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## DOWNLOADING

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Hay que tener valor torero para meterse en este jardín, pero aquí va:

El tema del foro de este mes, propuesto por nosotros, es "DOWNLOADING" y , como es habitual, Marquez defiende posiciones poco "populares", mantiene opiniones "contra corriente" y, que en este caso, no son compartidas entre la "tropa progre". De entre los ríos de tinta que corren sobre este asunto, hemos elegido un artículo venenoso (que se reproduce más abajo), por su efectividad y conciliar muchos apoyos, de un importante baranda, Mr. Snyder, miembro del "Board" de tan prestigiosa asociación como es NARAS y Presidente de Artist Hose Records, nominado 32 veces a los premios GrammysRAMMYs

Bien, yo no tengo, ni por asomo, ni una nominación a los Grammys (mucho menos un premio, que el tal Zinder igual tampoco tiene muchos), ni soy miembro del "Board" de tan prestigiosa asociación como NARAS. He sido un modesto artista y autor (bastante vilipendiado o justamente criticado / calificado, según se mire, como se puede comprobar en la sección "criticas" de esta página Web) y habiéndome dedicado, una parte de mi vida, a ser Editor (lo cual da a mis "enemigos" artillería suficiente para hundirme en la miseria cien veces) pero osaré enfrentarme al tiro en la boca que nos ha disparado Mr. Snyder y su propuesta de volver a la jungla.

En un extenso artículo publicado en Salon.com nuestro hombre parece postularse para el ideólogo ponente de una supuesta nueva revolución, lo que es un buen punto de partida para un debate.

"Embrace file-sharing, or die. 50 millions Americans can't be wrong". Dice el tipo.

OK. Pues comamos mierda. 100 billones de moscas no pueden estar equivocadas.

Y, además, se podría añadir: "Olvidémonos de la música, tirémonos al porno, que mueve mucho más dinero y volumen, en Internet".

Hablemos francamente, hay mucha gente hay fuera intentando hacer dinero (o ahorrárselo) con lo que pertenece a otros, algunos, por ahora, procurando abaratar su costo día a día, y mañana, si nuestro articulista tuviera razón, obteniéndolo gratis, y no hablamos solo del ciudadano común, si no, también, entre otros, de los grandes grupos de comunicación.

Microsoft que, obviamente, estaría interesada en que los productos que vende y/o licencia puedan llenarse de contenido gratis (lo que hace mas atractivo su producto), encargó, sobre este asunto, a cuatro equipos de super-cerebros, un dictamen (dictamen de parte, por definición) que concluyeron, unánimemente, que la industria tenía perdida la batalla. Bien, uno, que no es ni medianamente inteligente, sabe, al menos, que cuando se parte de presupuestos falsos se llega a conclusiones equivocadas. La impunidad en la descarga, ni es general, ni va a seguir, a medida que se fuese generalizando, siendo tolerada como hasta ahora. La comparación, aunque burda pero ilustrativa, sería partir de la premisa de que cualquiera que tenga una pistola puede entrar en un banco y llevarse el dinero, y que eso estaría justificado porque, primero, el de la pistola necesita dinero, los bancos lo prestan a un interés alto (por que algunos de nosotros, los clientes, hemos decidido que es alto) y, finalmente, es fácil conseguir que te lo den con la pistola. El planteamiento no cuenta con que los bancos están bajo la protección de el Estado, que tiene policía, que los bancos también se defienden y que la sociedad, sana repudia (o repudiará, no solo por principios sino, también, cuando el ciudadano medio (no artista) note que a algunos de sus "privilegios puede pasarle lo mismo) este comportamiento.

Supongo que los mismos expertos llegarían, también a la misma conclusión de que está perdida la batalla en el caso de controlar la prostitución, el tráfico de droga, el terrorismo o, en otro orden de cosas, la pobreza en el mundo o la superpoblación de algunas áreas.

Pero volvamos ahora a nuestro articulista que, demagógicamente, utiliza para sus fines a Thomas Jefferson con una cita que termina con "Los inventos no pueden ser, in nature, objeto de propiedad" que aparece en un ensayo de John Perry Barlow del que extrae un párrafo que comienza con "Si nuestra propiedad puede ser infinitamente reproducida e instantáneamente distribuida..." para llevar el agua a su molino, mostrando su incongruencia, porque si se cree a Jefferson en que los inventos no son objeto de propiedad, cuando Barlow habla de "nuestra propiedad" es que no esta hablando de "inventos", si no del resultado o desarrollo de los mismos, que si son objeto de propiedad; no se hablaría de "la rueda" como invento, si no de las diferentes marcas de ruedas que ponen en el mercado empresarios protegidos por patentes y marcas.

El prestigioso Presidente de Artists House Records, decide, unilateralmente, que todo el concepto de Propiedad Intelectual necesita ser re-examinado y las formas de proteger, la misma, reconsideradas, lamenta que la industria del Entertainment haya conseguido, según él, "by legislative crook and judicial hook" (ahora resulta que los que ganan en los tribunales son los delincuentes y los que vulneran la ley, "downloading", los buenos de la película) 20 años de extensión del copyright.

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He buscado, sin éxito, el/la Web de nuestro articulista para informarme sobre que discos pone en circulación y a que precio. Parece que sigue funcionando con métodos tradicionales y no aplicando las recetas que con tanto ardor preconiza y recrimina a la mayoría de la industria por no usar. Tampoco he podido constatar si ha tenido éxito en la aplicación practica de sus innovadoras teorías y ha conseguido ventas millonarias pues parecería que todo el que quiera salvarse del diluvio que viene lo lograría siguiendo sus sabios consejos.

Pero mezclando opiniones mas o menos aceptables, como

“It's not the presence of a “free” alternative that has caused the decline in CD sales, it's the presence of competing choices offering more value and fewer hassles”

con “originalidades” como

“Piracy is progressive taxation”

nuestro hombre acusa a lo que llamamos “la industria” de “criminalizar a la Sociedad” o las 200 millones de “piratas” que campean por el mundo, entre aseveraciones demagógicas para apuntalar el proyecto de nuevo orden del mundo diseñado y exigido por Mr Styner.

An argument for Downloaded Music

Hete aquí que transcribe parte de unas opiniones sobre el P2P.com “regarding piracy and on line distribution titled “Piracy is Progressive Taxation...” by Tim O'Reilly”, otro Presidente, al parecer tenido por el “best computer book publisher in the world”, pionero en la popularización de Internet y que vendió su Global Network Navigator, GNN, a AOL en 1995 con lo que parece que se salvo del desastre de la “burbuja.com” siendo AOL la que acarrea las perdidas “de aquellos polvos que trajeron estos lodos”.

Nuestro irascible e iracundo Presidente, prototipo de la seguridad en si mismo, después de acusar a RIAA y MPAA de “short term view that is characterized by the ‘sky is falling’ rethoric” califica las opiniones de O'Reilly de “provocative piece” y en ella se nos presenta la imagen de un bondadoso padre que, complacidamente, observa como su hija comete lo tipificado como delito en la gran mayoría de las legislaciones (en USA en particular) sin estar, como se supone lo esta ella, bajo el influjo del deseo, la melomanía, la adoración por algún ídolo, la moda u otras debilidades humanas, como la perniciosas, avaricia y la falta de responsabilidad, si no que, de forma sistemática y reflexiva, aunque interesadamente, se dedica a la justificación de esos actos y, obviamente, considera benéfico para la industria el downloading y, como uno de sus argumentos, dice que su hija compra después de hacerlo, muchos más CDs de los que él ha comprado en su vida. Falaz argumento que por no extenderse en filosofía, pudiera contrarrestarse con dos astracados ejemplos, ¿Diría alguien que es buena la prostitución porque después de hacer uso de ella, su hijo se va por el mundo acostándose con todas las chicas que puede?, y (en la confianza de que nuestro ponente no es esa clase de artista que solo escucha sus discos y confiando en que en el pasado ha acudido a las tiendas a comprar), ¿Tendría algún valor probatorio de lo que se pretende el hecho de que mi hijo haya comprado mas CDs, o haya viajado mas veces que yo a New York? considerando, además, que en gran parte de mi vida no había CDs, se editaban menos referencias y tenía mucho menos poder adquisitivo (sobre todo para viajar a New York).

Las 6 “perlas” con las que nos deleita Mr. O'Reilly no tienen desperdicio:

- Obscurity is a far greater threat to authors and creative artists than piracy.
- Piracy is progressive taxation.
- Customers want to do the right thing, if they can.
- Shoplifting is a bigger threat than piracy.
- File-sharing networks don't threaten book, music, or film publishing, they threaten existing publishers.
- "Free" is eventually replaced by a higher-quality paid service.

¿Y que le decimos aquí? Mon Dieu, Se atreve alguien a debatir , unos a favor y otros en contra (entre los que estaría yo) estos modernos “Seis Mandamientos”?.

Aquí os espero (muerto de miedo, eso si).

Embrace file-sharing, or die

A record executive and his son make a formal case for freely downloading music. The gist: 50 million Americans can't be wrong.

Editor's note: John Snyder is president of Artist House Records, a board member of the National Association of Recording Arts and Sciences (NARAS), and a 32-time Grammy nominee. On Thursday night, he submitted the following

paper to NARAS.

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By John Snyder and Ben Snyder

Feb. 1, 2003 | The following was written in response to a discussion by the board of governors of the New York chapter of National Association of Recording Arts and Sciences (NARAS) regarding the position NARAS should take with respect to a new public relations campaign proposed by the Recording Industry Association of America (RIAA) condemning those who download music from the Internet.

The subject of digital rights, and the position NARAS should take with respect to it, is near and dear to me. I've read a great deal about it. If I may, I would like to offer a few thoughts:

#### I. Intellectual Property

Irrespective of what we think should be done, it is still currently illegal to download copyrighted music that you didn't buy. This is a problem that needs to be addressed. The statistic discussed in the December meeting that there were 3 billion downloads the previous month shows that the law is going to have to be changed, unless you take the position that downloaded music is stealing and thereby criminalize the society. But how can 50 million people (over 200 million worldwide) be wrong? How do we reconcile the reality of downloaded music with the idea of intellectual property? Intellectual property has not always been defined and protected as it is today. Thomas Jefferson wrote about the philosophical considerations:

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of everyone, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density at any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property."

The above quote appeared in John Perry Barlow's excellent essay, "The Economy of Ideas," published first in the March 1994 issue of Wired magazine. Barlow writes:

"If our property can be infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even leaving our possession, how can we protect it? How are we going to get paid for the work we do with our minds? And, if we can't get paid, what will assure the continued creation and distribution of such work?"

"Since we don't have a solution to what is a 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.

"Legal efforts to keep the old boat floating are taking three forms: a frenzy of deck chair rearrangement, stern warnings to the passengers that if she goes down, they will face harsh criminal penalties, and serene, glassy-eyed denial.

"Intellectual property law cannot be patched, retrofitted, or expanded to contain digitized expression any more than real estate law might be revised to cover the allocation of broadcasting spectrum..."

The entire concept of intellectual property needs to be reexamined, and ways of protecting it need to be reconsidered.

Unfortunately, the entertainment industry has, by legislative crook and judicial hook, obtained a 20-year copyright extension. The Supreme Court recently upheld the "Sonny Bono Copyright Term Extension Act (CTEA)" that extended the life of existing copyrights an additional 20 years. This, in the face of Justice Steven G. Breyer's estimation that only 2 percent of works copyrighted between 1923 and 1942 are available to the general public. The Supreme Court case pitted the public against Disney, whose early Mickey Mouse cartoons were to enter into the public domain in 2003, and for whom Congress drafted the legislation in the first place.

This is a clear case of a multinational conglomerate using its political muscle to the disadvantage of everyone but itself. So, instead of creating new content and allowing long-standing laws to work, the entertainment business frantically seeks to manipulate the process to its own ends. And it does this with the obsequiousness of penurious politicians and a supinely acquiescent Supreme Court. That is the best the establishment has to offer, and it has nothing to do with progress or the good of the society.

#### II. Competition for the CD

The current argument over intellectual property is the result of the sharing of music files encoded as MP3s, Windows Media files, RealAudio files or other formats currently available. The music business blames these downloads, which it perceives as piracy, for the 10 percent decline in sales for the year 2002. This raises several questions, among them: How and why do people listen to music? What other products compete with CDs? And what is the role of radio?

Why is it that record companies pay dearly for radio play and fight Internet play? What is the real difference between radio and the Internet? Perfect copies? If we look at the Internet as analogous to radio, the problem becomes one of performance rights, not the unlawful exploitation of intellectual property. People are creating their own "radio" on their hard drives, and they are constantly changing it. Would this have anything to do with the "McDonaldization" of radio by Clear Channel and others? Would the fact that almost every song on commercial radio is bought and paid for have anything to do with the narrow focus and homogeneous nature of radio? What drives radio is advertising and money, not music. A lot of music gets left behind thanks to the current state of radio; that consumers are rejecting it shouldn't be

surprising. They're creating their own MP3 playlists, and if the labels were smart, they'd be doing everything in their power to be on those playlists, just like they do everything in their power to be on the playlists of radio stations. Instead, they scream copyright infringement and call their lawyers.

There are other reasons for CD sales to be down.

Dan Bricklin and Forrester Research list reasons for the drop in CD sales:

"... the economy, competition from other forms of entertainment (including the yearly \$6 billion of video games and the rush to the new DVD video format), and finally the shorter playlists on radio (partially a result of Clear Channel's control of 60 percent of rock radio listening and their style) that leads to fewer new musicians becoming well known ... MTV is playing fewer music videos, and in general, there is a record industry style to push a narrower range of musicians. You can imagine that the death of Internet radio will also cut down on the ways to find out about new music."

Price is a major reason for the decline in CD sales. On Bricklin's Web site there's a chart that shows that between the years 1991 and 2001, the average price of a CD went from \$13.01 to \$14.64, which is a 12.53 percent increase in price. The record companies raised prices precisely at the time costs were coming down. When a DVD costs \$19.99 and includes the movie in multiple formats with bonus material and no hassle, and a CD costs \$18.99 and comes with potential legal hassles, limits on fair use, and all the finger waving the RIAA can muster, the choice of which product to buy becomes clear. To put it simply, consumers feel that out of all their entertainment options, CDs provide the least bang for the buck.

There are five or six new and growing ways for people to spend their entertainment dollar. The video games market is one place the consumers went, and music followed suit. VH1 News recently reported that the new place to break an artist in is a video game. Some companies, such as Island Records, know this. They have a great track record of getting music on video game soundtracks. But unlike Island, most don't. There are other distractions that draw business away from the record companies: DVD, the fastest-growing home electronics development in the history of the world, the Internet itself, e-mail, cable TV, movies, and even mobile phones. In addition to that, the product marketed by record labels is narrow and significantly overpriced in comparison to the other available entertainment options. Portable CD players are being replaced by iPods. Instead of the 12 songs on a CD, there are 1,500 songs on an iPod. Why shouldn't CD sales be down? Truth be told, the record business is lucky to be alive.

Ananova.com reported that 3.8 million DVD players were sold last year, double that of the previous 12 months. DVD sales reached 80 million last year, representing a 111 percent increase over 2001. Twenty million DVDs and 1.2 million DVD players were sold in December 2002 alone. The movie industry sold 1.6 billion tickets, taking in \$9.3 billion in gross box office receipts in 2002, up 11 percent from the previous year, despite President and CEO of the MPAA Jack Valenti's recent statements that the future is bleak. Not since the 1950s have so many movie tickets been sold. Meanwhile, movie sharing on the Internet is at an all-time high. The movie business isn't suffering because of activity on the Internet. Quite the opposite -- the industry is making more money than ever! This is happening at a time when consumers are being offered more choices to view movies than ever before. This supports the view that people spend more money when they have more choices.

Advances in hardware and software have propelled the movie business ever since the VCR, which at the time was decried as the death of the movie business, just as the cassette was to be the death of the music business. In both cases, these "copying" devices enhanced their respective businesses. Whether it's the MPAA or the RIAA, there is no reason to trust those who have cried wolf in the past about new technology, especially when history has shown that advances in technology increase consumer spending.

Then there is the reality that the Internet is changing many businesses. EBay, the fastest-growing and most profitable of the major Internet companies, is selling everything in entertainment (and everything else) to scores of millions of people every week, including music and musical instruments. As a result, they have put many music and instrument stores out of business. In an era of rapidly evolving technology, businesses that adapt will survive, those who don't, won't. As reported by the New York Times on Jan. 17, 2003:

"EBay reported a profit of \$87 million for the fourth quarter, more than triple the \$25.9 million posted a year earlier ... Revenue was \$413.9 million in the quarter, up 89 percent from a year earlier ... For the full year, eBay earned \$249.9 million, up from \$90.4 million a year ago. Sales increased 62 percent to \$1.21 billion ... Last year, a total of \$14.9 billion worth of merchandise was sold on eBay. This is just shy of the \$15.5 billion in sales analysts expect this year from Federated Department Stores, the parent of Macy's."

These are startling numbers, and they reveal the way of the future. According to the Times, sales at Amazon increased 28 percent, to \$1.43 billion, and this in the face of one of the toughest retail markets in years. They did this by expanding their product lines (to include clothing) and offering free shipping to consumers whose orders exceed \$25. They did it by providing greater service for less money. Perhaps the music business will take note.

It is true that downloading music is a very popular entertainment option for many people. The number one P2P application, KaZaA, was downloaded 3,145,095 times during the week of Jan. 6-12, 2003. The number two P2P application, iMesh, was downloaded 440,877 times during the same period. KaZaA estimates that it had 140 million users by the end of 2002, twice as many as Napster at its peak. These fantastic numbers indicate a desire among consumers for music that the music companies traditionally satisfied but increasingly no longer do. This raises another question. Why don't the record labels have P2P networks? They have proven to be wildly popular. They don't require expensive investments in technology to start and maintain, and most importantly, the online community has embraced them wholeheartedly. The reason is, they can't agree with their "partners" -- publishers and artists -- on how to share the money. The same greed that got them into their current problem prevents them from extricating themselves from it. Let's suppose I'm a kid. I have a fixed allowance or a minimum wage job. I have \$100 a month to spend on entertainment, if I'm lucky. With that cash, I can rent or buy DVDs, pay for my Internet connection, go to a concert, a

movie, or a sporting event (at which I might buy some merchandise), buy a video game, pay my mobile phone bill, drive through the drive-thru, or buy a CD. From that list of options, what's the least likely thing I'm going to spend money on? I think the answer would be the CD, even if downloaded music didn't exist. I would argue that it's not the presence of a "free" alternative that has caused the decline in CD sales, it's the presence of competing choices offering more value and fewer hassles.

### III. An Argument for Downloaded Music

It could be argued that MP3s are the greatest marketing tool ever to come along for the music industry. If your music is not being downloaded, then you're in trouble. If you can't give it away, you certainly can't sell it. Daniel Bedingfield recently had a top 3 song on the radio, with "Gotta Get Thru This." However, his music was hardly available through any of the P2P networks. His record lasted on the Billboard Top 200 for less than a month, even though the single had been on radio playlists all over the country for several months. It's also been widely reported that the most downloaded album of all time was "The Eminem Show," by Eminem. It was downloaded so heavily that Interscope took the unusual step of releasing the album a week early due to the rampant online sharing of tracks from the album. Fast-forward to the end of 2002, and "The Eminem Show" is the best-selling album of the year. This seems to indicate the opposite of what the RIAA would have you believe. When people share MP3s, more music is sold, not less.

As VH1.com recently reported, at least one company believes that file-sharing is good for business, and that it's a "promotional tool and boosts the sales of albums that deserve it." M.S.C. Music & Entertainment is encouraging listeners to download 20 tracks from rapper Tech N9ne's new album, for free. "The major labels can no longer fool the consumer. They don't want you to sample their music because they know that if the fans realize there are only two good songs on a record, you will not buy it ... We believe in our product."

50 Cent, Eminem's newest talent and rap's current street king, sees an advantage to having his debut album, "Get Rich or Die Trying," available before the release date:

"The bootleggers are gonna go crazy with this record. They understand how much of a presence I have in the streets. They'll probably get the record two weeks before the album actually drops and it'll be all over the place ... I believe word of mouth is just gonna generate more sales. Consistency is the key to all success. If I consistently put out good music, if they buy the bootleg this go-around, it'll guarantee that they purchase the real CD when my next album comes out. I'm in a good space financially so I'm not worked up about the few dollars the bootleggers are gonna get."

There's a provocative piece on P2P.com regarding piracy and on-line distribution titled "Piracy Is Progressive Taxation, and Other Thoughts on the Evolution of Online Distribution," by Tim O'Reilly. His article discusses a number of subjects, including:

- Obscurity is a far greater threat to authors and creative artists than piracy.
- Piracy is progressive taxation.
- Customers want to do the right thing, if they can.
- Shoplifting is a bigger threat than piracy.
- File-sharing networks don't threaten book, music, or film publishing, they threaten existing publishers.
- "Free" is eventually replaced by a higher-quality paid service.

Tim O'Reilly is the founder and president of O'Reilly & Associates, thought by many to be the best computer book publisher in the world. He has been a pioneer in the popularization of the Internet. His Global Network Navigator site (GNN, sold to AOL in September 1995) was the first Web portal and the first true commercial site on the World Wide Web. O'Reilly takes a long-term view of the intellectual property problem, as opposed to the short-term view that is characterized by the "sky is falling" rhetoric of both the music (RIAA) and movie (MPAA) business.

O'Reilly's observations about the book business apply to the music business. As with the record industry, the publishing world enjoys only a 10 percent success rate. "More than 100,000 books are published each year ... yet fewer than 10,000 of these new books have any significant sales." And like recording artists and the music business, "Authors think that getting a publisher will be the realization of their dreams, but for so many, it's just the start of a long disappointment." O'Reilly continues:

"For all of these creative artists, most laboring in obscurity, being well-enough known to be pirated would be a crowning achievement. Piracy is a kind of progressive taxation, which may shave a few percentage points off the sales of well-known artists (and I say "may" because even that point is not proven), in exchange for massive benefits.

"I have watched my 19 year-old daughter and her friends sample countless bands on Napster and Kazaa and, enthusiastic for their music, go out to purchase CDs. My daughter now owns more CDs than I have collected in a lifetime of less exploratory listening. What's more, she has introduced me to her favorite music, and I too have bought CDs as a result. And no, she isn't downloading Britney Spears, but forgotten bands from the 60s, 70s, 80s, and 90s, as well as their musical forebears in other genres. This is music that's difficult to find -- except online -- but, once found, leads to a focused search for CDs, records, and other artifacts. eBay is doing a nice business with much of this material, even if the RIAA fails to see the opportunity."

O'Reilly makes other persuasive observations:

"Piracy is a loaded word, which we used to reserve for wholesale copying and resale of illegitimate product. The music and film industry usage, applying it to peer-to-peer file sharing, is a disservice to honest discussion...

"The simplest way to get customers to stop trading illicit digital copies of music and movies is to give those customers a legitimate alternative, at a fair price...

"The question before us is not whether technologies such as peer-to-peer file sharing will undermine the role of the creative artist or the publisher, but how creative artists can leverage new technologies to increase the visibility of their work. For publishers, the question is whether they will understand how to perform their role in the new medium before someone else does. Publishing is an ecological niche; new publishers will rush in to fill it if the old ones fail to do so..."

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"New media have historically not replaced but rather augmented and expanded existing media marketplaces, at least in the short term. Opportunities exist to arbitrage between the new distribution medium and the old."  
O'Reilly compares an on-line music subscription service to people paying \$19.95 a month for an ISP when "free" Internet is available, or \$20 to \$60 a month for TV programming when there is "free" TV programming:

"Why would you pay for a song that you could get for free? For the same reason that you will buy a book that you could borrow from the public library or buy a DVD of a movie that you could watch on television or rent for the weekend. Convenience, ease-of-use, selection, ability to find what you want, and for enthusiasts, the sheer pleasure of owning something you treasure."

Comparing TV to music, O'Reilly says a lesson that can be learned from television "is that people prefer subscriptions to pay-per-view, except for very special events. What's more, they prefer subscriptions to larger collections of content, rather than single channels. So, people subscribe to 'the movie package,' 'the sports package,' and so on. The recording industry's 'per song' trial balloons may work, but I predict that in the long term, an 'all-you-can-eat' monthly subscription service (perhaps segmented by musical genre) will prevail in the marketplace."

People want what they want and they have made their choices. They will still buy CDs, but they want to download music. The failure of the music business to provide a comparable alternative to peer-to-peer networks is the most logical explanation for the "illegal" downloading of music. And rather than address the problem by examining their own behavior, the music companies declare the consumer to be their enemy, support intrusive, overreaching legislation, and act precisely against their best interests. This remains true even in the face of the recent truce the RIAA agreed to with several technology groups. Rather than realize the profit potential of that about which they complain, they try to kill it, then they try to control it. Now they're trying to control the consumer. As O'Reilly points out in his final paragraph:

"And that's the ultimate lesson. 'Give the wookie what he wants!' as Han Solo said so memorably in the first 'Star Wars' movie. Give it to him in as many ways as you can find, at a fair price, and let him choose which works best for him."

The RIAA tries to "give the wookie what he wants" by giving him what they want. Their newest attempt is with a handful of half-baked music subscription services. The New York Times recently reported that "Jupiter Research expects consumers to pay about \$79 million for downloaded songs and CDs in 2003. Subscription services ... are expected to collect about \$107 million next year." The Times continues:

"The brewing battles among these services will be over how they package songs, what kind of exclusive access they can offer subscribers to particular artists and whether they can be used for portable devices, stereos and cars."

If subscription services offer a broad range of music and no digital rights management schemes, and properly labeled high-quality files, at a reasonable price with fast downloads, they will have a chance to compete against "free."

Unfortunately, it is unlikely that the music business will avoid copy protection issues. Instead, copy protection remains the No. 1 priority for both the music and movie industries. The future of digital media will have movies or songs offered in various ways for various prices. If you want to just play it once, or for a 24-hour period, it will be cheaper than if you want to download it to your hard drive and copy it. If you want it to play on all of your players, you will pay more than if you just want to hear it or see it over the Internet. 2003 will be a crucial year for industry online music subscription services PressPlay (Universal/Sony), MusicNet (BMG/Warners/EMI), and Rhapsody. They will have to develop an approach to these issues that satisfies the demand currently being met by the P2P networks if they hope to compete in this emerging market. Consumers are reluctant to accept limitations on use, so it is unlikely that copy protection will lead to a cure for what ails the music business.

The music business isn't like the movie business, even though both are involved in the digital dissemination of intellectual property. A song is not the same as a movie. Listening to a song on the Internet isn't the same as watching a movie for free on the Internet. It is arguable that downloading a song functions as a substitute for radio, a first step in the process of consumption, while watching a movie is, arguably, the last step in the process of consumption. Consumers may accept limitations on the use of a movie, making it more akin to the licensing of software, but they find it more difficult to accept limitations on the use of a CD they buy or music that they acquire by way of a subscription service. Consumers are used to renting movies; they're used to buying and owning music.

Music companies are more egregious in their abuse of consumers than the movie companies. Consumers don't hate movie companies, but they do hate record companies. The question is, why is this happening and what is going to be done about it? Digital copy protection (known as digital rights management or DRM) will only add fuel to this fire, so expect a very big blaze in 2003. In the end, it will be the music companies that run the risk of being consumed by it. Music companies have the opportunity to adjust to the new realities of digital distribution but instead they cling to their existing business models where they control as much of the distribution channel as possible. It is doubtful that this behavior will be rewarded with increased sales.

The Digital Millennium Copyright Act (DMCA) was passed by Congress in 1998 to address how technological innovation would affect intellectual property. In drawing up the document, Congress looked to the RIAA and similar groups for guidance as to what the law should contain. The Electronic Frontier Foundation (EFF) recently released a study titled "Unintended Consequences: Four Years Under the DMCA" which goes on to detail how the "anti-circumvention" clauses of the DMCA have been used to stifle innovation, censor free speech, and threaten academic/scientific research. These chilling effects of the DMCA contradict and limit the "fair use" doctrine that is an important part of copyright law. Additionally, the digital rights management (DRM) initiatives that the RIAA and MPAA propose to protect their copyrights do nothing to protect the "fair use" rights of consumers.

Record labels are confused and contradictory. They use MP3s in private while they deride them in public. If they're promoting a new band, they'll post the band's songs on P2P networks (often in a covert manner) with the hopes that they'll be traded and talked about in chat rooms. If it's an established act with a history of sales, they'll "spoo" the P2P networks with fake files (also in a covert manner). It's just another way of using MP3s, albeit a subversive and anti-

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customer way. The RIAA has apparently engaged in "poisoning" P2P networks.

The biggest damage done by downloaded music is the paralysis it has inflicted upon the traditionalists in the music industry. The path to profitability does not include a long and drawn-out legal battle with consumers, yet this is exactly what the RIAA is doing. The choice for NARAS is whether to lead the fight for what's best for the artists or whether to endorse the self-serving positions of the music industry's congressional lobbying group, the RIAA.

There is a convincing piece by Damien Cave on Salon.com titled "File Sharing: Innocent Until Proven Guilty," which argues that there is no proven correlation between downloaded music and the decline in CD sales. He continues to argue in "File Sharing: Guilty As Charged?" that a good deal of the "sky is falling" rhetoric created by the record companies and the RIAA is based on supposition and self-interest. In addition, the article "RIAA's Statistics Don't Add Up to Piracy" analyzes the RIAA's own statistics and argues that they do not support the RIAA's conclusion that downloaded music is the cause for the decline in CD sales. In this detailed analysis, George Ziemann argues that the record industry released 11,900 fewer titles in 2000 than it released in 1999, a 25 percent decrease, yet the total number of units shipped decreased only 10.3 percent and the dollar value of these units fell by only 4.1 percent. It seems that the RIAA is misinterpreting its own statistics.

#### IV. Record Company Complicity

It could be argued that the record companies are responsible for their current predicament. Again, how did they turn themselves into one of the most hated corporate sectors, and what are they going to do about it? Five years ago nobody gave a second thought about record companies; now they are reviled. Record companies need to realize that music is now viewed as a commodity with a shelf-life of 90 days, and that they made it so. As Prince recently put it:

"So are most citizens really being completely disrespectful of the value of art and the need to provide appropriate compensation to the artists for their works? We've said it before and we'll say it again: the rise of digital technology and peer-to-peer file sharing has little to do with people's intrinsic respect for art and artists, and everything to do with the cynical attitude of big industry conglomerates, which have consistently pushed for more and more commercial, highly profitable products at the expense of authentic art and respect for artists.

"If people do not feel enough guilt to prevent them from making digital copies of the latest episode of a popular TV show or hit pop song, it is precisely because the industry giants have succeeded in making these works purely commercial products, with little or no consideration for their actual artistic value. It is precisely because these companies have been consistently promoting commercial products at the expense of artistic works.

"The fact that actual works of art still manage to seep through the cracks of this huge profit-driven industry does not change anything about the fundamental equations that have been driving and still drive the industry, 2 days more than ever -- i.e. that art = money, artists = money-makers, and art lovers = consumers.

"As a simple example of how little music is valued as an art form by the industry, it is estimated that only about 20 percent of music ever recorded is currently available -- and, of this 20 percent, what proportion is actually readily available to music lovers? What proportion is not the current 100 top albums on the SoundScan charts?

"It simply appears that the instinctive reaction of the lover of art (be it music, TV shows, movies, or other forms of art) is such that, if the industry has no respect for his or her identity as an appreciator of art, then he or she has no reason to have any respect for the industry as a purveyor of art. By making digital copies of so-called cultural products, many people are not demonstrating their lack of respect for art and artists, but are expressing -- consciously or not -- their frustration with the way the entertainment industry profits from art at the expense of both art makers and art lovers.

"The consumers of the commercial products of the entertainment industry are only as cynical as the industry has deliberately made them, by dumbing down their products, by exploiting artists, by making profit-driven choices and decisions, and by providing their own kind with obscene compensations and legal impunity that are completely out of touch with the real world of ordinary people."

There is good reason for consumer cynicism. AOL Time Warner owns Warner Bros. Records (along with America Online, Time, Life, Fortune, Elektra, Sports Illustrated, HBO, Turner Broadcasting, CNN, Cinemax, Entertainment Weekly, New Line Cinema, Warner Bros. Studios, In Style, Warner/Chappell Music, Time Warner Cable, WBN, ICQ, Warner Music Group, Netscape, People, Reprise, Rhino, Atlantic, WEA, TNT, MapQuest, WinAmp, In Demand, Erato, Moviefone, and Road Runner). AOL makes a lot of money as an Internet service provider. There is no question that a large portion of the people using AOL's service are downloading the very music that Warner Bros. Records claims as being stolen. There is no question that the executives at AOL Time Warner know this. Also, let's not forget that it was AOL that bought Time Warner. Service trumped content.

The conglomerates are reeling from the impact the Internet and digital downloads are having in changing how the consumer thinks. But it is not the downloads that are wrecking the music business, it is the inability of the conglomerates to adjust to the Internet and the new ways consumers want to consume music. AOL Time Warner just posted a year-end loss for 2002 of \$98.7 billion. Sony, the only multinational corporation to have interests in both the music and consumer electronics worlds, has relinquished its leadership in the portable market to Apple's iPod due to Sony's conflicting interests in music copyrights (Sony Music) and in hardware. Sony hardware comes with anti-copying features, making it cumbersome and inflexible. For example, as reported in the Wired magazine article "The Year the Music Dies," the five major music companies sold \$20 billion worth of music last year, but Sony alone had \$42 billion in electronics and computer sales, making their music business much less significant. "If Sony wants to sell MP3-capable cell phones -- a big thing in Japan and potentially worldwide -- how much attention will it pay to Sony Music's protests?"

In another recent article in Wired magazine Frank Rose writes:

"As a member of the Consumer Electronics Association, Sony joined the chorus of support for Napster against the legal onslaught from Sony and the other music giants seeking to shut it down. As a member of the RIAA, Sony rallied against companies like Sony that manufacture CD burners. And it isn't just through trade associations that Sony is acting out its

schizophrenia. Sony shipped a Celine Dion CD with a copy-protection mechanism that kept it from being played on Sony PCs. Sony even joined the music industry's suit against Launch Media, an Internet radio service that was part-owned by - you guessed it -- Sony. Two other labels have since resolved their differences with Launch, but Sony Music continues the fight, even though Sony Electronics has been one of Launch's biggest advertisers and Launch is now part of Yahoo!, with which Sony has formed a major online partnership. It's as if hardware and entertainment have lashed two legs together and set off on a three-legged race, stumbling headlong into the future."

Sony is also the largest manufacturer of writeable CD drives. It, along with Philips, co-developed the CD and collects royalties from various CD patents. All CDs, whether used by commercial replicators or bought by the general public, are subject to these royalties, which currently stand at \$0.033 per disc. There were over 500 million blank CDs sold last year. The advantage of being a multinational corporation is the ability to use one asset to create another asset. Sony may make less money on music but is using it to make money elsewhere.

Similar internal conflicts exist within AOL Time Warner, Vivendi Universal, and the Bertelsmann polygon. Nevertheless, they continue to engage in businesses that infringe on their own copyrights. They are trying to have it both ways, in all ways. Instead of dealing with their own inconsistencies, they direct and fund the RIAA to lobby politicians to support legislation like the "Peer to Peer Piracy Protection Act." This act gives record companies the right to invade your hard drive (an otherwise illegal activity) if they suspect that you have illegally obtained their copyrights, their music. This anti-piracy law is actually an anti-privacy law, and it also limits fair use and threatens academic freedom. The RIAA and the music business are trying to legislate profitability. NARAS needs to take a position with respect to the copyright issue, but it should be an independent position. NARAS should come up with its own ideas. The RIAA is acting irrationally. Also, the record companies recently settled a price-fixing suit in which they admitted they were overcharging consumers. This point seems to be overlooked by the RIAA in its attempt to place all blame for the woes of the music business at the feet of file-sharing. Is it possible that the decrease in CD sales is related to the conspiracy by the major record labels to fix inflated prices?

#### V. Opportunity and the Future

One other word about the 3 billion music downloads each month: That's a lot of music. There aren't 3 billion songs. Music has become fungible. People are going through it faster than toilet paper. Never in the history of the world has there been more music in the air and never have more people listened to music. Out of this incredible desire and need for music, surely some good must come. I think more opportunity than ever is available to the musician and songwriter, and the record company too. They just have to create new ways to deal with this opportunity, and it won't be by the old rules. Janis Ian is a good example. Downloaded music has resurrected her career. She's actually making money because of downloads. I think that if it weren't for all of this activity on the Internet and all of this downloaded music, the CD market would be suffering more than it is. MP3s are lessening the decline of the music business, not creating it. Record companies are not logical, righteous entities. They are ramshackle, profit-driven enterprises. They act in their perceived best interests, and they act ruthlessly and, in many cases, irrationally. The people who run them still have their e-mail printed out by their secretaries. We have to wait for the next generation to take over, the "software" generation, the generation of people who don't remember growing up without a computer around. I would argue that the future of music is multimedia, the future of multimedia is DVD, and the future of music companies is software. In five years, record labels will be software companies and I don't think they know that yet. The music business will be saved by someone from the software business who can impose a new business model on music assets.

In the future there will be no record stores as we know them, no tangible product as we know it. The CD is going the way of the 8-track and the cassette. Soon there will be no need for the tangible thing. Consumers have made their choice. They want to listen to music while they're working at their computers, on a portable device like an iPod or MiniDisc player, or on a home theater jukebox (similar to a feature of Microsoft's Xbox). Digitally available music has given the consumer choices, and they like those choices. They don't want music just from commercial radio. They also want it from their hard drives and from the Internet. Yet record companies still want to force tangible, overpriced media on consumers who want to obtain data files and temporarily store them on their hard drives or on cheap, disposable discs (CD-Rs). If record labels don't start trying to be part of the future they will be bought up and converted to it by someone who is. People have always listened to music while they were doing something else. That's almost the essence of "American music." Record companies guessed right on the "something else" for a long time, but that was before the myriad of other choices became available to consumers. At one time in this country, listening to music on the radio was a miracle. It's no longer a miracle, and when you look at the technological developments in the last 70 years, there's little wonder why. It's been one miracle after another. And yet even to this day, radio is the sine qua non of a hit record. This is especially true in the era of radio consolidation, where corporate Goliaths like Clear Channel are allowed to exist. Maybe that's the only way radio can remain relevant: It has to become one big punch. In a world where diversity is an evolutionary step, radio moves furiously towards consolidation, aided and abetted by the FCC. Someone should ask the question, why is this allowed?

The way things are going, a few corporations are going to control access to all digital information, and if the current administration has its way, these activities will be monitored. The reason why the RIAA is screaming bloody murder about little ol' MP3 is because it means that they are losing control. People are making their own individual choices, and they aren't going along with the program of manipulation that has always limited those choices. Now that they're making choices, industry executives and politicians are shocked.

The same argument extends to the television industry with respect to TiVo and other personal video recorders (PVRs). Jamie Kellner, chairman and CEO of Turner Broadcasting, which encompasses everything from CNN to TNT and is a part of AOL Time Warner, was asked in an interview why PVRs were bad for his industry. He responded that it's "because of the ad skips ... It's theft. Your contract with the network when you get the show is you're going to watch the

spots. Otherwise you couldn't get the show on an ad-supported basis. Any time you skip a commercial ... you're actually stealing the programming." Viewers might find that reasoning less than persuasive, but they'll probably be very persuaded by the threatening, accusatory tone, and dismiss Mr. Kellner and his concerns. This is another example of an old media being unable to adjust to technology. Yes, Jamie, your business is threatened. You will have to change your way of thinking to save it. Abandon failing tactics.

#### VI. The Role of NARAS

In order for the record industry to remain relevant it will have to determine how to get people to buy something they can get for free. In addition to the cable television business, print publications, and ISPs, there is an industry that has found a solution to this problem, and the music industry should take notice. That industry is the bottled water industry. Bottled water is a growth market. But common sense would indicate that when water is virtually free (i.e., tap water) that people wouldn't want to pay \$1 for 16 oz. of water. Yet, most of us frequently do just that. Why? Because it is convenient and because we have been persuaded that it is safer, more pure, that it is "better" water. Convenience becomes necessity, belief becomes profit.

The bottled water industry is built on customer service. If the music business were to take this approach and ally themselves with consumers rather than fight them, it's quite possible that their profits would still be growing. But record companies distrust their customers even more than their customers distrust them. The circle is unlikely to be broken, which in turn creates wide open spaces for the entrepreneur, for a "new" way. NARAS has to appeal to the new, not the old. NARAS supersedes the short-term interests of the record companies. NARAS has an obligation to art and to the artists who create it, to creative excellence in its presentation, and it is those obligations, above all, that should define its actions. The relevance of NARAS exists in direct proportion to its independence.

Charlie Feldman suggested that the board undertake a "study" of the matter. He's right, only we should go further. I think we need a symposium, a gathering of eagles. NARAS should take the lead in this matter. Those who are taking it now are leading us over a cliff. The RIAA has staked out an untenable position that is as unrealistic as it is anti-consumer and anti-artist. Their interests and the interests of NARAS are not the same. Their solutions are not good solutions. They cling unsuccessfully to the past rather than embrace the stunning opportunities offered by the future. They will be unsuccessful in their attempts to criminalize the society, and in their attempts to stretch the drum head of old laws onto the drum of new technology. It is one thing to be unsuccessful, it's one thing to argue a bad position, but it's quite another to be silly and laughed at, and that's where the RIAA has ended up. They appear to be totally irrelevant except as bagmen. It's more than just bad P.R., it's bad science. The RIAA reached its conclusions, then looked for supporting arguments, all the while ignoring reality, opportunity and fact. They overstate their position, misinterpret their own data, and make dubious claims for artists' rights when the biggest abusers of artists' rights are their benefactors, the record companies themselves.

ZDNet reported that the sale of illegal CDs increased 50 percent from 2000 to 2001. This translates into \$4.3 billion dollars in sales from 950 million illegally sold CDs. This strikes me as a much more serious and obvious problem than downloaded music. So serious in fact that the problem of MP3s pales by comparison. This is where the record companies and RIAA should be putting their moral outrage, their money and energy. Those bad guys really are bad guys, profiting from the mass counterfeiting of someone else's property, unlike 14-year-old kids, who download music because they can't afford \$18 for two songs that are going to be replaced in a couple of weeks anyway. Equating the downloading of music with counterfeiting for profit brings disrepute to the RIAA's more important and necessary efforts to stop counterfeiting. Then again, it's ironic that if the RIAA is successful in shoving everyone back into the CD market, almost half of the CDs they buy will be counterfeits.

With respect to the question of downloaded music, NARAS should embrace new technologies, be the voice of reasoned analysis, and act as an arbiter to reconcile the conflicting views of the various parties involved. In the past, NARAS aligned itself with the RIAA and the record companies. This is a mistake, in my opinion, and I hope that the opinions expressed in this paper will at least give us reason to pause and to thoroughly examine our position, as well as the position, claims and statistics of the RIAA and their corporate backers. Above all else, NARAS must not rubber-stamp what is quite clearly a self-serving position (as happened on last year's Grammy broadcast when Mike Greene berated and branded music consumers as thieves and shoplifters). NARAS must be the independent voice, a voice of objectivity. NARAS should be the "think tank" of the music business, not an enforcer or a PAC. What we have here is the potential to become a leader in the new frontier of intellectual property rights, artists' rights, consumers' rights, the future of music, and the power of the art itself. I say let's seize the day. In my opinion, there is a vacuum of leadership with respect to these pivotal and crucial issues and NARAS should step in and fill that vacuum. It is a golden opportunity.

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About the writer John Snyder is president of Artists House Records, a board member of the National Association of Recording Arts and Sciences, and a 32-time Grammy nominee. Ben Snyder, John's son, works for It's a Gas Marketing/Management, a grassroots marketing company that serves the music industry. Sound Off  
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