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Petr Marák

Filosofická fakulta Univerzity Palackého

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**TECHNOLOGICAL IMPACT ON THE ECONOMICS
OF THE RECORDING MUSIC INDUSTRY**

(bakalářská práce)

Autor: Petr Marák,

Studijní obor: Angličtina se zaměřením na aplikovanou ekonomii

Vedoucí práce: Ference Joseph, J.Dr

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I declare that I elaborated this paper independently and that I mentioned the absolute list of works cited.

In Olomouc on the day

I would like to express my appreciation to Joseph Ference for steering me in the right direction that has eventually led to a successful completion of my finest academic work to date. His thoughtful advices and observations helped me significantly and without his input this thesis would not be what it is.

I would also like to extend my thanks to David M. Richardson who had patience to discuss the grammatical point of the thesis.

Abbreviations Used In the Thesis

ACTA – Anti-Counterfeiting Trade Agreement

APRA – Australasian Performing Right Association Ltd.

BBC – the British Broadcasting Company

BPI – British Phonographic Industry Ltd.

CD – Compact Disc

DAT – Digital Audio Tape

DEB – Digital Economy Bill

DRM – Digital Rights Management

EMI – Electrical and Musical Industries

HMV – His Master Voice

IFPI – the International Federation of the Phonographic Industry

IP – Intellectual Property

ISP – Internet Service Provider

MCSC – Music Copyright Society of China

MD – MiniDisc

P2P – Peer-to-Peer

PRO – Performing Rights Organizations

RIAA – the Recording Industry Association of America

WTO – World Trade Organization

WWW – World-Wide Web

XCP – eXtended Copy Protection

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Methodology of the work

The research was compiled using a variety of sources to provide the background and the foundations upon which the main claims of the paper are based. In order to provide quality work it was necessary to obtain indispensable data sources.

- The primary source was the Internet because it provides the most up-to-date data. It included an analysis of music fans' websites as well as official Labels' websites.
- As a secondary source, literature dealing with the recording industry needed to be purchased from various online bookshops because libraries, either the science library in Olomouc or the university library in Zbrojnice, were of little help in relation to this topic.
- Further information was acquired from online magazines dealing with the music industry.

The sources used in this thesis are listed in the corresponding list of sources at the end of the paper.

1. Introduction

This thesis tries to capture the evolution of the recording industry. I have chosen the topic of my thesis because music surrounds us in our everyday lives. Whenever we go to a restaurant there is a music playing in the background. People listen to music while driving their cars. Some cannot imagine going for a walk or jogging without their portable players filled to the top with music.

The aim of this paper is to sum up the most influential technologies and their effects on the recording industry. The thesis is focused especially on the digital era because the recent progress of modern technologies has influenced people's attitude towards music in ways that nobody would have expected before digital formats. During – let's say the last 15 years – the invention of technologies like CDs, MDs, the Internet, flash memory and audio compression has hit the recording industry market. Unfortunately for the big recording labels, the executives of the biggest players in the industry were totally unprepared for such rapid development. The thesis will show how the technologies influenced the whole industry, how those who were supposed to be responsible for keeping up with their customers' tastes and desires failed, how these people instead of showing initiative and being creative, or at least taking part in developing the technologies that could have led to even greater success of the industry, were filing lawsuits against their own customers.

The first chapter is a brief report on the history of the recording era from its early beginnings up to the digital age. In the second chapter the reader will be familiarized with basic functions, players and the structure of the record companies. The third chapter recapitulates the mutual relationship between the most influential technologies and the recording industry. The legal environment, piracy and the copyright protection societies behavior are briefly recapitulated in chapter four. In the fifth chapter there are some examples of business models that might have been used by the Labels in order to be competitive.

The final chapter is not intended to be a complex proposal for the big labels, it is supposed to be only a draft that shows that there are suitable ways to stay in business. It only illustrates how those responsible for moving the business forward were taking it backwards.

2. The History

The very first instrument that can be considered recording machine, is probably Thomas Edison's "talking machine" invented in 1877. Others before Edison were trying to record sound but Edison was the first who succeeded. What followed was founding of his Edison Speaking Phonograph Company in 1878. Many imitators saw an opportunity. Like Alexander Graham Bell, who in 1885 came up with a machine called a graphophon. As Edison's followers used his ideas, so did Edison and in 1888 he introduced "improved phonograph", borrow-back from graphophon. Edison chose a cylinder wrapped with tinfoil, Bell used wax-coated cylinders incised with vertical-cut grooves. In the beginning each cylinder had to be recorded separately so the mass reproduction of the same music or sounds was impossible.¹ In 1887 the third type of phonograph was invented by Emile Berliner, granted the patent for a "Gramophone" using non-wax disc photo-engraved with a lateral-cut groove.² In those days the introduction of new inventions was so fast that it could only lead to confusion. The result of this rush was a considerable number of incompatible formats. Some companies tried to cope with various standards and offered home players that were not tied to a particular recording method.

In 1890 The Columbia Phonograph Co. produced the first record catalogue – a one-page list of Edison and Columbia Cylinders. At the same time the first coin-operated phonograph - "juke box" was released. In its first 6 months of operation it earned \$1000. A boom in the popularity of nickel playing phonographs began. Berliner's U. S. Gramophone Company finally began to succeed and in 1894 he produced and sold more than 1000 machines (mostly hand-powered) and 25,000 records (7-inch hard rubber discs) – Berliner's disks were the first sound recordings that could be mass-produced by creating master recordings from which copies were made.³

¹ <<http://inventors.about.com/od/gstartinventions/a/gramophone.htm>>

² <<http://history.sandiego.edu/gen/recording/notes.html>>

³ <http://www.essortment.com/all/recordingindust_pqg.htm>

The invention of the spark transmitter with an antenna by Guglielmo Marconi at his home in Bologna, Italy in 1894, marked the beginning of its long history.

Eldridge Johnson improved the gramophone with a motor. The machine was designed as a simple and inexpensive which made it the most popular disc phonograph of 1900; he then merged his Consolidated Talking Machine Co. with Berliner's company to create the Victor Talking Machine Co. in 1901.

The trademark granted by the Patent Office on July 10, 1900, was a small dog with a cocked head posed in front of a gramophone. The little terrier was listening to his master's voice coming from the horn. "His Master's Voice" (HMV) became one of the best-known trademarks in the world and is still in use today.⁴

In 1902 the first Red label records were made in Russia for the Imperial Opera, on 10-inch discs with 4-minute capacity. The 10-inch disc cost \$1.00 and it would quickly become more popular than the previous 7-inch standard disc that could only play for 2-3 minutes. HMV in England recorded the complete Verdi's "Ernani" opera on 40 single-sided discs. In 1904 the International Talking Machine Co. from Germany presented double-sided discs allowing up to 10 minutes of recording on one disc.

The first real contract that would result in more than one hundred recordings over the next 20 years was signed by John Cormack with the Victor Co. in 1910.⁵

The year after WWI the Gennett Record Company in Indiana began to make lateral-cut records and was sued by Victor. Smaller labels joined Gennett in defending its claim that lateral-cut was in the public domain. Gennett won the case and became one of the largest record producers in the nation, releasing some of the earliest jazz records. The decision opened the gates for smaller independent companies to make their own recordings.

⁴ <http://inventors.about.com/od/gstartinventions/ss/gramophone_2.htm>

⁵ <<http://history.sandiego.edu/gen/recording/notes.html>>

David Sarnoff, as general manager of Radio Corporation of America (RCA) wrote a memo in 1920, "Sales of Radio Music Box for Entertainment Purposes". A few years later the record business was becoming seriously depressed⁶ when record sales fell by about a half from a high of \$106 million high. This was due to the growth of live radio. Despite that the Columbia label set a landmark by selling 750,000 copies of Bessie Smith's record in one year.⁷

In the late 20's Edison introduced a 12 inch 40 minute long playing record⁸ and the British Broadcasting Company (BBC) finally started to take the gramophone seriously, launching a regular long running record programme presented by Christopher Stone, brother-in-law of Compton Mackenzie, the founder and first editor of "The Gramophone magazine".⁹

The Gramophone Co. (HMV) and the Columbia Graphophone Co. merged and formed Electrical and Musical Industries (EMI). By the end of 1931 the largest sound recording studio in the world had begun operation at Abbey Road in London, by the end of 1931.¹⁰ In the same year the stereo recording technique still in use was patented. Radio penetration of homes reached 50 percent in the USA.¹¹

By the end of the 1930's the popularity of multi-record, coin-operated, record players with their loudspeakers and electrical amplifiers was rising rapidly. South American bars and restaurants that did not have live musicians got coin-operated record players. These businesses became known as Juke joints and Juke boxes were the record players. Juke Boxes became very popular. More than half of the records in the United States were produced for use in Juke Boxes.¹² The number of installed machines increased from 25,000 in 1934 to 300,000 by 1939.¹³ Even though the discs had to be renewed almost every week, without motion picture there would not be enough money for research into new improved

⁶ <<http://www.museum.tv/eotvsection.php?entrycode=sarnoffdavi>>

⁷ <<http://history.sandiego.edu/gen/recording/notes.html>>

⁸ <<http://library.thinkquest.org/19537/Timeline.html>>

⁹ <<http://www.soc.duke.edu/~s142tm01/history2.html>>

¹⁰ <<http://www.soc.duke.edu/~s142tm01/history3.html>>

¹¹ <<http://www.terramedia.co.uk/Chronomedia/years/1934.htm>>

¹² <<http://library.thinkquest.org/19537/Timeline.html>>

¹³ <<http://history.sandiego.edu/gen/recording/notes.html>>

technologies.¹⁴ In 1935 the first music radio and news station operating and Martin Block became the first disc jockey and the first Hit Parade was started.¹⁵ 60 years after the first talking machine AEG-Telefunken, demonstrated the Magnetophon tape recorder to the public.¹⁶

A very important landmark decision was made in 1940 when radio stations won a number of court cases over paying the record companies royalties for their records. Since then commercially recorded music become the normal radio broadcast.¹⁷ During the 1950s one could observe some manipulation by the record companies. Producers realized that when a song became a “hit” on the radio people were willing to buy the whole album if the company refused to release that song as a single. A full album typically cost four dollars or more while a single cost only a dollar or less.¹⁸

In the 1965 first pre-recorded audio compact cassettes (introduced by Philips) were released. The cassette format became very popular, mostly because of its easy to use. Although during its first year on the market only 9000 units were sold, three years later more than eighty different manufacturers sold over 2.4 million cassette players worldwide. The cassette business was worth about \$150 million in that year. By the end of the decade, the compact cassette became the standard format for tape recording.¹⁹ The number of LPs sold gradually declined while sales of cassettes increased rapidly. From that time record companies made their prerecorded music available on both cassette tape and disc.²⁰

It took a century before Edison's dream, that some day in the distant future there would be a talking machine in every home, came true. By the 1970s there were two or three in the average household.²¹

¹⁴ <<http://www.recording-history.org/HTML/business.php> >

¹⁵ <<http://history.sandiego.edu/gen/recording/notes.html#masses>>

¹⁶ <<http://www.soc.duke.edu/~s142tm01/history3.html>>

¹⁷ <<http://library.thinkquest.org/19537/Timeline.html>>

¹⁸ <<http://www.recording-history.org/HTML/business.php> >

¹⁹ <<http://www.soc.duke.edu/~s142tm01/history4.html>>

²⁰ <<http://library.thinkquest.org/19537/Timeline.html>>

²¹ <<http://www.soc.duke.edu/~s142tm01/history4.html>>

What Edison probably had never even dreamed about was a portable audio cassette player introduced by SONY in 1979, the Walkman.²² Market experts were skeptical²³; priced at \$200 Soundabout, as it was initially called, was not considered as a product for mass marketing.²⁴ When the first model was introduced the estimate of 5,000 units sold per month surpassed ten times within two months of its production. The popularity of taking your music with you was literally a hit. In the following years pre-recorded cassette tapes sales went through the roof.²⁵ With Walkman II the priced dropped and the size was considerably reduced to become one of the most successful audio products.²⁶ In 1983 sales of pre-recorded cassettes reached amount of 236 million in the U.S., leaving the sales of LPs far behind. Launching such a machine was a huge marketing success. Walkman became an icon and created a new industry of personal entertainment.²⁷ Walkman was such a major-part of the history of personal audio that its name became synonymous with personal cassette players.²⁸ Such an invention was a real breakthrough in the music industry. Music listening increased dramatically. Being able to enjoy music anywhere at anytime could only lead to people listening more than ever before.

When Tim Berners-Lee in 1991 came up with the World-Wide Web (WWW), nobody could even predict what a phenomenon it would become. In 1997 Advanced Multimedia Products developed the first successful MP3 player.²⁹ The Internet was already widespread and MP3.com was founded.

That is all for the brief history of technology and recording industry itself. A deeper analysis of the modern history will be covered in next chapters.

²² <<http://library.thinkquest.org/19537/Timeline.html>>

²³ <<http://history.sandiego.edu/gen/recording/walkman2.html>>

²⁴ <<http://www.soc.duke.edu/~s142tm01/history4.html>>

²⁵ <<http://history.sandiego.edu/gen/recording/walkman2.html>>

²⁶ <<http://www.soc.duke.edu/~s142tm01/history4.html>>

²⁷ <<http://history.sandiego.edu/gen/recording/walkman2.html>>

²⁸ <http://www.ehow.com/about_5394562_history-sony-walkman.html>

²⁹ <<http://inventors.about.com/od/mstartinventions/a/MPThree.htm>>

3. Ways of Understanding the Recording Industry

In the following chapter the main functions, structure and all necessary information for understanding the recording industry will be provided.

3.1. Basic Functions

The function of labels in the recording industry is, as in any other field of business, to make a profit. A label has two basic fundamental roles; acquire master recordings and market those masters. Acquiring master recordings means gaining control over the master recordings of an artist's performances. The term "market the masters" usually refers to the trading of copies of the masters to consumers.

3.2. Who are the Players

3.2.1. Early Years of the Recording Industry

Music companies play a key role in the recording of albums and singles.³⁰ For more than half a century there was an oligopoly in the recording industry and it was made up of three big companies (Edison, Columbia and Victor). But by 1953 four big record companies ruled the industry with 78 % of the market: Columbia, RCA Victor, Capitol and Mercury.³¹

3.2.2. Pure Competition for a While

Fortunately, small independent labels were popular among teenagers, who rejected the mass-market music style and preferred small independent labels, allowing small music companies to rise and survive.³² In the 1950s rock 'n' roll music brought some competition to the recording industry. In that era the music of many independent labels began to appear at the top charts. Consumer demand for rock 'n' roll and R&B music drove the recording sales of independents up to 44% of the market between 1955 and 1956. By the 1960s it was clear that the oligopoly was gone and new artists on dozens of new labels took over the charts, controlling over 75%.³³

³⁰ <http://www.ifpi.org/content/library/investing_in_music.pdf>

³¹ Gehman, Nev. "Poll clocks 35 also-rans for every solid-selling disk hit," *Billboard*, 3 January 1953. 1

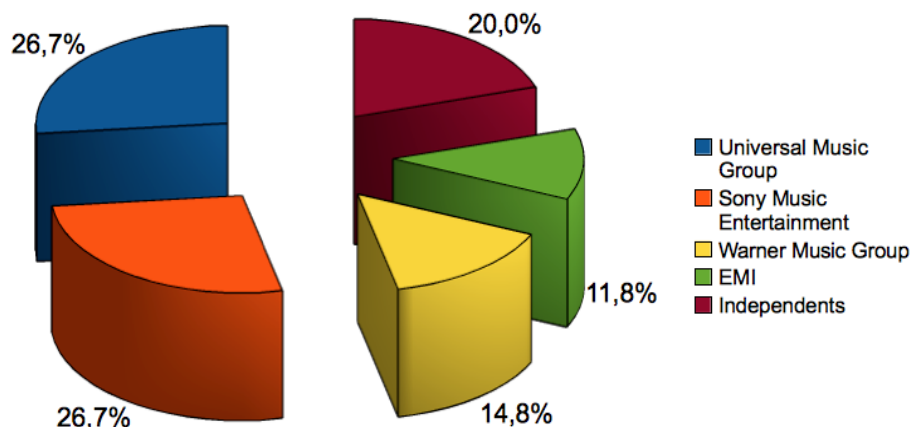
³² <<http://history.sandiego.edu/gen/recording/notes.html>>

³³ Rolontz, Bob. "72 labels landed on Charts In '58 – a Feverish Year," *Billboard*, 5 January 1959. 3

3.2.3. Oligopoly Strikes Back

But the situation turned back again. During the 1970s the industry was reverting to being an oligopoly when lots of significant independent labels joined the big players. In 1979 A&M, followed in 1983 by Arista and Ariola, joined RCA. United Artist merged with Capitol in 1979. If an independent label showed its ability to make a profit it became a subject of interest for a big company. Although in many cases the identity of an indie was preserved the ownership was in the hands of a large conglomerate.³⁴

As mentioned earlier, there are 2 different types of recording companies. The difference is mainly in their size. Basically, the bigger the company is the more specialist it can employ and more sophisticated departments it can afford.



Graph 01: Total market share of music labels in Q1 2010

Source: <<http://hitsdailydouble.com/news/newsPage.cgi?news07997m01>>

3.2.4. Major Companies

Major companies are the biggest players in the industry. In 1999 the Big Five controlled 84% of the 755 million albums sold in the U.S. in 1999: 26.3% by Seagram's Universal (owns MCA, Polygram), 16.2% by Sony Music (owns Columbia), 16% by Bertelsmann's BMG (owns RCA Victor), 15.7% by Time Warner's Warner Music, 9.4% by EMI.³⁵ Big companies worldwide sales

³⁴ Hull, Geoffrey. *Recording Industry*. London: Routledge, 1996. 30

³⁵ <<http://history.sandiego.edu/gen/recording/notes.html#digital>>

accounted for 72 % sales in 2000.³⁶ In the history the number of big record companies in the business was changing a lot. In 2008 Sony completed a joint venture between Sony Music and Bertelsmann Music Group (BMG) to become Sony Music Entertainment Inc. (SMEI) reducing the number to four.³⁷ The other three big players are: Universal Music Group, EMI and Warner Music Group.³⁸

All the major players have very similar structures. Each corporation usually holds other entertainment enterprises ranging from film and television to magazine publishing as well as consumer electronics or alcoholic beverages. Music department usually covers at least record companies and publishing music itself. Various labels under a recording company usually operates as stand-alone units for purposes of A&R (Artists and repertoire), which is responsible for matching new artists and good material with customers' tastes; manufacturing division, which is in charge of making all the recordings; marketing and the recording distribution system, which distributes company's labels.³⁹

3.2.5. The “Indies”

Independent record companies are usually those not owned by one of the major labels. Although, it may not be accurate. It can cover those operating only in local or regional market as well as those being part of a big entertainment company (just not one of the big four e.g. Disney) or a label not owned by the big four but has its recording distributed by one of them.

An independent label can be any size. The larger independents are quite similar to the major labels, while small, garage labels usually have two or three employees, including the owner, whose responsibilities include marketing, A&R scouting, dealing directly with artists or bands and helping them to find live performance opportunities and negotiating with retailers and distributors.⁴⁰

³⁶ Hull, *Recording Industry* 1996. 4

³⁷ <<http://www.sony.com/SCA/press/081001.shtml>>

³⁸ <<http://www.guardian.co.uk/music/2008/jan/20/popandrock.musicindustry>>

³⁹ Hull, *Recording Industry* 1996. 35-41

⁴⁰ <<http://www.musicbizacademy.com/knab/articles/insidelabels.htm>>

Independent labels play an important role in the industry, providing audiences with diversity and specialty music. Major companies often ignore all volume of sales ranging between 3,000 and 30,000 recordings. Indies sometimes serves as a source of new talents and new directions in the music for the conglomerates. New Age music is one of genres that began as an independent phenomenon. When it proved to be commercially successful larger labels bought the independents. Rap is just another good example.⁴¹

The market share of independent labels has increased recently. Some observers speak about this as the greatest success in music history. Indies accounted for 32% of aggregate album sales in 2008, up almost 1.5% from 2007. They are also the largest owners of master recordings in the industry - over 80% of America's music comes from independent labels.⁴²

Independent labels are sometimes organized in coalitions. For example Merlin. It is a multi-national non-profit organization that represents 8% (12,000 independent record labels) of the US music market. The same share as EMI, the smallest of the major labels.⁴³

Recently we have witnessed the rising popularity of independent labels. Nowadays recording costs are much lower than they used to be. A record company does not necessarily need to make hard copies of recordings if it is to distribute in cyberspace.⁴⁴

⁴¹ Hull, *Recording Industry* 1996. 42

⁴² <<http://top40-charts.com/news/Music-Industry/Indie-labels-are-on-the-rise-and-the-proof-is-in-the-numbers/48568.html>>

⁴³ <http://www.wired.com/listening_post/2008/06/indies-the-fift/>

⁴⁴ Hull, Geoffrey. *Recording Industry*. London: Routledge, 2004. 111

3.3. Structure of Record Companies

Structure at the corporate level

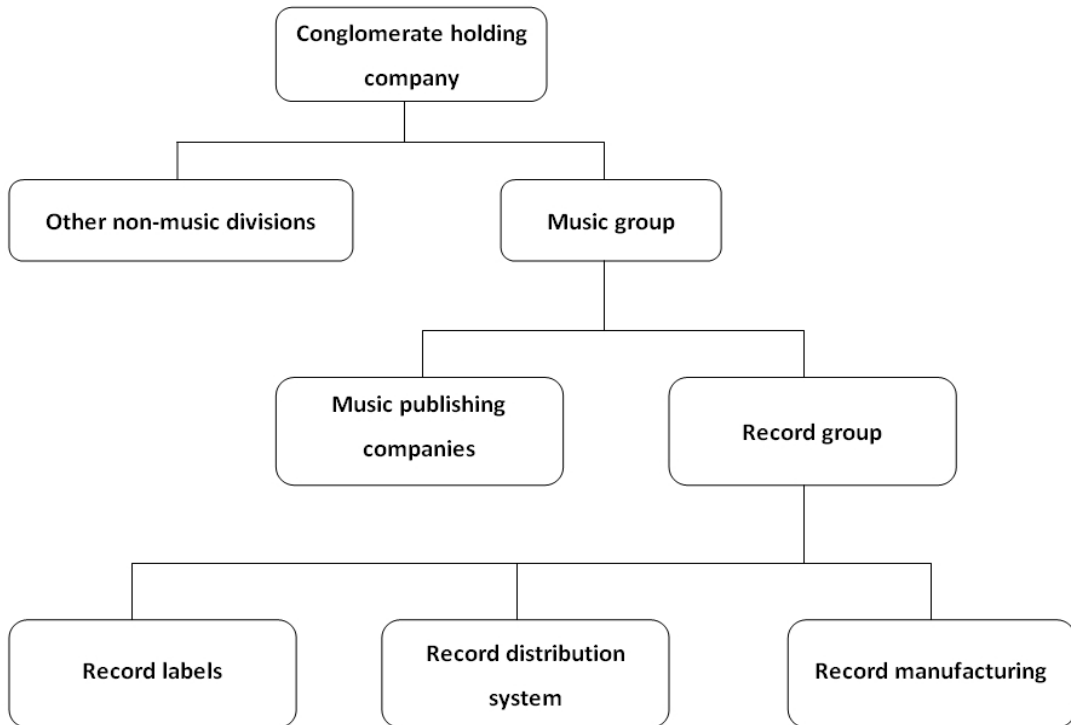


Fig. 1: Typical structure at the corporate level

3.3.1. Label structure

The basic function of a label is A&R and marketing. A label may perform those functions by itself or just hire an outside organization to provide the job.⁴⁵ It depends on the size of the label as well as on its ability to perform those actions. The more money a label earns the more it can spend on outsourcing.⁴⁶

Although there is not a rule how a particular department might be called the division is typical.

⁴⁵ Hull, *Recording Industry*. 1996. 36

⁴⁶ <<http://www.musicbizacademy.com/knab/articles/insidelabels.htm>>

Here is a list of typical responsibilities of each department:

Label President: Usually, but not necessarily, a person experienced with A&R, sometimes from accounting divisions or business affairs. The president usually supervises all activities of a label, mainly the division that he is experienced with, working as a producer or “talent scout”.

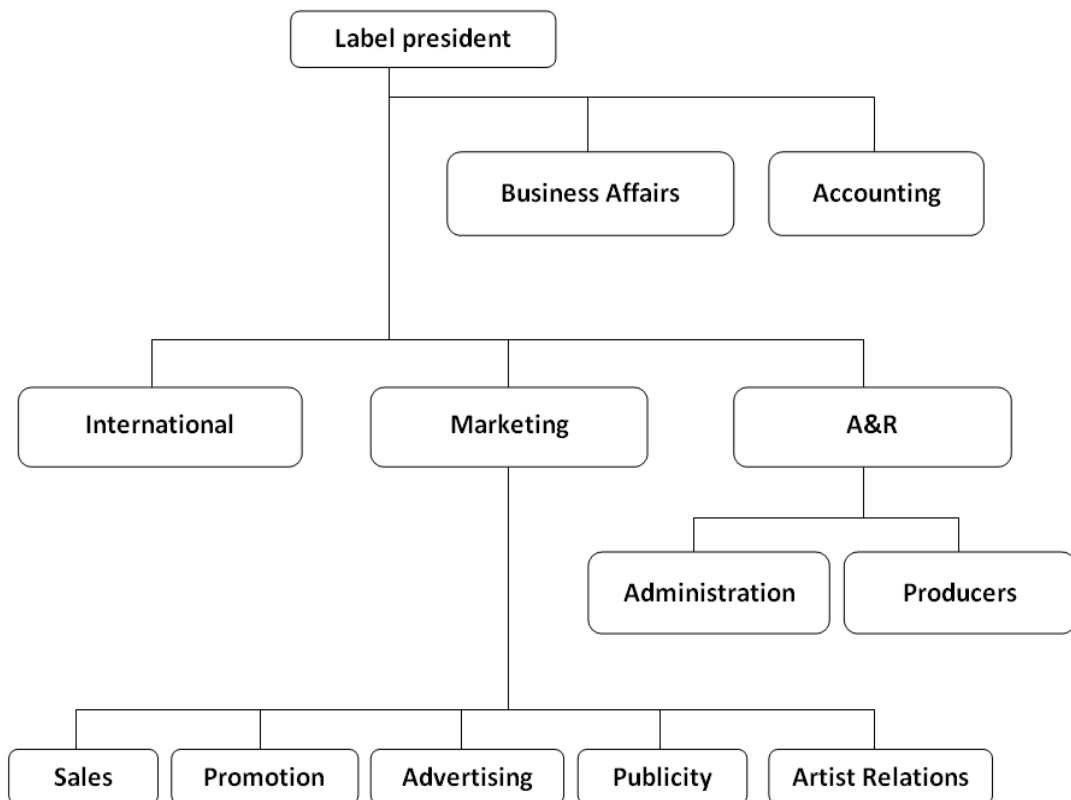


Fig. 2: Typical individual label organization

Business Affairs: This is the legal department of a label. It negotiates with artists and producers. It is in charge of licensing arrangements such as sampling and film use. It finalizes deals relating to other labels, album soundtracks and foreign licenses. The split of the negotiating function from A&R department or the president enables the marketing people and the creative people to be at peace with artists.

Accounting: As it's been said, making a profit is one of the key concepts for any recording company. This department is essential for any business that depends on the sale of so many and such different individual units. It is a very complex task that includes the counting of sales, returns, promotional albums, free goods and payments from royalties.

Internal division: This department is responsible for international distribution deals. It coordinates marketing plans and may be in charge of A&R tasks in foreign territories. Smaller labels usually hire some bigger or major label to take care of international marketing and distribution for them.

Marketing: While this division is often the largest in the big labels, smaller independent labels usually rely on a deal with major labels in this area. The small label then provides only an A&R function. Typical responsibility of the department is to make consumers aware of the company products, using TV and radio airplays, print publicity and advertising through any and all media as well as supply the retailers with recordings.

Promotion: Promoters work with radio, TV or Internet broadcast. Large labels have their own promoters and outsource some independent promotion people as well. They must arrange for the "right people" from the media and retailers to hear the artist when a live performance takes place. Sometimes they have to take their artists around to visit record stores or local radio and TV stations while on a tour. The promoter's job includes working with an artist on promotional tours or concerts.

Advertising: Advertisements must provide consistent images of artists and their records and for that reason this department is solely responsible for advertising the media plans relating to the release of an album or single. Some labels come up with cooperative advertising plan. In case of co-op plan the expenses are shared by the retailer and the label.

Sales: May consist of specialists in merchandising. Their duty is to get orders for the records from retailers. Salesman may set up on local, regional or national basis.

Publicity: This department is responsible for trying to get album or single reviews in local and national media. Publicity and promotion people set up press conferences and opportunities for media. Publicity is the easiest way how to get information to independent publicists. This division employs people who create press kits, artist photos and biographies write press release and try to get artist's appearance in media.

Artist relations: Sometimes may be called by different names e.g. product or career development. The division assures that the work of the other divisions creates unified image of every album. Often cooperates with artist's personal manager to ensure that unified image is presented. To get better idea of what the album is about they work with artist or producer during the recording of the album. Their job includes making sure that copies of recordings for sales and promotions, advertising and publicity follow the artist on tour. This practice began to be used during the 1970s when Labels realized that their marketing plans had to be more complex in order to succeed.⁴⁷

A&R: The Artist and Repertoire division seeks and records artists using scouts who attends live shows and scout for new talents. A&R job includes signing artist to a label. The department is also responsible for an artist's development. The department looks for writers for those artists who do not write their own songs. The department's output is a completed product ready to be marketed so the A&R is in charge of administrative duties associated with the finished master. The A&R works for a label, so it acts in the label's best interests.⁴⁸ Typical A&R representatives spend a great part of their day reading trade papers, music magazines and surfing the web. Web blogs are reported to be one of the most useful sources of information. It is up to them to filter what is “good” and what is not.⁴⁹

⁴⁷ Hull, *Recording Industry* 1996. 36-39

⁴⁸ <<http://www.arcontacts.com/what-does-an-a&r-do.htm>>

⁴⁹ <<http://www.thesite.org/workandstudy/gettingajob/careersatoz/arscout>>

A&R administration: People from A&R administration make certain that all people involved in album recording get proper credit. They also coordinate delivery of the recording, artwork and all materials required to complete production. Part of their job is to oversee that all musicians, artists and producers get paid when they are supposed to.⁵⁰

Producers: They organize all aspects of recording sessions. Producer's job includes selecting songs to record, choosing the right studio, equipment and sound engineers to work with, directing and motivating performers during the recording. In some case even writing and performing songs. Among musicians and singers a producer works with lawyers, accountants and distributors. Some experienced producers charge thousands of dollars a year.⁵¹ They may be from inner sources of a recording company working for a salary and royalty or may be entirely independent working for royalty and advances. Generally additional income is agreed in form of three to four percentage from sales.⁵² Top producers usually open their own recording studios.⁵³

3.4. Different Ways How to Examine the Industry

3.4.1. Systems Approach

There are many ways how to approach the recording industry. Systems theory is one of them. It is a business management tool that describes how enterprise works. This theory emphasizes that any business system is made up from five components: 1) inputs, 2) transformation process, 3) outputs (the results of transformational process), 4) a feedback process that will influence the selection of inputs into the next round of processing, 5) an external environment within which the organization carries out its processes. From this point of view the inputs are musician, songs, engineers, studios, plastic, producers, paper, plastic, technology and performances. The transformation process covers the recording of the masters, duplicating of the masters into CDs, tapes and music files, and marketing. Outputs of the recording industry are CDs

⁵⁰ Hull, *Recording Industry* 1996. 40

⁵¹ <<http://www.creative-choices.co.uk/knowledge/job-profiles/music-job-profiles/job-profile-recording-industry-producer>>

⁵² Hull, *Recording Industry* 1996. 40

⁵³ <<http://www.connexions-direct.com/jobs4u/index.cfm?pid=57&catalogueContentID=799&render=detailedArticle>>

and other recorded configurations as products and as cultural artifacts, profits and losses for the owners and employee satisfaction (including the artists and the writers). Feedback comes through purchases by consumers of recordings and live performances. The external environment are the social, legal, economic and political forces that occurs outside of the organization.

One of the key concept of approach systems is the difference between open and closed system. As the opposite of a closed system an open system must interact with the environment to survive. Because the recording system depends on popular tastes and culture for its market it is considered as an open system. Entropy is the final systems concept – tendency of any organized system to eventually decay into disorganization. The recording industry has to seek new creative inputs to survive.

The External Environment:

Social, Political, Legal, Technological and Economic forces

The music industry stands and falls with the external environment. To keep up with audience tastes and desires is a job for the A&R department. With a weak A&R, a company may struggle to survive. A good example is era of rock 'n' roll music. The major labels did not respond or they just ignored it. As a result many independent labels established their business.

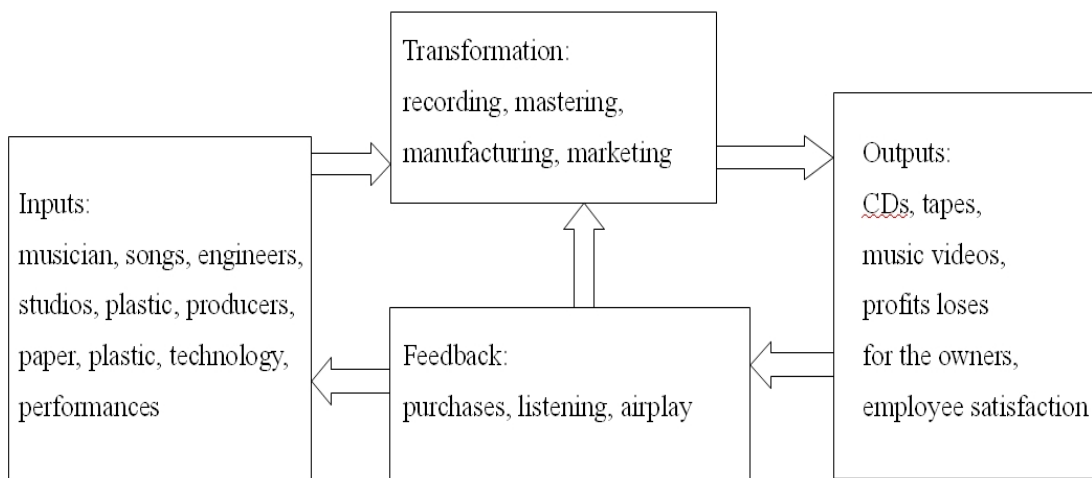


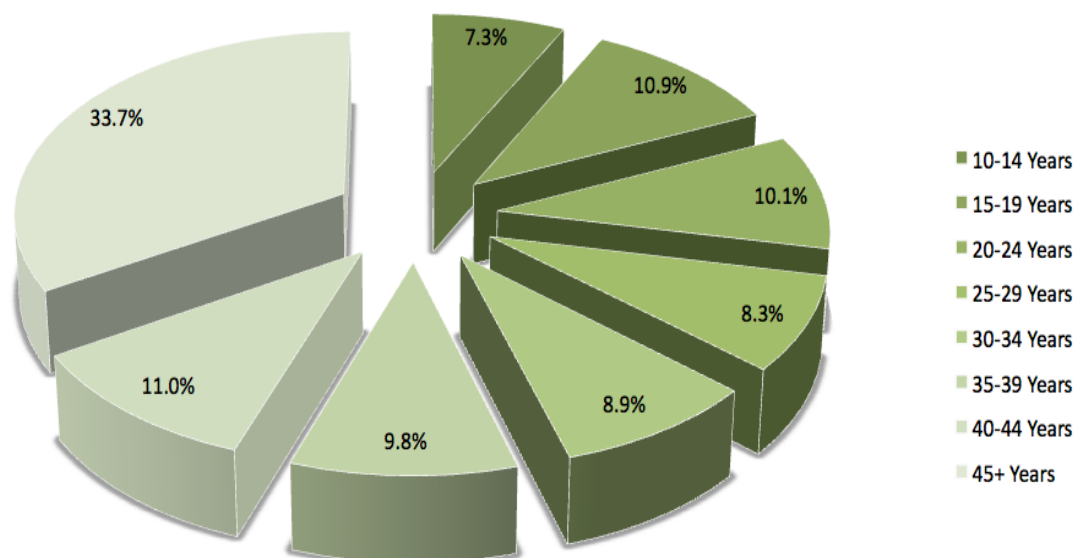
Fig 3: A systems view of the recording industry

Society

Every business has to feel the mood of a society and foresee potential effects of socio-cultural forces on its organization. A corporation can anticipate and adjust for societal trends using tools like surveys or scenario development. Media acts as a guardian. Not many CEOs appreciate appearing in the news. However, well-managed media can have a positive impact on the label's image. The media strongly influences the attitudes of the public towards a company.

Popular music, the breadwinner of the music industry, interacts heavily with society. It influences society and is influenced by it.⁵⁴

Music often mirrors social themes. Like reggae during 1960s and 1970s substituted for other media in Jamaica.⁵⁵



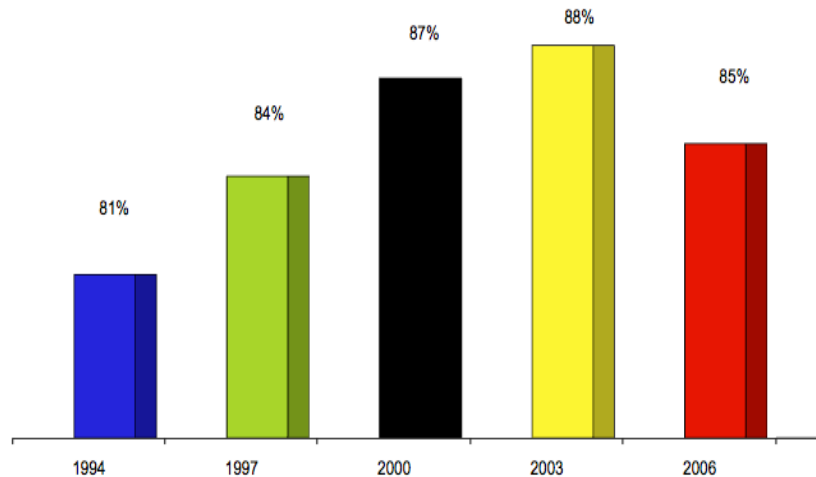
Graph 02: 2008 music consumer profile by age.

Source: RIAA⁵⁶

⁵⁴ Hull, *Recording Industry* 2004. 13

⁵⁵ White, Timothy. *Catch a Fire – The Life of Bob Marley*. London: Elm Tree Books, 1983. 4

⁵⁶ <<http://www.namm.org/news/press-releases/new-gallup-survey-namm-reflects-majority-americans>>



Graph 03: Percentage of respondents who agree that music is an important part of their life

Source: NAMM Gallup Survey

As the graph 02 shows, music is an important component of nearly everyone's life. More adults purchase recorded music than vote in elections.⁵⁷

Political Environment

Although political environment is considered not as important to the recording industry as other external factors it is worth a closer look. In 1972 reggae music and Rastafarian symbols were often used by a Jamaican political party during electoral propaganda. Although, in the 1970's Rastafarians were considered to be the most alienated group in Jamaica, they constituted about 3% of the population. This minority probably helped the People's National Party to victory.⁵⁸ In the 1970's each political party was associated with a particular (reggae or calypso) song.⁵⁹ The fact that Rastafarians are mostly non-political makes it even more interesting.⁶⁰ This is not the only case when politics has had a significant impact on the recording industry. In the late 1980s many labels and radio stations quit broadcasting some rap artists because feminists reacted against the lyrics. At the same time the recording industry went through a number

⁵⁷ Hull, *Recording Industry* 1996. 14

⁵⁸ Waters, Anita M. *Rastafari and Reggae in Jamaican Politics – Race, Class and Political Symbols*. New Jersey: Transaction Publishers, 1999. 3

⁵⁹ Waters. *Rastafari*. 185

⁶⁰ <<http://debate.uvm.edu/dreadlibrary/bailey.html>>

of congressional hearings that led to self-regulation and the identification of some recordings - a reaction to violence and profanity in lyrics and music videos— as requiring some form of classification. The warning label, “Parental Advisory Explicit Content”, appeared for the first time.⁶¹

Legal Environment

Tax laws, environmental regulations and labor laws are almost identical to that of most business. Copyright law, however brings a different legal environment to the industry. While patent protects an application of an idea, copyright protects the expression of an idea. The key concept behind copyright is originality.⁶² Copyright enables the protection of an industry's main output from unauthorized duplication as well as protecting live performances from unauthorized recording, broadcasting or distribution. However, there must be some laws that limit consolidation and the industry's attempts to control prices. For that reason antitrust laws and regulations limit the activity of the recording industry in that area.⁶³

⁶¹ Hull, *Recording Industry* 1996. 14

⁶² <<http://legal-dictionary.thefreedictionary.com/Music+copyright>>

⁶³ Hull, *Recording Industry* 2004. 15

3.5. Profitability in the Recording Industry

At the beginning of the twenty-first century the recording industry primarily served the market for prerecorded material through the sale of CDs and tapes. Only these sales make the recording industry a major player in the music industry. From 1985 to 2000 recorded music moved from fifth to fourth place in consumer media expenditures, surpassing consumer magazines, newspapers and motion pictures. In 2000 the average American spent an estimated 15.2 % of their media dollars on recorded music, up from 10.3% in 1985.

In 1994 the Big Six controlled the \$30 billion record industry: Philips (Polygram, A&M, Mercury, Island), Sony (CBS Records), Matsushita (MCA, Geffen), Thorn-EMI (Capitol, Virgin), Time Warner, and Bertelsmann (RCA Records).⁶⁴ However, at the end of the 20th century sales fell from their record numbers of the 1980s and 1990s and many music stores went bankrupt. Sales dropped from \$14.6 billion in 1999 back to 1996 levels of \$12.6 billion and were heading even lower. Employees of major labels were laid off and many divisions were downsized or even closed. The Labels were in big trouble trying to come up with a business model for successful music distribution.

Economic Environment

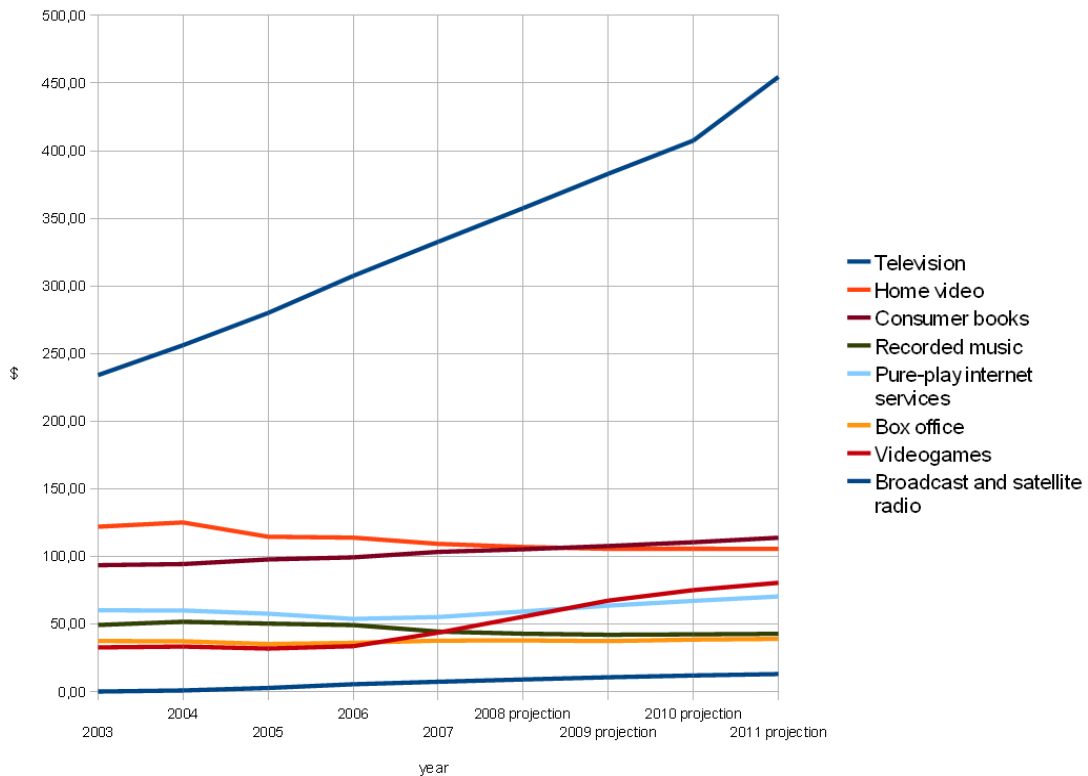
The recording industry incomes depend on overall economic situation heavily. As any other leisure time industry relies on consumers' income, their will to purchase recordings and live performance tickets. In times of economic downturn the sales of recordings declines. During the great depression in 1930s, the recording industry barely survived. Without revenues from radio airplay and the sale of recordings to jukebox owners, it would have ceased to exist.⁶⁵ According to NPMA's survey of music publishing revenues, music publishing revenues are probably more sensitive to per capita GNP than to age of population.⁶⁶

⁶⁴ <<http://history.sandiego.edu/gen/recording/notes.html#digital>>

⁶⁵ Hull, *Recording Industry* 2004. 13-15

⁶⁶ <http://www.nmpa.org/media/surveys/twelvth/NMPA_International_Survey_12th_Edition.pdf>

There are two primary channels through which the recording industry promotes its products. These are radio and television broadcasting. The four major labels have realized that horizontal and vertical integration – controlling of music publishing, television production, audio and video hardware manufacturing, radio and television broadcasting is the key to success. The main contribution of all these changes was a greater diversity of music available to wider audience.⁶⁷



Graph 04: The average American spending for media.

Source: Veronis Suhler Stevenson, New York, NY, *Communications Industry Forecast*.

⁶⁷ Hull, *Recording Industry* 2004. 17

4. Technology and the Recording Industry

Without technological progress there would be no recording industry. With modern technology and its improvements recording is becoming easier and cheaper. Artists and songwriters are able to make high quality recording much easier than ever before. In the beginning even Thomas Edison did not know that his “talking machine” invention would give birth to a whole new industry. Actually, his machine was hardly useful for a wider audience. In a few years Emile Berliner moved closer to mass production because of his method of making copies of the original recordings. This method allowed production on a much bigger scale, thereby recordings became available to the general public.

In many ways war is the mother of invention. Technological progress in 1940s, pushed by the Second World War, made reproduced music even more realistic. Stereo recordings showed that audiences appreciated improvements that allowed music to sound more like a live performance.

Cassette tapes brought more mobility to the music industry, allowing customers to have their favorite recordings in their cars, even without playing them on the radio.

Later, smaller amplifiers and players made pre-recorded music really portable. Finally, the recordings could be with the listener pretty much everywhere – on the beach, while jogging or at the gym, making even the task of commuting to work less boring.

The compact disc and digital recording took sound quality, ease of use and durability to a higher level. Digital transmission demands a new delivery system and brings access to an even greater diversity of recordings. The decreasing cost of manufacturing recordings and media players allows further market penetration of the whole music industry. All these features go hand in hand with the greater demand for recordings which brings greater revenues to the industry and makes for an even greater diversity of available products. All these cost reductions with relatively small initial investments enable a profit on a relatively small sales base; typical for small independent labels, which offer a wider variety of artists.

The electronic revolution has a significant impact on creative inputs too. Home recording equipment improvement allows creative artists to have more control over the recording process. Even small studios can “afford” to produce digital quality recordings. Lower production cost has positive benefits for the audience while more people make music and market it.

4.1. Digital Formats

Modern history of the recording companies begins with the digital era. At the beginning of the 1980's experimenting with digital sound finally brought some fruits. Philips' and Sony's joint work resulted in the creation of the Compact Disc (CD). Sound was recorded on a small disc that could contain up to 74 minutes of recording. Thanks to a laser beam that reads the binary code, the playback was free of unwanted surface sounds and there were no traces of playback on the disc.⁶⁸ The longer lifetime for the media and the player strongly supported the popularity of the format.⁶⁹ When the CD was launched in the UK it was hailed as "the most important development in the recorded music industry since the long playing record".⁷⁰ By 1989 over 200 million CD units had been sold.⁷¹ Initially, CD sales grew because buyers were replacing their old LPs with CD reissues – catalog replacement sales.⁷²

During the 80's Philips and SONY introduced Digital Audio Tape (DAT). In short, DAT is a recordable version of the optical compact disc. Copyright problems accompanied the development of consumer products so the DAT remained a high-priced professional medium.

4.1.1. CDs v. MDs

Decreasing sales of cassette tapes since 1989 suggested that the good old days of the cassette format were approaching the end. Consumers demanded the quality of a CD and the size of a cassette. Just ten years after the introduction of the CD SONY began to sell its new product – MiniDisc (MD). MDs offered stronger

⁶⁸ <<http://library.thinkquest.org/19537/Timeline.html>>

⁶⁹ <http://www.minidisc.org/ieee_paper.html>

⁷⁰ <<http://history.sandiego.edu/gen/recording/digital.html>>

⁷¹ <<http://www.soc.duke.edu/~s142tm01/history4.html>>

⁷² Hull, *Recording Industry* 1996. 4

resistance to vibrations, compactness and ease of recording of audio cassettes.⁷³ Surprisingly, over the years the CD format won the battle over the MD, even on the field of portable players. For the first time in history CDs and especially MDs (with MDs a user could use rewritable media) offered the function of recording music from computer. MD, although offering more features did not gain enough popularity to survive.

4.1.2. Audio Compression

In 1996 the ISO-MPEG-1 Audio Layer 3 (MP3) format was introduced in the United States. MP3 is generally an electronic standard for audio compression. It means that a compression is applied on a music file making it smaller with little or no sound quality loss. Until then downloading a single song would end up taking hours and the size of the files was too big. Using MP3 audio coding the original sound data from a CD can be shrunk by a factor of 12 while still retaining comparable quality with the source.⁷⁴

Since the end of 1998 The Fraunhofer Institute started to enforce their patent rights. All developers and producers of players, encoders/decoders now have to pay a licensing fee to the inventors of the technology. The MP3 is not the newest or best one but none enjoy such popularity. There is Windows media audio (WMA) developed by Microsoft in 2000 in response to the mp3, which became popular with many music-corporations because it offered copyright-protection of songs - Digital Rights Management (DRM). Advanced Audio Coding (AAC), developed in 1999 by the same companies that were behind the mp3 codec, offers improved sound quality compared to the two named above and is meant to be the mp3's successor. Another one is OGG vorbis. From the beginning it was an open source project, with the advantages that it is free of any patents, the algorithm is still being developed and the sound quality is getting better with every further change in the source code. Although OGG offers more advanced algorithm allowing better compression of the files making them even smaller than the mp3 or wma, it does not have much support by the portable music players and for this reason it is not that popular.⁷⁵ All the formats above are

⁷³ <http://www.minidisc.org/ieee_paper.html>

⁷⁴ <<http://inventors.about.com/od/mstartinventions/a/MPThree.htm>>

⁷⁵ <<http://all-streaming-media.com/streaming-media-faq/faq-Description-of-popular-audio->

those used commonly on the Internet. There are many more codecs used world wide but those are among the top ones.

A necessary improvement that allowed to this technology a true mobility - a flash memory was introduced to the public in 1997, another landmark in history of recording. Flash memory is an electronically rewritable memory. One of the biggest advantages of flash memory is that there are no moving parts - all solid-state technology makes it absolutely resistant against vibrations. The size, low power demand and other advantages of flash memory made it perfectly suitable for portable players and they first appeared in 1998.⁷⁶

4.2. Internet

The Internet began its history in the 1960s, initially called ARPAnet (Advanced Research Projects Agency) funded by the U.S. Department of Defense.⁷⁷ During the 1980s it attracted the attention of some of the general public but still could not be considered as a mass medium until 1991, when World Wide Web (www) introduced to the public the web languages <http and html> that allowed users easy access and the ability to transmit information via the network. To make it even easier a browser is used. Web languages are pieces of code that link one web site to another. A browser allows the user to access a link by clicking a mouse. Invention of a browser was a real breakthrough. It enabled virtually everyone with a personal computer to locate information on the Internet. Companies soon recognized the opportunity to easily promote themselves.⁷⁸ In 2008 almost 58 out of 100 inhabitants in Europe could be described as regular users; representing a potential audience of 354mil people.⁷⁹

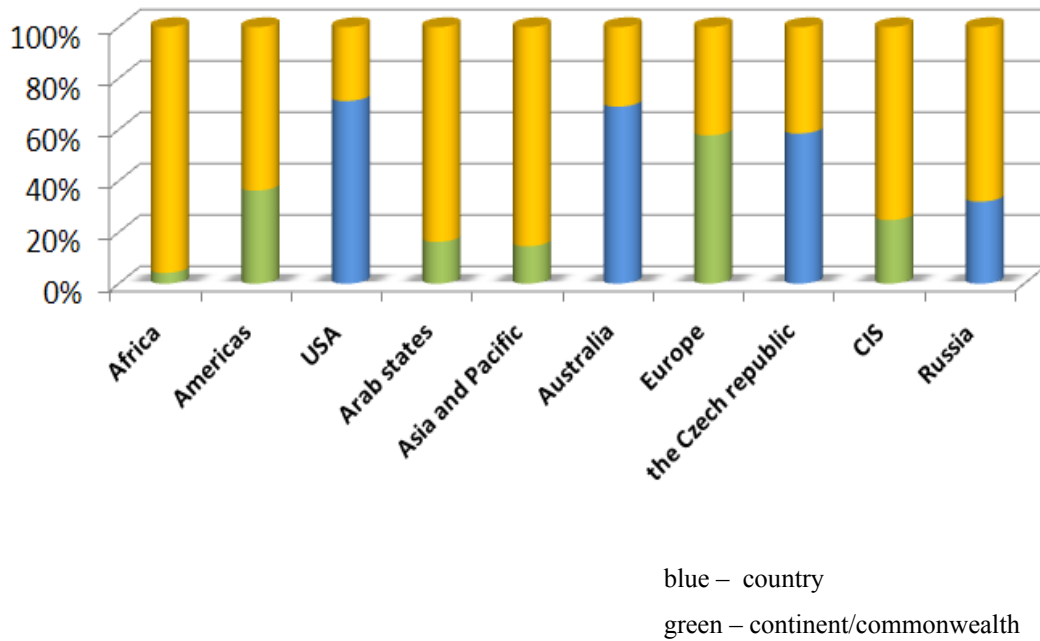
formats-MP3-WMA-OGG-AAC-WAV.htm>

⁷⁶ <<http://history.sandiego.edu/gen/recording/flash.html>>

⁷⁷ <http://www.computerhistory.org/Internet_history/>

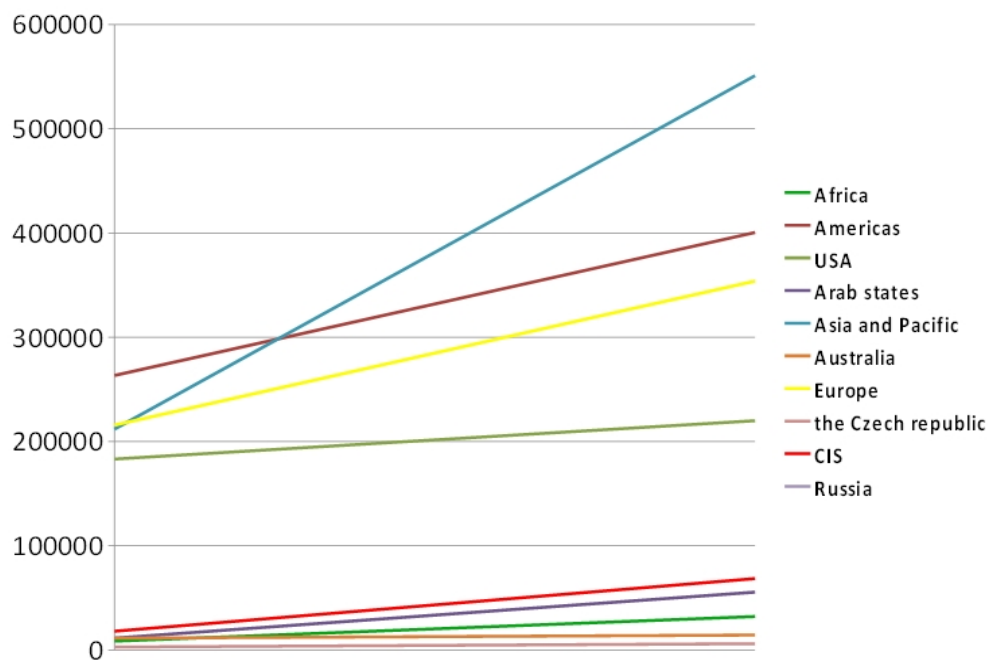
⁷⁸ Hull, *Recording Industry* 2004. 230

⁷⁹ <<http://www.itu.int/publ/D-IND-RPM.EUR-2009/en>>



Graph 06: Percentage of Internet users in 2008 per country/continent

Source: Telecommunication Development Bureau⁸⁰



Graph 07: Number of households with Internet connection

Source: Telecommunication Development Bureau

⁸⁰ <<http://www.itu.int/publ/D-IND-RPM.EUR-2009/en>>

There is no doubt that the Internet opens new ways to promote, distribute and sell artists' recordings and songs. The Internet also allows non-copyright holders to copy recordings illegally. One could say that the Internet must have been developed by a record label not by the Army as a reaction to the launching of Sputnik by the Soviet Union.⁸¹

The Internet brings both good news and bad news for the recording industry (while users only benefit). To get a better picture of how the recording industry is affected by the information superhighway it needs to be examined from three ways:

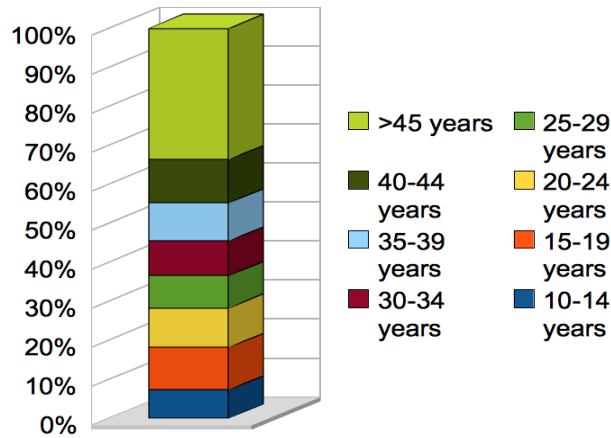
- As a great tool for promoters, artists, labels and publishers
- As a distribution pipeline for hard and digital copies
- As a legal battlefield over the unauthorized distribution and downloading copies⁸²

⁸¹ <http://www.computerworld.com/s/article/9036482/Happy_Birthday_Sputnik_Thanks_for_the_Internet_>

⁸² Hull, *Recording Industry* 2004. 230

4.2.1. The Internet as a Promotional Tool

The Internet as a new technology spread amongst the younger generation - who make a significant market for many recordings - quickly.



Graph 08: Consumer profile 2008

Source: RIAA

By the mid-1990s all the major players of the Recording industry had realized that the Internet could be very useful as a promotional tool. Each label ran its own Web site. Typically those sites promoted artists and their new releases. Visitors could usually see some photos, brief sample of videos and audios and read some background on their favorite artists. Soon fans and artists themselves came up with unofficial sites. In 1999 when artists signed contracts with Sony music they agreed with a clause giving the label the right to run the artist's Web site.

To promote new releases even more effectively Labels hired countless numbers of young people to engage in different chat rooms to do the job. The development of the Internet was more dynamic than the Labels. While the tracks and even entire albums were available free on the Internet on the day they were officially released the Labels began to consider a change of strategy.⁸³

The Internet significantly affected the live entertainment business. Shows were announced sooner on web sites than the tickets were released to the public. Promotion through the Web sites held to save up to 80% of money spent on advertising. Some artists allowed free access to their sites, some charged fees.

⁸³ Hull, *Recording Industry* 2004. 231

Indie labels participated from the very beginning of the phenomenon. Designing a Web site was neither difficult nor expensive so the Indies were able to compete with major labels in the business.

Music publishers set up sites with access to streaming samples and music catalogues, utilizing the promotional opportunities of the Internet.⁸⁴

YouTube

YouTube is used here as an example, although there are many more, because it is the most significant and the best known music video streaming site on the Internet.

YouTube is a site that allows users to upload and watch videos from all over the world. The company was founded by three former PayPal employees in February 2005. The site began its operation in November that year.⁸⁵ YouTube is a site that is widely used by both known and unknown artists in order to promote themselves. Because of the principle that anyone can upload pretty much everything, artists realize that it is an opportunity for people to get to know about them for free. That kind of promotion can be very worthwhile. In the fall of 2005 a rock band from Chicago shot a \$4.99 video and posted it on YouTube. The video became a hit – more than 9 million fans watched it within the few first months – the band became a superstar making tours around the world.⁸⁶

In 2006 Google Inc. decided to buy the YouTube website. In October it was sold for \$1.65 billion in Google stock.

Within 2 years the site became very popular. In 2008 statistics showed that every day, users watched more than 200 million videos with the most popular video of that year being Avril Lavigne with more than 90 million hits.⁸⁷ Every minute 15 hours of video is uploaded onto YouTube.⁸⁸

⁸⁴ Hull, *Recording Industry* 2004. 231

⁸⁵ <http://www.youtube.com/t/fact_sheet>

⁸⁶ Hull, *Recording Industry* 2004. 200

⁸⁷ <<http://www.telegraph.co.uk/news/uknews/2480280/YouTube-Overnight-success-has-sparked-a-backlash.html>>

⁸⁸ <<http://www.cleancutmedia.com/video/youtube-statistics-the-ultimate-time-suck>>

The site makes a great income from advertising. Each video on YouTube has advertising at the bottom of the screen.⁸⁹ With millions of visitors every day YouTube is a better advertising medium than any other TV during peak-time. From the beginning YouTube had problems with copyrighted material uploaded on their servers. After a few lawsuits in September 2006, Universal became the first major label to sign a contract with YouTube. YouTube was permitted to distribute Warner's music video catalogue in exchange for a share of YouTube's advertising revenues.⁹⁰ YouTube became very successful and music labels finally recognized the opportunity of a free online promotional service and partnered with YouTube.

Although it was unintentional, YouTube clearly provides a great opportunity for artists to show their demos and new music videos/audios for free on the Internet and thus let people know about them. It would make sense if it had been founded by a music recording company. The music labels again showed that their departments of new media were worthless – the industry should have been the one that came up with such an idea, and if not come up with it then at least have bought it. Instead, a third party came in and took over the phenomenon.

⁸⁹ If every advertising in every video was monetized for 0.65 cents per stream then together with 29.3 million views generate about \$190,000 per day.
<http://www.billboard.biz/bbbiz/content_display/industry/e3ie3f15bdff044b5bc2d51deb2f76b8b79>

⁹⁰ Knopper, Steve. *Appetite for Self-Destruction: the Spectacular Crash of the Record Industry in the Digital Age*. New York: Free Press, 2009. 201

4.2.2. The Internet as a Distribution Tool

Change is the law of life. And those who look only to the past or the present are certain to miss the future.

John F Kennedy

One of the first pioneers of online music business was Rob Glaser, who, in the mid-1990s contacted numerous Label executives. Rob was keen to make a deal with record labels about Internet music sales and marketing. Nobody was interested. Labels were making fortune on artists like Spice Girls. They saw no reason to keep up with modern technology.⁹¹

Pioneers of the Wild West

The first groundbreakers of distributing music via the Internet were two young guys, one had a band, the Ugly Mugs, and the other was a student of psychoacoustic audio compression. They taught themselves how to compress music and then sent it to their Internet newsgroup. Soon fans from all over the world began to ask them for more “Western music”. In a few months they started the Internet's first free music archive - the Internet Underground Music Archive (IUMA). They wanted to stay away from copyrighted music.⁹²

First business explorers

As Internet connection advanced to an “enjoyable level” the first software capable of playing online music, WINAMP, became standard for playing MP3s for free. Everything was ready to start a new chapter of music distribution. Users started to post MP3s, usually well-known artists, on their Web sites. The situation escalated in 1997 with the creation of MP3.com. Within 12 months and with 3,000 songs available for free download it became the top music site on the Internet. As a result the storing of digitized music on home computers became almost a cult.⁹³ Labels finally recognized that selling or renting recording downloads might be good business. In the beginning of the 21st century Labels began developing online music sales. In 2001 Universal bought MP3.com, Emusic

⁹¹ Knopper, *Appetite* 113

⁹² <http://www.chime.com/about/press/iris_online-9501.shtml>

⁹³ <<http://history.sandiego.edu/gen/recording/digital.html>>

and GetMusic, and together with SONY started a service called PressPlay. Their competitors BMG, EMI and Warner Music Group launched a competing system Music-Net. The systems were based on monthly fees that allowed users access to a number of limited downloads. Until 2002, when a cross-licensing contract was signed, if a user wanted a BMG product it could only be found on the Music-Net and vice versa. In 2003 both services had roughly about 250,000 customers, while illegal music downloading attracted millions.⁹⁴

In those days there were only two ways to run an online music business. A businessman could either obey the copyright law which meant dealing with a music industry that still insisted on their CD-selling model; or the illegal and dangerous way – allowing people to download music for free.

Napster

The Internet was spread over the world and standards for the storage of digital information allowed exchanging on an international scale. The rise of peer-to-peer (P2P)⁹⁵ file sharing systems only accelerated the interest in finding and exchanging these goods.

In 1999, Shawn Fanning, a second semester student, spent hours programming a code that resulted in his dropping out of college and the development of the largest, most infamous and most controversial file sharing software of the time. When Napster appeared on download.com it became a hit. Within a year it had about 20 million users worldwide.⁹⁶ Napster was very popular especially in colleges, mainly because of their fast Internet connection. College students also tend to like music, colleges had not only high-speed Internet connections but also computers available for students. And the last requirement -

⁹⁴ Hull, *Recording Industry* 2004. 233

⁹⁵ Peer-to-peer is a file-swapping technology, distribution of files between the computers exchanging files. Users usually use a software program that locates desired files on another user's computer. Instead of keeping files on a central computer the files were downloaded directly from another user's computer. It would be illegal to store copyrighted files directly on the computer, that is why the MP3.com was successfully sued by record companies. There are no servers or client computers on a pure P2P network, there are only *peers*. Although P2P software is legal it mainly serves for unauthorized distribution of movies, games and music files.

<<http://computer.howstuffworks.com/bittorrent1.htm>>

⁹⁶ <<http://www.bbc.co.uk/dna/h2g2/A741089>>

students tend to have little money. Napster was different from its ancestors. It was a peer-to-peer file swapping service.

The recording industry felt hurt terribly. To the Labels Napster was just a big automated machine that allowed millions of people to copy copyrighted material while neither the industry nor artists received any royalties in return. People loved Napster because they could get music without paying for CDs. For that very same reason the recording industry was against Napster.⁹⁷ The first to accuse Napster of copyright infringement was the metal band Metallica. The British company NetPD, which monitored Napster for traded files, announced that 335,435 were transferred in three days. Napster responded by disconnecting over 300,000 users accused of illegal file sharing.

Another one was Dr Dre who demanded the money he might have earned if the users had bought the music instead of downloading it for free.⁹⁸ But some wanted to make use of the service for promotion. For example Radiohead released their tracks to Napster and the album became No. 1. Drummer from Dispatch, a reggae-rock band made their recordings available on Napster. In early 2007 the band sold out Madison Square Garden. As quoted in *"Appetite for self-destruction"*: "What we found was it really didn't deter kids from coming to shows and buying CDs. In fact, I think it had the opposite effect – people heard songs off Napster and bought a lot of merchandise and CDs" said the band's bassist. To be honest, Napster users were consciously engaged in theft but they happened to get the public on their side and the major labels became unpopular. The supporters objected that for customers it was impossible to buy just some songs off an album. Users did not want to pay for the full album, if they were only interested in some particular tracks. The whole situation was reminiscent of the fight between David and Goliath.⁹⁹

In late 1999 RIAA filed a lawsuit against Napster. The company was accused of enabling millions of users to share music for free, depriving artists, publishers and producers of music of the revenue they were entitled to under copyright

⁹⁷ <<http://computer.howstuffworks.com/napster3.htm>>

⁹⁸ <<http://www.bbc.co.uk/dna/h2g2/A741089>>

⁹⁹ Knopper, *Appetite* 125

statutes.¹⁰⁰ Napster felt safe because of a precedent set in the case *Sony Corp. of America vs. Universal City Studios*. The court agreed that Sony is not responsible when customers use the company's product – a video recorder – to record copyrighted TV shows for their own use. Napster also objected that they cannot be responsible, just like a telephone company, when people use their lines for any illegal business. Napster contended that it serves only as a “middleman” for the users. And finally, Napster relied on the Digital Millennium Copyright Act of 1998, that protects ISP as long as they didn't actively engage in illegal behavior. For that reason all Napster employees were told not to acknowledge its users pirated music – even though it was later proved that over 70% of the available music on the system was copyrighted material.¹⁰¹

And how did Napster make money out of it? In the beginning it did not. The program was not initially created as a money maker, Shawn Fanning was just curious if the program could be done.¹⁰² Later one of the founders, Sean Parker, wrote up a business plan. Parker proposed the sale of concert tickets and band merchandise. The plan was never brought into effect.¹⁰³ Napster representatives tried to make a deal with the major labels. The Labels did not see any reason for leaving the old, suddenly inefficient CD-making and distributing system and wasted three years on the battlefield until the Labels reached an agreement on a functional, legal music-download service. They simply refused to participate in the digital future of the business – file sharing. Label chiefs failed to recognize the new way of doing business. On February 2001 there were many reasons for being concerned. Napster's built-in database accounted for 26,4 million users, most loyal and “addicted” to the service. Napster communicated with customers in a very efficient way. Labels would have a free, Internet-based promotional and marketing tool. It is certain that some customers would drop out. But a huge number would have been more than happy to pay for getting the music whenever they wanted, being allowed to play the music on a computer, burn it to a CD or transfer it to a portable music device. It is clear that if a label had jumped in when the base of Napster was about 27 million people and half of the

¹⁰⁰ <<http://archives.cnn.com/2000/LAW/law.and.technology/09/29/napster.advance/>>

¹⁰¹ Knopper, *Appetit*. 137

¹⁰² <<http://computer.howstuffworks.com/napster4.htm>>

¹⁰³ Knopper, *Appetite* 125

customers had left, those 13 million would have bought 10 tracks a month at \$10 a song and the service would have earned about \$13 million a year. Making Napster official in 2001 would have had a huge and positive effect on the record business. It was not only ignorance, but it was also a sort of arrogance which prevented new things from happening.¹⁰⁴

The dissolved company was bought by Roxio Inc., a software company, for \$5 in bankruptcy proceeding and relaunched as a legitimate service in 2003.¹⁰⁵ But it never achieved such popularity as it was too late, the users were already fragmented on some other free services like Gnutella and paid, legal and true dominator of the digital distributors – iTunes.¹⁰⁶

Gnutella and Others

The battle for Napster was over but file sharing was not. The same programmer who programmed WINAMP, software for playing mp3s on a computer, introduced new software, Gnutella. For users it was almost the same as Napster. There is a search engine where one can type an artist's or an album's name and then download a file that comes up. Gnutella has one crucial difference. There is not a central server as with Napster – there is no company entity to be sued. The code was bought by a company connected with Warner music – not a fan of the file sharing system. The owner of the code pulled it out from download servers but it had already spread and popular users created sites such as Kazaa and LimeWire, file swapping systems based on Gnutella software.

In 2007, Doug Morris, chief executive officer of the world's largest record company, Universal Music Group, gave an interview to Wired magazine. He spoke about the recording industry in the 1990s. Morris insisted there was nothing that he or anyone else could have done differently. "There's no one in the record company that's a technologist," Morris explained. "That's a misconception writers make all the time; that the record industry missed this. They didn't. They just didn't know what to do. It's as if you were suddenly

¹⁰⁴ Knopper, *Appetite* 143

¹⁰⁵ Hull, *Recording Industry* 2004. 237

¹⁰⁶ Knopper, *Appetite* 149

asked to operate on your dog to remove his kidney. What would you do?".¹⁰⁷ But this statement is far from the truth. Universal had employed about forty people in the new-media department since 1998. Such departments existed across all the major labels.¹⁰⁸

BitTorrent

A German study on the usage of file-sharing applications in several countries showed the popularity of P2P networks. According to the data gathered in 2008 from more than 1 million users, P2P networks are producing more than 50% of all Internet traffic, although only 20% of Internet users are file-sharers.¹⁰⁹

Nowadays the most popular P2P protocol is BitTorrent. It is a global standard with a base of over 160 million clients. BitTorrent allows transfer of large media files or any other software.¹¹⁰ The more popular a file is the faster it can be transferred with BitTorrent. It is popular because it is faster, cheaper and more efficient than a regular download.¹¹¹ BitTorrent is the most popular P2P protocol, however there are other significant players like eDonkey, DirectConnect (very popular in Eastern Europe while almost unknown in other parts of the world) or LimeWire.¹¹²

¹⁰⁷ <http://www.wired.com/entertainment/music/magazine/15-12/mf_morris?currentPage=3>

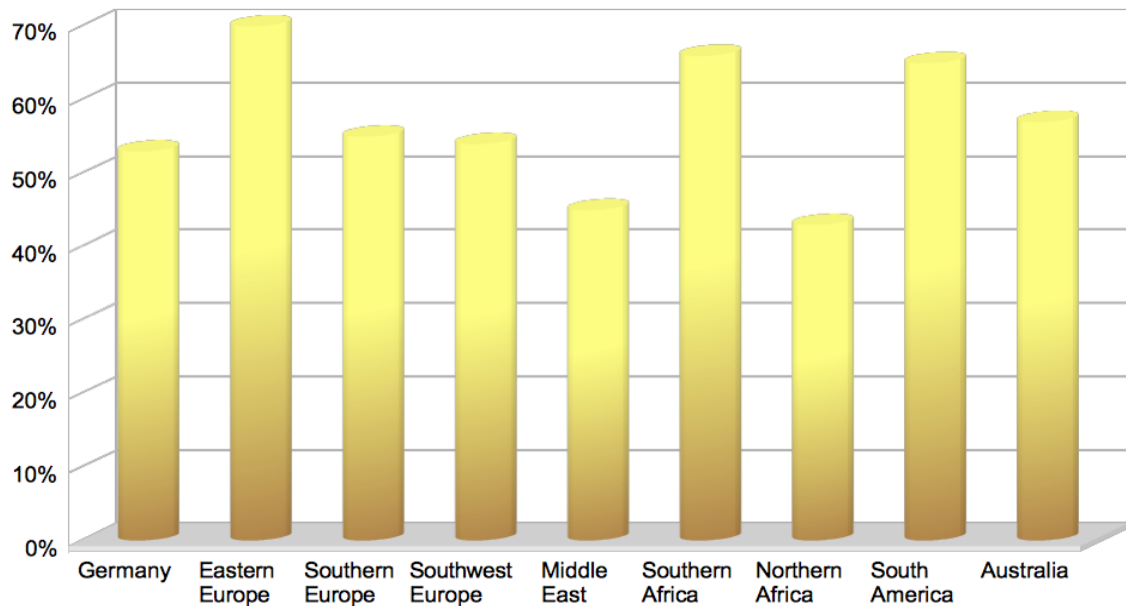
¹⁰⁸ Knopper, *Appetite* 113

¹⁰⁹ <<http://portal.ipoque.com/downloads/index/study>>

¹¹⁰ <http://www.nytimes.com/2009/10/04/business/04digi.html?_r=1&HP>

¹¹¹ <<http://www.bittorrent.com/btusers/what-is-bittorrent>>

¹¹² <<http://www.p2pon.com/top-10-most-popular-p2p-file-sharing-programs-in-2009-at-your-request/>>



Graph 09: Proportion of all P2P related to Internet traffic

Source: <http://www.ipoque.com/resources/Internet-studies/Internet-study-2008_2009>

One-click File Hosting

In the past few years there is a new phenomenon. It is called one-click file hosting, a service that provides file storage designed to store large files. It is a service that allows users to upload files from a remote location onto the one-click file host's server. As a return the uploader receives a unique URL which can be given to other people in order to download the file. There are many sites called "forums" that shares such links.

Unlike P2P running a server that stores the files is not that cheap so the providers delay starts of downloads and slow down downloading speeds to persuade users to buy a premium account for better service. Some companies offer their services for free, earning money from advertising. Some services require particular software to access files, others allow access via any Internet browser.

Files can be protected by a password so even the owner of the service is unable to find out if a file contains copyright protected material. That is why it is almost impossible to accuse someone of sharing copyright protected material.

The most popular one-click file hosting services are RapidShare.com, MegaUpload.com and FileFactory.com. There is a big advantage over P2P. A file on a hosting server is accessible 24/7. P2P users can download a file only if another user sharing the file is online.¹¹³ Rapidshare.com is listed among the 50 most-used sites on the Internet.¹¹⁴

¹¹³ <<http://www.ics.forth.gr/dcs/Activities/papers/1-click-hosting.imc2009.pdf>>

¹¹⁴ <<http://torrentfreak.com/rapidshare-ditches-ceo-bobby-chang-100421/>>

5. Piracy and the Legal Issues

5.1. Copyright

“Copyright and related rights protect the rights of authors, performers, producers and broadcasters, and contribute to the cultural and economic development of nations”¹¹⁵

This chapter is not intended to be a summary of copyright laws. The aim is to mention the most important laws which relate to the recording industry.

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed¹¹⁶

Virtually anything that has been created can be protected under copyright.¹¹⁷ For the purposes of this thesis it is important that music is protected by law. In short, copyright law recognizes authors' exclusive rights to their work.

If a piece of work is under copyright protection people are forbidden to:

- reproduce the music or lyrics
- distribute the music or lyrics either for free, for no profit, or for profit
- perform the music or lyrics in public
- play a recording of the music or lyrics in public--even if you own the CD
- make a derivative work or arrangement for public use in any form

It is illegal to do any of the things mentioned above unless royalties are paid. If authors want to legally enforce claims to their copyright their work must be registered with the copyright office.¹¹⁸

¹¹⁵ <<http://www.wipo.int/copyright/en/>>

¹¹⁶ <[#what](http://www.copyright.gov/help/faq/faq-general.html)>

¹¹⁷ <<http://www.Internet-story.com/copyright.htm>>

¹¹⁸ <<http://www.copyright.gov/circs/circ01.pdf>>

5.1.1. Duration of the Copyright

EU

Each EU member's copyright law is, to a large extent, constrained by European Union law and by international arrangements with which it must cooperate, although some details of any country's copyright law are a matter of national sovereignty. The most important international arrangements are the Berne Convention on the Protection of Literary and Artistic Property, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961, the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms 1971, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and the WIPO Performances and Phonograms Treaty 1996.

EU Copyright Law

The term of copyright protection in Member States of the European Union was harmonized by Council Directive 93/98/EEC of 29 October 1993. Member States were bound to adopt provisions so as to comply with the Directive by 1 July 1995. Copyright in literary and musical works last for a period of 70 years from the death of the author (or in the case of the Joint authorship, 70 years from the last of the co-authors to die). Copyright in a sound recording last for 50 years from the end of the year in which it is made, unless the work has been released during that period, in which case it is 50 years from the end of the calendar year in which the recording was released. Rights in performances last for 50 years from the end of the calendar year in which the performance took place, or if during that period a recording of the performance is released, for 50 years from the end of the calendar year in which the recording was released.¹¹⁹

US Copyright Law

The structure of US copyright law is different from the EU's. The standard term for copyright in the US was introduced by the Sony Bono Act in 1998 and means

¹¹⁹ <http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/B/4/gowers_cipilreport.pdf>

the life of the author plus 70 years. In the case of “works made for hire”, the copyright endures for 95 years from the year of its release, or for 120 years from the year of its creation, whichever expires first. But the situation is not that simple. It is necessary to distinguish between works created before January 1, 1978 and those created thereafter. Until 1972 sound recordings were not protected by federal law. A sound recording published between 1972 and January 1, 1978 would have been protected initially for the 1909 statutory term of 28 years, with a possible further renewal for 28 years. Works created after 1 January 1978 were protected for life plus 50 or 75 years in the case of “works for hire”. Existing works released before 1972 were granted the extra 19 years, so that the renewal term was 47 years. The Sonny Bono Act of 1998 created the extended term of life plus 70 or 95 years for “works for hire”. For existing pre-1978 works, the 'renewal term' was rendered as 67 years. Sound recordings published or created before 1972 may be protected under state law. The position of sound recordings published after 1 January 1978 is also complex and the subject of some debate. The 95-year term is applicable to 'works made for hire'. If it is not considered as “works made for hire” the term is the author's life plus 70 years.¹²⁰

Copyright Term Outside the US

The Rome Convention of 1961 has 83 contracting parties, including the UK, and Australia, but not the US or India. Article 14 of the Rome Convention sets a minimum term of 20 years from the end of the year in which the fixation was made. In 1971 the Geneva Convention for the Protection of Producers of Phonograms had 75 contracting parties (including the UK, the US, Australia and India). This treaty leaves the setting of duration to national law, but requires that if this is a specific duration it must be at least 20 years from the end of the year in which the recording were first published. The WTO Agreement has 149 parties (again including the UK, US, Australia and India). The WIPO Performances and Phonograms Treaty from 1996 has 58 parties, including the US but not, as yet, the UK, Australia, Canada, Brazil or India. Article 17 of the WIPO Performances and Phonograms Treaty establishes a 50 year term to be computed from the end of the year in which the phonogram was published. In several cases

¹²⁰ <http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/B/4/gowers_cipilreport.pdf>

(for example, Australia, Chile and Singapore), the 70 year term was adopted and follows on from the amending of legislation to implement Free Trade Agreements (FTA) with the United States. In this respect, the US-Chile Agreement of 2002 set a precedent by requiring that the term of copyright/related rights be not less than 70 years from publication if such publication was within 50 years of fixation, or 70 years from fixation. Columbia, Guatemala, Honduras and Peru are also parties to US FTA's on the same terms.¹²¹

5.1.2. Creation of a Song

The creation of a song usually begins with songwriters. Copyrightable songs are performed by recording artists for recording sessions and live events. The performances of the artists and producers are then captured by record companies in copyrightable sound recordings.

Joint Authorship

Generally, the person who creates the song is the author of that work. In the case of music copyright, the law distinguishes between “musical work” (the song) and “sound recording” (the sound of the sound). This is extremely important because it is very common that the melody is composed by a different artist than the lyrics in order to make a single song. In these cases each owns half of the entire work (instead of one using the rights to the melody and the other owns the rights to the lyrics). But what if the artist is a four-member-band? Then the contribution to the song must be “significant”. Mostly all members of a band make a significant contribution; they all participate in the creation of the recording.¹²²

Works Made for Hire

It is a work when the employer (a label) and not the employee (an artist) is considered to be the owner of the copyright. There is no need for any copyright transfer. The employer owns the copyright for its entire duration.¹²³

¹²¹ <http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/B/4/gowers_cipilreport.pdf>

¹²² Hull, *Recording Industry* 2004. 33

¹²³ <<http://www.copyright.gov/circs/circ09.pdf>>

5.2. Piracy

Piracy is just a response to technological innovations.

The first invention that allowed making copy of recordings was invention of a blank tape. Even then in the 1960s it was not really user-friendly to make a copy of a recording. It required a machine connected to another machine that could reproduce the sound of the recording.

Later with cassette tape people began to dub LPs to cassettes and cassettes to cassettes. Still the process of recording was very time consuming so it was not a case of big money losing for Labels. Exception were the owners of mass-duplication systems. Those pirates had also equipment able to reproduce graphic that could fool the customers. For that reason customers began to pay blanket license fees on the sale of blank media.

When CDs hit Europe, Japan and USA in the early 1980s there was initially no way to copy (burn) a CD. Later the technology advanced and by the end of 1990s almost every computer was equipped with a CD burner. In that era pirates used various CD duplicator that were able to produce tens of CDs per hour. Some serious “entrepreneur” were making thousands of illegal copies of a recording.

A Different Form

Until the end of the 20th century the recordings were pirated physically. That means that there was always a physical media with a recording. Since the invention of the Internet and its penetration in society, since the invention of an audio compression and the invention of different file-sharing software piracy ceased to exist in its previous form. The Internet provides the opportunity to distribute prerecorded music in a different than physical form.¹²⁴

¹²⁴ <http://www.musicbizadvice.com/a_little_history_on_music_piracy%20.htm>

Suicide in 2006

It is obvious that Labels did not like the fact that people can make a copy of a record instead of buying a new one. There were many attempts to protect CDs from unauthorized copying but all failed. To develop a protection was very expensive and it never worked properly. Like in 2002 Céline Dion's CD. Some customers claimed they could overcome the protection by drawing on the disc with a marker – years of development of very expensive protection became useless in few days. The best known copy protection is probably SONY's one from 2006 called eXtended Copy Protection (XCP).¹²⁵ The whole protection worked like this: a customer who bought a CD inserted it into a computer in order to listen to the brand new piece of music; the CD which contained XCP installed a rootkit¹²⁶ without informing the user first. Some users realized that their computers behaved oddly, a computer security expert from Texas found out that it is just because of the rootkit. Thousands of customers began to complain. This was one of the biggest Labels failures. People did not trust CDs anymore and artists were very disappointed. In the short term recalling of more than 47 million CDs costed SONY \$2 million to \$4 million. In the long term it was more than \$50 million and it led to abandonment of Digital Rights Management. Finally the Labels' executives started thinking about how to profit from music with no copy protection but it was too late.¹²⁷ Instead of an epic win it turned out to be an epic failure.

Recording industry officially blame file-sharing as a main reason of recent CDs sell drop. In a music survey in 2009 70% of 1000 respondents aged 15-24 did not feel guilty about downloading music for free and 61% did not feel they should have to pay for the music downloaded from the Internet.¹²⁸

¹²⁵ <<http://www.sonymsuit.com/>>

¹²⁶ A rootkit is a collection of tools (programs) that enable administrator-level access to a computer or computer network. Typically, a cracker installs a rootkit on a computer after first obtaining user-level access, either by exploiting a known vulnerability or cracking a password. Once the rootkit is installed, it allows the attacker to mask intrusion and gain root or privileged access to the computer and, possibly, other machines on the network. A rootkit may consist of spyware and other programs that: monitor traffic and keystrokes; create a "backdoor" into the system for the hacker's use; alter log files; attack other machines on the network; and alter existing system tools to escape detection.

<http://searchmidmarketsecurity.techtarget.com/sDefinition/0,,sid198_gci547279,00.html>

¹²⁷ Knopper, *Appetite* 227

¹²⁸ <[http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20\(c\)%20Marrakesh%20Records%20Ltd.pdf](http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20(c)%20Marrakesh%20Records%20Ltd.pdf)>

5.3. RIAA and Other Protectors of Music Rights

Those that give up freedom for security have neither.

Winston Churchill.

Rights protection societies are the groups that in many countries, and in their own words, protect the rights of artists, distributors and music labels; basically the whole recording industry. In short, these groups collect royalties and financially support the major music companies.¹²⁹ There are many such companies in the world with many different names, but in essence they have the same function. They exist to collect and pay royalties to their members when their music is recorded onto any format and distributed to the public, performed or played publicly, broadcast or made publicly available online. At the end there is a short example of their worldwide contribution to society. Performing rights organizations (PRO) insist on the claim that they protect music and artists and that file-sharing is killing music. But is this really true? In this section and in more detail in the next chapter there are some evidences which prove that music is being killed more by those protectors than by modern technologies.¹³⁰

IFPI

The International Federation of the Phonographic Industry (IFPI) is responsible for international co-ordination of anti-piracy enforcement, technology, lobbying of governments and representation in international organizations, legal strategies and public relations. It represents around 1400 members in 66 countries. It is also the source of market research and information, providing a range of global industry statistics. Its activities are co-ordinated from IFPI's London Secretariat and through offices at regional level in Brussels, Hong Kong, Miami.¹³¹

¹²⁹ <<http://www.riaa.com/whatwedo.php>>

¹³⁰ <<http://www.guardian.co.uk/news/datablog/2009/jun/09/games-dvd-music-downloads-piracy>>

¹³¹ <http://www.ifpi.org/content/section_about/index.html>

RIAA

Probably everybody who has ever read an article about royalty collection societies or copyright infringement is familiar with the Recording Industry Association of America (RIAA). The organization is officially connected with the IFPI. Its members are the music labels that create, manufacture and distribute approximately 85% of all recorded music produced and sold in the United States.¹³² It is very well known for one reason. The RIAA is probably the most energetic royalty collection group. There are many websites, like boycott-riaa.com, who fight against RIAA. These sites claim that the RIAA is just a lobby organization for the recording labels (see the market share of the RIAA members on the US market) and as with many other royalty collectors it slows down technological progress of modern technologies. They say that the RIAA just rips-off musicians.¹³³ While the RIAA claims the opposite. The RIAA also certifies Gold, Platinum, Multi-Platinum and Diamond sales awards.¹³⁴

BPI

British Phonographic Industry Ltd. (BPI) whose members account for 9 out of 10 recordings sold in the UK, is a trade organization that operates in the third biggest music market in the world. They “discuss matters of common interest and represent the British record industry in negotiations with Government departments, relevant unions and other interested parties and to promote the welfare and interests of the British record industry.” In the UK the BPI organizes the BRIT awards show every year since 1989.¹³⁵

APRA

Australasian Performing Right Association Limited (APRA) has administered the performing and communication rights of more than 60,000 composers, songwriters and music publishers in Australia and New Zealand since 1926. Like the other protectors APRA collects royalties.

¹³² <<http://www.riaa.com/faq.php>>

¹³³ <<http://www.boycott-riaa.com/why>>

¹³⁴ <<http://www.riaa.com/aboutus.php>>

¹³⁵ <<http://www.bpi.co.uk/category/about-us.aspx>>

MCSC

The non profit-making social organization Music Copyright Society of China (MCSC) was established on December 17, 1992. It is a legal body in whose name the Chinese music copyright owners exercise their rights by way of collective administration. As it is common, the organization, via contracts with overseas recording labels, represents their interest in the People's Republic of China.

OSA

The Society for the Protection of the Rights of Music Authors and Publishers (OSA) was established in 1919, is licensed by the Czech Ministry of Culture and performs collective administration based on the Czech copyright law and contracts for representation. Thanks to reciprocal contracts with foreign protective rights societies it has a repertoire of more than 1 million foreign authors. The main job of this group is granting permits for the use of works and collecting royalty fees. OSA is one of the international societies of protectors such as the European Grouping of Societies of Authors and Composers (GESAC), whose membership has 34 of the largest authors' societies in the European Union, Norway and Switzerland.¹³⁶ The unpopularity of OSA is demonstrated by the number of sites¹³⁷ and a petition¹³⁸ against it.

¹³⁶ <http://www.osa.cz/e_page3.php?t=7>

¹³⁷ <<http://www.osa-dekujem.cz/>>

¹³⁸ <<http://www.petitiononline.com/antiosa/petition-sign.html>>

5.4. Big Brother's Tools to Fight Against a Free Internet

5.4.1. HADOPI

The French law that allows the music industry to cut repeated copyright infringers off from the Internet is called HADOPI. Supporters of the law thought that it would discourage most people from downloading copyrighted content from the Internet.¹³⁹ The early projection estimated that more than 90% of copyright infringers would stop downloading the protected content,¹⁴⁰ while in practice the current situation since the adoption of the law is different. A new study from the University of Rennes shows that instead of a reduction in the piracy rate, online piracy went up by 3%. To be fair, the new law did have some effect. People changed their behavior; even more than they had in the past, the French started using one-click file hosting services, such as RapidShare, which, unlike P2P, are not covered by HADOPI.

Introducing the “three-strikes” law in 2009 made France the first country in the world to implement such an attitude against file-sharers. Recently many countries have considered similar measures. Currently the UK (DEB – Digital Economy Bill),¹⁴¹ Ireland¹⁴² and Taiwan¹⁴³ have all adopted a similar law. The same law is also under discussion in the USA.¹⁴⁴

The “three-strikes and you are out of the Internet” works like this: the music industry tracks down an infringer and warns the customer three times, after it has given three warnings the customer is reported to a judge. The judge only decides about the penalty. It can be a fine as well as disconnection from the Internet. Is there any presumption of innocence? Not in this case.¹⁴⁵

¹³⁹ <<http://www.diit.cz/clanek/nad-volnym-Internetem-se-stahuji-mracna/28137/>>

¹⁴⁰ <<http://torrentfreak.com/president-obama-discusses-three-strikes-anti-piracy-law-100311/>>

¹⁴¹ <<http://www.guardian.co.uk/technology/2010/apr/08/digital-economy-bill-passes-third-reading>>

¹⁴² <[http://torrentfreak.com/high-court-gives-go-ahead-to-3-strikes-in-ireland-100416/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Torrentfreak+\(Torrentfreak\)](http://torrentfreak.com/high-court-gives-go-ahead-to-3-strikes-in-ireland-100416/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Torrentfreak+(Torrentfreak))>

¹⁴³ <<http://torrentfreak.com/taiwan-bans-torrent-sites-brings-in-3-strikes-for-file-sharers-090427/>>

¹⁴⁴ <<http://torrentfreak.com/president-obama-discusses-three-strikes-anti-piracy-law-100311/>>

¹⁴⁵ <<http://www.edri.org/edri-gram/number7.11/hadopi-application-hurry>>

The result? People changed the way they obtained pirated content; they found it in different places and piracy only increased. Another example of an epic failure of the recording industry; brute force and intimidation fails once again.

5.4.2. ACTA

In 2007 members of World Trade Organization (WTO) began their work on an agreement dealing with the protection of Intellectual Property (IP), which is one of the key competitive initiatives in the Lisbon Agenda. According to the European Commission the main goal of the Anti-Counterfeiting Trade Agreement (ACTA) is improving standards for a more effective fight against counterfeit and pirated goods. Although the discussions about the ACTA began in 2007 and negotiations continued in 2008, the document is still in progress. Since then the agreement has been discussed in many seminars and on countless numbers of occasions in the European Parliament.¹⁴⁶ The coalition behind the agreement likens the piracy to drug trafficking.¹⁴⁷

The ACTA does not only deal with online music distribution, but this thesis is concerned only with this part of the agreement. The whole ACTA could be a topic for a different thesis.

According to the founders of the ACTA, officials from the USA and Japan are seeking new ways to deal with the copyright infringement online, including the very controversial “three-strikes law”. It brings some important and dangerous changes to fundamental principles of Internet law. These two countries propose to abandon the so called “safe harbor” – when an ISP is not responsible for what its customers do with their service. The proposal wants ISP's to police and patrol their systems – the USA and Japan are calling for adopting of global “three-strikes and you are out” policy.¹⁴⁸

¹⁴⁶ <<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/>>

¹⁴⁷ <http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142040.pdf>

¹⁴⁸ <<http://www.guardian.co.uk/technology/2009/nov/11/acta-trade-agreement>>

What is very disturbing, is the manner in which the agreement is being negotiated – all parties involved in the negotiations refuse to make public the plans of the agreement, which prevents any constructive input from the public.¹⁴⁹

"A copyright agreement is being treated akin to nuclear secrets, with virtually no transparency but for a few leaks that have emerged... as a policy-making matter, it's enormously problematic – but then the provisions associated with the treaty are even more problematic." Professor Michael Geist, a prominent legal and the ACTA expert at the University of Ottawa told CBC.

The ACTA suggests the establishment of a new global body, similar to the WTO or the World Bank with the power to override national legal structures.

"The US government appears to be pushing for three strikes – despite the fact that it has been categorically rejected by the European parliament," said Gwen Hinze of the Electronic Frontier Foundation, adding that the draft of the ACTA "confirmed everything that we feared".¹⁵⁰ Fortunately, according to the latest news the European Parliament voted not to approve the ACTA if it contained the "three-strikes" requirements.¹⁵¹

The most startling fact is that the Internet chapter of the ACTA has adopted many of the same policies that anti-piracy lobbyists, lead by the RIAA, have been calling for.¹⁵² The United States "is attempting to export a regulatory regime that favors big media companies at the expense of consumers and innovators," according to Public Knowledge, a Washington, D.C., digital rights group.¹⁵³

¹⁴⁹ <<http://torrentfreak.com/secret-anti-piracy-treaty-turns-isps-into-pirates-091104/>>

¹⁵⁰ <<http://www.guardian.co.uk/technology/2009/nov/11/acta-trade-agreement>>

¹⁵¹ <<http://www.wired.com/threatlevel/2010/04/acta-treaty/>>

¹⁵² <<http://torrentfreak.com/secret-anti-piracy-treaty-turns-isps-into-pirates-091104/>>

¹⁵³ <<http://www.wired.com/threatlevel/2010/04/acta-treaty/>>

Examples of the Trials Led by the Copyright-protection Societies

*...but instead of doing the easy thing, they have their old-fashioned business model! - and sue their customers...*¹⁵⁴

Thomas Middlehoff, the former chairman of BMG

Here are some examples of how the copyright groups sue virtually anyone for digital copyright infringement. A computer is a necessity for digital piracy, why then does the RIAA sue the computer-less?

In 2006 the RIAA lawyers filed a lawsuit against Marie Lindor, a home health aide. Ms Lindor was accused of the illegal distribution of copyright protected music files, although she had never used, purchased or even turned on a computer in her life.¹⁵⁵ Another example from the same year is when the RIAA sued a family that had also never had a computer.¹⁵⁶

In Russia, Veterans of World War II were sued by the Russian Authors Society (RAS) over the singing of a war song at the concert of the 65th anniversary of the end of WWII.¹⁵⁷

There are many other cases when children¹⁵⁸ or those without computers are sued by the copyright protection societies. How can someone be sued for illegal distribution of music via the Internet, without a computer? It is no problem for the almighty RIAA. Recently, after suing thousands of their own customers, the copyrighted protection companies realized that it is not good for their reputation so they have tried to lobby governments to adopt agreements such as the ACTA, DEB or HADOPI.

¹⁵⁴ Knopper, *Appetite* 188

¹⁵⁵ <<http://www.v3.co.uk/vnunet/news/2149712/riaa-sues-pirate-without>>

¹⁵⁶ <<http://www.v3.co.uk/vnunet/news/2154691/riaa-sues-computer-less-family>>

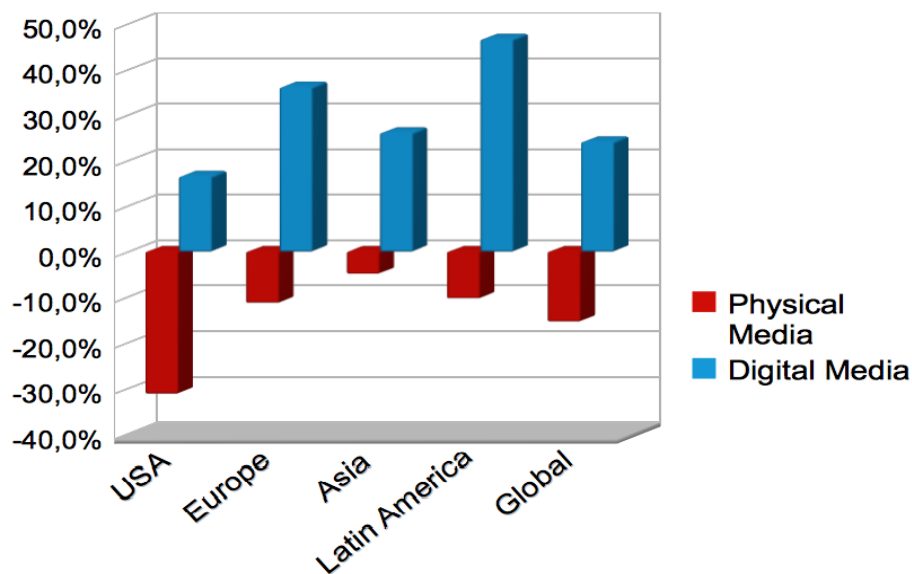
¹⁵⁷ <<http://torrentfreak.com/world-war-ii-veterans-must-pay-to-sing-war-songs-100328/>>

¹⁵⁸ <<http://torrentfreak.com/14-24-years-olds-pirate-8000-music-tracks-each-090810/>>

6. Business Models Suitable for the Music Industry

You are either a digital person or you are gone; digital is not the future – it is today

Without any doubts, the big labels and the whole recording industry need a completely different attitude towards their business – they need to change their way of thinking about how to make a profit when the sales of CD's drop. According to the 2009 year-end shipment statistics, the overall shipment of physical formats is decreasing while digital format's popularity only increases.¹⁵⁹ In the US digital music accounted for 40% of all music purchased in 2009; up from 32% in 2008.¹⁶⁰



Graph 10: Recorded Music Sales 2007-08, percentage change

Source: IFPI

What could be a successful model? The answer is not easy, but, as many surveys suggest, stonewalling new high-tech models and locking up the music content is definitely the wrong way.

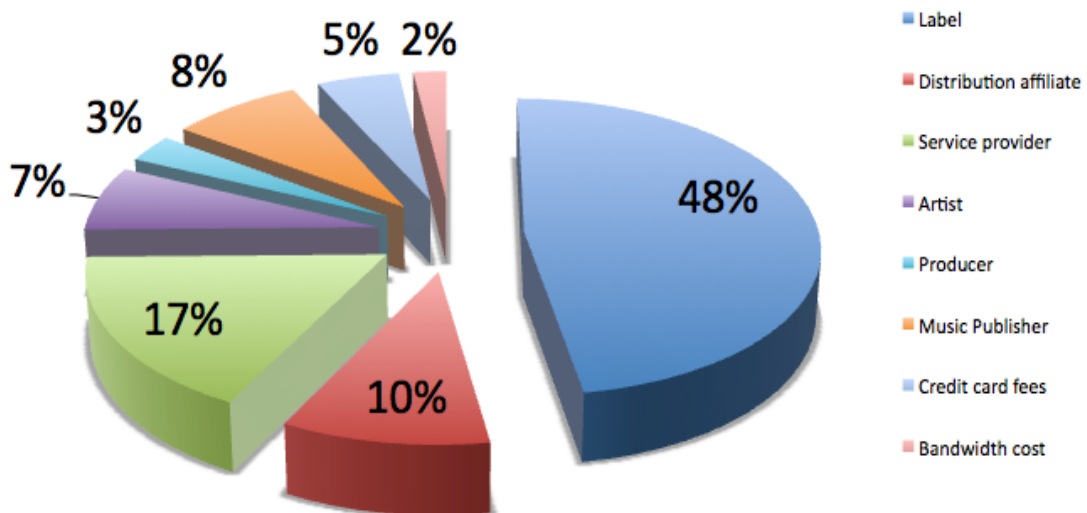
¹⁵⁹ <http://riaa.com/keystatistics.php?content_selector=2008-2009-U.S-Shipment-Numbers>

¹⁶⁰ <http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20100106007077&newsLang=en>

6.1. Software + Hardware=Success

On April 28, 2003 Apple Inc. introduced its digital music store – iTunes. While the Labels were suing Napster, and other file-sharing networks, Apple was developing its own digital music distribution system. Apple's representatives were negotiating with all major labels about the rights to sell music from their catalogues. Some were interested but some hesitated for a while and then realized that nobody else in the market was doing anything in digital music at the time. Apple Inc. insisted on a price of 99 cents for a song. The price for the whole album was set as the number of songs multiplied by 99 cents. Some artists objected to the low price and requested that their singles not be distributed through digital download.¹⁶¹

However, some customers considered 99 cents too high a price for a single. More than 50% of respondents in a survey by Marrakesh Records Ltd. in Great Britain in 2009 said that the price for a single should have been as low as a half of the current.¹⁶²



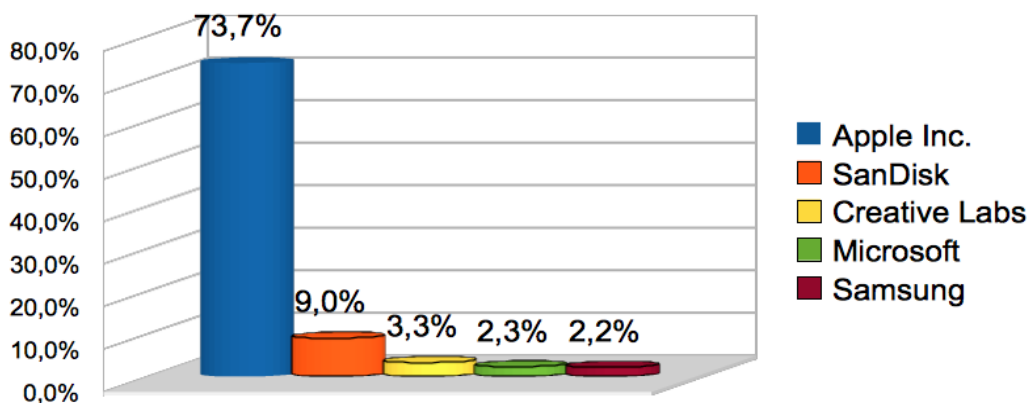
Graph 11: Revenues from a 99-cent download

Source: Garrity, Brian. "Seeking profits at 99 cents", *Billboard*, 12 July 2003, p.1

¹⁶¹ Hull, *Recording Industry* 2004 234

¹⁶² <[http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20\(c\)%20Marrakesh%20Records%20Ltd.pdf](http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20(c)%20Marrakesh%20Records%20Ltd.pdf)>

Two years before launching iTunes Apple Inc. introduced their first mp3 player iPod through its impressario Steve Jobs. iPod brought elegance and style into the market of previously too big or small and useless mp3 players with terrible user interface.¹⁶³ Apple made an exclusive deal with Toshiba, a hard-drive manufacturer. While others were using 2,5 inch HDD, Apple came up with 1,8 inch making the player smaller than its competitors.¹⁶⁴ iPod soon became very popular. The iTunes store helped the iPod's popularity a great deal. From Apple's point of view, the iTunes store was absolutely brilliant because music fans began to buy iPod even more. iPod with prices ranging from \$300 to \$500 was considered by many to be an overpriced audio player. Apple made it an exclusive player for music downloaded in the iTunes music store (without iTunes software on a computer one was unable to transfer music to the iPod player). In the beginning Apple's iTunes worked only on Apple Macintosh platform. Apple Inc. controlled about 5% of the computer's operations systems market and this fact helped when negotiating with major labels chiefs. They simply considered that 5% of the market share could not threaten their interest in the old ways of music distribution. What the Labels did not expect was introduction of iTunes for other platforms. In the fall of 2003 Apple introduced iTunes for Windows based computers. Almost instantly iTunes became the biggest online retailer controlling over 70% of the digital music market.



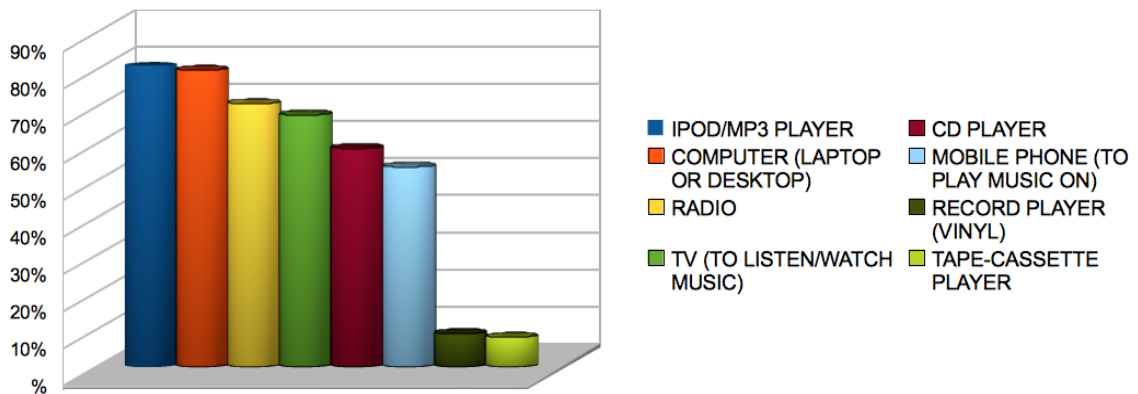
Graph 12: Popularity of mp3 players by manufactures in 2007

Source: <<http://blogs.zdnet.com/ITFacts/?p=12625>>

¹⁶³ <<http://www.ipodhistory.com/>>

¹⁶⁴ <<http://www.ipodhistory.com/ipod-first-generation/>>

Apple did not make much money from the 99-cents songs, it was rather, an additional source of revenue. The point was to use songs to profit from the expensive digital music player. iPods itself generated about \$121 million in revenue for Apple in the third quarter of 2003.



Graph 13: Mp3 players are the most widely used device for music listening
 Source: Youth and music survey 2009 by Human Capital for Marrakesh records¹⁶⁵

Ipod has influenced everything from music to fashion, electronics and computers. Celebrities like Bruce Willis or President Bush and Vice President Cheney were making playlists for their iPods. Thanks to iPod music became an exciting and important cultural item.¹⁶⁶

In 2007 Apple offered all songs from the EMI catalogue without any copy protection. For an additional 30 cents per song users were allowed to “unlock” previously purchased music and all song released by EMI were offered in two versions. For \$1.29 in higher sound quality without any restrictions – songs were playable on any mp3 player or computer or for 99 cents with DRM. This step made Apple's music store even more attractive. Soon all record companies were selling music as DRM-free format through iTunes. By April 2008, more than 4 billion songs around the world were sold through the iTunes music store. Within the next two years another 6 billion songs were sold. On February 25, 2010, the 10 billionth song was purchased and downloaded. iTunes is currently the biggest digital music store with the largest music catalogue featuring over

¹⁶⁵ <[http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20\(c\)%20Marrakesh%20Records%20Ltd.pdf](http://www.marrakeshrecords.com/Youth%20and%20Music%20Survey%202009%20(c)%20Marrakesh%20Records%20Ltd.pdf)>

¹⁶⁶ Knopper, *Appetite* 143

12 million songs.¹⁶⁷ Apple with its iTunes basically took over the music industry. The old-fashioned CD sales, which make up the bulk of the major labels' profits, drops while sales of iTunes singles rises.

6.2. Back to the Future

The major labels spent almost a decade doing everything to lock up songs so consumers could not rip them into mp3s or share them over the Internet. Steve Jobs made the executives think about DRM-free world of music by posting an 1800-word anti-DRM manifesto on apple.com. The first to release most of their catalogue online was EMI, realizing that music without any DRM is the key to energizing the digital business. Napster raised generation of kids who taught themselves how to rip digital music from CDs and share the output of it – mp3s for free online. Within the recording industry EMI's decision was more than disturbing. However, during 2007 Universal Music, Warner Music and SONY BMG made their catalogues available as DRM-free, doing the exact thing that they swore they would never do. After years of refusing something that had already been working, after millions spent on developing digital protections of music files – the Labels returned to DRM-free music.¹⁶⁸

6.3. 360-degree Contracts

With the standard contract, a label will take a cut of CD sales while profits from concert tickets, tours, T-shirt sales, sponsorship and song publishing go to the artists or bands. Recently 360-degree contracts are becoming more and more popular. It is an innovational project based on a contract under which artists and bands sign up to a label and a share in everything that is directly or indirectly related to their recordings. Rather than just putting an artist's work on CDs, a record company partners with the artist (or band) and shares the profits from live performances, merchandising and publishing. With artists like Madonna or Gwen Stefani there are opportunities for perfume or fashion companies. These contracts link various sources of income from different markets, so even if CD sales continue to drop, Labels will still make a profit.

¹⁶⁷ <<http://www.apple.com/pr/library/2010/02/25itunes.html>>

¹⁶⁸ Knopper, *Appetite* 232

- In 2005, Korn, an American metal band, partnered with the most prominent concert promotion company Live Nation and received a \$25 million payment for a 30% stake in all profits.
- In 2007 Madonna left Warner Music, her major label of 25 years, and signed with Live Nation.
- In the same year The Material Girl signed with Live Nation for \$120 million, sharing revenue for music sales, performances, merchandise and the rights to her name.
- In 2008, Nickelback and Shakira, longtime hitmakers signed similar deals with Live Nation.

6.4. Who Needs a Record Label?

“If I die tomorrow, I’ll be happy that we didn’t carry on working within this huge industry that I don’t feel any connection with... it felt very liberating to take complete control.”

Thom Yorke, guitarist and lead singer, Radiohead

At the time when Madonna announced her new deal – a 360-degree contract – Radiohead decided to keep away from the record labels entirely and released their new album as a digital download available directly via their website. The band asked fans to pay whatever they wanted for the album. People paid \$2.26 on average for the album and this generated more than \$2.7 million in profits for Radiohead. This idea, which, in the words of their managers, came up “when they were a bit stoned”, was a stunning success. Regardless of the revenues it brought, it attracted publicity for their 2008 tour.

In the fall of 2007 The Eagles distributed their first studio album in 28 years directly and exclusively via Walmart (digitally) and their website. The strategy paid off when The Eagles sold more than 700000 copies in the first week and more than 2 million by the end of the year.

In the same year Nine Inch Nails announced they would no longer work with their longtime label. They self-released their album for \$5 as a digital download. For fans who preferred the CD format and more elaborate packaging they released the album for anything between \$10 and \$300 (CDs with high-quality artwork, signed by the members of the band). The band manager estimated that NIN made more than five times as much profit off this release compared to what it would have made under the traditional industry system.¹⁶⁹

6.5. Sellaband

"To unite Artists and Fans in an independent movement that aims to level the playing field in the global music industry."

mission statement of Sellaband

The project was launched in August 2006. It is an interesting model introduced by a company based in Germany called Sellaband. With Sellaband artists gain complete ownership of the work they create and it is up to them to decide which incentive they offer to their fans. It is a project that helps to raise money from their fans in order to make a professional recording.¹⁷⁰ Music fans invest money in an artist they want to support. In return fans get such things as unreleased tracks or even trips to the studio. The musicians decide what they will offer to their investors.¹⁷¹ Usually, the bigger the investment, the more special benefits the fans receive. Some artists promise their fans a share of the revenue. If the band attracts enough "believers" to raise \$50,000 the Sellaband will have the band record an album. Sellaband keeps 10% of the money raised. If an artist does not reach 50,000 fans they can choose if they want their money back or if they want to support another artist. Since the project began it has coordinated recording sessions for more than 40 artists.¹⁷²

¹⁶⁹ Knopper, *Appetite* 246

¹⁷⁰ <http://www.sellaband.com/pages/about_us>

¹⁷¹ <<http://musicians.about.com/od/companyprofiles/p/sellabandprofile.htm>>

¹⁷² <<http://techcrunch.com/2008/04/08/sellaband-wins-5-million-in-further-funding/>>

7. Conclusion

In my thesis I have tried make an impression and create a picture of the environment in which the recording music industry operates.

The aim of the thesis is to show how the music recording industry totally missed the bus when modern technologies were developed.

The music recording industry as a whole has not positioned itself well for the changing environment over the last ten years and has failed to anticipate or adapt to the new market place. Instead the major labels insisted on their old-fashioned CDs selling model which is no more profitable than on the scale it used to be in the 1980s. The Labels need to stop messing around with any type of digital management, stop suing customers, reduce digital-track prices and cut unnecessary overheads such as warehouses and crates.

If the major labels cannot figure out, soon, how to make greater profit in the modern age via digital downloads or other means, they may have to sell their catalogues to other companies. Apple or some other visionary company will buy up the assets and, finally, start running the major record labels as high-tech houses. Apple has already shown that with the capability to negotiate licenses for recordings - by selling software (licensed music files) and hardware (music players), a company from outside the recording industry can achieve great success.

“I think that the Internet is going to effect the most profound change on the entertainment industries combined. And we're all gonna be tuning into the most popular Internet show in the world, which will be coming from some place in Des Moines. We're all gonna lose our jobs. We're all gonna be on the Internet trying to find an audience.”

Steven Spielberg

We are all witnesses to how music is becoming a service, not a product.

Summary

Tato bakalářská práce pojednává o situaci, se kterou se potýká hudební průmysl vlivem moderních technologií. Hlavním záměrem je vysvětlit a popsat jak prostředí, tak skutečnosti, které působí na všechny zúčastněné, ať už jde o majitele studií, vydavatelství, textaře či autory samotné. Práce se také snaží o objasnění situace na poli distribuce děl v moderní době.

Takřka všichni se dnes a denně setkáváme s hudební produkcí v různých formách. Hudba je fenomén, bez kterého si drtivá většina z nás nedokáže představit svůj život. V dnešní době hraje internet, a elektronická media vůbec, prim v šíření a distribuci hudby. A je to právě tento nový trend, který vyvolává spoustu otázek, na které nahrávací společnosti a majitelé autorských práv hledají odpovědi ve formě soudních procesů, které jen škodí jim samým, umělcům, ale také fanouškům a v neposlední řadě brání technickému pokroku, tudíž celé společnosti. Tato práce, mimo jiné, nabízí různé odpovědi na tyto otázky, především ve formě představení různých obchodních modelů moderního pojetí distribuce hudby nejen v digitální podobě.

Za počátek nahrávacího průmyslu se dá považovat doba na přelomu století 19. a 20., doba, jež nastala po vynálezu prvních přístrojů (fonografů) sloužících k záznamu zvuku a jeho zpětnou reprodukci. Když byl v roce 1894 představen první jukebox asi málokdo tušil jaký boom to způsobí. Ještě v témže roce gramofonová společnost Emile Berlinera prodala domácnostem více než 1000 „hracích skříněk“ a 25000 7mi palcových hudebních nosičů. E. Berliner byl prvním obchodníkem, který přišel s masovou produkcí gramofonových desek. Nutno podotknout, že tehdejší desky se v žádném případě nemohly rovnat těm takzvaným „dlouhohrajícím“ ze 70. let 20. století. Tyto první nosiče zvuku byly schopny pojmout záznam o délce maximální délce 4 minut a to pouze na jedné straně, zatímco LP z let 70. měly záznam provedený z obou stran o více než 10 ti násobné délce.

Od vynálezu první „hrací skřínky“ uplynulo více jak 60 let než nová technologie – záznam na magnetický pásek – vstoupil na trh s hudebními medii. Další příklad toho, kdy je „válka matkou pokroku“. Počátkem 60. let minulého století začaly tyto audio kazety získávat na popularitě. Stalo se tak především díky jejich snadné použitelnosti. Velkou měrou k tomuto faktu přispělo také jejich využití při přehrávání v automobilech, ale také skutečnost, že takřka každý si mohl pořídit domácí nahrávku, na rozdíl od gramofonových desek, které se prodávaly pouze jako již předem nahrané.

Další hřebíček do rakve gramofonovým deskám zatloukla firma SONY a její vynález z roku 1979 – Walkman, přenosný přehrávač audio kazet. Možnost vzít si sebou hudbu kamkoli a kdykoli způsobila mezi hudebními fanoušky doslova poprask. Touto historií analogového zvuku, od fonografu po audio kazety, jakožto posledního zástupce analogového nosiče hudby se zabývá úvodní kapitola.

Následující kapitola pojednává o struktuře nahrávacích společností a jejich funkcemi a to jak velkých nadnárodních koncernů, tak malých nezávislých společností. Je zde také popsáno, jak se měnilo zastoupení nahrávacích společností na trhu v celé jejich historii. Tato historie je víceméně o tom jak si giganti v tomto oboru předávali zákazníky a diktovali pravidla hry. Jediné světlé období, kdy došlo alespoň k jakési konkurenci je období let padesátých.

Dále se zde čtenář detailně seznámí s prostředím, v němž tyto společnosti operují. Je důležité si uvědomit, že pro prodej hudby je stěžejní především prostředí sociální. V anketě, jež provedla společnost NAMM se více než 80% respondentů vyjádřilo, že hudba zaujímá důležité místo v jejich životě. Ačkoli se hudba může zdát z politického hlediska jako málo či zcela bezvýznamný prvek, měla mnohokrát vliv na úspěch politických uskupení. Například v 70. letech na Jamajce, Mekce reggae, takřka všechny politické strany nějakým způsobem zahrnují tento hudební žánr do své předvolební kampaně, a to i přesto, že Rastafariánství, jakožto hnutí, kterému reggae vděčí za svůj vznik, bylo v té době považováno za okrajovou záležitost.

Tématem další kapitoly je vzájemný vztah moderních technologií a nahrávacího průmyslu. Tato kapitolu začíná tam, kde skončila kapitola o stručné historii analogového záznamu. Nástupce audio kazet – kompaktní disk znamenal opravdovou revoluci. CD sebou přineslo obrovský skok ve směru zkvalitnění záznamu. Laserový paprsek, jakožto snímací prvek vyřadil fyzický styk s mediem a to sebou přineslo markantní prodloužení životnosti záznamového media, která již nedegradovala s každým přehráváním.

Rozšíření digitálních nosičů bylo nezbytným krokem k takzvané komprimaci hudby. Komprimace umožňuje, aby zvukový záznam využíval jen desetinu kapacity oproti klasickému CD. Tento vývoj umožnil například vznik přenosných přehrávačů o velikosti krabičky od zápalek, které zvládly pojmout tisíce skladeb.

Nový formát byl ideálním „mediem“ pro přenos hudby na vlnách internetu, který si tou dobou již vydobyl své nezastupitelné místo v mnoha domácnostech. Toto období lze bez nadsázky označit za začátek konce do té doby zdánlivě neotřesitelné pozice nahrávacích společností. Z počátku totiž tyto společnosti braly internet jako nepřítele (ostatně je tomu tak dodnes). Neviditelná ruka trhu byl pro ně pojmem naprosto cizím. To, co hudební skupiny a fanoušci věděli již dávno, a sice že virální videa (například na serveru YouTube) jim takřka zadarmo udělají mamutí službu. Spousta umělců začala nabízet svou tvorbu ke stažení na svých webových stránkách. Samozřejmě, že se této příležitosti chopili i tací, kteří zakládali servery, na nichž byl ke stažení obsah, jež nebyl autorizován a docházelo tak nelegálnímu šíření, dnes by se spíše hodilo říct propagaci. Mezi nejznámější servery tohoto druhu patřil zejména Napster. Zde došlo k dalšímu fatálnímu omylu. Místo toho, aby nahrávací průmysl zareagoval chytře a koupil již bezvadně fungující systém s miliony zákazníků po celém světě a využil jeho potenciál, postarali se šéfové těchto společností o jeho zašlapání do země. Napster sice v pozměněné podobě funguje dodnes, ale soudní procesy a neustálé tahanice jeho pověst natolik poškodily, že se jedná spíše o minoritní záležitost.

Problémem šíření neautorizovaného obsahu a právními okolnostmi, jakožto i pirátstvím, se zabývá kapitola následující. Autorská ochrana hudebních děl se v jednotlivých státech liší. Jako zástupci jsou vybráni EU, USA a dále např. Austrálii či Singapur.

Existuje mnoho uskupení, jež tvrdí, že chrání zájmy umělců. V praxi se ovšem tato skutečnost liší. Tito „protektori“ spíše brání rozvoji moderních technologií a svými soudními procesy jen podkopávají důvěru veřejnosti v nahrávací průmysl. Nejznámějšími případy jsou ty, kdy je rodina bez počítače nebo osoba, jež počítač nikdy nevlastnila, nepoužívala ba ani nezapnula obviněna z nelegálního šíření autorsky chráněného obsahu. Pomyslnou třesinkou na dortu jsou lobbistické zájmy těchto zpátečníků (různých ochranných svazů autorských) o prosazení špehovacích dohod jako je například francouzské HADOPI či mezinárodní ACTA, jež znamenají jen a pouze omezování svobodného přístupu k internetu.

Již několik let je více než jasné, že vzhledem ke stále klesajícímu množství prodaných fyzických nosičů a naopak stále rostoucímu prodeji hudby v digitální formě, musí nahrávací společnosti přestat tvrdošijně trvat na obchodním modelu z minulého století. Je třeba si uvědomit, že svět se od 80. let změnil, je třeba, aby si tyto uvědomili, že volné šíření hudby je prostě fakt a žádné překážky tomuto trendu nezabrání. Lidé se již naučili používat moderní technologie natolik, že jakákoliv omezení jsou vzápětí překonána. Navíc bylo několikrát prokázáno, že to, co skutečně zabíjí hudbu není internet, ale nadnárodní ochranné a nahrávací spolky. Poslední kapitola na několika příkladech demonstruje, jaké jsou nové trendy na tomto poli, jak lze stále vydělávat hudbou i v době internetového přístupu k hudbě. Časy, kdy těmto společnostem přinášely nemalé zisky prodeje předražených naleštěných krabiček v plastických obalech jsou ty tam. Jasným důkazem budiž firma APPLE, která se svým internetovým obchodem s hudbou, iTunes, zaujímá čelní místo v této branži. Podařilo se jim totiž to, co nikomu předtím, přesvědčit šéfy největších firem nahrávacího průmyslu o uvolnění licencí na jejich hudební katalogy. Zákazníci tak získali přístup k milionům skladeb online a za cenu 99 centů si mohou pořídit 1 skladbu, cena celého alba je pak dána počtem skladeb na albu. Nastalo tak to, po čem hudební fanoušci již dlouhou dobu

marně volali, a sice po možnosti koupit si jen ty skladby, o které mají opravdu zájem. Společnosti APPLE se podařil brilantní obchodní kousek. Ačkoli má zisk na jedné skladbě „pouze“ 20 centů („pouze“ proto, že za celou dobu existence tohoto obchodu se prodalo více než 10 miliard skladeb), je to pro ni obrovský business. Tato společnost totiž prodává také vysoce ceněné hudební přehrávače hudby – iPod. Tyto přehrávače ve spojení s internetovým obchodem přináší společnosti nejen obrovské zisky, ale také prestiž na veřejnosti. Jak se říká „když se dva perou, třetí se směje“. Zatímco společnosti jako Warner music, Sony BMG, EMI apod. Utráceli za právníky a mnohdy zbytečné ochranné technologie na ochranu před kopírováním, APPLE, společnost se zcela jiným zaměřením převzala otěže a těší se takřka neotřesitelné přízni hudebních fanoušků.

Dalo by se říct, že vliv moderních technologií na ekonomiku nahrávacího průmyslu byl zdrcující, ovšem je třeba dodat, že toto fiasko není způsobeno nikým jiným, než společnostmi samotnými.

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Annotation

Author: Marák Petr

Department: Department of English and American Studies, Philosophical Faculty

Title: Technological Impact on the Economics of the Recording Music Industry

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Keywords: Music Industry, Recording Industry, Copyright, File-sharing.

The main aim of this work is an analysis of distributing a promoting of music in the age of downloading. This work will describe and compare methods used in recording music industry (music publishers, producers, studios, record labels, retail and online music stores, performance rights organizations etc) in selling, distributing. The work will contain comparison on situation in the Czech Republic, Asia, Europe and USA. And because recently we are witnesses of many law suits taken in the name of protecting artists the work will imply at least a chapter how music industry misses mark with wrongful suits. At the end of the paper different business models of distributing and promoting music will be mentioned.

Anotace

Autor: Marák Petr

Název katedry: Katedra anglistiky a amerikanistiky, Filozofická fakulta

Název diplomové práce: Vliv moderních technologií na ekonomiku nahrávacího průmyslu

Vedoucí diplomové práce: Joseph James Ference, J.Dr

Počet znaků: 102 657

Klíčová slova: Autorská práva, šíření hudby, hudební nahrávací průmysl

Tato práce se zabývá problematikou vlivu moderních technologií na ekonomiku nahrávacího průmyslu, jeho historií, problematikou šíření hudby v moderní době. Dotýká se také problematiky autorsky chráněných děl a také právní otázkou těchto děl. Shrnuje největší omyly nahrávacího průmyslu a na závěr nabízí několik možností řešení tohoto problému.