Out of tune ... Apple's ads, show you how to copy music - with the disclaimer "Don't steal music."

Apple's iPod digital music player may be the hottest electronic toy in the world, but it has almost no legal use in Australia, writes Julian Lee.

The next time The Clash's *I Fought the Law* is blaring away on your Apple iPod music player, savour the irony that not only are you likely to be an outlaw - you are getting away with it with the help of one of the world's biggest brands.

You are not alone. There are 100,000 of you across the country and the police aren't coming after you. Yet.

Apple's iPod is the Sony Walkman of the new century. In the 1980s, Sony's cassette player revolutionised music by making it portable. Today Apple and others have eliminated the tape and have taken the Walkman digital. An iPod owner can copy hundreds - even thousands - of songs from CDs onto a box the size of a cigarette packet.

More than 100,000 Australians listen to music on such digital music players. Retailers cannot stock them fast enough. There is just one problem.

Most people know it is illegal to download songs from the internet without paying. But far fewer people know it is illegal to copy music from a CD you have legally bought.

Anyone who has copied songs from a CD onto an iPod or computer hard drive has fallen foul of Australian copyright laws, which critics argue are failing to keep pace with technological change. Copying music for personal use is generally OK in the US and Europe. But not in Australia.

"It's unlikely that the Australian Federal Police would investigate individuals for offences such as illegally copying a CD," a police spokeswoman said. "However all cases referred to the AFP are categorised and investigated as necessary."

Unlike its rivals, Apple does not allow legitimate music websites such as Telstra and Ninemsn to sell digital songs for the iPod. Because Apple does not allow Australian customers to buy songs from its US iTunes website - and there is no local site - there is not much you can do legally with an Apple iPod in Australia.
"You could possibly use it to listen to music that you've recorded yourself or even to a recording made by your friend's band," says a copyright expert, Kim Weatherall, of Melbourne University's law school. "But that's about it."

Despite the law, a recent Apple magazine advertisement (pictured) demonstrates how to copy songs from a CD onto a computer - and then from the computer onto an iPod. At the bottom of the ad, in small print, is the plea: "Don't steal music."

Brett Oaten, a solicitor who represents popular Australian artists such as Powderfinger and Delta Goodrem, says: "Until we get the iTunes site in Australia there are not many ways to use the iPod legitimately here. You have to have an American credit card to gain access to the American site."

Apple refuses to say when, or if, it plans to launch iTunes here. However Charles Caldas, who heads Australia's biggest independent record company, Shock, says Apple "is talking to record companies about licensing songs here in Australia so we can assume they will launch here". Until then - like most record label bosses - Caldas is against changing the law.

Defying convention is what we have come to expect of Apple. Australian managers declined to answer questions for this article.

Apple is the company that came back from the brink in the mid-1990s with the iMac - a computer produced in lollipop colours such as grape and apricot that became a fashion accessory alongside the lava lamp and the divan.

Globally Apple is now selling more iPods than computers - 860,000 in the June quarter. Apple's latest "iPod mini" - also available in five colours - last month sold out its first Australian shipment in days. Although Apple did not invent the technology, rivals - including Sony - are scurrying to catch up.

Australians bought 78,401 digital music players (all brands) in the 11 months to June, according to retail consultancy GfK Marketing. Apple is the No. 1 seller, although its local sales figures are unknown.

The Herald spoke to a number of iPod users, who said they routinely broke the law either by copying songs from CDs or by downloading music from illegal websites. All requested anonymity, such was their reluctance to be identified as law-breakers.

Sue, a designer for a Sydney website design outfit, has no qualms about copying CDs onto her iPod. "Why shouldn't I be able to copy a CD that I paid $30 for? I should be able to use it in any way can."

David, a Sydney psychologist, doesn't want "a load of stolen music sitting on my hard drive".

In an effort to do the right thing, he has a friend in New York buy tracks from the US Apple iTunes site and email them to Australia. But the legal situation frustrates him. "Just because the music industry can't keep up with changes in technology, why should I not be able to listen to music in whatever format I choose?"

The music industry is split on the issue.

Songwriters and publishers want to change the law and pay for the copies through levies on digital music players and blank CDs. The record labels - which own the recordings - want the law to stay.

The situation is "mad", says Phil Tripp, a music publicist who is lobbying Canberra on behalf of the Australasian Performing Right Association (APRA, which represents songwriters and publishers). "So you bought a CD and you think you own the song. Wrong! You own the bit of plastic and that's it."

APRA says Canada - which allows copying - raised $30 million last year from a levy on blank CDs, DVDs and music players.

"There isn't an artist out there who doesn't want to see their work distributed in the widest possible way - provided they are paid for it by consumers, the website operators and the record companies," says Oaten.

That view is not shared by the record companies - represented by the Australian Record Industry Association.
APRA's levy proposal was "flawed, cumbersome and a very unsatisfactory solution which, in all likelihood, could exacerbate the very problem that it is seeking to address", ARIA said.

The last time the idea of a levy was introduced in Australia was 10 years ago and it was strangled at birth by the courts as unconstitutional. Instead, the record companies have developed technology to lock or "encrypt" CDs, preventing them from being copied onto digital music players. They have begun selling some music online, but they are struggling to compete with the many illegal websites where fans swap songs without charge.

The Federal Government stands on the sidelines, waiting for the music industry to adopt a common stance. The office of the Attorney-General, Philip Ruddock, says it is "looking at the issue".

The situation is complicated by the proposed free trade agreement with the US. As part of an agreement, Australia is to adopt tougher US-inspired laws aimed at preventing people from breaking encrypted CDs or DVDs, an activity that is not yet illegal in Australia. By 2006 anyone caught selling an encryption-breaking chip or a computer program or anyone found to have used such a devices to gain "access" - not just copy - material will face jail.

"If anything, digital copyright laws are going to become a lot tougher in this country," says Weatherall.

Even if iTunes were to launch here there is a view that it won't be the saviour from online piracy that the industry had hoped, despite the fact that it will offer for sale 800,000 tracks - more than twice as many as Australia's biggest online music seller.

Worldwide, iTunes has sold 100 million songs since its launch 14 months ago, compared to an estimated 2.2 billion illegal downloads in that period. Little wonder the industry isn't holding out much hope.

"Sales of [legal] downloads are negligible," says Oaten. "The number of downloads at the moment is modest," admits Brett Cottle, chief executive of APRA. Neither Telstra nor Ninemsn will reveal up-to-date sales figures.

"I suspect that even if people knew they were breaking the law then they probably wouldn't change their behaviour - and I don't know whether iTunes is going to change that," says Cottle.

More news

- Accused said sorry after rape, court told
- Actors fear deal will swamp local talent
- Tunnel safety fears raised on eve of worker's death

Home > National > Article

Copyright © 2004. The Sydney Morning Herald.