

September 13, 2004

To: The Stanford Community

From: John Etchemendy

Subject: File-sharing and Copyright Infringement

As another academic year begins, it is important to remind the Stanford community that the University will not tolerate the use of its networks to facilitate the pirating of intellectual property. The consequences for people who use the Stanford network to unlawfully file-share can be steep, and can come from different fronts. Both the copyright owner and the University may impose penalties.

A copyright owner or an authorized agent may lawfully scan Internet traffic under the Digital Millennium Copyright Act (DMCA), and send a complaint to Stanford as the Internet service provider (ISP) if it is discovered that a work was shared without permission. If the copyright owner chooses to follow-up with civil litigation, it may file a "John Doe" lawsuit against the IP address, and Stanford would have to provide the identity of the Stanford network user in response to a valid subpoena. Civil liability for copyright violations can result in penalties of up to \$150,000 per violation, and it is a violation either to download copyrighted material or to share copyrighted works with others.

Early in 2004, a John Doe lawsuit was filed against a user of the Stanford network, which alleged the Stanford network user unlawfully shared or downloaded 11 songs. This lawsuit settled with the Stanford network user paying a monetary settlement to the copyright owners.

Stanford requires that users of the Stanford network respect copyright law (<http://adminguide.stanford.edu/62.pdf>). Stanford follows up and responds to every DMCA complaint. If an individual at Stanford receives more than one DMCA complaint, the matter is referred for consideration of further disciplinary action: for undergraduate students, the matter is referred to a residential dean; for graduate students and faculty, the matter is referred to a Department Chair; and for staff, the matter is referred to a supervisor and to HR. Upon receipt of a very rare third DMCA complaint, Stanford immediately terminates Internet connectivity, including disabling the SUNet ID, and the matter is referred on for discipline: students are referred to

Judicial Affairs; faculty are referred to the Provost; and staff are referred to HR and can expect to be terminated.

Given that the consequences are so high, unlawful file-sharing is not worth the risk. Perhaps it continues in spite of the high risk because of some long-standing myths about file-sharing, which need to be debunked:

Myth #1: It's OK for me to download or share 999 songs, because the RIAA is only going after those with 1000 or more songs. Reality: Unlawfully file-sharing one copyrighted work is against the law and you run the risk of discipline at Stanford and facing a civil lawsuit claiming up to \$150,000 in damages. Suits have been brought, including the one involving a user of the Stanford network, for fewer than a dozen songs.

Myth #2: It's OK for me to download songs or movies that I paid for at one time, but have since lost. Reality: While it's almost certainly a fair use (within the bounds of copyright law) to convert a copy of a song or movie you own into another format for your own personal enjoyment, having purchased a song or movie on CD, DVD or videotape at some point in your life does not give you the right to free downloads of it in the future.

Myth #3: It's OK for me to download a copy of a television program because, after all, I could have recorded it legally if I had remembered to set my VCR. Reality: It is NOT OK to download television programs off of the Internet, absent the express consent of the copyright owner (e.g., Fox Television). In Stanford's experience television producers are being extremely proactive in going after unlawful file-sharing. Star Trek fans should be especially aware!

Myth #4: It's OK for me to share my music because, after all, I paid for it and I'm not making any money by sharing it. Reality: Copyright owners get to set the number and price of copies to be distributed, and sharing your music takes away that control from the copyright owner and cuts into their expected income. If you give away 20 copies of a song, the copyright owner will allege you've deprived her of 20 customers.

Myth #5: I'm perfectly safe using KaZaA, Gnutella or another P2P every once in a while to download a song or two, because I never share my music and that is what really catches the attention of the RIAA. Reality: Many P2P services include a default setting to share all music in the folders into which you place your downloaded songs. So, while you think you're downloading one or two songs, you may actually be sharing your entire music collection with everyone logged onto your P2P service. Even if you somehow disable the uploading of your songs, the downloads you do can be caught by a scan.

Myth #6: I don't download music, only the occasional game or movie and those copyright owners don't send out DMCA complaints. Reality: Stanford has received DMCA complaints for games, software, movies, TV shows, books, articles and websites. File-sharing any copyrighted work without permission is risky.

Myth #7: Stanford doesn't care too much if I file-share and so if I do get caught, I won't get into too much trouble. Reality: Stanford complies with all copyright laws. Stanford owns many copyrights, as do its faculty, students and staff. Stanford expects its intellectual property to be respected and is, in turn, respectful of others' intellectual property rights. Further, the DMCA provides that ISPs cannot be subject to liability for infringing activities that take place on its networks, provided that the ISP—Stanford—complies with the DMCA and has a policy in place to terminate Internet connectivity to repeat violators of copyright law. So, under the DMCA Stanford *must* terminate Internet connectivity to repeat violators in order to avoid liability.

There are many excellent resources on copyright and file-sharing at Stanford. For more information, please see ResComp's file-sharing FAQs, <http://rescomp.stanford.edu/info/dmca/>, or The Provost's Copyright Reminder for 2004, www.stanford.edu/dept/legal/orddocs/copyrightRem2004.pdf. Other questions about file-sharing may be addressed to Lauren Schoenthaler, University Counsel, at lks@stanford.edu.

Please respect the wishes of copyright owners and the University: do not file-share copyrighted works unless you have the express permission of the copyright owner to do so.

Sincerely,

John Etchemendy
Provost