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MP3s Are Killing Home Taping: The Rise of Internet Distribution and Its Challenge to the Major Label Music Monopoly[1]

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The phrase "home taping is killing music"—a slogan invented and heavily promoted by major labels to combat the unauthorized duplication of music in the early-1980s—now sounds quaint after the rise of digital distribution. Because the legal arguments surrounding the trading of copyrighted music on file-sharing networks have been extensively debated elsewhere, this article primarily focuses on the way this alternative distribution system poses a very real challenge to major labels. That music monopoly, which has been in place for a century, was able to secure its dominance because it controlled the means of production—something that is no longer the case, because recording, production and distribution costs have radically dropped in price since the 1990s. This article, which operates in a journalistic mode, places into historical context the 1990s compact disc boom and the subsequent rise of digital distribution. The consumer-led file-sharing explosion forced an unwilling music industry into the online marketplace, something that this article argues has been a boon for those working outside of the major label system. This has opened the door for small labels and independent artist-entrepreneurs to use these relatively inexpensive technologies to disseminate their music and circumvent the clogged, payola-drenched playlists of corporate radio.

This essay sets aside many of the legal discourses and controversies surrounding the emergence of music file sharing to examine one important aspect of it—namely, the way it holds the potential to create an alternative means of music distribution for artists who are often marginalized by the mainstream music industry. Here I will look at the way file sharing and other forms of Internet distribution have mounted a significant challenge to the hegemony of the major label distribution system. In doing so, I will begin by telling a story familiar to anyone intimate with the workings of the music industry. The narrative goes like this: Despite the fact that—in the name

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of musicians—the Recording Industry Association of America (RIAA) has filed copyright infringement lawsuits against downloading music fans, that same industry has never treated those musicians fairly or equitably.

I move on to demonstrate that, more than merely being a technology that enables copyright infringement, file sharing and other forms of Internet distribution are seen as a threat by the RIAA (and the major labels that it represents) because these new technologies threaten to erode their market hegemony. Later, I explore the emergence of "digital" as a medium that helped fuel the 1990s boom in compact disc sales, but which then ironically opened the back door to the dreaded specter of digital distribution. Although major labels embraced the digital CD format in the late-1980s, the same labels were dragged kicking and screaming fully into the digital age after consumers' adoption of MP3s and other digital music file formats. Lastly, I finish by discussing the ways in which small labels (and independent artist-entrepreneurs) have used these inexpensive new forms of recording and distribution to increase the diversity of music available to music consumers.

The Music Monopoly and Musicians

Dave Marsh, a native of "Detroit Rock City," has been in the music business for many, many years, and he's seen it all. Along with Lester Bangs, the rock critic featured as a pivotal character in *Almost Famous*, Marsh was an editor at the influential rock magazine *Creem*. After moving on to *Rolling Stone*, where he worked as an editor in the 1970s, he started his long-running independent magazine, *Rock & Rap Confidential*, and authored about a dozen books on music. Marsh also helped found the Rhythm & Blues Foundation, which was dedicated to fairly compensating black musicians who were ripped off in the 1950s and 1960s. True to form, he quit in disgust after it turned into just another hall of fame that had little to do with its original mission.

For years, this working-class rocker has been married to Barbara Carr, one of Bruce Springsteen's managers. They live comfortably in an expensive Connecticut home with their two little dogs; it is a contradiction that Marsh recognizes, and it seems to make him uncomfortable. Surveying his wooded New England neighborhood after I interviewed him for the documentary *Money for Nothing: Behind the Business of Pop Music*, he unleashed a classic Marsh-ism: "*Look at this place*. It's like something out of fuckin' *Faust*." Marsh knows that his comfortable home life is subsidized—indirectly, at least—by the same capital that circulates through the major label system. He is a cranky, cantankerous curmudgeon, rivaling only famed recording engineer Steve Albini (Nirvana, Pixies, Bush, Cheap Trick) in that department—though both also have sweet sides.

Marsh can list off a machine-gun litany of ways major labels use "creative accounting" to withhold royalties from an artist. "They get you on breakage fees, they charge you extra money to make CDs even though CDs are cheaper to produce than cassettes," he tells me, without missing a beat. "I mean, they just got a million scams to take money away from the artist," he says with disgust. "It's the reason TLC filed for bankruptcy, it's the reason P. M. Dawn sold three million records and were still not in the black with the record company." The rock-bottom price to make a video with MTV-level production values is around $100,000, and, depending on the contract, the artist pays at least half of it back to the record company. A more realistic number is a quarter of a million and, after two or three singles, the bills keep adding up. "In terms of the American economy," Marsh tells me, "the recording industry replaced the cotton industry with exactly the same labor relationship. You know, recording artists are mostly treated like sharecroppers." Still, the lure of a major label is strong.

"I know if some big record label had approached me when I was eighteen years old," Albini tells me, "and said we want you to be on our big record label—here's a record contract—I would have signed the first thing that was put in front of me, without any doubt." What made him change his mind? Years of musical horror stories and watching his friends get screwed by major labels. "Mainstream record labels, like any business, are just trying to maximize their profits, so they're trying to minimize their costs. Royalties are a cost; they want to keep that as low as possible. And, wherever possible, if they're going to be paying money to a band and they can instead use that money to pay for something else that they would otherwise have to cover."

Hip hop MC Busta Rhymes rattles off more things: "All those videos, the advertising in the magazines, the sniping that you see when you're walking up the block—all of these things have to be paid for—from the album pictures to the cassette being manufactured, to the actual studio time to record the songs. Everything. Every single red cent has to be made back before the artist can begin seeing money" (*Money for Nothing*). The vast majority of musicians do not make money from album sales, which end up benefiting only a very, very small minority of artists like Madonna, Metallica, or Aerosmith. "Industry rule number 4080, record company people are shady," rapped Q-tip on "Check the Rhime," from A Tribe Called Quest's 1991 hip-hop classic *Low End Theory*. Q-tip, another victim of the music industry, tells me, "Yeah, we obviously didn't learn our own lesson when I dropped that rhyme." He was laughing, but it was the sort of bitter laugh that keeps you from flinging yourself out of the nearest window in despair.

Here's what happened. The group sold 1.5 million copies with a 14% royalty rate, which meant they received about $1.12 per album. They spent $375,000 recording the album, which all had to be repaid to the label, and spent $80,000 for each of three music videos (back in the early-1990s when videos were cheaper to make). This and much more had to be paid back to their label before they could earn any royalties. "So we broke even with the company," says Q-tip. "But in our case we had other things we had to continue to pay off," like group taxes, individual taxes, and lawyer, accountant, and manager fees. "You're left with maybe $15,000. It's sad" (*Money for Nothing*). The year he was a platinum-selling artist with a breakthrough album, Q-tip was sleeping on his mom's couch, having made less that year than he would have working at a convenience store.

File-Sharing: A Challenge to the Music Monopoly

"What we find, historically, is that the folks who do best are those who embrace the new technologies," says Brian Zisk, co-founder of the Future of Music Coalition. "The King Olivers and those folks who are early and got their stuff on records built this following." But the musicians who would not let their music be recorded have been forgotten. "They may have thought they had a legitimate reason to say, 'We don't want people to copy our licks,' but it's really about how to get as many people to hear your music as possible." Radio was also supposed to ruin the recording industry because, well, if people don't have to pay for the music they hear, why would they go out and purchase records? The answer soon became obvious: the more people heard certain songs for free, the more likely they would buy a familiar record. Radio turned out to be a fantastic promotional tool.

In an oft-cited example, when the Chicago-based rock band Wilco was dropped by Warner after the major label deemed their album "uncommercial," the group searched for a new label, and the tracks leaked onto file-sharing networks—so they put the album on their website so fans could listen to it for free. By applying the major labels' logic, this should have cut into sales, but the exact opposite happened. Wilco's *Yankee Hotel Foxtrot* ended up debuting in the *Billboard* Top 20 and went on to be the band's biggest album, selling a half million copies, double that of its previous album. The publicity surrounding the plight of the record combined with the free distribution of their music on the Internet undoubtedly generated more sales for the little band that could.

Wilco's next album, *A Ghost is Born*, also spread on file-sharing networks long before its official release. "How do I feel about the record leaking on the Internet?" says Wilco business manager Tony Margherita. "Well, that's a little bit like asking me how I felt about the sun coming up today. It's an inevitable thing and not something we ever perceive as a problem" (Devenish). The erudite pop group Magnetic Fields are also signed to Nonesuch, Wilco's label. "When we went to Nonesuch," says manager-musician Claudia Gonson, "they told us not to worry about downloading—because look at what happened with Wilco, and how their sales increased."

Too Much Joy's Tim Quirk explains this apparent contradiction by drawing from personal experience. Although Quirk is not an old man, he's been in the music business long enough to watch LPs give birth to CDs, which then begat MP3s. Real Networks, his current employer, was one of the first music services to get in on the legal downloading game, so Tim can speak firsthand about the subject from the perspective of a businessman, musician, and fan. "I can listen to things for free all the time at my job," Tim tells me. "But I buy even more records than I did five years ago due to my access to more." He adds, "My personal take on file trading is the practical musician's take. To me, it's really not that much different from when I used to walk into a used record store, and if I saw a used Too Much Joy CD in the used bin, I was happy." Someone would be more likely to buy his CD at a reduced price than for $18, and it didn't matter to him either way because he never saw a penny of royalties. "As a musician, you want your music out there, you want it out in as many places as it can possibly be."

This increases the chances more people will pay to see your band when it comes through town (and perhaps buy merchandise), or that a newfound fan will purchase one of your other albums. While there are always going to be freeloaders who will never pay for music, that does not characterize the majority of fans who share music. A study of file sharers conducted in 2000 by the Norman Lear Center at the University of Southern California backs up these anecdotes with numbers. It stated: "MP3 usage does not reduce students' CD consumption patterns. Fully 73 percent of students who download MP3s reported that they still bought either the same number of CDs or more" (quoted in Garofalo). Those who are most likely to trade with friends are the very people who buy the most CDs, echoing the Warner report, which noted that home taping demonstrates a commitment to music. Additionally, the Pew Internet & American Life Project conducted random digit dial phone surveys during Napster's 2000-to-mid-2001 heyday, and it concluded:

> It is clear from the passion the Napster controversy has generated among music fans and musicians that a "commitment to music" is very much in play throughout the debate, as it was during the home taping controversy. That so many music downloaders in the surveys are not concerned with matters of copyright does not mean that they are criminals, or even scofflaws, or that they do not understand copyright law. Instead, as seems to have been the case with home taping, music downloaders believe music occupies a special place in their lives and in the world, a place that they believe is not subject to the same rules and regulations found in the world of commerce. In general, the Internet appears to have given them an opportunity to experience music in ways not as connected to income and commerce as music buying. (Jones and Lenhart)

A 2003 study by Jupiter Research found something similar among European downloaders. "There are strong music fans within the file-sharing community," Mark Mulligan, an analyst at Jupiter Research, told Reuters. "They are more likely to listen to digital radio and visit artist Web sites. There is compelling evidence that this group is the bedrock community for those willing to pay for legitimate (online) music services in the future" (quoted in Warner).

Isn't It Ironic?

A funny thing (humorous, at least, to someone who isn't a major label exec.) is that the music industry itself is responsible for ushering in the dark days of downloading. In the 1980s, record companies were pushing the digital compact disc format on the public, but cassette and LP buyers remained unconvinced. CD sales were not as brisk as they had hoped. Then, in the late 1980s, the major labels instituted an industry-wide return policy that forced retailers to stop carrying LPs. Because the vast majority of records released fail commercially, a liberal return policy has been an industry norm. Stores could no longer sell LPs without serious financial risk, because they could not return them for credit. I was working at a record store at the time, and I remember watching the geographic shift as CDs colonized the majority of the racks over a two-year period.

Although CDs are in many ways better than cassettes and LPs—in terms of sound quality and portability, respectively—this change was not purely the result of "free market" supply and demand. It was a conscious policy instituted by record companies that wanted to make sure this format took off. This generated higher profits and new sales as fans began replacing their vinyl collections with CDs at inflated prices. And it did not engender sympathy among consumers when a US court found the nation's largest labels guilty of a conspiracy to drive up CD prices. These companies were ordered to pay back to consumers $143 million for a practice called "minimum wage pricing" (which contributed to the steadily increasing retail cost of CDs throughout the 1990s) ("Court finds"). As production expenses fell, consumer prices rose, and artist royalty rates stayed the same.

Selling CDs meant higher profits, but it eventually allowed fans easily to "rip" songs onto their computers and upload music files to the Internet. Jim Guerinot, manager of the Offspring, a favorite among Napster users in 2000, believes that the industry brought the downloading debacle on itself. He said that when record companies complained about downloading, "I say to them, 'Hey, I'm not the one who went out and had sex without a rubber. This is your problem, not mine'" (Goodell). The industry opened the door to the digital world, but it was dragged the rest of the way by the consumer-led file trading movement. If record companies had their way, they likely would have never allowed their music to be sold on the Internet—much like if early 20th-century song publishers had had their way, we would still be diligently buying their sheet music; no phonograph, no radio, no cassette recorder, no MP3 player, not even the player piano.

The rise of digital distribution does not mean everyone will suddenly stop purchasing music. It became clear that many consumers were willing to pay for downloads after the debut of Apple's iTunes in 2003 (along with Rhapsody and the too-legit-to-quit Napster 2.0) (Eliscu). Most songs were available for 99 cents a pop, which was considered by most a good bargain, but the low price is deceptive. In the world of digital distribution, there are few costs associated with manufacturing and distributing a physical object, whereas costs are built into getting CDs into stores. For a similar price-per-track, record companies can sell their goods with a higher profit margin, but still pay an artist the same per-unit royalty, about 10 cents per song. The label takes 65 of the 99 cents, so that Apple—after it pays for advertising, hosting the files, and a workforce that runs the service—makes nothing (Orlowski). But the company can sell iPods, and it has been tremendously successful at doing that. Napster 2.0, with no iPods to sell and the same unfavorable business model, immediately began losing millions after the debut of the iPod (Chmielewksi).

Record companies also pass along the nonexistent manufacturing and distribution costs to the consumer (who now has less freedom to copy the song because of iTune's copy protection technology) ("iTunes"). However, by finally embracing this new digital distribution model, major labels are buying into something that may end their market dominance. For a century, the major label system dominated the music industry because it owned the means of production and distribution. Also—and this is important—by raising overhead costs (publicity, cross promotion, etc.), the music industry makes it more difficult for indies to enter the market. It just costs too much to get on radio and into stores, unless you have big pockets.

Modern Indie Labels: Another Challenge to the Music Monopoly

Today, the means of producing and distributing music has shifted to individual artists, which means one does not need a major label contract to reach thousands of people. Indie stalwart and Fugazi member Ian MacKaye states: "If there is anything good about the Internet—and there are some things good about it—it kind of cuts out the middleman. It's just a matter of being found" (Guntzel). The RIAA is fighting to save a system that rarely treated artists fairly. Following the lead of Ani DiFranco, who began her own independent label in the early-1990s, Michelle Shocked, Aimee Mann, and other artists burned by the major label system did the same.

Other independents like Touch & Go—home to many classic post-punk records, including dozens that Steve Albini has recorded—operate in much the same way. "Independent labels, generally speaking, operate on a profit sharing model," says Albini. "That is, as money comes in for a title, a certain amount of the money is used to pay off the expenses associated with that title and then the profits are split halvsies, generally, with the band."

The Def Jux label, home to one of the most talented rosters of today's hip hop artists, operates under the same principle. "We're a label," says Mr Lif, "where all the artists are friends and any configuration of us can go out and have a successful tour because we love performing." By sharing knowledge and resources, the independent artists and the owners of indie and micro-labels are able to turn into an advantage what used to be a liability: lack of major label connections and relative geographic isolation. Trailer is obviously not the first label of its kind.

The recent changes in the industry make it more possible for this model to be one of music's healthy futures. By healthy, I don't just mean economically, but also creatively and culturally. We can hear a greater diversity of expression than is allowed through the gates of big record companies—with their narrow ideas about what kind of music is profitable. For instance, if you knew hip hop only from what you heard on the radio or MTV, you'd rightly come to the conclusion that it's about nothing but bitches and money.

However, this 30-year-old genre is far more diverse than what the culture industry gatekeepers let us hear. Def Jux's owner, El-P, pushes his artists further from the predictable, deep into the margins, and audiences have responded with enthusiasm.

"I'm consistently encouraged to go *more* out there," says Mr Lif. Because there are no huge expenses, there is no pressure to ship platinum and, therefore, compromise one's artistic vision. "I know I'm going to make some of the best music of my life here, working with this family of ours," says Lif. Rather than having to worry about selling a half million copies just to break even, an increasing number of independent musicians can make a living selling 20,000 units.

I do not mean to romanticize indie labels or claim that they *always* behave more ethically than majors, but they do tend to be more closely involved with artists, and are often run by artists. As Berklee College's Director of Career Development Peter Spellman characterizes it, we are seeing a shift from the "music business" to the "musician business" (Spellman). In the early 2000s, major labels had to lay off large chunks of their workforce while—at the same time—many independent labels have seen profits rise (in some cases from 50% to 100%) (Margolies). This is because there are massive overhead costs that go into running companies like Sony Music, with its massive physical infrastructure that employs hundreds of people. Add on the majors' wasteful promotion and spending habits, among other things, and it is no wonder that musicians have to sell so much before they can see a dime. During the same period, the major labels' share of the market shrank and the independent sector enlarged in the US, UK, and elsewhere (Sexton).

Nielsen/Soundscan documented this growth in 2003 (and that's not counting the sizeable amount of music that is sold under the radar of this retail tracking system). "File-sharing has broadened the audience for all these independent bands," Steve Albini tells me. "All these subcultures and niche types of music—and music that's difficult to come by in the conventional record store environment—it's dead easy to find on the Internet. So, it's exciting people in exactly the same way that the phonograph excited people in the Plains about opera." "It's exactly the same way that radio made people sitting at home want to go to the dance hall. The Internet is making people who would never otherwise come across it find music that they like and then buy it."

And by not dealing with major labels, artists can also keep the copyrights for their music, something Tim Quirk and the rest of Too Much Joy found out the hard way. "I was kind of pissed because my Warner Bros albums are all out of print and the only way to get them is on eBay or at a used record store, and I don't see any of that money anyway," says Tim. "I'm not making any money anyway, so I thought, 'People are paying more than the record is worth, and that's stupid.' So, we built this website and you can listen to all of our records. We set it up as streams, which was easier. So, you can stream the albums, but not necessarily download them." Despite the fact that the company no longer sells the CDs, by offering their old music for free, they are potentially violating Warner's copyrights…on the music they created.

It's yet another example of how copyright law can lock up and imprison music, movies, and books—something that collectors, scholars, and fans have been screaming about for years. As an added bonus for their fans who visited the website, Tim and Too Much Joy guitarist Jay Blumenfield recorded a new song, under the name Wonderlick. "We sold T-shirts and also put a little thing up there for donations and t-shirt sales," he says. "And in 24 hours I made more money in donations and T-shirt sales than I had in ten years on Warner Bros." He then adds with a laugh, "It sounds very impressive until you remember that I never made a penny selling a record on Warner Bros." Too Much Joy ended their tenure at the label about a half million dollars in debt to the company.

Indie Labels+Internet Distribution−Major Labels=?

Even though major label sales are declining, slightly, numerous independent labels have never been better, though certainly not all. Unlike their big, Big Brothers, many embrace the existence of file-trading networks because indie labels see them as providing free promotion. Rich Egan, co-owner of Vagrant Records, believes that file trading helps his label compete against major labels with larger marketing budgets. "Our music, by and large, when kids listen to it, they share it with their friends," said Egan. "Then they go buy the record; they take ownership of it" (quoted in Nelson). Another large indie owner, who asked not to be named, told me that he is not concerned about file trading because his bands' slightly older fans still value owning the physical object. However, he expressed concerns that this might not be true for the next generation of music listeners. When I told him that Vagrant's Rich Egan feels his business—which caters to a younger demographic—has been boosted by file trading, he seemed relieved, and encouraged.

Speaking about peer-to-peer file trading networks, Public Enemy's Chuck D told a Senate subcommittee, "P2P to me means power to the people," adding that he trusts consumers to do what's right more than he does those who run record companies (Frommer). Chuck D was an early advocate of the Internet as a way of getting word out about music that the major labels do not want to push. Paul Miller, better known as DJ Spooky, points to Chuck D's rapstation.com and his own djspooky.com as places where alternative musical voices can get out. "I like the Grateful Dead model," he tells me. "They would encourage people to make copies. It didn't hurt sales; it instead created an entire cultural environment." In 2004, veteran musicians Peter Gabriel and Brian Eno launched MUDDA—the Magnificent Union of Digitally Downloading Artists. Gabriel, who runs Real World Records, said that he is just trying to give artists more options (Doland). "We need a model partnership where every artist should have a controlling influence in the whole production process," said Gabriel, "if they want it" (quoted in Weber).

This does not mean that the massive companies that dominate the $12 billion music business will dissolve—or that all these indie ventures will succeed. Major labels have embraced the idea that music should just be part of a synergistic stew that helps marketers reach a lucrative demographic. International Licensing Industry Merchandisers' Association President Charles Riotto observed, "Music has become a culture, a lifestyle that people want to partake in…and more artists are realizing that licensing royalties can be a significant revenue stream'' (quoted in Traiman). Britney Spears and others like her—those who not only sing, but can appear in films, commercials, televised concerts, *People* magazine, soda cans, etc.—are the new model for an industry that believes music-by-itself is decreasing in value (Kot). Only through cross-marketing opportunities, where they can license their properties (both the star and the music), do record companies believe they can survive.

At the same time, an equally expansive independent sector comprised of small businesses and individual musicians is emerging. Today, there is the very real possibility that most musicians can make a living from a small but loyal fan base, and completely bypass the bloated entertainment industry. ''I just think there's sort of a middle ground to it all,'' says Thom Monahan, a musician in the indie-pop group the Pernice Brothers. ''I mean, the Pernice Brothers make all our records in-house and all the money comes directly back to the band so, you know, we don't really need to sell tons of records in order for it to work.'' The group owns their own record label, Ashmont, which means they have full control over creative and economic decisions. ''If radio wants to play it, good,'' Thom says. ''They can come to us because it's just too much money to mount a radio campaign. It would be pointless. It'd be throwing money out the window to pay people—for what? I mean, where does that money go? It goes into a system that's feeding the rich.''

Conclusion

''I always tell people that for 10,000 years, there were human beings and there was music,'' the cantankerous Dave Marsh tells me. ''There were no record companies. If necessary, we can go back to that model again. And I've stopped saying 'if necessary.' Now, I just say it.'' Without the major label system, the lifestyle of the vast majority of musicians won't go down, and it might very well go up. ''For one thing, they wouldn't spend all that money, and time, and energy, chasing their tail trying to get a record deal,'' he says. ''You know, they'd just go out and make music, and try to make it in a way that pleased enough people so that they got paid enough to pay their rent and eat. That would be better.''

The music and movie industries were able to survive the home-taping scares of the 1980s and 1990s because a very basic social contract remained intact. You share some things, but you also support others by purchasing their creative work. People will only stop supporting musicians and other artists when the concept of community breaks down, not because of the introduction of a new technology (like radio or the Internet). When the owners of VCRs and audiocassette recorders realized they *could* make copies, and never have to pay for content again, it didn't mean the vast majority of people did. The same is true of unauthorized file sharing. We aren't headed toward ''Armageddon,'' as ex-MPAA CEO Jack Valenti calls it; nor is file trading—to invoke another infamous Valenti analogy—the Boston Strangler of the digital age. However, these technological changes do threaten to help break the music monopoly that has existed for a century, something that, at the very least, will increase the diversity of music available to music fans.

Note

[1] Some of this essay was drawn and transformed from parts of my book *Freedom of Expression®: Overzealous Copyright Bozos and Other Enemies of Creativity*. New York: Doubleday, 2005.

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