

The MP3 Fiesta: Party like it's \$9.99!

The recording industry has suffered considerable losses since the advent of digital music via the Internet. Tower Records, for example, is in tatters, while digital stores such as Apple's iTunes are doing brisk business. At \$9.99 a CD, with stringent (but ultimately worthless) copy protection, this is a bargain. Back in the 1970s, the average album cost about \$6.99. Today's iTunes download, indexed for inflation, comes in at less than 1/3 of the price in real dollars. A boon for consumers, without a doubt.

Other sites have tried to muscle in on the iTunes action with competitive pricing, shaving a few dollars off of iTunes' price. Apple has, as usual, made the whole greater than the sum of its parts. iTunes, iPod, iMac and the other iTems in Apple's bundle are just too good for most people to bother saving a dollar or two per CD.

In the illegal sphere, we have seen sites go up, down, and back up again, fully cleansed of both criminal activity and customers. Other sites (BitTorrent or LimeWire for example) are too annoying for regular use by anyone but financially strapped college students.

File sharing has resulted in an unbelievable number (over 20,000) of bizarre lawsuits from the Recording Industry Association of America (RIAA). One of their "most wanted" was 30-year-old Jammie Thomas, a single mom from Brainerd, Minnesota, who was convicted of "unlawfully pirating digital music." She now owes damages of \$222,000, or \$9,250 for each song downloaded.¹

Universities and college students are also high on the RIAA's list. Police raids in which computers and hard drives are seized are apparently acceptable at our nation's institutions of higher learning:

"I thought they were coming in for a drug raid," said Josh Cavinee, a sophomore at Ohio State University. "They came in, patted me down and made me sit in the corner," he said. "It's a good thing we didn't have drugs here."²

The RIAA is also sending out a record number of "filesharing takedown" (copyright) notices to universities across the country.³ Their purpose is quite clear as is shown in the heading on a flyer from the Information Technology Division of Texas Tech University informing students of possible RIAA "audits" which reads: "DON'T GET SUED OR IMPRISONED: *You can't afford the long arm of the RIAA.*"⁴

These tactics are obviously meant to frighten everyone into submission by threatening legal action. To prosecute, however, the RIAA needs to get users' IP addresses from their ISPs, which is a hoary issue from a civil liberties perspective. All of this reflects poorly on the legacy labels. Their public image is tarnished even further, and they appear as Luddites raging against the [digital] machine. It also puts them into a whole new line of

business—snooping around the internet, chasing IP ghosts as part of a misguided campaign to regain control of the industry by reasserting a business model that has been teetering for at least 10 years, and is now positively obsolete.

Enter the new kids on the Bloc [sic]—say hello to MP3Fiesta.com, a server housed in the former Soviet Union which has taken competitive pricing to a whole new level. When I first stumbled onto this site last year, I thought that the “\$0.99” downloads were for a single track, which would make them comparable to iTunes (without the copy protection). I was way off the mark. As I continued to browse the site, it became apparent that it was not \$0.99 per track, it was \$0.99 for the entire CD. This has recently gone up to \$1.98 per CD, but the price is still embarrassingly low.

The quality is the same (128kbps) as iTunes and others, and the download speed is fast and reliable. But is it legal? Apparently it is, at least for now.⁵ European courts have ruled that these sites are legal under current laws, but those laws, in Russia especially, are being read far more liberally than in North America.

The selection is not exactly broad in terms of style. There is some classical music, but it’s mostly recordings of old stalwarts and is, at present, hardly worth mentioning. There is quite a bit of jazz (the Keith Jarrett offerings are very strong, for example) but it is hardly a well-stocked library. Mostly, MP3Fiesta contains pop music; all types, all labels, with (surprisingly) many up-to-date big name releases, all for the same low price of under \$2 per CD.

Let’s index for inflation again shall we? At \$2 per CD, today’s consumers are getting *current pop music* for less than 10% of the cost in 1975. Safe to say that “Things Ain’t What They Used To Be.”

But let’s not get too sanctimonious—anyone who has listened to music of any kind in the last 40 years is likely (technically) a thief. The copying of LPs and CDs has been commonplace for at least 35 years. First, it was magnetic tape of various sorts, but there was always a significant loss of quality, although with cassette tapes, there was a significant increase of convenience. Then, it was CDs, with no loss of quality, and an increase in convenience. Then, it was MP3s, with a loss of quality that was difficult to hear, unless you’re a dog (a lyin’, cheatin’, and stealin’ dog that is) and a significant increase in convenience, especially with a dedicated MP3 Player which can hold hundreds of CDs. Quality and convenience finally aligned to create a product that was powerful and flexible enough to devour its corporate masters. Add the internet and inexpensive and ubiquitous dubbing capabilities to this already potent mix, and that horrible sucking sound you’re hearing every time a major label reports its diminishing sales figures has to be the “death-rattle ‘n roll” of the recording industry as we know it.

So, Russian servers are now offering downloads for pennies a song that are—at least in the new “Wild Wild East”—legal. I found it somehow embarrassing, ethically speaking, to “buy” music at these ridiculous prices. At \$0.19 per tune, one could literally reach into the “need a penny” tray at Starbucks and find enough money to load the iPod with a few

tunes for the ride home. I found myself wishing I could just steal them instead. When you copy a CD, you know you shouldn't be doing it, yet you do it anyway, perhaps making rationalizations about why it is acceptable to do so. Here are a few favorites:

1. The Che Guevara Wannabe

“Geffen is an international leviathan, so I’m stickin’ it to The Man.”

2. The Self-Appointed Music Promoter

“I’m helping to promote this artist by doing this—it almost qualifies as community service.”

3. The Penny-Pinching Rationalizer

“I bought the blank CD and some of that money goes to the Recording Industry or the Musicians’ Union or something like that, so I’ve really paid for the right to do this. As long as I don’t do it too much, I’m within my rights.”

Each rationalization, within its limited context, has some validity. I can’t speak for Che and the Penny Pinchers (there must be a band with this name somewhere), but, as a recidivist Self-Appointed Music Promoter, I can attest to the hundreds of artists whose music was first “shared” with me via cassette or CD, which then led me to actually purchase other recordings by those same artists. These miscreant “sharers” definitely increased sales for many of these artists by sharing with me. If I liked the band, I bought their music; if I didn’t, then the band had no potential income stream from me anyway. Where’s the harm?

What is interesting to observe, is that major music acts are now *doing* what the major labels’ surrogate is *suing* over—they’re giving CDs away to promote their music (a variation on rationalization #2). The Artist Currently Known As Prince gave away 2.8 million free copies of his recent recording *Planet Earth* with a Sunday newspaper in Britain.⁶ Nine Inch Nails released full length CDs that are explicitly “free to copy” as well as free singles available on Facebook.⁷ Radiohead released *In Rainbows* for whatever amount the user was willing to pay. (Can we arrange a meeting with Thom Yorke and OPEC please?) Apparently, this little experiment in flexible pricing didn’t pan out very well—our champagne socialist rock stars have decided that profit is, after all, OK [Computer], and have cancelled further experimental forays into egalitarian demand-side economics.⁸

The truth is that when you buy a product, you agree to the rules of use contained therein—whatever you do after that is between you and your conscience. In the end then, the excuses are just there to assuage the moral costs of stealing.

Is it really stealing? Formerly, when you copied music, you were at least giving up a smidgeon of your own integrity to do so. But the digital age has changed all of that, and it has produced its own widely-accepted euphemism—“sharing”—to replace the previous ethically-loaded terms “copying” (which still implies possible thievery) and “stealing.” When artists themselves decide that the real profit lies somewhere other than CD sales,

it's time for the record labels to change their business model or close up shop. The genie is out of the bottle, and no amount of litigation is going to put it back. The RIAA is vigorously resisting change, and they may succeed in bankrupting some single moms and frightening the hell out of some college students (nice going, RIAA), but ultimately, they can't fight the future. They will have to come to terms with an industry-wide paradigm shift, or they will perish.

Again, is it really stealing? Technically, yes, but in reality, it is not so clear—there are many examples of the legal code lagging behind technological and societal evolution, and this is one of them. The current laws governing copyright are unenforceable and anachronistic in the digital age. The sooner the legacy labels come to terms with this fact, the sooner they can start developing viable new models for a healthy and prosperous future for the industry.

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SOURCES

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- ⁴ Texas Tech University Information Technology Division. *Flyer handed out to Texas Tech students in 2006*. (photo in Appendix)
Photo Credit: Wesley Fryer (<http://www.speedofcreativity.org/>)
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APPENDIX

1. Flyer

From: cs@ttu.edu
Reply-To: cs@ttu.edu
Date: Wednesday, January 18, 2006 9:28 AM
To: <TTU_Students>
Subject: Warning to Students: RIAA Continues Audits

Attachments: m326947.jpg, m326955.jpg

DON'T GET SUED OR IMPRISONED:

You can't afford the long arm of the RIAA

Forewarned is Forearmed

Recently, the RIAA (Recording Industry Association of America) has been conducting comprehensive audits on university networks. The Information Technology Division warns students that those illegally downloading and/or distributing copyrighted music, videos, or other works are at a high risk of prosecution. You will be held personally liable for such illegal activities.

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AS A REMINDER:

- It is illegal to make, use, or pass along unauthorized copies of software, graphics, music or any other creative art or intellectual property for multimedia projects or any other use. This includes the copying of software programs, etc., required in a class.
- Illegal file sharing of copyrighted materials over Texas Tech Networks is strictly prohibited.
- It is illegal for anyone to upload or download full-length sound recordings or DVDs without permission of the copyright owners.

For more detailed information concerning copyright and related laws, please visit <http://www.ttu.edu/safecomputing/its/riaa/> (eRaider username and password required).

Know the law, protect yourself.

TEXAS TECH UNIVERSITY
Information Technology Division