

## CONCORD BRIDGE

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America on the stand  
*The RIAA's crusade to end file-sharing*

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*"The industry is using the court system to undermine democracy and achieve its objectives..."*

The subpoena brought her to tears. Twelve years old and faced with a multi-million dollar lawsuit filed by the recording industry's most powerful lobby, Brianna LaHara was the first of 261 song sharers to settle with the Recording Industry Association of America (RIAA). Allegedly failing to foresee that the defendant was a pre-teen who lived with her single mother in New York City public housing, the RIAA was quick to exchange a \$2,000 settlement for a token apology from the Catholic school honors student.

Subpoenas were delivered the same day to a 71-year-old grandfather in Texas, a photography professor at Yale University, and a slew of teenagers and adults from coast to coast – all considered "major offenders" of peer-to-peer digital file-sharing by RIAA.

"We're trying to send a strong message that you are not anonymous when you participate in peer-to-peer file-sharing and that the illegal distribution of copyrighted music has consequences," said RIAA Chairman Mitch Bainwol.

The Electronic Frontier Foundation (EFF) has led the charge against the industry's legal action, maintaining that suing one's consumer base is not the way to shift recent dwindling music sales upwards.

"Filing lawsuits against twelve year olds doesn't give consumers what they want and it doesn't give the music industry what it wants," said EFF Staff Attorney Gwen Hinze.

Insofar as the recording industry is fighting against what it considers clear copyright violations, there is a legal claim to be made. Songs are the intellectual property of their creators, and obtaining or providing them to others via the Internet is probably against the law. File-sharing software such as Kazaa, Morpheus or even closed network search engines such as those on college campuses, are essentially immune from merited legal action because they are in effect search tools and, therefore, not criminal. On the surface, the question is whether or not individuals can legally download intellectual property at no cost and with no profit for the creator of that property. But the deeper question remains one of political philosophy: is the recording industry's recent wave of lawsuits an attempt to pit a powerful army of lawyers against an otherwise law-abiding populace, the sole goal being that of undermining the legislature's decision not to explicitly outlaw music downloads?

Recent efforts to lobby both ends of Pennsylvania Avenue in Washington have resulted in mere investigations and not in legislation. So the recording industry has taken the matter into its own

hands. By targeting broad demographics of American society, the industry's aim is as clear as its conscience – simply to scare America from acting in a way that may otherwise be legal.

If the lawsuits were really intended to account for losses of revenue, the industry would not settle for a few thousand dollars and offer legal amnesty to those who contractually sign that they will not download 'free' music on the web. In strict dollars, it cost the plaintiff more to bring the lawsuit than it gained from the recent settlement.

The industry is using the court system to undermine democracy and achieve its objectives – and in doing so, it is rightly losing the public relations battle against its consumer base.

Danny S., creator of Brandeis's closed network search engine Boogle, maintains that the days of sharp album covers and metallic CDs are over. "The lawsuits are just the latest in a long line of recording industry mishaps which stem from an inability to comprehend and embrace new technology."

While the recording industry is quick to label people who download music 'thieves,' the fact that a large percentage of the educated American public openly admits to 'stealing' music suggests that the letter and spirit of copyright and intellectual property laws are not as clear as the industry portrays.

"If a large part of America admits to sharing files, there is an obvious disconnect in what the law is written as and how the law should be," said Boogle's creator.

Legalities aside, American society demands the latest technology – and it is in the recording industry's best interest to provide digital distribution methods at reasonable prices. Reaction to the recent lawsuits reflects a public more prone to sympathize with victims of recording industry scare tactics and less likely to support or even understand the legitimate intellectual property claims.

There is clearly a gap in intellectual property laws, but the solution must be achieved democratically. The court system interprets and enforces existing laws and should not be abused by powerful trade groups to solicit fear of suit – especially without clear legal merit. After all, the lack of criminal prosecution suggests that laws are in fact not being explicitly broken.

Intellectual property must be protected by federal and state legislatures, but suing teenagers and grandfathers, professors and businessmen – the same consumers to whom they are aiming to sell – will win neither the public relations battle nor the legal war.