

# Online music-swap firm Napster forms strategic alliance with media giant Bertelsmann

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An October 31 announcement showed light at the end of the tunnel for beleaguered Internet company Napster. As legal action against the online music-swap firm continues, Napster announced a strategic alliance with media giant Bertelsmann.

According to a press release from the German-based publishing and media company Bertelsmann AG, the company's new "eCommerce Group, BeCG, and Napster have developed a new business model that will provide Napster community members with high quality file sharing that preserves the Napster experience while at the same time providing payments to rightsholders, including recording artists, songwriters, recording companies and music publishers."

Once Napster has implemented a new membership-based service, Bertelsmann's music division, BMG, will withdraw its lawsuit against Napster and make its music catalogue available.

A statement on Napster.com assures users, "There will always be a free, promotional file-sharing element to Napster," but continues, "For months, we have been working to find a system that rewards artists for their work when members of our community share their music over the Internet. We've been trying to find a fair and mutually agreeable solution to concerns raised by others—without having to leave Napster's future hanging on the outcome of a court case." The company says that in Bertelsmann, Napster has found "a far-sighted member of the media industry to work with us."

The creation of an 18-year-old freshman at Boston's Northeastern University, Shawn Fenning, Napster has been embroiled for months in legal arguments with the Recording Industry Association of America (RIAA) representing the five major record labels. The

companies claim that in allowing users to exchange music files via the Internet, Napster is facilitating pirating and breaking copyright laws. For their part, Napster argue that the music made available on users' computer hard disks comes under the definition of personal use in much the same way as recording a CD to audio cassette.

Beyond the courtroom, the debate over Napster and online music in general is polarised in the extreme. The rock band Metallica and other artists joined the RIAA, claiming that their music had been made available on the Internet without permission and in breach of intellectual property rights. Both famous and lesser known artists are divided between those who think the music swapping technology provides a new and exciting medium through which the artists' work can become known, and those who think Napster and similar companies pose a threat to their livelihood.

The Napster debate has captured the attention of millions, both inside and outside the 38 million-strong Napster user base. Some went so far as to vandalise web sites, plastering them with pro-Napster graffiti. Fenning was and is presented as either the Robin Hood of the Internet or a modern-day gangster. Discussion of the rights and wrongs of this technology has, from the beginning, been framed as "for or against Napster"—"for or against the recording giants". To those who have accepted this presentation of the matter, Tuesday's announcement will have come as a great surprise.

In reality, however, an alliance with Bertelsmann or some other media giant was always the most likely outcome of the proceedings against Napster. One suspects also that such a deal was never far from the

minds of Fenning or his financial backers when the software was developed.

The emergence of Napster has had revolutionary implications for the music industry. It has served to highlight the contradiction between the Internet as a mass distribution network and the dominance over society exercised by big business. With file sharing technology such as that implemented by Napster, it is now possible to exchange recordings with millions of users simultaneously at little or no cost.

It is this threat to their control over distribution that the recording giants were seeking to suppress in the ongoing court action against Napster and similar actions against others. What such actions ignored is that once something as powerful as this has been released, it is almost impossible to suppress. Even if the courts find against Napster and order the company to close down its services, the technology is out there and music swapping will continue.

This was no doubt a major factor in Bertelsmann's decision to buck the trend and form an alliance with Napster, even while maintaining its own actions in the courts. Rivals who are said to be keen to continue the action in the courts will not welcome the decision. While Bertelsmann maintain that they are keen to work with others in establishing a standard for online music distribution, the announcement was clearly a pre-emptive strike to ensure Bertelsmann a leading place in the new era of digital music.

Universal Music are piloting their own online music scheme, under which users will pay a monthly subscription allowing them to listen to unlimited amounts of music via audio streaming. Unlike Napster, users will not be able to save the songs to their hard disks. Not only is this model clearly less attractive than the Bertelsmann-Napster alliance, but it also lacks the established user base of 38 million people worldwide boasted by Napster.

For all the talk of protecting the rights of the artist, the question concerning the recording giants has always been how to maintain their dominance given the emergence of this new medium. While some maintain that this requires the crushing of Napster, Bertelsmann have decided that it is better to embrace it and bring it under control.

The *Financial Times* of London praised the company for taking this decision. An editorial of November 2

comments, "This is a struggle in which the fittest can survive. But dinosaurs content to do nothing but insist on their presumed legal rights will find that a new species of younger, nimbler operators has taken over their habitat."

The unfolding of the Napster case should serve as a reminder that the democratic character of the Internet is not to be taken for granted. There is growing concern that the current frenzy of corporate mergers is extending to the Internet the big business monopoly of other mediums, such as television and newspapers.

Bertelsmann's new eCommerce Group was founded in June of this year, bringing together e-commerce companies such as Bol.com, BarnesandNoble.com and CDNOW. In a press release the company sets itself the goal of becoming "the leading global e-community and e-commerce network with exclusive access to the largest selection of media content." Boasting strategic alliances with America Online (AOL) and TerraLycos, Bertelsmann claims direct access to 200 million Internet users worldwide and 32 million unique visitors each month.

Notwithstanding the alliance with Bertelsmann, AOL has its own plans for the distribution of online music and other content. Utilising its multibillion-dollar merger with media giant Time Warner, AOL is seeking to marry content with customers. It too announced plans last week to offer streaming music to customers, bringing Time Warner content to AOL's 24 million subscribers.

Privacy campaigners have repeatedly raised concerns over the ability of companies to merge the tracking of a person's web browsing activity with personal details from more traditional retail outlets such as home-shopping catalogues.



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