

P2P and MP3s: Staying Out of the Middle

In the fall of 2002, presidents and CEOs representing the recording industry, the motion picture industry, music publishers, and songwriters wrote to college and university presidents, urging them to take steps to eliminate music and video piracy on their campuses. In the letter, the media executives argued that the sharing of MP3 music files and other media by peer-to-peer (P2P) methods is, in most cases, theft. They also pointed out some of the practical problems that P2P activity creates for colleges and universities: students' use of bandwidth takes away from the real business of the institution; and P2P file-sharing represents security risks for both the students and the institution.

Media executives would like college and university presidents to view this as a shared problem. They argue that higher education institutions should assume responsibility for students' behavior. The hope is that this effort, coupled with more aggressive efforts with business partners such as MediaForce and the RIAA Antipiracy Division, will result in colleges and universities becoming their enforcement tool. The focus will shift from the media industry to higher education.

How big of a problem is file-sharing for the music industry? Are students knowingly flaunting copyright laws? What should colleges and universities do? Should they be partners with the recording industry and artists in stopping file-sharing? What responsibility does higher education have to the recording industry, and what responsibility does it have to its students?

P2P and the Music Industry

The real economic impact of P2P file-sharing of MP3s is difficult to estimate. Stan Liebowitz, professor of managerial economics at the University of Texas at Dallas, argues that although there is a tremendous amount of downloading, it does not seem to have had an impact on CD sales.¹ In year-end sales reports, however, the recording industry showed a 10 percent decline in CD sales for 2002, following a 5 percent decline for 2001.² Although other factors, such as a weak economy, are undoubtedly contributing to the decrease in sales, P2P activity by college and university students is surely a major factor.

Still, we should avoid the temptation to look at P2P activity and assume that every music file shared represents a lost

sale. Students often collect music that they would never buy; they do so simply because the price is right. And when their interest is in a single song, few students will pay for an entire CD. In some cases, students are exposed to new artists and genres of music through file-sharing, which may actually earn the recording industry some sales that would not otherwise have taken place. A Nielsen/NetRatings survey shows that people who actively engage in music-swapping are far more likely to buy music than are those who do not share music files.³

The long-term effect of P2P activity is also unclear. This is, after all, the first cohort of students to whom this technology has been available. Will their attitudes toward and activities in file-sharing continue after graduation?

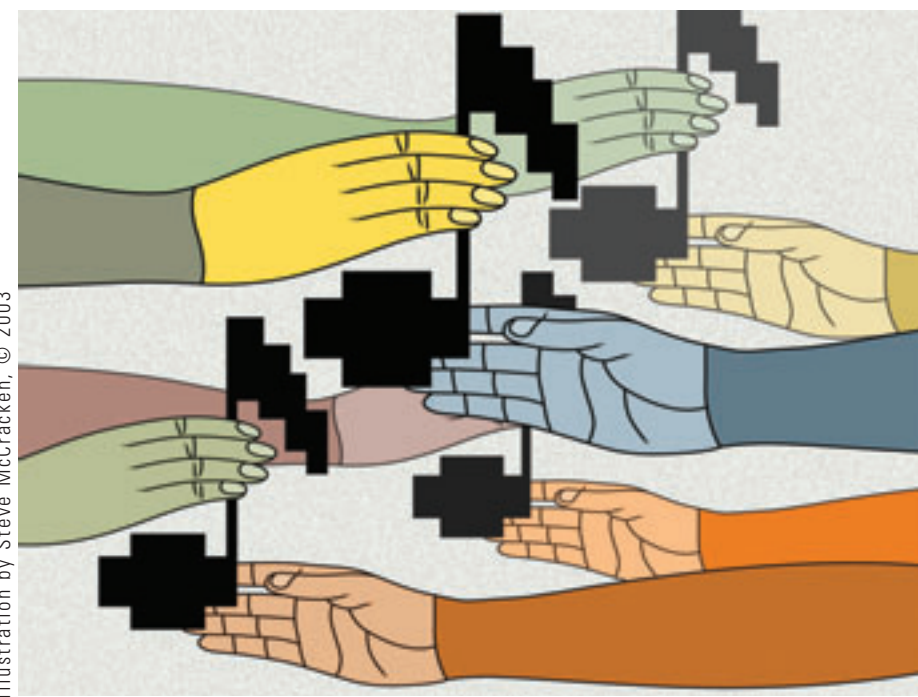


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Responsibilities of Colleges and Universities

Colleges and universities need to make every effort to educate students about what they are doing when they share MP3s using P2P and other file-sharing technologies. Institutions need to monitor student shares on computers and electronic storage systems that belong to the college or university. They must work to ensure that MP3s and other copyright-protected materials are not readily available for download to users either on or off campus.

However, the last thing colleges and universities should do is attempt to monitor the content of traffic passing over their networks. First, the technical issues alone are enough to dissuade such efforts. Second, just identifying traffic as being a P2P share and involving a music MP3 or a movie would not mean that there has been a copyright violation. But most important is the chill that such an effort would have on academic freedom.

Conclusion

The real problem here is a marketing model that technology has made obsolete. The entertainment industry has failed to change with the times. The recording industry continues to try to market CDs and DVDs as if they were records and tapes. The industry must learn to take advantage of the desire for instant gratification and should begin to experiment with different pricing schemes for music and movie downloading. It needs to look for ways to repackage its wares while exploring the value that is added by the purchase of a CD or DVD.

This was the conclusion of a recent conference sponsored by American University's Washington College of Law.⁵ One speaker, Verizon Vice President Sarah Deutsch, noted: "The only moat protecting copyright holders from total piracy is lack of broadband availability. The key word is 'evolve.'" After Kunitake Ando, COO for Sony Corporation, gave the keynote presentation at the 2003 Consumer Electronics Show, one report noted: "Ando emphasized that consumer electronics in the broadband age must free consumers to use video and audio content as liberally as possible, and that new technologies must allow them to mix

Will music be just as important a part of their lives then as it is now? Will their ethics surrounding music-sharing remain as egalitarian?

Students and Copyright Laws

Students who download copyrighted materials are indeed stealing. But copyright laws are not intuitive, and students are receiving conflicting signals about the practice of P2P file-sharing.

There has long been confusion about what is allowed under copyright law and what is not. Many people routinely record television programs, sporting events, and even pay-per-view movies and other events. There is a sense that as long as they are not selling copies on the streets, there is nothing wrong with what they have done. Most people would not hesitate to lend that tape or DVD to a neighbor or make a copy for a friend.

An entire industry has developed around the sharing of MP3s, and some of the biggest hardware and software companies offer products that encourage the practice. And I'm not talking about Napster or Kazaa. Diamond Multimedia's Rio was the first device aimed exclusively at the MP3 market and continues to be one of the most popular players on the market. The Microsoft media player that is native to Windows XP allows users to rip audio tracks from music CDs and burn the same music files onto another CD. Buttons to initiate these operations appear in the main window of the software. The media player will convert MP3s to CD native tracks without special effort or plug-ins. Is there any wonder that there may be some confusion?

Finally, the recording industry itself may be contributing to the problem. The October 21, 2002, issue of *Newsweek* magazine commented on reports that record labels may leak songs from upcoming albums in order to create talk in advance of the album's release. "Not surprisingly, some industry executives speculate that albums are often 'leaked' deliberately. 'Everybody always acts like they don't know where these bootlegs are coming from,' says Jermaine Dupri, CEO of So So Def Records. 'I think some labels are leaking. It creates a hell of a buzz, and record companies are starting to pay attention to that.'"⁴

and manipulate all the digital content at their disposal."⁶

In the near term, the music industry will be unable to stop file-sharing. In fact, any attempts to do so are likely to make students even more determined to make P2P file-sharing of MP3s successful. In the long run, the recording industry's efforts may alienate an important market segment, the very people the industry should count on as future customers.

Although I am sympathetic to the plight of both the artists and the record companies, this is their problem. The music, the movies, and the copyrights are theirs. Colleges and universities should not serve as enforcement agents. My institution will cooperate when a copyright holder seeks to enforce that copyright, but we will not chase down violators. We will keep our own equipment clean, but we will not check students' computers for violations. Colleges and universities do, however, have a responsibility to educate. We thus are—and will continue to be—a part of the effort to educate students about the ethics involved in P2P file-sharing and about the legality of their behavior.

Notes

1. Andrea L. Foster, "Economics Professor Backs Technology to Protect Copyrighted Materials," *Chronicle of Higher Education*, February 1, 2002, <<http://chronicle.com/weekly/v48/i21/21a03101.htm>> (accessed April 29, 2003).
2. Jonathan Whitehead, Vice President and Anti-Piracy Counsel for Internet and New Media, Recording Industry Association of America, remarks as panelist in "Peer-to-Peer: The New Lightning Rod for Digital Copyright," Networking 2003 conference, Washington, D.C., April 30, 2003.
3. Reuters, "Survey: Swappers Buy Music, Too," *CNET News.Com*, May 7, 2003, <<http://news.com.com/2100-1027-1000420.html>> (accessed May 12, 2003).
4. Curtis Harris, "Napster May Be Dead, but Bootlegging Is Thriving," *Newsweek*, October 21, 2002.
5. Dan Carnevale, "Record Companies Should Learn to Profit from File Sharing, Conference Speakers Say," *Chronicle of Higher Education*, October 22, 2002, <<http://chronicle.com/free/2002/10/2002102201t.htm>> (accessed April 29, 2003).
6. David Benjamin and Junko Yoshida, "Linux and TV Called Key to Broadband Tsunami," *EE Times*, January 10, 2003, <<http://www.eetimes.com/sys/news/OEG20030109S0049>> (accessed April 29, 2003).

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