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Ethics and the Music Industry: Can Technical Communication Offer Insight to the War on Digital Music Piracy?

Abstract

The purpose of this essay is to explore ethical situations that occurred during the height of the age of digital music piracy. Specifically, the scenario involved within this essay review the historical aspects of how the invent of online service providers (OSPs)—also known as peer-to-peer (P2P) file sharing providers—contributed to the rise in digital music piracy, the Recording Industry Association of America’s (RIAA’s) involvement with digital music piracy, and how users and OSPs were prosecuted in order to ignite a discussion about the egotistic ethicality associated with the interactions among various stakeholders in the situation, such as music fans, OSPs, copyright owners (i.e., musicians, songwriters, etc.), and trade organizations such as the RIAA. Lastly, this essay will offer suggestions for improving the current state of affairs by proposing that ethics of care be applied to the situation and by hiring technical communicators to serve as neutral yet impactful facilitators of regulations.

*Keywords: music piracy, Recording Industry Association of America (RIAA), peer-to-peer (P2P) file sharing, technical communication*

**Introduction**

Music piracy as we know it today is a derivative of piracy techniques that were used in the past. In the 1960s, a method known as home taping allowed people to pirate vinyl records by recording the audio on a cassette recorder. Today, DIY projects that enlist silicone rubber and casting resin have made it easy for people to produce copies of vinyl records. Over the years, innovative techniques have been used to give listeners music at little or no cost to them. Anti-copyright infringement campaigns have been launched to offset decreases in sales and to prohibit the downfall of major record labels’ profitability. At the same time, organizations have formed to protect the rights of users in terms of digital file sharing. This has resulted in many rhetorical conversations associated with the ways in which music is distributed and exchanged. Digital music piracy has been a hot topic since the inception of online services that allow users to upload and download virtually any song.

Many questions related to digital music piracy have been asked. Why do users pirate copyrighted musical works? Why do record industry-based organizations pursue seemingly harsh legal actions against everyday people? Why don’t more people know the laws and regulations associated with digital music piracy? How can the visibility and influence of said documents be augmented? What can be done to resolve the problems with the current way in which digital music piracy is handled? The purpose of this essay is four-fold. I will examine the history of digital music piracy as it existed during its most critical years and attempt to determine the ethical approach that was being followed during this time. I will also suggest an alternative ethical approach that could potentially improve the future of digital music piracy as it exists today and offer strategies to facilitate a state of improvements that can be carried out effectively by technical communicators.

**The War on Digital Music Piracy**

The Recording Industry Association of America (RIAA) was established in 1952 as a trade organization that set out “to protect intellectual property rights and the First Amendment rights of artists; to perform research about the music industry; [and] to monitor and review relevant laws, regulations and policies” (**Recording Industry Association of America**). The organization takes a firm stance against the illegal procurement of music in all available formats as well as the services that facilitate this type of acquirement. A major platform that the RIAA has been associated with is its involvement with the legal actions that have been taken against peer-to-peer (P2P) file sharing systems, a groundbreaking technology that has not only permanently changed how music is distributed and how fans expect to be able to obtain music, but it has also left an impact on how the intellectual property rights of artists, songwriters, composers, record labels, and other music industry-based stakeholders receive compensation for their work.

For many years, the existence of the RIAA went largely unnoticed by the general public; however, the increase in the popularity of and the use of the Internet in terms of social interactivity resulted in a shift in media as far as how music was legally acquired changed this dynamic. Files from compact discs (CDs) could be copied and stored on personal computers, but the creation of online music sharing software made way for digital music files to be essentially distributed at no cost to users, leaving the profits of music industry workers dwindling. Because of this, the RIAA initiated a war on digital music piracy.

The Internet’s ability to empower users with means for bypassing copyright infringement roadblocks that we once impassable on a large scale prompted federal regulations to be created in order to address the problems with the infringement of copyrighted work. Laws such as the No Electronic Theft (NET) Act of 1997 and the Digital Millennium Copyright Act of 1998 both actively sought to combat the illegal trade of copyrighted material by threatening lawbreakers with extravagant fines, significant jail sentences, and mandatory payments of statutory damages amounting to fifty-percent per illegally acquired copy—an amount that had the potential to force copyright infringers to pay hundreds of thousands of dollars per song (Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code). These amendments to the Copyright Law of 1976 sought to address the change in media as the turn of the millennium approached, but it wasn’t until after the establishment of Napster in 1999 that the RIAA and its affiliates decided to pursue more stringent legal actions against violators of the regulations as they pertained to copyrighted musical works.

On June 1, 1999, a peer-to-peer file sharing program infamously known as Napster was founded by teenagers Shawn Fanning and Sean Parker (Nieva, 2013). Not only did this software create an open exchange of music that did not involve paying for digital music files, but it also resulted in detrimental declines in music sales and prompted the RIAA to take action. Shortly after Napster’s inception, the RIAA began filing high-profile lawsuits against the companies that were providing these P2P services and against the users of these software programs (Electronic Frontier Foundation, 2008). In all, the organization’s strategy involved three main goals: to shut down and seek damages from P2P sharing services, to require Internet service providers to provide contact information for accused users using their IP addresses, and punish uploaders of P2P-shared files with fines, jail time, and monetary penalties.

In its efforts to eradicate the piracy issue, the RIAA has been accused of employing piracy-detection tactics known as P2P decoying, trawling, or spoofing that place dummy users in P2P networks in order to locate copyright infringers for prosecution (Banerjee, A., Faloutsos, M. and Bhuyan, L., 2008). Whether this specific accusation was used or not, RIAA admits that their piracy investigators conducted research to locate users who were guilty of uploading illegal music files (**Recording Industry Association of America**). This phase of the RIAA’s anti-piracy efforts reached a standstill because of the roadblock created when it was determined that specific contact information could not be obtained from an IP address alone. Thus, the RIAA shifted its efforts and subpoenaed Internet service providers (ISPs) and required them to provide the identities of the people associated with the Internet bills in order to file suit against them. They were able to do this because of a clause in the Digital Millennium Copyright Act (DMCA), and amendment to the Copyright Act of 1976 that was put in place by RIAA lobbyists that enabled copyright holders or authorized parties like the RIAA to ask district court clerks to issue subpoenas that would require ISPs to release the identities of infringers without needing to obtain a judge’s ruling beforehand (Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code). Opponents of this clause ultimately had it overturned, stating that it invaded the privacy rights of users (Electronic Frontier Foundation, 2008).

Lawsuits against individual users took place between 2003 and 2008 (Kain 2012). During the early days of the suits associated with the ISP subpoenas, reports describing ungrounded accusations appeared. Such cases involved suits being filed against children, elderly people, people who did not own computers, and even the deceased (Electronic Frontier Foundation, 2008). Defendants who did not confess to committing the accusations usually settled outside of court or received default judgments against them for not responding to the summons. The RIAA continued to pursue legal actions against those who infringed the copyrights of the recording industry members that they were representing. Eventually, the organization deserted its mass suits tactics and refocused their efforts on implementing settlement programs to replace them (National Public Radio, 2007). The current strategy for combatting digital music piracy is to notify infringers of their infractions by requiring ISPs to mail copyright notices that strive to “[to educate and notify downloaders](http://riaa.org/toolsforparents.php?content_selector=resources-music-copyright-notices) in advance that they are breaking the law and could face more serious consequences” (**Recording Industry Association of America**). Although the current state of digital music piracy has been explained, there are several ethical situations related to the actions that were taken that are worthy of consideration.

**Ethical Considerations**

The situation between the RIAA, its affiliates, P2P file sharing service providers, and users who procured digital music files has many ethical aspects that are worthy of consideration. For the purposes of this essay, it is important to note that sides are not being taken in this analysis; instead, this will serve as a simple review of the ethical complexities associated with the scenario in order to attempt to reach a more plausible solution from an ethical perspective. To begin, one of the most visible situations deals with the ethics involved with users downloading digital music files without paying for them or by paying for the P2P sharing service, which does not pay copyright holders (Electronic Frontier Foundation, 2008).

The next ethical situation deals with the facilitation of copyrighted musical works that P2P sharing services engaged in. Although these online service providers (OSPs) were not providing the actual copyrighted content, they were providing the platforms on which users could upload and download the digital music files for illegal distribution. Not only that, but applications such as Kazaa offered their services for a fee—none of which compensated the artists or other record industry affiliates who owned the copyrighted material. Monetary exchanges solely recompensed the OSPs for their applications and “ad-free searching” (Brescia University, 2011). The RIAA also sought legal action against OSPs such as Napster, KaZaA, and Limewire and fought to have them prosecuted to the fullest extent of the law and put out of business.

Similarly, the RIAA also took legal actions that forced the figurative hand of Internet service providers (ISPs), who, unlike OSPs, only provided the connectivity for P2P file sharing rather than the file sharing service itself. Not only were the ISPs subpoenaed and ordered to provide the RIAA with (previously anonymous) contact information so that the trade organization could match it to the IP addresses that they had marked as being in violation of established copyright laws, but this was also problematic because the lawsuits were filed against the person whose name appears on the bill associated with the IP addresses unless the owner of the specific username admits to being the P2P file sharer (Electronic Frontier Foundation, 2008).

Once the RIAA successfully short down several OSPs and acquired the necessary information from ISPs, the organization took action against individual users. From these individual lawsuits, the RIAA sought to be awarded reparations—monetary amounts that many users would most likely never be able to easily afford. In order to analyze these scenarios from ethical perspectives, two ethical theories will be considered in great detail in order to ascertain where this situation existed during the time that these occurrences took place and to offer suggestions as to what ethical approach is the most suitable for improving the future of how issues associated with music piracy are handled.

**Ethical Egoism.** Andrew Kernohan (2012) explains that under the terms of ethical egoism, “people should always act in their own self-interest [and] they are morally obligated to do what is best for themselves” (p. 41). In other words, people should not be concerned with the interests of any other person or thing other than themselves. It is not common for ethical egoism to be attributed to the behavior of humans in its purest form (i.e., never taking the interests of others into account under any circumstances), but Kernohan does assert that governments commonly exhibit the characteristics associated with pure ethical egoism (p. 41). Companies and other business organizations are commonly recognized for following the terms of ethical egoism. According to Dr. Claus Stru Frederiksen and Dr. Morten Ebbe Juul Neisen (2013), “[companies] focusing solely on profit maximization seem thus to be acting in accordance with ethical egoism”. In Kernohan’s explanation, he makes a point to mention that people “behave as ethical egoists” whereas nonhuman entities can “behave like ethical egoists” (p. 41). This word choice presents very powerful ethical implications that will be expounded upon shortly.

Moral standing is another layer of ethical egoism that must be analyzed before the ethical relationships among the parties in this analysis can be addressed. Kernohan states that “an entity has moral standing if [one] must consider it or its interests for its own sake when…making an ethical judgment” (p. 8). He goes on to say that “[if] an entity has moral standing, then [one] must think carefully about [one’s] duties toward it, or [one] must be careful about the consequences of [one’s] actions for its health and welfare” (p. 8). One last point that Kernohan establishes is that entities can possess moral standing “only if [one’s] ethical concern regarding the entity is for its own sake” (p. 8). To refer back to the statement regarding Kernohan’s word choice as he explained how governments could “behave like ethical egoists,” if governments and similar organizations can only “behave as” rather than exist as ethical egoists, are they capable of possessing moral standing (p. 41)?

With this information, it seems as if ethical egoism could effectively describe the ethical dynamic of the aforementioned scenario about digital music piracy; however, there are flaws that exist in the claims that ethical egoism is the appropriate ethical approach to analyze the issues concerning digital music piracy. An ethical egoistic approach accurately explains the logic behind how these involved parties behave. Users who engage in P2P file sharing to obtain copyright digital music files seem to disregard the other parties that exist within this scenario. Rather than pay for each song and using legal means of obtaining them, many users, for whatever reason, choose to either view this as an acceptable act as long as their desires are met or because they do not believe that their actions are wrong. Users can exists as ethical egoists if they a) feel morally obligated to act with their own self-interests in mind—an example of strong egoism, or b) feel that it is morally permissible to take advantage of the available means. Users also possess moral standing as ethical egoists because they are sentient and concerned with their ethical self-interests. With these precedents, can it be said that the RIAA can have moral standing as well?

The RIAA is an organization comparable to a government system that is capable of “behaving as” an ethical egoist (41). It can be said that the RIAA has the ability to behave as an ethical egoist because its efforts to combat digital music piracy are essentially to ensure that it remains a profitable and necessary establishment within the music industry. The RIAA exhibits ethical egoistic characteristics because if artists and record labels aren’t making money, then the RIAA can potentially go out of business if its “employers” are not making a profit. Although evidence that ethical egoism accurately describes how these parties interact with each other and make decisions, ethical egoism seems to miss the target in terms of resolving the problem. Instead of existing in a situation where every group seeks to consider its own interests over the interests of everyone and everything else around it, it makes more sense to employ an ethical approach that seeks to address the needs of all involved parties in the best and most fair way possible. To do this, ethics of care should be considered.

**Ethics of Care.** According to Paul Dombrowski (2000), an ethic of care “advocates an interdependent relationship of caring among equals that is mutually satisfying to all parties” (p. 64). By doing so, situations that involve ethics of care are explored with hopes of finding a middle ground in which all involved parties can coexist in a civilized, even peaceful manner. With ethics of care, decision-makers “[strive] to act in a way which shows caring concern to all involved parties—no one ‘wins,’ no one ‘loses,’” (Ross, 2012). Since the RIAA, record labels, musicians, other copyright owners, and users (also known as fans) are all necessary groups that allow the economics involved with the music industry to stay afloat, an ethical model that seeks to reach a compromise can successfully create a harmonious interactive environment for each party to exist in. Because the needs of all involved parties have to be met, an ethical solution that involves forming a compromise rather than determining an explicit winner would be the best choice for this specific situation.

Self-interests of all parties are the basis of ethical egoism. On the contrary, with ethics of care, entities are morally responsible for parties other than themselves. Joan C. Tronto (2001) offers four phases of care: “caring about,” “caring for,” “care giving,” and “care receiving,” (p. 62-63). Each of these phases can be translated into four non-healthcare-related phases: attending to the needs of other stakeholders, assuming responsibility (i.e., being held responsible for one’s actions), competence, and responsiveness. Rather than the RIAA solely protecting their own needs (and, possibly inadvertently, the needs of the record labels and artists that keep them employed), it would have to also consider the needs of other stakeholders within the war on digital music piracy.

An example of the second phase can be seen in a situation where P2P file-sharing users accept responsibility for their actions without seeking pity. This could also potentially involve making sure that every user completely understands the terms of use and the consequences of their actions, which is an area covered by the third phrase of Tronto’s ethics of care: competence.

In order to successfully follow this ethical model, it is crucial that all stakeholders are competent in their knowledge about the rules, regulations, and consequences associated with digital music piracy. This calls for action to be taken to see that all involved parties—users and OSPs in particular since they are the ones acquiring and facilitating illegal digital music downloads, respectively—are as knowledgeable as they can be so that they can behave properly in the exchange.

Tronto’s last phase of care as it relates to digital music piracy requires that involved parties respond to the actions that take place. An open line of communication must exist in order to assess the status and effectiveness of the ethics of care model and to address any obstacles or difficulties that may arise and prohibit stakeholders from carrying out the first three phases effectively.

A downside to this ethical model deals with the RIAA’s non-humanness. As previously mentioned, many governments (or organizations in this instance) can conduct themselves as ethical egoists that seek to appeal to their own self-interests. Under an ethics of care model, however, the RIAA would have to behave more humanistically in order for an ethics of care approach to be successful. The intentions of this would not be to weaken the RIAA, but it would allow the ethical model to flourish if all parties seeking a compromise were on somewhat of an even playing ground. By adhering to an ethics of care, it would not be farfetched to believe that the state of digital music piracy would improve.

As the preferred ethical model for improving the state of digital music piracy, standards of ethics of care specifically created for the stakeholders in this scenario would need to be created to ensure that a favorable compromise that would effectively “ameliorate majority/minority, win/loss structures” could be obtained (Ross, 2012). Currently, policymakers, lobbyists, and other parties associated with the legal industry work to create laws, acts, and amendments to laws that citizens and organizations can and should follow. Users, OSPs, and record industry stakeholders are expected to abide by these documents, but often they are not referred to unless there is an issue of concern. Rather than seeking information from documents such as the Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code, which exists as a 366-page book, information should be provided as an instructional document from which readers can learn. By viewing copyright regulations in this manner, instances where copyright infringers state that they were unaware of their legal wrong-doings could become moot statements. The RIAA maintains an updated sections of its site dedicated to informing readers of the law; however, the problem with this is that the RIAA can be viewed as an enemy or a biased information provider given its invested history of opposed views toward digital music piracy. In order to avoid losing the attention of necessary target audience members, these new documents would have to be created and hosted by a neutral party and make the document(s) accessible to and understandable for all involved parties.

**Technical Communication and Music Industry Ethics**

The situation concerning digital music piracy has been evaluated under two distinct ethical lenses. The next step involves taking action to reach a solution to improve the current state of affairs related to this complex topic. Since it has been established that an ethics of care would be a favorable approach to take in order to resolve the matter, how can this be implemented? If the current order of operations with the situation’s stakeholders has possibly reached a productivity stalemate, then including a group of workers that has traditionally lied outside of the realm of the industry could help facilitate change. Complementing the existing dynamic with people who specialize in “[making] information more useable and accessible to those who need that information, and in doing so, [advancing] the goals of the companies or organizations that employ them” (Society for Technical Communication). Technical communicators, who do just that, would be exceptional additions to these dynamic relationships. Incorporating technical communicators into the situation is one solution that could assist an ethics of care in improving the implementation of music copyright policies.

Technical communicators work with data obtained from subject matter experts and structure them in ways that accomplish the goals of the main organization while making the information understandable for all users (i.e., clients, users, etc.). If documents are understandable, then the likelihood of misunderstanding has the potential to be drastically reduced. Even if every person who legally or illegally allocates music files via the Internet does not refer to the federal documentations regarding these policies, the record labels themselves could employ technical communicators in positions where they would be responsible for creating resources that could be used by all stakeholders to obtain information regarding music copyright infringement and the procurement of digital music files without being obscured with legal jargon or existing in complex formats. The neutral common ground on which technical communicators could position their work could be as simple as a web site. The Copyright Law of the United States in its entirety is available at www.copyright.gov. The site name effectively informs users of the type of information that can be found on the site, and the .gov top-level domain name also lets users know that it is an official government web site. Although it is easy to find the complete code underneath the Law and Regulations header, the html and PDF versions of the code can be overwhelming and most likely does not exist in the most usable format for users to learn from. If the music industry chooses to hire technical communicators to act as web content managers for educating the public as well as providing resources for record industry workers in a site similar to www.copyright.gov but with more attention paid to the readability and pedagogical goals of presenting the information, then digital music piracy could significantly decrease theoretically.

Technical communicators can also work with other departments such as marketing to raise awareness that would reach a compromise for all parties involved in this situation. Another problematic element associated with www.copyright.gov and resources concerning digital music piracy is that knowing that trustworthy educational documents exist can be tricky. In order for the information to reach the maximum number of people and organizations, these people and organizations need to know that it exists. Technical communicators with experience in document design can assist in marketing and advertising departments to design impactful documents online and in print that succeed in promoting the resources, expanding the knowledge associated with the content, and offering text that meets the needs of all involved parties. These are only a few areas in which technical communicators can help facilitate ethics of care so that it helps produce an efficient compromise regarding illegally copying and distributing of digital music files. One advantage of technical communication as a field is its adaptability, meaning that technical communicators can employ their knowledge and skills in a wide variety of areas, such as “Trainers and E-Learning Developers,” “Information Architects,” “Usability & Human Factors Professionals,” and “visual designers” –all of which could be employed to aid in improvement efforts related to digital music piracy (Society for Technical Communication).

**Conclusion**

A historical overview of the scenario related to digital music piracy as well as an in-depth discussion of ethical considerations have been analyzed in this article. Will an operative solution be attained? The answer to this question lies in how matters are handled here on out. In order for the piracy issue to reach an ethical solution, efforts from all involved parties will have to be restructured. Accountability, responsiveness, competence, and acknowledgement of the needs of each stakeholder through the application of ethics of care will need to be carried out in order to ensure a fair compromise to how digital music piracy issues are handled.

Hiring technical communicators to assist with this implementation also has the potential to be advantageous all around. Users will be informed of the regulations associated with legal and illegal P2P file sharing in a more efficient manner and copyright-holding record industry workers as well as the RIAA will be able to have their own individual needs addressed properly.

Keeping an open dialogue so that suggestions for improvements can be addressed immediately is also a vital component to the value of applying ethics of care to this situation. By doing so, the integrity of all associated groups can be upheld and the realm of digital music distribution and exchange can be a more progressive and unbiased domain for fans and record industry affiliates alike.

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