

U.S. Federal Copyright law treats copyright holders for musical works (typified by a songwriter) and musical performances (typified by a band or performer) differently.¹ When music is played publicly, musical work copyright-holders receive federally mandated performance royalty payments. However, holders of musical recording copyrights (generally) have no analogous means for continued income through the duration of the copyright irrespective of sales – they are limited to preventing copying and encouraging sales of their records.²

With the rise of the Internet, pirating music became easier than ever before. Not only was the cost to make a copy, previously requiring some medium such as a cassette tape, reduced to effectively zero, it became trivial to make many copies simultaneously throughout the world. These capabilities hit the mainstream through the Napster computer program, and any person with an internet connection could pirate music with apparent anonymity. CD sales – musical performance copyright-holders' main source of revenue – declined while Internet music piracy came into its prime, and the record companies pointed to piracy as responsible for decreased profits.³ This decrease in performance copyright-holders' revenue, coupled with their new right to control electronic – and only electronic – broadcasts begs the question: why do we treat holders of musical works and performance copyrights differently, and is it still justified?

¹ See 17 U.S.C. §§102, 106.

² Id. Note that Congress recently granted sound recording copyright-holders the right to control digital audio transmissions of their work. 102 U.S.C. §106. There is an obvious disparity here, as these onerous payments impact the then-new Internet radio stations, whereas their established and much better funded AM and FM siblings did not have to pay the same royalties.

³ This claim of causation is hotly debated, and cannot be relied upon as fact.