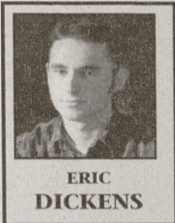


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Napster legal defense is an insult to precedent copyright law, company should lose lawsuit to RIAA

The battle over MP3 distribution and online copyright infringement is starting to resemble an episode of MTV's "Celebrity Death Match."



ERIC DICKENS

In one corner stands the pro-Napster contingency headlined by the boys of Limp Bizkit. In the other is Metallica, representing stingy old fiends with the gall to expect compensation for the use of their property.

Although this matchup will likely end

Piracy Online Special Series Part 1 of 3

up in clay on MTV, the case's real details are much more complicated than anything Mills Lane could sort out.

Whether the battle is fought in a courtroom or the squared circle, Napster should lose its case against the Recording Industry Association of America (RIAA).

Napster Inc. is fighting to survive in a California court because the RIAA has, quite correctly, accused the young software company of facilitating rampant copyright infringement. For years, RIAA has unsuccessfully sued various other players in the MP3 game, until the breakthrough case against MP3.com.

Earlier this year, the RIAA won a multimillion-dollar lawsuit against the Website for making online versions of CDs available to the site's My MP3.com subscribers.

The MP3 situation has reached a crux, and it is time for the courts to make the right decision. The RIAA should win its suit against Napster, shutting down the service and cutting the head off a prominent source of criminal activity.

In July, Napster entered its first brief to California Judge Marilyn Patel. Napster's brief focused on two simple points: There are correct, legal uses of Napster, and not all MP3s are illegal.

Napster's first point is one many other MP3 companies have used to defend themselves in court. Most MP3-related operations have remained legal by constantly finding loopholes. Because some MP3s are legally released by their owners or are copied, or ripped, from a CD the consumer owns, MP3 applications, Websites and portable devices maintain a possibility for legal use.

Likewise, Napster's July brief stated that its service is legal because it can be used to trade legal files — that the potential for legal use justifies its overwhelming illegal use. This logic amounts to little more than pulling the wool over the judge's eyes.

Sure, Napster has legal uses, but so do guns. Just because guns have legal uses does not mean there should not be regulations on who owns one and how they are used. Even though Napster lawyers contend the application can be used legally, this does not guarantee its legality.

A more realistic comparison is Sony's Betamax technology. In 1984, when the motion-picture industry sued Sony over the company's Betamax home video recorder, the precedent of defining a technology's legality was set.

The courts decided that, if a technology has "substantial non-infringing uses," consumers could not be denied access to it. While the Internet, the MP3 file format, MP3 applications and Websites all have "substantial non-infringing uses," Napster, as it is currently being used, does not.

The vast majority of file trading using Napster servers is blatant copyright infringement. To contest that Napster's few legal transactions prove the program's legality is working a loophole well enough to make any politician proud.

The second point of Napster's original brief contends that the 1992 Audio Home Recording Act (AHRA) and last year's RIAA/Diamond Multimedia Systems lawsuit protect the trading of music files for non-commercial use. The law states that consumers can make digital recordings of music for private use, but those recordings cannot be copied for other consumers.

Unfortunately for Napster users, they are copying files for other users, even if they are sharing MP3s they legally ripped from their own CD. The AHRA allows

people to make MP3s, but posting them for mass distribution is still illegal.

Napster's July legal argument verified the fact that the program has legal uses and that some MP3s are legal, but this is not enough to save Napster. Accordingly, Judge Patel slapped an injunction on the company, requiring it to unlist all illegal files. While this injunction would have temporarily shut down Napster, the company's lawyers quickly fired back with an appeal that has kept the service up and running for now. On Friday, Napster filed a more complete brief to once again fight for the application's legality. Napster contends it cannot comply with Patel's ruling to filter out illegal

MP3s because "file names often do not distinctly identify ... whether the music is from a CD (in which the plaintiff recording companies may own the rights) or a recording of live concert (which many artists allow to be freely circulated ...)," so it cannot effectively remove illegal files.

The brief also states that following Patel's request would restrict its users and society from the innovative and important peer-to-peer technology. While it is true filtering out the bad from the good would require a total redesign of Napster's technology, and that redesign

would deprive users of the program's few legal uses, doing so is a necessary step to finally make Napster a legal application and ensure that those who own the copyrights, be it the artist or the record company, stay in control of their property.

Napster may not want to hear it, but a line has to be drawn between the innocence of the program's potential and the blatant criminality of trading copyrighted files. Napster's users are breaking copyright laws with almost every point and click. Napster's legal arguments have kept it online so far, but the loopholes are running out.

As sad as it may be, the end of Napster in its current state will come sooner or later. If the RIAA wins this lawsuit, the second generation of peer-to-peer trading, one that satisfies all parties and does not make a mockery of copyright laws, can be ushered in.

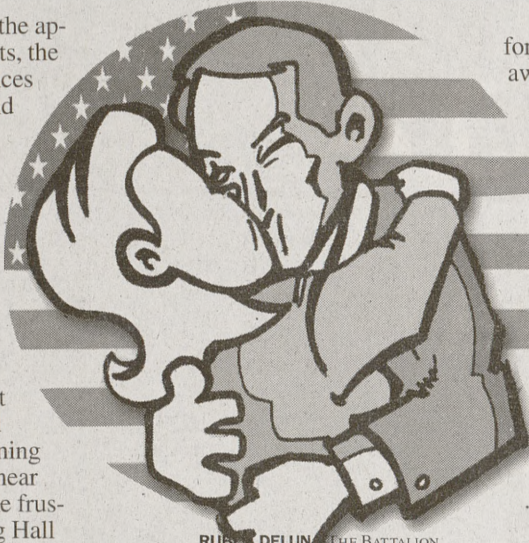
Eric Dickens is a senior English major.



RUBEN DELUNA/THE BATTALION

Bull Board

Good bull — With the appreciation of many students, the Department of Food Services will continue the Outbound Dining option for meal plans at all campus dining facilities through the fall semester. Upper-classmen: remember the days before the expansion of Outbound Dining? The only options were to eat at a dining hall or redeem a measly Aggie Meal Credit (AMC). Contrary to Food Services' catch phrase, dining on campus was nowhere near fun back then — more like frustrating. With Sbsa Dining Hall scheduled to reopen for the spring semester, most students should hope things do not go back to the way they were.



RUBEN DELUNA/THE BATTALION

open-mouth kiss between Vice President Al Gore and Tipper, his wife, at last week's Democratic National Convention was extremely cringe-worthy.

One must feel some sympathy for the man — he was seconds away from giving the speech of his political life and all he had to do was embrace his wife before he went to the podium. Instead, he fumbled and added more fodder to his awkward robotic persona. One can only speculate what Gore's exact thoughts were as he approached his wife:

"Whatever you do, Al, do not look awkward. Do not look awkward. Hug Tipper — check. Gaze into her eyes — check. Peck her on the lips ... wait a minute.

Something is wrong. Why are we awkwardly staring at each other? Just kiss her before things get worse. Danger! Danger! Does not compute! Does not compute!"

— David Lee

Bad bull — The steamy



MIKE LUCKENBACH ATLANTA CONSTITUTION

Tradition of overhype

Despite risk of letdown, new students can find help

Not surprisingly, freshman year is difficult for students at Texas A&M. It is the year they arrive on campus, often hours away from anyone they know. No one care how important they were in high school.



JESSICA CRUTCHER

No matter how much scholarship or financial aid money one receives, it probably will not go as far as expected. If students are fortunate enough to make it through the entire year without subsisting solely on ramen noodles at some point in time, they should thank the gods that be for this blessing.

Is Texas A&M an excellent school? Yes. But it is not the happiest place on earth, where good grades flow freely and everyone says "howdy."

Considering all of this, one can become disillusioned rather quickly with the whole "Fightin' Texas Aggie Spirit" front A&M is so fond of presenting.

College life is not as fun as it was made out to be during recruiting sessions and freshman orientation.

Far from being one big happy family, A&M has the same number of squabbling student groups with inflated senses of self importance as every other major university.

Many students will discover that counselors and office personnel are not quite as helpful after their money got reeled hook line and sinker into that void that is the Texas A&M University System.

One of this writer's most vivid memories of freshman year was walking into a University office that shall remain nameless to request an appointment in person since phone calls had gone unreturned for five days.

Imagine the joy with which this response was met: "Look, all our counselors are really busy recruiting right now, and they just don't have time to talk to you." So much for caring staff at a University where everyone is supposedly more than a number.

Is Texas A&M an excellent school? Yes. But it is not the happiest place on earth, where good grades flow freely and everyone says "howdy." There really are people out there who care. Somewhere. The hard part is figuring out who they are.

There are entirely too many students who stumble blindly through their college careers because they have no idea who to turn to for help.

Thankfully, several programs are devoted to helping students resolve conflicts. These organizations include the Student Counseling Service, the Department of Student Life, Residence Life, the Student Financial Aid Office, and the Department of Multicultural Services.

The Student Counseling Service provides a wide variety of services, from crisis counseling to career advice.

The Department of Student

Life's goal is to provide education, outreach, and support for students. It also provides services for specific groups of students, such as mi-

Considering all of this, one can become disillusioned rather quickly with the whole "Fightin' Texas Aggie Spirit" front A&M is so fond of presenting. College life is not as fun as it was made out to be during recruiting sessions and freshman orientation

norities and gay and lesbian groups.

The Student Financial Aid Office can be a lifesaver for students struggling to pay tuition. More information can be found at <http://vpsa.tamu.edu/services.htm>.

Texas A&M really is a top-notch University, but it is not the idyllic place people make it out to be. Despite A&M's drawbacks, freshmen should remember there are places to go for help.

No matter how horrible things seem, there is a good chance someone out there has the ability to fix the problem.

And in the long run, if students can find that helpful person, everything really will be all right.

Jessica Crutcher is a junior journalism major.