

# **The Music of the Future**

## The Future of Music in Cyberspace

*Jeroen Steeman*

Communication and Information Studies  
Faculty of Arts  
Utrecht University

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*Music was my first love  
And it will be my last,  
Music of the future  
And music of the past.*

*To live without my music  
Would be impossible to do,  
'Cause in this world of troubles  
My music pulls me through.*

Music Was my First Love – John Miles

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## **Introduction**

New media change the world and you don't have to be an Internet scientist to foresee that. Often these changes appear less revolutionary than thought. Internet won't make us turn off our television, nor will Sms stop us from calling.

But we can make one exception. Mp3, the technique to reduce music files to a size so they can be sent over the Internet, did change the world. At least it changed the world of the music fan and the record companies. To turn the thread of loss of profit away, they started huge lawsuits against everything that associates itself with Mp3.

In this essay I want to come up with an acceptable solution for the problems surrounding Mp3s. This has to be acceptable for the millions of people that are downloading music on the Internet, but also for the music industry.

I will try to find this solution in three steps. In the first chapter I'll describe the principle Mp3 and its history.

The success of Mp3 can't just be explained by its use, there are several reasons why people make the switch to Internet music. I'll discuss this in chapter 2. In the third chapter I will try to explain these motives to download music according to different theories.

The answer of the music industry to all this is twofold, they sue companies involved with Mp3 at one side. At the other side they start their own Internet services. In chapter 4 these steps will be analyzed to see if they form any alternative for the music fan.

In the long run there are two possible alternatives for the current situation; Digital Rights Management and Free Music. In chapter 5 I'll explain the way Digital Rights Management works and I'll analyze its usefulness.

In chapter 6 I'll discuss the underlying principles of Free Music, as analyzed by John Perry Barlow. The following chapter will explain the Theory of Free Music.

In the last chapter I'll draw my conclusions and summarize the outcome of this essay, an acceptable future of music on the Internet.

# **CHAPTER 1: The History of Mp3**

## **The Birth of Mp3**

In 1987 the *Fraunhofer Institute* started to research on broadcasting digital audio through a network. After two years they had developed ISO-MPEG Audio Layer-3, commonly known as Mp3. It would take many more years before Mp3 would be perfected.

Special about Mp3 is that it can downsize music files so that it can be transferred through the Internet, without a great loss of quality. I won't step in any details about it, but it comes down to the fact that the human ear can't hear sounds from 44.1 kHz and up. By removing those sounds, Mp3 reduces the size of a music file up to 14 times of its original size.

On a regular compact disc, one minute of music takes 8.8 Megabytes, while coded with Mp3 it will only take about 0.7 Megabyte. Instead of 74 minutes a CD can contain more than eleven hours of music.

Around 1997 a couple of college students designed a program to play Mp3-files on a desktop computer, they called it WinAmp and published it on the Internet, free for everybody to download. Meanwhile being connected to the Internet wasn't a privilege for universities or big companies anymore, people at home could get connected to the world wide web through their regular telephone lines.

## **Napster**

In 1998 university students in the US (with broadband internet on their own desktop computer) and music fans all over the world started to download music in Mp3. Within one year, Mp3 became the standard for listening to music on the Internet.

These two developments were crucial for the growth of Mp3. Although downloading a song in Mp3-format would still take fifteen minutes or half an hour, lots of sites appeared where you could download the Top 40 in Mp3. People started having a small collection of Mp3-music.

In the next years broadband Internet and CD-burners became widely available for everyone. Music collections started to grow and could now be burned onto a CD to listen to in a regular CD-player.

But this is only the beginning of what is called the digital music revolution. In January 1999, Shawn Fanning, an 18-year-old dropout university student created a program for Internet users to swap their music files online: Napster. He also made his program publicly available on the Internet. After one year 60 million people downloaded his software and used it to download music.

## **Reactions of the music industry**

Of course the music industry wasn't happy with all these developments, and threatened sites offering Mp3s with lawsuits for copyright violations. The music industry formed the Recording Industry Association of America (RIAA), a lobbying arm of the industry. Being a huge industry, the big entertainment companies had another card up their sleeves, in 1998 the RIAA had an important say in the development of the Digital Millennium Copyright Act (DMCA). The act was intended to establish copyright protection on the Internet, but it went much further than that. I'll get back at this in the fourth chapter.

The DMCA doesn't just prohibit downloading illegal Mp3s, it also prohibits sites linking to Mp3s on other sites and programs helping to swap mp3s (which could be obtained legally), like Napster. On this Act Napster was sued by the RIAA and finally in 2001 the Federal Court has ruled against Napster, it had to stop its services.

## KaZaa

But the RIAA was already one step behind on the 'music pirates' as they like to call them. From the ashes of Napster lots of new peer-to-peer services developed, amongst them were Gnutella, WinMX and the KaZaa. The last one depends on a slightly different technique. It doesn't use a central service to register who shares what songs and that makes it actually unstoppable to shut down.

Internet was designed as a defense system that had no central mainframe, if a server got hit and lost its connection, the network automatically finds another way around. This system makes it impossible to shut the Internet down, because it finds its own connection. KaZaa works the same, and will always keep on working unless the whole Internet is shut down. Today KaZaa is the most popular file sharing program, not only swapping music, but every kind of content available on a computer, like movies and software. It currently celebrated its 100 millionth download, proving that music on the Internet is more alive then ever before!

## **CHAPTER 2: Why do people download?**

Before we get any deeper in the trials of the music industry to ban 'piracy', as they like to call it, I'll discuss the various reasons why people are actually downloading music from the Internet. The mp3 format became a success because apparently there was a need for it. This chapter will list the arguments that explain the success of Mp3, divided in six sections.

### **Record stores**

Often mentioned as a reason for downloading music off the Internet is that the prerecorded CDs are found far too expensive. In America and Europe prices of 20 dollar or euro are no exception for new released CDs. The prices of older CDs take a couple of years to drop to a more reasonable price. By then the consumer found a cheaper way to obtain his music, through the Internet.

### **Television**

The biggest music channel of the world rarely plays videos anymore. MTV fills most of its time with programs about celebrities and with commercials. Meanwhile the big record companies gained shares in music stations as MTV to promote their own music. So when MTV plays videos it's the same label-hyped artist over and over again. There seem to be some exceptions, there are music channels where the viewer can request videos, like The Box in the Netherlands. But they come with a price and they still offer a limited choice of recent music.

### **Radio**

Here we can discuss the same arguments as we did with television. Radio stations tend to cut off songs at the end, play too much commercials and record companies own a lot of them so here also isn't much variety in music.

### **Law**

The governments around the world have been extremely slow in creating legislation to tell which kind of downloading is illegal and in trying to find a solution for licensing. People won't wait until that's cleared, they have the tools and they will use them.

### **Business**

People find it very hard to sympathize with the business that claims that its artists are losing money to Mp3, and then pays them last – after the label, the managers, the lawyers, the labels promotion department and everyone else involved in making and promoting the record. Artists usually don't earn much based on their record sales, the most of the income comes from giving concerts, merchandise and selling royalties.

### **Love**

People download music because of love. They want unlimited access to music. The Internet proves to be a great place to find rarities like b-sides, white label versions and acoustic versions of music that people could never obtain a copy of legally.<sup>1</sup>

So I can conclude that there are two main arguments of people downloading music. First the people think the CD prices are too high and not worth their money. Second, the traditional media have a lack of variety and choice for the music listener.

Downloading music gives the listener his freedom back to choose to listen to its own favorite music. In the next chapter I'll discuss the theories concerned with these outcomes.

## **CHAPTER 3: Merge and Synergy**

### **Homogeneity**

The culture critics of the Frankfurter Schule always watched the entertainment industry closely. Especially Max Horkheimer and Theodor Adorno warned already in 1944 about the dangers of a monoculture in the entertainment industry. Although they criticize almost every form of modern culture, we can get some interesting points out of their theories.

First the entertainment industry would minimize the abilities of men to see details because of the homogeneity of its products. Because all the music is the same the listener would lose his interest in the details of music.

Their second claim is that the industry no longer creates popular culture (as in the name, created by the people), but it creates their own culture with interchangeable details.

*Not only are the hit songs, stars and soap operas cyclically recurrent and rigidly invariable types, but the entertainment itself is derived from them and only appears to change.<sup>2</sup>*

### **Mergers**

In the mid and late nineties all the big entertainment companies started to merge to survive in the transforming world of media. Michael J. Wolf, a consultant to major companies as Viacom, MTV and Time Warner writes:

*Companies were no longer interested in merely being the biggest studio or the most successful TV network. They had to be more. Theme parks, cable networks, radio, consumer products, books and music all became prospects for their potential empires. Media land was gripped by merger mania. If you weren't everywhere... you were nowhere.<sup>3</sup>*

These mergers brought the number of companies in the same branch down and caused a new development: synergy or convergence. Creators of content and their distributors merged into one company. Publishers bought bookstores and TV-stations bought cable networks.

The same happened in the music industry. At the end of the nineties there were only five major record companies left: Sony, Universal, BMG, EMI and Warner. Not even did they expand horizontal over the music market. They saw themselves vertical expanding to all directions of music, because almost every company was part of a huge media conglomerate. BMG is part of Bertelsmann, Vivendi owns Universal Music, Warner Music is part of AOL Time Warner, and only recently the merger of EMI into AOL Time Warner failed. The music companies became very powerful because they gained access to a great marketing machine.

### **No Choice**

In *No Logo* Naomi Klein writes about these two main developments that cluttered the entertainment industry even more together than it already was. In the chapter Mergers and Synergy she tells in detail about the entertainment industry and their powers as they control almost every part between the musicians and the listeners.

This control over the market leaves the music listener less choice, as the record industry tends to know what's good and what's not, in other words, what sells and what doesn't sell. Naomi Klein demonstrates this with Virgin (part of EMI), a record label and owner of huge Virgin mega stores. A mega store can promote a Virgin-artist through listen booths, video screens and even satellite dishes to beam live concerts, almost leaving the music fan no choice.

*Why wait around for something as temperamental as audience demand or radio play when by controlling all the variables you can create the illusion of a blockbuster success before it even happens?<sup>4</sup>*

The Internet offers music listeners an opportunity to listen to other music than produced by the big five record companies. Using the Internet to download the music they like, they can have a choice again. While swapping files with other fans, they can construct their own taste for music. They can decide which songs they want to hear.

## **CHAPTER 4: Running with the hare and hunting with the hounds**

The music industry is now trying to get back at Mp3 in two ways. One way is the legal path in which the DMCA was developed and internet companies are sued for making music exchange possible, or just for 'not blocking' an internet site providing mp3s.

In the same time the music industry started their own music selling services on the Internet, trying to compete with services as Napster and KaZaa. In this chapter I will discuss both ways and I'll try to prove why both of them are no substantial solution for the 'piracy' on the Internet.

### **DMCA**

I already briefly mentioned the Digital Millennium Copyright Act in chapter one, now I want to discuss more about a certain part of the Act, section 1201.

This section is the most important one for music on the internet; it prohibits methods of bypassing copyright protection on different media, in this case for example by cracking the codes of copy protected music files.

The section consists of two distinct prohibitions, a ban on *acts* of circumvention, as well as a ban on the *distribution of tools and technologies* used for circumvention.<sup>5</sup>

In the first case it is illegal to circumvent the copy protection on a CD, even if you're intended to make a copy for yourself. In the second case it is illegal for a company to release a program to circumvent the copy protection on a CD, so that users can copy their CDs.

### **Consequences of the DMCA**

In an effort to conceal all issues with intellectual property, many people think the DMCA goes much too far. The Electronic Frontier Foundation (EFF) bundled a number of examples and divided them into three sections.

1. Section 1201 chills free expression and scientific research
2. Section 1201 jeopardizes Fair Use
3. Section 1201 impedes competition and innovation.

An example of the first point is the case of *2600 Magazine*. Eight major motion picture companies sued 2600 for publishing the DeCSS software program, which decodes the country codes used on a DVD to prevent it from playing in DVD-players in other country zones. 2600 made the program available through their Internet site, but they didn't take part in any development of the DeCSS program. Nevertheless the judge ignored the First Amendment and ruled in favor of the motion picture companies and barred 2600 from publishing about DeCSS or even linking to it.

The second point shows the disappearance of Fair Use by issuing 'copyright-protected CDs', making it impossible for normal consumers to make a copy for their own use.

The third point explains that many copyright owners focus on stopping competition than stopping piracy, like Sony using the DMCA to keep a monopoly on Playstation games.<sup>6</sup>

The most widely known enforcement of the DMCA happened when Dmitry Sklyarov got arrested after speaking at an Internet conference. Prosecutors were alarmed by the software giant Adobe that Sklyarov had worked on a program to convert e-books from the special e-book format of Adobe to the widely used Pdf-files. His employer ElmSoft published the program.

*Sklyarov was never accused of infringing any copyrighted e-Book, nor of assisting anyone else to infringe copyrights. His alleged crime was working on a software tool with many legitimate users, simply because third parties he never met might use the tool to copy an e-Book without the publisher's permission.*<sup>7</sup>

In December 2001 Sklyarov was allowed to return home, but his employer ElmSoft was continued prosecuted. As a result of this event lots of scientists are hesitating to publish any research on encryption systems that could offend the DMCA. The EFF and lots of other organizations strongly act up to the DMCA because it's objecting the freedom of speech and print.

### **If you can't beat them, join them**

Although the music industry joined the Internet boat quite late, they tried to catch up with the rapidly changing music society on the Internet.

In 2001 Universal and Sony joined venture in Pressplay, a subscription service offering legal downloads. EMI joined them later. In a reaction on this Warner, BMG and EMI started MusicNet, in cooperation with Real Networks. Both services claim that they offer high-quality music files and that the artist gets compensated, for around \$10 a month. This seems quite reasonable, until you try it for yourself. The music downloading community is not convinced, and there are several reasons to support that opinion.

### **Nowhere near Napster**

One of the reasons Mp3 became so popular was that you could always listen to them even without being online, and burning them on CDs to listen to them in your regular CD-player. Both MusicNet and Pressplay don't offer the possibility to do this. The music files are in a different format, which can't be stored on your computer and can't be burned on a CD, forcing you to use their music program.

In most of the cases the music is sent to you in streams, which come out of speakers in a faded, echoed manner. And that's nowhere near the relative quality of an Mp3-file. Because the music files are not stored on your computer you have to be connected to the Internet to listen to your music files, and if you decide to quit the service, you'll loose your collected songs. The amount of songs you can download is due to a maximum, if you want to hear more you have to pay extra.

On top of this absence of usability, not every song is available on one service. Since Warner Music doesn't take part in Pressplay, you won't find any of their songs on that service, the same happens if you're trying to find Sony owned songs on MusicNet.<sup>8</sup>

There are some other services offered by independent companies, but because the Big Five hold 80% of the music copyrights, it's hard for them to meet agreement on offering legal downloads. Currently there are investigations conducted in Europe and the US to see if the Big Five misuse their powers. In fact, according to one source, MusicNet is not engaging smaller entities, and even allegedly requires companies to commit to advance payments of as much as \$750,000 before entering licensing talks, which is quite an unusual measure.<sup>9</sup>

Until now it doesn't seem that these legitimate alternatives ever become the same success as Napster and KaZaa, where music fans have no trouble finding music and playing it using their favorite software.

## **CHAPTER 5: Digital Rights Management**

### **Protecting Music**

As a successor of subscription services as MusicNet and Pressplay, the music industry thinks that they have found the ideal solution to the problem of 'piracy', Digital Rights Management (DRM). In this chapter I'll discuss the principle of DRM, and the pros and cons of this system.

Digital Rights Management is a technology that prevents unauthorized copies from being made. It uses encryption deep within the original code of the music file. This makes it possible to charge for every copy that is being made, and even to charge for every time a song is listened or a book is read. In his article *Policing Pirates in the Networked Age* Stan Liebowitz discusses the Napster trial in depth, and he comes up with the solution of DRM to protect the music industry against the 'music pirates stealing music' through the Internet.

Microsoft boldly stands up and is now trying to include DRM in its own music format, Wma. Primarily a step toward regaining market shares from Nullsoft, the developer of the most used Mp3 player, WinAmp. Wma is not open source and it can be limited to play just a couple of times, in a combination with pay-sites it can provide DRM.

I have strong objections against the use of DRM because I think it disturbs the balance of power between producers and consumers of music. Secondly it diminishes the Fair Use Right as discussed in Chapter 4.

### **The uselessness of DRM**

And again the software industry provides us a clear example. Protecting shareware worked fine before Internet, but nowadays sites where you can find cracks to 'open up' your program are thriving. Just as Microsoft's Wma files already have been cracked, it will only take a matter of time before every new DRM-format will be cracked and converted to Mp3.

Digital Rights Management shifts the power from the consumer to the producer, just as happened with the CD-market in real life. Because of the monopoly of the Big Five, prices are as high as the sky. DRM makes it possible for them to conquer the Mp3-market to and I'm sure that they won't make that any cheaper. After all they made a lot of costs because of Mp3 and why wouldn't they try to get that back. DRM offers the music industry to decide whether we can listen to which song or not. So DRM protects the industry and not their music.

Music fans will listen less to music because of DRM. With DRM music fans will have to pay for their music before they even hear it. This will reduce the trials of a music fan to find new undiscovered music. Another point is that people that just like one band or one song have to pay much more for listening than they used to do for listening to a CD. Every time the amount paid in total adds up, while the amount paid for a CD stays the same, and reduces the amount paid per time listened.

DRM diminishes the right of Fair Use, people now have to pay for making a copy of their songs to listen to them in their car for instance. Now it's completely legal to make a copy of your own CDs for personal use. Further it would be impossible to quote from protected intellectual property, opposing a major difficulty for educational purposes. As with the DMCA, DRM would restrict creativity and innovation.

But the most important argument why DRM won't work is that it isn't stopping Mp3 and KaZaa from spreading. As long as this combination is available on the Internet (and virtually unstoppable), DRM protected music just won't be used.

Liebowitz encounters all these arguments by saying that DRM will still leave some possibilities because DRM won't be perfect. As long as the masses won't listen to illegal music, the DRM has proven its use. But to prevent these masses from listening, the whole Mp3-format should be made illegal to stop masses from downloading it. And still then it would be impossible to stop people from possessing Mp3s, and according to the Financial Times it would require more lawyers than even exist in the United States. Liebowitz also states that there still would be a possibility for music fans to copy music to an analog format, as tapes.

*The fact that digital copies of music are technically better than analog copies is a trivial difference to most listeners not using an extremely high-end audio system.<sup>10</sup>*

This argument makes no sense at all as people who are downloading music are most of the time extreme music fans, which certainly do care about the quality of their music. And you don't have to own a Bang & Olufsen to hear the difference between a CD and a cassette tape. Digital Right Management doesn't have any chance of working as it's supposed to be working.

If DRM will be widely used, there will be an even stronger opposition that we already have now with the DCMA. Pamela Samuelson pleads another politics of intellectual property, because DMCA and DRM in its trail hurt intellectual property itself, in its trials to preserve it.

*Maybe a new politics of intellectual property could help copyright industries get re-focused on providing content that a wide array of the public might want to enjoy instead of putting so much effort into suppressing innovation and competition in the information technology industry and the digital networked environment through lawsuits and unsound legislative initiatives.<sup>11</sup>*

## **CHAPTER 6: Ideas are no commodity**

So what is actually wrong with the music industry? There are a lot of theories about this question. In this chapter I want to discuss some of them.

### **The Economy of Ideas**

Already back in 1994 John Perry Barlow wrote *The Economy of Ideas*, it addressed the problem of copyright on the (at that time) relatively small Internet. He understood that the Internet would cause a major change in the use of copyrighted material.

In his article Barlow foresaw that Intellectual Property would lose its copyright protection on the Internet, like it's actually happening now.

### **Copyright is lost on the Internet**

Like everyone can notice on the Internet, copyright is disappearing. Everyone with a fair Internet connection can download complete books, CDs and movies, without anyone able to do anything about it. The Internet always was an unlawful space, with no one strong enough to enforce law. John Perry Barlow foresaw this loss of soft (intellectual) property and the impotence of the copyright laws.

*Since we don't have a solution to what is profoundly new kind of challenge, and are apparently unable to delay the galloping digitization of everything not obstinately physical, we are sailing into the future on a sinking ship. This vessel, the accumulated canon of copyright and patent law, was developed to convey forms and methods of expression entirely different from the vaporous cargo it is now being asked to carry. It is leaking as much from within as from without.<sup>12</sup>*

Barlow indicates that copyright never protected intellectual property. Copyright protects the packaging of ideas, not the ideas themselves. Copyright protects the expression of ideas, like the books in which Darwin's Evolution Theory are explained. The Evolution Theory itself can't be protected with copyright because man can't prohibit it from being taught at schools. Ideas can't be sold; it's their expression on paper, disc or film that is sold. On the Internet this medium isn't present, it's like a pure exchange of ideas.

But the loss of copyright on the Internet doesn't mean that it's losing its value. To accomplish this line of thought, we have to stop seeing intellectual property as a commodity. But if thoughts can't be sold, how can they contain a certain value? Barlow gives us three major points to explain this.<sup>13</sup>

### **Meaning has value and is unique to each case**

According to the theories of Stuart Hall meaning is what is made by the receiver, who decodes the message in the context of his or her own framework of knowledge.<sup>14</sup> That comes down to that each relationship with a source of information is unique. Each receiver actively processes information and gives it a different interpretation. Information is experienced, not possessed.

The value of this information depends on its meaningfulness for the receiver. As I don't like classical music, the music has no value to me.

### **Familiarity has more value than Scarcity**

With physical commodities there is a direct relationship between scarcity and value. The value of a product increases when there's less of it. With ideas this process is often exactly the reverse. The value of ideas increases as they become more commonly known.

The best example of this comes from the software market: Microsoft Word would have never become the leading word processing program without piracy. As the program became widely available for users all around the world, the program became standard for word processing files, increasing Microsoft's revenues because big companies and governments followed.

### **Point of view, origin and performance have value**

As ideas can be copied without any loss of quality and instantaneously can be distributed on the Internet, the 'aura' of art gets lost.<sup>15</sup> The aura can be seen as an extra element of art. The aura returns with expressions of point of view, which can't be stolen or duplicated. This also applies to performances of artists. Their music regains its aura, because of their presence. Music fans will always be willing to pay more for a concert than a CD, and in fact that's what's happening in reality.

These three points above prove that intellectual property won't lose its value because of the Internet, but it won't be a property anymore. Ideas published on the Internet belong to everyone, an ideal form of DotCommunism!

### **Creativity will survive**

An often-used objection by the music industry is the fact that piracy would kill creativity. In a more recent article by Barlow, *The Next Economy of Ideas*, this objection is turned down. According to Barlow creativity will survive the 'virtual age' of Internet. First Barlow indicates that the world turned for a long time without copyright.

*I take further comfort in the fact that the human species managed to produce pretty decent work during the 5,000 years that preceded 1710, when the Statue of Anne, the world's first modern copyright law, passed the British parliament. Sophocles, Dante, da Vinci, Botticelli, Michelangelo, Shakespeare, Newton, Cervantes, Bach – all found reasons to get out of bed in the morning without expecting to own the works they created.<sup>16</sup>*

Following the disappearance of copyright Barlow expects that creativity will be assured by five practical values. I will name them and explain them.

### **Relationship and service**

Relationship is what supports all sorts of modern 'knowledge workers'. Doctors have a relationship with their patients, architects with their clients, and executives with their stockholders. The artist has his relationship with his readers or listeners. Patronage is a combination of this relationship and service. Da Vinci and Michelangelo got support through the assignments they got from the Medici and Pope Leo X. But patronage still exists as a form of sponsorship, IBM helped Mandelbrot with his developments in fractal geometry.

### **Convenience**

People always walk the easiest way, and they're willing to pay for that. The software industry isn't starving because of all the illegal downloads, because in the long run it's more convenient to pay for the product and get technical support when you need it. The reason music sales haven't come to a complete stop is because it's easier to buy a CD in a record store than searching all over the internet to find all the songs of a CD in an acceptable quality.

### **Interactivity**

Can you imagine that you have a pain in your stomach and surfing the Internet to find out what it is instead of seeing your doctor? Consulting offers interactivity. You can ask specific

questions and get answers you understand. Just in the same way it's more fun to attend a concert, and being a part of it, than to download a CD from the Internet. Writers that publish their work on the Internet are still asked to speak at seminars.

### **Ethics**

Although the Internet may be a place without law enforcement, ethics always played a major role in chat conversations. When people are offered things for free, they still feel the need to pay a small amount of it, like tipping the waiter after a meal. People that download music still want to pay for their Mp3s, but there's no convenient way to do this. In the next chapter I will get back at the psychology of tipping.

## **CHAPTER 7: Freeing Music**

If we follow in the trail of Barlow and observe the developments of KaZaa and other download programs, we can't conclude anything but the fact that copyright is losing its grip on intellectual property on the internet, especially music. Early examples of Digital Rights Management have failed obviously, and KaZaa can't be shut down by any government. The possibilities I will discuss in this chapter sound controversial, but I'm sure that they will prove themselves after some time. This plan is a combination of the Free Music Philosophy and theories of the same kind, and the Tipping Model for compensating the artist. I have collected arguments to support my view that freeing music is the best thing to do.

### **The Free Music Philosophy**

Already in 1998, Ram Samudrala published the Free Music Philosophy (FMP). This document is stated in the form of a Frequently Asked Questions (FAQ), each paragraph answers a particular question. The second answer clearly describes the definition of Free Music.

*Free Music means that any individual has the freedom of copying, distributing, and modifying music for personal non commercial purposes. Free Music does not mean that musicians cannot charge for records, tapes, CDs or DATs. (...) When I say music I mean the expression of ideas (in the form of a musical composition or a sound recording) on some medium, and not the medium itself. Thus you have the freedom to make a copy of my CD, the freedom to download sound files of my songs from my server on the Internet, the freedom to cover or improve upon a song I've written, but you are not necessarily entitled to free CDs.<sup>17</sup>*

So Free Music pleads for legalizing Mp3-swapping through the Internet. An unlimited possibility to listen to music and save it on your hard drive or Mp3-player. Of course this only applies when it's for personal use, commercial users have to pay rights to organizations like BMI and ASCAP.

### **Tipping Model**

Free downloadable music will initially decrease revenues of record stores, but this loss can be marginalized if the music fan downloading music is given an opportunity to tip the musician or songwriter that created the music. With a click on a button the listener can upload some small money to the musician if he likes his music. You can see it as a new form of street artists, where the listener can flip a coin in its cyber-hat to thank him for the music. The Tipping Model does not require a price to be set, because there is no need for a physical medium in this virtual age.

*A car manufacturer would quickly go broke if he let the costumer decide on the price of the car; the costs of each "free rider" (...) who decides he doesn't want to pay for his car would be enormous. But intellectual property is different, because the incremental cost of providing a costumer is rapidly approaching zero.<sup>18</sup>*

The music fans will exchange music themselves, making it popular if they want it to be. The record companies could jump in this hole and develop a system that makes online tipping possible.

I think that a combination of these two is a solution to maintain Mp3 in the future. But I have to correct the Free Music Philosophy of Samudrala in two ways. In the time Samudrala wrote this philosophy peer-to-peer networking as used in Napster and KaZaa wasn't developed yet, so I think that this should be implemented in the FMP. On the other hand I think that music should not be open to covering or improving a song, because this infringes the right of an

artist to see a piece of music as his own creation. The writing of music is often an emotional matter and I don't think that should be open to be changed by others. This Philosophy lets people download music from the Internet freely, without any restriction, except that it's kept for personal use.

If this philosophy would be applied to all music, the music industry would face a tremendous change. This change however is faceable considering the major changes the record world's already been through. I think this philosophy is the only option there is left for the music industry. In fact it's already in use, with KaZaa and the possibilities of copying CDs. It's not hard to understand the motivation of the music labels on their reaction to Mp3 music; they're losing their cash cows, the musicians themselves. All the other parties can profit from Free Music, the musicians themselves, their creativity and the music listeners.

### Free Music won't reduce sales

Although the tremendous change of attitude required of the music industry, Free Music will have a smaller effect on music sales than suspected. On the first hand the record companies will save a lot of money on the costs of continuously suing companies involved with Mp3, this money could then be spent on supporting and promoting their artists.

On the second hand Free Music could increase record sales, in combination with more acceptable prices. As listeners have an opportunity to sample, they can first listen to one track of a new CD and consider if they want to buy the whole album. If they won't buy it, they will be fair enough to put a small amount in their tip box.

Tipping is the ultimate form of power to the buyers. They can always define their own price, and make or break an artist if they want to; they are no longer subjected to the will of the record companies. In a short time Free Music will give the music industry a tremendous boost.

### Examples

Of course I can't state this philosophy without referring to the reality. The past few years there have been several project that support my view of Free Music.

1. In the summer of 2000 Stephen King published his first part of his new novel *The Plant* on the Internet, and asked readers to pay one dollar if they liked it. If enough reader would pay, he promised to release more parts of his novel in the same way. By the end of 2000 about 76% of the readers that downloaded this part, had paid. Numerous people offered to pay extra for the "free riders"<sup>19</sup>
2. Software is already a few steps in the lead of music, with a system of Internet scripts that can be changed to one's personal needs.

*You may copy and distribute verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty; keep intact all the notices that refer to this License and to the absence of any warranty; and give any other recipients of the Program a copy of this License along with the Program.*<sup>20</sup>

A lot of Internet pages offer the viewer a possibility to donate a small amount of money to the developer of the software. The viewer clicks on a special button and tips the developer for its labor.

3. Music Fans of The Grateful Dead, so called Deadheads are free to tape concerts and to distribute them among each other. Even though free recordings were often more

entertaining than the band's commercial albums, fans still went out and bought records in such quantity that most of them went platinum.<sup>21</sup>

4. In 2000, Radiohead's *Kid A* was already downloaded from the file swapping services, before it was officially released in October, despite of efforts of Capitol Records (the band's label). Nonetheless, the album – considered their less mainstream work, sold 200,000 copies in one week, landing Radiohead its first number one effort and eventually going platinum.
5. Rock band Wilco, after being dumped by Reprise Records in 2001, streams its new work online in an effort to find a new label. In April the label Nonesuch releases it on CD, and the critically hailed work is on pace to be the band's most commercially successful album.
6. The band The Offspring had the most illegally downloaded song of 1999 with *Pretty Fly for a White Guy*, and still sold more than 4 million copies of its *Americana* album.<sup>22</sup>

## **CHAPTER 8: Conclusions**

In this essay I tried to analyze the future of music online. I discussed the reasons of people downloading music from the Internet and I tried to compare two various solutions to this problem to see which one could be used best. In this chapter I'll write down my conclusions.

### **Why do people download?**

In this chapter I analyzed the various reasons why music fans started to download music from the Internet. It wasn't just the possibility of downloading that made Mp3 a success; there was dissatisfaction about the way that the music industry runs its business. Prices are found too high, and television and radio stations don't offer much variety.

So along came the real Internet with possibilities for music fans to download the music that they actually want to hear. They didn't care anything about legislation not able to keep up with them.

Of course the music industry was absolutely not happy with this, they could see their cash cows being flushed. In an answer to this they did two things:

1. They lobbied for new legislature and sued the companies involved with Mp3 based on the DMCA. The time has proven that the DCMA hands too much power to the owners of copyright, crushing even the freedom of speech and press.
2. The music industry came up with competitors of KaZaa and others; MusicNet and Pressplay. But research proved that these services are nowhere close to the usability and quality of KaZaa and Mp3.

Elaborating on these services, Stan Liebowitz and the music industry see Digital Rights Management as the final solution to stop 'piracy' of music on the internet. DRM however has no potential whatsoever, because of several reasons.

1. DRM-files always will be cracked
2. As long as KaZaa and Mp3 are available, music listeners aren't even thinking about switching.
3. DRM infringes the Right of Personal Use, making it impossible to make a complete legal copy for own use, without paying for it.

But all these theories lack one major point: KaZaa and Mp3 are still working. Subscription services and DRM won't have any use until Mp3 and KaZaa are out of the game, and I doubt if that's ever going to happen.

In his theories John Perry Barlow indicates that copyright will be lost on the Internet. This indicates that music (and other intellectual property) should be seen as a service, instead of a commodity. The loss of copyright doesn't mean that creativity will die, there are five principles that will save creativity.

The music industry would do a much better job if they used the power of Peer-to-peer networking. If music on the Internet would be set free, it would offer an enormous marketing opportunity. If combined with lower CD prices and valuable artwork, Mp3 would increase their revenues. With the Tipping Model implemented there is a great chance that the music industry can make up for their costs of their huge lawsuits. In a way the Theory of Free Music is already used, with KaZaa unstoppable almost every song is available on the Internet. Considered my arguments I think that that the Theory of Free Music is the only way to solve the problems of the music industry, without extremely high prices or a loss of choice for the music fans.

With still rising connection speeds and still decreasing media files, the whole entertainment industry await a long and hard way if they don't meet the consumer in its demands. With a fast Internet connection you can download a complete movie in a couple of hours. It's only a matter of time before this connection is widely available, and the whole circus starts all over again.

## Notes

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- <sup>1</sup> I used parts of the thoughts of Mike Prevatt in *Why I Download: Confessions of a Music Junkie*, <http://www.alternet.org/story.html?StoryID=13577>
- <sup>2</sup> Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment*, 1944
- <sup>3</sup> Michael J. Wolf, *The Entertainment Economy*, 1999, Times Books, New York
- <sup>4</sup> Naomi Klein, *No Logo*, 1999, Picador, New York
- <sup>5</sup> Electronic Frontier Foundation, *Unintended consequences, three years under the DMCA*, <http://www.eff.org>
- <sup>6</sup> Idem
- <sup>7</sup> Idem
- <sup>8</sup> Mike Prevatt
- <sup>9</sup> Dawn Chmielewski, *Justice Department Probes New Online Ventures*, [http://www.dallasnews.com/entertainment/436540\\_webmusic\\_05ove.htm](http://www.dallasnews.com/entertainment/436540_webmusic_05ove.htm)
- <sup>10</sup> Stan Liebowitz, *Policing Pirates in the Networked Age*, 2002, Policy Analysis
- <sup>11</sup> Pamela Samuelson, *Toward a New Politics of Intellectual Property*
- <sup>12</sup> John Perry Barlow, *The Economy of Ideas*, 1994, Wired Magazine, [http://www.wired.com/wired/archive/2.03/economy.ideas\\_pr.html](http://www.wired.com/wired/archive/2.03/economy.ideas_pr.html)
- <sup>13</sup> Idem
- <sup>14</sup> Stuart Hall, *Encoding/Decoding*, 1980
- <sup>15</sup> Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*
- <sup>16</sup> John Perry Barlow, *The Next Economy of Ideas*, 2000, Wired Magazine, <http://www.wired.com/wired/archive/8.10/download.html>
- <sup>17</sup> Ram Samudrala, *The Free Music Philosophy (v1.1)*
- <sup>18</sup> Robert Woodhead, *Tipping – A method for optimizing compensation for intellectual property*, 2000, <http://tipping.selfpromotion.com>
- <sup>19</sup> Idem
- <sup>20</sup> Free Software Foundation, *GNU, General Public License*, 1991
- <sup>21</sup> John Perry Barlow, *The Next Economy of Ideas*
- <sup>22</sup> Mike Prevatt