

# A comment and clarification on the Napster controversy

28 June 2000

Dear editors,

Public interest in the Napster controversy has exploded since my recent WSWs article on the rock band Metallica's suit ("Rock band launches suit against Internet music downloads" [5 May 2000]). Since the article was published there have been a number of significant developments in the case, including the launching of new lawsuits. The media—print, broadcast and online—has shown considerable interest in the issue within the US and worldwide. Much of the commentary frames the issue simply as whether one is for Metallica and against Napster or vice versa. This is a myopic approach.

The heated nature of the debate and the ferocity with which the recording industry is pursuing its cases against Napster and other mp3-related technologies are indications of the significant implications of the rapid development and widespread use of the Internet for its profits. The scale with which music is being distributed across the Internet in the form of mp3 files shows that this new application of technology is no longer a novelty.

The downloading of music files has rapidly become a popular benefit of the Internet. At the same time, the RIAA (Recording Industry Association of America) is attempting to defend itself by denying the public access to the enabling technology. The record companies are using all of their influence and legal resources to force the issue to a head in the courts. The industry has a consistent record of opposing each newly introduced copying technology, so as to deny the public the means of threatening the industry's collective monopoly over popular music.

The battle over music has at its heart the issue of private property, which is a basic component of capitalist society. However, there is a uniquely modern twist to this scenario, the first element of which revolves around the interpretation and enforcement of the concept of intellectual property. It is no surprise that the record industry has always sought to uphold the strictest interpretation, prohibiting copying of recordings in any form.

The second aspect is the nature of digital technology and the Internet. Every form of information, whether type, graphic, sound, animation, or the more invisible and sophisticated workings of a computer program, is encoded into data bits and *copied* from one computer's hard drive to another and another. Whether a user realizes it or not, the content of the web site he is seeing and hearing is being copied to his or her hard drive. By its nature, the Internet defies any and all attempts at copy prevention.

The general conflict has major implications for the way in which

the Internet, and society itself, will develop in the coming period. Several readers have sent comments since my original article was posted, and some have made valid points. A clarification is called for on the issue of copyrights, as well as the rights of artists in general.

Some general statements I made in my article on the role of copyright law could be interpreted in a manner that would amount to a historical distortion. Copyright law in its initial incarnation was, overall, a rational and progressive development. While it is true that the introduction of copyright law paralleled the rise of the capitalist class and capitalist property relations, this was at a time when that class played a generally progressive historical role in the struggle against feudalism.

In 1709 the British parliament enacted the first copyright law, entitled the "Statute of Anne," which had an essentially progressive character. Up until that time, the publishers, called stationers, who controlled the printing presses, had exclusive control of all written works by the grace of the crown. Except for those writings the monarchy deemed unfit to print, the stationers would decide among themselves who would print which works. The creators of the works had virtually no say in the matter and exercised no control over the production and distribution of their books.

The Statute of Anne did two things. First, it granted authors exclusive control over their works for a limited time, giving them the opportunity to be more fairly compensated. Also granted was state protection against plagiarism.

Second, it established the "public domain," whereby the public was protected against copyright claims on all previously existing writings. That meant anyone with the means could publish works by Shakespeare, Dante, etc. This had the effect of making editions of classical writings widely available at reasonable prices.

When the newly independent United States adopted its Constitution in 1787, it empowered Congress to enact copyright legislation (Article I, section 8), and shortly afterward, in 1790, the first US copyright law was enacted, modeled closely on the Statute of Anne. These laws encouraged the propagation of ideas and the spread of literacy, a far cry from the spirit of today's interpretation of copyright law, which increasingly is aimed at restricting the rights of the public.

Today, some proponents of intellectual property are seeking to make these laws even more restrictive toward the general population. Late last month hearings were held in Washington, DC over proposed changes to the Digital Millennium Copyright Act,

passed by Congress in 1998. The “Progressive Policy Institute,” a Democratic Party think tank, is proposing to remove or limit provisions which extend protection from prosecution to Internet Service Providers (ISPs). Napster is seeking to use these proposed amendments to defend themselves against liability claims by the record industry. They want to hold ISPs responsible for any “piracy” that is perpetrated by their users.

The RIAA claims that online copying of music files costs them \$5 billion each year. This figure is based on the supposed monetary value of the music files copied, not on actual loss of revenues to the industry. It should be noted that the major record labels were recently found by the Federal Trade Commission to have colluded to fix prices of CDs substantially above their value, so industry profits have been artificially bloated for some time.

The implications of such proposed changes in the copyright law are huge. If the RIAA can hold ISPs liable for such losses, then they, along with their counterparts in the publishing, movie and software industries, can conceivably wield power to transform the Internet into a tightly policed online environment.

The industry has long considered the airplay that recordings are given on radio as lost revenue, but rather a necessary vehicle to create markets and increase sales. The difference between radio airplay and downloading of music is that in the latter case a copy is created which is under the control of the end user, to do with as he or she sees fit. The actual monetary effect on the industry is difficult to calculate, but just as the industry has found ways to compensate those of its artists for airplay who are lucky enough to hold more equitable contracts, it could do the same for downloads, but across the board for all artists.

I would like to add some points concerning the rights of musical artists. Copyrights, in their best interpretation, provide only some protection for artists and for the content creator in general. Here I would like to clarify a point which one reader made in regard to the distribution of Metallica's “studio songs.” Some of the recordings which found their way to Napster users were unpublished recordings which were apparently obtained illegally. This cannot be viewed in the same way as works that have been published and distributed through the normal industry channels. In this case, there was likely some real thievery involved in making unpublished studio recordings available on the Internet, though it is possible this could have happened unwittingly by someone who had them on his hard drive legitimately. I can't claim to know, but in either case the technology itself is not to blame for whatever transgressions may have occurred, and banning its use is not the answer.

In general, musical artists are probably more injured by copyright law as it is enforced today than they are helped. The domination of business interests over the music industry means that relatively few artists have artistic control over the production of their work, or any say over how it is distributed. Resources are made available to artists strictly on the basis of what is deemed to be profitably marketable.

There are “successful” artists who have been brought into the system, and even some who have apparently succeeded in bucking the system and establishing their own labels. But for the vast majority of musical artists, their copyrights are a woefully

inadequate tool for leveraging their way to a mass audience.

This is not to say that copyright law should be done away with, but as I said my article, in a socialist society copyright law would be “drastically altered in favor of the public good.” This formulation may sound vague, but this discourse is only a contribution to framing such an approach for the future.

I firmly believe that in this advanced stage of capitalism the existence and enforcement of the public domain has been given short shrift in the interest of preserving the profit margins of the media conglomerates. Thus one of the original intents of copyright legislation for the protection of the integrity of creative work has been watered down immeasurably.

I referred in my article to the reciprocal relationship between the artist and the public. It could also be said that there is, especially in popular music but not exclusive to it, a profound connection between an artist and the public domain. Any honest artist will be able to cite his major influences, inspirations and heroes, and admit that his work heavily borrows from them. For example, just as Rossini had such a relationship to Mozart, Marsalis draws upon Armstrong, McCartney upon Little Richard, Clapton upon Robert Johnson, Muddy Waters and Jimmy Rodgers. This is a healthy process, even though those who are imitated don't always benefit by way of royalties. My point is that this relationship prevails throughout all of culture and is a good and necessary phenomenon. Future artists will be inspired by work that they find on the Internet.

A socialist interpretation and implementation of copyright law must have as its primary concern the interests of the masses in society. Rather than protecting the interests of an elite minority against the public, it must seek to protect and enhance the integrity of the creative process for the benefit of all.

James Brewer

*Metallica joins recording industry's attack on Napster*

Rock band launches suit against Internet music downloads

[5 May 2000]

The Internet and Computerization

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