Free Software Matters: Software Keeps Music Free

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Last month I spoke at the Future of Music Policy Summit in Washington, DC, where an unusually broad array of participants in all sides of the digital music controversy came together within shouting distance of the Congress. Most of what I had to say in my own public remarks concerned an issue primarily important in the US: the fate of the Digital Millennium Copyright Act and its prohibition on "circumvention" of access control technology that prevents fair use of digital multimedia. The DMCA has had international effects, to be sure, including the prosecution of a Norwegian, Jon Johansen, for his involvement in helping to build a Linux-based DVD player, about which I have written in this space before. But the Summit made me think more about other, less local aspects of the relationship between free software and the transformation of multimedia content distribution, and about the death of the recording industry in particular.

Though predictions of the industry's demise by mere anarchists such as I were long ignored by the press and the industry itself, there are few observers left between the ages of 12 and 50 who don't understand that the tight oligopoly that calls itself "the music industry" is in mortal trouble. As I have said here before, the industry's hope of building a leak-proof pipe from their studios to each listener's eardrum is an impossibility, because free software exists. No matter how tightly music is wrapped, no matter how many layers of strong encryption keep the music safe from unauthorized duplication in transit, eventually it must be unwrapped, turned back

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into raw audio data and sent to a soundcard or other device for eventually producing movement among air molecules. At that stage, when the operating system is invoked to perform soundcard I/O, unless the kernel of the PC, palmtop, portable digital music player or other data processor is fully trustworthy—which means not under the control of its user—the data could also be saved, duplicated, and sent anywhere else in the wired universe. Any free software kernel thus turns the computer on which it runs into a threat to the industry's favored business model.

So while the industry has been trying madly to make the concept of secure digital music work, they have been inherently on a collision course with the reality of free software, which ensured that SDMI could never fully work at all. Meanwhile, Napster has shown what those of us who don't believe in the utility of property rights in digital goods have theorized before: that anarchist distribution (which means uncontrolled sharing by anyone with anyone) is a more efficient and desirable way to distribute music. The oligarchs responded by lawsuits in the US designed to prohibit the development of a competing free distribution system, arguing that because such a system would inevitably be used for some infringing distribution of music "owned" by the companies, it could not be permitted to exist, even if it could also be used as a distribution system by the millions of musicians all over the world who neither had nor wanted to have a recording industry contract. Shutting down Napster, thus offending its tens of millions of music-buying users, was their best idea.

But in recent months a few attempts at a more intelligent reponse have occurred among the dinosaurs. Bertelsmann—not coincidentally the most recent megafirm to acquire a piece of the oligarchy—has tried, if I may coin a phrase, to think different. Bertelsmann's settlement with Napster, which involved a large direct investment in the firm, has tried to domesticate the new distribution phenomenon. As Napster has repeatedly said, the intention is to charge a monthly subscription price to use its facilities for arranging peer-to-peer exchanges of music. The proceeds of that subscription fee (which if Napster could get its existing base of roughly 50 million users to pay £2.50 per month would amount to £1.5 billion per year) could then be used to buy license rights from the music industry. That would end the Napster wars, and perhaps even allow the industry to use Napster as a vehicle for distributing not MP3s, with their inconvenient open data format, but crippled secure music that could not be further copied.

From the industry point of view, that sounds pretty good. After all, Napster would be charging people for sharing data between their own computers, which means very little overhead, and the industry would be getting paid even when people were exchanging music they don't own. Almost ideal, in fact, for the five companies that presently control more than 90% of the world's music. But because of free software, this new strategy too will fail.

The problem is that while the dinosaurs were trying to eliminate Napster by suing a company, free software was being written to serve both client and server roles in the existing Napster protocol. Servers that comprise the OpenNap network can fulfill the required role presently played by the Napster middleman, while clients like Gnapster and audioGnome allow the user to switch from the official Napster server to the OpenNap net transparently. And in a peer-to-peer system, when the users switch, all the inventory shifts as well.

In preparation for the imposition of subscription charges, the most recent version of Napster's own client no longer permits its users to choose alternate servers. It's no-cost software, but it's not free: its users can't modify it to do what they want. So people are going to use the free clients instead, and then they're going to use the flexible free clients to switch to the open servers. Already I see many times of the day when OpenNap users have more music on offer than official Napster. When the subscription fee goes into force even a traditional economist can predict that all the rest of the users, and the music, will follow. Because of free software, the peer-to-peer systems cannot be rendered "unfree."

Napster may give way to Gnutella, Freenet, or a protocol not yet implemented. But even the existing protocol, with which so many people all over the world are already familiar, cannot be taken private by Bertelsmann or anyone else. We shall soon see that Bertelsmann has wasted its money, taking Napster down with it. Music is going to be the first of the human arts that is fully freed from the efforts of "owners" to reduce the supply in order to increase the price. As I said in Washington, "excluding people from music is a bad way to distribute music, and humanity now has a better one. All data that can be shared will be shared. **Get used to it.**" That's freedom for musicians as much as for listeners, though the industry loves to pretend otherwise. And it's among the most important reasons why Free Software Matters.