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Supreme Court rejects Internet music download case

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The U.S. Supreme Court building seen in Washington May 20, 2009.

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(Reuters) - The Supreme Court let stand on Monday a ruling that a traditional Internet download of sound recording does not constitute a public performance of the recorded musical work under federal copyright law.

The justices refused to review a ruling by an appeals court in New York that the download itself of a musical work does not fall within the law's definition of a public performance of that work.

The not-for-profit American Society of Composers, Authors and Publishers (ASCAP) appealed to the Supreme Court. It said the ruling has profound implications for the nation's music industry, costing its members tens of millions of dollars in potential royalties each year.

ASCAP says more than 390,000 composers, songwriters, lyricists and music publishers in the United States exclusively license their music through the organization. It licenses nearly half of all of the musical works played online, according to the court record in the case.

The federal government opposed the appeal. U.S. Solicitor General Donald Verrilli said the appeals court's ruling was correct and comported with common understanding and sound copyright policy.

ASCAP argued that digital downloads were also public performances for which the copyright owners must be compensated. But a federal judge and the appeals court rejected that argument.

At issue was a section of the Copyright Act stating that to perform a work means to recite, render, play, dance or act it either directly or by means of any device or process.

"Music is neither recited, rendered, nor played when a recording (electronic or otherwise) is simply delivered to a potential listener," the appeals court ruled.

Verrilli agreed. He said that the downloading itself was not a performance of the work and the musical work was not played during the transfer.

Washington attorney Theodore Olson, a Bush administration solicitor general, represented ASCAP in the appeal.

He said the appeals court ruling improperly narrowed the right to perform copyrighted musical works publicly and placed the United States in violation of [intellectual property](#) treaties and other international agreements.

The Supreme Court denied the appeal without comment.

The appeals court also ruled that fees paid by [Yahoo Inc](#) and [RealNetworks Inc](#) for licenses to play music on the Internet should be recalculated. That part of the ruling was not at issue before the Supreme Court. The Supreme Court case is ASCAP v. United States, No. 10-1337.