

# Judge Agrees With RIAA, “Making Available” Equals Copyright Infringement

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A judge has ruled in favor of the plaintiff in the *Atlantic v. Howell* file sharing lawsuit, agreeing with RIAA lawyers that the "making available" of copyrighted works using peer-to-peer software constitutes copyright infringement. Copyright owners have the exclusive rights to distribute their works; the legal distinction here is whether sharing a song in a P2P folder is the same thing as distributing it.

The RIAA's monitoring partner, MediaSentry, submitted screenshots showing that Jeffrey Howell (a.k.a. "jeepkiller@kazaa") shared 54 copyrighted songs, and Howell admitted under deposition that they came from his CDs. However, he claimed MediaSentry's screenshot didn't prove anyone downloaded the songs or that he knowingly shared them.

The judge disagreed, writing in an [Order](#) granting Atlantic's Motion for Summary Judgment, "It is no defense that a Kazaa user did not directly oversee the unauthorized distribution of copyrighted material." (Howell claimed to have been at work at 11:52 PM on January 29, 2006, when the screenshot was taken). He awarded Atlantic Records \$40,500, or \$750 per song.

Ray Beckerman of [Recording Industry vs The People](#) says this is the [second](#) case he's heard of in which a judge has ruled that it's illegal to share songs in the absence of proof that someone downloaded them.