

# THE COPYRIGHT SOCIETY OF THE U.S.A.

New York Chapter

Rose Auslander and Jonathan Purow, Co-Chairs

November 11, 2008

Dear Members of the New York Chapter of the Copyright Society:

We are excited to invite you to our Wednesday, **December 10th, 2008, luncheon program**, at noon, at the Princeton Club, 15 West 43rd Street, New York, NY.

## DOES "MAKING AVAILABLE" = MAKING INFRINGEMENT?

Is placing music in a shared P2P folder a copyright violation? What should the answer be, and what are the possible implications for hyperlinking and other internet activities, as well as the business implications? At the moment, it depends on what court you ask:

- In the Jammie Thomas case in Minnesota, U.S. District Judge Michael Davis originally ruled that making available was a violation, but then had second thoughts. In 2007, the court instructed jurors they could find unauthorized distribution -- copyright infringement -- if Ms. Thomas was "making copyrighted sound recordings available over a peer-to-peer network "regardless of whether actual distribution has been shown." The jury found Thomas guilty of willful copyright infringement. Recently, however, the judge ordered a mistrial for "manifest error of law" based on this instruction.
- The only ruling left standing against making available is *Elektra Entertainment Group, Inc. v. Denise (sic) Barker*, Case No. 05-CV-7340 (S.D.N.Y. March 31, 2008), where Judge Kenneth Karas analogized "distribution" in Section 106 (3) to "publication," defined as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending" and ruled that "an offer to distribute ... for the purpose of further distribution" may be enough to violate a copyright owner's distribution right.
- In *Atlantic Recording Corp. v. Brennan*, Civ. No. 3:07cv232(JBA), 2008 U.S. Dist. LEXIS 23801, \*7 (D. Conn. Feb. 13, 2008), default judgment was denied on grounds that the defendant might have a valid defense that an actual distribution of a copy is required for a violation of the distribution right.
- In *London-Sire Records, Inc. v. Doe 1*, No. 04cv12434-NG (D. Mass. March 31, 2008), Judge Nancy Gertner denied a subpoena to identify Doe, ruling that the recording company failed to state a claim of copyright infringement absent evidence of an actual distribution/download.
- In *Atlantic Recording Corp. v. Howell*, No. CV-06-02076-PHX-NVW, 2008 U.S. Dist. LEXIS 35284 (D. Ariz. Apr. 29, 2008), the court denied the plaintiffs' motion for summary judgment, and ruled that merely making copy of a copyrighted work available to public did not violate the distribution right.

Please join us for a scintillating panel discussion on both the legal and business sides of this issue, with **Daniel Brotman** (Future Music), **Prof. Justin Hughes** (Cardozo School of Law), **Jennifer Pariser** (Sony BMG), **Prof. Frank Pasquale** (Seton Hall Law School) and moderator **Eric Schwartz** (Mitchell, Silberberg & Knupp).

To attend this exciting panel discussion, please complete the attached form, and mail or fax it to The Copyright Society of the U.S.A., 352 7th Ave., Suite 739, NY, NY 10001, fax # (212) 354-2847, by **December 4**. We look forward to seeing you on **December 10, 2008**.

Date: Wednesday, December 10, 2008

Time: 12:00 p.m.-12:30 p.m.: Cocktails (cash bar)  
12:30 p.m.-1:00 p.m.: Lunch  
1:00 p.m.-2:00 p.m.: Program  
**(Please note: event will end promptly)**

Place: **The Princeton Club, 15 West 43rd Street, New York, NY**

Cost: \$60.00 (members) \$70.00 (non-members)

CLE: ***The Copyright Society of the U.S.A. is a NY CLE Approved Provider. This course is Transitional and Nontransitional, and provides 1.0 Credit (based on 50 minutes).***

## **SPEAKERS:**

DANIEL BROTMAN has been CEO of FutureMusic, an online music magazine, since 2001. Prior to his current position, he was Vice President of New Media and Internet Development at TVT Records, the first record label to have an on-demand music video jukebox, free time-restricted digital downloads and viral promotional eCards. Before TVT, he was Vice President of New Media at RomeBlack. Daniel obtained his BFA in Film Production at the Tisch School of the Arts of New York University.

PROF. JUSTIN HUGHES teaches intellectual property and international trade at Cardozo School of Law in New York, and serves as Director of Cardozo's Intellectual Property Program. Formerly a policy expert in the U.S. Patent & Trademark Office, his areas of expertise include domestic and international copyright, trade and WTO issues relating to intellectual property, database protection, trademarks, geographical indications, and intellectual property in developing countries.

JENNIFER PARISER currently serves at Senior Vice President and Associate General Counsel dealing with litigation and anti-piracy for Sony BMG Music Entertainment, and has lectured extensively at the ABA and NY State Intellectual Property Sections and at various law schools. Prior to joining Sony Music in 2000, Ms. Pariser was a litigation associate with the New York law firms of Patterson, Belknap, Webb & Tyler and Debevoise & Plimpton, and clerked for the Honorable Charles Tenney in the US District Court for the Southern District of New York.

PROF. FRANK PASQUALE teaches intellectual property, technology, and administrative law at Seton Hall Law School, and serves as Associate Director of Seton Hall's Gibbons Institute of Law, Science, and Technology. He was educated at Harvard, Oxford, and Yale Law School, and clerked for the Honorable Judge Kermit Lipez of the U.S. First Circuit Court of Appeals and served as a fellow at the Institute for the Defense of Competition and Protection of Intellectual Property in Lima, Peru. Prior to joining Seton Hall, Prof. Pasquale practiced intellectual property law with Arnold & Porter LLP.

ERIC SCHWARTZ (MODERATOR) is currently a partner in their Intellectual Property and Technology section of Mitchell, Silberberg & Knupp's Washington D.C. office. He is adjunct professor of Copyright Law at Georgetown University Law Center and is the author of the chapter on U.S. Copyright Law in the standard treatise *Geller & Nimmer on International Copyright Law and Practice*. Prior to entering private practice, Mr. Schwartz served as Senior Legal and Policy Advisor, and Acting General Counsel at the U.S. Copyright Office.

Very truly yours,

Rose Auslander  
Jonathan Purow  
Chapter Co-Chairs

**THE COPYRIGHT SOCIETY OF THE USA**  
**Registration Form – New York Chapter**

|  |   |
|--|---|
| <b>Return This Form To:</b><br>352 Seventh Avenue, Suite 739<br>New York, NY 10001<br>Telephone: (212) 354-6401<br>Fax: (212) 354-2847<br>Email: amy@csusa.org | <b>Event: Does “Making Available” = Making Infringement?</b><br>Wednesday, December 10, 2008, NOON<br>The Princeton Club<br>15 West 43 <sup>rd</sup> Street<br>New York, NY10036-7497 |
|--|---|

*Please print clearly:*

NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**Registration Fees:**

Payment by check or credit card *must* accompany this form.

| Type                             | Cost    | After 12/4 | Quantity | Total | Total |
|----------------------------------|---------|------------|----------|-------|-------|
| Cost                             |         |            |          |       |       |
| <input type="radio"/> Members    | \$60.00 | \$70.00    | _____    | _____ | _____ |
| <input type="radio"/> Nonmembers | \$70.00 | \$80.00    | _____    | _____ | _____ |

**Method of Payment:**

MasterCard     
  Visa     
  American Express     
  Check

Credit Card No.: \_\_\_\_\_     
 Expiration Date: \_\_\_\_\_ MM / YY

Signature: \_\_\_\_\_ Security #: \_\_\_\_\_

Please make check payable to “THE COPYRIGHT SOCIETY OF THE USA”

**Cancellation and Refund Policy:**

Full refund will be issued if a cancellation is received in writing 5 days prior to the event. No refunds or credits will be issued for cancellations 3 business days before the event. Registrations are transferable.

**Additional Registrants:**

| First Name | Last Name | Email |
|------------|-----------|-------|
|            |           |       |
|            |           |       |
|            |           |       |

352 SEVENTH AVENUE, SUITE 739 NEW YORK, NY 10001  
 TEL: 212 354 6401 FAX: 212 354 2847 EMAIL: AMY@CSUSA.ORG

The Copyright Society of the U.S.A.  
352 SEVENTH AVENUE, SUITE 739  
New York, NY 10001  
Telephone: (212) 354-6401 • Fax: (212) 354-2847 • e-mail:  
[amy@csusa.org](mailto:amy@csusa.org)

**Scholarship / Financial Hardship Policy**

A limited number of scholarships are available to judges, law clerks, law professors, law students, attorneys, pro bono attorneys and paralegals who work for nonprofit organizations, legal service organizations or government agencies, recent graduates not yet employed, and unemployed attorneys who must take CLE courses in order to meet their state requirements.

All requests must be made in writing accompanied by a completed registration form. No more than three requests per person will be considered in any one year. Requests should describe the applicant's interest in the topic and justification for a waiver of fees.

Requests should be accompanied by a recommendation from an instructor in the case of students, or supervisors in the case of law clerks or paralegals.

Requests and scholarships are not transferable. Approval will be based on need and funds available on a first come first served basis. If approved, the scholarship will result in a waiver of the course fees for the specific program application. To apply, please send your request, in writing, prior to the reservation form deadline. Students must submit a copy of their student identification cards.

All requests for scholarships should be sent to: The Copyright Society of the U.S.A, 352 Seventh Avenue, Suite 739, New York, NY 10001. Please call (212) 354-6401 or e-mail [amy@csusa.org](mailto:amy@csusa.org) for further information.