

Music Distribution and the Internet: A Legal Guide for the Music Business

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The music industry has been affected greatly by the development of the technologies that provide for downloadable files. The change has made reliance on the old model of CD distribution and sale through stores unworkable. In *Music Distribution and the Internet*, Andrew Sparrow tackles the implications of the Internet on music from every vantage point. He discusses the multiple ways in which music was downloaded in the past, ways in which music is currently available, and new emerging technologies. Sparrow then discusses the contracts and business associations involved in these transactions. Finally, Sparrow discusses the privacy protections for those who purchase on the Internet. The book is written such that a non-lawyer will learn the basics of English contract law and understand the important points of these transactions and the governing law.

Sparrow describes the past illegal methods of downloading and file sharing tracks. He investigates the record companies' careful use of targeted litigation against illegally downloading individuals. Sparrow then discusses the careful balance struck between dissuading those who illegally download by making examples of individuals, while at the same time hoping not to alienate music-lovers. He also traces the important actions initiated by record companies against websites that enabled file-sharing. File sharing

cases involving *Napster* and *Aimster* are contrasted with those involving *StreamCast* and *Grokster*.¹ In terms of holding sites accountable, the questions of potential non-infringing uses and actual knowledge or control of users is important.

Sparrow describes how the record companies were losing money and faced an insurmountable problem in dealing with copyright infringement. What grew out of the dilemma was a multifaceted solution in the music business. The approach was to embrace the new technology by making songs available for download at reasonable prices. This new market, combined with public awareness that free downloading is not legal, prompted an exponential increase in the number of singles downloaded legally each year. The author also investigates other different approaches taken to adjust to the new technologies. Some companies are trying to develop copyright protection technology built into their product, while other areas of the world are trying “limited rights reserved” Internet postings that can be accessed freely under the Creative Commons system.

Sparrow then investigates emerging markets for downloads, such as cell phones. An example of the complexity of the contract for downloading music from a cell phone is that a full set of terms and conditions statement will not fit on a cell phone screen. Under EU law, at least, reference to terms and conditions on the server’s website suffices. This segues into Sparrow’s discussion of the privacy of data collected during a transaction. In the EU, the Data Protection Act places strict guidelines on what information may be collected, under what conditions, and how it must be stored.² Sparrow continues by

¹ Compare *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001) and *In re Aimster Copyright Litig.*, 334 F.3d 643 (7th Cir. 2003) with *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005).

² Data Protection Act of 1988 is a regulation in the EU that lists eight general principles, provided the customer consents or is bound by contract. The data must be: (1) fairly and lawfully processed; (2)

describing some of the different models of Internet sites that make downloading available. From sites like iTunes to official record company and artist sites, the parties involved are numerous. For example, royalties are collected by private companies that enforce the rights of copyright owners. These companies, such as the Performing Rights Society (UK), take a percentage of the profits from any download. The royalties are then allocated accordingly, but the transaction inevitably must involve all of the data protection measures required by law.

He then discusses the many parties to the transactions and the important considerations in any transaction. For example, it is important for a site involving sale of music over the Internet to consider the intellectual property right implications of its contract with the web designer. It is also important to consider how a contract addresses maintenance of the site, and whether it provides for damages if the site has difficulty and business is lost.

Throughout *Music Distribution and the Internet*, Sparrow discusses the important terms that must be included in any contract for downloading music. Particularly interesting are considerations such as making the site simple for younger customers and making the site sensitive to disabled viewers. The EU has some regulations regarding these matters. Considering that anything on the web can potentially reach customers in all countries, these considerations are potentially important regardless of local regulations.

processed for a limited purpose; (3) adequate, relevant, and not excessive; (4) accurate and up to date; (5) not kept longer than necessary; (6) processed in accordance with the individual's rights; (7) secure; and (8) not transferred to countries outside European Economic area unless country has adequate protection for the individual.

In the later sections of Sparrow's book, he shows how all of the previous considerations and protections also apply to other music available over the Internet, such as streaming concerts. The EU and UK regulations are listed, but these regulations will likely also apply across borders, depending on the reach of the site. This segues into a discussion of choice of law provisions in the contracts, and personal jurisdiction for internet sites. Choice of law can be provided, but where litigation may occur depends on the nature of the site conducting business and any property in other countries.

Finally, Sparrow discusses the different methods of payment over the Internet and the implications for the sites accepting such payment. Clearly, this affects not only financial implications but also possible warranty implications if the customer returns the product or repudiates the contract. This tailors into a brief portion about electronic authentication.

Music Distribution and the Internet is a comprehensive look at every part of the music business affected by technology. Sparrow wrote the book in a manner that is equally accessible to those without a legal background. Sample contracts and clauses are included, as well as a checklist of considerations for each business relationship. The chapters are relatively short and each addresses a different part of the process. This book is a must-read for anyone currently involved in the performance, sale, purchase, promotion, or advertisement in the music business.