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12/19/05  
6.901 Inventions and Patents  
Final Project

### ***Copyright Infringement in Music and an Alternative to Piracy***

The issue over shared music over the internet has construed a host of backlash by people who record and distribute the music legally and those who continue to undermine the process. The main problem today with the music industry in America has been the issue over the rights of purchased music and how much rights people who legitimately purchase music have in distributing music. Before the advent of the internet and compact discs (CDs), sharing music through copies was much more difficult, and the Record Industry Association of America (RIAA) did not pay much attention to illegal sharing of music even though it may have occurred on a smaller scale. According to the RIAA, it sees unauthorized reproduction of any of its music, packaging art and labels, or live concerts with its contractors<sup>1</sup>. In their website, the consumer is the ultimate victim, as the pirated recordings and packaging are not as high quality as the original. The RIAA claims that each pirated copy distributed is a lost sale which nets an annual estimated 4.2 billion dollars in lost sales. However, if quality was such an issue to casual listeners, then piracy would not be such a large issue as it has become. Instead the RIAA spends hundreds of thousands, even millions of dollars on product that will ultimately fail. Clearly, there is some mismanagement of funds. The RIAA can only hope to combat piracy and increase their profitability by utilizing the promotional power of the internet to combat the illegal sharing of copyrighted material.

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<sup>1</sup> RIAA on Anti-Piracy <http://www.riaa.com/issues/piracy/default.asp> (12/16/05)

According to the RIAA, pirated music is lower quality, and only hurts the consumer as by distributing inferior reproductions. This is a rather interesting point, as a study was done in Germany in March of 2000 on high fidelity music, particularly the popular format Moving Picture Experts Group Layer 3, commonly known as MP3.<sup>2</sup> In this study, a random group of audiophiles who listen to music regularly were invited to listen to music on a premium sound system that cost over 18,400 US dollars. It was a contest among the volunteers who could discern the difference between MP3s of 128 kilobits per second (kbps), 256 kbps and a CD quality song<sup>3</sup>, with the grand prize being approximately 600 US dollars for the volunteer who could correctly identify the most song quality differences. Surprisingly, the winner was a volunteer who was deaf in one ear, Gernot von Schultendorf, having correctly identified 26 songs and their compression qualities. He admitted that the task was difficult, although he himself preferred 256kbps over the CD quality sound because it produced a “rounder and more pleasing than the original [CD quality]”<sup>4</sup> Of the other volunteers, many of them gave up or were not able to correctly identify as many songs as Schultendorf. This study poses some interesting questions for the RIAA and the casual listener alike—given the state and quality of legitimate music, why are people still continuing to share music, particularly in a lower quality format? It is obvious that people cannot discern the difference between the quality of the audio file, and that even if the casual listener possessed an extravagant system that cost over 10,000 dollars, would they still be able to tell the difference?

Furthermore, Americans have become fascinated with being able to take their music

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<sup>2</sup> The original article, in German can be found here: <http://www.heise.de/ct/00/06/092/> a translation of the article in English is here <http://music-reviewed.com/forums/viewtopic.php?t=74&sid=2acb7aaa646851e84f6a80e72569e72a> (12/16/05)

<sup>3</sup> CD Compression rates, which can vary from manufacturer and producer, are on the order of 4000 kbps

<sup>4</sup> Music-Reviewed (English article) (12/16/05)

anywhere they want. Being able to convert your purchased CD into other formats should go without question in the rights of the consumer. A consumer who purchases a CD should be able to take that data and put it on his computer, his portable music player, burn it onto a CD with his other favorite songs on it as well. From these points, the consumer is definitely not suffering from losing from pirating music, in fact, the he is actually benefiting from it by making it more convenient to listen to music wherever and whenever he wants. However the RIAA does bring up an interesting point to the distinction between the good consumer who wishes to share his music with himself and possibly his family, and the pirate who wishes to share his music with the world. At some point the sharing becomes illegal.

Distinction between how much sharing falls under a clause under the copyright laws known as “fair use.” Much of the definition of “fair use” is left up to manufacturer and judges. Apple, founder of the popular iPod and iTunes, one of the largest online stores for purchasing music, defines this limit. Apple allow up to five computers to be authorized to be able to have a copy of the purchased song. Each authorized computer enjoys the same privileges that the primary user possesses, such burning the song onto CDs or exporting it to other digital devices, such as portable MP3 player.<sup>5</sup> Most casual users do not own more than five computers, so it would make sense that this rule applies to close friends and family as well, to be able to stretch Apple’s definition of sharing to its limit. Fair use is an expansive term, meaning that its meaning is able to evolve under different judges’ interpretations and depending on the circumstances.<sup>6</sup> Fair use means that any copyright material that is used for a transformative purpose may be used without

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<sup>5</sup> iTunes help browser (Authorizing Computers) (12/16/05)

<sup>6</sup> Copyright and Fair use [http://fairuse.stanford.edu/Copyright\\_and\\_Fair\\_Use\\_Overview/chapter9/9-a.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-a.html) (12/16/05)

permission of the owner. Common uses of fair use fall under commentary, critiquing, and parody which does not commercially hurt the original owner of the copyright material. One popular example is recording off of the radio. The RIAA is not concerned with people recording songs off of the radio, which is legal under for copyrighted material. However, the RIAA does not worry about recorded music off of the radio because the user does not have the choice about what music is played, the quality is usually lower, and the DJ usually records his own voice or plays the song incompletely. The details of fair use remain up to distributors such as Apple and interpreters of the law such as judges. Everyone agrees that illegally sharing copyrighted material to millions of users is illegal. The question is how to encourage people who illegally share and download music to legitimately purchase music.

The reason why the RIAA is going after the illegal distributors of their copyrighted material is that in effect causes them to lose billions of dollars. The claim over lost revenue results in lost money for retailers, the recording industry, the consumer, and most importantly, the creative artists.<sup>7</sup> The issue here is really how much money is lost, and which constituents in the process lose the most. Obviously the most important member in this issue is the artists, as without their creative property, the recording industry, the retailer, and consumer would be left with nothing. The RIAA claims that despite the insignificant cost of the plastic that makes a CD, the rising production and promotion costs are hurting the music industry. However, as mentioned before, the miniscule details that go into production cannot be easily detected by the causal listener, then much of the cost of paying premium producers to create the highest quality tracks really are not justified at all. The other high cost of the CD, promotion, is the last obstacle

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<sup>7</sup> RIAA on Anti-Piracy (12/16/05)

to overcome. When Jefferson and the founders of the United States came together to create the patent system, they perhaps did not envision all the issues that consume the record industry today, but they did create the patent system for encouraging new ideas, specifically in this case, ideas which contribute to the creativity and expansion of music. With an exception to the outstanding artists that define a genre, most artists of today's popular music have rarely anything new to contribute beyond their first album and a few of their memorable songs<sup>8</sup>. There is something grievously wrong about the way record labels sign artists, otherwise there would not be such a high rate of failure and lists of artists with only one popular song. The RIAA has become a barrier which prevents the flow of new ideas into music. In this manner, the RIAA admits that 10-15% of the artists' records actually become profitable, due to the high costs.<sup>9</sup> An environment with such a high rate of failure of the remaining artists can create a very conservative and dogmatic approach to what makes a record successful, more specifically, profitable. Therefore the RIAA will refuse to adopt new artists and changes to their business model unless they have evidence to prove that it can become profitable. Such a conservative approach can become a problem for music and new artists with new ideas. Therefore a new solution to the RIAA's strategy should be a low cost option that they cannot refuse to adopt.

An ideal change would be to utilize the new resources of the internet to offset the costs of creating albums and to promote artists' musical ideas, and furthermore to combat the issue of illegal sharing of copyrighted music. This would allow the RIAA to invest more resources into researching and finding new talent and using it to promote new artists' ideas. The RIAA spends a large amount of money, and about 85% of the time, the

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<sup>8</sup> A list of artists with just one popular song is compiled by the website One Hit Wonders <http://www.onehitwondercentral.com/index.cfm> (12/16/05)

<sup>9</sup> RIAA on Records [http://www.riaa.com/news/filings/napster\\_faq.asp](http://www.riaa.com/news/filings/napster_faq.asp) (12/16/05)

money goes towards promoting their artists that will inevitably become unprofitable.

Promotion through the internet can be a much more effective means of reaching millions of potential fans of music. One of the ways that the internet can be used is allowing free downloads of a limited amount of content from new artists from online stores. This has already been done to some success from websites such as MP3.com, where they have artists' permission to promote their product. However, by increasing the magnitude and scope of the project, a movement against piracy can begin. It is a situation that benefits the new, unknown artists by advertising their band and ideas, the record labels by offsetting the high costs of promotion, and the retailer by increasing traffic of potential customers to buy the artists' product. The idea is to attract customers with free product, and to encourage them to want the rest of the album by purchasing the rest of the album. To further entice customers to purchase the music legitimately, exclusive content can be offered as well. Exclusive content can be anything from documentaries, interviews, and behind the scenes content that fans will appreciate. The idea behind the exclusive content is not to spend a significant amount of money creating it; rather this content should merely be offering another part of the creative process that is already being done. This idea is similar to the extra content that is offered by many DVDs, which the motion picture industry is using to combat a similar battle of piracy. Another benefit is that by encouraging new artists to bring their content to customers, it will also encourage established artists to continue to create as well by threatening their potential market share of customers. The RIAA is a large third body company resistant to change its economic model, and could benefit by adapting to the new possibilities of the internet. In this way can the RIAA hope to dampen and eventually stop the piracy of copyrighted music.