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Roger Williams University School of Law

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# Newsroom

## Murphy on Illegal Music Downloads

Professor Colleen Murphy spoke with Providence Business News about a man successfully sued by the music industry for illegal music downloads.

**From PROVIDENCE BUSINESS NEWS:** "Illegal tunes no music to his ears" by Rebecca Keister, PBN

Staff Writer



**JUNE 11, 2012:** Joel Tenenbaum just received his doctorate at Boston University, where he'll start teaching statistics courses to MBA students this fall.

His post-graduate work took six years to complete. Before that, he earned a bachelor's degree at Goucher College in Maryland. He's been in school his entire adult life and throughout it all there's been one constant: having his name associated with illegal downloading of music files.

"I just got my doctorate and I'm defending my actions as a teenager," Tenenbaum said. "This isn't my normal life. If you were to read news articles, you'd think I'm an activist of some sort. My primary amount of time is spent [on work] and spending time with family and friends. I try to focus [on that]."

Tenenbaum, 28, has been defending since he was approximately 19 his admitted illegal downloading of music files on the Internet for which he has been ordered to pay Sony BMG Music Entertainment \$675,000 in damages – an amount he says he simply can't afford and that was recently upheld when the U.S. Supreme Court refused to hear his appeal.



“I think there’s a lurking question here,” **said Colleen Murphy, a professor of law at the Roger Williams University School of Law.** “You know, [it’s] sort of contrary to [the] ordinary [where] juries stick up for the little guy. [The jury] in [this case sided] in favor of the big record companies, which is sort of an interesting twist.”

The lurking question, **Murphy said**, is whether Tenenbaum actually will end up paying the fines.

His case began in 2003 when, amid a Recording Industry Association of America crackdown on file-sharing on college campuses, he was served with a pre-litigation letter that in the early to mid-2000s many others like him, including a dozen students at Brown University in Providence, received.

The letter stated the association had found Tenenbaum, through IP address tracking, had stolen copyrighted artist material by downloading songs through free file-sharing websites.

A settlement was offered somewhere between \$3,500 and \$4,000, Tenenbaum said, but he couldn’t afford it at the time.

Instead he sent RIAA a \$500 money order which, he said, they sent back uncashed. He said he also was turned down for the association’s hardship program and then didn’t hear anything.

Until, that was, August 2007, when a formal complaint was left at this door step.

“Then they wanted something like \$12,000, which I didn’t think was reasonable,” Tenenbaum said. “I did not think it was going to take this long.”

In 2009, a jury ordered damages of \$22,500 per each of 30 songs he admitted downloading, fining him under U.S. copyright-law statutes that dictated an allotment between \$750 to \$150,000 per song.

The damages were reduced to \$67,500 by a judge, who said the original fine was unconstitutionally excessive. But the 1st U.S. District Court of Appeals in Boston reinstated the award.

Tenenbaum's case has retained national attention in the ensuing years because it is one of just two file-sharing cases out of 12,000 that have gone to trial.

Jammie Thomas-Rasset, a Minnesota mother of four, was fined close to \$2 million by a jury for her illegal downloads. Damages have been reduced to \$54,000, but the suing record companies are appealing that decision.

Thomas-Rasset's case has been through three trials.



Tenenbaum's case is currently in a wait-and-see phase.

The Supreme Court's refusal sends the damages decision back to Boston's District Court, where Judge Rya W. Zobel will decide if the damages awarded are excessive.

"What's likely to happen [is that] the district judge, I think, will likely find the jury's award was excessive on nonconstitutional grounds and [then] the record companies will challenge that, and they likely will appeal,"

**Murphy said.**

The Higher Education Opportunity Act of 2008 issued regulations on peer-to-peer file sharing that put into place strict compliance policies at colleges and universities. Rules were effective in July 2010.

Institutions must, among other things, provide students with a description of copyright law and campus policies and combat violations with monitoring systems.

“In 2008, Brown put programs in place to address the unauthorized distribution of copyrighted material,” said Darlene Trew Crist, director of news and communication. “The university takes this issue seriously, works to educate the Brown community and offers legal alternatives to download music and other copyrighted material, which together seem to have been effective.”

RIAA, said Liz Kennedy, director of communications, maintains an active investigation team and notifies schools when a student there has been caught file sharing. Kennedy said thousands of such notices are sent each week to schools nationwide.

The association said that awareness of the illegality of downloading without permission increased from 35 percent to 72 percent of college students since it began its lawsuit program.

Consumer-market-research firm The NPD Group reported that unpaid music acquisition fell to 13 percent of all Internet users in 2011 from its peak of 19 percent in 2006.

There is still a problem, however, Kennedy said.

The Institute for Policy Innovation reports that illegal downloads account for \$12.5 billion in lost dollars and \$2 billion in lost wages.

As for Tenenbaum, he's not expecting much cooperation from RIAA after such a long struggle.

“I don't think the RIAA is going to make any offer to me that I can reasonably pay,” Tenenbaum said. “I'll be declaring bankruptcy if the judgment stands.” •

*For full story, click [here](http://www.pbn.com/detail.html?sub_id=47f2a0d7f0ba). [http://www.pbn.com/detail.html?sub\_id=47f2a0d7f0ba]*