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## Rhymin' & Stealin' - How Napster Stole the Industry

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# Rhyming' & Stealin'

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How Napster Stole the Industry

12/1/2009

By Johnathan D. Holbrook  
University Honors 499

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## ***I. The Times They Are A-Changin'***

In 2008, the buzzword on everyone's lips seemed to be "change." "Change" is a word that can have many meanings and connotations, for better or worse. The 2008 presidential election centered on the campaign of Barack Obama's promise for reform to government in the campaign slogan "Change." The United States' economy and the world at large has suffered the worst recession in almost a century, a "change" many could do without. However, few consider the changes that happen every day in our lives, which appear to happen almost instantaneously. Consider, for example, the adaptation of new technologies and vocabulary that has occurred in the last decade alone: Blackberry, iPod, YouTube, Google, Facebook and many more we use or discuss on a daily basis have become part of the vernacular. Above all of these inventions and developments, none has had the cultural, economical, legal and social impact that Shawn Fanning's 1999 invention has: the now infamous and historical program known as Napster. This program not only invaded every facet of our lives, it changed the way we obtained, retained and discovered not just music, but all areas of entertainment today.

## ***II. Same as it Ever Was***

To better understand the impact of Napster, one should understand the culture of the music industry prior to the launch of the pioneering program. The recording industry has long been one of the most volatile business markets, enjoying record profits one moment, only to face bankruptcy and buyouts the next. Consider the late 1970s, a time famous for disco, bellbottoms and platform shoes. Though disco proved initially to be wildly popular, the quality of production and artistry quickly began to decline. The trend is often for the pressured record companies to release a rushed or poor product in order to capitalize on the demands of their consumers. While this approach can maximize profits in the short term, over time, consumers often become jaded.

It is when the market becomes saturated that the music industry resembles the business cycle: booms to recessions.

However, unlike on Wall Street, the music industry can go from swoon to soar with the latest release of a known artist or an once-in-a-lifetime release that can single-handedly rescue the industry. 1982 happens to be known for such a release, the now immortal *Thriller* by Michael Jackson. Holding the record for greatest selling album worldwide (with 110 million units sold) and producing seven top-ten hits, *Thriller* proved to be that rare hit that could save an industry by itself. As Michael Jackson's classic illustrates, a record company could survive on the biggest hits of known artists like Madonna and Michael Jackson.

The music industry, much like any other business sector, focuses on making a profit, specifically how to improve the bottom line. Therefore, when a new opportunity to maximize profits presents itself, the industry is quick to react and embrace, much as is the case for the introduction of the compact disc, or CD. Records produced on vinyl had long since reached a cap of \$8.98, drawing outrage if any record label attempted to charge more. On average, the initial pricing of CDs averaged almost \$8 more per product. Though CDs may have cost more to produce, the record companies' profit margin on each CD sold was substantially higher than anything earned from vinyl records (Knopper 10, 31-33).

Beyond the profits earned, CDs presented a more compact and portable medium in which to transmit music to the consumer, allowing more music to be purchased and collected than under the delicate, cumbersome vinyl format. To understand the profitability of the compact disc for recording labels, consider the growth in profits from its initial year in 1983 to its peak in 1999: in 1983, CDs made the US recording industry approximately \$17.2 million; in 1999, that number had reached \$12.8 billion. As any business executive will admit, cash is king for a

company. With the advent of the CD, record companies had more cash than ever before. Perhaps one can begin to understand the reluctance the business may have had to do anything that would take away from these record profits (Knopper 34-35).

Little did the record companies know that they were creating the perfect storm for change. Unlike the vinyl era, music businesses stopped offering singles for a popular song; with this approach, consumers were stuck buying a \$15-\$18 CD for one song instead of paying substantially less for one song. Therefore, even with a mediocre or inferior product, the recording companies continued to profit. Even as new technologies were being developed in the 1990s, the industry took a Luddite approach to the coming changes, focusing solely on continuing to sell CDs and resisting any new changes that may have undermined their record profits. In retrospect, the brewing storm would soon strip all of the power and money away from the record companies and shift the balance toward the musicians and consumers.

### ***III. A Change is Gonna Come***

The catalyst for the future would come in the innovative new file format known as an MP3. Created by a group of scientists who worked on the project for decades, the ISO-MPEG-1, or MP3 for short, was officially developed around 1991. This new format compressed a music file to the bare necessities in order to greatly reduce the file size. For example, music is composed of various notes and sounds, some detectable by the average human ear and some not. An MP3 would strip out the undetectable or “unnecessary” sounds in order to reduce the size of the file, allowing one to store thousands of songs where it previously would have been impossible (Knopper 116-118; Wise Geek.com).

Although created using music files, MP3s were originally intended to transmit speech faster and more efficiently over phone lines. The advent of the internet and its widespread

dissemination would lead to a cultural phenomenon that would change the face of music forever. Throughout the 1990s, the internet would become more popular and accessible, leading MP3s to become a huge hit amongst the “underground” community. People would post music in the new file format online in order for others to gain free access.

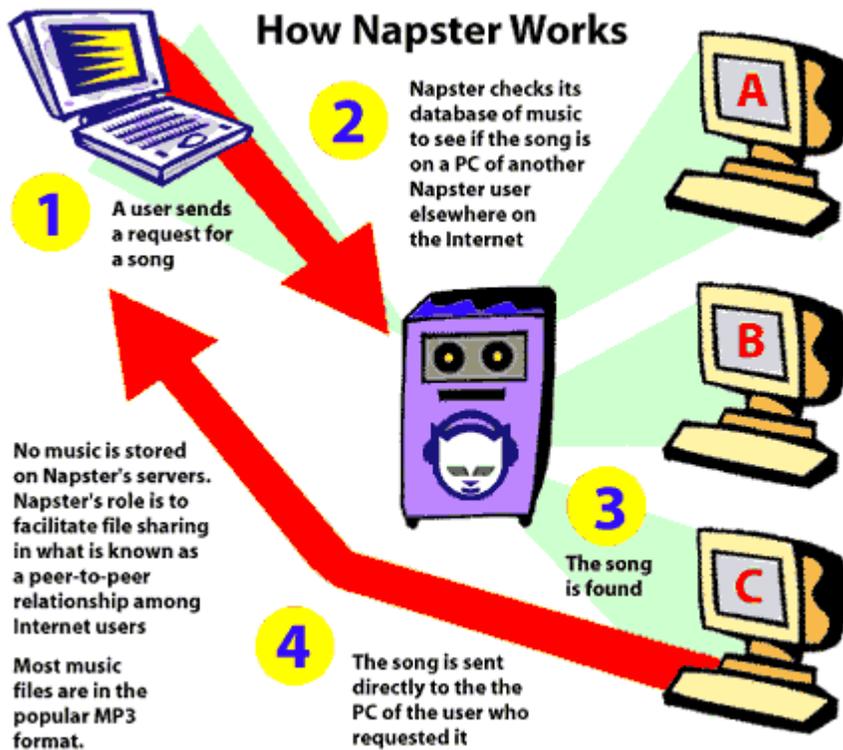
Multiple Web sites developed in the mid-to-late 1990s that allowed users to obtain music not only from local musicians, but also the major artists that were copyright-protected by the major labels. In 1997, Michael Robertson created MP3.com, essentially a search engine for music. As more and more people began to learn of these new resources, the media began to notice the surge in popularity, noting that “MP3” had replaced “sex” as the most searched-for term on internet search engines (Knopper 118-121).

Even though the storm was beginning to brew, the record industry did little to prepare for the oncoming maelstrom. One of the development teams for the MP3 even attempted to warn the industry as early as 1990, but was unsuccessful in generating any concern. So the MP3 would grow in popularity and accessibility, creating a new medium of transmission for music lovers that happened not to contain any copyright protection. It was not until 1999 that the Recording Industry Association of America (RIAA) first began to notice the popularity of pirating MP3s, specifically the popularity of one service known as Napster.

#### ***IV. Born to be Wild***

Like many college students in the 1990s, Shawn Fanning wished for a way to trade MP3s online in a much faster and less frustrating manner than the search engines used by many other music junkies. Unlike many other students, Shawn was a boy-genius, a hacker extraordinaire with a voracious appetite for learning as much about a topic in order to master its every nuance. While at college, Shawn conceived the idea of Napster; it would function like a chat room in that

users would log-in to access a central server. This server would allow the user to search for a song title stored on other active users' hard drives that they could then download. Unlike most of the search engines found on the internet, Napster would simply act as a middle man between users, allowing them to easily communicate with other users in order to obtain the music they sought; this setup that would later be called a peer-to-peer network or P2P (Wise Geek.com).



*A visual illustration of how Napster's P2P design works.*

[http://ntrg.cs.tcd.ie/undergrad/4ba2.01/group10/napster\\_activnews.gif](http://ntrg.cs.tcd.ie/undergrad/4ba2.01/group10/napster_activnews.gif)

Though Shawn was a skilled programmer and hacker, he utilized the help of various other hackers and programmers he was friends with in online groups. As the young Fanning slaved over perfecting the code and programming of Napster, his overly ambitious uncle John Fanning began to see a business opportunity develop, and quickly incorporated Napster Inc. Initially, Shawn shared the program with roughly thirty of his close hacker friends; soon, almost 15,000 people had downloaded Napster and were sharing music files. With the support of

various investors and venture capitalists, Napster grew quickly, amassing hundreds of thousands of users who shared music, video, images and various other files through Shawn Fanning's program. By October 1999, the company boasted 150,000 registered users sharing over 3.5 million files. Shawn had succeeded in creating the most well-developed form of quick and efficient music sharing. The fact that it was free quickly drew the attention of the record industry and their teams of lawyers (Knopper 123-129).

### ***V. I Fought the Law, and the Law Won***

As Napster grew in popularity, it began to draw interest from the industry watchdog, the RIAA. Though the RIAA had attempted to communicate with Napster before any lawsuits were ever filed, management at Napster, specifically CEO Eileen Richardson, knew they had to stall any sort of investigation into Napster's business until funds from venture capitalists could be secured. The biggest problem for Napster was its business model: everything about the company was illegal, and the business knew it. It was the hope of the owners and management that if the company could successfully ingrain itself in the music world, it could either force any laws ruling Napster illegal to be reversed or repealed, or the music industry would strike a deal allowing the company to partner with the record labels in a pay-per-song model (Knopper 129-132).

On December 6, 1999, the RIAA filed its copyright-infringement lawsuit against Napster in the US District Court in San Francisco, an event that did not surprise anyone at Napster. It is a known fact that the employees at Napster were trained on how to address the issue of the company's legality when addressed by everyone from the media to the government. Though everyone was well aware of Napster's transgressions, public support for the company and its rock'n'roll-esque rebellion against the "man" (RIAA) grew more every day.

Hank Barry, the future CEO of Napster, served as the lawyer for the company; he felt confident that his company could win the case against the RIAA based on a series of precedents and laws. In 1984, the US Supreme Court ruled in *Sony Corp. v. Universal City Studios* – also known as the “Sony Betamax” case – that it was legal for Sony to produce VCRs which people could use to record copyrighted TV shows for their own use. Much like a VCR, Napster believed the same logic would apply as they did not directly infringe on any copyrights; instead, it functioned as a middle man for its users (*Sony Corp. of America v. Universal City Studios, Inc.* 464 U.S. 417). Beyond the famous Supreme Court case, Napster also relied on the Audio Home Recording Act of 1992, which allowed consumers to make taped copies of their own albums, as long as they did not sell them (*Digital Millennium Copyright Act of 1998*).

Perhaps more pertinent was the recently passed Digital Millennium Copyright Act of 1998. Under Section 512 (d), a search engine’s liability is limited as long as (1) the provider did not know the material was infringing, (2) the provider has the right and ability to control the infringing activity, (3) the provider must not receive a financial benefit directly attributable to the activity, and (4) upon receiving notification of a claimed infringement, the provider must expeditiously take down or block access to the material. In Steve Knopper’s 2009 book *Appetite for Self-Destruction*, Barry was quoted as saying, “Look, [Napster] could lose and we could lose all our money. Or they could win and it could be a chance for the first spectacular social networking company” (Knopper 136).

The biggest challenge for the RIAA lawyers was to prove that Napster knew about its users pirating copyrighted material; if they were successful, then Napster could hardly claim to be an innocent middle man like a VCR manufacturer or an internet service provider. Ultimately, though Napster had a great argument, it was an e-mail sent between Napster co-founders Shawn

Fanning and Sean Parker that would undermine any argument brought before a judge.

Knopper's novel revealed that after poring over boxes and boxes of internal documents provided by Napster, George Borkowski, attorney for the RIAA, discovered an internal e-mail from Parker to Fanning, in which Parker stated, "Users will understand that they are improving their experience by providing information about their tastes without linking that information to a name or address or other sensitive data that might endanger them (especially since they are exchanging pirated music)" (Knopper 137). On July 26, 2000, US District Judge Marilyn Hall Patel ruled in favor of the recording industry. Her ruling demanded that Napster remove all copyrighted material from its service within two days. The ruling was essentially the death of the young, rebellious company (Knopper 136-138).

Prior to the decision, Barry had attempted to strike a deal with the major record labels. Now boasting over 22 million users, Barry believed establishing a pay-per-song model with the record labels would not only allow Napster to survive, but also would allow the record companies to profit from each download by the service's established user base. The deal Barry attempted to negotiate with the labels would grant a majority equity ownership in the company and a split in future revenues. Although they deliberated for days, the deal ultimately fell apart, leading to the later court decision that doomed Napster. Jeff Kwatinetz, CEO of the management company the Firm, later stated, "[The record companies] left billions and billions of dollars on the table by suing Napster – that was the moment that the labels killed themselves" (Knopper 143). Knopper argued this point as well in his 2009 account, when he provided a rough estimate of the amount of money lost by the record labels. As Knopper put it:

*"Let's say record labels had jumped in when Napster's user base was at 26.4 million per month. Let's say conservatively speaking, half*

*don't want to pay and go to [other P2P providers] or some other free service, leaving 13.2 million users. Let's say each uses the official Napster to buy 10 songs for \$1 apiece every month. That's record business revenue of \$132 million per month, or \$15.4 billion a year. Sure, labels would have had to pay artist and publisher royalties out of that, but the overhead of trucks, warehouses, crates, and record stores suddenly get cut dramatically”(Knopper 142-143).*

Though a pay-per-song model would eventually develop, it would come much later, when the record labels were beginning to grow desperate as they watched the revenues and successes they had enjoyed during the 1980s and 1990s fall precipitously. The sudden sense of desperation would inspire a deal that would only further cripple the record labels, leading many to wonder what might have been if an agreement had been struck between Napster and the labels.

### ***VI. A Friend of the Devil is a Friend of Mine***

Steve Jobs, the founder and CEO of Apple Inc., is known for his many innovations, aggressive management style, and no-holds-barred business approach. As early as 1999, Jobs and his marketing team began discussing a way to entrench Apple in the music market; Apple would quickly turn into the premier company concerning all things MP3. The first step in controlling the market started with the development of iTunes, formerly known as SoundJam; iTunes was the sleek-looking and highly functional digital music jukebox that would allow users to organize their music as they saw fit. With the perfect user interface in place, the biggest challenge for Jobs and his team was to develop an MP3 player that would allow users to listen to

their collection of digital music wherever they may be. Though multiple devices had already been developed, none had perfected the design or interface to fully capture the market, creating the perfect opportunity for an opportunist like Jobs.

Utilizing many breakthroughs including the smallest hard drive ever developed, the first iPod was released on October 23, 2001. The iPod was a small handheld device that allowed users to store MP3s on their portable player; the real upgrade over previous portable players was the hard drive space and sleek design. Engineers from rival component manufacturers marveled at the impressive design and packaging as well as the aesthetically pleasing look – Apple had succeeded in developing a great interface for users between their devices and music, as well as developing the chic, sexy device that everyone would enjoy using. The only thing that remained was the daunting task of convincing the record labels of the viability and, more importantly, the legality of their invention (Knopper 167-170).

In 2002, the record labels struggled with people illegally downloading music through the P2P programs that had arisen out of Napster's ashes: companies such as Limewire, Kazaa, and many more. With no viable alternative to buying a CD, the executives at the big record labels were becoming desperate for an online music store through which to sell singles and albums to willing customers. Luckily for the record labels, Apple had already begun to perfect its soon-to-be released online store, the iTunes Music Store. Finally: software that would allow users to purchase music from the comfort of their homes.

Impressed immediately, Warner was the first of the record labels to sign a content-licensing deal, developing the 99-cents-per-song concept in the process. But this was just the beginning of a string of deals that would handicap the labels and lead to Apple becoming the entertainment giant it is today. Concerning the 99-cent model, Apple collects 22-cents per song

for retailer's cut, leaving the rest for the record labels to split between artists, publishers, and themselves. Though the executives at the record labels were hesitant to concede almost 25% of the profits from every download to the middle man, they were desperate and had little leverage to negotiate a better deal with Apple. Another big argument from the record labels was the inclusion of digital rights management – a feature that prevents users from making unlimited copies of the music files they downloaded – which Jobs initially rejected. Though he eventually compromised on the issue of DRM, this initial opposition would prove to be beneficial to Jobs later on. Apple would develop FairPlay, which stopped users from sharing music on more than three computers.

After haggling with the big five record labels – Warner, Universal, BMG, EMI and Sony – over the semantics concerning the iTunes Music Store, Jobs and his crew at Apple finally had the approval to take over the music industry. One may wonder why the record labels would agree to such a lopsided deal that had the potential to be immediately detrimental. There are many reasons, and they all seem to start with Steve Jobs. Jobs had been a successful businessman in many industries, including the formation of such popular companies as Apple and Pixar; this experience in different backgrounds provided him with the confidence and charm he needed to challenge the record executives. In addition, the record labels viewed the iTunes Music Store as an experiment, considering both iPods and iTunes were initially only compatible with the Macintosh operating systems. This limitation meant Apple only had access to about 5% of the market; the record executives thought to themselves, what harm could come from 5% of the market? Perhaps the most important reason the record labels agreed to the deal was the marketing budget Apple planned to employ every quarter – a figure thought to be between \$15

million and \$30 million. This essentially free advertising would prove to be especially effective when no competitor entered the digital music business until almost 2007 (Knopper 170-178).

But Jobs' campaigning for support did not stop with the record labels; next Jobs had to reach out to the biggest stars in music in order to gain their approval, an attempt that had proven futile by other digital music services. Unlike other services, Jobs had the reputation and name needed to garner support for his device and service, ultimately gaining the support of such elusive artist as The Eagles, U2, the Rolling Stones and Sheryl Crow. Even Dr. Dre, the rapper who had fiercely opposed Napster, was so wowed by iTunes and its simple approach that he quickly agreed to let Jobs sell his music.

The iTunes Music Store launched on April 28, 2003, and boasted a catalog of almost 200,000 songs available for 99 cents each. Their initial catalog may have been missing big names like The Beatles, Led Zeppelin and Radiohead, but it did have the support of artist like Bob Dylan, U2 and Eminem. Sheryl Crow endorsed Apple's music service, saying, "This industry has been in such a funk. It really needs something like this to get it going again" (Knopper 178). The spark the industry needed would come when the iTunes Store became compatible with Windows-based computers in October 2003. Immediately a huge cross-over success, Apple would sell 25 million songs in 2003 alone. Though the 99 cents provided little profit overall for either Apple or the record labels, it opened the door to new possibilities for Apple. With more people using iTunes, more consumers began buying the much more profitable iPod in order to listen to their new music. By the numbers, in just the fourth quarter of 2003, iPods generated about 7% of Apple's \$1.7 billion in revenues – roughly \$121 million overall. It was quickly becoming clear: while record labels were hemorrhaging money, Apple was getting rich off the new deal. As Irving Azoff, The Eagles manager and early supporter of iTunes, said

in the May 29, 2008, issue of *Rolling Stone*, “We make more money for forty-five minutes of one show in Kansas City than our entire iTunes royalty” (Knopper 178).

The “Appleization” of pop culture was just beginning. Suddenly, music was at the forefront of our lives once again. The iTunes Music Store quickly took more than 70% of the market, effectively blocking future competition from Microsoft, MTV, Sony Corp., and Wal-Mart. By April 2008, iTunes had sold more than 4 billion songs around the world. Apple’s success was directly linked to the success of iTunes and the iPod, as Apple’s stock increased from almost \$8 billion to \$80 billion in the short span between launching iTunes and the present day (Knopper 179-182).

As the record labels began to see their misfortunes rising, the record executives started to blame Jobs for their woes. One executive, Warner CEO Edgar Bronfman Jr., demanded Apple implement a variable pricing scheme, charging more for top 40 songs and the more popular selling purchases. As of April 2009, Apple introduced a variable pricing scheme, introducing prices ranging from 69 cents to \$1.29 a piece. Another complaint rising from the record labels centered on FairPlay, the DRM program that limited iTunes-purchased tracks from working on other competitor’s devices. In response to these complaints, Jobs decided to remove all DRM from Apple’s music, meaning users could now share their collection with an unlimited number of people at any time.

As Robert Pittman, cofounder of MTV and former COO of the AOL-Time Warner merger, lamented in Knopper’s *Appetite for Self-Destruction*, “Stealing music is not [what’s] killing music. When I talk to people in the music business, most of them will admit the problem is they’re selling songs and not albums. I mean, you do the math” (Knopper 181). Pittman’s point gets to the heart of the matter for record labels. Consider the “one hit wonders”. In 2000,

the Baha Men with their single “Who Let the Dogs Out?” would sell almost four million copies of their CD, with the price ranging from \$15-\$18. In contrast, in 2003, pop band Fountains of Wayne and their hit single “Stacy’s Mom” sold only 400,000 copies of their album to go with 520,000 digital singles. While Apple can benefit from selling singles, the precipitous drop-off in sales heavily affected the record labels (Knopper 181).

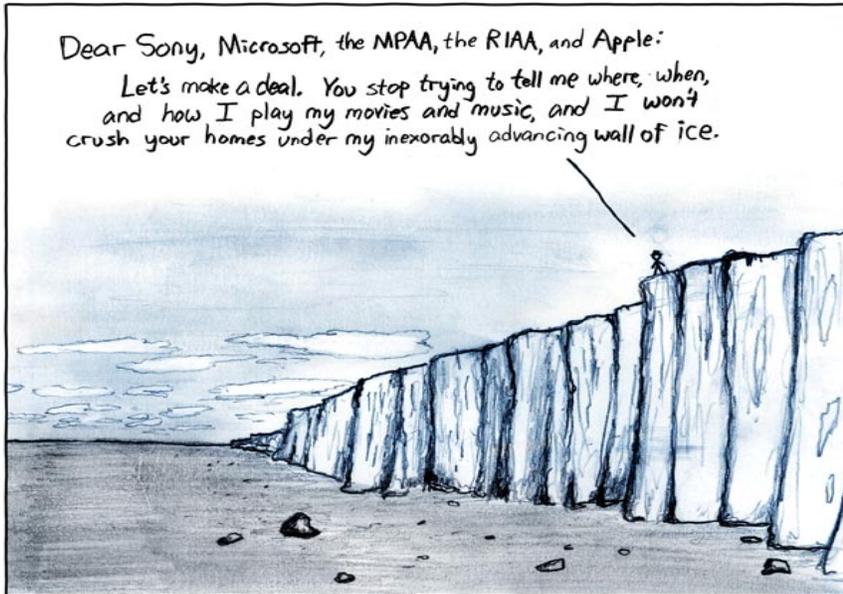
The emergence of Apple showed musicians a new realm of possibilities. The success of iTunes proved that the dependence on record labels and their “endless” supply of capital was quickly changing. Now, artists had more incentive to take control over their music and become more self-sufficient. This newfound opportunity would ultimately change the way musicians approached distribution of their music and would further cripple the record labels for the years to come.

### ***VII. 50 Ways to Leave Your Lover***

As the record labels were hemorrhaging money, the extravagant bonuses for established artists and the bottomless budgets for new artists quickly began to tighten. Inversely, as Apple became more and more successful, it became increasingly harder for the record labels to support the “name” acts or to push new up-and-comers to the masses. 2007 marked the beginning of a mass exodus of established acts from their record labels, beginning with the perennial number one seller Madonna leaving Warner Music, her label of twenty-five years. What made this exit even worse is who she signed with: Live Nation, the world’s biggest concert promoter. In what would soon become known as a 360° Deal, Madonna signed for \$120 million, sharing revenues from music sales, performances, merchandise and the rights to her name. This monumental signing would soon be followed by rap’s biggest seller, Jay-Z, who signed a similar deal with Live Nation for \$150 million. Soon the biggest names in the business including Nickelback,

Shakira, the Jonas Brothers and many more would sign similar all-inclusive deals that would allow them to profit more from their own music than any other previous deal. It quickly was becoming apparent the record labels had little to offer the musicians to incentivize them to stay (Knopper 241-244).

Above all, the actions of one particular band completely changed the state of music on October 10, 2007, a date *SPIN* magazine later called "...a day that will live in infamy in the hearts of major-label executives" (Knopper 244). Radiohead has long been considered one of the most industry-savvy and aware acts in music, often seeking new ways of changing the system. Having already leaked their 2000 album *Kid A* through the service Napster, Radiohead decided to take it a step further by self-releasing their 2007 record *In Rainbows* through their website in a "pay what you want" model. Put simply, fans could decide to pay nothing or an infinite amount in order to obtain the new record from one of the world's biggest bands. Though Radiohead has been reluctant to release the true numbers of their massive social experiment, it is believed that the people who paid gave an average of \$6, or roughly \$2.26 per album when including those who did not pay – amounting to more than \$2.7 million in profits for Radiohead. While this may seem meager in comparison to the millions made by the record labels, this grand experiment turned out to be the most profitable album ever by the British band. Thom Yorke, lead singer of the band, stated in Knopper's *Appetite for Self-Destruction*, "I'll be happy that we didn't carry on working within this huge industry that I don't feel any connection with" (Knopper 244). Though Radiohead had already released a digital copy of its CD in 2007, 2008 saw the release of the traditional CD, which would sell 122,000 copies its first week – good enough for number one on the *Billboard* charts.



*Radiohead's warning  
to the music industry*

[http://www.ateaseweb.com/  
2009/08/14/radioheads-  
wall-of-ice-ep-more-clues/](http://www.ateaseweb.com/2009/08/14/radioheads-wall-of-ice-ep-more-clues/)

Other big time artists would continue the trend of leaving their record labels for new avenues of release. Paul McCartney, the famous bassist of The Beatles, left his longtime label, Capitol Records, to release his new album through Starbucks, the ubiquitous giant coffee chain. The Eagles, one of the best-selling acts of all time, released its new album exclusively through Wal-Mart retailers, bypassing even iTunes and the Amazon music store and resulting in over two million copies sold of their 2007 album *Long Road Out of Eden*. Nine Inch Nails, a popular hard rock act, followed Radiohead's example, choosing to release its new album *Ghosts I-IV* online in \$5 downloadable blocks, or for \$10-\$300 for a hard copy CD and other elaborate packaging. Nine Inch Nails (NIN) would later confirm the actual revenue earned by the industrial metal rockers: \$1.6 million. Pearl Jam has self-released a new album, resulting in more profits and success than would have been possible with the record labels.

The success of these acts revealed that it is indeed possible to advance without the help of a major label; all it takes is a smart marketing campaign and a loyal fan base. With the advent of social networks like MySpace and Facebook, it is even easier for artists to connect with fans not only in their local markets but around the world, opening new avenues to share their music, experiences, videos, photos and merchandise. Already, several artists have enjoyed success by releasing their music for free online in order to build a fan base before raking in revenues through touring. Acts such as Britain's Arctic Monkeys released its catalog online via MySpace for free to all of its fans, soon becoming one of the hottest young acts out of the old country. James Mercer, the lead singer for the popular indie group The Shins, recently told *SPIN*, "When you think about how unhealthy the business has been, this is like lancing the fucking boil and cleaning it out. It's not a fucking disaster to regular bands out there. It's now more likely I'll be able to start my own label, release my work, profit from it, and have a more lucrative career. For a band on our level, it's all a bowl of cherries" (Knopper 246).

The more successful record labels today are proving to be smaller labels such as Sub Pop Records and Fueled by Ramen whose diminutive size allows them to break new acts with impunity, experiment with new marketing campaigns, and ultimately share the music with fans in ways never imagined. The trend continues as the major record labels have begun to splinter off into smaller units; it appears the future will be littered with droves of smaller labels, rather than a conglomerate of five labels trading off who gets the latest star. One may argue that there is no way an artist can release his or her music for free, and then expect a fan to pay for anything later. To the contrary, one of the hottest-selling acts in the business has continuously released new material online for free; in 2008, Lil Wayne's *The Carter III* sold 1.4 million copies in its

first week, becoming the first CD in almost a decade to sell over a million copies in its first week of release.

Considering that the selling of music, whether in hard copy or digital form, has long been the least profitable source of revenue for artists, it makes sense that they would release their product for free. With the emergence of online radio players such as Pandora, it is easier than ever to discover new acts. Upon hearing a song by a young, new band, a fan can then listen to that artist's entire catalog via a free, legal venue such as the website Lala.com, which allows you to stream a song in its entirety one time before having to buy it (a great feature when attempting to discover a band). After building an affinity for a band, the fan will be more inclined to attend a concert, buy merchandise or even buy the artist's music. This is where the artist truly begins to make money: at the concerts that allow fans to enjoy all the senses – to experience the sights, not just the sounds. Throughout popular music history, bands have always made their money through touring and merchandising, a fact that has become exponentially more important with the music coming free to the masses.

It is easy to see that things have changed for the industry whose “golden years” will soon be a distant memory. Napster truly succeeded in becoming the *zeitgeist* of the internet age, changing not only the way we listen to music, but the way we go about discovering the very musicians we collect and listen to. But this shift is not contained to just the music industry. Instead, Napster's effects are felt throughout the entire entertainment industry, leading to massive changes, for better or worse, in the television, movie, videogame, and even adult entertainment sectors.

### **VIII. *You Say You Want a Revolution***

Take a moment to think about the way you watch a television program. Perhaps consider the last time you watched a movie and the method in which you viewed it. The internet sparked the development of many new innovations that would change the way entertainment reached the masses, but it was the influence of Napster that truly motivated an entire industry to change almost overnight. The popular P2P service that allowed users to share their music was soon used for more than just the latest Britney Spears album; users began downloading television programs and whole movies, some before they were even released in theaters. Unlike the music industry's reluctant approach to this rapidly changing environment, the television and movie industries proved quite adept and quick to adapt, though it may have been more out of necessity than self-motivation.

The digital video recording (DVR) device known as TiVo launched in 1998 and quickly changed the way we watch television. No longer forced to watch commercials, consumers could "TiVo" a program – a term that has come to mean "record on a DVR device to watch later in order to fast-forward through commercials" – and cut down on their viewing time thanks to the deleted commercials. In addition, TiVo users could set up season passes that automatically recorded their favorite shows without reprogramming the device *à la* the VCR. Since TiVo's inception, television stations have struggled to keep viewers watching programs during their scheduled air time, leading to less money from sponsors and, in turn, less money for the networks such as NBC, CBS, and ABC.

Attempting to dam the flood of viewers delaying their viewing experience in order to skip commercials, television has embraced and attempted to change the model in order to better adapt to its market. Utilizing the concepts of TiVo's season passes, limited commercial viewing and

watch-whenever-you-want convenience, NBC Universal, Fox Entertainment Group, and ABC Inc. partnered to form Hulu.com, an interactive online site that allows a user to watch television programs and movies online with limited commercial interruption. Boasting thousands of movies and television programs, Hulu allows users to set up subscriptions to their favorite approved programs and watch them at their convenience. Though it may be the same concept as TiVo, Hulu is free for anyone in the United States and offers an extensive range of programming.

But the renaissance has not just been limited to television programming; the movie industry was also affected by the internet and its ability to make life easier for consumer. In 1997, Reed Hastings became the founder and CEO of Netflix, Inc., an online service provider that allows users to order any of more than 100,000 titles to be shipped to his or her doorstep for a flat and affordable rate. Today, Netflix not only ships movies but also allows users to stream programming online through a Netflix device, an Xbox 360, Playstation 3 or some TiVo devices. Now users have a legal channel in which to watch movies without having to buy a DVD or leave home to rent a movie from places like Blockbuster or Hollywood Cinema. Netflix has been so successful in the last decade, boasting revenues over \$1 billion as well as almost eliminating its biggest rival, that the reeling Blockbuster has been struggling with potential bankruptcy throughout 2009.

Though the television and movie industries are but two examples of the impact the internet has had, Napster and its file sharing format prompted much of the change in all areas of entertainment. Television and film both still face the threat of illegal downloading and file sharing from the more popular torrent sites – a file format smaller than an MP3 that allows massive amounts of data to be shared faster – from which users download entire films and television series to their personal computers. The difference lies in the approach taken by the

television and film industries; instead of attempting to destroy the illegal market and sue all users, both have adapted and attempted to embrace the culture by altering the “way it’s always been” approach. Services such as TiVo, Netflix and Hulu are just some of the examples that the industry has utilized to meet the shifting demands of consumers in a rapidly changing economy. It is fair to say that the entertainment industry took notice of the methods employed by the record industry concerning Napster and the eventual shotgun wedding with Apple; instead of waiting for things to get better or change, the television and film industry took the initiative to meet the challenge head on, allowing for a potentially brighter future than the one many record executives are facing.

### ***IX. This is the End, Beautiful Friend***

Ironically, the industry that Napster maimed and nearly killed has also seen the most unlikely resurrection. While the record labels reel from the damage of their decision to shun the internet and all that it offered, the artists creating the music have enjoyed a new found voice. Artists are gaining more independence, leading to an even stronger desire for more artistic control. The desire for more control has led to the creation of guilds and coalitions seeking to change an industry that has long prevented musicians and artists from profiting from their creative endeavors. Leading the way is the ever-radical Radiohead with its Featured Artists Coalition (FAC) who attempt to create a central voice for all artists and their struggle for fair rights concerning their art.

Though the true impact of Napster and its free file-sharing may be a battle for years to come, the shift created by Napster is hard to ignore. Finally, artists have been granted the power with which to fight for more control. No longer are the large record labels allowed to dictate the terms of their industry to the artists, all thanks to the mishaps of a young college kid from

Massachusetts who wanted to share music with his friends. With the popularity of legal online music sites such as Pandora and Lala, it is possible to imagine a future in which all music is free, leaving artists to rely more on the revenues generated from touring and merchandise. If free music is the future, the bell could toll for the big record labels. Only time will tell if Napster began to hammer the final nail into the coffin of the often-ruthless recording industry.

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