

THE COPYRIGHT SOCIETY OF THE U.S.A.

New York Chapter
Jonathan Purow and Andrew Sparkler, Co-Chairs
Ari Abramowitz, Assistant Co-Chair

DIVVYING UP THE DIGITAL PIE: *THE FIGHT OVER MUSIC DOWNLOAD & E-BOOK ROYALTIES JUST GOT HOTTER.*

Over the past 5 years, numerous recording artists, such as the Allman Brothers and the Youngbloods, have filed lawsuits challenging how their labels compute digital royalties under pre-digital era (e.g., pre-2000) recording contracts. These suits typically allege that downloads sold by iTunes and other third parties are sales under *third-party licenses*, for which most record deals require the labels to pay an artist royalty of 50% of the label's "net royalty receipts." It appears that many labels have instead been treating these as "sales through normal retail channels," for which the royalty is usually just a relatively low percentage of wholesale or retail price. With digital on its way to becoming the dominant method of record distribution, the stakes for these older contracts are huge.

Which side is winning? On September 3, 2010, the 9th Circuit (in *F.B.T. Productions, LLC v. Aftermath Records*) clearly sided with artists, holding that third-party digital downloads are sales under third-party "licenses," and that Aftermath Records therefore should have paid Eminem's production company at the higher level of 50% of the label's net royalty receipts. Moreover, in doing so, the 9th Circuit reversed a *jury verdict* in favor of the label, and held that the trial judge should have granted summary judgment to F.B.T. as a matter of unambiguous contract interpretation. Therefore, Round 1 in this fight has gone to the artists.

Is the 9th Circuit decision right? Will other circuits follow it? What impact will the decision have if followed? And, although decided in the context of recording contracts, what clear implications will it have for book publishing royalties for e-books?

Please join our distinguished panel of experts, **Brian D. Caplan** (Partner, Caplan & Ross, LLP), **Stephen E. Gillen** (Partner, Wood, Herron & Evans, L.L.P.), and **Emio F. Zizza** (Vice President, Business & Legal Affairs, Warner Bros. Records), and moderator **John P. Luneau** (Law Offices of John P. Luneau), who will critique or support the 9th Circuit's holding, explain its likely legal and economic impact if followed, and discuss the actions that artists and labels should take in response.

To attend, please complete the form and email, mail or fax it to The Copyright Society of the U.S.A., 352 7th Avenue, Suite 739, New York, NY 10001, e-mail amy@csusa.org, fax # (212) 354-2847, by noon on March 30, 2011. We look forward to seeing you!

Date: Tuesday, April 5, 2011
Time: 12:00 p.m.-12:30 p.m.: Networking Reception (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: \$65.00 (members) \$75.00 (non-members) \$33.00 (students - Limited)
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:

BRIAN D. CAPLAN is a partner and founder of Caplan & Ross, LLP in New York. He has more than 26 years' experience litigating a broad range of entertainment, intellectual property and commercial matters, and has represented recording artists, producers, publishing companies, record labels, personal and business managers, accounting firms, professional athletes, and fine art dealers. Among the contractual disputes, defamation cases and copyright and trademark actions he has prosecuted or defended, Mr. Caplan is currently lead counsel in the plaintiffs' class action *Allman v. SonyBMG Music Entertainment*, in which the recording artist plaintiffs seek contract damages and declaratory relief on the ground that music downloads sold by iTunes and other third-party digital services are sold pursuant to a "license," and that artist royalties for such sales must therefore be paid at the rate of "50% of net licensing receipts" under the recording contracts.

Mr. Caplan speaks frequently at seminars and universities in the U.S. and abroad on intellectual property matters and the dynamics of the entertainment industry. He is an annual Lecturer before the Southern Regional Entertainment & Sports Law Symposium and has lectured as an authority on United States copyright law before the International Association of Entertainment Lawyers annual Midem conference in France. Mr. Caplan is a member of the Copyright Society of the U.S.A., the International Association of Entertainment Lawyers, and the Friar's Club.

STEPHEN E. GILLEN is a partner at Wood, Herron & Evans, L.L.P., a 140-year-old Cincinnati law firm focused on intellectual property, where he concentrates his practice on book publishing and entertainment transactions and disputes, internet issues, advertising law, computer law, copyrights, technology transfer, trade secrets, and related matters. His clients include several East Coast publishers and authors, artists, photographers, videographers, independent producers, Internet service providers, multimedia developers and software programmers throughout the U.S. Prior to entering private practice in 1994, Mr. Gillen worked for nearly 20 years in book publishing, including as in-house counsel for South-Western Publishing Company (an educational publisher owned by Cengage, f/k/a The Thomson Corporation). Mr. Gillen has served on copyright and permissions committees with the Association of American Publishers, and teaches courses in Media Business and Law at the University of Cincinnati and in Electronic Media Law at the College Conservatory of Music. He currently serves on the Council of Advisors to the Text and Academic Authors Association, the Board of Trustees of Voyageur Media Group, Inc., and is a member of the Authors Guild. Mr. Gillen is a frequent speaker on copyright and book publishing matters and has written widely in the area, including an article on royalties on e-book sales, entitled "Contract Updates for the E-Book Era," published in the August issue of the *Independent*, the monthly publication of the Independent Book Publishers Association.

EMIO F. ZIZZA is a highly accomplished music industry executive with nearly 15 years of experience working at global music entertainment companies. Mr. Zizza began his career at Arista Records under music industry legend Clive Davis. When Clive left Arista in 2000 to form J Records, Mr. Zizza joined that company which subsequently merged to become RCA Music Group. He currently serves as Vice President of Business and Legal Affairs for Warner Bros. Records. Throughout his career, Mr. Zizza has negotiated agreements for such superstars as Metallica, Eric Clapton, Faith Hill, Alicia Keys, Christina Aguilera, Kings of Leon, Dave Matthews Band, Pearl Jam, Aretha Franklin and Carlos Santana. In addition, Mr. Zizza has over 10 years of experience teaching at the law school level. He has taught courses such as "Entertainment Law" and "Law of the Music Industry" at Seton Hall Law School. Presently, Mr. Zizza is an adjunct faculty member at Rutgers University School of Law where he teaches "Entertainment Contract Drafting and Negotiation." Mr. Zizza is also a frequent guest lecturer on the current challenges facing the music industry.

MODERATOR:

JOHN P. LUNEAU is proprietor of the Law Offices of John P. Luneau, and handles transactional, copyright and trademark matters for entrepreneurs, artists, labels, producers, authors and non-profit organizations in the music, film, television, dance, arts and entertainment industries. Before launching his full-time entertainment practice in January 2011, Mr. Luneau served for 15 years as senior in-house business & legal affairs attorney at the large independent record labels and music publishers Rykodisc, Palm Pictures, and Razor & Tie, most recently as Vice President, Business & Legal Affairs at Razor & Tie in New York City. Before working in the music business, Mr. Luneau was General Counsel of the Pennsylvania Ballet, and an intellectual property associate at a major Philadelphia firm. Mr. Luneau has appeared on numerous music industry and copyright panels. For the past 20 years he has also been very active in the Copyright Society of the U.S.A., having served on the Executive Committee and as Trustee, co-founder and Chairman of the Philadelphia Chapter, co-organizer of the 1999 Annual Meeting, and Chairman of the New York Chapter.

Very truly yours,
Jonathan Purow
Andrew Sparkler
Chapter Co-Chairs

Ari Abramowitz
Assistant Co-Chair

THE COPYRIGHT SOCIETY OF THE USA

Return This Form To: 352 Seventh Avenue, Suite 739 New York, NY 10001 Telephone: (212) 354-6401 Fax: (212) 354-2847 Email: amy@csusa.org	Event: DIVVYING UP THE DIGITAL PIE: THE FIGHT OVER MUSIC DOWNLOAD & E-BOOK ROYALTIES JUST GOT HOTTER. Tuesday, April 5, 2011 NOON The Princeton Club 15 West 43 rd Street, New York, NY 10036-7497
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(There are a limited number of seats for full time students. Requests are taken in the order they are received)

I am not a member of the Copyright Society but would like to be added to the email list.

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Cancellation/Refund Policy: Full refund issued if cancellation is received in writing 5 days prior to event. No refunds or credits issued for cancellations 3 business days before the event. Registrations are transferable.

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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 for further information.