Some Issues In Music Distribution

Frank Field
DN: Distribution Networks
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Napster Has Started A Flood Of Questions
- What Is It That Record Companies Sell?
- What Is It That Consumers Buy?
- What Is The Value Proposition For Both?
- What Is The Business Model That Underlies This Industry?
- What Is The Proper Role Of Technology In This Area?
- How Should The Other Modalities Of Control Be Employed?

Let's Look At Our First Block Of Questions
- What Is It That Record Companies Sell?
- What Is It That Consumers Buy?
- Who Are The Consumers?
- What Is The Value Proposition For Both?

Consider The Language Of The US Copyright Statute:
Copyright protection subsists, in accordance with this title, in
- original works of authorship
- fixed in any tangible medium of expression, now known or later developed,
- from which they can be perceived, reproduced, or otherwise communicated,
- either directly or with the aid of a machine or device.

The CD Is Just The Package
- Copyright protection subsists, in accordance with this title, in
  - original works of authorship
  - fixed in any tangible medium of expression, now known or later developed,
  - from which they can be perceived, reproduced, or otherwise communicated,
  - either directly or with the aid of a machine or device.
Alienation

- Merriam-Webster Collegiate Dictionary Online:
  - a withdrawing or separation of a person or a person's affections from an object or position of former attachment

- The Author/Creator, in "fixing" her/his creation into something tangible, can now distribute and sell it to others

- The law of copyright dictates who can copy and distribute this fixed creation for profit;
  - creates a legal basis for buying, selling and transferring this right to others
  - creates an economic basis for a business in producing and distributing this "fixed" creation

Note That The Consumer Is Also Alienated

"from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." (the "player piano" text <G>)

- Compare a CD with a book or traditional sheet music
  - Converting the fixed expression (a book or sheet music) into an experience is completely under the individual, personal control of the reader/music player
  - Converting a CD into an experience requires a set of devices, generally owned by the purchaser of the CD
- The consumer invests her/his time/effort/resources into this acquisition and conversion process to achieve the experience implicit in the fixed expression that has been acquired

Incentives To Be Alienated On Both Sides

- Artist/Creator
  - Alienation enables reproduction and distribution
  - Reproduction and distribution enable extraction of economic rents
- Consumer
  - Alienation enables access to experience otherwise unavailable, under circumstances otherwise unavailable
- But, alienation also opens the door to control
  - Stationer's Guild
  - Copyright Laws
  - Other Forms?

The Next Question

- What Is The Business Model That Underlies This Industry?
  - "Courtney Love Does the Math" - Courtney Love; Salon; June 14, 2000 - A Look at the Economics of the Record Industry
  - Worth Examining, Given Conflict Between Artists and Industry
    - Note That Love Presented These Materials While Engaged In A Lawsuit With Her Record Company
    - Settled Out of Court
  - Objective: To Demonstrate The Unfairness Of The Industry To The Basic Performer (vs the Superstars)
  - Presents The Basic Elements Of A Modern Recording Contract

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Courtney's Math

- Presents Numbers For A Band Signed To
  - $1,000,000 Advance; 20% Royalties
  - Sales of 1,000,000 CDs
- Her Bottom Line:
  - Artist/Band Nets $180,000 after taxes (and net royalties from CD sales = $0)
  - Record Company Nets ~$6-7 million
- Band Has To Cover Costs That Might Be Surprising To Outsiders
  - Recording Costs (Profit to Record Company?)
  - Video Production Costs
  - Tour Costs
  - Radio Promotion Costs

At First Blush, Seems Inequitable

- Although Taxes Will Change Things, a 30x Differential Seems Substantial
- Of Course, This Was At Least One Of The Key Objectives Of The Piece
- However, It's Not Quite So Simple
  - What If the Band Doesn't Sell 1,000,000 units?
  - What If the Band Sells More than 1,000,000 units?
  - Who's Facing The Risks?
- Record Companies Claim
  - Most Bands Don't Sell 1,000,000 Units
  - In Fact, Sales of 500,000 Units Needed For Them To Break Even

The Details @ 1,000,000 CDs Sold

(\& with some inconsistencies resolved)

- Monies Received By The Band
  - Advance:............................$1,000,000
  - Royalties:..........................$2,000,000
    - 20% of Assumed $10/unit
  - Net: $180,000 after taxes (and net royalties from CD sales = $0)
- Monies Expended By The Band
  - Agent:.............$100,000
  - Legal:......................$25,000
  - Manager:............$25,000
  - Taxes:..............$170,000
  - TO Record Company
    - Recording Costs:..$500,000
    - Recouped Video Costs:.....$500,000
    - Recouped Tour Support:..$200,000
    - Recouped Promotion:......$300,000
    - Recouped Advance:.......$1,000,000
  - Net: $6,050,000

Profits As A Function Of Sales Volume

- Assume “recoupable” costs come out of royalties/sales
- If sales are not high enough, record company “eats” the loss
- Assume CD production costs constant with volume and produced in million-unit lots
- Assume no profit to company on recording studio time

Monies Expended By Record Company

- Advance:.......................$1,000,000
- Video Production:........$1,000,000
- Tour Support:..............$200,000
- Radio Promotion:............$300,000
- CD Manufacturing:..........$500,000
  - Assumed per 1,000,000 units
- Publisher Royalty:.........$750,000
  - $0.75/unit
- Marketing:.....................$2,200,000

Monies Received By Record Company

- Sales Gross: $10,000,000
  - Recouped Video Costs:....$500,000
  - Recouped Tour Support:..$200,000
  - Recouped Promotion:......$300,000
  - Recouped Advance:.......$1,000,000
  - Net: $6,050,000
Conclusions?

- Of Course, the Shape of the Distribution Can Change a Lot
- But, What Does the Base Analysis Suggest?
- Are the Companies That “Unfair?”
- Or, Is There Something Else?

Note:
For Comparison, See Steve Albini’s “The Problem With Music”

- Other Artists With Perspectives Online
  (Links : IP Controversies : Digital Music : Record Industry Practices)
  ➤ Prince - http://www.npgmusicclub.com
  ➤ Janis Ian - http://www.janisian.com

The Last Set of Questions

- What Is The Proper Role Of Technology In This Area?
- How Should The Other Modalities Of Control Be Employed?

“Architecture” - A Dimension Frequently Missed

- “Digital Copies Are Different”
- “Internet Is Unregulable”
- “We Must Take Extraordinary Measures To Defend A Policy”
Lawrence Lessig and the Internet

- The End-to-End Design of the TCP/IP Protocol Underlies Many of the Common Assertions about the “Regulability” of the Internet
  - “Intelligence at the Edges”
  - Packets are Just Bits
  - “Censorship == Network Failure”; Re-Route To Avoid
  - Consequence of the Original DARPA Design Goals
- This Architecture Is Being Changed To Service New Goals
- The Implications Of These Architecture Changes Are Subtle
  - Need To Know A Lot To See These Implications
- Lessig Is More Like Cassandra Than Paul Revere
  - Probably The Most Famous Pessimist In Internet Policy Today

Why All These Extra Lines?

- Record Companies - Digital Copies, Persistent Or Otherwise, Are As Good As The Original - Could Displace CD Sales - Added To The 1995 Law
- Harry Fox - Digital Copies, Persistent Or Otherwise, Are “Mechanical Reproductions” - Thus, Copying Licenses Must Be Paid
- ASCAP/BMI/SESAC - Digital Distribution Is A “Public Performance” - Thus Performance Licenses Must Be Paid

Defence of Distribution?

- Is Copyright The Real Issue?
  - CONTU White Paper Declared Every Digital “Image” Is A Copy
    - An Interesting Perspective Since Challenged In DMCA Evaluation
      - “Ephemeral Copies” Returning To The Discussion
  - Recall The Discussion Of Where Copyright Laws Come From
    - Developed By Distribution Stakeholders
    - Negotiated Positions To Maintain Business Economics
    - Congress As Manager Of Negotiations
  - With The Development Of The Internet, Distribution Is No Longer A Big Business Proposition
    - Barriers To Entry Have Fallen
    - Does The Current Distribution Business Model Work?
    - Is The Internet Regulable?
### A Few Issues

#### Music Questions
- Defend the Current Distribution Model?
  - Or Develop A New Business Plan?
- Has Napster "Poisoned" The Digital Music Distribution Well?
- Digital Delivery A Perfect CD Substitute?
  - Whose Fault Is That?
- Is Digital Delivery Sufficiently Different To Sacrifice Other Goals?
  - Fair Use?
  - The Public Domain?
  - Functionality In Digital Machines?
  - Functionality In Software & O/Ses?

#### Deeper Questions
- "Copy-Duty" - Lessig/Litman
  - A "Right to Read?"
  - "First Sale" Doctrine
- Barlow's "Digital Bottles"
- Is "Digital" == "Better"?
- Is Ice-T Right? Are We "Robbers?"
- How To Answer These Questions?
  - Market Power
  - Political Choices
  - Legislative Initiatives
  - Judicial Interpretation
  - Technical Advances/Developments