

## Napster v. the Recording Industry: Are the Musicians Really Losing Out?

In October of 1993 Pearl Jam released their much anticipated sophomore effort, *Vs.* Everyone was astonished when SoundScan totaled the figures, and *Vs.* had broken previous records for albums sold its *first* week in release. In one week the album sold 985,000 copies. However, *The Bodyguard* original motion picture soundtrack still held the record for most albums sold in a single (*non-debut*) week: 1,061,000. At this same time, thanks in large part to Prodigy and America Online, the Internet was beginning to enter homes on 14.4Kbs modems. And MPEG 1 Layer 3 files were known only to those most savvy with computers.

Fast forward to November 1998: Garth Brooks releases his “Double Live” CD and breaks both Pearl Jam’s and *The Bodyguard*’s records, and sells 1,085,000 albums in its first week. The fans were familiar with the songs before the album’s release, since the tracks included were live versions of his hits. Like with any greatest hits album, there is no fear the album is a waste of money. The Information Age has come into full swing, and MPEG 1 Audio Layer 3 files have acquired the simple name MP3. MP3s become popular with faster connection speeds, and begin to get media attention. At the time MP3s were by no means the standard for music. The primary people with large amounts of MP3s at their disposal were college students, who had high speed Internet access and access to other computers on their Intranet. But most people, who were using dial-up modems, were not willing to sit at their computers and search for MP3s (which were extremely difficult to find), and then wait an hour to get one song. It was not worth it. Buying CDs was still the most realistic way to get music.

May 18, 1999: The Backstreet Boys’ second album, *Millennium*, debuts, and beats Garth Brooks’ record, by selling 1.13 million albums the first week. Earlier that year Shawn Fanning, a freshman at Northeastern University, took on his suitemate’s challenge to come up with a more efficient way to locate MP3s. Starting as a small project on the side, Fanning’s MP3 peer to peer software took up all his spare time and began to jeopardize his schoolwork. He left school one weekend to work on his program

in peace and never came back. He realized that he might not be the first with the idea, but he would be the first to develop an efficient MP3 finder.

March 21, 2000: After a legal battle to change labels delays production, and an extremely catchy single is put into heavy rotation on MTV and radio stations, 'N Sync's second album, *No Strings Attached*, is released. All previous records are shattered. *No Strings Attached* defeats *Millennium*'s first week sales in one day. The album sells 2.4 million copies in its first week, and ends up selling 5 million albums in five weeks. Households all over the country are switching from their 56K modems to DSL or Cable, making the Internet much faster, and time spent downloading files reasonable. Around this time Fanning's dorm room project, Napster (named after a nickname he acquired for his curly hair during JV basketball in high school) is about 20 million users strong and growing every day.

So what do albums like *Vs.*, *Millennium*, and *No Strings Attached*, and more importantly their sales, have to do with Napster? Everything.

The MP3 has come a long way since its invention in 1991 at a German audio research lab, the Fraunhofer Institute, as a way to transfer and store a CD-quality digital sound file in manageable size: about one-tenth the size of a regular WAV file (format used on CDs). The MP3 format has had a major impact on music.

I have always been a fan of music of all genres. I had to have all the CDs of the artists I liked. Consequently I was always broke, blowing my allowance and paychecks at Sam Goody and in music clubs like BMG. It was a big day for me when I bought my 100<sup>th</sup> album. Of course I bought some albums that serve better as coasters now, and I certainly resented paying \$15 for an album I wasn't even sure I was going to enjoy in its entirety. But I was reckless, and continued buying CDs.

I remember in August 1998, right before I was to go off to college, hearing a song I really liked on the radio. I wanted to buy the CD, but was saving all my money for textbooks. A friend who went to Penn State suggested I get the song off the Internet. He gave me a crash course in MP3s and let me loose on the world wide web to find this

brand new song by an unknown artist. After about three hours of searching, I located the song. After another hour I had successfully completed my first download of an MP3. I thought to myself, “This is certainly not a good way to get music. I could have spent this four hours working and spent the money earned from that time on the CD, and I would have an entire album, liner notes, and a tangible and mobile copy of the CD. I don’t want to sit in front of my computer every time I want to listen to this song.”

That attitude changed once I arrived at JMU. All of a sudden, I didn’t have to suffer a 36.6K modem, and had access to all the other students’ shared MP3s. Within seconds I could have an entire album if I wanted it—if I knew where to go. However, that didn’t stop me from buying CDs, it just made me more picky. Being a typical college student, I was broke and had to spend my money wisely on food and laundry. CDs could wait. I had enough for the time being.

However, if I liked an album enough I bought the album. I view MP3s as similar to online versions of magazines. Sure you can print out all the articles found in the current issue of any given periodical. But I think most people will agree that if they want all the articles, they’d rather just pay the \$3-4 on the magazine, and have a hard copy for good, to take with them wherever they go. When I buy a CD I value it much more than MP3s. I savor opening the jewel case for the first time and looking at the liner notes. Even with a magazine, previewing it is an option before buying it. If I see a headline that interests me, I might flip to the corresponding article and skim it, or even read the entire article to decide if I want to buy the magazine. The recording industry is telling us, in essence, that we can’t read the article before buying the magazine.

I began my sophomore year armed with three tools that would greatly assist me in my quest for free music: an extra 8.4GB hard drive, a CD burner and Napster, which was still brand new. All of a sudden I could find any obscure song I wanted, save it and make a tangible copy of it. I no longer had to be in my room to enjoy my music. My MP3 collection consisted of both legal and illegal copies of songs. A lot of the songs I had on my hard drive were copies of songs I owned in audio tape format. Or were copies of songs I owned in CD format, but wanted to have on my computer to hear at random

mixed in with other songs. Several were songs I had no intentions of ever buying, but were nice to have, *i.e.* any one hit wonder. But the bulk of MP3s on my computer were songs of artists I liked and contemplated buying.

The simple fact that my interest in music increased is clear. Friends would introduce me to new bands, send a few MP3s of their work, and I became a fan of music I never would have learned about on MTV or the radio. Before MP3s and high-speed connections, spreading the word about a new band was difficult, and bootleg tapes of performances were passed from person to person *in person*. The transition from an underground band to a mainstream music force used to be a long one. But not anymore. After being introduced to a band, I turned around and shared the music with another friend who went to another school. I sent a few songs to him, and viola, another fan.

Napster takes this idea to the next level and allows users to find songs of all types from any other anonymous users. No longer do music fans have to rely on MTV or the radio to learn about new music. The problem with those media outlets is that record companies decide what is played, making it very difficult for those without the support of a major label to get noticed.

So if the record industry isn't backing these new artists, what is their problem with Napster? Copyright violation of songs they do own the rights to.

In October 1998 the Recording Industry Association of America (RIAA) was awarded a temporary restraining order blocking the distribution and sale of Diamond Multimedia's Rio portable MP3 recording device. The RIAA's argument was that the recording device violated intellectual property rights. In December of 1998 the RIAA (begrudgingly) accepted the MP3 format and had its first meeting on ways to limit piracy. The same month, frustrated by delays in the release of his band's new album, *Bring the Noise 2000*, Chuck D's rap group Public Enemy posted MP3-formatted tracks on the band's web site. However, their distributor, PolyGram-US forced them to remove the files. Here is an example of a group not strictly interested in selling as many albums as they are in getting the music to their fans. They weren't the first and were certainly

not the last. Many major artists have offered a variety of MP3s on their web sites as well as on larger MP3 hubs such as MP3.com—live versions of popular songs, rare B-sides, as well as full versions of songs found on their albums.

In February 1999 Lycos Inc. launched a search engine for MP3 sites with links to more than 500,000 files, ten times larger than any existing MP3 database at the time. In March 1999 an association claiming to represent 1,300 global music publishers filed criminal legal proceedings against Lycos' partner in Norway to suppress the MP3 search engine. Little did the music industry know, the fight with Internet music was just beginning.

After Napster was launched, access to music via the Internet for those not fortunate to have a high-speed connection became a reality. The time spent downloading a song didn't necessarily change, but the time spent searching for songs was cut down to seconds. Napster's ease of use and idiot-proof layout made it ideal for novices and experts alike. It is no surprise that as of November 2000, only a little over a year since its launch, Napster claims 32 million users.

The Record Industry sees Napster as a threat, and has sued for copyright violations, as well as for millions, if not billions of dollars in lost revenue. However, in past years, record sales have steadily increased. It isn't uncommon for an album to leak onto the Internet before its official release. For example, pirated copies of *No Strings Attached* were being downloaded before its release, and it still broke all previous records. I remember searching for "No Strings Attached" the day the album was released. Sure enough I came back with 100 results immediately, including all of the tracks from the album, not just the popular single "Bye Bye Bye." According to 'N Sync's manager, Johnny Wright, "I think [the Internet] helped a lot...People had the opportunity to hear more than just the single the radio was playing." Another example is Radiohead's *Kid A* album, which was also leaked illegally onto the Internet. Tens of thousands of fans downloaded the unreleased songs off Napster. For the next several weeks, when Radiohead was doing live shows to promote *Kid A*, many fans sang along, since they had downloaded the songs off Napster. Radiohead saw this as a positive thing:

their fans knowing the words to the new songs and singing along gave them the greatest feeling. When the album was officially released, it debuted at number one on the charts. The “pre-release” of the album on Napster was one of the most heavily downloaded albums on the service. This free promotion took a band—who had never broken into the top 40 with any of its previous three albums—straight to number one.

Speaking of number one albums, only a privileged few have enjoyed first week sales of a million or more albums. Some have already been mentioned: *Double Live*, *Millennium*, and *No Strings Attached*. Joining the ranks were four more albums this year: Britney Spears’ *Oops!...I Did It Again* (1.3 million), Eminem’s *The Marshall Mathers LP* (1.7 million), Limp Bizkit’s *Chocolate Starfish and the Hot Dog Flavored Water* (1.05 million), and the Backstreet Boys’ *Black & Blue* (1.6 million). Is the year of Napster really hurting the music business?

There are artists opposed to Napster and its counterparts, including Eminem. More vocal artists who are anti-Napster are Metallica and Dr. Dre. Metallica joined the RIAA in its lawsuit against Napster, fighting for proper compensation for the artists. One day I went to sign onto Napster, and I got an error message telling me that Dr. Dre and Metallica had kicked me off for illegally having and sharing their copyrighted songs. It didn’t necessarily matter to me, since I also used programs similar to Napster, like Scour Exchange, Imesh, and Gnutella. But I wanted to have Napster as well. I went onto the Internet and searched for ways to get back onto Napster. I found several pages explaining exactly how to delete Napster’s identification code for me (what Metallica and Dr. Dre submitted to have me, as well as 300,000 other Napster users banned) and reinstall Napster without a problem. Within twenty minutes I was up and running again on Napster. So whether Metallica and the recording industry likes it or not, there is always going to be piracy of music, as with all forms of media. Some people simply will not buy music if they can copy it from a friend or download it for free. But this is not the majority of people, like the RIAA claims.

For as long as I can remember, I have been a fan of Madonna. I have most of her albums, (a few in both tape and CD form), and am happy to support her. When her new

album, *Music*, came out in September, I bought it the first day it was out. I had acquired three illegal MP3s of songs from the album ahead of time, which confirmed my intentions to buy the album. My one gripe was that I had to pay almost \$16 for about 45-minutes of music. Perhaps if the price of CDs wasn't so outrageous, more people would be buying music.

The Federal Trade Commission charged the five major music groups, Sony, Warner, EMI, BMG, and Universal with restraining competition in the CD music market through their cooperative advertising policies. Minimum advertised price (MAP) policies let the labels share the cost of retailer advertising only for those stores that agreed to certain pricing levels for the advertised music. This led to an extra estimated \$480 million spent by consumers unnecessarily. The major labels signed a consent decree earlier this year, prohibiting them from using MAPs for seven years. Thanks to this agreement, retailers can now sell the advertised CDs for however much or little they want to.

It is partly thanks to the banning of MAPs that Limp Bizkit's new album did so well in its first week. Sales were fueled by several factors, some of the most important being price and bonus tracks. Best Buy agreed to sell the album for \$9.99 (the album carries a \$18.98 suggested retail price), and included two bonus tracks not available elsewhere.

Limp Bizkit is living proof that Napster is good for the music industry. Fred Durst, Limp Bizkit's front man, is Napster's #1 supporter. This past summer Limp Bizkit went on a summer tour, sponsored by Napster. Cost of admission to fans? Zero. That is especially impressive since it is the tours that generate revenue for the artists themselves. The money made from albums usually goes to the record label, lawyers, technicians, publishers, distributors, and pretty much everyone but the artists. The artists make their money by touring. The Backstreet Boys' and 'N Sync's last tours grossed a combined \$26 million in merchandising alone. By giving back to the fans, Limp Bizkit gained a larger fan base, and more support in their efforts. They even won the "Givin' It Back"

My VH1 Music Award last week for going the extra mile for fans, making their music more available in all forms: in concert, on CD, and on the Internet.

It is unclear how MP3s will fit into the future with Internet connection speeds increasing every day, CD burners becoming standard on home computers, and technology becoming more and more easy to use. Whether Napster starts charging a subscription fee, or everyone switches to a different program to get MP3s for free, MP3s are not going away. It is time for the record industry and anti-Napster bands like Metallica to embrace MP3s, and work with companies like Napster, so MP3s can benefit everyone. The acceptance of MP3s is not the death sentence for CDs, because most people still want the package deal of a CD, including liner notes and art—but no one wants to pay \$19 for one album.

Perhaps other artists should take a cue from Limp Bizkit, who might not have made as much money as 'N Sync, but is most in sync with what fans want and never stop giving. I might not be a huge fan of their music, but Limp Bizkit has definitely earned my respect for being one of the few groups willing to encourage Napster, and use it to its advantage, showing the world MP3s are good, and here to stay.