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Music and software piracy : issues and solutions for music teachers and media intensive educators

Abstract

The rampant piracy of digital materials is not just a problem for the individual home user. In today's world it is increasingly a concern for educators and their school district as a whole. Many recent court actions have been brought against school districts based the illegal use of unlicensed software and other copyrighted materials. This project presents the issues of music and software piracy and the legalities of the United States Copyright Act. It presents common examples for use in the music or media intensive classroom, as well as legal usage requirements including the payment of royalties and purchase of recording or distribution licenses. Also covered are methods and suggestions on how faculty members can ensure that their school is compliant with current law and beyond the scope of legal actions that can adversely affect the district both financially and in the realm of public relations.

**MUSIC AND SOFTWARE PIRACY:
ISSUES AND SOLUTIONS FOR MUSIC TEACHERS AND
MEDIA INTENSIVE EDUCATORS**

A Graduate Research Project

Submitted to the Division of Educational Technology

Department of Curriculum and Instruction

In Partial Fulfillment

Of the Requirements for the Degree

Master of Arts in Education

UNIVERSITY OF NORTHERN IOWA

By

Chad Criswell

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Has been approved as meeting the research requirement for the
Degree of Master of Arts.


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Abstract

The rampant piracy of digital materials is not just a problem for the individual home user. In today's world it is increasingly a concern for educators and their school district as a whole. Many recent court actions have been brought against school districts based on the illegal use of unlicensed software and other copyrighted materials. This project presents the issues of music and software piracy and the legalities of the United States Copyright Act. It presents common examples for use in the music or media intensive classroom, as well as legal usage requirements including the payment of royalties and purchase of recording or distribution licenses. Also covered are methods and suggestions on how faculty members can ensure that their school is compliant with current law and beyond the scope of legal actions that can adversely affect the district both financially and in the realm of public relations.

Introduction

Educators are presented with many responsibilities. Recently, due to the perceived moral decline of our culture in many areas, we also find ourselves burdened with the added responsibility of being a good moral and ethical role model for our students. The teaching profession normally does well in this regard. It is this author's observation, however, that in several specific cases, such as in the media intensive classrooms of music, art, and computer sciences, we are not living up to the standard to which we must aspire. Tight budgets and poor community support have in some cases caused many of our own "moral compasses," to become stuck. The current issue of digital piracy of audio and software is firmly established in today's world, and in some cases, we as educators are unintentionally condoning the practice.

In the state of Iowa, industry analysts state that approximately 32% of software is illegally reproduced for use in homes, businesses, and in our schools (International Planning and Research Corporation, 2001). The national average for software piracy is estimated at 24%, this roughly translating into over eight billion dollars in lost revenue to the software industry alone, with another one and a half billion dollars in tax losses to state governments. When combined with the estimated losses in the music industry, the total amount of lost revenue to American companies is thought to be as much as fifteen billion dollars each year (*Costs of Internet Piracy for the Music and Software Industries*, 2000).

There has been much debate both within publishing firms and at the state and national legislative levels. Internationally, a myriad of ideas has been offered as ways to stifle the problem, ranging from severe prison terms to the taxation of blank recordable media (O'Donnel, 1995). Up to this point, however, little action has been taken. The primary reason for the slow response at the national level has been to provide the markets a chance to adjust more fully to the new methods of online and digitally conducted commerce. In fact, beginning in 1996 and at several points thereafter, legislation has stalled in Congress, and our legislators have admitted to taking a "wait and see," attitude. Rather than jump into the fray with legislation and changes which might adversely affect the entire economy, some members of Congress have instead chosen to allow market forces and the industry itself to determine how manufacturing and distribution will adapt to this new segment of the economy. If this strategy fails, only then will they attempt to take action at the national level (Raeburn, 2001).

A significant amount of court action has already been taken with the primary basis being the United States Copyright Act. In the very recent past, a number of arrests have been made in which both college and high school students have been charged with violations of this federal Act. In 1999, Jeff Levy, a student at the University of Oregon was arrested, tried, and sentenced under the "no electronic theft act" (*Student Becomes First Convicted Internet Pirate*, 1999). His crime was the illegal posting of thousands of music recordings via his web

site. While few and far between, arrests like these are widely seen as deterrents toward individuals who would consider breaking the law to copy and distribute copyrighted media.

Individual school systems are also not beyond the possibility of legal action under this Act. Recently the Business Software Alliance (BSA) has begun litigation against school districts that it considers to be in violation of the Copyright Act due to the rampant loading of unlicensed software onto district-owned computers. School districts across the country have been given the order to audit their software inventories. Failure to comply with these requests, it is threatened, will result in the filing of lawsuits on behalf of the many software companies which the BSA represents (Richtel, 1998). In one such case, the resulting settlement with the BSA penalized a large California district at an amount far in excess of the amount it would have cost to legally purchase every one of the disputed copies (Helfand, 1998).

The music and software industries are becoming increasingly active in their fight to curb piracy. Companies such as Adobe, which manufactures such high-end publishing software as PageMaker and Photoshop, have gone so far as to create their own piracy reporting systems. The Robin Hood Anti-Piracy Initiative turns coworkers, students, and faculty members against each other by offering charitable donations of software products in exchange for turning in businesses and other individuals who are using illegal copies of their software (Adobe

Systems Inc., 1999). As a result of this program and various others undertaken by the BSA and the International Software Alliance (ISA), more and more school districts are finding themselves vulnerable to litigation. A disgruntled employee, student, or parent who is aware of the existence of illegal software on district computers commonly initiates this litigation by providing information to one of the watchdog agencies as a way to “get back,” at the school.

It is not just software piracy, however, that threatens our schools. In some areas of the country, it has become common for enterprising young students to make copies of their music CDs or to download illegal copies from the Internet, burn them onto blank CDs and then sell them out of their locker at school for a profit. Often the student will give the music away for free or charge a small amount for a CD full of music which would cost as much as twenty dollars in a record store. In some schools this issue has forced them to set up Internet firewalls to deny users access to downloads of MP3 formatted files over their high-speed connections. On more than one occasion, music teachers have been faced with the ethical dilemma of students bringing in copied music for use in a class assignment or for use by the teacher in a classroom presentation. In all of these cases, the school district as a whole can be vulnerable, whether it be to legal action or simply to bad public relations when the word gets out that such illegal activities are taking place on school property.

It is because of these things that we, as teachers and administrators, must take the initiative to stop such activities and return to good moral and ethical judgment in this regard. Throughout the following sections, specific laws will be discussed together with their possible legal and financial impacts. The majority of the examples are focused around media intensive educators such as music and arts education instructors, however all are applicable to almost any department within a school system. This report concludes with a series of tables, (See Appendices A-D) which will provide easy reference for some of the most commonly asked questions regarding performance, recording, and use of copyrighted materials in our schools. Recommendations will also be presented to help educate and prevent this kind of illegal activity by students and staff members.

Methodology

Reference sources for this paper were obtained through ERIC online database searches, the UNISTAR library database at the University of Northern Iowa, as well as extensive Internet searches carried out through Google.com and Northernlight.com. Also extensively used was the State of Iowa Electric Library at <http://www.elibrary.com>. Additional information on several topics was gained through personal communications with the copyright departments of Hal Leonard Publishing of Milwaukee and the Harry Fox Agency of New York City.

Online reference sources were selected based on the likelihood to produce recent and relevant information. Because of the current societal impact of many of these issues an extensive use of periodical, newsprint, and broadcast transcripts was also made through the Electric Library website. Google.com was selected for its high degree of relevant search results. Northernlight.com was used for the extensive and relevant nature of its special collection documents. When specific information could not be discovered through these and other standard search sources, direct communications were made via telephone with the copyright departments of relevant music publishing houses.

Discussion

Software Piracy

The most pressing piracy issue facing school districts is the act of placing unlicensed copies of software on multiple computers for which the school does not have the appropriate licenses. Many software producers believe this to be one of the primary pirating violations in the United States. As mentioned previously this has caused the policing organizations such as the Business Software Alliance (BSA) and the Software Piracy Alliance (SPA) to file lawsuits against individual school districts in an effort to recoup damages as well as send a message to the entire educational system.

Until recently, many in the profession concluded that the 11th amendment to the Constitution precluded state agencies such as schools and colleges from

being sued in this manner. Several recent cases in the Supreme Court, however, have shown the interpretation that this amendment does not apply in the copyright context. In other words, although a court can reduce statutory damages in such a case to as little as \$200.00, it does not prevent a school from being sued for the copyright infractions (Salomon, 1999).

In one of the most widely publicized cases of this kind, the Los Angeles Unified School District was sued by the BSA in 1998 under allegations that teachers and other employees had illegally copied software programs. The lawsuit sought \$300,000 in damages and required that the school pay the appropriate licensing fees to become legal within three years. In total, the proposed settlement would cost the district nearly five million dollars over a three year period (Helfand, 1998).

Other schools have also been threatened with lawsuits and have instead volunteered to do internal audits of the software that has been loaded onto their hard drives. Whittier Arts Magnet School in Berkeley, California found themselves in this very situation. As a result of their audit, the school ordered 75% of loaded software destroyed when it was discovered that the school did not own the appropriate licenses. In an interview with the school's director of computer resources, Rupert Gopez, he attempted to validate the acts of his department by stating, "If we hadn't taken the liberty with those programs, we

would never have been able to use them and parents would never have been able to use them” (Richtel, 1998, p. 4).

In the end, many individuals believe that piracy in the schools is the result of having insufficient funding to purchase the software that is necessary to fulfill the educational goals of the institution. The BSA and SPA, however, do not agree given that most software companies offer very attractive educational software pricing systems. Many observers also point out the ethical issues associated with the act of piracy by teachers and the public relations fiascoes that often result such accusations.

Suggestions for Getting and Staying Legal

To combat this issue before any allegations are made, several steps should be voluntarily taken at the district level. Many suggestions have been found to help with the process of getting and staying legal. The Software and Information Industry Alliance (SIIA) (2002), prescribes the following nine steps for coming into compliance with software licensing rules:

1. Appoint a software manager.
2. Create and implement a software policy and code of ethics.
3. Establish software policies and procedures.
4. Conduct internal controls analysis.
5. Conduct periodic software audits.

3. Policies and procedures should be developed to ensure compliance with software licensing rules.

6. Establish and maintain a software log of licenses and registration materials.
7. Teach software compliance.
8. Enjoy the benefits of software license compliance.
9. Thank employees and students for participating. (p. 10)

Further, the SPA prescribes that audits of existing software and licenses should be conducted prior to purchasing any additional licenses, and that all employees should be thoroughly educated on the legal and technical issues surrounding software licensing. Similarly to the SIIA's suggestions they further recommend that all employees be required to sign a code of ethical conduct (Julka, 1997).

Of course, the most cost effective way to prevent piracy in a school is to stop it before it starts. Some recommendations from the United States Department of Education for prevention of piracy include:

1. Have a central location for software programs. Know which applications are being added, modified, or deleted.
2. Secure master copies of software and associate documentation, while providing faculty access to those programs when needed.
3. Never lend or give commercial software to unlicensed users.
4. Permit only authorized users to install software.
5. Train and make staff aware of software use and security problems.

(Stone, 1999, p. 6)

It is vital that every school system work to eliminate the use of unlicensed software on their systems. Several companies have begun to offer services to help districts audit and track their software licenses, however it is possible and more likely that this responsibility is delegated to the district's Technology Director or to a member of his/her staff. Several of the software agencies also offer programs for use by auditors to record and maintain databases of installed software. In some cases these programs are run over the network, in others, an auditor must physically run a program on each computer, then transfer the information gained to a central database for analysis.

Other solutions to help combat this problem include finding new ways to get the software to individual users. There are programs that run over a network server which restrict the number of copies of a software program that can be running at any one time. A drawback to this method is the large amount of bandwidth that such a server-managed system can require (Coale, n.d). Solutions used by some schools and universities include using a disk imaging system which, when run at regular intervals, will return a computer or series of computers to a designated hard drive state which contains only those copies of software which are licensed. The drawback to this method is that it requires that all personal teacher or student documents and data be stored either on removable media or on a network file server. It also does not prevent the reloading of illegal software

once the restore has been completed (Orpen, R., personal communication, June 19, 2001).

The Open Source Solution

The growing animosity being shown by the software industry towards educational institutions has had a wide variety of effects. Some schools have chosen to audit themselves and find the funding to support the various licensing requirements. Other schools have instead used the issue to move themselves toward a more financially responsible alternative, that of free and open source software (K12Linux in Schools Project, 2002).

The phrase “Open Source,” refers to software that is distributed free of charge, often with the accompanying source code. This open attitude permits individuals to alter the software to meet their own individual needs and requirements while opening up incredible possibilities for improvement and innovation. The most attractive aspect of this concept is that the software can be loaded onto as many computers as needed without requiring any costly licenses. In most cases the software can be downloaded for free from the Internet. In others, a single small purchase of one set of discs and/or documentation is required. Some companies have begun producing free office suites to compete with the Microsoft Office suite of utilities (Loss & St. Ogne, 2000). Others produce free, but limited versions of their robust products for use in special

situations. A listing of some of the most relevant free software packages is provided in Appendix C.

While free software is available for all operating systems, the great majority of free and open source software currently available runs primarily on the Linux and Windows operating systems. However, since Linux itself is a free and incredibly stable operating system, a school could theoretically build an entire lab of computers, fully loaded with word processing, graphics, and other useful applications for only the cost of the hardware. Internationally, this idea is gaining popularity as well. The use of Linux is taking root in Southeast Asia, and more extensively in the country of Mexico where the government plans to convert 140,000 school computer labs to Linux. To fill these labs with comparable retail products, the cost of software alone would have been approximately \$124 million. Through the new method, the entire country is being supplied with adequate software for the cost of a \$50 set of installation discs and a manual (Kahney, 1998).

The Linux operating system is commonly considered to be an operating environment better suited to more advanced computer users. The system itself does not use a graphical interface such as the Microsoft Windows desktop. Instead, the text-based operating system is often “skinned,” with the addition of a graphical user interface such as the K Desktop Environment (KDE). These interfaces allow the user to have a desktop environment similar to that of

Windows, but often more confusing than the Microsoft product. Another downside to using Linux as a Windows replacement is the lack of educational courseware available for the platform. Very few educational titles have been written for the Linux operating system (Loss & St. Ogne, 2000).

This limitation to the Linux system is rapidly changing, however. As more people and organizations jump on the open source bandwagon, more and more applications are being created. Of particular interest is the Open Source Schools Project that has developed its own free version of the Linux operating system that is specifically tailored to the high school educational environment (Linux in Education report #73, 2002). Through extensive support through local users groups, this organization continues to press forward with the use of Linux in schools across the country.

Perhaps one of the most attractive aspects of the Linux operating system is the ease with which older machines can be given new life through the XTerminal system. XTerminals are groups of computers (clients), that are connected to a larger, often more powerful server computers via traditional networking methods such as Ethernet. In this approach, a single powerful central server holds the data and programs that are to be used. The user logs in to an older machine that is set up as a "thin client." This thin client serves only to display information and thus requires very little computing power. The applications are run on the main server, but the person using the client terminal is unaware of the difference. The

XTerminal system also simplifies the job of the software administrator since all programs are kept on the main server. Thus, less time and effort is required to maintain and manage the software licenses. XTerminals are much more stable and difficult to corrupt than stand-alone computers, and they can be created on almost any hardware platform including older 486 PC's and 680x0 Macintoshes (Loss & St. Ogne, 2000).

Music Piracy and Copyright

The use of music recordings in the band or vocal classroom is a given and necessary part of the educational process. Unfortunately, there are several portions of the Copyright Act that are often overlooked by teachers in their quest to provide the best possible education for their students. It is important that teachers be aware of these laws, and attempt to set a good, moral example for our students. The following section will focus on the many issues that face music educators on a regular basis. It will discuss the legalities of recording and using copyrighted music in an educational setting. For detailed information regarding the use, arrangement, and reproduction of printed music and other literary materials, please refer to the publication, "The United States Copyright Law: A Guide For Music Educators," which is published by the Music Educators National Conference, and available from most school music publishers.

Performing and Recording Copyrighted Music

The United States Copyright Act provides educational and religious institutions with the right to perform copyrighted musical compositions without paying royalties to the publisher (17 U.S.C. 1 § 107). This royalty-free right to perform in public does not, however, extend to instances where recordings are made of the performance for reproduction and distribution by the organization. For example, a vocal director does not have to pay royalties to the publisher when performing a piece of music as an extension of the school's music program. However, when a recording of this performance is made it is quite likely that a licensing agreement should be obtained.

This right to fair use in educational settings also does not apply when fees are charged for admission to the performance of the copyrighted music if the fees are used for commercial profit. If these admission fees are used for educational or charitable purposes, performance royalties do not have to be paid (Music Educators National Conference, 1992).

The Licensing of Musical Recordings for the Classroom

Licenses come in a variety of forms, including the mechanical license, synchronization license, and Internet broadcast license. Each license grants the holder to produce a reproduction of a work in a specific format. The differences between these three types are listed below.

A mechanical license grants permission to physically record and copy the audio portion of a performance. If a music director wishes to produce a set of ten songs to include on a CD or audio tape recording of their group then this is the type of license that would be necessary. The mechanical license is limited to audio reproduction only.

A synchronization license is required when copyrighted music is set to accompany some type of visual medium. This includes such things as the video taping of performances or the setting of the music to any type of choreographed visual presentation (television commercial, dance routine, laser light show, etc.) (ASCAP, 2002a).

An Internet broadcast license is used to allow the broadcast of copyrighted audio via the Internet using streaming technologies such as Quicktime, Real Player, or other proprietary formats. The first such license was offered in 1995 and has since become very popular. Unlike the mechanical and synchronization licenses, Internet licenses must be obtained through the American Society of Composers, Artists, and Publishers. Licenses for Internet broadcast are purchased on a yearly basis, and offer the user with the right to broadcast any ASCAP song, of which there are over 135,000 in its database (American Society of Composers, Authors, and Publishers, 2002b).

Fees for Licensing

Each music publisher handles licensing in a slightly different way. In a situation in which a music director wishes to produce a recording of ten songs performed by his or her ensemble, each individual publisher must be contacted to obtain the appropriate licenses and fee schedules. By looking at the copyright information provided at the bottom of most standard musical repertoire, you can determine the owner of the copyright, and possibly the address and contact information. In the case of arrangements of previously published music, it is necessary to determine the original owner of the copyright, not the publisher of the new arrangement. When this information is not available, it is possible to contact the American Society of Composers Artists and Publishers or Broadcast Music, Inc. (BMI) to determine the copyright holder and contact information (Harry Fox Agency, personal communication, July 9, 2002). Addresses and contact information for these and other similar agencies are provided in Appendix D.

In general, most royalty fees are standardized across the industry. The current statutory royalty rate is eight cents per copy per song if the song is five minutes or less in length. Songs in excess of five minutes are charged at a rate of 1.55 cents per minute or fraction of a minute (Current Statutory Royalty Rates, 2002). In this example, a CD of ten songs would cost a minimum of eighty cents each to license. However, most band and vocal music publishers require a

minimum fee per song of approximately ten dollars or more. This would mean that, in this example, a minimum of 125 copies of each song would have to be licensed, resulting in a minimum payment of 100 dollars to license the production of the ten song recording. Other licenses have different fee schedules (Hal Leonard Corporation, personal communication, July 10, 2002). A sample listing of royalty fees and other information is provided at the conclusion of this document (See Appendix A).

If a music director intends to produce in excess of 500 copies of a song, the process is simplified considerably. Most music publishers have authorized the Harry Fox Agency of New York City to provide mechanical licenses for recordings in quantities of between 500 and 2500 copies. To determine if a song can be licensed for recording in this fashion, it is required that the director check the online database located at <http://www.songfile.com>. Then, using an online form and payment method, mechanical licenses for all of the songs to be compiled on the CD can be obtained at the same time from the Agency. In cases where the Harry Fox Agency does not possess the right to license a specific song, a request can be made via the web site that will be approved or denied within about three weeks (Harry Fox Agency, personal communication, July 11, 2002).

It should be noted that with the advent of the CD-Recordable Disc, many music directors now have it within their abilities to make professional quality recordings of their group without hiring a professional recording studio. The rates

quoted above apply regardless of who reproduces the media, resulting in large labor related savings for the director who wishes to burn the needed quantity of recordings on his own.

In researching this document on the Internet, this author came across many school web sites that post copies of their students engaged in musical arts performances on the Internet. To determine the licensing fees for Internet such broadcasts, an educator should use ASCAP's Ratecalc service at <http://www.ascap.com/weblicense/license.html>. This online form permits the user to enter in information about their web site and the audience. It automatically calculates the yearly licensing fee. For most low use purposes such as would be applicable to most school uses, the fee is approximately \$264.00 per year. This is not a per song fee, rather it allows the owner to broadcast any song in the ASCAP database for the duration of the license term. The actual license form is also available to download for evaluation (See Appendix A).

Unfortunately, this is not the only license needed in order to publish on the Internet. Since in order to distribute the music it must be copied to the hard drive of the web server, a mechanical license purchased from the publisher is also required in order to be fully in compliance with existing law (ASCAP Experimental License Agreement for Internet Sites & Services- Release 4.0, 2002b). Further, if the web published music is accompanied by video, such as a

recording that might be made at a band concert, a synchronization license is also required.

Classroom Use of Copyrighted Audio

The use of copyrighted music in the classroom extends beyond the act of recording and producing new media. The music teacher also makes extensive use of prerecorded music as an instructional aid to teach musical concepts and ideas. Ironically, this is an area of copyright law in which many of teachers unwittingly foster illegal behavior in their students. It is because of this that it is imperative that teachers know the laws of fair use and present themselves as a good ethical role model for their students.

First, it is necessary to present a basic primer on the definition of “fair use.” Fair use is the legal right to use copyrighted material, in portion or in its entirety, in a manner in which normal usage would require payment of royalties. Due to the interpretable nature of the many types of fair use examples, the full text of the relevant section of the United States Copyright Act (1976) is presented below for examination:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting teaching (including multiple copies for classroom use), scholarship, or research,

is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(17 U.S.C. 1 §107)

The accepted interpretation of this law allows educators to use copyrighted audio materials in the classroom for educational purposes without fear of reprisal, so long as the material is not reproduced or altered. This accommodates the majority of situations in which an educator might use a piece of music or other media.

Specific examples of this fair use include the right of the teacher to make a single recording of a student performance for study and for archival purposes, to

preserve or replace library copies when not available for purchase, or to make a single recording of aural exercises or tests using copyrighted material. These may translate into maintaining a library of past audio recordings of your ensemble, making an archival copy of a vinyl phonograph record that is no longer available for purchase, or copying a song or portion of a song for use in a testing situation in the classroom.

Digital Audio Piracy

In today's digital environment, a few additional items must be discussed. It has become more common for students, and faculty, to bring with them digitally-created copies of copyrighted materials for use in the classroom. An example of this might be when a student brings in a burned CD copy of a piece of classical music for you, the teacher, to use as an example in the classroom. This situation, and in many other iterations on the theme, is where morals and ethics must be considered when choosing whether or not to use the material. The teacher may not have a quantifiable means to determine whether the student legally made the copy from a personally owned original, or whether the burned CD was copied from the Internet or other source. In the end, each individual case must be considered for its own merits when deciding whether or not to use the copied material in the classroom. A more detailed listing of examples is included in Appendix B.

Conclusion

To prevent many of the negative aspects of copyright infringement it is suggested that all schools develop a code of conduct to address the issue, making certain to point out the legalities of copying and pirating digital media of any kind. In more specialized classrooms, such as those in the music department, a section addressing these items should be included in the handbook or syllabus which accompanies the relevant classes. The faculty should present this information at the beginning of each year and then follow through with the procedures it prescribes. Every effort should be made to instill in the students and faculty the knowledge of right and wrong in regard to these issues.

In all of these situations it could be said that the cause of all such corruption is the high price tag associated with obtaining legal materials. It could also be said that the most noble of people is "he/she who remains within the boundaries of law not because he is afraid of being caught, but because he simply knows that it is wrong." The moral and ethical problems of digital piracy in the school systems of our country do not have to constitute a losing battle. Changing the views and attitudes of young people must begin with those who would teach them. If we, as educators, dance around the edge of legality and use our occupation as our benevolent rationale, we are doing a disservice to the very students to whom we are obligated. Moreover, our complacency can lead to the downfall of our district and to our own personal vilification. By becoming aware

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United States Copyright Act of 1976 as amended, 17 U.S.C. 1 § 106, 107, 108

Your group must be the
primary author and must be
author of the work and not
merely a contributor to
part or other work
entirely
The work must be
fixed in a tangible medium of
expression
The work must be
original to the author

Your group must be the
primary author and must be
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entirely
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expression
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Appendix A

Royalty Payment Considerations for Music Educators

Situation	License Required	Approximate Costs
<p>Your band or vocal ensemble performs a public concert of copyrighted musical arrangements.</p>	<p>None</p> <p>The public performance of copyrighted material for school/educational use is exempt from royalty payments.</p>	<p>No fees or royalties are due apart from the purchase of the music itself.</p>
<p>Your group records the performance and then makes copies of the performance for distribution to members of the band or other members of the community. You do not charge for these copies apart from the cost of the tape. The media used can be any recordable audio media.</p>	<p>Mechanical</p> <p>Once you copy and distribute a performance of ANY copyrighted material you are liable for the royalties to the artist. You must contact the publisher for permission to reproduce the music.</p>	<p>The current standard rate is 8 cents per song or 1.15 cents per minute per song if the song is over five minutes in length. For a recording of five songs, each five minutes or less in length, the cost would be \$0.40 per CD or a minimum charge (usually \$10.00 per song), whichever is higher.</p>
<p>Your group intends to sell these recordings at a profit as a fundraiser for your musical organization. You will be doing all of the editing, mixing, and burning of the finished products.</p>	<p>Mechanical</p> <p>Royalties apply, using the same schedule as for the example above.</p>	<p>The current standard rate is 8 cents per song or 1.15 cents per minute per song if the song is over five minutes in length. For a recording of five songs, each five minutes or less in length, the cost would be \$0.40 per CD or a minimum charge (usually \$10.00 per song), whichever is higher.</p>

Situation	License Required	Approximate Costs
<p>Your group video taped the performance and intends to copy the tape and distribute it.</p>	<p>Synchronization</p> <p>Anytime music is accompanied by a visual element (commercial, choreography, etc.) royalties are required.</p>	<p>The current synchronization rate is approximately \$0.25 per song per copy, with a minimum charge of around \$15.00 per song. This rate varies by publisher.</p>
<p>You intend to stream the recording on your band's web site using audio only.</p>	<p>Internet Broadcast & Mechanical License</p> <p>The Internet license allows you to stream any copyrighted song through your website for a one year period.</p> <p>The mechanical license allows you to load a copy of the song onto the web server's hard drive for online distribution.</p>	<p>Varies by the level of usage your site would receive.</p> <p>Minimum fee is \$246.00 per year plus the cost of the mechanical license.</p> <p>Further information available from: http://www.ascap.com/weblicense/ascap.pdf</p>
<p>You intend to stream the recording on your band's web site using video and audio.</p>	<p>Internet Broadcast, Mechanical, and Synchronization Licenses</p> <p>Same as above situation with the addition of the synchronization license.</p> <p>The synchronization license allows you to also present the visual portion of the presentation.</p>	<p>Varies by the level of usage your site would receive.</p> <p>Minimum fee is \$246.00 per year plus the cost of the mechanical and synchronization licenses.</p>

Source: Personal communications with Hal Leonard Music Publishing and Barnhouse Music Publishing, July 9, 2002.

Appendix B

Classroom Performance and Reproduction of Commercially Available Music

Situation	Copyright issues	Solutions
<p>You bring in your own recordings or school owned recordings of copyrighted music to play as an example in an educational classroom environment.</p>	<p>As long as you do not make copies of the music and distribute this music to your students, you are exempt from paying royalties.</p>	<p>No royalties are due. Okay to use in class.</p>
<p>A student brings in a commercially available music recording for use in the classroom as an educational tool.</p>	<p>As long as you do not make copies of the music and distribute this music to your students, you are exempt from paying royalties.</p>	<p>No royalties are due. Okay to use in class.</p>
<p>A student brings in a copy of a commercially available music recording that he or she personally owns the master of. The recording is to be used for educational classroom use.</p>	<p>As long as you do not make copies of the music and distribute this music to your students, you are exempt from paying royalties.</p> <p>The student must own the original master from which he made the copy.</p>	<p>It would be more appropriate for the student to bring the original rather than a duplicate. If the student is worried about losing the CD or damaging it, ask him or her to bring in the title card from the CD's jewel case with the copied media.</p> <p>If you suspect that the student does not truly own the original media, refuse to use the copy until he or she brings in the master.</p>

Situation	Copyright Issues	Solutions
<p>A student brings in a copy of a commercially available music recording that he or she DOES NOT own the master of. The recording is to be used for educational classroom use.</p>	<p>The student has broken copyright laws by making an illegal copy of the musical recording.</p> <p>Since no one personally paid to purchase the music being played, it is thus also a violation of copyright law to play the recording in the classroom environment.</p>	<p>Don't use the music.</p> <p>Inform the student that the act of copying music without personally owning the original is illegal and a violation of federal copyright law.</p> <p>Follow through with the policy you have set forth regarding pirated music in your school.</p>
<p>A teacher or student downloads from the Internet copyrighted music files that are normally available on commercially manufactured media.</p> <p>The person does not pay a fee for the download and the music file itself is not being provided as a free download with permission from the publisher or artist.</p>	<p>Since no one paid for the music and it was not provided specifically for free by the song's publisher or artist, the music download is illegal and a violation of copyright law.</p>	<p>Don't use the music.</p> <p>Inform the student that the act of downloading or copying music without personally owning the original is illegal and a violation of federal copyright law, unless the music files are provided freely by the artist or his agent.</p> <p>Follow through with the policy you have set forth regarding pirated music in your school.</p>

Source: Personal communications with Hal Leonard Music Publishing and Barnhouse Music Publishing, July 9, 2002.

Appendix C

Internet Sources of Free or Open Source Software for your Classroom

Source:	Materials Available:	Platforms Supported:
www.openoffice.com	Open Office Suite from Sun Microsystems. A freeware alternative to purchasing licenses for other commercially available office suites such as Microsoft Office or AppleWorks.	Windows Linux
www.gimp.com	The Gimp is a freeware graphical image editor with the style and most of the abilities of Adobe Photoshop.	Windows Mac OS X Linux
www.linux.com	A free, open source, operating system for Intel based computers. Can be "skinned," with customizable graphical user interfaces similar to Microsoft Windows for point and click simplicity.	Intel based PC's
www.newbreedsoftware.com/tuxpaint	Tuxpaint is a simple drawing program for younger students.	Linux
www.octave.org	A tool for computing complex scalars, vectors, and matrices. Similar to the commercial program Matlab	Linux
www.gnome.org/projects/gnumeric	Gnumeric is a spreadsheet program	Linux
www.k12ltsp.org	K12LTSP is a customized version of the Linux operating system specially written for use in educational institutions.	Intel based PC's
www.abiword.com/download	Abiword is a free word processing program for the Windows platform	Windows Mac OS X Linux
www.openoffice.org	Open Office is a free office suite of programs that runs on all three major operating systems	Windows Mac OS X Linux
www.finalenotepad.com	Finale Notepad is a graphical music notation program with many of the features of the full \$400 retail version.	Windows Mac OS 9
www.metacard.com	MetaCard is an authoring language that can import and convert HyperCard stacks. Limited free versions are available, and the full version K-12 educational licenses are reasonable.	Linux Windows Mac OS

Appendix D

Contact Information for Various Music Publishing Organizations

Performing rights

American Society of Composers, Authors, and Publishers, (ASCAP)
 One Lincoln Plaza
 New York, NY 10023
 (212) 595-3050

Broadcast Music, Inc. (BMI)
 320 West 57th Street
 New York, NY 10019
 (212) 586-2000

SESAC, Inc.
 156 West 56th Street
 New York, NY 10019
 (212) 586-3450

Recording rights

The Harry Fox Agency, Inc.
 205 East 42nd Street
 New York, NY 10017
 (212) 370-5330

Addresses of publishers

National Music Publishers' Association, Inc. (NMPA)
 205 East 42nd Street
 New York, NY 10017
 (212) 370-5330

Music Publishers' Association of the United States (MPA)
 C/O NMPA/HFA
 205 East 42nd Street
 New York, NY 10017
 (212) 370-5330

Source: Music Educators National Conference, Music Publishers Association of the United States, Music Teachers National Association, National Association of Schools of Music, & The National Music Publishers Association. (1992). *United States copyright law: A guide for music educators*. [Brochure].