

### Editor's Note

John Swanson's "Don't Fight the Crime if You're Going to Sling Grime" engages the reader immediately with a clever title and slightly surprising—but technically accurate—confession. Consider how the introduction seamlessly combines *ethos*, *pathos* and *logos*. Swanson's argument offers as evidence dramatic, *pathos*-laden examples. Has the writer also performed sufficiently extensive research to balance emotional appeals with ample statistical data? He connects this abundant support to his argumentative purpose with clear, logical explanations given in a confident, journalistic style. Quotations are smoothly incorporated via signal phrases into the writer's own sentences and paragraphs: Swanson does not allow the sources to argue his point for him. The topic of media piracy is complex, entailing plenty of room for debate, and timely as well. What's your stand on this complicated problem?

## Don't Fight the Crime if You're Going to Sling Grime

John Swanson

I am a thief. I have willingly and knowingly committed tens of thousands of actions of theft since my kleptomaniac-like spree began over six years ago . . . and I am not alone. Since launching into the public eye in 1999 with the rise of Napster, illegal music downloads have become almost commonplace in American society. However, along with the advent of this new digital age of music has come a change in the industry itself. With more consumers being able to find music online for free, CD sales have plunged dramatically since peaking in 2000 (Ahrens). In an effort to save its business, the Recording Industry Association of America, or RIAA, have become the leaders in the fight on illegal file-sharing. Unfortunately, CD sales have continued to plummet even as the RIAA threatens suits against thousands of its customers. The RIAA has thus become increasingly more desperate in its actions to stop illegal downloading and copyright infringement. With each passing day, the choices made by the RIAA are beginning to show how this paranoid organization is becoming more immoral than file-sharing itself rather than using the internet as a tool to save itself.

It's important to look at this history of the fight against illegal downloads in order to understand where it currently stands. Napster was created in 1999 and introduced the concept of free and unlicensed music to millions of Americans before being shut down by the RIAA in July 2001. But the damage was done. Instead of finding a way to work with Napster in order to use the internet as a tool for better music distribution, the RIAA quashed the program and thus sent 26.4 million file-sharing refugees to countless other sites in search of free music ("Global"). Such a pattern has continued ever since. For every site or program that is shut down by U.S. laws, countless others spring up from the hydra that is music piracy. Napster was followed by KaZaA, Morpheus, Limewire, Bit Torrent, and a myriad of other programs and websites.

According to the *L.A. Times*, an average of 80 percent of 12–24 year olds believe that downloading illegal music is not a crime. With a mindset like this, it's easy to understand why 20 billion tracks were downloaded illegally last year alone, and the number keeps growing (Webb). The *L.A. Times* also notes that CD sales have sunk 30 percent since 1999, coincidentally the same year Napster came about, with little hope of bouncing back any time soon (Duhigg).

Understandably worried about the cause-and-effect relationship of illegal downloading and slumping sales, the RIAA decided to take action. Thus far, their main weapon in battling illegal downloads has been the threat of suits against a small handful of these musical pirates. Most cases are settled out of court for a few thousand dollars, saving both the accused and the RIAA the time and effort of a lengthy legal battle. Since they began sending out letters in 1999, the RIAA has settled with 26,000 individuals, with only one case going to court (Ayres). The logic behind this move is that the possibility of a no-win lawsuit with large monetary losses would drive down the number of people illegally downloading music. These suits were never about trying to make up revenue lost by illegal downloading. In fact, according to Jennifer Pariser, Sony BMG's head of litigation, the RIAA loses money in each of its suits against its customers (Bangeman). However, even in the face of these lawsuits, illegal file-sharing has grown exponentially over the past six years. As a result, the steps taken by the RIAA have become much more drastic and harsh.

Many will argue that file-sharers who are caught and made to pay are simply getting what they deserve. But who gets to decide what is fair? One needs to look no further than the case of Jammie Thomas, the only individual yet to take a file-sharing lawsuit to court, to see the heinous monster that the RIAA has become. According to a story in *The Times*, Jammie is a single mother of two living in a small town in northern Minnesota. She makes around \$36,000 a year and was sued in 2005 for sharing twenty four songs on the KaZaA file sharing network. Denying that she was guilty, Jammie was willing to spend more money on legal counsel than it would've cost to settle out of court in an attempt to prove her innocence. The case ultimately went to trial, with the RIAA pushing that the maximum \$3.9 million possible fine be levied against Jammie. When the verdict was announced in early October, many were stunned. Jammie was found guilty and ordered to pay \$222,000 (or \$9,250 *per song*) to the RIAA. On top of \$60,000 in legal fees, the judgment will no doubt drive this single mother into bankruptcy (Ayres). One must have an extremely calloused heart to find this not cruel and unusual. For sharing twenty four songs, Jammie definitely got more than she deserved.

The wicked actions of the RIAA are not limited to those they wish to make examples of. The RIAA currently finds itself being sued on both the state and federal level by innocent individuals who wish to expose how the RIAA treats suspected file-sharers. Texan Rhonda Crain has filed suit against the RIAA, accusing that they collaborated with unlicensed firms and "... agreed between themselves and under-

stood that unlicensed and unlawful investigations would take place in order to provide evidence” for lawsuits in the state of Texas (“RIAA”). While the suit does not specify the details of the types of illegal spying, it doesn’t take much effort to uncover other examples of the RIAA’s ‘investigation methods.’

An Oregon woman named Tanya Anderson recently filed a federal suit after RIAA officials threatened to interrogate her ten year old daughter after a case of mistaken identity led them to believe she was downloading music (Triplett). Instead of relenting after discovering they had the wrong person, the RIAA instead insisted that Tanya pay thousands of dollars to settle the case. In a clear attempt at intimidation, someone working with the RIAA even contacted Tanya’s daughter’s school pretending to be her grandmother and inquired about her attendance (Triplett). The RIAA now obviously seems to think it acceptable to bully families and children in order to keep up their track record of successful settlements.

According to the RIAA, the cases of Jammie Thomas and Tanya Anderson are extremely rare examples of bad publicity regarding file-sharing lawsuits. “When you fish with a net, you sometimes are going to catch a few dolphins” says RIAA spokeswoman Amy Weiss (qtd. in Roddy). They have adopted a no-tolerance policy regarding illegal downloads, hoping that by making examples of those caught, music pirates will think twice about stealing in the future. This is not a viewpoint held only by those affiliated with the RIAA. Many music aficionados believe that the internet is a plague upon the musical market and see no issue with the RIAA’s methods and results.

However, this school of thought doesn’t take into account the good done to music by the internet and file-sharing. Websites such as Last.fm, MySpace, and Purevolume are helping thousands of small bands get their names out in a way never before possible. With little mainstream promotion, bands like Clap Your Hands Say Yeah, Sufjan Stevens, and the Arcade Fire have become incredibly popular thanks to the support generated by their internet fan base. Not all downloads are “thefts”; many fans often download an album to “test it out” before going out and purchasing it, myself included. The distribution of music legally online is a booming market as well. According to the *Sydney Morning Herald*, last year 47 million homes in the U.S. bought 5 billion songs online (Wright). Digital album sales grew 103 percent from 2005 to 2006 with no plateau in sight (Ahrens). Illegal file-sharing may be a crime, but those few who are caught are bearing an extremely unfair punishment wrought by a paranoid industry ignoring the myriad of good this new technology could do for them.

Despite the good that the internet has done for music, the topic of illegal downloads usually spurs an argument based on the artists themselves. Critics of file-sharing argue that “true fans” would never steal from the artists they love. This statement is not entirely true. Due to stringent recording contracts by the RIAA (which produces 90 percent of the music in the U.S.), most artists make the majority of their revenue from touring and merchandise sales (“Who”). “True fans” supplant these small losses by showing their dedication to the band—paying record amounts of money to see their bands play

and spending even more money on often overpriced merchandise. Even artists themselves have begun to use the advent of the internet and file sharing as a new way to reach out to fans. Many artists, like Dave Matthews and Pearl Jam, have begun to sell downloadable copies of individual live shows as a new form of entertainment and profit. Musicians rarely care about file sharing; it's the industry that has become fearful.

And the industry has good reason to fear: according to the *Washington Post*, sales of records are down from \$13 billion in 2000 to \$9 billion last year (Ahrens). More and more musicians themselves are noticing this change and abandoning labels altogether. Radiohead let fans pay what they thought fair for their newest album, Nine Inch Nails has made it public that they will never release an album via a major label again, and Prince gave away his newest CD free with copies of the British tabloid *Sun*. The internet is the way of the future, at least as far as music goes. Instead of embracing this new digital technology to help save itself, the RIAA is alienating itself from its customers by its immoral decisions.

There are easy ways that the RIAA could use the internet itself to fix their current situation. Many individuals and organizations, including Napster and the EFF, have proposed an extremely simple method of keeping both downloaders and copyright holders happy by instituting a single \$5–\$15 monthly charge for an unlimited number of downloads from whatever service online file sharers preferred on an individual basis. These charges could easily be set up in coordination with internet service providers, who already are able to monitor traffic from illegal downloads quite easily. In return, the RIAA would promise not to threaten those paying users with lawsuits. Unfortunately, the RIAA refuses to comment on such a plan, showing an extreme amount of stubbornness while only hurting themselves.

If I was in Jammie Thomas' shoes, ordered to pay \$9,250 for each song I've ever illegally downloaded, I would be hundreds of millions of dollars in debt. That's not to say I don't buy CDs themselves. I can't estimate the amount of money I've spent on artists I've discovered from the internet or on CDs I've bought after downloading them first. Even amidst the improbable threat of facing such charges, I don't think I'll be changing my ways. I don't see any logic in helping support an organization that has been charged with using illegal means to sue its customers into bankruptcy. I support the artists, not the immoral and stubborn industry.

The sad thing is that the RIAA show no signs that they are learning from their ineffective and cruel methods. Last year they even filed a lawsuit against XM satellite radio accusing them of copyright infringement (to the tune of \$24 billion) for allowing subscribers to record *off of their own radios*, something that radio listeners have been able to do since the introduction of the tape deck (O'Brien). The paranoia and stubbornness don't look to be subsiding anytime soon. Bob Dylan once sang "You better start swimmin' or you'll sink like a stone/ for the times they are a-changin'" ("Times"). In the pool that is the music business, the RIAA is acting like an angry, water-wing-wearing toddler who fears new experiences. The times are

changin', and the RIAA needs to take off its floats, start swimmin', and try new things before its customers leave it in a time out.

### Works Cited

- Ahrens, Frank. "Despite Drop in CD Sales, Music Industry Is Upbeat" *The Washington Post* 18 April 2007. D01. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- Ayres, Charles. "Mother fined \$222,000 in download ruling." *The Times* 5 October 2007. 46. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- Bangeman, Eric. "RIAA anti-P2P campaign a real money pit, according to testimony" *Ars Technica* 2 October 2007. 3 November 2007 <<http://arstechnica.com/news.ars/post/20071002-music-industry-exec-p2p-litigation-is-a-money-pit.html>>.
- Duhigg, Charles. "Is Copying a Crime? Well . . ." *Los Angeles Times* 9 August 2006. 1. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.lexis-nexis.com/universe>>.
- Dylan, Bob. "The Times They Are A-Changin'." Columbia Records, 1964.
- "Global Napster Usage Plummet, But New File-Sharing Alternatives Gaining Ground, Reports Jupiter Media Metrix." *comScore*. 20 July 2001. 2 November 2007 <<http://www.comscore.com/press/release.asp?id=249>>.
- O'Brien, Danny. "Digital radio faces \$24bn piracy claim" *The Irish Times* 19 May 2006. 7. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- "RIAA Accused Of Illegal Investigations" *Techweb* 5 July 2007. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- Roddy, Dennis. "The Song Remains the Same." *Post-Gazette.com* 14 Sep 2003. 24 Jun 2008 <<http://www.post-gazette.com/columnists/20030914edroddy0914p1.asp>>.
- Triplett, William. "RIAA Counterattack." *Daily Variety* 31 August 2007. 2. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- Webb, Adam. "Can filesharers be made to pay?" *The Guardian* 22 March 2007. 1. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.
- "Who We Are." *RIAA*. 3 Nov. 2007 <<http://riaa.com/aboutus.php>>.
- Wright, Gerald. "Rock'n'roll will never die, but the labels look decidedly ill." *Sydney Morning Herald* 17 October 2007. 20. *Academic Universe*. Lexis-Nexis. Robert E. Kennedy Lib., Cal Poly State U. 29 October 2007 <<http://web.Lexis-Nexis.com/universe>>.

*John Swanson is a biochemistry major.*