Digital Audiobook Theft Whitepaper

Important note: This whitepaper is intended to provide information of general interest to its members and is not intended to offer legal advice about specific situations or problems. For legal advice on any issue, please consult your attorney.

Audiobook copyright infringement, often referred to as piracy, is a growing concern among publishers and disseminators of audiobooks. Copyright infringement is subject to United States Federal law.

What can you do if you find your audiobook(s) on an unauthorized site?

The DMCA, Digital Millennium Copyright Act, among other things provides a procedure by which copyright holders may notify websites that they are carrying infringing materials and demand they be removed (taken down) from the site. **To send such a notice:**

a) You need to own the copyright or have the right to assert infringement of a copyright, such as by license;
b) The alleged infringement cannot be covered by an exception such as Fair Use or free speech laws—you must have a good faith belief that the infringing use is not covered by any law permitting its use;
c) The materials must be capable of being infringed online, meaning it must be in digital form.

The following are some steps you can take to protect your recordings:

1. Make sure the site actually is illegally making your materials available and is not an authorized sublicensee from someone to whom you have licensed the materials, which includes a right for them to sublicense. Check with those sites you've licensed and ask whether the URL on which you found your materials is known to them and is sublicensing materials from them. If so, then you are likely actually receiving your sales reports and monies from any sales from such sites, you just don't know it because most of the reports you get don't break down sales by sublicensees.

2. You've determined the site is indeed unauthorized. Look at the site to see whether it shows how to present them with a takedown notice. A takedown notice is exactly what it sounds like. It notifies the site that you, the rightsholder, did not authorize the use of your copyrighted (or licensed to you) materials and hence you are demanding that the materials and listing are removed from that site. If this is a legitimate site but your materials have been placed there illegitimately, such as on Kobo.com or googleplay.com, the website typically will have its own DMCA-compliant procedure in place to notify them of the dispute. Search their site for information regarding their procedures and follow those procedures. If you cannot find those procedures, contact the site any way you can to obtain that information. Alternatively, you can prepare your own takedown letter (the requirements for the letter are in the next paragraph) but you still will need to know to whom to send it in order for it to constitute notice. Know that you may not obtain a quick resolution. You may have to get in contact with the site on more than one occasion to get the matter resolved.

An effective takedown notice is required by law, 17 U.S. Code section 512 (c) (3) (A) to contain the following information: (i) A physical or electronic signature of the person authorized to act on behalf of the owner of the allegedly infringed rights; (ii) identify the copyrighted work claiming to be infringed or, if more than one copyrighted work at a single online site, a list of the works; (iii) identification of the material(s) claimed to be infringing and that is to be removed and information sufficient to permit the service provider to locate the material; (iv) information sufficient to permit the service provider to contact the complainant, such as an address, telephone number and an email address; (v) a statement that the complainant has a good faith belief that use of the material(s) is not authorized by the copyright owner, its agent or the law (such as fair use) and (vi) a statement that the information in the notice is

accurate and, under penalty of perjury, that the complaining party is authorized to act on the behalf of the owner.

3. The site is one which ignores takedown notices. You've found your audiobook on a site which ignores your requests under their stated procedures or, if none, ignores your DMCA-compliant takedown notice. In this case, you may find it difficult to remove the infringed materials. It may be you can't determine how to send your takedown notice. You can try to identify the site's owner(s) by going to whois.net and inputting the URL. This may provide you with the information needed to send a takedown notice. Note, however, that this may not give you the information you seek. Some domain owners hide their identities and contact information.

This paper is not intended to be a comprehensive tool for solving issues of copyright infringement of audiobooks nor is it intended to be legal advice. In the event of infringement, you may wish to consult with an attorney who is experienced in the DMCA and copyright infringement.

For more information, see the DMCA, located at 17 U.S. Code Section 512.