

Only if Diversity Survives

For many people music is an integral part of life. Music has been around for probably as long as humans have been around, long before radio or the Internet. It has the ability to affect our moods and the way we think and act. Music in some societies is necessary to perform important rituals. It can define a generation. For all these reasons, the sanctity of music should be protected, and as of right now it is not. Music today, for most people at the top of the music industry, has become solely a commodity. As a result America's young people have become desensitized to its affect and power, further seeing it only as a commodity. Corporate level greed has helped shape a culture of youth in America that struggles to find the value of lesser-known artists and believes that the songs they hear over and over on their local pop stations are valuable songs. These same songs encourage an attitude of self absorption and a belief system rooted in monetary gain as the only means of life fulfillment. The music industry needs a restructuring to allow greater diversity in music genres heard by America's youth. Internet radio has the potential to reshape society's perception of music and has already become a bigger part of everyday life. However, copyright law has a stranglehold on this new media, and puts it in danger of becoming another cog in the money-churning machine at the expense of America's youth. This paper explains the benefits of non-interactive webcasting, how copyright law obstructs its full potential, and a suggestion for how copyright law can be altered to benefit society and the music industry.

Non-interactive webcasting became an asset to the music industry with the passage of the DMCA. The DMCA set up a compulsory licensing scheme that allows record companies to "realize a new revenue stream from royalties paid by online

broadcasters” for the performance right of the sound recordings being aired (Phelps, 2001). This new income source allows record companies to profit from all their artists, not just the popular ones. Online non-interactive radio “act[s] as advertising for obscure artists and promote[s] album sales,” benefiting the record company and the artist (Delchin, 2004). It is also an excellent outlet for promoting artists globally because the Internet has a powerful reach. “In 2007, 17.8% of the world's population used the Internet” (Connely, 2008). A larger audience makes it more likely that people will buy albums and artists will get greater recognition.

Aside from royalties, non-interactive online radio benefits record companies in other ways. Record companies can create their own webcasting services and only play music by artists they produce, further increasing music sales. Some record companies have already started to use this powerful distribution tool. “MusicNet (a co-venture between Real Networks, AOL-Time Warner, BMG and EMI) and PressPlay (a co-venture between Yahoo, Microsoft, Sony and Vevendi-Universal)” are two online stations created in part by the major labels. (Rose, 2002). Not having to pay an outside vendor to broadcast their music, record labels will promote their lesser-known artists, thus increasing music variety and generating revenue through ways that traditional broadcast radio does not allow. They can also “save a portion of the estimated \$150 million a year they spend to obtain commercial broadcast radio airplay” by utilizing Internet radio’s capabilities (Magri, 2003). Perhaps record labels will be less likely to participate in payola practices if they are gaining revenue from all of their artists rather than from a few select artists.

The recording industry is not the only beneficiary of non-interactive Internet radio, the public benefits as well. One of the greatest features of non-interactive webcasting is the music diversity it offers. It “has the ability to provide listeners with much greater music variety than over-the-air broadcasts” not only because more artists have the opportunity to have their music aired, but also because space on the Internet is unlimited, whereas the airwave frequencies are not (Fessler, 2003). Diverse music is important for the public because it exposes people to different ideas, which facilitate personal growth and an open mind, something today’s youth needs. Among these different ideas are those that are held by different cultures. Since webcasting has global capability, “webcasters can play to the niche audiences, rather than appealing to the average listener in the local area”(Reid, 2004). Many niches encompass specific cultural music, and anyone around the world can listen. Since music is an expression of cultural ideals and values, exposing people to different cultures’ music moves society in the direction of increasing cultural awareness, a necessary process to advance peace in our increasingly interdependent world. Such diversity may generate a better value system, contrary to the one that traditional pop radio fights so intently to maintain.

Traditional broadcast radio’s repetitive nature has desensitized people to music possibly resulting in piracy. If people are constantly listening to music with little inherent worth then why would they feel an guilt for downloading it illegally? Internet radio, however, can potentially have the opposite effect. “A recent study shows that consumers who use streaming media bought more than 1.5 times the number of CDs in the past year than the average American” (Fessler, 2003). Since Internet radio has grown considerably since 2003, it is likely that these statistics have increased, if not direct CD sales then MP3

downloads. Perhaps non-interactive webcasting's wider music assortment will encourage people to value music enough to actually buy it. Webcasting also makes it easier for listeners to buy music because online stations display the album and artist information. Many sites now "include a picture of the album cover artwork as well as a 'click-to-buy' button," making legally buying the music a click away (Magri, 2003). Additionally, Internet radio eliminates the annoying process of trying to figure out the name and artist of a catchy tune. Non-interactive Internet radio can and does alter our ideas and actions, just as any other media does. Breaking out of the mold of the same old with Internet radio, perhaps the disoriented value system of America's youth can be altered.

While non-interactive Internet radio serves in the best interest of the public, it also offers something for advertisers to gain. With its almost limitless reach advertisers can target broad, or narrow markets because of webcasting's ability to identify specific groups. "Internet radio makes it possible to surgically target an upscale, technology-savvy and increasingly multicultural demographic in a quantifiable or so-called 'measurable' fashion" (Magri, 2003). A powerful tool, advertisers can use their money effectively and gain desired results while spending less time and money on demographic analysis. Effectiveness will also increase because advertisements can be visual and auditory, making them more memorable. Moreover, it is less expensive than advertising on traditional radio. Since it "is a relatively new medium companies and advertisers can purchase advertising spots for a fraction of what it [normally] costs" (Magri, 2003). Overall, there are not many disadvantages to non-interactive webcasting. The recording industry has something to gain, as well as the public and advertisers. As our world

becomes increasingly more digital and our wireless capabilities continue to grow, Internet radio will inevitably assume a larger role in society.

Exactly what role and how Internet radio's capabilities are utilized remains unknown as current copyright law is counterintuitive to a productive radio system. The current statutory royalty rate set out by the CARP agreement does not foster an environment that would allow small non-interactive webcasters, the ones that offer the greatest diversity, to survive. "Most webcasters earn little to no revenue from their transmissions and argue they will be forced to shut down operation because they cannot afford the royalty payments" (Jackson, 2003). As many small webcasters drop out of the market, those Internet stations that have corporate backing will begin to dominate the market. "KPIG, the first commercial FM radio station to stream its programming over the Internet, announced in July, 2002, that it was going to suspend its Internet simulcasts because it could not afford to pay the webcasting royalty fees. Following this announcement, in September, 2002, KPIG returned to the Internet, not as a free Internet radio station, but rather as part of Real Networks' subscription service" (Magri, 2003). Although KPIG is a simulcast station being bought out, it reflects the detriment of the high rates especially since simulcast stations usually have a greater chance of staying afloat because they have a larger revenue stream from their traditional broadcasting side.

Furthermore, the established rates do not reflect an accurate market for webcasters because they do not consider the discrepancy between "large webcasters [that] distribute hundreds of channels and are owned by multi-billion dollar corporations...[and] thousands of small webcasters [that] have almost no resources or financial backing" (Jackson, 2003). Most of these small stations do not broadcast online to gain a profit, but

rather they care about the quality of the music they air and want to share it with the public. There is no reason that they should have to pay rates that are set by a standard used by multi-billion dollar entities. The initial rates, reflecting an agreement between Yahoo! and the RIAA, would actually prevent small webcasters from surviving in the market as exemplified by “an admission by Mark Cuban, former president of Broadcast.com (now owned by Yahoo!), that Yahoo! was willing to agree to a per performance royalty rate in part to drive smaller webcasters out of business” (Jackson, 2003). Small non-interactive webcasters’ ability to target precise markets provides an advantage; however, they will not be able to realize significant revenue until they capture a devoted audience, which is unlikely to happen if they cannot afford to pay the royalty rates (Jackson, 2003). It is a Catch 22 for small webcasters. They cannot reach an audience until they gain advertising revenue to pay for the royalty rates, but they cannot get advertising revenue until they reach an audience. The current royalty rates also limit some webcasters that strive to eventually turn a profit. A popular webcasting site, Pandora, is at the point of having a profitable business after years of building their service, but “the new royalty rates will swallow seventy percent of Pandora's income,” which is a major setback (Robertson, 2008).

Aside from the steep rates, some of the eligibility requirements for getting a compulsory license are too restrictive and force some webcasters to negotiate directly with the record companies. Such restrictions are desirable by the record company because they can “deny licenses or they may negotiate any royalty fee or terms that they wish” and distribute royalties to the artist as they see fit (Conley, 2008). Although the statutory rate is a ceiling rate, those webcasters that do qualify for it would not want to go directly

to the record companies to negotiate for the above reasons. It is ironic that the RIAA fought so adamantly in the beginning for high royalty rates, when regardless the rates webcasters pay, recording companies will be gaining a revenue stream that they previously did not, and eventually Internet radio may replace their need to pay traditional radio stations billions of dollars just to have songs aired that only benefit a small selection of artists they produce. Another restriction imposed on the webcasters is the necessity to keep a record of aired songs. Of course this is an essential requirement to insure that all relevant parties get their dues. However, “the lack of standards, incompatible systems, inaccurate song information, the cost and complexity of in-house deployments, and the sheer volume of music transactions that need to be managed make this a challenging problem” for non-interactive small webcasters (Sternberg, 2004). Perhaps this process would be more feasible if a governing body created a uniform and affordable system for keeping the records.

Aside from these factors, current copyright law impedes an efficient radio system because it exempts traditional radio broadcasters from paying for the public performance right of sound recordings. This exemption creates an unfair advantage for over-the-air broadcast stations and robs artists and producers of royalties. The U.S. Copyright Office agrees with this, and “has repeatedly urged that sound recordings receive a full performance right,” which would result in millions of dollars in additional revenue to producers and artists (Conley, 2008). As CD sales begin to decrease and the prevalence of digital performances increase, broadcasters should have to pay for the performance right because the performance will eventually become the main source of revenue for artists and producers (<http://www.futureofmusic.org>). The exemption for broadcasters

further greeds in an already corrupted radio system where the public is punished through a lack of music variety and a degradation of music quality. Webcasting has the potential to overturn the oligopolistic nature of the current radio system.

A better radio system, however, will not be realized until copyright law is changed. At the forefront, sound recordings should receive a full performance right. Others share in this idea. "On December 18, 2007, a bill called the "Performance Right Act" was introduced in the House. The bill would [...] amend section 114(d)(1) by striking 'by means of a digital audio transmission' and replacing it with 'by means of an audio transmission'" negating the difference between terrestrial stations and webcasters (Conley, 2008). Terrestrial broadcasters should have to pay for the performance right because they do not deserve to be able to save money, while participating in illegal payola practices. Former New York Attorney General Elliot Spitzer began a payola investigation in 2003 that led to over 30 million dollars in fines against the major record labels and radio companies with recognition of illegal practices (Kosar, 2008). Rather than playing music for its quality it is being played in return for deeper pockets. Such practices reveal the insatiable nature of the radio industry, and allowing over-the-air radio stations to save money on royalty payments should not reward this corruption.

Aside from their corruption, traditional broadcasters should have to pay for the performance right because they can no longer validly use the excuse that airplay results in record sales. New media such as MP3s and webcasting have made terrestrial radio "less powerful than it has been for decades," and as webcasting becomes increasingly more portable traditional radio will become increasingly less important (Conway, 2006). Although terrestrial stations lessen in importance, music will still be aired; therefore, they

should have to pay for the performance right. Aside from all these reasons, they should have to pay for royalties because webcasters have to pay them. If the restrictions imposed on non-interactive webcasters by the DMCA “make webcasting function like traditional over-the-air radio broadcasts,” then either webcasters should not have to pay for the performance right or terrestrial broadcasters should (Delchin, 2004). The performance must be paid for, but webcasters should not have to do it alone.

Finally, for radio to be in the best interest of all parties involved, the statutory rate for webcasters should be lowered. If terrestrial stations are required to pay for the performance right some the burden will be removed from webcasters that pay it. The rates can then be lowered, putting non-interactive webcasters “on a level playing field with traditional AM/FM broadcasters” as it should be (Delchin, 2004). Decreased rates would allow more non-interactive smaller webcasting stations to survive in the market, thus increasing music diversity. Lowering rates to reflect an accurate market for all webcasters will help copyright law get back to one of its objectives “to increase public access to creative works by rewarding authors with royalties” (Robertson, 2008). With lower royalty rates, it will also be less likely that Internet radio will be dominated by a payola system or consolidation. The more webcasters that survive, the more programmers can “regain the power to decide whether to play a particular song based on merit, not financial influence” (Conway, 2006). While some programmers may decide they want to accept money in return for playing music, if more webcasters can afford to maintain service it will be unlikely that only a few stations will dominate, and the ones that take money will not matter. It is important that a payola system does not infiltrate Internet radio because it has a negative impact on society. It results in a population that values the

same insignificant music only because it is repeated over and over. Royalty rates should be lowered to be “reflective of copyright law objectives by minimizing the disruptive impact on Internet radio's evolution” further allowing more webcasters to get their foot in the door and copyright holders to be fairly compensated (Robertson, 2008).

Internet radio is a part of our society. It has the potential to change the way we hear and perceive music, which in turn can change the way we think and act. Music should return to being a positive influence in life for everyone. Many people today still listen to older music that has intrinsic value so they know about music's effects, what it means, and should mean. Many of America's youth, however, do not know of the true inspiration of music. Music to them is what they relentlessly hear on the radio that promotes greed, selfishness, and fairy tales. As Internet radio becomes more portable and begins to take over traditional radio, it is imperative that it does not end up as a payola driven system corrupted by the undying desire for money. However, if copyright law is not changed to allow lower royalty rates for webcasters, which is feasible if archaic radio pays sound recording royalties as well, small non-interactive variety driven webcasters will be out of business. Regardless of a rate change record companies and artists will profit. America's youth, however, may not be so lucky as conglomerates take over Internet radio while small webcasters crumble under high rates. Do we really want future generations to embody the ideals portrayed by the monotonous and empty music they hear on traditional radio? America is at a point in its history where its youth needs to acquire an open mind. Internet radio can facilitate this, but only if diversity survives.