it and decide if you want to buy it?

A: The short answer is “no.” The longer answer is “probably not, but it depends.” (Sounds like a typical lawyer’s answer, doesn’t it? ) A copyright owner has several exclusive rights. But listening to their music is not one of them. That’s why you don’t have to pay to hear the radio. Unfortunately, copying is an exclusive right. Now, some websites are licensed to provide streaming of music or are licensed to permit someone to download a 30-second sound clip to sample the recording. If a sites is licensed to allow you to do this, you can do it legally. If it isn’t, you can’t. In most of the cases (a vast majority of the cases) the site is not licensed to allow you to sample the music.

Q: Is the answer different if you merely listen to it in a streaming format, instead of actually downloading it?

A: Yes, very different. As I mentioned above, anyone can listen to music. It isn’t one of the rights reserved exclusively to a copyright owner. Feel free to listen, just don’t record what you hear. I suspect that Internet radio will benefit from the recent tactics of the RIAA in suing children. Unfortunately, there are very substantial limitations on what music can be webcast. The restrictions came into place in the mid 90’s, and restricts how many recordings from a particular artist may be played within a certain period of time, and how often the recordings are replayed. Since they are also restricted in their ability to list what recordings will be webcast, no play programs can be posted. But if you can find the music you want to hear, listen all you want, online or offline.

Q: What if you own a CD but can’t find it, or at another location, can you download another copy of the music legally?

A: No. While you are allowed to make a copy of the CD you purchased (or selections from that CD) for your own personal use, you cannot download a copy of the same music legally. When you buy a CD (the old-fashioned way, at a brick and mortar store) you acquire certain rights. You can listen to the CD, you can make a copy for your own personal use and you can convert it into a format for your MP-3 player or similar device. You can also give your CD away to a friend. (Just don’t keep the copy you made while giving the original to a friend.) You didn’t acquire the rights to make copies of the same music from other sources.

Q: Is there a legal difference between downloading music and allowing others to download it from you?

A: Yes. Although both are against the law, according to our friend and music copyright expert, Bennett Lincoff, Esq., if you are downloading music from someone else, you have violated the law. In the second case, when you upload it for others to download, you are violating the law and helping others do the same.

Q: If you want to use a song you already own on a CD but need it in MP3 format, can you download it in MP3 format to use on your MP3 player only?

A: No. You can convert it into an MP-3 format though. (See above.)

Q: What rights do you acquire when you buy a CD?

A: You can listen to the CD, you can make a copy for your own personal use and you can convert it into a format for your MP-3 player or similar device. You can also give your CD away to a friend. (Just don’t keep the copy you made while giving the original to a friend.) You didn’t acquire the rights to make copies of the same music from other sources.



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Q; What if my child is only 12 and downloads music online without my knowledge?

A; Direct copyright infringement is a strict liability offense. That means it doesn't make any difference if you knew what you were doing was illegal, or even if you knew that the music was copyrighted. If you download music from others online, you are liable. And parents are often responsible for the legal actions of their children. So far, parents have been paying to settle claims against their children, even as young as twelve years old.

In addition, since the parents typically own the computer and control the Internet access, they might be held liable for their children's actions under contributory theories. (See "And Now for the Really Boring Stuff...the Law")



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