

# Northland Forum

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SECTION B

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## What's wrong with sharing?

With the landmark Duluth music lawsuit back in court, it's time to get to the heart of the issue

CARA  
DUCKWORTHRECORDING INDUSTRY  
VIEW

Music piracy is illegal, and it won't be tolerated

It's commonly known as piracy, but it's a too-benign term that doesn't even begin to adequately describe the toll that music theft takes on the many artists, songwriters, musicians, record label employees and others whose hard work and great talent make music possible.

Music theft can take various forms: individuals who illegally upload or download music online, online companies who build businesses based on theft and encourage users to break the law, or criminals manufacturing mass numbers of counterfeit CDs for sale on street corners, in flea markets or at retail stores. Across the board, this theft has hurt the music community, with thousands of layoffs, songwriters out of work and new artists having a harder time getting signed and breaking into the business.

One credible analysis by the Institute for Policy Innovation concludes that global music piracy causes \$12.5 billion of economic losses every year, 71,060 U.S. jobs lost, a loss of \$2.7 billion in workers' earnings, and a loss of \$422 million in tax revenues, \$291 million in personal income taxes and \$131 million in corporate income and production taxes. In response, the music industry has employed a multi-faceted approach to combat this piracy, combining education, innovation, and enforcement.

With investigators deployed in cities across the country, the RIAA is working closely with law enforcement to pull pirated products off the street and to demonstrate that the consequences for this illegal activity are real.

We are continuing our efforts to educate fans about the value of music and the right ways to acquire it and, when necessary, to enforce our rights through the legal system.

Record companies have licensed hundreds of digital partners that offer a range of legal models to fans: download and subscription services, cable and satellite radio services, Internet radio webcasting, legitimate peer-to-peer services, video-on-demand, podcasts, CD kiosks and digital jukeboxes, and mobile products such as ringbacks, ringtones, wallpapers, audio and video downloads and more.

Our goal with all these anti-piracy efforts is to protect the ability of the recording industry to invest in new bands and new music and, in the digital space, to give legal online services a chance to flourish.

CARA DUCKWORTH is director of communications of the Recording Industry Association of America.

JAMMIE THOMAS



DEFENDANT'S VIEW

I'm fighting this lawsuit for more than just myself

I will fight this suit as long as I possibly can. I have been offered many settlements from the plaintiffs in this suit, before, during and after the trial, but I refuse to be bullied into paying for something I didn't do. Also, now I consider this more than only my case and I'm no longer doing this for personal reasons alone.

There are many people out there who have found themselves in the same or similar situation as I am, most of them either children, broke college students, or parents. These people either chose to settle or didn't think they were able to defend themselves against the multi-billion dollar corporations. So I feel I am in the right position to try to help quite a few of these innocent victims of this bullying.

JAMMIE THOMAS of Brainerd is the mother of two boys, whom she described as the reason "I decided to fight back against the RIAA." She has requested a new trial in Capitol Records' case against her.

RAY BECKERMAN



LAWYER'S VIEW

Stay tuned: This case is about to get really interesting

In the Capitol v. Thomas case, which I went to trial in Duluth last October, the jury returned a verdict of \$222,000 against a Brainerd woman for having 24 song files on her computer that may have been "available" to others over the Internet.

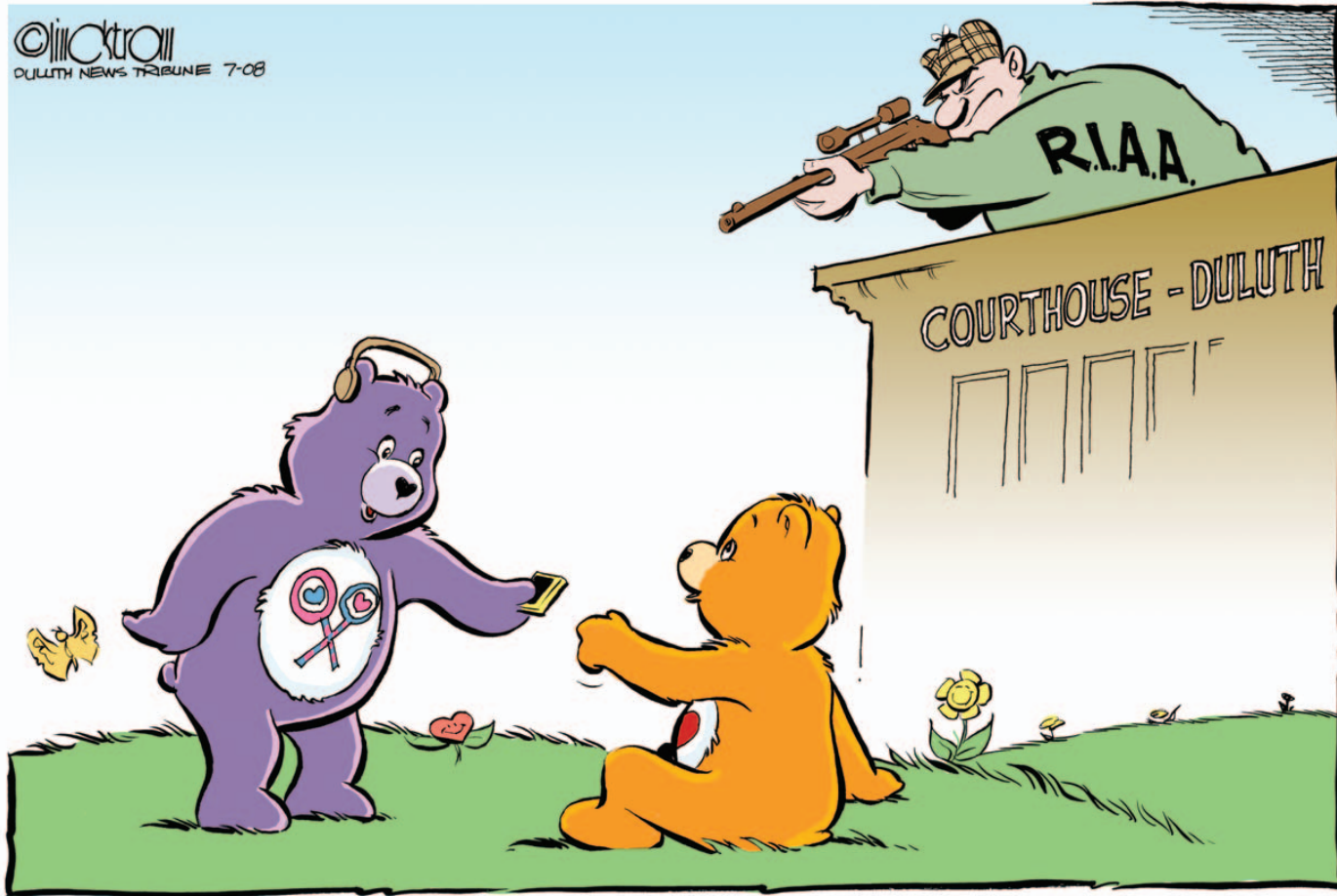
However, the judge who presided over the trial has now said that the lady may be entitled to a do-over because it appears that a "manifest error of law" was committed by him when he instructed the jury that merely "making the files available" — as opposed to actually disseminating copies to other people — was a sufficient basis for copyright infringement liability.

Turns out that the Recording Industry Association of America lawyers convinced the judge to give the jurors that instruction, but forgot to tell the judge about a couple of details he might have wanted to know: One, the U.S. Court of Appeals for the 8th Circuit, which presides over the District of Minnesota, had previously ruled that you can't have liability without proof of actual dissemination, and secondly, one of the two authorities the record company lawyers were relying upon, an Arizona case named *Atlantic v. Howell*, had been vacated a week before the Thomas trial.

The judge has requested that interested organizations file *amicus curiae* ("friend of the court") briefs, and has scheduled a public hearing for Aug. 4, 10 a.m., in Courtroom 1 of the federal courthouse in Duluth.

The judge wants to make sure nothing gets overlooked this time around. If you would enjoy seeing what a federal judge looks like when he's hopping mad, drop by the federal courthouse in Duluth that morning. The RIAA lawyers will wish they were somewhere else.

RAY BECKERMAN is a New York City-based attorney who frequently represents defendants in RIAA lawsuits.



STEVE LINDSTROM / FOR THE NEWS TRIBUNE

OUR VIEW

## Is judicial system the best venue for music file-sharing debate?

On Oct. 2 last year, the music world focused on the Duluth federal courthouse where, for the first time, a jury was selected to hear a case about unauthorized music file sharing.

Five days earlier in an Arizona federal court, a judge in similar case vacated a summary judgment that had favored the recording industry.

More on the Arizona case in a moment. When the Duluth trial closed Oct. 4, the answer to the ultimate question — if it's OK to share copyrighted music — was... well, barely addressed at all.

"I was found liable of copyright infringement without the plaintiffs having to prove I downloaded anything," the defendant, Jammie Thomas of Brainerd, wrote on the online digital news site p2pnet.net after the trial.

The jury's decision, which ordered Thomas to pay \$222,000 for music she hadn't bought, set the eyebrow-raising precedent that you are your IP, or Internet provider address, and responsible for whatever flows into your computer. While evoking all sorts

of civil liberty concerns, the verdict failed to send a definitive message to millions that copying or sending an unauthorized birthday mix CD is wrong.

"I don't think sharing copyrighted music is wrong," Timothy Charles, a 2006 graduate of Duluth's Lakeview Christian Academy, now at Northwestern College in St. Paul, told the News Tribune's editorial page staff last week.

"I don't agree with people selling copyrighted music without getting permission from the artist," continued Charles, a member of the Facebook group, "I love sharing music on iTunes." "However, I think that if no money has changed hands between sharers, it won't hurt the music industry at all."

Fellow iTunes group member and June Lakeview grad Matthew Denney disagrees.

"It is stealing," he said. "Just because there is the technology to share copyrighted [material] that does not give us, the consumer, the right to do it."

The recording industry couldn't agree more.

"The unauthorized reproduction and distribution of copyrighted music is just as illegal as

shoplifting a CD," reads a statement on musicunited.org, a Web site for an umbrella group of organizations, among them the Recording Industry Association of America. "The rules are very simple."

Well, maybe not that simple, especially when it comes to proving the music was actually shared.

"If you sat there making copies of a CD and you were selling them on a street corner, that would obviously not be OK," said Ray Beckerman, a New York attorney who has battled the RIAA in many cases. More difficult, he said, is establishing that someone made copies through a file sharing network. "The only way they would get any evidence is if the person admitted they downloaded a file."

And that leads back to Thomas, who denies downloading or distributing anything, and the forgotten Arizona case, which this spring was remembered by, or otherwise brought to the attention of, U.S. District Judge Michael J. Davis in the Duluth case.

"At least one authority relied upon by Plaintiffs ... has since been vacated," Davis wrote of the Arizona decision in a May 15 order reviewing the Thomas case. With it came the extraordinary and admirable announcement that he may have erred in instructing his court's jury.

"On reconsideration, [the Arizona] court has now held that making sound recordings available for distribution is not actionable under the Copyright Act and that 'actual distribution' is required," Davis continued, directing both sides to file briefs addressing whether Thomas distributed, rather than just possessed, the music files.

Those briefs were filed last week, with music industry lawyers arguing that requiring proof of distribution would render copyright laws "worthless."

Obviously, this newspaper and any other would defend copyright laws to the fullest. But if there's a loophole failing to address nanosecond copying in laws written in the days of the Victrola, the recording industry's energy might be better directed at Congress.

There, wise minds can decide the issue once and for all, and file — and share — a solution.

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Timothy Charles,  
Duluth iTunes user

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