

**BMG Music v. Gonzalez,
430 F.3d 888 (7th Cir. 2005)**

Year	2005
Court	United States Court of Appeals for the Seventh Circuit
Key Facts	Plaintiffs, recording companies including BMG Music, alleged that defendant Gonzalez infringed their copyrights in several audio recordings when she used a “file-sharing network” to download and retain unauthorized copies on her home computer. Defendant asserted a fair use defense, claiming she intended to sample the works on a “try-before-you-buy basis.” Defendant appealed the district court’s ruling in plaintiffs’ favor.
Issue	Whether defendant’s unauthorized downloading and retention of plaintiffs’ copyright-protected works to purportedly sample the works before buying was fair use.
Holding	The court held that defendant’s unauthorized downloading and retention of copyright protected works was not fair use. In reaching its conclusion, the court first determined that defendant was not engaged in a nonprofit use due to her downloading and retention of whole copyrighted songs that “often are sold per song as well as per album.” The court then focused on the negative effect of the use on the potential market, finding that “[m]usic downloaded for free from the Internet is a close substitute for purchased music.” The court discounted defendant’s assertion that she was trying music before buying by pointing out that the market for methods of introducing potential consumers to music, for example radio, was negatively impacted by competition from peer-to-peer networks. Finally, the court noted that there existed myriad authorized means for customers to listen to music before purchasing, and concluded that defendant’s downloading was not a fair use.
Tags	Seventh Circuit; Internet/Digitization; Music
Outcome	Fair use not found

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