

**Before the
Federal Trade Commission
Washington, DC 20580**

In the Matter of)
)
Mp3DownloadCity.com and)
MyMusicInc.com)
_____)

**COMPLAINT AND REQUEST FOR INVESTIGATION,
INJUNCTION, AND OTHER RELIEF**

I. INTRODUCTION

1. The Center for Democracy and Technology (CDT) files this Complaint and Request for Relief with the Federal Trade Commission (FTC) seeking immediate action to prevent harm to Internet users as a result of deceptive advertising by Mp3DownloadCity and MyMusicInc (hereinafter “download websites”) and/or their subsidiaries and/or affiliates. This matter is within the Commission’s jurisdiction over unfair and deceptive trade practices.

2. The download websites claim to offer “100% legal” downloads in exchange for a subscription fee. In fact, they merely point users to filesharing software and provide instructions for its use. Users of these sites users are led to believe that they are purchasing a license to download and use songs and movies—much like they would on a licensed subscription service like Rhapsody or the new Napster.¹ In fact, users are provided no such license, and if they follow the sites’ explicit invitations to download “movies still in theatres” or music by the Beatles and the Rolling Stones, they may face substantial legal liability.²

¹ Subscription services—which charge a periodic fee for access to a large library of music and which are most similar to the sites in question—now share the market equally with *a la carte* download services like Apple’s iTunes, according to one recent study: “While 16 percent of online adults currently enjoy downloading 99-cent singles, 17 percent have been wooed by subscription services such as Napster and RealNetworks’ Rhapsody.” Dines C. Sharma, *Study: Subscription services to drive digital music*, C|NET (Dec. 1, 2004) at http://news.com.com/2102-1027_3-5473153.html

² The legality of downloading some copyrighted works may be a gray area in certain situations; for example, the legality of downloading a digital version of a CD track already owned by a consumer is an untested proposition in the US. However, the behavior encouraged by the download websites could result in several types of legal liability. In *A & M Records, Inc. v. Napster*, the Ninth Circuit found that “Napster users who upload file names to the search index for others to copy violate plaintiffs’ distribution rights. Napster users who download files containing copyrighted music violate plaintiffs’ reproduction rights.” 239 F.3d 1004, 1014 (9th Cir. 2001). Used with their default settings, most of the filesharing applications promoted by the download websites will share the music and movies that a user downloads and require action by a user to avoid such sharing. Regardless, CDT believes the assurance provided by

3. The download sites are polluting a large and growing market for legitimate music download services. With focus nationwide on the movie and music industry actions against illicit file sharing, consumers are increasingly seeking alternative legal routes to access popular content online.³ In many cases, such alternatives take the form of licensed subscription services — like Rhapsody or Napster— that closely resemble the services that Mp3DownloadCity and MyMusicInc claim to offer.

4. The risk of consumer confusion in such circumstances is not merely speculative. Several users that were sued by record companies for illegal filesharing said they mistakenly believed that because they had paid money for filesharing software, they were entitled to download popular music legally.⁴ One individual who ran a website similar to the two identified in this complaint reported that she received 20 to 30 subscriptions a day over a 3 month period.⁵

5. Average consumers cannot reasonably be expected to distinguish between genuine licensed download subscription services like Napster, and sites like Mp3DownloadCity and MyMusicInc whose misleading claims to offer “100% legal” services put consumers at risk. These sites are preying on the goodwill of Internet users trying to lawfully access content in the digital media marketplace. By fostering consumer confusion, and unfairly competing with licensed services, they are also impeding the development of legitimate offerings. CDT believes that the advertising and promotional materials of Mp3DownloadCity and MyMusicInc constitute deceptive trade practices.

6. These deceptive services inhibit the development of legitimate markets for downloading copyrighted content online. Licensed distributors of digital content are deprived of customers, and consumers lose trust in the claims made by legitimate players. Over the last decade, the development of consumer trust in online commerce has led to the current vibrant market for purchases of physical goods over the Internet. Likewise, developing a legitimate market for licensed content online will require making consumers feel safe as they download and access digital music, videos, games and other media.

7. In light of the harms suffered by Internet users, CDT requests that the Commission

- a) Investigate Mp3DownloadCity and MyMusicInc and their subsidiaries and affiliates to determine who is responsible for the deceptive advertising.
- b) Enjoin Mp3DownloadCity, its affiliates and other responsible parties from future

the download websites’ claims that the activities promoted on those sites are “100% legal” is clearly misleading.

³ One recently released study found that 47 percent of people who downloaded music in December 2004 and who were age 12 or older paid a fee to do so. That same statistic was 22 percent a year ago. Dines C. Sharma, *Study: Fee-based music gains on swapping*, ZDNET (Feb. 10, 2005) at http://news.zdnet.com/2100-9588_22-5571262.html.

⁴ “My mom paid \$29.95 for Kazaa and assumed she was using a legitimate service,” said Marilyn Rodell, whose mother is being sued. “How was she supposed to know the difference between Kazaa and something like Pressplay where you pay \$9.95 a month?” Michelle Delio, *Rude Awakening for File Sharers*, Sept. 11, 2003, at <http://www.wired.com/news/digiwood/0,1412,60386,00.html>. “I thought it was OK to download music because my mom paid a service fee for it.” *12-Year-Old Sued for Music Downloading*, NEW YORK POST, Sept. 9, 2001.

⁵ Neil Strauss, *A Wary Eye on Sites for Music Sharing*, N.Y. TIMES, Jan. 1, 2004, at E1.

- use of deceptive advertising.
- c) Enjoin MyMusicInc, its affiliates and other responsible parties from future use of deceptive advertising.
- d) Pursue damages or other relief as the Commission finds appropriate.

8. CDT highlights two egregious actors in this complaint. In our research, we found many other websites that contain language similar to that found on the websites of these two actors. Many of the websites we found offer affiliate agreements. The two websites we have identified, and others like them, may be connected through such affiliate relationships. We intend to augment this complaint as we uncover additional information and additional deceptive sites.⁶ The FTC is in a unique position to pursue the clearly bad actors behind the websites we have identified in this complaint, as well as to investigate the affiliate relationships among these or other similar websites.

II. PARTIES

9. The Center for Democracy and Technology (CDT) is a non-profit, public interest organization incorporated in the District of Columbia. CDT is dedicated to preserving democratic values and civil liberties on the Internet and other interactive communications media. CDT strives to promote the free flow of information and content online without impairing the underlying technologies of the Internet. CDT pursues its mission through public education, grass roots organizing, litigation, and coalition building.

10. Mp3DownloadCity is hosted at the IP address 207.44.240.176. The domain name is registered to Steve Scott, 7621 S. Beverly Blvd, Beverly Hills, CA 90210. A letter to this address was returned. The billing contact is listed as David Holt, 405 Sylvan Terrace, Hopkinsville, KY 42240. The IP address is registered to Everyones Internet Inc., located at 2600 Southwest Freeway, Suite 500, Houston, TX.

11. MyMusicInc is hosted at the IP address 69.28.236.59. MyMusicInc is registered through Network Solutions, and its registration information is protected by Network Solutions' privacy guard proxy registration service. The IP address is registered to Groupe iWeb Technologies Inc. Groupe iWeb is located at 3185 Hochelaga, Montréal, Québec. Users who register with MyMusicInc are directed to a second website, MyMusicMember.com. MyMusicMember.com is hosted at the IP address 66.206.13.29. MyMusicMember's registration information is also protected by Network Solutions' privacy guard. The IP address is registered to Cyber World Internet Services, located at 12402 N. Division St. #240, Spokane, WA.

⁶ CDT originally included a third website, Mp3DownloadHQ.com, in our complaint. In response to our letter, the site's owner, Active Publishing, agreed to remove the "100% legal" label from this site and several other similar sites. We are still reviewing those sites to determine whether the remaining promotional materials are deceptive.

III. STATEMENT OF FACTS

12. CDT was first alerted to this problem both by encountering misleading advertisements for “100% legal” services during our own use of the Internet, and through a growing number of press accounts documenting the consumer harm and confusion arising from such websites.⁷

13. It is difficult for us to exactly quantify the number of consumers affected by such sites, particularly with respect to the two specific sites identified in this complaint. However, anecdotal evidence suggests that significant numbers of consumers use such sites, and that many are confused by the claims of legality. As mentioned above, one individual who ran a website similar to the two identified in this complaint reported that she received 20 to 30 subscriptions a day over a 3 month period.⁸ One reporter writes that he receives “at least one e-mail a day” from confused consumers trying to understand the legality of such services.⁹ The sheer volume of advertising that CDT has encountered in its research suggests a high level of commercial activity likely amounting to hundreds of thousands or millions of dollars in revenue per year.

14. To investigate these services in detail, CDT used a variety of search engines to search the Internet for “mp3,” “legal downloading,” “music downloads,” and “legal mp3,” much like a consumer in search of these products. The results included legitimate download services, the websites in this complaint, and dozens of other websites which appear to be similarly deceptive. It was in this manner that CDT found the two websites identified in this complaint: Mp3DownloadCity.com and MyMusicInc.com.

15. CDT signed up for each of these services. Both promise unlimited legal downloads, charges for membership, and then instructs their members to install peer-to-peer filesharing software as a means of accessing these downloads. Particular claims made by each service are listed below.

16. CDT attempted to contact both of these services directly before filing this complaint (see Appendix B), but received no responses.

Mp3DownloadCity.com

17. This service promises legal downloads, charges nearly \$25 and then instructs its clients to download peer-to-peer filesharing software. Only once users have subscribed are they told about “MP3 legal issues,” including the illegality of sharing copyrighted works.

18. This website begins with the claim that “Napster's Number One Replacement Software is Back.” Scrolling down, users are told that it is “100% Legal Guaranteed.” Users are told:

⁷ See, e.g., Neil Strauss, *A Wary Eye on Sites for Music Sharing*, N.Y. TIMES, Jan. 1, 2004, at E1. Eliot Van Buskirk, “100% Legal MP3s,” *my foot*, C|NET (Jun. 23, 2004) at http://reviews.cnet.com/4520-6450_7-5140720-1.html

⁸ Neil Strauss, *A Wary Eye on Sites for Music Sharing*, N.Y. TIMES, Jan. 1, 2004, at E1.

⁹ Eliot Van Buskirk, “100% Legal MP3s,” *my foot*, C|NET (Jun. 23, 2004) at http://reviews.cnet.com/4520-6450_7-5140720-1.html

AND BEST OF ALL PEOPLE ARE NOT GETTING SUED FOR USING OUR SOFTWARE. YES! IT IS 100% LEGAL.

19. Users are also promised two bonuses:

BONUS #1 Sign Up Today and Get Access To Free Full Version Games For PC, Playstation 1&2, XBOX, Nintendo, Dreamcast and more For FREE.

...

BONUS #2 Sign Up Today and Get Access To Free Full Length Movie Downloads That are still in Theatres and on DVD.

20. We signed up for the lifetime membership of \$24.95 and logged into the website.¹⁰ Under “Getting Started,” we were instructed to download from a list of “filesharing software.”¹¹ This list included Blubster, Kazaa and KazaaLite. This software provides access to peer-to-peer networks where many copyrighted works are shared illegally. (These networks are, in fact, also used for lawful, non-infringing purposes. But the vast majority of “popular” works promised by the download websites are shared unlawfully.)

21. Mp3DownloadCity's section on “How to Download Games” explains:

The #1 Featured software to use to download games is Kazza [sic]. Below are instructions on how to download the software to start downloading games. After you finish downloading Kazza [sic] you will now be able to type in the name or title of the games you are looking for in the search box to locate the files.¹²

22. Mp3DownloadCity's section on “How to Download Movies” explains:

You can find thousands of movies to download on kaaza. Type in the name of the movie or video title in the search field then click search.¹³

23. After users have paid to subscribe to the site, they are presented with a link called “legal issues.” This link leads to an external article entitled “Mp3: Legal and Ethical Issues.”¹⁴ This article explains:

You see, despite the wild popularity of MP3s these days, the harsh reality is that almost all of this activity is patently illegal. Any time you distribute music that you don't own - and this includes posting “Ridin' the Storm Out” to your homepage - you're breaking copyright laws.

¹⁰<http://www.mp3downloadcity.com/login/welcomemp30.htm>

¹¹<http://www.mp3downloadcity.com/file1a.htm>

¹²<http://www.mp3downloadcity.com/gameshelp.htm>

¹³<http://www.mp3downloadcity.com/movieshelp.htm>

¹⁴Adam Powell, *MP3: Legal and Ethical Issues*, at <http://webmonkey.wired.com/webmonkey/99/06/index1a.html>

MyMusicInc.com

24. This service promises legal downloads, charges nearly \$25 and then instructs its clients to download peer-to-peer filesharing software as a means of accessing the claimed legal downloads.

25. The front page advertises: “Download FREE Unlimited Music, Movies, Games & More.” A link entitled “100% Legal” leads to a website¹⁵ further describing these claims:

Today, there are over 220 million users trading MP3s & videos on these LEGAL filesharing networks. You can be assured that Filesharing is 100% legal, MP3s are 100% legal, and your membership to **MyMusicInc.com** is 100% legal.

...

MyMusicInc.com does not condone piracy or breaking copyright laws. The MP3 sharing tools available on our website are powerful search tools & we recommend that you use your discretion when downloading music and movie files.

26. The disclaimer contains a link entitled “Federal Judge Rules: File-swapping tools are legal” directing users to a news article¹⁶ describing the Grokster district court ruling.

27. Another link on MyMusicInc's page¹⁷ leads to that same disclaimer in the above paragraphs and is in the form of this image:



28. We registered for lifetime membership at a cost of \$24.95. Once a member, we were directed to a different website: <http://www.mymusicmember.com/home.asp>. We were presented with the question:

HELP: How do I download music?

Have you installed the search program yet?

YES | NO

29. Clicking on NO led us to a website that instructed us to install LimeWire filesharing software.¹⁸ This software provides access to peer-to-peer networks where

¹⁵<http://www.mymusicinc.com/legal.htm>

¹⁶John Borland, *Judge: File-swapping tools are legal*, C|NET (Apr. 25, 2003). at http://news.com.com/2100-1027_3-998363.html

¹⁷<http://www.mymusicinc.com/download.htm>

¹⁸<http://www.mymusicmember.com/getstarted.asp>

copyrighted works are shared illegally. After returning and clicking YES, we were instructed to test LimeWire with the following example¹⁹:

Enter a portion of the song title, artist name or album title in their appropriate text boxes (keep the search generic to start, as the program has advanced filtering you can use to narrow down your search results)

Example: song title = 'no satisfaction'; artist name = 'rolling stones'

“Satisfaction,” by the Rolling Stones, is a copyrighted song.

IV. GROUNDS FOR RELIEF

30. The promotional practices described above constitute deception. Under well-established policy, the FTC will find deception if there is a representation that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.²⁰

The Representations Are Misleading to the Reasonable Consumer.

31. Websites that offer “unlimited downloads” and that claim their services are “100% legal” or “safe” mislead consumers into believing that the services do not expose them to copyright liability. Reasonable consumers are unlikely to be aware that these claims are accurate only to the extent that they describe owning or downloading the peer-to-peer software itself, or a small subset of public domain and licensed content.

32. Specifically, consumers are likely to evaluate the websites' claims in light of the growing national attention to the legal risks of filesharing and the widely publicized lawsuits by the recording and movie industries against filesharers. In many cases, the websites specifically reference such lawsuits in their materials. Reasonable consumers will understand the websites' claim as intended to distinguish them from “illegal” peer-to-peer networks. The representations on the download sites are thus likely to lead many consumers to believe that their subscription fee grants them a license to download popular copyrighted music and video content.

33. This concern is exacerbated because the claims of legality are juxtaposed with invitations to download “movies still in theatres” and with demonstrations using clearly copyrighted music as examples. Many consumers will reasonably understand the download sites' claims of legality as applying to the activities specifically encouraged or illustrated on those sites.

34. Consumers' belief that paying a subscription fee would entitle them to licensed access to copyrighted works is clearly reasonable given that several legitimate services offer just such an arrangement. Many consumers will confuse the download sites

¹⁹http://www.mymusicmember.com/downloading_music.asp

²⁰See 15 U.S.C. § 45 (2000). James C. Miller, *FTC Policy Statement on Deception*, § V (Oct. 14 1983). <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter *Policy Statement*].

described above with such legitimate licensed downloading options. For example, it is difficult to see how an average consumer could be expected to distinguish paying a subscription fee at one of these download sites to access popular music through LimeWire or Kazaa from paying a subscription to legally access the same music through Napster.

35. The download sites' written disclaimers concerning copyright liability do not allow them to escape the misleading effects of their prior claims of legality. As the FTC's Policy Statement on Deception notes, "Accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation."²¹

36. For each of the download sites described in this complaint, disclaimers are only presented to consumers either

- a) after they have subscribed to the service (and hence already paid the subscription fee), or
- b) after they have followed a link from one of the pages making the "100% legal" to a subsequent page, seeking clarification.

Thus consumers only see disclaimers after they have signed up – and paid – or if they decide to investigate the claims of the services being "100% Legal," rather than accepting them at face value.

37. Additionally, in many instances even if consumers do find and read the disclaimers, the text does little to remedy the original impression created by the headlines on the download sites: an impression of unlimited music downloads that are legal and safe. Several of the disclaimers contain pro-forma citations to copyright law and to the fact that unauthorized downloading may be a violation of the law, without specifically telling consumers that the "100% legal" claim applies only to ownership of filesharing software, and not to its use for downloading copyrighted materials. One disclaimer even begins by saying that "MP3's and filesharing networks are legal and using them is legal."

The Representations Are Material.

38. Express claims are presumed material.²² The decision to promote products in a certain way reflects a belief that consumers are interested in the advertising and that the claims are therefore material. Claims that software and services are "100% Legal" are made by the advertisers with the belief that consumers are concerned about the legality of music, videos and software that they acquire online.

39. Claims about areas that significantly involve reasonable consumer concern are

²¹*Policy Statement*, § III. Citing *Litton Industries*, 97 F.T.C. 1, 71 n.6 (1981) and *Beneficial Corp v. F.T.C.*, 542 F.2d 611,618 (3d Cir. 1976).

²²*Policy Statement*, § IV. Citing *Central Hudson Gas & Electric Co. v. PSC*, 447 U.S. 557, 567 (1980).

also considered material.²³ As described in detail above, consumers are aware of copyright infringement litigation against users of filesharing systems, and are concerned about the legality of online sources of music and videos. The claim that a particular music or video download service is “100% legal” is therefore material on this ground as well.

V. CONCLUSION AND REQUEST FOR RELIEF

40. Because of the deceptive nature of the promotions described above, and because of the resulting harm to consumers, CDT is requesting that the Commission:

- a) Investigate Mp3DownloadCity and MyMusicInc and their subsidiaries and affiliates to determine who is responsible for the deceptive advertising.
- b) Enjoin Mp3DownloadCity, its affiliates and other responsible parties from future use of deceptive advertising.
- c) Enjoin MyMusicInc, its affiliates and other responsible parties from future use of deceptive advertising.
- d) Pursue damages or other relief as the Commission finds appropriate.

41. The development of a viable marketplace in online content will be substantially harmed if users cannot distinguish legal services from unlicensed, illicit downloading. Therefore, it is imperative that the Commission act in cases such as these where deceptive advertising is misleading to well-intentioned consumers.

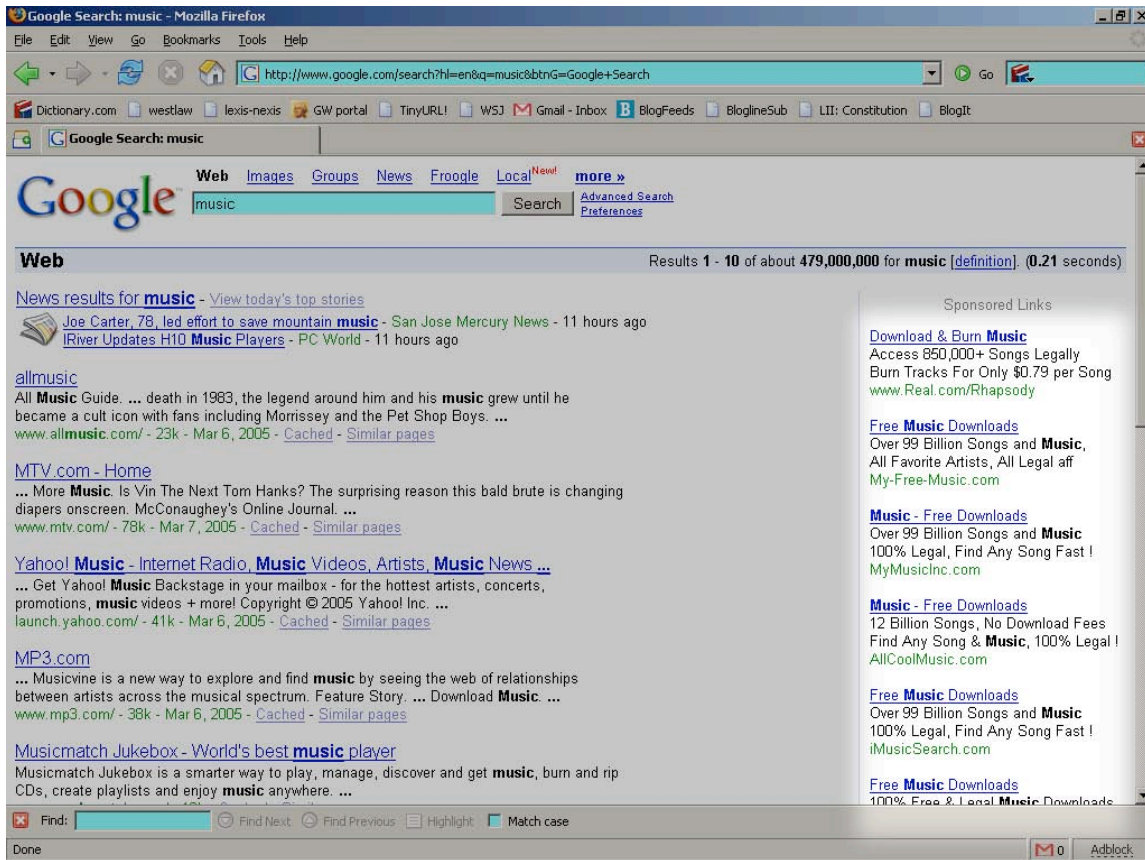
Respectfully submitted,
Alan Davidson, Associate Director
Ari Schwartz, Associate Director
Michael Steffen, Policy Analyst
Guilherme Roschke, Law Clerk

Center for Democracy and Technology
1634 I St., NW
Washington, DC 2006
202-637-9800
<http://www.cdt.org>

March 8, 2005

²³*Policy Statement*, § IV.

Appendix A: Screenshots

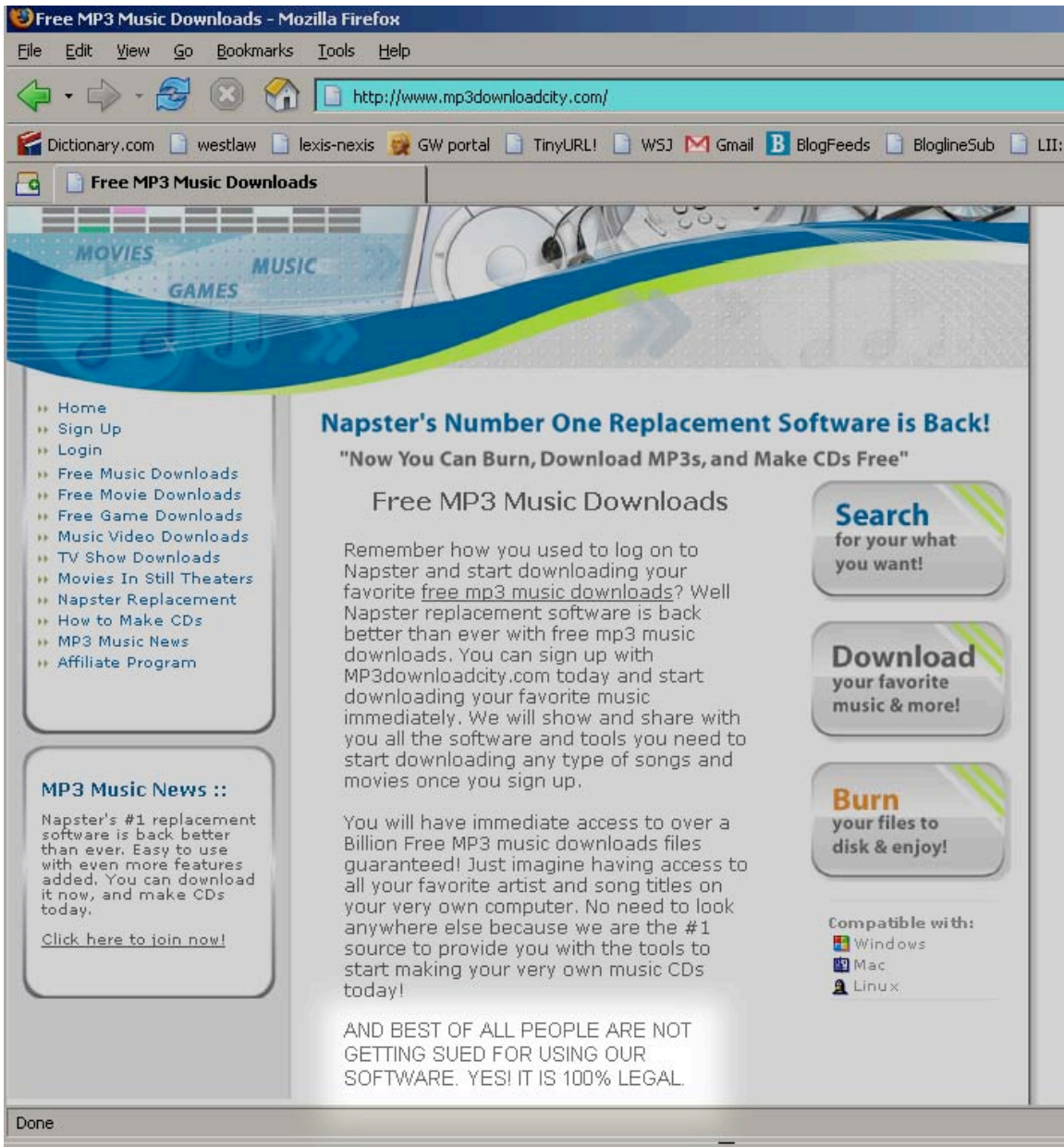


Search showing unlicensed services, including MyMusicInc.com, advertised alongside Real's Rhapsody licensed, legal service.

The screenshot shows a Mozilla Firefox browser window with the address bar displaying <http://www.washingtonpost.com/ac2/wp-dyn/Search?keywords=legal%20downloads>. The page content includes:

- Navigation tabs: News (254), Photos/Videos (129), Events/Locations (8)
- Section: **News Search Results**
 - Your Search for **legal downloads** returned 254 results. Showing Results **1-10 of 254**
 - Sort results by: [Date](#) | [Relevance](#)
- News articles:
 - The (Legal) Digital Music Marketplace** (washingtonpost.com) - 8:53 AM February 28, 2005. iTunes: Spurred by the runaway popularity of the iPod player, Apple's iTunes has grown...
 - Downloading: The Next Generation** (washingtonpost.com) - By David McGuire, 8:16 AM February 28, 2005. Kelly is the type of person who gives music industry executives hives. She arrived at college in 2001 having never downloaded music -- illegally or...
 - Operating System Updates** (Live Discussion) - Rob Pegoraro, 2:00 PM February 28, 2005. Fast Forward's Rob Pegoraro was online to talk about his latest...
 - Loudoun Regrets Rejecting '04 Deal** (The Washington Post) - By Michael Laris, Page C01, March 06, 2005. Last May, lawyers behind one of the broadest **legal** challenges to a local government in Virginia history made a settlement offer to Loudoun County...
 - Christian Group Sues BBC Over Broadcast** (The Washington Post) - Page B08, March 05, 2005. LONDON -- A Christian lobbying group has launched **legal** action against the British Broadcasting Corp...
- Advertisements on the right side:
 - Try Napster To Go Downloads for Free**: Get unlimited music for your PC and MP3 player without paying 99¢ a song. Find your favorites and discover new music. Choose from over 1,000,000 songs. Fast, safe, **legal**. Get a free trial. www.napster.com
 - Legal Music Downloads - 99¢ or less**: Download unlimited **legal** music and movies. Play them on your computer, MP3, CD, or DVD players. 100% satisfaction guaranteed. www.mp3rx.com
 - Buy legal at eMusic**: Get a free two-week trial. 50 free MP3s. Just \$9.99 per month after free trial. **Download**, play, burn. Sign up now at eMusic. www.emusic.com
 - Legal Forms Software by Standard Legal**: Do-it-yourself **legal** forms and software from Standard **Legal**. Divorce, wills, bankruptcy, home sale, etc. Comprehensive, state-specific instructions in easy to use forms. Save on **legal** fees. www.standardlegal.net
 - Download Music, Movies, More Legally**: My Music Inc. lets you **download** free unlimited MP3 music, DVD movies, software, games and more. Huge free music and movie selection. 100% safe. 100% **legal** - no **download** fees. mymusicinc.com

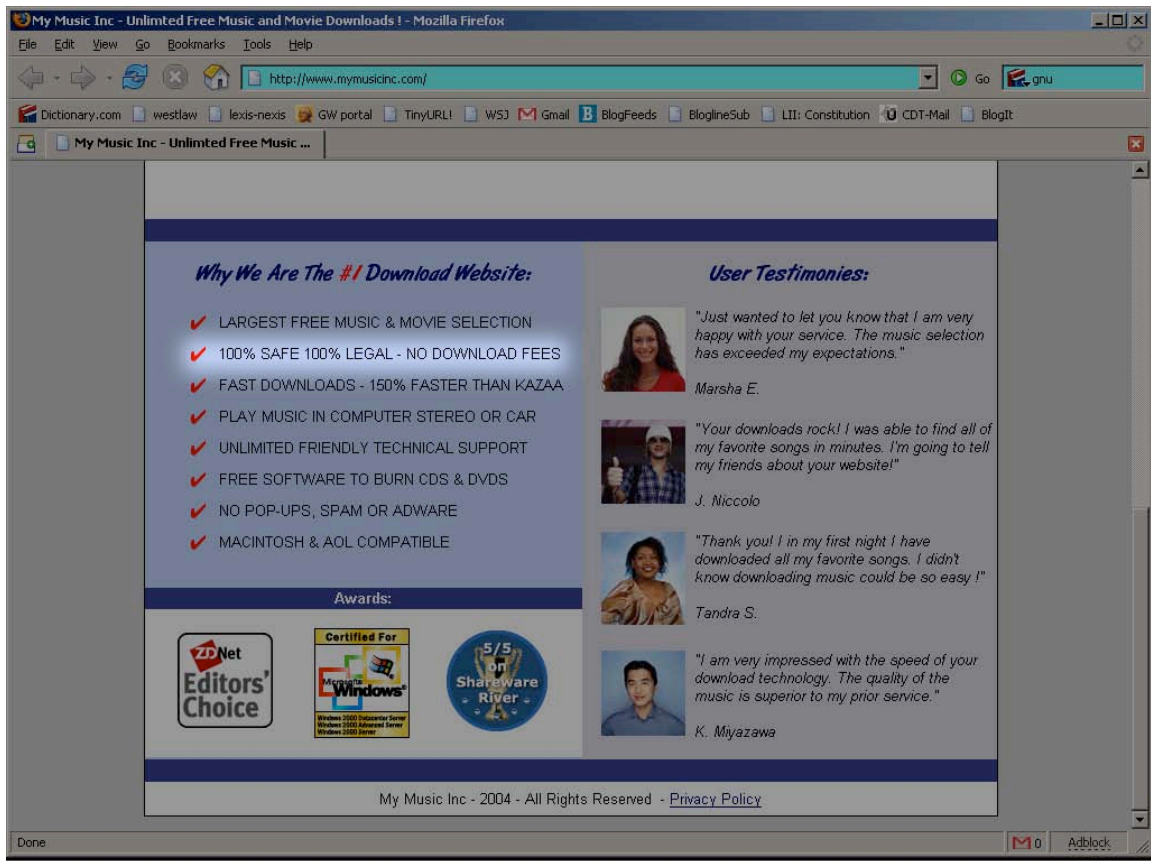
Search for “legal downloads” showing unlicensed services, including MyMusicInc.com, advertised alongside the Napster licensed, legal service.



Mp3DownloadCity.com front page.



MyMusicInc.com front page.



More of MyMusicInc.com front page.

Appendix B: Letters to Download Websites

February 25, 2005

Steve Scott, Registrant
7621 S. Beverly Blvd.
Beverly Hills, CA 90210

David Holt, Billing Contact
Virtual Space
405 Sylvan Terrace
Hopkinsville, KY 42240
270-886-8614 (Phone)
270-889-9244 (Fax)

Dear Mr. Scott & Mr Holt,

We are writing regarding the Mp3DownloadCity.com membership music service.

As part of our ongoing effort to inform consumers about their rights and responsibilities online, we are investigating troubling claims made by some online merchants regarding their music and video download services. Based on our findings, we are contemplating a range of actions, which may including filing a complaint detailing deceptive trade practices with the Federal Trade Commission.

We came across your service during our survey, and are concerned by some of the representations made to consumers in your promotion of that service. The main page of your website prominently claims to be offering unlimited music downloads that are “100% legal guaranteed.” You instruct your members to download peer-to-peer file sharing software as a means of downloading “movies still in theaters,” and “XBox, Playstation and computer games.” We believe your “100% legal” assurance is misleading to consumers, who are likely to believe that their membership fees grant them a license to download music from these services, when in fact they will likely be engaging in copyright infringement. The disclaimers provided on subsequent linked pages are not prominent or clear enough to dispel the misconceptions fostered by the claims on the Mp3DownloadCity.com website. We believe that the these practices may constitute deception under Section 5 of the FTC Act.

Consumers are concerned about the legality of music and movie downloads, and are seeking to participate in the growing market for legitimate online music and video distribution. However, we are concerned that misleading statements about the legality of infringing uses of peer-to-peer services are likely to confuse consumers and frustrate the development of such a marketplace.

We are moving forward quickly on this matter. However, before we take further action,

we would like to hear from you. We request that you contact us within the next week (i.e. by March 4th) at 202-637-9800, or by email at downloads@cdt.org.

Sincerely,

/s/

Alan Davidson,
Associate Director

February 25, 2005

Ryper, Inc.
ATTN: MYMUSICINC.COM
c/o Network Solutions
P.O. Box 447
Herndon, VA 20172-0447
info@mymusicinc.com
c76ym9fz4ur@networksolutionsprivateregistration.com
905-248-3113 (FAX)

Dear MyMusicInc.com,

We are writing regarding the MyMusicInc.com membership music service.

As part of our ongoing effort to inform consumers about their rights and responsibilities online, we are investigating troubling claims made by some online merchants regarding their music and video download services. Based on our findings, we are contemplating a range of actions, which may including filing a complaint detailing deceptive trade practices with the Federal Trade Commission.

We came across your service during our survey, and are concerned by some of the representations made to consumers in your promotion of that service. The main page of your website prominently claims to be offering unlimited music downloads that are "100% safe and 100% legal." You instruct your members to download peer-to-peer file sharing software as a means of accessing what you describe as "all the most popular music and movies." We believe your "100% legal" assurance is misleading to consumers, who are likely to believe that their membership fees grant them a license to download music from these services, when in fact they will likely be engaging in copyright infringement. The disclaimers provided on subsequent linked pages are not prominent or clear enough to dispel the misconceptions fostered by the claims on the MyMusicInc.com main page. We believe that the these practices may constitute deception under Section 5 of the FTC Act.

Consumers are concerned about the legality of music and movie downloads, and are seeking to participate in the growing market for legitimate online music and video distribution. However, we are concerned that misleading statements about the legality of infringing uses of peer-to-peer services are likely to confuse consumers and frustrate the development of such a marketplace.

We are moving forward quickly on this matter. However, before we take further action, we would like to hear from you. We request that you contact us within the next week (i.e. by March 4th) at 202-637-9800, or by email at downloads@cdt.org.

Sincerely,
/s/
Alan Davidson,
Associate Director