

## **FALLOUT - a follow up to The Internet Debacle**

*August 1, 2002*

### **I. I am out of my depth**

Quite frankly, when I spent three months researching and writing *The Internet Debacle* for *Performing Songwriter Magazine*, I wasn't planning to become part of a "cause". I assumed that some of the magazine's 35,000 subscribers might read it, and a few might email me about it. I'd been writing articles for "Perfsong" since its inception, and had never gotten more than a couple of emails in response to any of them. So I went into it blind.

I had no idea that a scant month later, the article would be posted on over 1,000 sites, translated into nine languages, and have been featured on the BBC, in USA Today, and a host of other press.

The article came out eight weeks ago, and once we saw the reaction, we posted it on my own website soon after. In the past twenty days I've received over 2,200 emails from unique senders (people who've never been to my site before). I've answered every one myself, getting an education I never intended to get in the process. I've corresponded with lawyers, high-schoolers, state representatives, executives, and hackers. And I've felt out of my depth for a good portion of it.

I am in no way qualified to answer most of the questions I received, though I did my best, or referred them to someone else for discussion. The issues here are much, much bigger than I can encompass. I only wrote about downloading, record companies, and music consumers; within a few days, I found myself trying to answer questions like "Who owns the culture?" for myself. Length of copyright, fair use on the web, how libraries are being affected - these are all things I hadn't given much thought to before.

When I began researching the original article, I was undecided as to whether downloading was wrong, but the more I researched, the more I reached the conclusions stated in *The Internet Debacle*. I've had only a few weeks since the first article was published, and I've been on the road the entire time, so I haven't had the opportunity to research most of these questions. I want to thank Jim Burger and other attorneys and fans who kindly sent me articles and court cases to read off-line, while I was sitting in the car en route to the next city.

Do I still believe downloading is not harming the music industry? Yes, absolutely. Do I think consumers, once the industry starts making product they *want* to buy, will still buy, even though they can download? Yes. Water is free, but a lot of us drink bottled water because it tastes better. You can get coffee at the office, but you're likely to go to Starbucks or the local espresso place and bring it back to the office with you, because that coffee tastes better. When record companies start making CD's that offer consumers a *reason* to buy them, as illustrated by Kevin's email at the end of this article, consumers will buy them. The songs may be free on line, but the CD's will taste better.

### **II. My current conclusions**

In an article for *Newsweek*, Steven Levy writes:

"So why are the record labels taking such a hard line? My guess is that it's all about protecting their internet-challenged business model. Their profit comes from blockbuster artists. If the industry moved to a more varied ecology, independent labels and artists would thrive - to the detriment of the labels... The smoking gun comes from testimony of an RIAA-backed economist who told the government fee panel that a dramatic shakeout in Webcasting is 'inevitable and desirable because it will bring about market consolidation'." [*Labels to Net Radio: Die Now*", Steven Levy in *Newsweek*, July 15, 2002.]

There are, as I see it, three operative issues that explain the entertainment industry's heavy-handed response to the concept of downloading music from the Internet:

1. *Control.*

The music industry is no different from any other huge corporation, be it Mobil Oil or the Catholic church. When faced with a new technology or a new product that will revolutionize their business, their response is predictable:

- a. Destroy it. And if they cannot,
- b. Control it. And if they cannot,
- c. Control the consumer who wishes to use it, and the legislators and laws that are supposed to protect that consumer.

This is not unique to the entertainment industry. This mind-set is part of the fabric of our daily lives. Movie companies sued consumers and hardware manufacturers over VCR manufacturing and blank video sales, with Jack Valenti (Motion Picture Association of America chairman) testifying to Congress that "the VCR is to the movie industry what the Boston Strangler is to a woman alone at night" – and yet, video sales now account for more industry profit than movies themselves!

When Semelweiss discovered that washing your hands before attending a woman in childbirth eliminated "childbed fever", at a time when over 50% of women giving birth in hospitals died of it, he was ridiculed by his peers, who refused to do it.

No entrenched model has ever embraced a new technology (or idea) without suffering the attendant death throes.

2. *Ennui.*

The entertainment industry is still operating under laws and concepts developed during the 1930's and 1940's, before cassettes, before boom boxes, before MP3 and file-sharing and the Internet. It's far easier to insist that all new technologies be judged under old laws, than to craft new laws that embrace *all* existing technologies. It's much easier to find a scapegoat, than to examine your own practices.

As they say, "You can't get fired for saying no."

3. *The American Dream.*

The promises all of us are made, tacitly or otherwise, throughout our lives as Americans. The dream we inherit as each successive generation enters grade school - that we will be freer than our grandparents, more successful than our parents, and build a better world for our own children. The promises made by our textbooks, our presidents, and our culture, throughout the course of our childhoods: Fair pay for a day's work. The right to leave a job that doesn't satisfy, or is abusive. Freedom from indentured servitude. The premise that every citizen is allowed a vote, and no one will ever be called "slave"

again. The promise that libraries and basic education in this country are free, and will stay so.

These are not ideas I came up with on the spur of the moment; this is what we're taught, by the culture we grow up in.

And of everything we are taught, one issue is always paramount - in America, it is *the people* who rule. It is *the people* who determine the government. *We* elect our legislators, so they will pass laws designed for *us*. *We* elect and pay the thousands of judges, policemen, civil servants who implement the laws we elect our officials to pass.

It is the promise that our government supports the will of *the people*, and not the will of big business, that makes this entire issue so damning - and at the same time, so hope-inspiring.

When Disney are permitted to threaten suit against two clowns who dare to make mice out of three balloons and call them "Mickey" as part of their show, the people are not a part of it. When Senator Hollings accepts hundreds of thousands of dollars in campaign contributions from entertainment conglomerates, then pretends money has nothing to do with his stance on downloading as he calls his own constituents "thieves", the people are not involved. When Representatives Berman and Coble introduce a bill allowing film studios and record companies to "disable, block or otherwise impair" your computer if they merely *suspect* you of file-trading, by inserting viruses and worms into your hard drive, it is *the people* who are imperiled. And when the CEO of the RIAA commends this behavior as an "innovative approach to combating the serious problem of Internet piracy" [Hilary Rosen, in a statement quoted by Farhad Manjoo, Salon.com June 2002], rather than admitting that it signifies a giant corporate step into a wasteland even our government security agencies dare not enter unscathed, *the people* are not represented.

### **III. A hopeful thought**

"If classroom copying is sharply curtailed, if we give someone a software patent over basic functions, at some point the public domain will be so diminished that future creators will be prevented from creating because they won't be able to afford the raw materials they need. An intellectual property system has to insure that the fertile public domain is not converted into a fallow landscape of walled private plots." [James Boyle in the New York Times, March 31, 1996.]

I said that the research and information I've received over the past three weeks has made me hopeful, and I meant it. Because I know that although RIAA and their supporting companies can afford to spend 55 million dollars a year lobbying Congress and in the courts, they cannot afford to alienate every music buyer and artist out there. At that point, there will be a general strike, make no mistake. Just one week of people refusing to play the radio, buy product, or support our industry in any way, would flex muscles they have no idea are out there.

And I know that although businesses can spend unlimited dollars on campaign funding, only *the people* can elect a government. I believe that to a politician, no amount of lobbying money is worth the price of being voted out of office.

That, my friends, is why I have hope. Because I know that in America, votes count. Because I know that if enough people understand this issue, and vote accordingly, right will win. Legislation will be enacted that takes the will of the people into consideration, and favors their right to learn over Disney's right to control. Internet radio,

currently in peril, will go offshore and out of the country if necessary, so audiences can hear thousands of songs instead of a narrow playlist. The RIAA will become a small footnote in the pages of Internet history, and the people will have triumphed - again.

#### **IV. A modest proposal for an experiment that might lead to a solution:**

"The record companies created Napster by leaving a void for Napster to fill." [Jon Hart and Jim Burger, *Wall Street Journal* [www.WSJ.com](http://www.WSJ.com) April 2, 2001]

1. *All the record companies get together and build a single giant website, with everything in their catalogues that's currently out of print available on it, and agree to experiment for one year.*

This could be the experiment that settles the entire downloading question once and for all, with no danger to any of the parties involved. By using only out of print catalogue, record companies, songwriters, publishers and singers won't be losing money; the catalogue is just sitting in storage vaults right now. And fans can have the opportunity to put their money where their mouths are; if most people really *are* willing to pay a reasonable price for downloaded music, traffic on this site should be excellent. If most people really are downloading from sites like Napster because there's so much material unavailable in stores, traffic on this site should be unbelievably good.

2. *The site offers only downloads in this part of the experiment.*

Since all the items on my proposed site are unavailable on CD, there's no need to invest time and money linking to sites (or building record company sites) where consumers can buy them on a CD. This will also ensure that the experiment stays pure, and deals with only downloading. It would also preclude artists like myself from offering downloads of material available on CD's, skewing the results.

3. Here's where the difficult part comes in. *All the record companies agree that, for the sake of the experiment, and because these items are currently dead in the water anyway, they're going to charge a more-than-reasonable price for each download.*

By "reasonable" I'm not talking \$1.50 per song; that's usurious when you can purchase a brand-new 17-song CD for a high price of \$16.99, and a low price of \$12.99. I mean something in the order of a *quarter per song*. I read a report recently showing that in the heyday of Napster, if record companies had agreed to charge just a *nickel* a download, they would have been splitting \$500,000 a day, 24 hours a day, 52 weeks a year.

Record companies would have to agree that there'd be no limits on how many songs you could download, so long as you were willing to pay for each one; this is a major reason their own sites haven't been more successful.

Keeping the rate that low would:

- a) Encourage consumers to use the site, even those of us for whom downloading with a modem is time-consuming and tedious.
- b) Spread a lot of great old music around - and music, like all art, stands on the bones of those who've gone before. One of the big problems with so much catalogue out of print is that whole generations are growing

up never having heard the "originals", but only the clones. It's always better to build on the real thing.

c) Do a great deal to repair the record companies' credibility in the eyes of consumers - in fact, it could be made to look like a gift of gratitude for all the support consumers have shown over the years! And while I know this may not seem important to the corporate model right now, it will become increasingly important as the world continues to shrink, mistrust of large business grows, and more and more people go back to "brand loyalty". If Sony are being reasonable, and BMG are not, sooner or later the Sony brand will conquer the market, and BMG will have to fall into line or fall out. That's capitalism at its best, isn't it?

5. *Last but not least, the monies received would be portioned out fairly. I'm no economist, but the model might read something like this:*

a) The record companies would bear the brunt of the costs involved in creating the site. There are plenty of ways for them to make money from this experiment, whether it works or not, and the massive exposure of their out of print catalogue, with a little attention to which albums receive the most downloads, could create a whole new sub-industry in a short time. It's good for them to share, and to pool their resources; if nothing else, it will stop their constant bickering for a while.

b) A reasonable (there's that word again) amount would be deducted off the top of each download to pay for costs. This deducted amount would *not*, as is traditional, be borne completely by the artists or their heirs. It would be shared by all parties concerned - companies, singers, writers. Limits would be put on costs, so companies couldn't divert funds to pay their normal operating costs. And the accounts would be published *on the website monthly*, open for inspection by anyone. If you did this, they could even set up the initial experiment as a non-profit, and deduct the cost of putting up the site! Record companies would not be allowed to charge for storage fees, artwork, free goods to Guam; consumers could begin to trust them again.

c) From that point on, share and share alike. Let the record company, the artist, the songwriters and the publishers split the take equally. Don't laugh! The costs of that album have already been paid, no matter what they tell you, and the only cost associated with this is putting the stuff on line, then maintaining the site itself. And again, the stuff was just sitting in storage; they weren't expecting any earnings from it. The songwriters, who traditionally get paid more than the singers, would be fairly compensated and have nothing to complain about. And the singers, for once, would be paid for the works they'd recorded.

d) In an ideal world, several different types of downloading formats would be available - wav. files, MP3 files, Ogg Vorbis files. Maybe you'd charge a tiny bit more for a higher sampling rate. And like the record companies, any companies owning the software for these downloads would donate their software for the sake of this experiment, with future terms to be negotiated later if it succeeds.

What a great way for consumers to decide which one they like! What a great way for software companies to prove that theirs is better!

There are all kinds of other protocols you could implement once you knew whether this worked. For instance:

- Imagine an Internet where there's one giant music site, easily accessible to anyone with a modem and computer. The site offers downloads at reasonable prices for everything and anything ever recorded, and links you back either to direct sales, or to other sites where you can purchase the music in CD, DVD, or other formats. Wouldn't it be great to search under an artist's name and literally be able to hear everything they ever did?

- Links could be made from the artist and their work to press articles, streaming videos (I know, I know, but until we can all copy a stream to DVD as easily as we can from the TV to a video, it's a non-issue), special artwork, interviews, movies, concert footage, even guitar lessons.

Live cams could show artist's concerts, from anywhere in the world, giving fans who can't go to Japan the opportunity to see how the concert is different there. Venues that maintain live cams could have their own sub-websites, and charge a fraction of the cost of going to a concert for these. They could even be coupled with tours of the surrounding area, interviews with local fans and artists, and the like. Who knows - the music industry might actually wind up educating an entire global generation. It won't affect concert sales, because people who go to a concert know they're getting something very different from sitting at home watching it on a screen. Otherwise, MTV and VH-1 would have put theaters out of business years ago.

- Last and most important, artists and consumers could feel like they were a part of something bigger than themselves, and actually become *partners* with the music industry. And that industry, instead of responding with Draconian measures and safeguards, could feel like they were actually a part of the community - helping to further the artistic and intellectual resources of this country, and of the world.

America has always exported its culture; that's our number one route into the hearts of the rest of the world. Instead of shutting that down, let's run with the new model, and be the first and the best at it. It's a brave new world out there, and somebody's going to grab it.

And now, on to the fun stuff:

Emails received on this subject: 1,268 as of July 30, 2003 (does not include message board posts)

Number of times the article has been translated into other languages: 9. (French, German, Chinese, Japanese, Italian, Spanish, Portuguese, Russian, Yugoslavian.)

Times AOL shut my account down for spamming, because I was trying to answer 40-50 emails at a time quickly and efficiently: 2

Winner of the *Put Your Money Where Your Mouth Is* award: Me. We began putting up free downloads around a week after the article came out.

Change in merchandise sales after article posting (previous sales averaged over one year): Up 25%

Change in merchandise sales after beginning offering free downloads: Up 300%  
Offers of server space to store downloads: 31  
Offers to help me convert to Linux: 16  
Offers to help convert our download files from MP3 to Ogg Vorbis: 9  
Offers to publish a book expose of the music industry I should write: 5  
Offers to publish a book expose of my life I should write: 3  
Offers to ghost-write a book expose of my life I shouldn't write: 2  
Offers of marriage: 1  
Number of emails disagreeing with my position: 9  
Number of people who reconsidered their disagreement after further discussion: 5

Interesting things about the emails: All but 3 were coherent. Of those, one only seemed to be incoherent, but was in fact written by someone who spoke no English, and used Babblefish.com as a translator. (Sample: "I love your articles and play your music for my babies" became "I love babies and want to touch your articles.")

Silliest email: A disagreeing songwriter who said he was going to download all my songs, burn them to CD's, and give them away to all his friends. Thank you!

Biggest irony: I'm writing this on a Sony Vaio laptop that came with my first ever CD burner, and easy instructions on how to copy a CD or download a file.

And from the emails:

"Several years ago the music industry reached an agreement with CD manufacturers to receive a royalty on blank, recordable CD's to compensate for the effects of copying music.. the recording industry is receiving a royalty for the "Audio" CD so that it can be used for copying music, taking the money, and then turning around and complaining that the CD is being used to make "unauthorized" copies. Now what is up with that? make up your mind!" (bohannon)

"...America On Line became so prominent by sending out CDs of their product via direct mail. Their growth rate quickly exceeded the capacity of their infrastructure, but that problem does not affect the music industry: they have the infrastructure. Why in the world do they not sign more small artists to a one-record deal, with "first-dibs" rights guaranteed to the record companies, for a comparatively small fee to the artist for the first record? They could send out CDs just the way AOL does, except with maybe 20 cuts per CD, of different artists, mailed quarterly? Eighty good artists per year, in your mailbox. If only one catches fire, the record company exercises their "first dibs" option, the artists can't bolt to a different label, and they get signed for a more standard record deal. Anyone who doesn't catch on gets dropped after one CD... at least they got a shot. Would the cost of this positive publicity really be any more than the cost of fighting file sharing?" (henry1)

"...they should take a tip from the movie industry and modern DVDs, which so overload the consumer with clear and compelling value that even those who wouldn't bat

an eye about downloading a CD and not paying for it...have no motivation to spend dozens of hours downloading and piecing together all the value and quality available in a \$25 DVD. I've bought DVDs for \$20 where the movie was the tip of the iceberg--music tracks, documentaries, interactive presentations, audio tracks, stills, screen tests, and on and on....They can fight with compelling value--whether it's built in videos, computer games, free tickets, unique passwords to go download bonus tracks, demo tracks and dance mixes...karaoke tracks for each song, alternate vocal takes...Who could, or would, want to spend the time reproducing all that via downloading? As long as the consumer experience of a music CD can be duplicated with an hour or two of downloading and a quick burn to CD, they aren't going to convince anybody who might actually buy the CDs (but aren't, because they can download them) to do so...Rather than do things to alienate the current base of consumers that regularly buy their product, they should focus on adding value to their product." (kevin)

A final note:

Our representatives are not in Congress or the Senate because they want to make a better living. They're there because they want power, and influence. Without the office, they have neither.

If they believe their actions will cause large amounts of the population to vote against them, no amount of money will be sufficient to buy their cooperation. If you let your representatives know, en masse, that you will not vote for them if they support ridiculous measures such as the bill allowing media companies to spread viruses on the computer of anyone "suspected" of file-sharing, and if enough of you tell them so, they will NOT work hand in glove with the RIAA.

We cannot possibly match the monies the record companies can devote to litigation, but we CAN threaten to vote those representatives who are in bed with them out of office. And ultimately, it's the votes they care about.

*Shortly after "The Internet Debacle" and "Fallout" were published, iTunes was announced. The success of iTunes has more than justified the stance taken in both of these articles.*

*In an article she wrote, Hilary Rosen speculated that Janis Ian wrote "The Internet Debacle" in order to gain publicity for her new album. However, no new Janis Ian album was in the works, let alone about to be released. The next Janis Ian album was not released until August 2003, a full year after the article first appeared.*

*You are welcome to post this article on any cooperating website, or in any print magazine, although we request that you include a link directed to <http://www.janisian.com> and give Janis Ian writer's credit!*

*Want to know how your politicians are voting on these issues? Go to <http://www.vote-smart.org/>*