

# Dollars, Downloads and Digital Distribution: Is “Making Available” a Copyrighted Work a Violation of the Author’s Distribution Right?

Kristy Wiehe\*

I. INTRODUCTION.....	117
II. THE POSITION OF THE RIAA.....	118
A. <i>What Is “Making Available”?</i> .....	118
B. <i>The Plain Language of the Copyright Act Establishes that “Making Available” is an Exclusive Right of the Copyright Owner</i> .....	119
C. <i>Case Law Supports an Interpretation of the Copyright Act to Include “Making Available” as a Violation of the Right of Distribution</i> .....	119
III. REBUTTAL TO THE RIAA’S INTERPRETATION OF 17 U.S.C. § 106(3) .....	120
A. <i>The Plain Language of Section 106(3) of the Copyright Act Narrowly Defines the Distribution Right....</i>	120
B. <i>Case Law Rejects an Expansion of Section 106(3) ...</i>	121
C. <i>Expansion of the Distribution Right Threatens Commerce by Blurring a Previously Well-Defined Right ..</i>	121
IV. SOLUTIONS .....	122
V. CONCLUSION .....	124

## I. INTRODUCTION

Recent litigation initiated by members of the Recording Industry Association of America (“RIAA”) asserts that “making available” a copyrighted sound recording on a peer-to-peer (“P2P”) file-sharing network is a violation of the copyright holder’s exclusive right of distri-

---

\* Kristy Wiehe is the Editor-in-Chief of the UCLA Entertainment Law Review.