

## Whose Music Is It? The Battle between Copyright and Right to Copy

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### Abstract

*Although it is illegal to download copyrighted music off the Internet without paying for it, the majority of Americans – whether they download music or not – either don't see it as wrong or don't care. This paper utilizes social constructivist and symbolic interactionist theories in an analysis of news coverage to uncover the challenges computer and online technologies pose to the U.S. music industry; how meaning is constructed in society, specifically through the media; and how and why constructed meanings sometimes fail to gain acceptance from members of society, especially in the digital age. The six-year timeframe examined in this study encompasses the same period in which MP3 technology began to gain widespread acceptance, online music downloading was growing rapidly, and the RIAA legal and legislative fights were launched with full force. Although the music industry has changed somewhat since, this paper's study of the opening segment in the music-downloading saga helps facilitate an examination of how claims are made about emerging technological opportunities.*

**Keywords:** MP3, downloading, file-sharing, media.

### Introduction

New technologies exhort individuals to adapt to new and changing opportunities, and sometimes social norms and laws are violated in the process. For different groups, the advent of MP3 technology created both beneficial and detrimental possibilities. Music fans attained the means to rapidly download near-CD-quality recordings onto their computers, often without having to pay. The U.S. music industry, however, argued that music downloading robbed record companies and musicians of profits and violated intellectual property rights. Claiming lost sales and copyright infringement, the music industry encouraged new legislation and initiated legal battles to combat the purported negative effects of music downloading. (The music industry, broadly defined, includes recording artists, songwriters, producers, record companies, and anyone else with a stake in music sales.)

When these maneuvers did little to quell the rapidly spreading activity or even convince people it should be controlled, the music industry took its case to the media. Media reports during

this time, however, contained inconsistent messages, and the music industry failed to gain acceptance for its claims. Using social constructivist and symbolic interactionist theory, this study analyzes the challenges new technologies posed to the music industry; how the music industry tried to construct meaning about online music downloading through the media; and why the music industry's claims failed to gain acceptance from members of society.

## Background

### Innovations in technology

New technologies made it easy for large numbers of people to download music off the Internet. High-speed Internet connections and the advent of MP3 technology made near-CD- quality recordings easier and faster to download. (MP3 stands for MPEG version 3 and is a computer format that digitally compresses songs into about one-tenth of their original size.) Although downloading music from the Internet onto personal computers was possible before the development of MP3 technology, it wasn't nearly as quick or efficient; plus, the previous formats filled much more space on downloaders' computer hard drives. Newer hard drives have much more storage space available and high-speed Internet connections drastically reduced download times, both of which made downloading and storing large amounts of MP3 files practical (Cooper & Harrison, 2001, p. 73).

Also contributing to the ease of music downloading are "file sharing" services, which allow users to access other users' computer hard drives and retrieve any available music files they want, all for free. File-sharing services typically use software that works through a server that contains "addresses" for each user. That "address" information is used by computers to find music files on the hard drives of other users. The file-sharing service acts as a virtual phonebook that catalogs users who are willing to "share" music files on their computers with others. Downloaders can use the service to connect to other users, but the service itself does not store music or distribute music through its servers (Rainie, Fox, & Lenhart, 2000, p. 2).

Napster was one of the first free file-sharing services available. It began operating in 1999 and quickly grew in popularity; by 2000, the company claimed to have 10 million users (Rainie et. al., 2000, p. 2). Other file-sharing services soon emerged and became almost instantly popular following Napster's success, including BearShare, Morpheus, iMesh, Grokster, eDonkey, and BitTorrent.

Some services, like Gnutella, Kazaa, and FreeNet, with complex organization and divided ownership, represented a different breed of file-sharing service because they are extremely difficult for regulators to monitor. For example, Kazaa's "servers are based in Denmark, the software is programmed in Estonia, the domain name is registered in Australia, with the company that now owns the network, Sharman Networks, registered in the 'no names given' Pacific tax haven of Vanuatu" (Leyshon, Webb, French, Thrift, & Crewe, 2005, p. 188). Essentially, this type of file-sharing service, instead of using a central server or storing addresses of MP3 files, "creates a network of users over the Internet and transmits the search request from user to user until the file is found" (Rainie et. al., 2000, p. 3).

### **Popularity and effects of music downloading**

Pew Internet Project researchers reported in 2001 that almost 30 million American adults and more than 7 million youths ages 12 to 17 had downloaded music files from the Internet, and about 79 percent of adult Internet users obtained the files for free (Graziano & Rainie, 2001, p. 2, 5). The number of music downloaders continued to grow: In 2003, 29 percent of Internet users, or about 35 million people, reported that they download music files online (Rainie & Madden, 2004, p. 1).

Music downloaders do not necessarily share music files online and file sharers do not necessarily download music, although there is much overlap between the two populations. Many only download music, some download and share music files, and a small number only share files. Less than half – 42 percent – of music downloaders say they also share files with others online, and, of Internet users in general, 9 percent say they share files but do not download them (Madden & Lenhart, 2003).

Record companies claimed in 2003 that since 1999, they had a 25-percent drop in CD sales (Madden & Lenhart, 2003, p. 2) and largely blamed Internet music downloaders for the billions of dollars in lost revenue (Hopkins, 2004, p. 161). Other reports, however, attributed the industry's lost sales to other factors, including inflated CD prices, few titles released in recent years, and increased competition from other entertainment technologies (e.g., computer games and cell phones) (Leyshon et. al., 2005; McCourt & Burkart, 2003; Metz, 2004; and "Music Sales Decline Again in 2003," 2004). Some analysts claim that the music industry was close to a crisis since at least the 1980s (because of the above factors, in addition to longtime mismanagement) and that online music downloading was only the "tipping point" that pushed the industry into impending crisis (Leyshon et. al., 2005, p. 184-185).

### **Legislation and litigation**

Regardless of the cause(s), the music industry indeed experienced a decline in sales in recent years. According to the Recording Industry Association of America, a group representing major record labels (including "The Big Four": The EMI Group, Sony BMG Music Entertainment, Universal Music Group, and Warner Music Group, as well as hundreds of smaller labels), CD sales dropped from about \$13.2 billion in 2000 to about \$11.2 billion in 2003. Citing these economic costs, the record companies sued both file-sharing services and individual music downloaders.

In the 1990s, the music industry, fearing the potential for new technologies to cut into sales, had begun proactively seeking new or expanded legislation to include the Internet and new technologies in copyright laws. The Copyright Act of 1790, which originally covered books, charts, and maps, was extended to protect music as intellectual property in 1831. Largely prompted by the mainstream use of cassette tape recorders and VCRs, the 1976 Federal Copyright Act allowed for "fair use" of recordings, which permitted individuals to make unlimited copies of cassette or video tapes for personal use after purchasing an original copy (McCourt & Burkart, 2003, p. 338). While previous legislation did not specify sanctions on the not-for-profit distribution of copyrighted material, in 1997, the No Electronic Theft Act made

copying and distributing copyrighted works, for financial gain or not, illegal (Hopkins, 2004, p. 161). This legislation paved the way for sanctions against file sharing (Yar, 2005). In 1999, in one of the first cases to apply this law, the Department of Justice convicted a University of Oregon student of illegally distributing copyrighted music and other materials (Hopkins, 2004, p. 161).

Copyrighted works in digital form received increasing protection throughout the 1990s. Although the Audio Home Recording Act of 1992 authorized individuals to make copies of digital music for personal, noncommercial use, it prohibited “serial copies” (McCourt & Burkart, 2003, p. 337). The RIAA cited this legislation in the late 1990s when it filed lawsuits against manufacturers of MP3 players and other song recording devices, claiming the companies, through their products, allowed for the production of serial copies. In 1999, however, the Ninth Circuit Court upheld a district court ruling that computers and MP3 players do not qualify as digital audio recording devices as defined by the act, and, thus, their manufacturers do not have to pay royalties or incorporate serial copyright management systems. The ruling did not, however, exempt manufacturers of computers or MP3 players or consumers from lawsuits over copyright infringement (Hopkins, 2004, p. 161).

The Digital Millennium Copyright Act of 1998 gave the music industry more leverage against the copying and distribution of music, as it eliminated the “fair use” provision of the 1976 Federal Copyright Act. In 2000, major record companies won a copyright-infringement lawsuit against MP3.com, a Web site launched in 1997 that allowed musicians to distribute their music online, and MP3.com was ordered to pay millions of dollars in penalties, in addition to royalties, to continue distributing music on its Web site (Hopkins, 2004, p. 161-162). Soon after this legal victory, the music industry pursued Napster for “contributory federal copyright infringement and related state law violations” (Hopkins, 2004, p. 162). Napster argued that it was protected under the Digital Millennium Copyright Act of 1998 because of a clause that protects Internet service providers. Napster did not persuade the court, which, in July 2000, placed an injunction on the company. In February 2001, the Ninth Circuit Court of Appeals upheld the injunction, saying it “agreed with the lower court that Napster, by its conduct, knowingly contributed to copyright infringement” (Hopkins, 2004, p. 162). In 2002, Napster was ordered to shut down “unless it could guarantee that it would block 100 percent of unauthorized songs from being downloaded *via* the Internet” (Hopkins, 2004, p. 162). Napster filed for bankruptcy in June 2002, but, by this time, many copycat services were growing in popularity. The RIAA continues to file lawsuits against other file-sharing services. Some services that either settle with RIAA (e.g., BearShare) or are forced to shut down (e.g., Napster) later re-emerge as licensed music services, which charge users a fee for each downloaded song.

None of this initial legal wrangling seemed to discourage music downloaders from continuing their activity. Internet researchers argued that the “appeal of downloading music has grown during the same period that legal controversies have swirled around the Napster file-sharing service” (Graziano & Rainie, 2001, p. 2). A 2000 Pew Internet Project survey found that 78 percent of music downloaders reported that they didn’t think downloading music files for free was stealing and that 61 percent said they didn’t care if the music they downloaded was copyrighted (Rainie et. al., 2000, p. 5).

In addition, it appeared that, not only were music downloaders indifferent to copyright laws, but neither the larger population of Internet users nor the general population seemed concerned about the activity. Pew researchers concluded that the music industry had been largely unsuccessful in convincing Internet users or the general population that downloading music is wrong or akin to stealing, citing survey results that showed 40 percent of all Americans say people who download music online “aren’t doing anything wrong,” 35 percent say downloaders are stealing, and 25 percent “don’t take a position” (Rainie et al., 2000, p. 6).

Even as many Americans became more aware of the court cases surrounding illegal music downloading (Borland, 2004, p. 1), both Internet users and members of the general population were unlikely to hold individual downloaders responsible. In 2005, 53 percent of Internet users and 49 percent of Americans surveyed reported that they thought the companies that operate file-sharing services – not individual downloaders – should be held responsible for illegal downloading (Madden & Rainie, 2005, p. 1).

In 2003, the RIAA changed its focus and started targeting individual music downloaders with lawsuits. The industry group ran into problems, however, when it tried to obtain the names of downloaders from Internet service providers. The RIAA’s well-known legal battle with Verizon resulted in a victory of sorts for downloaders. In 2002, the RIAA sued Verizon because the telecom company, citing issues of privacy, refused to provide the names of customers who used file-sharing services. A district court ruled in favor of the RIAA, but that decision was later overturned. The U.S. Supreme Court refused to hear the RIAA’s appeal the following year in 2004. Because of this ruling, the RIAA has since had to file “John Doe” lawsuits before acquiring subpoenas to obtain defendants’ real names and addresses (Rainie & Madden, 2004, p. 5).

Pew researchers reported that students are more likely to download music online than nonstudents (Madden & Lenhart, 2003, p. 4-5). In addition, colleges and universities are more likely to comply with RIAA requests (Mervis, 2005, p. 1). Unsurprisingly, then, the RIAA’s next target was educational institutions and has since sued hundreds of student downloaders after issuing subpoenas to their schools.

Another reason colleges and universities were targets of RIAA lawsuits is because many of them actually operate or participate in exclusive versions of file-sharing services. One example is i2hub, a “trading” service used primarily on Internet2, “a superfast network that was created by universities for academic research but is generally unavailable to the public” (Mervis, 2005, p. 1). Students and faculty can use Internet2 to download all kinds of files, many at speeds five to ten times faster than most services (Mervis, 2005, p. 1), making college campuses efficient places to download large amounts of music files.

Despite mixed legal success, the music industry continues to sue individual users, many of whom settle out of court for thousands of dollars each, some as much as \$18,000 (Hopkins, 2004, p. 163). As of March 2004, the RIAA had sued 1,977 individuals (Borland, 2004, p. 1).

About the time the music industry began suing individual music downloaders, the number of Internet users saying they download music dropped. According to the Pew Internet Project (Rainie & Madden, 2004, p. 1, 3), since the RIAA began filing copyright-infringement lawsuits

against individuals, “the percentage of online Americans downloading music files on the Internet has dropped by half and the numbers who are downloading files on any given day have plunged.” A 2005 study showed that 28 percent of former downloaders said the *main* reason they stopped was because they were afraid of getting into trouble or because they had heard about the RIAA lawsuits. Only 10 percent of the former downloaders said they “simply decided that the downloading was wrong.” Others cited time constraints, lost interest in the activity, trouble finding the files they wanted, or that their Internet service provider, school, or workplace wanted them to stop downloading (Madden & Rainie, 2005, p. 9). The Pew Internet Project researchers suggested that this reduction in downloading and file sharing may be an effect of media attention surrounding the RIAA’s attempts to curb illegal copying and online distribution of music. Also a possibility is that “there may be a fraction of Internet users who are simply less likely to admit to either downloading music or sharing files due to the negative media portrayal of the activity” (Rainie & Madden, 2004, p. 3).

### **A Thief by any Other Name**

While limited research exists on music and video downloading and other types of copyrighted file sharing, like swapping video games and computer software (Rainie & Madden, 2004; and Yar, 2005), most focuses on demographics of downloaders or file sharers, the frequency of the activities, litigation, and legislation. Therefore, I examined studies of related phenomena, bootlegging and shoplifting, to see how the act of downloading music illegally could be compared to these other acts of theft. The main reason for comparing bootlegging, shoplifting, and Internet music downloading is that people participating in all three activities tend to maintain nondeviant identities, although bootleggers and shoplifters, unlike music downloaders, generally recognize that their actions are against the law.

### **Bootlegging**

Music bootleggers are people, usually die-hard fans, who create and (usually) distribute unauthorized recordings of live performances of songs. Unlike music downloaders, who steal music that has already been released by official record labels, bootleggers produce and distribute music that has never been officially released, usually either live concert recordings, or “out-takes,” studio recordings that did not make it onto a released album (Marshall, 2004, p. 165). Bootleggers often make complex arrangements to smuggle their recording equipment into a live performance, stand in an area where the sound is best, and record for sometimes hours without being discovered. Most bootleggers sell or distribute their recordings, but some keep them for their own collections (Neumann & Simpson, 1997).

What particularly separates bootleggers from Internet music downloaders, though, is that bootleggers generally recognize their activity as violating copyright law and make an effort to avoid detection. “Bootleg collectors often recognize their own activities as breaking copyright laws or carrying social connotations of deviance” (Neumann & Simpson, 1997, p. 321). Bootlegging has traditionally been an underground activity, “found in back street record shops and specialist collector fairs” (Marshall, 2004, p. 170).

Internet music downloaders are sometimes referred to as “bootleggers” in academic literature and in the media, but there are major differences. While music bootleggers recognize the deviance in their act and attempt to avoid detection, most music downloaders say they don’t care about copyright laws or even acknowledge that what they’re doing is wrong. Music downloaders also make little effort to avoid detection; most download and talk about their downloading openly. This may explain why a culture seems to have developed around bootlegging and not music downloading – if downloaders don’t recognize their activity as wrong, they are perhaps less likely to seek support from others who participate in it, as bootleggers do.

The music industry apparently perceives the effects of bootlegging and music downloading differently. Although the music industry has portrayed bootlegging as a “high-level, large-scale crime” that robs musicians of their intellectual property and record labels of profits (Marshall, 2004, p. 165), the music industry has done little to stop the activity when compared to the significant efforts it has made to stop music downloading. This is likely because “bootlegging has always been a small-scale activity,” with a normal production and distribution rate of about 500 copies per bootleg worldwide (Marshall, 2004, p. 165).

Although bootleggers tend to acknowledge that their activity is against the law, there is little evidence to suggest that they believe it is wrong. Bootleggers often respond to the music industry’s claims of lost sales by pointing out that the bootleg recording were never intended to be released, thus the industry cannot lose money on a product it had no intention of selling. Further, some say the music industry generally underpays musicians and often even withholds royalties on officially released music (Marshall, 2004, p. 170), arguing that bootlegging may only be harmful to record labels, which are so wealthy that it hardly makes a difference.

### **Shoplifting**

Shoplifters, or people who take items from a store without paying for them, like bootleggers and unlike music downloaders, make a tremendous effort to hide their actions from others – both from employees at the targeted store and also oftentimes friends and family. “Pilferers expect no ‘in-group’ support for their behavior” (Cameron, 1973, p. 378), largely because they recognize their actions as against the law and know that others (friends and family) would not approve of their law breaking. Some, however, may be part of a “shoplifting ring,” in which their activity is accepted and perhaps discussed and rewarded by members of the group, but they still hide it from those who are outside the group.

Shoplifters, like bootleggers, tend to rationalize their crimes. Although they generally recognize their actions as illegal and often feel guilty about them afterward, “it still seems to them less wrong to steal from a rich store than to take from the family budget” (Cameron, 1973, p. 376). This train of thought serves to justify the theft and helps shoplifters not think of themselves as thieves.

Shoplifting differs from bootlegging and music downloading in that what is being taken is in tangible form, whereas with the other two types of stealing, it may be easier to deny a theft because the product cannot be seen or touched. Yet, again, music downloaders typically do not recognize the laws protecting what they are taking, while bootleggers and shoplifters do

recognize the laws but find them illegitimate and/or rationalize their law breaking in spite of them.

This study focuses on why music downloaders do not seem to feel the same way about their acts of theft as do other thieves, such as bootleggers and shoplifters, as well as the music industry's efforts to apply a deviant label to music downloading by taking its message to the media.

### **Research Questions**

This study was guided by the following research questions:

1. How does Associated Press coverage portray Internet music downloaders, the music industry, and musicians?
2. How do these various portrayals affect the identities of the music downloaders?
3. In what ways does the AP coverage create meanings about Internet music downloading?
4. Do the constructed meanings about Internet music downloaders change over time?

### **Constructing Deviance**

The introduction of any new technology requires that people learn to adapt to the device and its new opportunities. Legal issues often arise with the widespread use of new technologies because the devices and the uses and opportunities associated with them can initially be interpreted in multiple and sometimes conflicting ways. "Technologies provide unusual problems in sensemaking because their processes are often poorly understood and because they are continuously redesigned and reinterpreted in the process of implementation and accommodation to specific social and organizational contexts" (Fulk, 1993, p. 922). Because of this difficulty in defining new and ever-changing technologies, interested groups in society try to create such definitions and hope for their acceptance to establish some sort of control over people's use of new technologies. A regularly changing "set of social structures and technological manifestations arises as groups selectively appropriate features of both a technology and the broader social structure in which the group is embedded" (Fulk, 1993, p. 922). Groups in effect create messages, or meanings, about new technologies and their uses within the social structure that they hope will be accepted by members of society.

Record companies are trying to create negative connotations about online music downloading, and specifically they are attempting to convince the public to accept their claim that people who download music for free from the Internet are thieves and that file-sharing services are contributing to this illegal activity and should be stopped. At the same time the record companies are encouraging people to apply the deviant label to music downloaders, they also want the public to see record companies and the artists they represent as victims.

Constructing these kinds of meanings in society (and having such claims broadly accepted) is no easy task. Kai Erikson (1965, p. 458) regarded deviance "as conduct which is generally thought to require the attention of social control agents – that is, conduct about which 'something should be done.'" The record companies try to create this sense of harmful behavior by encouraging portrayals of music downloading as a social problem that members of society need

to take action against. “The *perception* of behavior as deviant relies on the perception of threat and the attribution of responsibility to the deviant” (Hewitt, 2003, p. 241). This is why it is crucial for the record companies to try to make a clear case that someone (the music downloaders) is stealing property (songs) owned by victims (the record companies and individual musicians). They must create a sense of wrongdoing, and in doing so, some perpetrator, crime, and victim must be outlined, for “the vocabularies with which we discuss deviance rely heavily on conceptions of right and wrong” (Hewitt, 2003, p. 241). In an attempt to successfully cast an image of deviance on music downloading, the record companies took their case to the media, which, through the stories they disseminate throughout society, help create meanings for members in that society.

Jack Lule (2001, p. 29) argues, “*Storytelling* seems fundamental to human life... Humans make sense of the world and their time in it through story.” Storytelling is important to, not only human life, but also social life. Humans and their societies need stories, for stories – and their meanings – help a group of people define themselves. “These societal stories attain sacred status. They become accepted and their value becomes assumed. They narrate and illustrate shared beliefs, values and ideals” (Lule, 2001, p. 33).

It’s fitting that the media call their reports “stories” and rate these stories in order of importance, or which has the most crucial meaning to disseminate (the “top story”). Through stories, the media help transmit societal norms and values to the masses and can help construct societal meanings for their audiences. The claimsmaking process follows a basic order, beginning with “activists, professionals, or others with vested interests in bringing attention to an issue and/or promoting a particular image of the problem.” Then, the media transform the primary claims and disseminate the subsequent secondary claims to the public (Best, 2001, p. 270). The distribution of these claims may then be adjusted according to how well the message is being accepted by the public.

“Primary claimsmakers” define the issue or problem and typically suggest how it might be addressed, while the media, as “secondary claimsmakers,” promote public concern about the issue or problem, which may also lead to increased pressure on lawmakers to address it (Best, 2001, p. 269). Social problems, then, are not necessarily the most serious threats to society, “but products of effective claimsmaking, media exposure, public perceptions, and public policies” (Best, 2001, p. 269-270). The record companies want to claim that online music downloading poses a threat to society in that there is a definite perpetrator, a crime, and that the victims are suffering immensely; use the media to widely distribute this claim; watch as people accept the claim; and then enjoy the resulting changes to public policy. But, of course, this only occurs when a claim has been *successfully* applied, as evidenced by its widespread acceptance.

One way the media facilitate claim acceptance by the public is by comparing them to other, more common societal problems or cultural values. Labeling an activity as “deviant” or “criminal” “carries with it a *symbolic* weight and charge, equating it with socially sanctioned perceptions of moral violation and wrongdoing” (Yar, 2005, p. 687). For this reason, online music downloaders are often compared to bootleggers or shoplifters, which are more familiar deviant actors to whom the deviant label has already been successfully applied. Because there is already an amount of public concern for these other types of crimes, aligning them with another

action (music downloading) can help create more acceptance of the claim that the newer action is just as deviant, or wrong, as the previous ones.

Oftentimes, however, “primary claimsmakers find themselves competing with one another for media attention” (Best, 2001, p. 276). This, too, is evident in the music downloading literature in that one group (the record companies) is attempting to successfully label another group (music downloaders) as deviant, while that latter group is fighting the label, often through media coverage. Thus, constructing meaning in society is a constant struggle until widespread acceptance of a claim is achieved and either public policies are changed or voluntary social control is maintained through the public’s acceptance of the claim. This study examines how the music industry, through the media, has tried to construct meanings about online music downloading and the outcome of those efforts.

### Methodology

“Newspapers are not simply noisy channels which connect one end of an information exchange with another,” wrote Stuart Hall (1975, p. 17-18). “They employ verbal, visual and typographical means for ‘making events and people in the news signify’ for their readers. Every newspaper is a structure of meanings in linguistic and visual form.” It is important to not only look at *what* is said in a newspaper (the literal words and information contained in articles), but also “*how* what is said is presented, coded, shaped, within a set of signifying meaning-structures” (Hall, 1975, p. 21). Newspapers (and other forms of media), through the ways in which information is presented, help people understand their world and construct meanings about it. They “do not merely report the news: they ‘make the news meaningful’” (Hall, 1975, p. 21).

Media not only make news meaningful for consumers, but they can also make particular information seem more or less important. A newspaper can emphasize or minimize the importance of individual stories by their placement on a page, what size headlines they receive, whether they are accompanied by photographs, what section they are placed in, and through a wide range of typographical tools, including underlining, bold face, and italics. Because the articles analyzed in this study were obtained from a wire service and were therefore not in publication form, this study focuses on what is said in the articles and the positioning of the information within the articles. The structure of the articles can reveal much about how the writer intended the reader to interpret the information.

Journalists are trained to write in the “inverted-pyramid” style. The first paragraph of any news article should contain what the writer perceives to be the most crucial, relevant, and newsworthy information, giving the readers a quick idea of what the story is about. Each paragraph in the rest of the article should contain increasingly more details until the end. Therefore, a reader can expect to obtain the essential information of a story in the first couple of paragraphs. The headline is also important, as it sums up the entire story in just a few words. Because of space constraints, the headline writer must pick out what he or she perceives to be the most crucial piece of information in the story. Thus, the headline reveals the bare point that the article is trying to make. For these reasons, I paid particular attention to the headlines and first few paragraphs of each story to study how the writer structured the article to emphasize some information and de-emphasize other information and why. “It is only when we penetrate to the

deep structures of the newspaper that we really understand *how* a paper stands in relation to the society which it ‘mirrors’ day by day” (Hall, 1975, p. 24). Textual analysis can help uncover how the media create meaning through news.

Textual analysis is a qualitative method of analysis that seeks to delve beneath surface meanings to uncover deeper social meanings that may be hidden beneath the text’s façade. Textual analysis is “useful in penetrating the latent meanings of a text” (Hall, 1975, p. 15) because the researcher can dig beneath the literal meanings of the words to uncover underlying meanings that are present within the texts. These underlying meanings can provide information about society, societal values, and the ways in which texts create meaning and social understanding. Textual analysis “views the news story as a dramatic act, a text whose language unavoidably gives meaning to the world it reports, meaning that can be understood through interpretation” (Lule, 1989, p. 616).

### **Procedure**

Through this method, I analyzed 16 articles from The Associated Press (AP) wire service, the first article released on the wire on Dec. 11, 1998, and the last on Dec. 10, 2004. These articles were released during the same timeframe in which MP3 technology began to gain widespread acceptance, when online music downloading was growing rapidly, and when the RIAA legal and legislative fights were launched with full force. This is a distinct phase in the music-downloading saga and facilitates examination of how claims are made about emerging technological opportunities.

The articles were obtained from an employee at AP’s Nashville, Tennessee, bureau who searched in the organization’s database using the keywords “MP3,” “downloading,” “Internet,” and “music.” Using this convenience population, the number of articles was narrowed down to reflect a broad time period and to find the most relevant articles (i.e., some of the articles brought up by the database using the keywords were unrelated to this study and were subsequently discarded).

Six of the 16 articles analyzed were written by the same writer, which would be expected. Journalists are usually assigned “beats,” or particular subjects within which they are responsible for reporting news. This writer was likely assigned to a technology beat.

### **Rationale**

I chose to use the AP because of its far-reaching influence on all sorts of media and because of its reputation for integrity and accuracy. Being a wire service, AP articles are published by various news outlets (most commonly, newspapers) all over the world. By using a wire service, my study is not limited to a specific newspaper or geographic location.

According to *The Associated Press Stylebook*, “Today the not-for-profit cooperative is the world’s largest news organization, providing coverage of news, sports, business, weather, entertainment, politics and technology in text, audio, video, graphics and photos to 15,000 news outlets with a daily reach of more than one billion people around the world” (Goldstein, 2003, p.

421). The AP became the not-for-profit cooperative in 1990 under the Membership Corporation Law of New York state. It is headquartered in New York City but has 242 bureaus around the world and more than 3,500 employees.

### Findings

Throughout the 16 articles analyzed for this study, there is a recurring pattern of constructed meanings. To uncover this pattern, I read through all the articles multiple times, specifically looking for similarities and differences in the language used to describe music downloading, music downloaders, and the music industry; comparisons to other types of activities, legal or not; who was quoted; and whose side of the story appeared to be the focus of the article and whose side was left out or de-emphasized. I also carefully examined how the information was arranged within each article, especially what information was contained in the first sentence and first paragraph.

Four sequential themes emerged, with some overlap during the transition from one theme to the next: The earliest articles both tout the advantages of new MP3 technology *and* focus on the illegal activity of Internet music downloaders and portray record companies and recording artists as victims of these downloading deviants. After that, the focus reverses, and a claim is reported that illegally downloading music isn't the downloaders' fault, and finally, that the downloaders are victims of overzealous and greedy record companies. I used these themes to divide the articles into groups, which will be discussed separately. The transition from one theme to the next interestingly seems to coincide with significant RIAA legal battles.

### New opportunities for music thieves

The first two themes — which I have labeled “new opportunities” and “music thieves” — occur almost simultaneously. They also were published at the same time MP3 technology and file sharing were growing in popularity: The articles within these themes were published in 1998 and 2000, while Napster started in 1999. Their contrasting messages indicate that early articles failed to transmit a clear meaning about music downloading or downloaders, as is seemingly better accomplished in later articles.

The first few paragraphs of Article I describe the exciting opportunities the new technology affords consumers. The first sentence states, “...a new technology called MP3 could reshape the way we buy and hear music.” The second paragraph continues describing the possibilities and almost seems to advocate obtaining songs from the Internet for free: “In the time it would take to drive to the record store, spend \$16.99 on the latest CD, bring it home and pop it in a stereo, a music lover could download the same high-quality recordings over the Internet – often for free.” The music downloader in this article is called a “music lover”; the language used to describe downloaders is drastically different in subsequent articles. Not until the seventh paragraph does the music industry's claim get attention: “The Recording Industry of America Association says artists will be hurt most as bootlegged MP3 files siphon off royalties. The RIAA reported losing \$300 million annually prior to the advent of online piracy.” The next paragraph, however, immediately dismisses this claim: “Then again, the RIAA said the same thing about cassette tapes, and the music business survived.”

Article II, which was released on the wire just four days after Article I, shows support for the music industry's claim that it is the victim of downloaders' crimes. The first paragraph in this article describes the downloaders not as "music lovers," as in the earlier article, but as "music thieves." After this point, the first theme is dropped in favor of this second one.

Articles III and IV use the same kind of language to describe the downloaders, including terms like "elusive thief unleashed on the Web" and "new high-tech type of thief," and describe their actions as "pernicious," showing "no respect for the law," and an "illegal bazaar." Article III's headline follows along the same lines: "Latest Internet concoctions create pirating bonanza." This rhetoric also creates a sense of urgency about the situation, which supports the record companies' claim that music downloading is an emerging social problem that must be dealt with. Article IV quotes musician and member of the band Metallica Lars Ulrich as saying, "If they want to steal Metallica's music, instead of hiding behind their computers in their bedrooms and dorm rooms, then just go down to Tower Records and grab them off the shelves," which is directly comparing music downloading to shoplifting. The timing of the articles in the "music thieves" theme is especially interesting, as most were published in 2000, when the RIAA won landmark legal cases against MP3.com and Napster, which may have influenced the content of these articles.

In this group of articles, however, the AP writers start to imply the next theme, that downloaders are not responsible for their actions, but not until the middle to end of the articles. In Article IV, the same one that details Metallica's struggles with music downloading, the writer noted, "(Ulrich) said the band's fans are breaking the law, but 'we are not going after the individual fans, Metallica has always felt fans are family.'" And at the end of Article III, Greg Blatnik, an analyst with Zone Research, is quoted as saying, "The battleground is really between technology and the law," which again diffuses the responsibility of the music downloader by blaming, not their actions, but technology.

### **Blame Goliath**

Article V takes this technology-is-to-blame message even further; the first sentence refers to the battle between music downloaders and the music industry as a "David-and-Goliath story for the dawning Digital Age," which implies that, although the music downloaders aren't as rich and powerful as the big, bad music industry, they can still triumph over the mean, ugly giant. In the seventh paragraph – still very early in this lengthy article – an analyst with Forrester Research was quoted as saying, "(Consumers) love music so much they're willing to steal to get it," implying that it isn't the downloaders' fault because they're just such devoted fans of the music that they have to do anything to get a hold of the songs. One of the AP's primary sources in this article, a music store owner, is quoted as saying, "The record companies have done this to themselves and now they're reaping the whirlwind," and, "Anything that brings down the major companies is fine with me." Both statements explicitly blame the music industry for the illegal use of their products.

Article VI offers plenty of explanations for why music downloaders may participate in illegal activity without feeling responsible. The headline sets up the image of the music downloader as victim: "Was the record industry attacking its fans by attacking Napster?" Other information

offered within the article helps justify or excuse the actions of downloaders: The writer reports toward the middle of the article, "Music sales in general are up this year." Four paragraphs later, Napster CEO Hank Berry "indicates fans are using the service to sample music, not keep it," implying that "sampling" is not stealing. The writer notes toward the end of the article, "The musician Prince suggests poor treatment of fans has left record companies with little reservoir of good will."

The next articles detail how the music industry is using its money and power to keep the music downloaders down. Articles VII and VIII detail the legal disputes between the music industry and file-sharing services, saying that record companies "should not treat people like criminals" and should not "freak everyone out with police tactics."

Articles IX, X, and XI detail ways the music industry is trying to curb the ability of consumers to download music or even copy songs and CDs they purchased. Article X is perhaps the best example of how the writer seems to take the side of the music downloader. The article recounts the consumers' point of view on the music industry trying to take away their "right" to download music. The sixth paragraph begins, "Many consumers who have tried copy-protected CDs, usually unwittingly, have been angered by the results." This sentence also illustrates a recurring theme throughout the remaining articles, which is the portrayal of the music industry as sneaky and anti-consumer. In the same article, a music copier is quoted: "I own upwards of 800 CDs, but it seems like they're on a crusade against me. It's a strange development when you seem to be hellbent on alienating your best customers." Another article in this group describes the music industry's "secretive campaign against online music swappers." Here, the language has again changed from "music thieves" to "music swappers," a much-less deviant label.

The last article in this theme and the first two in the next theme were published in 2003, the same year the RIAA began its legal pursuit of individual music downloaders. Again, this litigation appears to have influenced the media coverage.

### **Poor music industry**

Articles XII, XIII, XIV, XV, and XVI attempt to invoke the imagery of the deviant music downloader but not quite as harshly as earlier ones. Terms like "music pirates" and "piracy epidemic" begin to resurface, but often they are located in the middle to end of the articles, positioning that de-emphasizes their importance. The last three articles detail how much money the music industry says it has lost because of music downloading and explain what it is doing to try to stop the activity. Although the focus is back on "record industry as victim," the strong language against music downloaders and the crime comparisons are no longer present.

### **Conclusion: What Went Wrong**

The music industry has not thus far been able to successfully label music downloaders as deviant or create the widespread belief that their actions are criminal or even wrong. In other words, their claim has not yet been accepted by the general public. There may be several reasons for this.

The media messages portray music downloaders as deviants *and* victims and the record companies as victims *and* as greedy and powerful giants who are taking advantage of and attacking individuals. Essentially, the media are disseminating both sides of the debate: the claims of both the record companies and the music downloaders, which inhibits the immediate and widespread acceptance of just one claim.

Another problem for the music industry is the vagueness of the laws protecting intellectual property. The music industry has struggled in court battles against manufacturers of MP3 recording devices, file-sharing services and individual music downloaders because the copyright laws were not written to protect this type of intellectual property. According to Bruce G. Carruthers and Laura Ariovish (2004, p. 24), "...what separates ownership from mere possession is the fact that others recognize ownership rights, either directly or through a formal legal system." Members of society do not seem to largely accept that songs are the sole property of anyone, partly because it is difficult to understand how intangible property can be owned and partly because it isn't even legally clear who owns music. Property rights differ according to what may be owned, who may own it, and what constitutes legitimate "use" of owned property. "Property also varies in how it is transferred, alienated, or enforced, and in its exclusivity (private versus public)" (Carruthers & Ariovish, 2004, p. 24). Ownership typically involves socially recognized rights, particularly economic rights. The problem is that it seems most members of society aren't clear about who owns, and therefore has rights to, any given performance of a song – is it the record company or the artist? Does either have control over how the song is used? Because of this ambiguity, it may be easier for music downloaders to see no clear victim suffering from their activity.

Even if a music downloader recognizes that someone (the record company or the musician) is losing benefits by his or her activity, there is so much physical and emotional distance between the perpetrator (the music downloader) and that victim (the record company or musician) that it is easy for the downloader to disregard the "victim." Neumann and Simpson (1997, p. 324) note that "it is important to consider how the technological reproduction of music inherently manifests social, commercial, and emotional distances between audience members and artists while, at the same time, offering them a means to overcome those distances." With the exception of attending live performances, most individuals are at a distance from musicians; they never interact or even see one another. The downloader is aware, however, of rich and powerful record companies and the lavish lifestyles of musicians, which may make it difficult to understand how downloading music is harming anyone.

Related to these issues is that the nature of the Internet seems to allow individuals to distance themselves from "offline" society, including its norms and laws. In the online world, people interact with others in "telecopresence," meaning our online interactions are carried out from "a distance in a disembodied environment" (Zhao, 2005, p. 388). "How we *perceive* ourselves is influenced by the extent to which we are able to directly see others and how they respond to us" (Zhao, 2005, p. 388-389). The online world, however, allows people who are physically separated to be electronically linked to one another, creating a situation in which interacting individuals cannot directly see how others respond to them. The disembodied nature of the online world effectively allows individuals to interact with one another anonymously; they are simultaneously linked to and shielded from each other (Zhao, 2005, p. 391). Because those we interact with

online are distanced from and have little influence on our offline lives, we may not be as concerned about the consequences of our online actions.

An individual can thus create a “digital self” that is separated from his or her everyday self and “constructed solely through online interaction without the intervention of nonverbal feedback and the influence of traditional environmental factors” (Zhao, 2005, p. 395). The digital self is free to violate social norms of the offline world because the individual has located him or herself in a different realm – the online world. Separating the online, digital self from the offline self makes it possible, even easy, to erase one self and “build a new one without resorting to physical relocation and social uprooting” (Zhao, 2005, p. 398). Individuals can switch between online and offline selves without ever changing physical location.

While online, individuals can disregard offline social norms and laws, while still maintaining their law-abiding offline selves. Although an individual may think stealing is wrong in the offline world, the online world is seen to have its own norms and laws, which do not seem to prohibit downloading music. Creating a digital self helps individuals reconcile the discrepancy between activities that are socially acceptable online but unacceptable offline. The offline selves of music downloaders, then, can be unaffected by the activities of online, or digital, selves. This separation of selves means that people may be able to participate in illegal activities (music downloading) online without having to come to terms with those activities or their consequences offline.

Laws protecting tangible property must be adapted to accommodate new forms of intangible property, namely that which is produced by new technologies. Only then can it be made clear who can own and have rights to that intangible property (like music) and what limits can be established on who can use it and how (Carruthers & Ariovich, 2004, p. 25). Until the law is more clear on the limits of use for new technologies *and* people accept the claim that downloading music online for free is theft, the music industry will continue to have a difficult time convincing the general public that music downloading is, not only wrong, but a crime with clear perpetrators, clear victims, and harmful consequences.

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**Appendix – Articles Analyzed**

- Article I:** Harris, R. (1998, December 11). New technology could change music industry, consumer habits. *The Associated Press*.
- Article II:** Quinones, E.R. (1998, December 15). Record companies pledge to deliver music online better than bootleggers. *The Associated Press*.
- Article III:** Harris, R. (2000, April 12). Latest Internet concoctions create pirating bonanza. *The Associated Press*.
- Article IV:** Harris, R. (2000, May 3). Metallica wants 335,000 fans barred from trading music online. *The Associated Press*.
- Article V:** Harris, R. (2000, July 5). Internet swaps shake up music industry, put pressure on prices. *The Associated Press*.
- Article VI:** Bauder, D. (2000, August 21). Was the record industry attacking its fans by attacking Napster? *The Associated Press*.
- Article VII:** Harris, R. (2000, October 2). Judges grill attorneys over Napster injunction; ruling pending. *The Associated Press*.
- Article VIII:** Fordahl, M. (2001, March 7). A legally palatable Napster can work only with file locks, not blocks. *The Associated Press*.
- Article IX:** Harris, R. (2001, September 19). Woman's lawsuit complains that technology to prevent CD copying limits its use. *The Associated Press*.
- Article X:** Hopper, D.I. (2001, November 30). Despite rocky start, music labels push forward with copy-protected CDs. *The Associated Press*.
- Article XI:** Bridis, T. (2003, August 28). Music industry discloses some methods used to track downloaders. *The Associated Press*.
- Article XII:** Frommer, F.J. (2003, October 2). Senator seeks reduced penalties for music downloading. *The Associated Press*.
- Article XIII:** Veiga, A. (2003, November 14). Music labels learn key marketing info on listening trends from illegal song-swapping. *The Associated Press*.
- Article XIV:** Veiga, A. (2004, February 19). FBI warning labels to begin appearing on CDs, DVDs, software. *The Associated Press*.
- Article XV:** Record companies sue 761 more computer users for swapping music. (2004, November 19). *The Associated Press*.

**Article XVI:** Yen, H. (2004, December 10). High court agrees to hear file-sharing dispute. *The Associated Press*.

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