



Cultures of music piracy

An ethnographic comparison of the US and Japan

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ABSTRACT ● In 2003, the US recording industry, hoping to change what some view as a 'culture of piracy', initiated lawsuits against its own consumers. What is this culture of piracy and what is at stake in trying to change it? In this article, I take an ethnographic look at music file-sharing, and compare the situation in the US with Japan, the second largest music market in the world. My findings are based on fieldwork in Tokyo, and surveys and discussions with US college students. By considering the ways social dynamics and cultural orientations guide uses of digital media technology, I argue that a legal and political focus on 'piracy' ignores crucial aspects of file-sharing, and is misleading in the assumptions it makes for policy. A focus on fan participation in media success provides an alternative perspective on how to encourage flourishing music cultures. ●

KEYWORDS ● ethnography ● fan cultures ● file-sharing ● internet ● Japan ● music ● piracy ● US

The battle over online music in the US turned ugly in the summer of 2003 when the Recording Industry Association of America (RIAA) initiated lawsuits against its own consumers. Beginning in July, the RIAA issued subpoenas to internet service providers demanding disclosure of the identities of computer users suspected of sharing copyrighted music files online. ●

By March 2004, the RIAA had initiated close to 2000 lawsuits. Before the dust settles, thousands of music fans will face lawyer fees, possible court cases, and out-of-court settlements that are likely to cost thousands of dollars.¹ The RIAA hopes the dragnet, and ensuing publicity, will change the 'culture' of file-sharing online by convincing computer owners that using software to share music files is identical to shoplifting from a neighborhood store.² But what is this *culture* of file-sharing, and what is at stake in trying to change it?

Music is one of the key battlegrounds for power in the media, in part because what happens with music businesses is likely to influence other publishing and entertainment industries. The stakes are high not only because the record companies are suffering, but because the impasse between the file-sharers and the recording industry is only one aspect of larger transformations underway, shifts which highlight the conflicting demands of civil society, where information and ideas should be freely exchanged, and an information economy, where cultural goods play an increasingly important role in the marketplace. To an extent, the RIAA is right. The problem is cultural and the consequences are economic. Yet it is surprising how little analysis has been devoted to the links between the presumed culture of piracy and the activities that create conditions of growth in the entertainment world in the first place. Can the industry association teach (or enforce) 'respect for property' while building a healthy music market in the digital age? It is naive to think that such changes can take place without a careful look at what fans are doing and why.

We can broadly characterize two main approaches to managing the transition to a new era for the recording industry, specifically, digital rights management and alternative compensation systems, both of which are expertly described by William Fisher (2004), a professor at Harvard Law School. Digital rights management (DRM) focuses on strengthening the property aspect of music, and making file-sharing less attractive. This includes teaching youngsters, either in the classroom or in the courtroom, that downloading is stealing. It also means developing new technologies, laws and business models aimed at managing consumers' access and uses of entertainment products. Digital rights management is currently the leading approach of entertainment companies in the US, but the negative consequences of this approach are wide-ranging and profound (see Lessig, 2004). Moreover, DRM may not achieve its goals even if it 'works'.

In contrast, a range of lawyers, economists, and activists are working to develop alternative compensation systems (ACS), which Fisher calls 'the best of possible solutions' (Fisher, 2004: 15). This group tends to accept the inevitability, and for some the desirability, of sharing. Here, the focus is on devising new methods to support artists and entertainment companies, both to offset the losses attributable to unauthorized copying, and to reduce the

negative consequences of expanding enforcement of intellectual property rights. Proposals include taxing hard drives, blank CD-R media, and broadband internet connections.³ Although one difficult challenge is determining how funds should be distributed, there are already companies like BayTSP and BigChampagne that measure traffic and holdings on p2p networks. ACS proposals show more promise than DRM for supporting a vibrant entertainment culture, and could contribute to the broader movement for more balanced approaches to copyright in the digital age (Lessig, 2004; Litman, 2001; Vaidhyanathan, 2001). Yet such ‘copyleft’ activism could also benefit from a deeper consideration of fans, who could be instrumental in generating the political will to shift the debate from ‘protecting property rights’ to ‘improving cultural creativity by supporting artists’. It may be that ‘combating piracy’ is not the only way to promote a flourishing entertainment world.

In this article, I propose taking seriously the notion of a ‘culture of piracy’ by exploring ethnographically the practices and attitudes of file-sharers. Please note that I use the terms ‘file-sharing’ and ‘piracy’ interchangeably, not to emphasize their ‘good’ or ‘bad’ sides. Part of my point is that determining whether file-sharing is good or bad depends upon looking at the issue from multiple angles. I should also clarify that the piracy I’m discussing here refers to non-commercial file-sharing, that is, sharing of music and media without the exchange of money. Pirated CDs and DVDs sold on sidewalks around the world are a separate issue.

I begin with an ethnographic consideration of the music sharing in the US to unpack the overly simplistic image that people are sharing music ‘just to get something for free’. A peer-to-peer perspective on popularity reveals that the boundaries between piracy, promotion, and sharing are far from clear. I also discuss reasons why a purely technological solution to digital piracy is unlikely. Then we turn to Japan, the second largest music market in the world, to consider what a cross-national comparison reveals about the intersections of culture, technology, legal settings, and business practices. My interest in copyright initially grew out of my research on hip-hop in Japan (Condry, 2001), where sampling and clearances have taken a somewhat different path compared to the US. Six brief research trips to Japan since 1999 also allowed me to discuss the issue with Japanese musicians, businesspeople, and fans.

Japan shows that the ‘culture of piracy’ transcends national boundaries, and does not depend on online peer-to-peer networks. In the US, the debate over music piracy largely revolves around peer-to-peer (p2p) file-sharing software, beginning with Napster, and later Kazaa, Bit Torrent, Freenet, and so on. But as of the beginning of 2004, Japanese record companies have largely avoided an online file-sharing epidemic. Sales have nevertheless plummeted more sharply than in the US. Yet Japan uses the law differently. By spring 2004, hundreds faced lawsuits in Europe (Lander, 2004), but

Japan's legal action against file sharers is limited to three arrests. Instead some business leaders are taking a hard look at the intersection of fan attitudes and promotion strategies. Japan is also instructive because some Japanese popular culture industries, namely, *manga* (comic books) and *anime* (Japanese animated movies), may have benefited substantially from copyright infringement that was not prosecuted.

Then I return to the US to analyze some possible directions for moving beyond the current impasse between record companies and recalcitrant pirates. Since Napster was founded in 1999, I have used the issues surrounding MP3 files and p2p networks in my courses in two colleges in the US to talk with students about the music industry, consumer power, and intellectual property rights. This serves as a kind of fieldwork research on student attitudes. My findings are also based on essay surveys distributed to students, which I followed with in-class discussions.

One aspect of this study worth highlighting is that we must consider carefully how we characterize 'culture' in the analysis of 'piracy' internationally. What is striking is that the contrast is less one of 'Japanese culture' being different from 'American culture' but that American and Japanese fans share many attitudes, while the responses of the Japanese business community differ markedly from those in the US. My approach is part of a widening effort within anthropology, and in cultural studies more generally, to move away from seeing fieldwork and ethnography as primarily situated in geographically bounded locales. Akhil Gupta and James Ferguson, for example, argue that it is important to see anthropology's distinctive trademark not as a commitment to 'the local', as in the people of a local community, but rather to emphasize anthropology's 'attentiveness to epistemological and political issues of location' (Gupta and Ferguson, 1997: 39). They draw inspiration from Marxist and feminist perspectives which highlight the ways cultural understandings imbue different actors with different kinds of power.

Ethnography's great strength has always been the explicit and well-developed sense of location, of being set here-and-not-elsewhere. This strength becomes a liability when notions of 'here' and 'elsewhere' are assumed to be features of geography, rather than sites constructed in fields of unequal power relations. (Gupta and Ferguson, 1997: 35)

This focus on locations instead of locales offers new opportunities for ethnographers to examine a diverse range of sites, not necessarily guided by geographical area, but rather by the ways people are positioned in social, business and technological networks. This is especially important in the conflict over file-sharing because moving forward requires enlisting the enthusiasm of fans.

Losers never win: a peer-to-peer perspective on popularity

The common assumption that new digital technology could destroy the recording industry is exemplified by the cover of *Wired* magazine (2/03). Playfully recontextualizing Apple's iTunes slogan, it shows a zeppelin going down in flames, and reads 'Rip. Mix. Burn: The Fall of the Music Industry'. A three-year decline in the US market, and a five-year decline in the Japanese market, indicate that the world's two largest recording industries are in trouble. Executives in both countries sometimes acknowledge that piracy may not be the only reason for the decline, but they are quick to stress that digital copying could completely undermine the business of selling packaged music. The logic seems unassailable. If music is free, no one will pay for it. If no one pays, artists and producers will stop creating music. How can anyone argue with that?

First, it is important to recognize that few musicians' efforts can be explained simply by a desire to make money. Archeological sites in China with crane bone flutes dating back six millennia remind us that the impetus to make music does not depend on contemporary business models (Wade, 2003). Styles of music sharing and commodification have changed dramatically over the years, with a wide range of social customs, patronage systems, performance spaces, folk communication and travel, that, even without recordings, produced elaborate musical traditions around the world. Let me be clear: I believe artists should be paid for recorded music. But to reduce the question of how artists should be supported to primarily a question of how to 'protect digital content' is misleading. Artist perspectives on the conditions that promote creativity are essential to this debate as well, but beyond the scope of this article.

In terms of consumption, we can begin by recognizing that a lot of music is already available for free *and* people pay for music anyway. Sales of bottled water show that the presence of 'free' does not necessarily eliminate markets. Even without Kazaa, we can tape music off radio or the TV, enjoy music in public spaces, and borrow music from friends easily enough. Even so, music lovers end up buying music. People use commercial means when there is some value in doing so. The idea that inconvenience or fear of copyright cops is going to help make legitimate services look attractive is possible, but it ignores the more important part of the equation: Why do people want music in the first place?

This is where an ethnographic perspective is useful for giving a sense of what it is like to live in a certain cultural world. If you live in a college dorm, for example, the question is not *why* you don't respect copyright law. The question is, how could you *not* share music? Imagine the following conversation:

Student A: 'I got the new KRS-1 album. It's great.'

Student B: 'Cool. Could I borrow it sometime? I'd like to hear it.'

Student A: 'No, I think we need to protect the copyrights of artists, record companies and publishers. Please go buy the CD yourself.'

Student B: 'Loser.'

Unlike underwear or swimsuits, music falls into that category of things you are normally obligated to share with your dorm mates, family, and friends. Yet to date, people who share music files are primarily represented in media and business settings as selfish, improperly socialized people who simply want to get something – the fruits of someone else's labor – for free. In fact, if asked directly by a friend to share music, sharing is the only reasonable thing to do.

Moreover, there is a particular pleasure to be had in turning on a friend or family member to music that they don't know. In a very real way, it creates a social bond. Afterwards, the two people can talk about new albums, news about the artists or the scene, upcoming shows, and so on. If an album has been recommended by someone familiar, our desire to get the album, whether bought, borrowed or stolen, may be driven as much by a desire to explore the relationship than with the desire for a particular band or style of music. The closer we feel to another person making the recommendation, the more likely the music is to pique our curiosity. We become interested in things, communicate things, and desire things not only for ourselves but also because we care about others.

There are two likely objections at this point. First, even if the sharing of a CD with a friend 'isn't so bad', it doesn't explain why people feel justified in sharing their music collections with potentially millions of strangers. Second, some might argue, even if sharing CDs has been deemed culturally acceptable up to now, a new ethics of digital technology is necessary to prevent the destruction of media businesses.

Why *do* people sign onto p2p networks to share with strangers? Despite all the rhetoric of stealing, in some ways, file-sharers are doing exactly what consumers are supposed to do: get the most possible stuff for the least possible money. For a fan-based movement that is often viewed as a radical rejection of capitalist principles, a kind of 'dot-communism' (Sullivan, 2000), in fact individual music piracy is remarkably pro-consumption. Peer-to-peer systems follow the principles of network economics, which hinge not on supply-side economies of scale, but on demand-side economies of networks (Shapiro and Varian, 1998). The more participants, the more sharing, and the more distributed users and content, the more valuable the network is.

'Think locally, act globally' is one element of the dynamic that has produced a peer-to-peer music library that, at the time of writing (summer 2004), is still the most comprehensive, and cheapest, of the music services.

The distributed library of music, and increasingly movies as well, is historically unprecedented, and emerges from personal desires to acquire combined with a willingness for at least some users to open their shared folders online. There is an intriguing convergence here between the analysis of 'millennial capitalism', which highlights the growing importance of consumption in shaping identity, society, and markets (Miller, 1995; Comaroff and Comaroff, 2000), and popular culture studies that attend to fans (Jenkins, 1992; Kelly, 2004). If value cannot be reduced to price at the point of purchase, then we need a deeper understanding of how audiences generate value and meaning. Popular music studies explore such things as the mass appeal of record players (Gitelman, 2003), taste cultures of club music (Thornton, 1996), and the challenges of writing about fans as a scholar (Maxwell, 2002), and thereby remind us that official sales figures produced by the recording industry provide only a partial representation of consumption practices around music (Negus, 1992: 12).

Let's turn to the second objection. Even if there are social pressures that encourage file-sharing, don't we need to change the culture, to create a new ethics of digital reproduction, in order to avoid destroying the recorded music business altogether? It is striking that people both for and against p2p networks have assumed that file-sharing will hurt sales, but that might not be the case. In one empirical study designed to establish causality between p2p downloads and sales, Felix Oberholzer of Harvard Business School and Koleman Strumpf of UNC-Chapel Hill examined a large dataset of file-sharing during the last part of 2002. To their surprise, they found that downloads had an effect on record sales that was 'indistinguishable from zero' (Oberholzer and Strumpf, 2004: 3). Even using their most pessimistic estimates, they conclude that it would take 5000 downloads to displace one sale. As Lessig (2004: 70–71) describes, there are other possible causes for the drop in US sales besides piracy. In 2002, the RIAA reported that CD sales had fallen by 8.9%, from 882 million units to 803 million units, and revenues fell by 6.7%. But there was also a 20% drop in the number of new CDs released since 1999. Also, from 1999–2001 there was a 7.2% rise in CD prices. In the same period that the RIAA estimates that 803 million CDs were sold, 2.1 billion CDs were downloaded for free (*ibid.*: 71). Lessig points out that if each download were equivalent to one lost sale, as the RIAA assumes in assessing damages, we would be witnessing a 100% drop in sales, not a 7% drop.

Downloading a CD is different from shoplifting, because online digital copies are 'non-rivalrous' goods. Even after I download a CD, a copy remains on the original sharer's computer, and it also remains on the shelf of the record store. But even though the consequences of p2p sharing are far from clear, the recording industry is rapidly trying to develop technological means to stop it.

Can technology stop piracy?

No one is certain, but the trends to date make it seem unlikely. The US recording industry spent years with the Secure Digital Music Initiative, hoping to find some way effectively to lock up digital music, but when the format was released, it took only weeks to identify fundamental weaknesses. In a paper by Biddle et al. (2000), four workers for Microsoft, but not representing the company, describe why technology alone probably cannot find a magic bullet to prevent online file-sharing. They use the term 'darknet' to refer to a collection of networks and technologies used to share digital content (Biddle et al., 2000: 1). They assume, rightly I believe, that 'users will copy objects as long as it is possible and interesting to do so' (p. 2). Since the various elements of darknets (storage, search, transmission, input and output) offer few points of attack, the digital content will remain available to a fraction of the people in a form that allows copying. With broadband, it only takes a few copies before such reproducible digital content is easily accessible worldwide. We can imagine that new 'digital containers', with keys and locks but new software for converting file formats, are likely to be forthcoming as well. What is amazing about the internet is how quickly and widely word gets out (Richtel, 2002). The Digital Millennium Copyright Act makes it technically illegal to distribute information on circumventing copy controls, but DVD decoding software to get around Macrovision, DVD region-encoding, and CSS encryption is so widespread that the lawsuits against people who originally made the code public were dropped in the US before being decided. Both technological limitations and the historical trends in the US show that record companies would be better served by shifting emphasis away from digital rights management to try other approaches. Indeed, the RIAA's desperation in suing their own consumers is at least partly an admission that technological devices alone won't work.

Are the lawsuits changing file-sharers' behavior? Reports are mixed. The Pew internet Project, extrapolating data from phone surveys in April 2004, estimated that the lawsuits convinced around 6 million former downloaders to stop, but also estimated that 5 million new users started up in the same period (Rainie et al., 2004). Companies that track volume of traffic and number of downloads report a slight dip after the summer 2003 publicity surrounding the lawsuits, but numbers quickly returned to pre-lawsuit levels, and still represent about 20 times the volume of legal downloads (Banerjee, 2004). It's no wonder that the RIAA wants to change the culture. But to understand the character of this culture, and its relationship to the internet, a cross-national comparison can give some perspective.

What internet problem? Lessons from Japan

Japan, the world's second largest economy, is also number two in music sales. It's a mature national market, where Japanese music (*hōgaku*) has outsold Western music (*yōgaku*) since 1967, and now comprises three-quarters of the market.⁴ According to the Recording Industry Association of Japan (RIAJ), recorded music sales in 2002 were valued at US\$4.6 billion (\$36.09 per capita) compared to US figures of \$12.3 billion (\$43.10 per capita) (RIAJ, 2003b: 21). Like the US, Japan has been experiencing declines, but in some ways surprisingly little given that Japan entered a decade-long recession in 1992, and yet the value of audio sales rose from 1993 to peak in 1998. Since 1998, the value of audio sales eroded steadily 5–7% for three years, then in 2002 dropped 13%, with early estimates of 2003 showing similar declines. What is striking, however, is that few business leaders are citing the internet as the primary reason for the loss in sales. An international comparison of users on file-sharing networks suggests why (Oberholzer and Strumpf, 2004: 35).

Based on data from late 2002, Japan had the second highest share of world internet users, yet its share of downloads ranks seventh, a mere one tenth of the share of US downloads, and a fifth of the downloads of Germany.

How did Japan avoid an online file-sharing epidemic, despite having such a large number of internet users? Is the law more stringent, or law enforcement more aggressive? No. Japan's copyright law is largely harmonized with the US, yet only three people face legal action for using p2p networks. Do Japanese music fans have more respect for copyright law, or more sympathy for record companies? Doubtful. In fact, music fans in Japan seem at least as willing as Americans to copy and share music.

The difference is internet cell phones and CD rental shops that are legal

Table 1 Geography of file-sharing (%) in order of share of downloads

Country	Share of users	Share of downloads	Share of world pop'n	Share of world GDP	Share of internet users	Software piracy rate
USA	30.9	35.7	4.6	21.2	27.4	23.0
Germany	13.5	14.1	1.3	4.5	5.3	32.0
Italy	11.1	9.9	0.9	2.9	3.2	47.0
France	6.9	6.9	1.0	3.1	2.8	43.0
Canada	5.4	6.1	0.5	1.9	2.8	39.0
UK	4.1	4.0	1.0	3.1	5.7	26.0
Japan	8.4	2.8	2.0	7.2	9.3	35.0
Spain	2.5	2.6	0.6	1.7	1.3	47.0

Source: Oberholzer, 2004: 36.

and ubiquitous. In Japan, broadband internet access for college students and households has lagged behind rates in the US. Instead, the Japanese are far more likely to access the internet via cell phone, and connection fees make the time spent downloading a song prohibitively expensive. Instead, unauthorized copying, especially with CD burners, is blamed for the drop in sales. Industry association research from surveys in the summer of 2003 found that more people had recorded music (66%) than had bought music (53%) (RIAJ, 2003a: 4). But with CD rental shops, purchase prices double the US norm, and widespread use of mini-disk recorders, it is not a surprise. In Japan, three weeks after a Japanese artist's album is released with a purchase price of \$25 or more, fans can rent the same CD for \$3. Foreign music is not available for rental until one year after its release in Japan, and sales have fallen less sharply (though sale prices are also about \$5 cheaper) (McClure, 2003). Music industry consultant Masataka Yoshikawa says that the practice of copying CD-Rs is so rampant that teenagers no longer refer to a purchased CD as a 'CD' (*shii dee*) but instead use the term 'master' (*masutaa*), as in the master copy which is best for dubbing (Interview, 8 July 2003). Copy-control CDs are widely used in Japan with uncertain effects.

But why aren't Japanese record companies crusading to shut down rental stores? Makiko Okada, of Next Level Records (Tokyo), said, 'The time for stopping rental companies is past. They are part of the business now' (Interview, 3 December 2003). An emcee with the Japanese hip-hop group Rhymester also noted a widespread feeling that stopping CD rentals would lead to an even greater drop in sales (*ibid.*).

Instead of attacking consumers with lawsuits, some in Japan's recording industry are asking, why is it that fans see dubbing CDs as acceptable? In July 2003, I spoke with Katsuya Taruishi, the head of the statistics division of Oricon, the company that tracks album sales in Japan. He noted that Japanese fans voice the same complaints heard in the US, the foremost being that CD prices are too high for albums with only one or two good songs. Research by Oricon, however, also showed that although music fans were *buying* fewer albums, they were *listening* to more CDs than ever, this in spite of increased competition for young consumers' disposable income from cell phones, video games and DVDs.

Taruishi and others in the music business place at least some of the blame for consumer copying on the recording industry for styles of promotion that encourage thinking of music primarily as a commercial item. In 1990s Japan, he explained, record companies relied heavily on promoting songs through tie-ups with television commercials and prime time dramas. They focused on hit songs, rather than developing fan relationships with artists and groups. Taruishi argues that such practices taught fans that music is simply a commodity, not a piece of the soul of an artist or group, and so fans had little compunction against simply copying music CDs, whether from friends or rental shops.

In situations where the connection between artists and fans is viewed as more direct, people will buy. This was clearly illustrated by the astonishing success of a small, indie label punk band out of Okinawa named Mongol 800, who had the best-selling album of 2002 without major label promotion. Hailing from Okinawa, the southernmost string of islands in Japan and far from the media epicenter of Tokyo, Mongol 800 named their first album 'Message', a prophetic title. Its marketing began locally, with a strong push from Tower Records in Naha, the capital of Okinawa. Sales grew gradually until the album became a word-of-mouth phenomenon, spurred in part by email recommendations, friend-to-friend over cell phones. Tourists visiting the tropical southern islands began bringing the album back as *omiyage*, a customary local gift that Japanese bring back after traveling.

The music sounds like positive-attitude punk, but the imagery is symbolic of local pride that is partly credited for the album's success over nationally marketed acts. The CD cover shows residents in Okinawan outfits, and inside is an image of locals protesting the military presence. The 'message' of Mongol 800's first album for some record company representatives in Japan is that organic hits can emerge in an era when top-down, power-push strategies appear to be failing.

The absence of litigation towards individual CD-R copying brings to mind two other genres of Japanese popular culture which seem to have



Figure 1 Mongol 800, Japan's best selling album, an indie, in 2002

benefited from lax copyright enforcement, namely, *manga* (comic books) and *anime* (Japanese animation). Manga are the weekly comic books, and collected volume paperbacks, which account for 20% of publishing sales value, and 40% of the volume (Schodt, 1996). There is an astounding variety of genres and styles aimed at every segment of Japanese society, for men and women, young and old. There is also a widespread practice of making and selling fan-made comics (*dôjinshi*), which often use the images of mainstream commercial manga. In Tokyo, an annual 'Comic Market' (*Komiketto*, in Japanese) for buying and selling the fanzines draws around 300,000 visitors over a three-day period. Most of these *dôjinshi* take their characters from mainstream manga in clear violation of Japanese copyright law, and some of these fan artists can support themselves on sales. Why don't manga publishers sue?

Salil Mehra (2002), a professor at Temple University Law School, presents an excellent analysis of *dôjinshi* and Japanese copyright law, describing diverse theories as to why the publishers avoid lawsuits, though both the fanzine artists and the publicly traded company that organizes the convention could be held liable in Japanese courts. He notes that Japanese law requires the copyright holders themselves to sue, which might hurt the reputation of mainstream artists. Japanese courts tend to assess much smaller fines than do American courts. One law firm says the reason is that there are neither enough lawyers nor resources to prosecute such cases (Lessig, 2004: 27). Matt Thorn, a professor in the Manga Department at Kyoto Seika University, also argues that manga publishers realize that the *dôjinshi* markets do not substantially hurt sales, and in fact, if a particularly racy fanzine causes a stir, it helps sales of the mainstream manga (personal communication, February 2004). Toshio Okada, who works in anime, explained that some of the artists who work for mainstream publishers also participate in the *dôjinshi* markets, and therefore the publishers were loathe to draw attention to their own tacit acceptance of the practice (personal communication, October 2003). Possible reasons are many, but the conclusion is clear. Japan's manga industry succeeds despite, and perhaps partly because of, widespread 'copyright infringement'. File-sharing of digital music files for free is not the same as the exchanging of *dôjinshi* for a fee, but the point is that other nations' industries sometimes are less draconian than the US and succeed anyway.

The *anime* world may provide another example of the potential benefits of taking a lenient attitude towards copyright. Anime, or Japanese animated films and TV shows, have become a worldwide popular culture success story. One of the remarkable features of transnational trade in anime is the widespread practice of 'fansubbing', whereby fans working in small groups for no pay whatsoever add subtitles to Japanese animated films and TV shows. The groups are so efficient that the most popular anime in Japan, after they are aired on television for the first time, are available online as

fansubs within a few hours. There are good reasons to think that the dubbing and trading of anime among fan clubs in the US contributed strongly to the growing American interest in the films (Leonard, 2004). There is also evidence that anime fans do some self-policing of their collections, as when the MIT anime club removes fansubs and replaces them with boxed sets when they become available. Anime thus provides another example of how permitting some copyright infringement has not caused the ‘fall of the anime industry’, but may well have contributed to its worldwide popularity. Similar cases can be made to explain how major media in the US, including film, radio, recorded music, and cable TV, all depended heavily on ‘piracy’ for their early success (Lessig, 2004: 53–61).

So Japan offers several lessons. Eliminate p2p and you still won’t eliminate unauthorized copying. Marketing practices may be partly to blame for fans’ willingness to copy music. Hits can be generated many ways, even without major label promotion. Businesses have other options besides fierce copyright enforcement. Manga and anime have flourished in the context of lax legal responses. Japan, with its rental CD shops, karaoke boxes, and a soon-to-be-booming market in ‘ring tunes’ (CD quality songs for ringing cell phones), shows that possible futures for media businesses are various. US record companies may be fighting the wrong battles.

American consumers vs. the industry: finding common ground

To find some ways to move beyond the impasse between file-sharers and the recording industry, let’s look in greater detail at the discourses surrounding piracy in the US. A Foxtrot cartoon by Bill Amend from 22 November 2002 captures several key features of student attitudes.



Figure 2 Cartoonist Bill Amend on downloading and the American family FOX TROT © 2002 Reprinted with permission of Universal Press Syndicate. All rights reserved.

Based on discussions with students, and the results of 70 essay question surveys in 2003–4, a common theme is that students acknowledge that downloading music is illegal, but they justify it in terms of their antipathy towards the recording industry. One consequence of the recording industry's strategy of using the language of stealing, piracy, and ethics to make its case is that students respond by questioning the industry's own 'stealing' and 'ethics'. Complaints are numerous, and the quotations below are taken from surveys in October 2003.

- *CDs are too expensive.* Given that making a single CD costs record companies well under \$1 (Vogel, 2001: 162), students feel that CDs are overpriced, especially when it turns out there are only a couple of good songs on the album. A student who reports never using p2p software because of 'ethical concerns' still thinks that a more appropriate price for music would be 50 cents/song or \$3/album.
- *Marketing is deceptive.* Frustration was evident in one student's response: 'Preventing downloads is just trying to trick me into buying rubbish.' Another student said that downloading 'makes up for all the music I got tricked into buying'.
- *Where is the money for the purchase price going?* 'I do not feel that I want to be supporting music/marketing label (i.e. mass media). I would rather see less money spent on videos and more on live shows.' Another student: 'I am not stealing from artists but the greedy middleman.' Record companies might dispute 'greedy' but their accounting practices are circuitous. Courtney Love (2000) describes a hypothetical example, drawn from her experience, of how a band that gets \$1 million advance and sells two million albums can still end up with no money, while the record company walks away with \$11 million.
- *'Musicians make enough money already.'* Superstar celebrities like Jay Z, Britney Spears and Justin Timberlake seem to dominate students' thinking about the economics of the music industry. 'They should use recorded songs for promotion, and then make their money through performances.' Personally, I disagree with this assertion because touring is grueling work, and profitable only for the top tier musicians.
- *Downloaded music is free promotion for record companies.* Some students seemed to have such a strong sense of themselves as members of the 'target demographic' that it was deemed natural for the record companies to want to give away the music to them. As corporations increasingly rely on viral marketing, street promotion, cool hunting, and peer-to-peer branding, students are aware that they are integral to the entertainment industries' promotion networks (Lindstrom and Seybold, 2003; Quart, 2003). They have a subtle understanding of the ways value is added through the product's movement through social groups. Giveaways and sponsorships are part of their lives, as at a live show in Boston in the summer of 2003,

featuring Common and Bubba Sparxxx, where free sample CDs were lying around on tables and at the bar. Each CD contained one full song, and five song snippets, about a minute and a half long each, from albums that were due out a couple of months later. The message seems to be that for the chosen few, the trendsetters, music is free, or rather, not free so much as compensation for the time and energy spent evaluating it.

Student attitudes accurately reflect some aspects of the recording industry, but capture only part of the story. Take, for example, artists' share of sales of 99 cent songs from Apple's online iTunes Store.

Perhaps the most dramatic point is that the label receives 47 cents, while the artist, producer, and songwriter/publisher together receive only 18 cents. The record company makes more than two and a half times what the musicians make. In the era of cassette tapes, the ratio was similar, and artists, songwriters and producers combined could expect about 12%–18% of the sale price of an album (Vogel, 2001: 168). From this perspective, the pirates seem to make a pretty good case.

Record companies argue, however, that evaluating their share of the pie depends on understanding some of the unusual features of the music market. The 'disproportionate' amount that goes to record companies is necessary, they say, because so many albums fail to turn a profit. By some estimates, only 1 in 10 albums makes money, a situation that is even worse than the film industry where on average 3 in 10 films turn a profit (Vogel, 2001: 163). They take the risk to support music that may or may not be a hit, so they deserve a larger cut to keep that process going. Although it may cost record companies less than a dollar to press a single CD that sells in the store for \$16, the costs for studio production can easily run from

Table 2 Sales of 99 cent songs from Apple's online iTunes Store

	USA
Label	47
Artist	7
Producer	3
Publishing	8
Service provider	17
Distribution affiliate	10
Bandwidth costs	2
Credit card fees	5
Total (cents / song)	99

Source: *Billboard*, 12 July 2003, p. 64.

\$125,000 to well over \$300,000 (Vogel, 2001: 162). Promotion of an album can range from almost nothing to millions of dollars, not to mention advances to support artists and their tours, and numerous other costs of doing business. If record companies made their compensation schemes transparent, they might be more persuasive in making this argument. One also wonders whether the 1 in 10 success rate is a 'natural' characteristic of the music market or whether alternative models might be more successful. A great frustration of those working towards alternative compensation schemes is that they tend to get shut down before they can demonstrate their potential.

One finding surprised me the most. In class, when I play devil's advocate and try to get students to feel guilty about file-sharing, I've been struck by how resolutely they defend their actions by referring to record company injustices, celebrity compensation, deceptive marketing, and unfair prices. In the fall of 2003, I started asking students a new question: Is there some music you would always pay for? Most students said yes. They mentioned indie artists, or artists from their hometown, whom they know 'need the money'. Some students identified major groups 'with a solid track record of good albums'. Other students mentioned entire genres of music, notably, jazz and classical music, because 'they stand the test of time', and because they are not adequately supported by major record companies.

The common ground for fans and artists, it seems to me, is the sense of participation in a shared community supporting music that people care about. This kind of ethics among pirates converges with features of fansubbers and the *dôjinshi* artists as well, namely, the idea that there is some commitment to the popular culture form that transcends monetary value, but draws instead more strongly from notions of fan attachments in our shared investments in a participatory culture (Jenkins, 2003). There is a new generation of media consumers who are increasingly conscious of their own role as media promoters and producers, and whose attachments to media are driven in part by the ways they can work and play with that media, building playlists, making mixes, trading favorites. A more promising future depends on building upon their enthusiasm.

Conclusion

Napster showed that if enough people agree to share music – that is, if there is a culture of piracy – then broadband access to an online network can approximate a 'celestial jukebox'. From a music lover's point of view, such a library is a godsend. It eliminates the inconvenience of thinking of music as a commodity – Was it worth the price? Did I get ripped off? – and offers the opportunity to share music at the level of the ideas, freely exchanged and competitive with other music, as opposed to other commodities. It

brings to the fore the value of music in terms of what it means to ourselves, our family, and our friends. In contrast, efforts to revive the recording industry by reinforcing the property relationship in music work in opposition to this social urge to share music. The lawsuits against consumers, pending legislation in Congress aimed at online piracy, and education campaigns in schools all share a commitment to ‘protecting property’ as the basis for a healthy business. But I know many people who have used p2p downloads to develop new love affairs with music. Some rekindle old flames, some have flings with new acquaintances, others confirm in advance that a relationship will last. The RIAA wants to teach us that if you didn’t pay for it, it isn’t love.

Even if the RIAA manages to reduce p2p file-sharing in the US to Japan’s miniscule level, Japan shows us that preventing online sharing does not stop unauthorized copying. With the widening range of storage and transfer technologies – flash cards, standalone CD-R, iPods, terabyte-sized hard drives, etc. – it seems likely that the ‘darknet’ may be less reliant on p2p eventually anyway. Technological speed bumps may slow down the less-tech-savvy consumers, but ‘tech-savvy’ changes rapidly with the times. Remember when email was once new and geeky? Finding some balance in copyright enforcement is extremely important, but we need to balance more than simply ‘property loss’ and ‘penalties’. Digital rights management imposes costs that are too seldom acknowledged. Even if the lawsuits ‘succeed’ in reducing sharing, they are likely to fail in the larger goal of leading us to a healthy music future because the social dynamics that drive our interest in music depend on word-of-mouth discussions, friend-to-friend sharing, and convenience in accessing music.

Some people speak of the ‘corrosive effect on our legal system’ when people flaunt copyright law, but there is a logic and a presumed ethics to sharing among fans (e.g. downloading is OK, but downloading and selling is not). The logic of this ethics is not fully consistent, nor does it fully represent the music business, but it does show that music fans still feel the need to justify their actions on moral grounds, even when using ‘free’ networks. The more bedeviling ‘corrosive effect’ on the recording industry is the ideology of commercialism that demands music be thought of primarily as a piece of ‘property’. This commercialism is an important pivot around which fan attitudes revolve. If music is just a commodity, consumers will get it as cheaply as they can. If music is the art and lifeblood of a group they care about, fans will support that group. This could be the foundation on which to build alternative compensation systems.

I would also point out some implications for international cultural studies. Initially, I assumed that a cross-cultural study of music piracy would reveal differences between the US and Japan in the treatment of ideas of copyright, creativity, and music. Instead, what I found was a convergence of attitudes among fans in the US and Japan, but a divergence in corporate

and legal responses to declining record sales. Using ethnography to study not geographic locales but *locations* constructed in fields of unequal power relations seems to me a very productive way of grappling with the troubling conflicts surrounding visions of culture in a civil society (free, shared) and culture in an information economy (commodified, privatized). Americans tend to assume that the US is leading the world technologically, economically, and politically towards some kind of global convergence, but there is increasing evidence that we are witnessing a proliferation of alternative national futures. If cultural creativity does in part depend on allowing the free use of cultural heritage, as Lessig (2004) and others argue, then one potential danger of draconian copyright regimes is to turn the US into a media backwater, while other nations, with more liberal practices towards non-commercial use, may find ways to compete more successfully in the global media market.

Finally, does all this mean that copying and file-sharing are acceptable? The ethics of file-sharing depends not simply on whether or not we download music, but what happens afterwards. Lessig (2004: 68–9) identifies four purposes for downloading: (a) to replace purchasing, (b) to sample then purchase, (c) to access otherwise unavailable content, and (d) to access content that is not copyrighted. Only (a) can hurt the marketplace. I would encourage us to think of file-sharing as a new kind of commercial-free radio, where the consumer becomes the DJ. Downloading music is ethical provided we support artists who are important to us, and this includes payment for recordings. This would allow us to reap the benefits of digital distribution while mitigating the negative consequences. Some will say fans can't be trusted to do this, but the evidence suggests that the alternative of drastic technological and legal approaches would constitute an even worse scenario. If fans use digital technologies in a conscientious way, and record companies withhold judgment on the dangers of non-commercial uses, then we might be able take music into a new era in which the battles over music piracy will seem as quaint as worries about the destructive potential of player pianos or VCRs. Whatever happens, there will be no way to move ahead without paying close attention to the attitudes and practices of the upcoming generation of fans.

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Notes

- 1 In December 2003, the *Los Angeles Times* reports out-of-court settlements with the RIAA ranging from \$3000 to \$7000 (Menn and Jones, 2003).
- 2 As an RIAA website puts it, 'Within the internet culture of unlicensed use, theft of intellectual property is rampant. . . . Many individuals see nothing wrong with downloading an occasional song or even an entire CD off the internet, despite the fact it is illegal under recently enacted federal legislation. . . . RIAA is pursuing a multi-faceted approach, combining education, innovation, and enforcement.' This excerpt is from the RIAA website under 'Issues' with the title 'Online Piracy and Electronic Theft.' <http://www.riaa.com/issues/piracy/online.asp> (accessed 28 August 2003).
- 3 Ren Bucholz presents an easy-to-understand scheme for voluntary compulsory licensing which illustrates the key elements of an alternative compensation system, online under 'Visualizing VCL' at <http://www.trubble.com/blog/archives/000169.html> (accessed 20 April 2004).
- 4 To clarify, most of the Western music sold in Japan is pressed and distributed domestically, usually with a 'bonus track' and the lyrics translated into Japanese. There are some, but far fewer imports, which sell for about half the price of Japan-made CDs.

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