

EARLHAM COLLEGE



INFORMATION SERVICES

***IMPORTANT  
NEWS  
REGARDING  
DIGITAL  
COPYRIGHT  
VIOLATIONS!***

"Dear Sir/Madam:  
We have asked your Internet Service Provider [i.e., Earlham] to forward this letter to you in advance of our filing a lawsuit against you in federal court for copyright infringement." (See full text of letter on backside of this brochure.)

This is typical of the letters now being sent to college and university network users by the Recording Industry Association of America (RIAA). Fortunately, none of those users are at Earlham College, yet. Since these letters have gone to other undergraduate colleges (e.g., Barnard, Allegheny) we feel it appropriate to alert the Earlham Community about such letters.

Earlham has received 38 "cease and desist" letters in the past regarding alleged copyright infringement. However, this *new* letter raises the stakes. Colleges and universities are receiving numerous letters like the one on the backside of this brochure. The letter puts the user on notice that a law suit may be filed. There is also a warning to the user not to erase any of the files or programs associated with peer-to-peer sharing. The letter states that erasing files could be construed as obstruction of justice. Furthermore, the user is advised to consult with a lawyer. Like the earlier letter, if Earlham receives one of these new letters it will be passed on to the user associated with the machine identified by IP address.

The higher stakes of a threatened lawsuit comes in the midst of a long history of what is permissible. The laws are imprecise and court decisions are the main mechanism by which the precise meaning of the law is clarified. This new letter threatens the computer owner with legal action and encourages the owner to settle online through a website.

It is our judgment that it is unwise to share copyrighted files without the express written permission of the copyright holder. We recommend that members of the Earlham Community not allow access to these copyrighted files through peer-to-peer sharing.

Currently, when Earlham receives a cease and desist letter, Computing Services forwards the emailed letter to the user with the following notice:

"In response to this notification, ECS (Earlham Computing Services) requests that you immediately remove any copyrighted material on your computer from public access and reminds you that you are solely responsible for actions involving the IP address registered in your name. Failure to remove the material may result in the disabling of your network access."

Earlham prizes privacy. It is College practice to protect that privacy. Earlham does not disclose the identity of the individual associated with the IP address to any outside party without the force of a subpoena. Earlham also asserts that it is not responsible for the content of network traffic.

If a person using a computer on the Earlham network does anything illegal that person is responsible. If an action, such as sharing copyrighted files, comes to our attention, then the perpetrator could be charged for a violation under the Community Code, but we do not seek out or monitor file sharing activity. The notice from the RIAA is not sufficient for us to take that action under the Community Code. When network users receive the message from the Computing Center the user generally resolves the issue. To our knowledge, no one has been charged under the Community Code.

Readers who want to follow developments in the RIAA suits can find reports at Ars Technica (<http://arstechnica.com/>), "art of technology," which is an online news service focused on "original news and reviews, analysis of technology trends."

Please feel free to contact Tom Kirk (x1260) [kirkto](mailto:kirkto), Tom Steffes (x1366) [stefto](mailto:stefto), or Wes Miller (x1278) [wesm](mailto:wesm).

## **How do peer-to-peer (P2P) systems work?**

The heart of a peer-to-peer system is a piece of software that identifies the locations of files on other computers around the network which also contain that same software. It is a form of distributed computing which allows computers to exchange files among each other. Examples of such software are LimeWire, Gnutella, Kazaa and BitTorrent. Many of these software applications are configured by default to share the users' files, often without their knowledge. Once the software is loaded and files are placed on a personal computer those files can be identified by others and shared. It is important to be pro-active in managing file-sharing applications.

One of the dangers of P2P technology, aside from the copyright violation, is the danger of spyware, adware and other software that tracks activities on a computer. This invasion of privacy can lead to identity theft or the compromising of personal information.

Peer-to-peer exchange is not itself illegal. In fact there are many legitimate uses for P2P technology. What may be illegal is the distribution of any copyrighted file without the permission of the copyright holder. This includes audio, video, or text files and computer programs.

If you want to read more about peer-to-peer (P2P) technology see *isafe Peer-To-Peer Newsletter* (<http://www.isafe.org/imgs/pdf/education/P2PNetworking.pdf>).

To read more about individual P2P software and how each can be configured to avoid unknowing distribution of copyrighted material see the University of Chicago's Computer Center advice pages at <http://security.uchicago.edu/guidelines/peer-to-peer/> .

For a broad music and recording industry perspective on the issues surrounding P2P sharing see MusicUnited, [www.musicunited.org](http://www.musicunited.org) .

# Holme Roberts & Owen LLP

*Attorneys at Law*

February 28, 2007

## **Re: Notification of Copyright Infringement Claims**

Dear Sir/Madam:

We have asked your Internet Service Provider to forward this letter to you in advance of our filing a lawsuit against you in federal court for copyright infringement. We represent a number of large record companies, including EMI Recorded Music, SONY BMG MUSIC ENTERTAINMENT, Universal Music Group and Warner Music Group, as well as all of their subsidiaries and affiliates ("Record Companies"), in pursuing claims of copyright infringement against individuals who have illegally uploaded and downloaded sound recordings on peer-to-peer networks.

We have gathered evidence that you have been infringing copyrights owned by the Record Companies. We are attaching to this letter a sample of the sound recordings you were found distributing via the GnutellaUS (LimeWire) peer-to-peer network. In total, you were found distributing 476 audio files, a substantial number of which are sound recordings controlled by the Record Companies.

The reason we are sending this letter to you in advance of filing suit is to give you the opportunity to settle these claims as early as possible. If you contact us within the next twenty (20) calendar days, we will offer to settle the claims for a significantly reduced amount compared to what we will offer to settle them for after we file suit or compared to the judgment amount a court may enter against you. If you are interested in resolving this matter now, please contact our Settlement Information Line at 913-234-8181 or, alternatively, you may settle this matter immediately online at [www.p2plawsuits.com](http://www.p2plawsuits.com) using the CASE ID# that appears at the top of this letter.

In deciding whether you wish to settle this matter, here are some things you should consider:

The Copyright Act imposes a range of statutory damages for copyright infringement. The minimum damages under the law is \$750 for each copyrighted recording that has been infringed ("shared"). The maximum damage award can be substantially more. In addition to damages, you may also be responsible for paying legal fees we incur in order to pursue these claims, and are subject to having an injunction entered against you prohibiting you from further infringing activity.

Now that you are aware that a lawsuit may be filed against you, there is an obligation for you to preserve evidence that relates to the claims against you. In this case, that means, at a minimum, the entire library of recordings that you have made available for distribution as well as any recordings you have downloaded, need to be maintained as evidence. Further, you should not attempt to delete the peer-to-peer programs from your system - though you must stop them from operating. For information on how to do this, you may visit [www.musicunited.org](http://www.musicunited.org).

This is a serious matter and to the extent you have any questions, we strongly encourage you to contact us to ask those questions. Finally, if you would like more information regarding music downloading/file sharing and peer-to-peer networks, please visit [WWW.p2plawsuits.com/](http://WWW.p2plawsuits.com/).

IF WE DO NOT HEAR FROM YOU WITHIN (20) CALENDAR DAYS FROM THE DATE OF THIS LETTER, THEN WE WILL FILE SUIT AGAINST YOU IN FEDERAL COURT.

We are not your lawyers, nor are we giving you legal advice. We urge you to consult with an attorney immediately to advise you on your rights and responsibilities.

Sincerely,

Donald. J. Kelso