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REBELS ON THE NET

What makes popular music popular is not only the nature and content of the songs or the identity of its performers; it is also its availability. Popular music is as much shaped and defined by advertising, marketing, distribution and retailing as by lyrics and chords sequences. The sheer amount of literature on the subject is a sobering reminder of how much of a truism this has become.¹ However, it is also a field in which fast, permanent evolution necessitates constant monitoring. The development of the Internet was bound to have a momentous impact on popular culture, particularly on the accessibility of the words, sounds and images that define it. Throughout the 1990s, a series of technical innovations gradually made the distribution of music *via* the Internet more than a dream, and several commercial ventures were launched, probing the possibilities of making music accessible on-line.² But none generated such a fierce and heated debate as the new generation of digital music-promoting companies led by the much maligned and the much celebrated Napster, and a number of others that came in its wake, Gnutella, Scour, CuteMX, Freenet or iMESH, to name but a few.

In the course of the last few months, the music business has indeed been challenged and questioned by companies like Napster that offer a revolutionary means to access music. They owe their existence to a computer

1. See particularly: Robert Burnett *The Global Jukebox* (London: Routledge, 1996); David Buxton, *Le rock, star-système et société de consommation* (Paris: La Pensée Sauvage, 1985); Michael Cable, *The Pop Industry Inside Out* (Lodo: Routledge, 1977); Frederic Dannen, *Hit Men: Powerbrokers and Fast Money Inside the Music Business* (New York: Random House, 1990); R. Serge Denisoff, *Tarnished Gold* (New Brunswick (NJ): Transaction, 1986); Mark Eliot, *Rockonomics* (New York: Citadel, 1993); Reebee Garofalo & Steve Chapple, *Rock'n'Roll is Here to Pay: the History & Politics of the Music Industry* (N.p.:Nelson Hall, 1977); Dave Harker, *One for the Money: Politics and Popular Songs* (London: Hutchinson, 1980); Ian Peel, *Music and the Internet* (Bath: Future Publishing, 1996); Russel Sanjek & David Sanjek, *American Popular Music Business in the 20th Century* (New York: Oxford University, 1991); Robert C. Toll, *The Entertainment Machine* (New York: Oxford U. P., 1982); George Tremlett, *Rock Gold: The Music Millionaires* (London: Unwin Hyman, 1990).

2. See Claude Chastagner, "Musique et Internet: du contrôle de la distribution à celui du consommateur", in *Culture et pratiques culturelles*, Bernier-Boissard, ed. (Paris: L'Harmattan, 2000).

format called MP3, shorthand for “MPEG Audio Layer-3”, a handy compression technology, with no embedded encryption or copyright protection, created by a coalition of international audio experts and perfected in Germany in 1987. MP3 compresses large sound files down into a size easy to download and swap over the Internet. What Napster does is to provide Internet users with a program that enables them to share songs and swap music files they already have on their computers in MP3 format with other Napster users, a free, easy and almost instantaneous process. The problem is that the stockpiles thus connected are mostly of unauthorized MP3 files. For if Napster cannot remove copyrighted material from the user-created pool and does not technically “host” any copyrighted material on its site, most of the music downloaded and shared is, since it is either music Napster’s users have bought directly in digital form (from record companies sites or on-line retail outlets), or their own CDs that they have compressed into MP3 files (a simple process that only requires a “data ripper”, a free program that can be found anywhere on the Net which enables the copy of CD audio files directly onto a computer’s hard drive, the files being subsequently compressed to a few megabytes by the MP3 encoder).

As a result, Napster is being sued by the Recording Industry Association of America, the music-industry lobbying group. Its president, Hilary Rosen, and the major recording companies she represents,³ contend that Napster is unlawfully distributing copyrighted music, thus stealing RIAA property and hurting profits; more exactly, Napster is accused of tributary copyright infringement, which means contributing to and facilitating other people’s infringement. To assess what is at stake, it may be useful to know that there were 3 billion songs downloaded in January 2001 alone, making it the most popular website ever. “We estimate that a worst-case scenario would be 16 percent of all U.S. music sales in 2002 being lost to Web piracy, representing a \$985 million loss in US music profitability,” reads a confidential analysis, issued in August 2000 by the Sanford C. Bernstein & Co. Investment Research Group. A preliminary injunction shutting Napster down has been stayed by a San Francisco federal court pending appeal, while mp3.com is going on appeal following a September ruling by a Federal District Court in Manhattan that the company had willfully infringed the copyrights of Universal Music Group (settlements have been reached with the other majors). Napster and consorts are thus technically engaged into piracy, the “unauthorized use of another’s production, invention or conception” (Webster). Popular wisdom (and more surreptitiously, heads of states) have traditionally held pirates in high esteem;

3. EMI, Sony, Bertelsmann A. G., Universal and Time-Warner.

they vindicate lower class resentment of the rich and powerful and provide the excitement of vicariously infringing on the law. Is it enough to turn Napster's inceptors into subversive activists? Is this new method of acquiring music an act of resistance, of defiance, or does it merely contribute to the entertainment of the masses in a capitalist economy? These are some of the issues I would now like to explore.

Napster's activities, or rather its users' activities, have become the focus of a major debate throughout the United States, especially on American campuses. Obviously what is heard across the board from the plaintiffs is basically what all the victims of piracy have always proclaimed: that it kills business, and that there is nothing glamorous in it. The novelty is that small-scale, independent entrepreneurs and unknown musicians are joining the fray and are developing their own means to fight Napster, such as dropping "cuckoos-eggs", "bombs" or "Trojan horses" (empty or falsely labeled music files) on the Net to thwart the functioning of Napster. Like the majors, they consider Napster as sheer robbery, depriving them from their livelihood. More famous names have also come forward in support of the RIAA's action such as Throwing Muses' Kristin Hersh, Black Crowes' lead singer Chris Robinson, Jonatha Brooke, Sara McLachlan or Mick Jagger, on ads sponsored by the RIAA, that read "I support the RIAA and its actions against Music Archive Sites on the Internet because copyright is my lifeline, without it recording artists would drown," or "Don't trash us by pirating sound recordings on the Net. Get real. Get legit". Some artists, like Metallica or Dr. Dre have even gone one step further and have personally sued Napster. The main arguments of Napster's opponents, artists and labels alike, is that the works are used without their permission, and that such practices ultimately hurt and penalize lesser-known artists since fewer official CD sales may induce their record companies to terminate their contracts.

On the other side, one can also find a surprisingly high number of musicians and independent record companies (Alan Kovac, president of Left Bank Management, which represents the Bee Gees and Motley Crüe, Jim Guerinet, owner of Time Bomb Records and manager for The Offspring and No Doubt...) supporting Napster's users. Their arguments sound as convincing as those of their opponents: they maintain that Napster gives musicians, particularly the more obscure ones, greater exposure (indeed, Napster's home page features a "discovery" zone and a chatroom where users are encouraged to discuss their more offbeat tastes and discoveries); they point to customers' frustration with the high prices of CDs (\$16 on average) and to the fact that downloading is actually creating more demand (according to the RIAA Annual Report, music sales have risen from \$13.7 to 14.6 billion in 1999: the

hordes of college students and music fans who have embraced Napster also seem to be the music industry's best customers);⁴ they also underscore the invaluable interaction thus created between artists and their audience which contributes to bypass traditional restraints (limited radio promotion, bin space in stores and number of spots on the record company roster...). Another argument is that even if income from CDs or paid downloads is endangered by the new trade in free tracks online, artists can make up for it through other means, like touring and the sale of paraphernalia, while labels might pass on some savings from lower marketing and promotion costs and cuts on expensive middlemen. Finally, all insist on the convenient and easy use of Napster, which allows one to get whatever music one wants almost immediately and in a form that allows it to be played anywhere (car radios, portable players, home stereos...).

What is more surprising is to observe how Napster's supporters have turned the issue into a free-speech debate and a struggle of resistance against American corporations and capitalism at large. Several associations have come up to organize the struggle on campuses, such as Students Against University Censorship (SAUC). Some of the technical press has also sided with them. For these groups, Napster represents a necessary form of subversion, challenging the goals and methods of transnational companies. By subversion we understand literally coming up with one's own "version" of the music business, and overturning the majors', refusing to subscribe to their logos, to ratify them [Serres 10]. The young have often embraced specific musical genres because of their subversive potential, because of the oppositional stance they represented against their parents, society or the law, however delusional such claims might be. Napster's activities appear as both dangerous, since they are illegal, and chivalrous, which adds to their attraction. More than just a means to get free music, Napster has become a cause, a fight, and a righteous one. As Daniel Nazar writes, "the battle is no longer legal, it is moral", and rapper Chuck D of Public Enemy adds: "It's a fantastic way to build a minor league system of artists. It's Napster on one side and major labels on the other. Pick your side." [quoted in Brown]. With the struggle metaphorically and hyperbolically described as a fight between David and Goliath, and Fanning as a new Robin Hood, the picking is easy. Napster has become a paradigm of

4. Napster's opponents have also underestimated music consumers's fascination with ownership and packaging and that downloading seems to be taken as a form of sampling before the actual purchase of a CD.

youth,⁵ intelligence, small scale, independence and modernity against middle-aged, stilted, ossified corporate executives.

How can Napster actually subvert the music industry? First of all, it defies its omnipotence, its quasi-monopolistic organization (according to a SAUC leaflet, “The RIAA isn’t worried about money, they want power”).⁶ Napster also challenges the majors’ *raison d’être* since it destroys “the option value” they offer. With Napster, consumers no longer depend on record companies to provide them with a medium, the CD, cassette or LP, that would give him the option to listen to a specific music where and when they want, something the radio or television does not. This is now offered free of charge by Napster and mp3.com, which suppresses the traditional media’s added-value. Furthermore, until now, record companies have relied on retail outlets, whether it be mall chains or independent stores, for the distribution of their products. The various attempts by majors to complement this vertical, top-down organization with a more direct, horizontal one, the sale of digital music on line, have been extremely limited (in October 2000, BMG offered 125 titles from both singles and albums, EMI 100, Sony 50, and Universal only 60 tracks); the songs are slow and difficult to download (it took several hours to purchase an album on EMI’s site) and expensive (as much as \$3.49 for one song). Napster offers a free, ubiquitous, decentralized and user-friendly system that so far majors have not been able to beat. It is also paving the way for a new manner of using the Internet called P2P, peer-to-peer file-sharing (which was, incidentally, the original principle of the Internet before it became a mere repository for specific data-bases).

Peer-to-peer technology could have momentous, truly revolutionary consequences on the culture and information industry. Some go as far as calling it “online socialism”. Ian Clarke, the originator of Freenet and a staunch proponent of P2P, predicts that in the process, media empires may be overturned. However, for John Borland of CNET News, like many socialist cultures, reality (the necessity of business backing) threatens to undermine idealism. Because sites like Napster do not contain any files (they remain on the users’ hard drives, the digital information travels via the Internet but the files are not actually stored on a central server) and because they search for data on countless hard drives simultaneously, P2P networks are fast and efficient. Besides, P2P is not limited to music files; anything that can be stored

5. The inventor of Napster, Shawn Fanning, was 19 when he wrote the software, and was still a freshman computer-science major at Boston’s Northeastern University.

6. Incidentally, faced with mounting protest and the threat of litigation in a Federal Trade Commission lawsuit accusing the record industry of price fixing, the majors’ representatives have agreed in May 2000 to a settlement which may lead to a decline in prices of up to \$5.

in a computer file, from films and photos to books or magazines, can be traded and pirated over the Internet. As Cohen puts it, “there’s no corner of the so-called content industry, no bit of intellectual property, no *idea*, that isn’t in danger of being Napsterized”. The development of P2P will create a demand for greater bandwidth and faster, more powerful PCs which will affect the balance of power between computer makers, Internet service providers, and the cable companies that carry traffic across the Internet and are currently trying to persuade consumers to subscribe to services like DSL and cable modems. The intruding and all-pervasive nature of P2P technology (anyone will be able to dip into the hard drives of other connected web users) will also lead us to rethink our attitude toward digital privacy and piracy.

An unexpected, strong voice has been heard in defense of Napster, that of Courtney Love, a major music and movie star, in a speech to the Digital Hollywood Online Entertainment Conference, given in New York on May 16, 2000. What is particularly striking in her speech is that she does not so much set out to defend Napster (she even specifies that “It’s piracy when those guys that run those companies make side deals with the cartel lawyers and label heads so that they can be ‘the labels’ friend’, and not the artists’”) as she attacks the recording industry. For Love, the real pirates are the majors. She first bases her argumentation on a rather conventional definition of piracy (“Piracy is the act of stealing an artist’s work without any intention of paying for it”), then proceeds to demonstrate that it is precisely what record companies do. To make her point she uses the hypothetical example of an unusually successful first album selling one million copies and with an unusually high 20% royalty rate; this would nevertheless leave the band members, after costs for radio promotion, recording time, tour support, video production costs, etc. have been recouped by the record company, with \$0.00 to share. In the meantime, the company would gross \$11 million, a neat \$6.6 million profit after expenses. To make matters worse, artists do not even own the copyrights of their music for 35 years.⁷ A recent telling example is that of Erykah Badu whose debut album sold three million copies and who declared, at the Rhythm and Blues Foundation’s show,⁸ held during the September 2000 MTV Video Music Awards, “I thought it was going to be a lot more money”. Love’s attack dramatically shifts the debate from the copyright issue to the part actually played by the majors. They move on from the role of righteous plaintiffs to that of

7. This would have become permanent if the amendment to the 1978 Copyright Act suggested by Congressional aide Mitch Glazier defining recorded music as “works for hire” had passed as part of the Satellite Home Viewing Act of 1999 bill.

8. The Foundation’s goal is to help musicians in need and push recording companies to make up for past abuses and exploitative contracts.

villainous defendants, which ultimately defuses all the moral arguments put forward to justify their attack on piracy.⁹ Other artists also consider Napster as a subversive tool. Chuck D explains how it is going to blow apart the music industry, and stresses the similarity between Napster and rap, a movement that is still on the outer perimeters of the mainstream.

Considering Napster as a form of resistance, the spearhead of a revolt against corporate America, betrays convictions reminiscent of the avant-gardes of the twentieth century, and of the stance adopted by early members of the rock academia.¹⁰ They routinely contended that non-mainstream artistic forms are politically and socially empowering and have the potency to challenge dominant systems. This implies maintaining artistic differences with the market in terms of content.¹¹ Paradoxically, the defense of Napster lies on a distinctively McLuhanite disregard for content. What is downloaded is seldom mentioned by its supporters, as if the sheer fact of sharing files were in itself a subversive gesture, even if the most frequently requested songs are by mainstream stars such as Madonna, the Spice Girls, Michael Jackson or Bruce Springsteen (which may after all very well be the case). Napster-the medium might be the ultimate challenge, not because of the nature of the music it enables people to exchange but simply because it exists.¹² One possible implication of Marshall McLuhan's emphasis on the medium is that modern technological society neutralizes the subversive content of all artistic forms, something Herbert Marcuse claimed was happening in the 1960s with the major representatives of European nineteenth-century and early twentieth-century culture, those who embodied "the Great Refusal". Another lesson is that this is anyway counterbalanced by the impact of technological revolutions, from the invention of the movable press to television. So that Napster would at the same time formalize and ratify the impossibility of any cultural artifact to be rebellious as such, but also shift the subversive potential from the content to the medium, to the extent, writes Daniel Eisenberg, that "it has forced purveyors of 'content', like Time-Warner [...] to wonder what content will even be in the near future."

9. Courtney Love even revealed industry practices such as the illegal sale of millions of "cleans", i.e., records that should be given as promotional tools but are nevertheless sold without the artists' knowledge and without paying them any royalty.

10. For a thorough discussion of the issues of avant-gardes and modernism, see Astradur Eysteinnsson, *The Concept of Modernism* (Ithaca: Cornell, 1992).

11. This is by no means an easy challenge in a context where all cultural artefacts are mass-marketed.

12. This special issue of *Cercles* may have contributed to convince us of the irrelevance of associating any musical genre to an act of subversion anyway. Moreover, since the commercialisation of art has made it impossible to sustain convincing Romantic or avant-garde positions, the only artistic opposition left could be to deny these roles' significance. Which brings to mind Susan Sontag's preference for a "contentless" art.

Napster's rebellious aura is also triggered by its nostalgic association to a mythical, glamorous, subversive past. The conditions for another student revolt similar to that of the 1960s (which was anyway more than anomalous in the usually quiet context of American universities) are certainly far from being met, but the echoes of Jerry Rubin's message still resonate on many campuses. "The money economy is immoral, based totally on power and manipulation, offending the natural exchange between human beings: an exchange based on common need. Looting is a natural expression of the money system. Capitalism is stealing... All money represents theft. To steal from the rich is a sacred and religious act" [Rubin 43]: here may lie the roots of piracy as an ethic. Napster disrupts the system, introduces disorder into the otherwise smooth functioning of the music business and could ultimately bring cultural capitalism to a halt. All the more so, reminds Bill Joy, as "theft in the digital world, whether of software or of songs, does not seem to carry the moral freight of theft in the material world". Hence the strong position adopted by the industry and exemplified in Jim Griffin's (Geffen Records' entertainment technologist) statement that "we need to bring order to the Net" (quoted by Brown). Politically committed opposition to transnational record companies is certainly enhanced, perhaps initiated by the RIAA's anti-Napster bullying practices. Last year, it launched a slick info-site called Soundbyting that, according to Hilary Rosen, was intended to scare college students away from MP3 piracy. This was followed by sending notices to over 300 colleges, warning them that students were hosting illegal MP3 files on university servers and explaining the legal consequences. As a result, Carnegie Mellon University, for example, recently disciplined 71 college students, after a search revealed that they were swapping files on the campus intranet. At the University of South Carolina at Spartanburg, a student who was pirating MP3s was threatened with a lawsuit. The RIAA also pressured member companies such as Columbia House to pull advertising from MP3 sites, told artists and their agents that mp3.com was engaging in theft, and generally spread propaganda that MP3 was illegal.¹³ However, as Adam Liptak argues convincingly, litigation is decidedly not the best way to tame new technology. Courts are inherently retrospective institutions that do not take the future into account, while history has repeatedly shown that new technologies eventually win, if they bring substantial improvements to the consumers, whatever the initial opposition. This is, incidentally, an interesting case of industrial schizophrenia, since most new technologies, including those that

13. Soundbyting's focus on "illegal MP3s" is so relentless that it misleads visitors into thinking that the entire format as such is illegal, which is not the case.

threaten copyright laws (recordable CDs for instance) are manufactured by the very companies that release copyrighted material (Sony, Philips etc.).

However, even Jerry Rubin's later positions evolved closer to a defense of entrepreneurial capitalism and individual economic initiative than early slogans such as "a hip capitalist is a pig capitalist" allowed to forecast. The new breed of capitalists, say start-ups' owners, can hardly be distinguished from their customers. They live the same life, eat the same food, play the same games, wear the same clothes. Hip capitalism has become the norm in the world of the piously dubbed New Economy whose ethos is to produce real money with virtual goods. What are the advocates of Napster truly fighting for, who are they really supporting? A young guitar-strumming ex-student, indeed genuinely committed to inventing groundbreaking software and living the frugal life of many computer geeks, but who is also the customized Mazda RX-7 driving owner of a potentially major business venture (whose chief-executive is capitalist veteran Hank Barry), who recently introduced Britney Spears at the MTV Video Music Awards and has been offered a deal by Nike. Shawn Fanning, that the press now nicknames the David-turned-Goliath, plans to make money by placing ads on his site or selling merchandising. As a matter of fact, on the carefully composed picture illustrating the *Time* special issue, the bottles of beer and soda remain anonymous, but the logos of Fanning's Dell computer and Quicksilver T-shirt have been discreetly enhanced in white. However, Fanning himself is not the point; he is certainly less money-minded and more sincere about creating innovative software than many others. What is interesting is how an ordinary young man has been turned by many youths, journalists and media professors into a symbol of revolt, how a simply consumer-friendly idea has become the most subversive technology of the decade. This is extremely revealing of our society's needs for archetypal, polarized clashes, regardless, to some extent, of their content. We need, it seems, regular doses of ideologically enhanced issues, particularly of the small-versus-big type, in order to vent frustrations and restore social cohesion through cathartic struggles. Because unlike the previous systems of production, the new economic world is not owned or led by a real class with vested interests, political polarization between the left and the right has become more problematic, hence the resort to artificially sustained oppositions. Typically, consumption (and the businesses that make it possible) has become the postmodern locus of our rebellions.

By showing to what extent contemporary battles are no longer waged on cultural, political or artistic grounds, but for the right to consume, by identifying consumption as the ultimate link between people, Napster raises the issue of modernity: the confusion, loss of hierarchy and undifferentiation that

the centrality of consumption entails. The contradictory consequence of this evolution is that as uniformity and homogenization spread, the injunction to be different becomes stronger, which tallies with the fact that media cultures are at once more stereotyping, and in that sense conservative, but also hooked on constant marginal variation. Difference is being erased but it also has to be maintained, even if it but a simulacrum of difference, a superficial one, through highly ritualized and symbolic struggles such as Napster's. So that, as Charles Jencks claims, the postmodern world is shifting from "centralized culture to fragmented, minority taste cultures [...] from repetitive manufacture of identical objects to automated manufacture of small amounts of superficially varying objects, from few styles to many genres"[72], all superficial differences that cannot hide the relentless, invisible process towards ultimate confusion, the total commodification of society of which Napster is but the latest example, a mimetic reflection of society rather than a subversion of its norms.

For all the subversive and rebellious movements of the last forty years and the various critiques of bourgeois society carried out since the 1960s have in fact served the interests of global capitalism. Indeed, what was (and still is) advocated as the necessary condition to free the individual from the shackles of capitalist and/or conservative regimes was fast change, delocalization, the abolition of taboos and prescriptions, of religious and traditional customs. However, all these restrictions represented a check to the spread of capitalism. Capitalism thrives on the destruction of the past; it requires the free, mobile, fast-going, isolated consumer, contemptuous of traditions, the new man brought about by the portable phone, the lap-top computer and commercial TV and radio, the P2P, file-sharing individual. The paradox of being at the same time the rebellious supporter of Napster and a consumer of corporate produced music is only apparent. The two are in fact complementary. Which brings us back to the historical reality of pirates: individualistic, rebellious entrepreneurs serving the interests of their governments.

What is left to subvert now that capitalism has become both the enemy to slay and the instrument with which to slay it, now that rebellion against transnational companies is carried out in the name of a capitalist venture, now that consumption has become the means to fight consumer society? How is it possible to be at the same time in and out, to rebel without seceding, to subvert without renouncing, to enjoy without surrendering? This is the fundamental challenge of modernity.

Aftermath

By Jim Hu and Evan Hansen, Staff Writers, CNET News.com
October 31, 2000.

German media conglomerate Bertelsmann said Tuesday that it has formed an alliance with online music-swapping service Napster, signaling a significant shift in the so far hostile face-off between the major record labels and the start-up.

A press release dated February 20, 2001, suggested that there would be two kinds of subscriptions, a basic membership (between \$2.95 and \$4.95 a month, limited downloading), and a premium membership (between \$5.95 and \$9.95, unlimited downloading) and as much as 1 billion dollars could be paid in the next five years to the major labels.

No more comment.

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Web sites

Files-sharing sites

www.napster.com (the original)

www.macster.com (for Macintosh computers)

www.gnutellanet.com (Napster's direct competitor)

www.cxc.com (Gnutella for Macintosh users)

www.fairtunes.com (money can be sent to the artists downloaded)

www.scour.com

www.freelisten.com

www.throttlebox.com

General discussion and documents

alt.music.mp3.napster

www.mp3.com/my/news/yourmusic.html

Pro-Napster

www.napsterfreedom.com

www.savenapster.net

www.members.linkopp.com/napster

www.napstermp3.com

Anti-Napster

www.riaa.com (the RIAA site)

www.hand-2-mouth.com/cuckooegg

www.stopnaster.com