

THE INTERNET DEBACLE - AN ALTERNATIVE VIEW
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"The Internet, and downloading, are here to stay... Anyone who thinks otherwise should prepare themselves to end up on the slagheap of history." (Janis Ian during a live European radio interview, 9-1-98)

When I research an article, I normally send 30 or so emails to friends and acquaintances asking for opinions and anecdotes. I usually receive 10-20 in reply. But not so on this subject!

I sent 36 emails requesting opinions and facts on free music downloading from the Net. I stated that I planned to adopt the viewpoint of devil's advocate: free Internet downloads are good for the music industry and its artists.

I've received, to date, over 300 replies, every single one from someone legitimately "in the music business."

What's more interesting than the emails are the phone calls. I don't know anyone at NARAS (home of the Grammy Awards), and I know Hilary Rosen (head of the Recording Industry Association of America, or RIAA) only vaguely. Yet within 24 hours of sending my original email, I'd received two messages from Rosen and four from NARAS requesting that I call to "discuss the article."

Huh. Didn't know I was that widely read.

Ms. Rosen, to be fair, stressed that she was only interested in presenting RIAA's side of the issue, and was kind enough to send me a fair amount of statistics and documentation, including a number of focus group studies RIAA had run on the matter.

However, the problem with focus groups is the same problem anthropologists have when studying peoples in the field - the moment the anthropologist's presence is known, everything changes. Hundreds of scientific studies have shown that any experimental group wants to please the examiner. For focus groups, this is particularly true. Coffee and donuts are the least of the pay-offs.

The NARAS people were a bit more pushy. They told me downloads were "destroying sales", "ruining the music industry", and "costing you money".

Costing *me* money? I don't pretend to be an expert on intellectual property law, but I do know one thing. If a music industry executive claims I should agree with their agenda because it will make me more money, I put my hand on my wallet...and check it after they leave, just to make sure nothing's missing.

Am I suspicious of all this hysteria? You bet. Do I think the issue has been badly handled? Absolutely. Am I concerned about losing friends, opportunities, the possibility of gaining my 10th Grammy nomination by publishing this article? Yeah. I am. But sometimes things are just wrong, and when they're that wrong, they have to be addressed.

The premise of all this ballyhoo is that the industry (and its artists) are being harmed by free downloading.

Nonsense. Let's take it from my personal experience. My site www.janisian.com gets an average of 75,000 hits a year. Not bad for someone whose last hit record was in 1975. When the original Napster was running full-tilt, we received about 100 hits a month from people who'd downloaded *Society's Child* or *At Seventeen* for free, then decided they wanted more information. Of those 100 people (and these are only the ones

who let us know how they'd found the site), 15 bought CDs. Not huge sales, right? No record company is interested in 180 extra sales a year. But... that translates into \$2,700, which is a lot of money in my book. And that doesn't include the ones who bought the CDs in stores, or who came to my shows.

Or take author Mercedes Lackey, who occupies entire shelves in my local bookstore and library. As she says herself: "For the past ten years, my three 'Arrows' books, which were published by DAW about 15 years ago, have been generating a nice, steady royalty check per pay-period each. A reasonable amount, for fifteen-year-old books. However... I just got the first half of my DAW royalties... and suddenly, out of nowhere, each Arrows book has paid me three times the normal amount!.... And because those books have never been out of print, and have always been promoted along with the rest of the backlist, the only significant change during that pay-period was something that happened over at Baen, one of my other publishers. That was when I had my co-author Eric Flint put the first of my Baen books on the Baen Free Library site. Because I have significantly more books with DAW than with Baen, the increases showed up at DAW first. There's an increase in all of the books on that statement, actually, and what it looks like is what I'd expect to happen if a steady line of people who'd never read my stuff encountered it on the Free Library - a certain percentage of them liked it, and started to work through my backlist, beginning with the earliest books published. The really interesting thing is, of course, that these aren't Baen books, they're DAW---another publisher---so it's 'name loyalty' rather than 'brand loyalty.' I'll tell you what, I'm sold. Free works."

I've found that to be true myself; every time we make a few songs available for free download on my website, sales of all the CDs go up. A lot.

And I don't know about you, but as an artist with an in-print record catalogue that dates back to 1965, I'd be thrilled to see sales on my old catalogue rise!

Now, RIAA and NARAS, as well as most of the entrenched music industry, are arguing that free downloads hurt sales. (More than hurt - they're saying it's destroying the industry.)

Alas, the music industry needs no outside help to destroy itself. We're doing a very adequate job of that on our own, thank you.

Here are a few statements from the RIAA's website:

"Analysts report that just one of the many peer-to-peer systems in operation is responsible for over 1.8 billion unauthorized downloads per month". (Hilary B. Rosen letter to the Honorable Rick Boucher, Congressman, February 28, 2002)

"Sales of blank CD-R discs have...grown nearly 2 ½ times in the last two years...if just half the blank discs sold in 2001 were used to copy music, the number of burned CDs worldwide is about the same as the number of CDs sold at retail." (Hilary B. Rosen letter to the Honorable Rick Boucher, Congressman, February 28, 2002)

"Music sales are already suffering from the impact...in the United States, sales decreased by more than 10% in 2001." (Hilary B. Rosen letter to the Honorable Rick Boucher, Congressman, February 28, 2002)

"In a recent survey of music consumers, 23%...said they are not buying more music because they are downloading or copying their music for free." (Hilary B. Rosen letter to the Honorable Rick Boucher, Congressman, February 28, 2002)

Let's take these points one by one, but before that, let me remind you of something: the music industry had exactly the same response to the advent of reel-to-reel home tape recorders, cassettes, DATs, minidisks, VHS, BETA, music videos ("Why buy the record when you can tape it?"), MTV, and a host of other technological advances designed to make the consumer's life easier and better. I know, because I was there.

The only reason they didn't react that way publicly to the advent of CDs was because they believed CD's were uncopyable. I was told this personally by a former head of Sony marketing back around 1983, when they asked me to allow them to release my album *Between the Lines* in CD format, at three-quarters the royalty rate I was contractually entitled to earn. (And why should I earn 25% less? "Because it's a brand new technology." And now, twenty years later, do I still earn 25% less on that CD? Of course!)

Regarding Rosen's comments, who's to say that any of those people would have bought the CD's if the songs weren't available for free? I can't find a single study on this, one where a reputable surveyor such as Gallup actually asks people that question. I think no one's run one because everyone is afraid of the truth - most of the downloads are being done by people who want to try an artist out, or who can't find the music in print.

And if a percentage of that 1.8 billion is because people are downloading a current hit by Britney or In Sync, who's to say it really hurt their sales? Soft statistics are easily manipulated. How many of those people went out and bought an album that had been over-played at radio for months, just because they downloaded a portion of it?

Sales of blank CDs have grown? You bet. I bought a new Vaio last December (ironically enough, made by Sony), and now back up all my files onto CD. I go through 7-15 CD's a week that way, or about 500 a year. Most new PC's come with Windows XP, which makes backing up to CD painless; how many people are doing what I'm doing? Additionally, when I buy a new CD, I make a copy for my car, a copy for upstairs, and a copy for my partner. That's three blank discs per CD. So I alone account for around 750 blank CDs yearly.

And I'm sure the sales decrease had nothing to do with the economy's decrease, or a steady downward spiral in the music industry, or the garbage being pushed by record companies. Aren't you? There were *32,000 new titles* released in this country alone during 2001, and that's not including re-issues, Do-It-Yourself projects, or smaller labels that don't report to SoundScan. Our "*Unreleased*" series, which we haven't bothered SoundScanning, sold 6,000+ copies last year.

A conservative estimate would place the number of "newly available" CD's per year at 100,000. That's an awful lot of releases for an industry that's being destroyed.

To make matters worse, we hear music everywhere, whether we want to or not; stores, amusement parks, highway rest stops. The original concept of Muzak (to be played in elevators so quietly that its soothing effect would be subliminal) has run amok. Why buy records when you can learn the entire Top 40 just by going shopping for groceries?

Which music consumers is the RIAA talking about here? College kids who can't afford to buy 10 new CDs a month, but want to hear their favorite groups? When I bought my nephews a new Backstreet Boys CD, I asked why they hadn't downloaded it instead. They patiently explained to their senile aunt that the download wouldn't give them the cool artwork, and more important, the video they could see only on the CD.

Realistically, why do most people download music?

To hear new music, or records that have been deleted and are no longer available for purchase. Not to avoid paying \$5 at the local used CD store, or taping it off the radio, but to hear music they can't find anywhere else. Face it - most people can't afford to spend \$15.99 to experiment. That's why listening booths (which labels fought against, too) have been such a success.

You can't hear new music on the radio these days. I live in Nashville, Tennessee - "Music City USA" - and we have exactly one station willing to play a non-top-40 format. On a clear day, I can even tune it in. The situation's not much better in Los Angeles or New York. College stations are sometimes bolder, but their wattage is so low that most of us can't get them.

One other major point: in the hysteria of the moment, everyone is forgetting the main way an artist becomes successful - exposure. Without exposure, no one comes to shows, no one buys CDs, no one enables you to earn a living doing what you love. Again, from my personal experience: in 37 years as a recording artist, I've created 20+ albums for major labels, and I've never once received a royalty check that didn't show I owed them money. So I make the bulk of my living from live touring, playing for 80-1500 people a night, 200-300 nights a year, doing my own show. I spend hours each week doing press, writing articles, making sure my website tour information is up to date.

Why? Because all of that gives me exposure to an audience that might not come otherwise. So when someone writes and tells me they came to my show because they'd downloaded a song and gotten curious, I am thrilled!

Who gets hurt by free downloads? Save a handful of super-successes like Celine Dion, none of us. We only get helped.

But not to hear Congress tell it. Senator Fritz Hollings, chairman of the Senate Commerce Committee studying this, said "When Congress sits idly by in the face of these [file-sharing] activities, we essentially sanction the Internet as a haven for thievery", then went on to charge "over 10 million people" with stealing. [Steven Levy, Newsweek 3/11/02]. That's what we think of consumers - they're thieves, out to get something for nothing.

Baloney. Most consumers have no problem paying for entertainment. One has only to look at the success of www.Fictionwise.com and the few other websites offering downloadable books and music at reasonable prices to understand that. If the music industry had a shred of sense, they'd have addressed this problem seven years ago, when people like Michael Camp were trying to obtain legitimate licenses for music online. Instead, the industry-wide attitude was "It'll go away". That's the same attitude CBS Records had about rock 'n' roll when Mitch Miller was head of A&R. (And you wondered why they passed on The Beatles and The Rolling Stones.)

I don't blame the RIAA for Senator Holling's attitude. They are, after all, the Recording Industry Association of America, formed so the labels would have a lobbying group in Washington. (In other words, they're permitted to make contributions to

politicians and their parties.) But given that our industry's success is based on communication, the industry response to the Internet has been abysmal. Statements like the one above do nothing to help the cause.

Of course, communication has always been the artist's job, not the executives'. That's why it's so scary when people like current NARAS president Michael Greene begin using shows like the Grammy Awards to drive their point home.

Grammy viewership hit a six-year low in 2002. Personally, I found the program so scintillating that it made me long for Rob Lowe dancing with Snow White, which at least was so bad that it was entertaining. Moves like the ridiculous Elton John-Eminem duet did little to make people want to watch again the next year. And we're not going to go into the Los Angeles Times' Pulitzer Prize-winning series on Greene and NARAS, where they pointed out that NARAS' foundation, MusiCares, has spent less than 10% of its revenue on disbursing emergency funds for people in the music industry (its primary purpose), or that Greene recorded his own album, pitched it to record executives while discussing Grammy business, then negotiated a \$250,000 contract with Mercury Records for it (later withdrawn after the public flap). Or that NARAS quietly paid out at least \$650,000 to settle a sexual harassment suit against him, a portion of which the non-profit Academy paid. Or that he's paid two million dollars a year, along with "perks" like his million-dollar country club membership and a Mercedes. (Though it does make one wonder when he last entered a record store and bought something with his own hard-earned money.)

Let's just note that in his Grammy Awards speech, he told the viewing audience that NARAS and RIAA were, in large part, taking their stance to protect artists. Greene had hired three teenagers to spend a couple of days doing nothing but downloading, and they managed to download "6,000 songs". Come on. For free "front-row seats" at the Grammys and an appearance on national television, I'd download twice that amount!

But...who's got time to download that many songs? Does Greene really think people out there are spending twelve hours a day downloading our music? If they are, they must be starving to death, because they're not making a living or going to school. And how many of us can afford a T-1 line, which is what Greene's "consumer sample" were permitted to use?

This sort of thing is indicative of the way statistics and information are being tossed around. It's dreadful to think that consumers are being asked to take responsibility for the industry's problems, which have been around far longer than the Internet. It's even worse to think that the consumer is being told *they* are charged with protecting *us*, the artists, when our own industry squanders the dollars we earn on waste and personal vendettas.

Greene went on to say that "Many of the nominees here tonight, especially the new, less-established artists, are in immediate danger of being marginalized out of our business." Right. Any "new" artist who manages to make the Grammys has millions of dollars in record company money behind them, I can guarantee that. The "real" new artists aren't people you're going to see on national television, or hear on most radio. They're people you'll hear because someone gave you a disc, or they opened at a show you attended, or they were lucky enough to be featured on NPR or another program still open to playing records that aren't already hits.

As to artists being "marginalized out of our business," the only people being marginalized out are the employees of our Enron-minded record companies, who are being fired in droves because the higher-ups are incompetent.

And it's difficult to convince an educated audience that artists and record labels are about to go down the drain because they, the consumer, are downloading music. Particularly when they're paying \$50-\$125 apiece for concert tickets, and \$15.99 for a new CD they know costs less than a couple of dollars to manufacture and distribute.

I suspect Greene thinks of downloaders as the equivalent of an old-style television drug dealer, lurking next to playgrounds, wearing big coats and whipping them open for wide-eyed children, who then purchase black market CD's at generous prices.

What's the new music industry byword? Encryption. Record companies like Sony and BMG are going to make sure no one can copy CDs, even for their own personal use, or download them for free. Brilliant, except that it flouts previous court decisions about blank cassettes, blank videotapes, etc. And it pisses people off.

How many of you know that many car makers are now manufacturing all their CD players to also play DVD's? or that part of the encryption record companies are using doesn't allow your store-bought CD to be played on a DVD player, because that's the same technology as your computer? And if you've had trouble playing your own self-recorded copy of *O Brother Where Art Thou* in the car, it's because of this lunacy.

The industry's answer is to put on the label: "This audio CD is protected against unauthorized copying. It is designed to play in standard audio CD players and computers running Windows O/S; however, playback problems may be experienced. If you experience such problems, return this disc for a refund."

Now I ask you. After three or four experiences like that, shlepping to the store to buy it, then shlepping back to return it (and you still don't have your music), who's going to bother buying CD's?

The industry has been complaining for years about the stranglehold the middle-man has on their dollars, yet they wish to do nothing to offend those middle-men. BMG, for instance, has a strict policy for artists buying their own CDs to sell at concerts – they charge the artist \$11 per CD. They know very well that most of us lose money if we have to pay that much; the point is to keep the big record stores happy by ensuring sales go to them. What actually happens is no sales to us or the stores.

NARAS and RIAA are moaning about the little mom & pop stores being shoved out of business; no one worked harder to shove them out than our own industry, which greeted every new Tower or mega-music store with glee, and offered steep discounts to Target and WalMart et al for stocking CDs. The Internet has zero to do with store closings and lowered sales.

And for those of us with major label contracts who want some of our music available for free downloading... well, the record companies own our masters, our outtakes, even our demos, and they won't allow it. Furthermore, they own our voices for the duration of the contract, so we can't even post a live track for downloading!

If you think about it, the music industry should be rejoicing at this new technological advance, not fighting it! Here's a fool-proof way to deliver music to millions who might otherwise never purchase a CD in a store. The cross-marketing opportunities are unbelievable. Delivery is instantaneous, costs are minimal, shipping non-existent...a staggering vehicle for higher earnings and lower costs. Instead, they're

running around like chickens with their heads cut off, bleeding on everyone and making no sense.

As an alternative to encrypting everything, and tying up money for years (potentially decades) fighting consumer suits demanding their first amendment rights be protected (which suits have, in the end, always gone to the consumer, as witness the availability of blank and unencrypted VHS tapes and cassettes), why not take a tip from book publishers and writers?

The Baen Free Library, at www.baen.com, is one success story. The Science Fiction Writer's Association, at www.sfwaweb.org, is another. The SFWA site is one of the best out there for hands-on advice to writers, featuring in depth articles about everything from agent and publisher scams, to a continuously updated series of reports on various intellectual property issues. More important, many of the science fiction writers it represents have been heavily involved in the Internet since its inception.

Each year, when the science fiction community votes for the Hugo Awards (voted on by readers) and the Nebula Awards (their equivalent of the Grammys, voted on by professionals), most of the works nominated are put on the site in their entirety, allowing voters and non-voters the opportunity to peruse them. *Free*. If you are a member or associate member of SFWA, you have access to even more works. The site is also full of links to members' own web pages and on-line stories, even when they aren't nominated for anything. Reading this material, again for free, allows browsers to figure out which writers they want to find more of - and buy their books.

Wouldn't it be nice if all the records nominated for awards each year were available for free downloading, even if it were only the winners? People who hadn't bought the albums might actually listen to the singles, then go out and purchase the records.

I have no objection to Greene et al trying to protect the record labels, who are the ones fomenting this hysteria. RIAA is funded by the labels. NARAS is supported by them. It stands to reason.

However, I object violently to the pretense that they are in any way doing this for *our* benefit - and you should be wary, too. If they really wanted to do something for the great majority of artists, who eke out a living against all odds, they could tackle some of the real issues facing us:

- The normal industry contract is for seven albums, with no end date, which would be considered at best indentured servitude (and at worst slavery) in any other business. In fact, it would be illegal.

- A label can shelve your project, then extend your contract by one more album because what you turned in was "commercially or artistically unacceptable". They alone determine that criteria.

- Singer-songwriters have to accept the "Controlled Composition Clause" (which dictates that they'll be paid only 75% of the rates set by Congress in publishing royalties) for any major or subsidiary label recording contract, or lose the contract. Simply put, the clause demanded by the labels provides that a) if you write your own songs, you will only be paid 3/4 of what Congress has told the record companies they must pay you, and b) if you co-write, you will use your "best efforts" to ensure that other

songwriters accept the 75% rate as well. If your co-writer and co-publisher refuse, you must agree to make up the difference out of your share.

- Congressionally set writer/publisher royalties have risen from their 1960's high (2 cents per side) to a munificent 8 cents.

- Many of us began in the 50's and 60's; our records are still in release, and we're still being paid royalty rates of 2% (if anything) on them.

- If we're not songwriters, and not hugely successful commercially (as in platinum-plus), we don't make a dime off our recordings. Recording industry accounting procedures are right up there with films.

- Worse yet, when records go out-of-print, we don't get them back! We can't even take them to another company. Careers have been deliberately killed in this manner, with the record company refusing to release product or allow the artist to take it somewhere else. And you're stuck there forever if they want you to be.

- And if they do let you leave, because the record label "owns" your voice for the duration of the contract, you can't go somewhere else and re-record those same songs they turned down.

- And because of the re-record provision, even after your contract is over, you can't record those songs for someone else for years, and sometimes decades.

- Last but not least, America is the only country I am aware of that pays no live performance royalties to songwriters. In Europe, Japan, Australia, when you finish a show, you turn your set list in to the promoter, who files it with the appropriate organization, and then pays a small royalty per song to the writer. It costs the singer nothing, the rates are based on venue size, and it ensures that writers whose songs no longer get airplay, but are still performed widely, can continue receiving the benefit from those songs.

We artists should be speaking up, and Congress should be listening. At this point they're only hearing from multi-platinum acts. What about someone like Ani DiFranco, one of the most trusted voices in college entertainment today? What about those of us who live most of our lives outside the big corporate system, and who might have very different views on the subject?

There is zero evidence that material available for free online downloading is financially harming anyone. In fact, most of the hard evidence is to the contrary.

Greene and the RIAA are correct in one thing - these are times of great change in our industry. But at a time when there are arguably only four record labels left in America (Sony, AOL/Time/Warner, Universal, BMG - and where is the RICO act when we need it?)... when entire genres are glorifying the gangster mentality and losing their biggest voices to violence...when executives change positions as often as Zsa Zsa Gabor changed clothes, and "A&R" has become a euphemism for "Absent & Redundant"... well, we have other things to worry about.

It's absurd for us, as artists, to sanction - or countenance - the shutting down of something like this. It's sheer stupidity to rejoice at the Napster decision. Short-sighted, and ignorant.

Free exposure is practically a thing of the past for entertainers. Getting your record played at radio costs more money than most of us dream of ever earning. Free downloading gives a chance to every do-it-yourselfer out there. Every act that can't get

signed to a major label, for whatever reason, can reach literally millions of new listeners, enticing them to buy the CD and come to the concerts. Where else can a new act, or one that doesn't have a label deal, get that kind of exposure?

Please note that I am not advocating indiscriminate downloading without the artist's permission. I am not saying copyrights are meaningless. The way I look at it, if I earn the money to build or buy my own home, I shouldn't have to let other people squat there just because it exists. I make a large portion of my income from royalties, and I have no qualms about that. But I have serious qualms about the heavy-handed reactions and nonsense currently coming from my own industry about this subject!

I am objecting to the RIAA spin that they are doing this to protect "the artists", and make us more money. I am annoyed that so many records I once owned are out of print, and the only place I could find them was Napster. Most of all, I'd like to see an end to the hysteria that causes a group like RIAA to spend over 45 million dollars in 2001 lobbying "on our behalf", when every record company out there is complaining that they have no money.

We'll turn into Microsoft if we're not careful, folks, insisting that any household wanting an extra copy for the car, the kids, or the portable CD player, has to go out and "license" multiple copies.

As artists, we have the ear of the masses. We have the trust of the masses. By speaking out in our concerts and in the press, we can do a great deal to damp this hysteria, and put the blame for the sad state of our industry right back where it belongs - in the laps of record companies, radio programmers, and our own apparent inability to organize ourselves in order to better our own lives - and those of our fans.

If we don't take the reins, no one will.

Sources: Baenbooks.com, BMG Records, Chicago Tribune, CNN.com, Congressional Record, Eonline.com, Grammy.com, LATimes.com, Newsweek, Radiocrow.com, RIAA.org, personal communications. This article has been revised to ensure factual accuracy.

Read Janis' follow up to this article: **FALLOUT** - a follow up to **The Internet Debacle**.

Later notes:

Shortly after this article was turned in, Michael Greene resigned as president of NARAS. Shortly after the follow-up article, "Fallout", was published, iTunes was announced. The success of iTunes has more than justified the stance taken in both articles.

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