

Carleton University

Noise Annoys: Pirate Radio and the Distribution of Music in the Digital Age

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Abstract

As with certain periods in the past, it is common to read that the distribution of mainstream music is either drastically transforming or that a handful of entities continue to maintain distinct monopolies. My project will suggest that the alterations currently taking place in the recording industry are much more complex than either of these positions suggest. To get a picture of how the industry both evolves and resists change, I will specifically look at the notion of ‘piracy’ and attempt to compare and contrast the offshore pirates that broadcasted into England in the 1960s with the Internet downloaders of today. To what extent does piracy drive and inspire corporate change? In what ways have the pirates and their methods been absorbed into the industry? I will consider how these shifts in the music industry might be indicators of larger transformations taking place within contemporary capitalism.

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“Music, an immaterial pleasure turned commodity, now heralds a society of the sign, of the immaterial up for sale, of the social relation unified in money. It heralds, for it is prophetic. It has always been in its essence a herald of times to come.” - Jacques Attali¹

INTRODUCTION

It is often noted in the media, and in journals addressing cultural issues, that there is a significant transformation taking place in the music industry. Words like ‘napster’ and ‘piracy’ now feature in many general articles about music. As a term associated with music, piracy has now been around for several decades. It is certain that the label has both legal and (sub) cultural implications. The intention of this study is to consider various elements of what has been termed by the music industry as piracy. It will look at aspects of, and some connections between, pirate radio and music downloading. For the sake of limiting the scope of the project, it will specifically examine the history of pirate radio in England (with an emphasis on the period from the 1960s to the 1980s), and switch focus to North America when exploring Internet music file-sharing. The project will consider whether these shifts in the consumption and distribution of popular music can be considered to be forms of centralization, decentralization or, alternatively, some particular space between these two poles.

My initial contention is that changes in the distribution of popular music are incremental and involve ongoing processes of resistance, co-option and negotiation. The pace and intensity of these progressions should not be overestimated, neither should there be a denial that concrete industry changes have taken place in the past and continue to occur. This study will entail an examination of the power dynamics at work within the music industry, regulatory bodies, levels of government and the consumers of cultural

products. The intent is, in part, to observe the shifting contours of contemporary capitalism.

ISSUES BEING CONSIDERED:

The primary theme I am addressing concerns claims (both from within and outside of the music industry) that the popular music industry is either not changing at all or, alternatively, that it is regularly being transformed in a radical fashion. There has been a general argument that the distribution and consumption of popular music has been going through a number of significant alterations – a trend that has accelerated in the age of digital distribution. The notion is that consumers are increasingly driving trends in music delivery patterns and that the old hierarchical supply networks are in an on-going process of fading away. This line of thinking implies that new technologies (most recently in the form of MP3s and file-sharing) have been employed to democratize an industry that has traditionally been considered the exclusive domain of a handful of multinational corporations. This reasoning implies that there have been specific periods in which the consumers of popular music have challenged and undermined entrenched distribution monopolies – whether this is represented by pirate radio stations challenging the state broadcasting control in Britain, or Internet downloaders upsetting hegemonic corporate distribution structures. With respect to Internet activity, there is an almost utopian implication that the music industry is evolving into a “creative commons” or a “gift economy.”² Paradoxically, both the recording business and regulatory bodies, in an attempt to initiate further regulation and legal control, have also emphasized that the industry has, at times, changed in a dramatic and uncontrolled fashion.

Alternatively, there have been claims (most often from outside of the business), that the recording industry has only been altered on the surface. The assertion is that rather than replacing its conventional form of distribution, the industry has merely shifted in tactics and emphasis. If scarcity has become less associated with recorded music, it has cropped up in other areas – such as merchandising, the star-system and live performances. Recorded music might be declining in terms of sales, but the industry continues to thrive by inserting music (via licensing agreements and cross-marketing) into television, film and advertising. Part of this argument involves the idea of active co-option. There is evidence that government-sanctioned radio in the UK continues to absorb both the styles and personnel of pirate radio. In addition, there are claims that artists who record on independent labels (or opt to make their music available on-line) are merely in a phase that will lead to a relationship with, if not a major label, then an established distributor. Furthermore, just as record companies once covertly used pirate stations as promotional outlets, there is evidence that the mainstream industry now employs illegal downloading sites both to gather marketing information and to distribute advertising. This line of thought does not necessarily deny that alterations are taking place within popular music, but it puts a greater emphasis on the small modifications and continuities of capitalism rather than on dramatic ruptures and discontinuity.

My general contention is that a more comprehensive reflection of the music business lies in the terrain between these two poles. While there are a number of complexities, inconsistencies and outright contradictions in this negotiated space, its examination can provide insight into both the music industry specifically and into contemporary capitalism generally. Although this study will focus on the present-day

distribution patterns of contemporary music, it will also be about how capitalism is being transformed and reconfigured in the digital age.

CHAPTER 1 – THEORY & METHODS

This project will involve a number of interacting theoretical perspectives. This multidisciplinary approach would seem to be necessary, as in my study there will be overlapping elements of sociology, anthropology, cultural studies and political economy. My opening theoretical point will be drawn from Antonio Gramsci's conception of hegemony, and move on to explore how this theory has been engaged from both cultural (subculture and post-subculture studies) and political perspectives. However, there will also be an acknowledgement and examination of what has now become known as post-hegemonic interpretations of culture and power. As defined by Scott Lash, a post-hegemonic order conceives of a dynamic where "power comes to act from below; it no longer stays outside that which it 'effects'."³ Exploring the notion of post-hegemony, Jon Beasley-Murray describes the contemporary era as one of "postideology" and, echoing Lash, makes the case that politics has become omnipresent rather than absent.⁴ In part, he feels that this concept of dispersed power is tied to Gilles Deleuze's Foucault-inspired contention that there has been a transition from a society of discipline to one of control.⁵ Nicolas Thoburn links this idea to the changing aspects of capitalism whereby capital is now oriented towards communications and is associated with "fluidity, open identities and indeterminacy."⁶ Exploring this perspective will entail considering the philosophical work of Deleuze and Félix Guattari as well as the interacting notions of 'Empire' and 'multitude' as defined by Michael Hardt and Antonio Negri. The intention is not to consider these theories as discrete entities, but to conceive of ways in which they may be integrated to achieve a more complete exploration of music and piracy and how they may be employed to scrutinize the interactions of power and capitalism.

Gramsci's conception of hegemony has a number of layers to it. Primarily it is an argument based on the idea that power is not solely linked to coercion – that influence may also have an element of consent associated with it. According to Patrick Brantlinger, "Power in complex societies is always negotiated and shifting, and it is always relative to the class, group, and status positions of those who share it differentially, unequally."⁷ In part the aim is to consider the role not only of state institutions, but of civil society as well. Gramsci writes that "state = political society + civil society," adding that hegemony is "protected by the armor of coercion."⁸ While Gramsci leaves open the possibility of agency, effective counter-hegemonic forces may entail a lengthy period of consensus building. As power is constantly being negotiated, there are often no overtly visible conflicts, nor are there firm conclusions to these interactions. While this may indicate that existing configurations of power often appear as neutral and natural, it also suggests that hegemony can never be interpreted as total.⁹ Society can more aptly be viewed as a series of exchanges and relationships. What is significant about Gramsci's theory is that it moves beyond Marxist conceptions of economic determinism.¹⁰ While it has been argued that Gramsci largely conceived his theories around events that were taking place in Italy in the early part of the twentieth century, a number of his ideas were later taken up by subculture theorists. International Relations scholar Robert Cox points out that Gramsci's theories were intentionally open-ended and dynamic which has meant that they can be adapted to a variety of political and economic scenarios – including relationships that are local, national and global.¹¹ Arguably, for Cox, Gramsci's work is as much about method as it is about theory.

A significant precursor to the work on subcultures that emerged in the 1960s and 70s were the debates that took place between the critical theorists at the Frankfurt School. In particular, a dialogue that took place between Theodor Adorno and Walter Benjamin opened up a number of questions about the relationships between popular culture, economy and politics. When considering the popularity of jazz, Adorno made the case that such music was intentionally designed for a mass audience that would passively consume it.¹² This meant that music had become standardized and had lost its ability to surprise and educate. In other words popular music pandered to a “false collective.”¹³ Adorno’s reading of popular culture is often contrasted with Benjamin’s essay titled *The Work of Art in the Age of Mechanical Reproduction*. In this essay, Benjamin considered the idea of film as a mass medium and made the case that the very reproduction of film is an important move away from the notion of ‘aura’ which had been associated with prior (exclusive) works of art. Benjamin writes that “in permitting the reproduction to meet the beholder or listener in his own particular situation, it reactivates the object reproduced.”¹⁴ Arguably, this idea implies that there is a transfer of power from creator to viewer, and that the mass production could be viewed as a positive development. Simon Frith notes that this idea made “cultural struggle possible” and that “creation had become a collective rather than an individual process.”¹⁵ It should be noted that Adorno and Benjamin were both writing before the period of large scale mass production and that their views did in fact overlap on a number of issues pertaining to popular culture. However, while it would be a mistake to see these conflicting views as binary opposites, they do open a useful debate about the cultural and political power dynamics at work within popular culture.

Perhaps nowhere were these questions more fully embraced than in the Centre for Contemporary Cultural Studies (CCCS) at Birmingham University. While the school was founded in the mid-1960s, it became highly influential under the guidance of Stuart Hall in the late 1970s. Employing Gramsci's notion of hegemony, many of the subculture theorists associated with the school considered the ways in which traditionally subordinated groups carved out distinctive societal spaces. For Hall, the idea of resistance "signaled those forms of disaffiliation (like the new social movements associated with youth) which were in some sense challenges to the negotiations of the dominant order but which could not be assimilated to the traditional categories of revolutionary class struggle."¹⁶ Scott Lash has noted that this was a marked shift from the Marxist assumption that battles between classes would exclusively be played out on the factory floor.¹⁷ The aim of Hall and others was, in part, to draw attention to the interactions between actors (in the form of agency) and larger societal structures.¹⁸ Drawing on the work of Roland Barthes, there was an assumption that such things as clothes, speech and music (or style in general) had a degree of political significance. Simon Frith notes the possibility of "positive mass consumption", adding, "Cultural goods could now be equated with the value of the groups consuming them – youth, the working class, women."¹⁹ This notion was further developed by Dick Hebdige, who articulated the concept of bricolage. Drawing on the Situationist idea of "détournement", bricolage involves adapting and customizing found products and signs to subcultural ends.²⁰ Of course, subculture theory was not without its detractors. Often critics have wondered precisely what 'meanings' can be gleaned from styles, and whether or not the consumption of cultural items could be considered political acts of 'resistance' in any

concrete way. To what extent are subcultures exclusive rather than inclusive? Still others, in contrast to Cox, have questioned the validity of taking Gramsci's work and theories out of their original context.²¹ However, in spite of these potential limitations, the concepts developed by the Birmingham School continue to be effectively employed in the analysis of group activity (user groups, hackers, pirates, etc.) on the Internet.

In recent years, many of the issues that have not been adequately addressed by subculture theory have been taken up by academics working under the post-subcultures banner. In a sense, their critiques of the CCCS are intended to give subculture study a more wide-ranging and contemporary variation. The key point behind these new theoretical conceptions is to move away from the romantic idea traditionally associated with subcultures. In part, this entails a critique of the binary relationships associated with subcultures – mainstream versus periphery, insider versus outsider, and authentic versus co-opted.²² Oliver Marchart calls for a distancing from the “incorporation myth” and a shift towards what he refers to as a “post-heroic phase” of subculture examination.²³ In other words, Marchart thinks it is a mistake to conceive of subcultures as merely locked into infinite phases of resistance and co-option. He also thinks that subculture theory needs to return to its Gramscian roots to the extent that it needs to address macro-political issues in addition to cultural developments. Marchart talks about the importance of “becoming macro”, and points out that the figure of Gramsci's “modern Prince” was about the organization, consolidation and expansion of movements.²⁴ While this brings up a number of interesting questions and possibilities, it remains debatable whether Marchart's vision of subculture theory is about how movements should be examined or

about the direction in which he wishes to see activities flow. Do subcultural movements automatically take on a macro-political dimension over time?

Marchart's conception of hegemony is, in part, based on the work of Ernesto Laclau and Chantal Mouffe. Laclau and Mouffe make distinctions between "relations of subordination" and "relations of oppression", and note that it is through the occurrence of a "discursive exterior" that "discourses of subordination" can be comprehended.²⁵ In other words, as they have pointed out, "the struggle against subordination cannot be the result of the situation of subordination itself."²⁶ This would seem to indicate that forms of oppression have the potential to inspire action when outside factors become available for comparison.²⁷ At the same time, the authors make the case that forms of resistance are not predictable, linear or homogenous in nature. This notion implies that only some forms of resistance develop an overt political character. Laclau and Mouffe note that counter-hegemonic struggles involve both the "proliferation of particularisms" and the "valorization of differences."²⁸ They also emphasize the importance of articulation with respect to the expression of social movements. In part, the point is that events and situations can both be expressed in different fashions and reacted to in a variety of ways. There is a conception that struggles begin with only a "partial character."²⁹ From this perspective, forms of resistance have the potential to develop in a variety of manners. While this might seem to indicate an infinite number of forms of resistance, the authors argue that it is overly limiting to have preconceived notions regarding potential avenues of change (a failing they associate with conventional Leftist thinkers).³⁰ For Laclau and Mouffe the presence of multiple openings (or 'ruptures') suggests the presence of multiple possibilities.

It should be noted, as Lawrence Grossberg has frequently pointed out, that even the CCCS conception of subculture theory had a great deal of range. He states that there were never wholly accepted conventions and that “there never was a single and homogeneous, pure and unsullied center.”³¹ While Geoff Stahl also acknowledges the complexity and usefulness of the CCCS School, he points to three particular areas of weakness. His first critique concerns how some at the CCCS interacted with postmodern theories. Stahl discusses an overemphasis on symbols which located “semiotic play with appropriated texts above that of the imaginative and concrete contexts in which cultural activity is enacted.”³² This statement calls into question Hebdige’s conception of ‘style as bricolage’ and works by other CCCS writers who were pursuing similar lines of thought. Secondly, Stahl points to the ways in which subculture theory often relied on constructing concrete ‘Other’ (mainstream consumers and media, authority figures, etc.)³³ As with the appropriation of symbols and signs, this too may be considered a diversion from the actual activities within subcultures. It also potentially ignores the relationship and interactions between subcultures and the perceived ‘Other’. Again, this is a critique of the binary logic found within some of the CCCS output. Lastly, Stahl, echoing some of the earlier concerns of Angela McRobbie, notes that the CCCS overemphasized class at the expense of other factors. He specifically points out that issues such as gender and ethnicity were often placed “outside of the purview of a model bound to a geographically specific notion of territory and ‘winning space’.”³⁴

Rupert Weinzierl and David Muggleton argue the post-subcultures studies need to be mindful that subcultures may have both local and global elements, and at times they will reflect the interaction between these two levels of analysis. They note that

subcultures can no longer be interpreted as “discrete” or viewed as “clearly identifiable.”³⁵ They propose models that are both more multifaceted and increasingly complex. There is also a move away from the emphasis that the CCCS placed on class as a central unifying factor in forms of resistance. Significantly, they argue that subcultures might be distinct because of their relationships with commodities – as is the case with bikers and snowboarders.³⁶ To this end they point out that the “subcultures of today are also complicit in the (niche) marketing of their own identities.”³⁷ Part of the overall point they make is that contemporary subcultures have a higher degree of media literacy and broader conception of what constitutes media. Drawing on the work of Sarah Thornton, Weinzierl and Muggleton note the ways in which media can both bond and identify subcultures.³⁸ This notion revisits Hebdige’s description of the role played by fanzines during the punk period.³⁹ While Weinzierl and Muggleton are clear that subcultures may be linked to commodities, they also emphasize that they are potentially organized in opposition to neo-liberal conceptions of globalization. In this case, forms of resistance entail a blending of “particularistic approaches” and attitudes that are distinctly “universalist (anti-capitalist).”⁴⁰ Furthermore, as Marchart has discussed, there is an implication that contemporary subcultures are hybrid in nature – being composed of both perceived “authenticity” and “synthetic manufacturing”.⁴¹ In other words, subcultures can be played out in the negotiated space between alleged legitimacy (local and genuine) and apparent co-option (global and corrupted).

Stahl emphasizes the importance of computer-mediated communications (CMC) in the emergence of new spaces and relationships. Drawing on the theories of Benedict Anderson, he considers the ways in which new real or ‘imagined communities’ are

developing across the Internet.⁴² Stahl also addresses Arjun Appadurai's notion of "communities of sentiment" in order to explore how groups (which often appear heterogeneous) are potentially both physically dispersed and interconnected in new and innovative ways.⁴³ Considering the implications of these new developments, Stahl states that "an analytic model more flexible than that offered by subcultural theory must be found to describe the elasticity and fluidity that confounds any notion of self-contained cultural practices."⁴⁴ This theme is further explored by Richard Kahn and Douglas Kellner who comment on the important role that increasing levels of media awareness are currently playing. Significantly, they also point to a form of "subcultural immediacy" that seems to be attached to a new form of on-line interaction.⁴⁵ Not only is there a new sense of speed but there are emerging forms of media that both create new openings and challenge traditional (potently hierarchical) mediums. Kahn and Kellner also touch on the ways in which Internet users play games, post pictures and share information. They describe this as a type of "gift economy" which is both interactive and largely free of traditional forms of (corporate or governmental) constraint.⁴⁶ Clearly this notion can be extended to such peer-to-peer (P2P) music-sharing sites as Napster. While acknowledging that corporate forces successfully closed down websites such as Napster, Kahn and Kellner note that "a movement had been started that publicized the utopian potential of the Internet as subcultural community and bearer of a gift economy."⁴⁷ At the same time, Kahn and Kellner concede that the Internet can also be used to absorb and regulate such activity, as well as potentially act as a platform for less progressive forms of political action.

Perhaps another way of moving beyond these potential limitations is to engage with the work of Gilles Deleuze and Félix Guattari. In particular, their conception of rhizomes points to the way relationships and interactions can branch out in non-linear ways. Rhizomes can point to the way connections are frequently made by chance or in a fashion that was not anticipated. In contrast to “arborescent” forms of hierarchy (what they call “pseudomultiplicities”), Deleuze and Guattari write that “the rhizome operates by variation, expansion, conquest, capture, offshoots.”⁴⁸ It is important to note that rhizomes can be imagined in a number of different ways. For instance, David Bell has described the ways in which cyberspace can be conceived as a rhizome. Bell extensively draws on the writings of Charles Stivale, who describes a rhizome model that would “extend the multiplicity of sociocultural and creative dynamic not in binary terms, but in terms of continuing offshoots, continually producing affective relations and all manner of becomings that themselves contribute to the dynamic multiplicity of creativity.”⁴⁹ This is a conception of cyberspace that lacks a distinct hierarchy and is both diffused and endlessly expanding. While Allison Cavanagh questions the notion of perceiving the Internet as a rhizome, she makes the case that aspects of cyberspace, such as hyperlinks, might be conceived in this way.⁵⁰ Elsewhere, Markus Giesler has referred to the on-line sharing of materials as “gifting rhizomes.”⁵¹ This is a conception whereby the gift giver both retains the original information (songs, photos, etc.) and has a potential to supply a multitude of recipients.

Deleuze and Guattari’s conception of ‘war machine’ also seems to offer a useful way in which to examine these issues. The term, which does not necessarily coincide with physical conflict, can be interpreted as both a force operating outside of the State

(potentially as opposition), as well as the creative energies that have been absorbed by the State.⁵² The authors argue that “the war machine has an extremely variable relation to war itself.”⁵³ Paul Patton also notes the connection between this notion and Deleuze and Guattari’s conception of smooth (the “rhizomatic” territories of nomads) and striated space (State-like enclosures).⁵⁴ As such, the war machine can be both a force of centralization and of decentralization. In its nomadic form it seems to increase non-striated space, but in its State-captured conception it seeks the opposite (although the State may also employ smooth space – as in the case of global trade).⁵⁵ A significant point seems to be that war machines which have been absorbed by State structures do not necessarily have predictable or stable formations. In addition, the concept of ‘nomad’ should not necessarily be tied to the literal idea of movement – it could equally apply to forces in motion that are in operation outside of hierarchical structures. This notion of nomad is also linked to Deleuze and Guatarri’s conception of ‘lines of flight’ and ‘deterritorialization’. Lawrence Grossberg has defined lines of flight as entities which “disarticulate” and “open the assemblage to its exterior, cutting across and dismantling unity, identity, centers and hierarchies.”⁵⁶

Perhaps the Deleuze and Guattari concept that is most clearly tied to the idea of war machine is that of ‘apparatus of capture’. This thought is related to the ways in which State forces (legislatures, judiciaries, etc.) seek to capture the forces exterior to their area of control (forms of labor, etc.). The authors describe the state as a “phenomenon of intraconsistency”, which aims to bring disparate elements together in a unified system.⁵⁷ Patton writes that “the state itself deploys a structural, legal violence – a violence of capture, whose institutional manifestations are judicial and penal,

instructions of capture and punishment, police and prisons.”⁵⁸ In part, this concept points out that descriptions of the war machine alone (with its potential to alternatively work within and without the State) offer little in the way of concrete explanations.⁵⁹ Deleuze and Guattari note that war machines have the “power of metamorphosis”, while the State has the “power of appropriation.”⁶⁰ In part, there is recognition that the appropriation changes the character of war machines. This could conceivably point to the ways in which informal activities and economies are brought within the sphere of the capitalist system. This notion is what Mark Bonta and John Protevi describe as an “apparatus of capture of activity.”⁶¹ At the same time, it is clear that war machines can also resist the State and offer a variety of oppositional forms.⁶² As such it remains questionable what shape resistances will take and to what extent ‘capture’ is an on-going process. Significantly Patton points out that the State and the war machine are interconnected and that they “combine and draw upon one another” in a way which “prevents the war-machine from functioning as a simple model for practices of opposition to State forces.”⁶³

Various forms of economic and political resistance, absorption and interaction can also be examined by considering Michael Hardt and Antonio Negri’s conception of Empire. Hardt and Negri describe Empire as our current all-encompassing reality, yet it is a thin veneer of dispersed power that allows for a variety of counter-hegemonic openings. The authors, who draw extensively on the concepts of Deleuze and Guattari, note, “The creative forces of the multitude that sustain Empire are also capable of autonomously constructing a counter-Empire, an alterative political organization of global flows and exchanges.”⁶⁴ They go on to talk about a variety of contemporary struggles and how the “multitude will have to invent new democratic forms and new

constituent power that will one day take us through and beyond Empire.”⁶⁵ According to Hardt and Negri, the multitude are both contained by Empire and acting in opposition to it.⁶⁶ Thus Empire is seen as global terrain on which power relationships are played out. Significantly, Hardt and Negri describe the decentralization of contemporary production – in a form of a transition from a formal (Fordist) to an informal economy (post-Fordist). At the same time, the informal economy presents a series of openings and possibilities. They make the case that the Internet (which they see as an example of a rhizome) is an example of how technology can be re-imagined for purposes not linked to its origins. While cyberspace can clearly be monitored, its diffuse nature makes such activity difficult. The Internet is (potentially) democratic in that it is a system that lacks a centralized structure. A similar argument is made about the open-source society.⁶⁷ The dispersed structure of cyberspace can be contrasted with more traditional forms of broadcast media that are more arborescent in nature.⁶⁸ Hardt and Negri point to the “genius of the multitude” – a notion that stands in contrast to the traditional conceptions of individual power and inventiveness.⁶⁹ They write that “The power of the multitude to create social relationships in common stands between sovereignty and anarchy, and it thus presents a new possibility for politics.”⁷⁰ Clearly, this notion of collective power stands in sharp contrast to the idea that resistance is exclusively produced through forms of resistance taken by discrete and homogenous subcultures.

While Hardt and Negri can see the potential of the Internet, it is clear that cyberspace is being contested. In one instance, users operate as forces of opposition to the Web’s centralizing tendencies and yet, at the same time, there is evidence that cyberspace is being increasingly controlled by a small number of corporate forces. While

the Internet might be an example of “hyper-deterritorialization”, the hardware and software that make up its components generally operate within the capitalist system.⁷¹ Hardt and Negri state, “The new communication technologies, which hold out the promise of a new democracy and a new social equality, have in fact created new lines of inequality and exclusion, both within the dominant countries and especially outside of them.”⁷² As well as issues concerning inclusion and exclusion, the use of the Internet also raises questions about power and surveillance.

With respect to the ownership of databases (now frequently being compiled by the tracking of on-line activity and preferences), Poster has talked about the prospect of a “super-panopticon.”⁷³ In addition, there is the notion of “individuation”, whereby Internet user profiles are both monitored and constantly updated.⁷⁴ In a sense there is the simultaneous prospect of both narrow-cast marketing and forms of control. Richard Barbrook has made the point that Deleuze, when describing the role of communication technologies, has drawn on Foucault’s notion of a transition from a “society of discipline” to a “society of control”.⁷⁵ While Deleuze makes a link between the computer age and a society of control, he also cautions that “...machines don’t explain anything, you have to analyze the collective apparatuses of which machines are just one component.”⁷⁶ Significantly, Deleuze points out that creation and communication are two entirely different things. Taking a wider view of the transition from discipline to control, Nicholas Thoburn describes an emerging “general cybernetic model of social production, with a self-transmuting overlay of disciplinary techniques across social space” (‘modulation’ replacing ‘moulds’).⁷⁷

Lawrence Grossberg makes a case that there are connections to be made between the ideas of Gramsci, Laclau & Mouffe and the philosophies of Deleuze & Guattari. He points out that the notion, or practice, of ‘articulation’ can be seen as an element that runs throughout these seemingly disparate theories. Articulation can be interpreted as the ways in which concepts, groups and practices may become (temporarily) linked. It can be viewed as a process of both bringing together and breaking apart. Stuart Hall has stated that, “Articulation is … the form of the connection that can make a unity of two different elements, under certain conditions.”⁷⁸ Hall goes on to point out that such connections may be complex, volatile and temporary. Similarly, Grossberg speaks of a concept for “describing the process of forging connections between practices and effects, as well as of enabling practices to have different often unpredicted effects.”⁷⁹ Richard Middleton has described how when the process of articulation is functioning well, elements come together in ways that both appear natural and have a tendency to spread.⁸⁰ Grossberg also talks about how articulation is a “theory of contexts” in that it is not about assigning a single immutable context to any particular idea or activity.⁸¹ Contexts can be seen as interacting and overlapping. In addition, Grossberg describes the role that structure plays in such examinations – noting that it is common to claim that Deleuze and Guattari reject notions of structure in their investigations, yet concepts such as rhizomes and assemblages have underlying conceptions related to structure.⁸² At the same time, it should be noted that Grossberg is clearly not making a case for structure as determinacy. He acknowledges the reality of structures, but also states that “this is markedly different from essentialist analyses which take for granted the reality and even the necessity and universality of certain structures.”⁸³

Grossberg also makes the case that the concept of ‘affect’ is a theme common to both cultural studies and the philosophy of Deleuze and Guattari. The term is linked to a number of concepts including both rhizomes and war machine. In the Foreword to *A Thousand Plateaus*, Brian Massumi describes a “prepersonal intensity corresponding to the passage from one experiential state of the body to another and implying an augmentation or diminution in that body’s capacity to act.”⁸⁴ In other words, Deleuze and Guattari talk about a notion of transition that has the potential to either increase or decrease agency. For them “affects are becomings.”⁸⁵ Affect is both “what a body can do and what it can undergo.”⁸⁶ In a sense, the term is linked to desire, involvement and the concentration of energy. Grossberg describes “mattering maps”, which are “like investment portfolios: there are not only different and changing investments, but different intensities or degrees of investment.”⁸⁷ He goes on to make the case that affect is something different from general notions of taste, interpretation or understanding. It is connected to a sense of belonging or identification.⁸⁸ It is for this reason that Grossberg argues that affect is a particularly appropriate term with respect to popular culture – potentially empowering zones where people share common interests that have the possibility of leading to either additional activities and alliances or forms of more overt political action.⁸⁹ Of course, this notion of energized connections and collective forces also has the potential for more exclusionary and less positive forms of agency. In this way, the notion of affect is firmly interconnected with the concept of articulation.

It is important to remember that the very notion of Empire is not without its shortcomings. For instance, it is hard to imagine how political activity can be organized and effectively take place in an environment defined by immanence. Perhaps not

surprisingly, Laclau questions a conjecture that seems divorced from the theory of articulation. For Laclau, the multitude is “constructed through political action – which presupposes antagonism and hegemony.”⁹⁰ Mark Laffey and Jutta Weldes have made the case that Empire downplays the continuing importance of state power.⁹¹ At the same time they point out that sovereign territory has never been an applicable indicator regarding global power. They make a similar argument with respect to the ongoing importance of borders – suggesting that the notion that the globe consists primarily of smooth space is an overstatement.⁹² Lastly, they argue that Hardt and Negri do not pay sufficient attention to the fact that the United States remains a global hegemon.⁹³ These critiques are echoed by Michael Strangelove, who adds that Empire overlooks the continued importance of both local and regional elites.⁹⁴ He remarks that, “Postmodern conditions of diffuse and decentred power are anchored on the modern reality of state-based cultural, economic and military imperialism.”⁹⁵ While not directly addressing the work of Hardt and Negri, Alain Joxe has a unique and informative take on the concept of Empire. Joxe envisions a planet that is much more chaotic, where an Empire of disorder persists. While retaining a dominant place in Empire, the United States is unwilling to take any sort of protectorate role for the territories under its influence. In this scenario power is exercised by “remote control”, and Empire is a “system of regulating disorder by means of financial norms and military expeditions ...”⁹⁶ In this scenario the sources of problems and discontent are continually pushed to the outer boundaries of Empire.⁹⁷

For the purposes of this project it is also useful to consider the fluid and uncertain nature of informational and cultural flows. To this end the anthropological-oriented work of Arjun Appadurai provides a number of valuable insights. His examination of

the global flows and “scapes” are linked both to Deleuze and Guattari’s notion of rhizomes and to Scott Lash and John Urry’s conception of disorganized capitalism.⁹⁸ Appadurai opts to utilize the suffix ‘scape’ – as in mediascapes, technoscapes, ideascapes – in an effort to illustrate the dynamic and tentative nature of relationships. Describing the unpredictability associated with contemporary flows and interactions, he notes that, “even an elementary model of global political economy must take into account the deeply disjunctive relationships among human movement, technological flow, and financial transfers.”⁹⁹ From this point of view, there needs to be as much emphasis placed on chaos and uncertainty as on predictability and order. Equally important, Appadurai makes the point that the term scape is appropriate in that the various aspects of local and global relationships are perspective dependent.¹⁰⁰ In a sense, this argument points to the gap between the utopian claims made by advocates of neo-liberal globalization and the realities of contemporary cultural and financial exchanges. There is the suggestion that global forms will always have undetermined local components and variations.

Considering global interactions, Jonathan Xavier Inda and Renato Rosaldo have described “awkward connections” which are “highly selective and uneven.”¹⁰¹ For these authors, globalization is “at once a matter of selectively dense interconnections and extensive disconnection and abjection.”¹⁰²

Historically, this sense of undetermined and shifting relationships can also be seen in the linkages between states and illegal practices. In his examination of the connections between piracy and state-formation, Thomas Gallant draws on World-Systems theory and suggests that there often is not a clear distinction to be made between state activity and illegal acts. Similar to the notion of war machines, Gallant uses the example of how

border guards often oscillate between being engaged by the state and by private armies. Often the end of conflicts (both within and between states) determines whether particular individuals are labeled as legitimate or illegitimate.¹⁰³ The combatants alternatively face legal difficulties or become functioning components of the state. Importantly, Gallant also notes the ways in which the activities of pirates has led to the opening of new markets and the spread of capitalism.¹⁰⁴ In addition, as Josiah McC. Heyman and Alan Smart have argued, such activities bring into question both the stability of states and the notion that they have “sustained legal hegemony.”¹⁰⁵ Although the authors maintain that this is not a new phenomenon, they suggest that states are “incomplete, disunited (and) fractured.”¹⁰⁶ It is for this reason that illegal actions persist in spite of the efforts made on behalf of states. Drawing on the work of Philip Abrams, they suggest there is a divide between “the state idea” and the “empirical state.”¹⁰⁷ Heyman and Smart also call into question the idea that illegal activity can be attributed merely to discrete subcultures, instead insisting that such actions take place within a web of relationships.¹⁰⁸

Lastly, it seems pertinent to address aspects of policing and legal control that appear related to the case studies. Firstly, there is a notion that states are inspired and encouraged to adhere to forms of parity and continuity. Drawing on the history of policing in Europe, Foucault points to an equilibrium where it is in the interest of states to possess an awareness of both internal and external police forces.¹⁰⁹ It is desirable to have consistent and effective policing both within your own state and within neighboring states. The suggestion is that a region is weakened as a whole if there is a state that is not pulling its weight in terms of policing.¹¹⁰ Foucault notes that, “European equilibrium gives the set of states the right to see to it that there is good police in each state.”¹¹¹ It

seems certain that in our contemporary setting this notion still holds for Europe and that the concept might even be extrapolated to describe global forms of policing. Laffey and Weldes have pointed out how policing, like borders, remains vital in the era of neo-liberal globalization (with respect to such issues as intellectual property) and note that in many ways new concerns over security indicate the continued relevance, at least as far as corporations are concerned, of the state.¹¹² As they see it, policing remains key as long as efforts continue to be directed toward extending privatization and property rights.¹¹³ Secondly, the legal concept of amnesty has relevance with respect to both broadcasting and file-sharing. While, in the past, amnesty was something that could only be offered by governments, more recently the term has also come to encompass programs offered by corporations to copyright violators. The transgressors agree to destroy pirated materials, promise not to engage in such activity in the future, and are granted an exemption from criminal charges. Significantly, Andrew Schaap points out that the term amnesty implies a “strategic compromise” rather than an act of “forgiveness.”¹¹⁴ Likewise, Peter Krapp notes that it is less about forgiveness, which is linked to the act of remembering, and more about “mutual forgetting” and “instrumentalized amnesia.”¹¹⁵ As such, amnesty is related to ongoing relationships that entail compromise and negotiation. As with interstate policing, the question becomes: to what extent has amnesty been successfully used as a tactic of control?

Overall, the aim is to look at these various theories and philosophies in an interactive way. These ideas are not conceived of as isolated entities, but rather viewed as connected even if some are linked in only tangential ways. Given that the topic of this project crosses into a number of disciplines, it seems appropriate to integrate a variety of

theoretical perspectives. It is not the objective of this study to disprove any of these theories but to consider the ways in which they might give insight into the case studies. The intention is to explore the following cases as both distinct entities but to be mindful that they are related to the dynamic relationships between power and capitalism. While focusing on post-hegemonic conceptions of power and space, there will be an attempt to maintain an awareness regarding the limitations and potential shortcomings of this approach (which may neglect both national and local relationships and spheres of influence). Furthermore, post-hegemonic conceptions of diffused power and authority may overlook persisting centralized instances of power and influence.

METHODS

While my research will generally fall under the qualitative banner, I will employ a multi-methodological approach. My overarching approach with respect to methodology might best be described as descriptive-interpretive. In a number of ways, I will be engaging in what Egon Guba and Yvonna Lincoln refer to as “constructivist inquiry.”¹¹⁶ I will be drawing on my pre-existing knowledge; but at the same time, I will be attempting to recognize that the project is an interactive joint effort to the extent such activity is possible. As Guba and Lincoln note, there is an “epistemological assumption” that it is not feasible to de-link “the inquirer from the inquired into.”¹¹⁷ Constructivist methods also draw on the idea of employing tacit knowledge and purposeful sampling in an effort to secure the most appropriate informants and to build knowledge.¹¹⁸ In addition, Guba and Lincoln describe findings that are focused on consensus and involve the interactions of various constructions in a “hermeneutic dialectical process.”¹¹⁹ Michael Quinn Patton

has made the point that constructivist inquiry takes into account that the parties involved in a given situation will have unique experiences and distinct perceptions.¹²⁰ As a result, this method of inquiry often puts a specific emphasis on subjects, or topics, that have been traditionally marginalized.

While my thesis will not be specifically about the Internet, cyberspace or cyberculture, I will be mindful of the various emerging methodologies in those areas.¹²¹ I will attempt to avoid any determining conceptions of technology. My intent is to look more generally at the idea of contested space. The hope is to move beyond macro and micro conceptions of space and to consider the ways in which the two interact. Drawing on the work of Edward Soja, Paula Saukko describes a ‘thirdspace’ – one which considers the relationships between various levels and conceptions of space. This conception considers the associations between “macrostructures” and “lived space.”¹²² Echoing Deleuze and Guattari’s notion of rhizomes, Saukko states: “rather than imagining the perspectives to proceed vertically from small to big, they are best envisioned horizontally, or as a web, where views from different nodes open up a different view of space, but these views cannot be organized hierarchically.”¹²³

My general methodology will be a case study approach. The intention is to consider the two case studies separately, but also to point out any similarities or dissimilarities. While my case selections were purposeful (one representing a set of national or regional interactions, and the other of a more global nature), their connections from the outset are speculative and uncertain. By limiting the project to two case studies, the intent is to include a high degree of depth in that there is sure to be a lack in breadth. It is acknowledged that any case study involves sets of constructed boundaries – both in

terms of the activities examined and in the time periods selected. In this instance, these selections are, in part, attributable to the availability of research materials. The most significant limitation within the literature associated with pirate radio is a lack of academic materials. Most of the writing on pirate radio has been done by former pirates or by scholars examining the evolution of the BBC. As a result, there is very little information from the perspective of pirate radio listeners or the recording industry itself. It is for this reason that the section on radio in the UK (in contrast to the downloading case study) will emphasize state legislation and regulation rather than the strategies employed by recording companies. With respect to on-line music there is a great deal more information written from a variety of perspectives. Perhaps the most significant limitation in this area is that the industry seems to be at present rapidly shifting in a variety of directions simultaneously. My qualitative research will require that I investigate a multitude of primary and secondary sources – books, journal articles, newspaper reports, magazine articles and websites. As a part-time music journalist, I will also be drawing on my interactions with a number of my pre-existing contacts which include performers, industry personnel, ethnomusicologists and journalists.

The case study approach does have a series of potential problems and biases. Diane Vaughan has stated, “In the same way that our preconceptions of cases appropriate as units of analysis can become fixed, so can our ideas about what constitutes useful information and how to go about getting it.”¹²⁴ One potential way to lessen the impact of such prejudices is to adopt an interdisciplinary approach that addresses both micro and macro levels of analysis and considers the ways in which they connect and interact.¹²⁵ In addition, there will be an attempt to be mindful of the terms used throughout my project.

The word ‘pirate’ seems to be particularly loaded – having connotations that are, among others, potentially pejorative, romantic or complimentary. The term has power associated with it, both in terms of state authorities as well as with forms of resistance. In a sense the word has both legal and cultural meanings. The questions will be: who is using the term (and associated language), in what context, and why? The intention is to avoid an assumption that pirates make up a homogenous or like-minded group. As there is an acknowledgement that the term is illusive and highly contestable, no attempt will be made define it in a single, concrete way.

CHAPTER 2 - PIRATE RADIO IN THE UK

The first case study I will consider concerns the emergence of pirate radio in England. This phenomenon received a great deal of media coverage in the 1960s, but it has roots that predate this period. In addition, the legacy of that era persists in new forms of pirate radio – both on-line and off-line. Among journalists and academics, it has frequently been contended that the pirates forever changed the face of broadcasting in Britain. It has also been asserted that the public broadcaster in England effectively and efficiently co-opted both the techniques of the stations and the pirate DJs themselves. Are both of these claims too broad, and to what extent does each tell only a portion of the story of how radio broadcasting evolved in the 1960s? What role has been played by government, the music industry, regulatory bodies, and the pirate stations themselves? To what degree have the activities of the various parties involved intersected and overlapped?

BACKGROUND

It seems that any assessment of pirate radio in England requires an examination of the emergence of the British Broadcasting Corporation (BBC). The origins of the institution go back as far as 1922, when a number of businesses united to form a cartel which was known as the British Broadcasting Company. It is important to note that many of these businesses were pioneering electronics companies which had intentions of selling radio receivers.¹ From these very early days, the British Post Office – which oversaw the use of radio frequencies – was involved in collecting (in the form of user licenses) and distributing revenues for the company. The conclusion of a committee examining broadcasting in 1926 called for a state monopoly that would offer discriminating and

educational materials for listeners.² The report called for a public entity that would be “acting as Trustee for the national interest.”³ In January of 1927, the BBC was formed by a royal charter. The corporation would have a degree of autonomy and be publicly funded via annual fees charged to radio set owners. As the collector of fees, and thus the gauge on listener contentment, the government could encourage the BBC to cater to what it interpreted to be public demand.⁴ John Reith, who had managed the company in its former incarnation, became the Director-General of the BBC. It is widely noted that Reith’s sense of moral mission and public obligation, as opposed to merely pandering to the masses with light entertainment, highly influenced not only the formation of the BBC, but also its lasting legacy.⁵ Concerning the early evolution of the BBC, Don Browne has noted that, “There would seem to be three dominant elements behind each succeeding decision to retain the BBC monopoly as completely as possible: financial, emotional and philosophical.”⁶

While the BBC is commonly portrayed as uniquely conservative, it should be remembered that the views about entertainment and popular culture it espoused were widely held in a number of areas. Robert Chapman makes the case that in many ways the BBC mirrored the views and philosophies of the principal educational institutions during its initial years of operation.⁷ In a way, the BBC represented a continuation of the colonial mindset and Chapman further adds, “... the corporation was not setting a precedent when many of its leading fugues condemned ‘wisecrack, song, and the blare of the jazzband’ as next to worthless.”⁸ Likewise, it could be said that the broadcaster was expressing a general concern about commercialization which, at the time, was commonly linked to cultural decline and encroaching Americanism.⁹ It can be argued that Reith’s

take on the importance of morals, standards and education actually demonstrated a high opinion of the general public.¹⁰ It seems safe to say that in the early days of the BBC it was also difficult to gauge or measure what would engage a typical radio listener. While acknowledging the overt class aspects of the early BBC, Asa Briggs makes the point that it would be a mistake to describe the corporation as “monolithic.”¹¹ Given its relationship with Parliament and its hierarchical command structure, the BBC administration encompassed a spectrum of viewpoints regarding the nature and future direction of broadcasting. However, it is fair to say that the BBC concentrated broadcasting in London and, up until the late 1960s, it contained little broadcasting directed toward the cities and communities outside of the capital.

While it is commonly assumed that off-shore pirate radio first challenged the BBC broadcasting monopoly in the mid-1960s, there were a number of forerunners. One of the earliest and most significant was Radio Luxembourg which went on the air in 1930 and began broadcasting programming in English as early as 1933. Initially, the BBC argued that the mainland station was occupying unauthorized frequencies, but there was also concern in Parliament regarding the use of airwaves for advertising and content that might be political in nature.¹² However, Radio Luxembourg was clearly exploiting openings left by the BBC. In part, its broadcasting gained popularity during those periods that the BBC was off the air – most significantly on Sundays.¹³ At the same time, due to its highly formatted and commercial nature, Radio Luxembourg was not without a certain amount of stiffness and formality.¹⁴ However, it was via Radio Luxembourg that many UK listeners first heard the early rock and roll records coming out of the United States in the 1950s.¹⁵ As music journalist Simon Frith has stated, in comparison to the

institutionally mediated “conservative” programming heard on the BBC, when commercial radio arrived it sounded “radical.”¹⁶ Radio Luxembourg’s influence was limited as it only broadcast in English at night and, in many parts of the UK, it was difficult to pick up its signal clearly.¹⁷

By broadcasting from outside of the UK, Radio Luxembourg was not subject to the same regulations as the BBC. For instance, the BBC was constrained by the notion of ‘needle time’ which was a Musicians’ Union-influenced agreement that severely curtailed the amount of recorded music it could air. As a result, broadcasting music in the UK largely entailed the transmission of live concerts and in-studio performances. The BBC was also required to interact with the Performing Rights Society (PRS).¹⁸ The Society, which had been established in 1914, engaged in monitoring the rights of both music publishers and composers.¹⁹ Furthermore, the BBC was obligated to negotiate with Phonographic Performance Limited (PPL), an organization which represented record companies and collected royalties on their behalf. At the time, as with the Musicians’ Union, the PPL sought to limit the amount of recorded music being played over the airwaves.²⁰ Initially, the contention was that broadcasting songs would inhibit the sales of records. Radio Luxembourg had the benefit of being clear of both the financial and bureaucratic limitations of these agreements. Furthermore, as a commercial venture, the station was able to capitalize on the radio advertisement restrictions within the UK. While the PPL’s official line was that it was preferable to limit the number of recordings being broadcast, this did not keep large record companies such as EMI and Decca from purchasing promotion air time on Radio Luxembourg.²¹ Frith notes that, “... from 1946 to 1968 it was possible for companies to buy quarter-hour segments on Radio

Luxembourg's English language programs which were, in effect, record company commercials.”²²

Prior to the mid-1960s, a number of stations operating on ships began to broadcast into the UK. It seems likely that these mobile stations, which took advantage of the smooth spaces of both the airwaves and the sea, were filling areas left open by domestic broadcasters (both in terms of available radio frequencies and potential content) as well as pursuing the type of commercial ventures that Radio Luxembourg had demonstrated were possible. Arguably, the first such vessel broadcasting in the international waters around Europe was Radio Mercur, which began operating off of the Dutch coast in 1958. Chapman notes that there were as many as seven ships operating in the early 1960s (often based out of Denmark, Sweden or Holland), and that these ventures enjoyed both successes and failures from a business perspective.²³ Among the thriving stations was Radio Veronica, which commenced broadcasting in 1960. Some of the station’s content was in English, and the ship was said to be generating as much as £1 million in profit per year.²⁴ Veronica was broadcasting as much as twelve hours of popular music each day and, during its second year of operation, it was making plans to boost its signal strength in order to reach more listeners in the UK.²⁵ Bringing to mind Foucault’s take on the quest for equilibrium in inter-state policing, by 1962, all mainland European countries except Holland had passed legislation criminalizing unauthorized forms of offshore broadcasting.²⁶ Although Holland did not have concrete laws regarding broadcasting in international waters until the 1970s, the issue played a part in elections that took place in 1965.²⁷ Significantly, Radio Mercur temporarily operated under a Panamanian flag-of-convenience as a way to evade authorities.²⁸ This would become a common tactic for

pirate vessels based in the UK as Panama was not, at that point, a signatory to any agreements that might regulate or limit offshore broadcasting.

Simon Frith makes a convincing case that the rise of pirate radio in Europe reflected changes that had already become apparent in forms of commercial broadcasting taking place in the United States. This was in part due to the ‘rationalization’ of the industry in the United States and the increasing use of demographics to identify and pinpoint specific markets.²⁹ Significantly, Frith points out: “The process by which radio had become a mass medium was reversed: using this data, stations had, in the 1930s, sought to put together huge heterogeneous audiences, now concentrated on exploring the differences between small homogeneous ones serving precisely the musical (and consumer) tastes of specific age, ethnic, or local groups.”³⁰ While Frith notes that the newly identified format quickly became standardized, it was an example of how neglected groups of listeners could be identified and exploited.³¹ During the same period, pirate broadcasters in Europe were discovering some of the same information – albeit by methods that were more trial-and-error in nature. What the European pirates had in common was that they filled openings not covered by legitimate radio stations – both spaces in the form of time-of-day program scheduling and content gaps with respect to popular music.³² While the form of advertisement-driven radio offered by the pirates was not without its conventional and conservative aspects, the offshore stations did play a key role in the initial spread of rock and roll music throughout Europe.³³ What is noteworthy is that even from this very early period pirate radio was an indicator of the connections and relationships between subcultural struggles and corporate forces.

As emphasized above, it was the needle time arrangement which most overtly curtailed BBC programming. The *Copyright Act* of 1956 re-entrenched stipulations that there were to be clear limitations put on the amount of recorded music that could be broadcast on the BBC. Even prior to the Act, the BBC was required to negotiate a renewable license with the PPL that would specify, in addition to payment rates, how much recorded music the public broadcaster was allowed to air.³⁴ As of the late 1950s, the BBC was licensed to play only 28 hours of recorded music weekly over its domestic service – which often meant that the Light Programme (a post-war BBC concession to popular tastes) was allocated as little as 14 hours of recorded music each week.³⁵

Although BBC attempted to negotiate an increased amount of needle time, when the licensing agreement was renewed in 1963 the public broadcaster was unable to secure an increase in the amount of records it could air.³⁶ Arguably, even if the BBC had the will to more actively pursue the playing and promotion of popular music, this agreement with the PPL would have severely limited any movement made in that direction. Furthermore, it seems certain that this agreement was, at least in part, responsible for creating an opening that the pirate stations could take advantage of. It has been demonstrated that the Musicians' Union strongly influenced the PPL with respect to needle time licensing. Teddy Warrick, a BBC producer during this period, makes the case that the PPL was likely afraid that the Musicians' Union might try to prevent its members from recording if they became dissatisfied with needle time agreements.³⁷

The entire issue of needle time demonstrates that the BBC was in some ways caught between the competing forces of musicians. On the one hand, the labels (via the PPL) represented musicians involved in the recording of music. At the same time, the

Musicians' Union represented performing musicians who had a larger interest in playing live on the air. To further complicate these matters, many prominent musicians often occupied both camps – earning revenues from both playing on the air and working in recording sessions. Asa Briggs, who has written extensively about the BBC, has noted that the broadcaster was restrained by a “coalition of rich record companies” and “highly protectionist trade unionists.”³⁸ This notion stands in stark contrast to the idea that the content airing on the BBC was primarily limited by government officials and institutional bureaucracy. It also problematizes the binary us/them conflicts often depicted in subculture theory. Briggs ultimately concludes that the policies the domestic pirates would eventually endeavor to circumvent “supported the restrictionists rather than the BBC.”³⁹ While the recording industry as a whole would criticize the British pirates when they emerged, many individual record labels would attempt, as they had earlier with Radio Luxembourg, to get their material played on these fledgling commercial stations.⁴⁰ As far back as 1927, when the BBC first began playing recorded music, it had been observed that there was a direct relationship between radio play and record sales.⁴¹ Frith has made the interesting observation that radio play, the activity that most influenced the sale of records, was largely (short of paying for plays as with Radio Luxembourg) beyond the control of the recording industry.⁴²

Although there were a couple of attempts to launch ship-based pirate radio stations in Britain in the early 1960s, it is now widely accepted that Radio Caroline offered the first concrete challenge to the BBC’s broadcasting hegemony. The station was launched in March of 1964 and quickly gained a high degree of popularity. Broadcasting off the Essex coast, Radio Caroline would eventually have as many as 9

million listeners.⁴³ The station would also go on to claim that it was generating £80,000 in profits each month.⁴⁴ Although it seems certain that Radio Caroline was influenced by previous European pirate stations, Andrew Crisell makes the point that it was even more inspired by American Top 40 radio.⁴⁵ The first complete program broadcast from the vessel was a Top 20 show which featured songs by groups such as the Rolling Stones.⁴⁶ In addition, the station operated from 6 am to 6 pm each day of the week. Shortly after the arrival of Caroline, the BBC sought and received a significant increase in needle time as the license was increased to 75 hours per week for all of the BBC services.⁴⁷ As with Radio Mercur, Radio Caroline operated under a Panamanian flag. This was an attempt to bypass the provisions of the Wireless Telegraphy Act (1949) which forbid British stations to operate without a license. Instantly the Post Office filed a complaint with the International Telecommunication Union (ITU) in an effort to prompt a revocation from Panamanian authorities.⁴⁸ However, within a short period of time, Caroline would absorb a second pirate station (Radio Atlanta) and begin offering two services – increasing its range by broadcasting separate signals in the North and South.

THE PIRATE BUSINESS

While there is often a romantic notion surrounding the offshore pirates that presents them as anti-establishment figures that ran up against monolithic regulatory agencies and government officials, the full story seems to be more complex and nuanced. In fact, starting an offshore pirate station during in the mid-1960s required a very large amount of capital. Such ventures were generally not undertaken without a high degree of organization and a large number of prominent investors. While many of Caroline's

initial backers could have been described as members of the counter-culture, often they were affluent socialites (sometimes referred to in the media of the day as ‘The Chelsea Set’).⁴⁹ Perhaps the most prominent of these early investors was Jocelyn Stevens, then editor of *Queen* magazine. Such were the ties with Stevens that Radio Caroline initially used the offices of the magazine as its business center. In total, more than £250,000 was raised to launch the Radio Caroline.⁵⁰ Among the sponsors of the station were magazines and beer companies, although the owners heeded domestic rules that disallowed advertising material initiated by political parties.⁵¹ Significantly, Radio Atlanta had been founded by Allan Crawford, who at the time was the Managing Director of Southern Music. In the mid-1960s Southern Music was one of the largest music publishers in the world.⁵² While it is apparent that these early pirate stations were challenging the norms of broadcasting in England and their listeners might have been classified as a subculture, it is significant that many of these businesses were highly organized, relied heavily on social contacts, and were backed by significant amounts of capital. This notion clearly challenges the more romantic notion that subcultures organize from below and are, in turn, co-opted by corporate forces. At the same time, given that the stations were situated in international waters and the conflicts that would ensue with authorities, it is hard not to be reminded of Deleuze and Guattari’s conception of the smooth space. They write that, “... the sea is a smooth space par excellence, and yet was the first to encounter the demands of increasingly strict striation.”⁵³

Radio Caroline was founded by Ronan O’Rahilly who was twenty-two years old in 1964. O’Rahilly had been involved in operating nightclubs and, by the mid-1960s, was representing a singer named Georgie Fame. Briggs notes that Fame had not been

able to secure a recording contract with any of the major recording companies operating in England at the time.⁵⁴ This is significant in that four major companies (Pye, Phillips, EMI, Decca) had a virtual monopoly on all of the music that was being commercially recorded in the early 1960s. In fact, EMI and Decca alone controlled approximately 75% of the record market in Britain.⁵⁵ It has been noted that O’Rahilly approached Radio Luxembourg not realizing that he could only get a record played by paying a fee.⁵⁶ Furthermore, the fledgling talent agent also discovered that what little popular music the BBC played at the time came from established artists.⁵⁷ It is widely reported that O’Rahilly started Radio Caroline as a way to disrupt the radio broadcasting monopoly that existed during this period – although there is also evidence that his plan to start a radio station predated his experiences managing Georgie Fame.⁵⁸ While Radio Caroline clearly played a key role in opening up the spectrum of content that was heard on British airways, it too, as a commercial venture, eventually had sponsored programming which coloured its play lists.⁵⁹ However, in spite of some of these surface contradictions, O’Rahilly gained a reputation for having a business style that was informal, freewheeling and impulsive.

It is worth noting that while all of the ship-based pirate stations were commercial projects, not all of the stations displayed the same degree of business acumen. If Radio Caroline is an example of a business operated in a casual manner, Radio London was just the opposite. Radio London, which went on the air in December of 1964, turned out to be Radio Caroline’s chief rival. Unlike its predecessor, Radio London adopted a much more systematic approach to broadcasting – which included hiring a press-relations firm and launching a number of media promotions.⁶⁰ The station’s director, Philip Birch, had

already enjoyed an extensive career in high-profile advertising. To avoid legal difficulties, the station was operated under a trust located in the Bahamas.⁶¹ Most of the positions of authority at Radio London were occupied by people who had media and advertising experience.⁶² Via numerous prominent investors and a comprehensive business plan, Radio London was able to raise £1.5 million.⁶³ The new station attracted as many as 10 million listeners and was netting as much as £20,000 each month.⁶⁴ Radio London, perhaps influenced by both its high-profile American investors and American radio stations, offered a much more overtly formatted form of Top 40 programming.⁶⁵ Robert Chapman argues that Radio London had differing goals from Radio Caroline in that it had the long-term aim of legitimizing and legalizing American-styled commercial broadcasting in England.⁶⁶ While engaged in a commercial activity that occupied a legal grey area, the station actively avoided controversy and made efforts to avoid clashes with authorities. The case of Radio London points to the merits of post-subculture theory in that there is not a clear distinction to be made between corporate forces and emerging forms of entertainment. If the demand for pirate radio was subcultural in nature, it seems certain that the supply was much more intricate and uncertain in nature. The Radio London example also points to the ambiguous line between illegal and state-sanctioned activity.

This notion is further borne out when one considers the ways in which many of the pirate stations resembled conventional businesses. While the pirate radio phenomenon may have appeared as a free-flowing rhizome, it should be considered that the industry also had arborescent tendencies (both within the pirate community and inside individual stations). Often a single company would own a number of stations, and

mergers and takeovers were commonplace.⁶⁷ This also means that a number of the ventures eventually failed, only to later rematerialize in a different guise or as part of a new partnership arrangement.⁶⁸ Arguably, this was linked to the highly regional character of offshore broadcasting; the only way companies could cover a greater amount of territory (and gain increasing amounts of advertising revenue) was either by alliance or by merger.⁶⁹ As with conventional businesses, success also prompts imitation, and many pirates ended up trying to broadcast into the same (urban) lucrative markets. Eventually, over twenty pirate broadcasters would function around the UK in the mid-1960s – some of whom would reduce costs by operating from abandoned offshore towers or forts. One such fort-based station was Radio Sutch which was operated by the singer Screaming Lord Sutch. This was the only case of a performer becoming directly involved in pirate broadcasting – although, arguably, the initial motive was linked to a quest for short-term publicity rather than an attempt to set up a comprehensive station.⁷⁰ Radio Sutch was used largely as a vehicle to promote Sutch as well as other artists who worked under the same management.⁷¹ Rather than engage in open competition, other stations opted to interact on a semi-formal basis. For instance, officials from the two stations that were considered the greatest rivals – Radio London and Radio Caroline – met periodically to discuss shared business concerns.⁷² While Frith acknowledges that UK listeners interpreted the pirate stations as a form of “cultural freedom”, he goes on to note that “In most respects … the ‘free’ pirates simply represented American commercial interests – ideologically (their program ideas and styles) and materially (their sources of capital and advertising).”⁷³

While the commercially-motivated pirates may have had good reason not to annoy their sponsors, there is also a great deal of evidence that they generally avoided having confrontations with the government and regulatory bodies as well. While presenting themselves as good citizens may have been a tactic to stop, or at least delay, an inevitable government clampdown, offshore stations actively avoided controversy. As mentioned above, they generally kept away from any form of broadcasting that could be considered overtly political (in the sense of being linked to specific domestic parties). In 1965, Radio Caroline also opted to decline potentially lucrative advertising from the Ian Smith-led colony of Southern Rhodesia.⁷⁴ Chapman recalls that many of the stations had specific codes of conduct and that some of the pirates had even publicly declared a willingness to pay taxes and royalties on the recordings they were playing.⁷⁵ He also notes that Radio London and Radio Caroline broadcast classical music and tributes on the day of Winston Churchill's funeral in 1965.⁷⁶ Radio Caroline was also active in supporting charities such as C.A.R.E.⁷⁷ On one occasion, the General Manager of the PPL revealed that the pirate stations had been more cooperative than some of the other organizations with which they interacted.⁷⁸ Furthermore, some of the pirates emphasized that they were not technically breaking laws at this point. While it was certain that the government would eventually take action against them, the offshore stations were occupying a legal grey-zone in the mid-1960s. Even when legislation did arrive, all of the persisting stations (with the exception of Radio Caroline) closed down their operations prior to having clashes with regulatory forces. Much of this demonstrates the divide between the rhetoric associated with the pirate stations and their day-to-day

conduct as well as the thin line between legitimate and illegitimate broadcasting in the UK.

The recording industry made it clearly known that it was opposed to the offshore pirate stations. Given the quasi-legal nature of the stations, there was no mechanism in place by which the pirates would pay for the use of recorded material. Shortly after Radio Caroline began broadcasting, the PPL revealed that it intended to obtain a High Court injunction against its activity.⁷⁹ In a statement, the organization stated, “Indiscriminate broadcasting of records is detrimental to the interests of the industry, musicians and artists.”⁸⁰ The International Federation of the Phonographic Industry (IFPI) made similar claims and added that such unregulated activity might lead to the broadcasting of obscene material or political content that could be seditious in nature.⁸¹ In addition, the Musicians’ Union pointed out that it continued to have an appropriate level of influence to limit the amount of pre-recorded music that was aired in Britain. It should be recognized that the BBC employed some 600 full-time musicians during this period.⁸² It also seems possible that the major labels might have overtly opposed the pirate stations because they provided a potential outlet for a number of emerging independent labels.⁸³ At this point the vast majority of independent labels were either controlled or distributed by the major labels. In addition, the record companies continued to state that the offshore stations actually overexposed many artists – an activity they associated with a dip in record sales during this period.⁸⁴ The PPL was backed up in Parliament by a Labour MP who repeatedly called for a ban of the offshore broadcasters.⁸⁵ There were two distinct forces at work – the labels wanting to sell records and the commercial broadcasters wanting to maximize their number of listeners. Frith

has pointed out that these two goals are not one and the same, and at times might work in opposition to each other.⁸⁶ It is also apparent that the pirates were in a difficult position. On the one hand they might be accused of being illicit businesses if they did propose to disburse royalties, and yet they also risked criticism if they failed to offer payment.⁸⁷ In spite of some lip service from the pirate stations, no formal agreements were attempted with the PPL during this period. Ultimately, as Briggs points out, the PPL was unable to control the instantaneous and massive success of the pirate stations.⁸⁸

While there would seem to have been a sharp divide between the record companies and the pirate stations, there was also a great deal of ambiguity. Firstly, there was something of a gap between the stated position of the major labels and their activities. For instance, there is evidence that the record companies provided the ships with promotional material in spite of their publicly stated rhetoric.⁸⁹ There was a sense amongst the labels that they did not want to give up a potential advantage that one of their competitors might exploit. Supplying records to the pirate stations was initially a clandestine affair, although it became increasingly explicit.⁹⁰ It is curious that the labels would adopt this attitude, given that they actively employed Radio Luxembourg as a promotional vehicle. However, it seems likely that the official PPL position had more to do with appeasing the Musicians' Union than with being an indicator of how business was actually conducted. As with the supply of promotional material in general, delivering records to the pirate stations acted as a loss-leader for the record companies. In addition, the official PPL take on the pirates is in direct contradiction to the entire Top 40 formula. Top 40 radio works, in part, on the assumption that the more that songs are played, the more they are purchased.⁹¹ The relationship between the record companies

and the pirates points to the complex nature of flows between recognized industries and quasi-legal actors. While there appeared to be a clear ethical and financial divide being played out in public, there was also an interactive and multifaceted subsurface relationship. Although the majors attempted to maintain their hegemony, this does not mean that they were oblivious to the changing dynamics of their market. Clearly, pirate broadcasting represented a smooth space that could be employed for their purposes.

Although the pirate stations were clearly interconnected with the business community in England, both in terms of investors and ties to record labels, this does not mean that their product did not have subcultural merit. To some extent, the pirates attracted young listeners because they were “buccaneering.”⁹² The pirates presented a romantic image that could be interpreted by listeners as being more authentic and rebellious than the pre-existing broadcasters. For instance, the Top 40 music they played was less tightly controlled than that which had previously been offered on Radio Luxembourg.⁹³ Andrew Crisell has described how, compared to Radio Luxembourg, the pirate stations seemed more interested in entertaining listeners than merely marketing to them.⁹⁴ It needs to be recalled that the pirates were challenging both the BBC and the brand of commercial broadcasting offered by Luxembourg. It seems certain that this rivalry was linked to the disc jockeys, who in true American Top 40 fashion, developed routines and distinct on-air personalities. Even the commercials and jingles seemed to offer a break from the highly formalized broadcasts emanating from the BBC. Arguably, the very styles of the disc jockeys conveyed meaning and articulated a budding youth culture that was marking itself off from previous generations. In addition, the disc jockeys made a point of interacting (reading listener mail on the air, fan-club interaction,

personal appearances, etc.) with their supporters. While the pirate stations were clearly profit-driven, they provided a series of points where the developing rock music scene in England could converge and flourish. That there was an ongoing gulf between the supply and demand of rock music highlights the complex and multilayered nature of subcultures.

In many ways the pirate stations can also be associated with the technology that was emerging during this period. This would include not only increasingly powerful generators and transmitters, but also changes that were taking place in the recording process. Briggs points out that tape recording (and features associated with tape editing) was important in that some of the pirate broadcasters would transmit prerecorded programs.⁹⁵ Furthermore, 45 r.p.m. records were becoming increasingly easy to manufacture at the same time that there were significant improvements in the quality of long-playing records. However, perhaps the biggest development in terms of consumption of pirate radio was the increasing availability of transistor radios.⁹⁶ Significantly, Pye developed a transistor radio named “Singalong” which it actively promoted on Radio London.⁹⁷ Elsewhere, further demonstrating the closeness of lawful and illegitimate businesses, there were transistor radio and antenna advertisements that specifically claimed that their devices could be used to optimally tune in the pirate stations.⁹⁸ That some of the makers of this equipment (Philips, etc.) had ties to the anti-pirate recording industry adds another layer to the complexity of these relationships. What seems certain is that the success of transistor radios reflected cultural changes that were taking place during this period. Young people were assigning a higher value to mobility and individuality. Small and portable radios enabled a new wave of listeners

both to share common bonds in public and to enjoy their favorite music surreptitiously at home.

THE PIRATES & THE GOVERNMENT

While it is often written that the British government generally disapproved of the pirate broadcasters, the initial offshore era of pirate radio lasted for over three years. Not only were the political factions divided on how to handle the issue, there is a great deal of evidence that both the Conservative and Labour governments were concerned that any sort of general clampdown on the pirates would make their parties unpopular with the electorate. The Conservatives were in a difficult position in that they generally did not support what might be perceived as unlawful activity, but at the same time, many members championed laissez-faire free enterprise. In fact, a number of Conservative backbenchers were involved in lobbying in support of commercial radio.⁹⁹ While breaking the BBC monopoly was an appealing prospect for some, it seems certain that a number of Conservative Members of Parliament (MPs) did not want commercial broadcasting to become an unregulated and untaxed free-for-all. Some members of the Conservative government also made much of the fact that the pirate stations might interfere with the radio frequencies used for shipping.¹⁰⁰ While the Conservatives were in power when Radio Caroline first began broadcasting, there is evidence that the party delayed taking action against the pirates out of fear that it would cost them support at the polls.¹⁰¹ Alternatively, the Conservatives might have felt that Radio Caroline would fail in the same way that previous attempts at commercial offshore broadcasting in Britain

had.¹⁰² Either way, it was a Liberal MP who first introduced a bill to control the activities of the pirate stations in 1964.

While the precise role pirate radio may have played in the general election of October 1964 remains uncertain, the Labour party emerged as the victors. Prior to this tide-turning vote, the Conservatives had been in power for over a decade. However, even in the wake of their victory, over a year would pass before the new Labour administration would introduce legislation to curtail the pirates. As with the Conservatives, they feared an adverse reaction at the polls, an issue that was of even greater concern for the Labour government as they had obtained a slender majority in the House of Commons (HOC). The Labour government more vigorously pursued the issue after having gained a more comfortable majority in April of 1966. However, throughout the mid-1960s it was generally understood that the Labour government did not support the notion of private broadcasting. Crisell notes that Labour was “ideologically hostile to what it regarded as (the pirates) unscrupulous commercial opportunism.”¹⁰³ In this period, the Labour government was fielding requests for action against the pirates both from within the country (the Post Office and competing media outlets) and from outside of the country (European countries who were claiming that the new pirate signals were interfering with their domestic transmissions).¹⁰⁴ In addition, it was regularly pointed out in HOC debates that the pirates were not paying either taxes or royalties on recordings.¹⁰⁵

The issue of radio piracy was made even more complex by Tony Benn who had been appointed Postmaster General when Labour came to power. While Benn generally disapproved of the pirates, he was something of a controversial figure in that he was also interested in reconfiguring both the BBC and the Post Office.¹⁰⁶ He would at one point

propose an umbrella type of oversight institution to be known as the National Broadcasting Corporation. However, much like the Conservatives, the Labour government was in no hurry to tackle this issue – proposing a new White Paper study in late 1965 at a time when it was expected that they would produce new legislation. Significantly, Benn did not rule out the prospect of the BBC adding an additional radio service, nor did he dismiss the possibility that the public broadcaster might pursue alternative sources of revenues (limited advertising) for the Light Programme.¹⁰⁷ While the BBC and the British government are often portrayed as being one and the same, clearly there were tensions between some of the BBC governors (who wanted the services to remain wholly funded by the public), Postmaster Benn and the Labour Party. In addition, there were a number of other forces playing a role in the pirate radio controversy – including the opposition parties, the private radio lobby, pirate radio enthusiasts (which included fan clubs and lobby groups), as well as the European countries that wanted England to act on this matter.

In some ways it was the actions of other European governments that gave the Labour party an opportunity to pursue legislation against the pirates. In January of 1965 at the Council of Europe, a broadcasting agreement had been reached by ten countries. Regarding the European Agreement, Paul Harris notes that, “under the terms of this agreement, states undertook to act against pirate radio stations, punishing as offences their establishment and operation as well as giving any form of assistance to such stations.”¹⁰⁸ In this instance Foucault’s notion of equilibrium amongst regional police forces becomes a factor. As Britain accepted the agreement in early 1965, Benn had a greater pretence for announcing that legislation against the pirates was forthcoming.¹⁰⁹ A

second event that prompted decisive action against the pirate stations took place in Britain. In June of 1966 an individual was killed during a dispute about who owned a particular offshore station.¹¹⁰ This incident, which was linked to a number of competing partnership and merger proposals around the fort-based station known as Radio City, generated a great deal of media coverage. It should be noted that the UK press generally disapproved of the pirates, as they were viewed as illegitimate competitors for scarce advertising revenue. The ensuing lead-up to the trial of the accused murderer (who had ties to the Liberal Party and the public broadcasting lobby) generated additional press attention, and drew the public's attention to the more unseemly side of the competition among the pirate stations.¹¹¹ These two events, along with an increased HOC majority resulting from the 1966 elections, gave the Labour government an opening to justify legislation against the pirates. If the pirates had previously been seen in a romantic light, the issues surrounding them were rearticulated and linked to the necessity of public order and safety. In addition, in part due to the fallout from the Radio City affair, Benn resigned and was replaced by Edward Short, a Postmaster General who made it very clear that he did not support any form of private funding for the BBC.¹¹²

While the Labour government introduced the *Marine Etc. Broadcasting (Offences) Act* in July of 1966, it would take 11 months for the Act to be passed and 13 months for it to come into effect. Briggs concisely summarizes the content of the *Marine Act* as "(making) it an offence to provide a ship or radio equipment for use in pirate broadcasting or to supply programs, advertising, goods, or services", adding that "anyone caught doing so would be liable to a two-year gaol sentence."¹¹³ Don Browne has argued that the prospect of political advertising was of greatest concern to the ruling party. He

points out that the pirates were generally known as supporters of free-market-oriented politicians and that Radio Caroline in particular was clearly anti-Labour.¹¹⁴ At the same time, the opposition Conservatives frequently used the debates around the Act as a way to indicate that Labour were out of touch with the realities of both free-markets and young people. One Conservative MP noted in the HOC that “this uncontrolled enjoyment has so rattled a Socialist government that we are condemned to monopoly until the Conservatives come back to set the people free.”¹¹⁵ The debates brought to the fore such issues as the viability of private broadcasting in Britain and questions about what types of services might emerge when the pirates were closed down. Even within the Labour party there was debate as to what form an alternative to the pirates would take, and whether or not any substitute service would be operated by the BBC.¹¹⁶ Initially, within the Cabinet Committee on Broadcasting there were members, influenced by Benn, who entertained the notion of some funding coming from advertisers.¹¹⁷ The BBC prevailed in this dispute (maintaining its monopoly with the prospect of an increased budget), as the broadcasting White Paper of late 1966 clearly indicated the corporation would operate any new popular music station.¹¹⁸ Chapman argues that if the Conservatives had an overabundance of faith in free-markets, the Labour government ultimately had too much trust in the BBC. Regarding the *Marine Act* he states, “In the lead-up to legislation, the squabbling over prized assets and ownership rights completely overshadowed other equally valid arguments about access and representation.”¹¹⁹

In some ways, the *Marine Act* debates draw attention to the issue of how language had been used to describe the pirate broadcasters. While the term pirate may have romantic connotations, and was to some extent embraced by the offshore broadcasters, it

also implies lawlessness and immorality. Throughout the mid-1960s it was not uncommon for politicians to refer to the pirate stations as ‘floating jukeboxes’. The implication was that the offshore stations were linked to dubious activities and could be associated with youth, profit and mechanization. Short frequently pointed out that pirates were committing crimes (a questionable assertion prior to the *Marine Act*), at one point stating, “Every burglar too would like legalizing.”¹²⁰ In a sense the debates surrounding pirate radio took on the tone of a moral panic. Often politicians would present the matter from the perspective that society was in a state of ethical decay of which these broadcasters were a key component. However, there was little analysis about how this period was different from the Radio Luxembourg era, or of the reluctance on the part of the political parties to confront the issue in a more direct manner. In addition, many politicians did not seem to consider that the pirate listening base clearly stretched beyond the teenage market.¹²¹ As the issue was rearticulated, the Labour government became the force of status-quo law and order, while the Conservatives presented themselves as the party of young people and commercial radio. The political issue for the Labour government was about how to get rid of the pirates without alienating voters.

If the pirate radio stations fit Deleuze and Guattari’s description of a war machine, one of the key ways in which the British government integrated or captured this activity was by initiating BBC Radio One. Within weeks of the passage of the *Marine Act*, which essentially ended offshore broadcasting in Britain, the pop-oriented Radio One network was launched. Equally significant was that the first voice heard on Radio One was that of Tony Blackburn, a popular pirate disc jockey who had worked on both Radio Caroline and Radio London. In fact, a number of pirate disc jockeys (John Peel, Simon

Dee, Keith Skues, etc.) would make their way to the BBC. Clearly, in an effort to minimize public outcry, the BBC had been making plans to keep the gap between the closing of the pirates and the opening of Radio One as small as possible. One of the ways in which this could be accomplished was by hiring disc jockeys that had experience in both popular music and the emerging styles of on-air performance that appealed to younger listeners.¹²² Perhaps significantly, it was the highly organized, establishment-friendly Radio London that provided more disc jockeys than any other station.¹²³ What is certain is that the pirates had paved the way for the successful emergence of Radio One. They supplied both an established audience and on-air personalities with pre-tested track records. One of the key factors about the offshore broadcasting period is that the listenership of the Light Programme had not declined – meaning that the pirates had identified, or perhaps generated, a new audience.¹²⁴ Reflecting on the changes at the BBC, Browne states, “even if a monopoly may rarely undertake major innovation on its own, neither can it remain unresponsive to outside events and public demands – even those (with) which it may feel little sympathy.”¹²⁵ Additionally, it is worth recalling Thomas Gallant’s point about how post-conflict scenarios can emphasize the ambiguous and close relationship between actors considered legal and those labeled illegitimate.

Of course, even with a new popular music format and a roster of pirate disc jockeys, Radio One did not exactly match the style and feel of the offshore stations. Crisell notes how Radio One “aped (the pirate) presentational style and jingles”, and argues that the BBC network would not have done well had it been in open competition with the pirates.¹²⁶ Much was made in the media about how “stiff”, “lifeless” and formal Radio One was in its early days.¹²⁷ Perhaps Chapman best identified the nature of the

service when he wrote, “Like Radio London before it the BBC constructed a notion of institutional prestige and responsibility by playing down the importance of teenage appeal.”¹²⁸ However, Frith has pointed out that the BBC had something of a different mandate. Rather than narrowly targeting genres of popular music, the network selected from various types of popular music that were selling well.¹²⁹ Frith goes on to argue that the BBC was in fact trying to nurture a heterogeneous audience. In some ways, this hybrid form of broadcasting directly contradicted the types of narrow-casting that were emerging in commercial ventures during the 1960s. Frith adds that the BBC format relied heavily on the personalities of the individual disc jockeys in that they had to sustain audiences who were frequently hearing forms of popular music they did not necessarily like.¹³⁰ The disc jockeys were further highlighted given that the BBC continued to be bound by needle-time agreements during this period. As a result of these format restrictions, and in spite of a new crop of on-air personalities and a high degree of success, the BBC and Radio One maintained its stuffy and institutional reputation during the late 1960s. Considering the new station, and the BBC’s new commitments to local broadcasting during the same period, Jeremy Tunstall writes, “In 1967 BBC radio put on its new clothes, but in reality it was only a bit more modern and not a great deal less ancient.”¹³¹ In addition, there was the lingering question of whether by employing a handful of pirates the BBC had actually disguised the fact that it had retained many of its long-time broadcasters, formats and policies.¹³²

Perhaps the case of the off-shore pirates points out how war machines take on a different form when they become part of the state. While Britain captured, or re-territorialized, both the sea and the airwaves, this did not mean that the pirates

disappeared. It remains questionable as to whether it is possible to permanently convert the smooth space of air waves and sea into a striated (state) space. Arguably, the pirate spirit persisted, even in a diminished form, within the parameters of state regulation. However, as post-subculture theory would suggest, there was neither a clear-cut battle nor a concluding victory. Capturing a given activity is not necessarily the equivalent of confining a creative force. It seems applicable to draw on Gramsci's notion of hegemony and say that that there was a shifting group of interactions and (non-binary) relationships. Ultimately, there was not a clear dividing line between the BBC and the pirate broadcasters – no strict us (legal) versus them (illicit) dynamic. In addition, arguably, the pirates were not 'captured'. While the majority of the ships were put out of business, the pirates clearly altered the way broadcasting was conducted in Britain. In addition, in true rhizome form, pirate broadcasting persisted in quasi-legal and unexpected ways. For instance, Radio Caroline continued to operate and lives on even today in an on-line format. Even in the period immediately following the offshore pirates, clandestine and illegal broadcasting continued in a variety of forms.

INDEPENDENT LOCAL RADIO & PIRATES ON LAND

During the 1970 election campaign, the Conservatives promised to bring commercial radio to England. As a result of their victory, Independent Local Radio (ILR) was established under the guidance of the Independent Television Authority (ITA). This regulating authority, which awarded licenses and monitored programming and advertising, was renamed the Independent Broadcasting Authority (IBA) in 1972. The newly elected Heath administration appointed Christopher Chataway, an avid supporter

of commercial radio, to the position of Minister of Post and Communications.¹³³ Within a year of the election, a government White Paper projected the launch of up to sixty commercial radio stations in Britain. The notion was that the stations would offer popular programming along with local news.¹³⁴ When presenting the White Paper to the HOC, Chataway emphasized that the stations would operate under renewable contracts and be under the control of the IBA.¹³⁵ However, it was not until 1973 that the first local commercial radio broadcasters began operations. Briggs points out that by this time both Radio One and other local BBC radio services had endured long enough to become entrenched.¹³⁶ At the same time, it was evident that some members of the commercial radio lobby were not pleased about being placed under the authority of the IBA.¹³⁷ The case was made that the legislation did not go far enough toward breaking the BBC's monopoly and that it didn't fully support the idea of free and private broadcasting.¹³⁸ The first two independent radio stations to emerge were both based in London – LBC (news and information) and Capital Radio (popular entertainment). Within their decade of operations, the ILR stations had decidedly mixed results, yet by 1983, forty-three stations had come on air.¹³⁹

Simon Frith makes the argument that the initial ILR stations more closely resembled the BBC than the American stations upon which they were modeled. Frith states that, “by law, they had to provide ‘a general service’ to all members of their communities as well as attract an audience ‘acceptable to our advertisers’.”¹⁴⁰ The point Frith makes is that in some ways the commercial broadcasters were limited and adverse to risk. As a result, these stations ended up being more conventional and predictable than BBC services. Arguably, the ‘general service’ licensing criteria also made it difficult to

pinpoint both listeners and a specific advertising base. Crisell brings up three reasons for the erratic and limited success of ILR.¹⁴¹ Firstly, he argues that many of the original stations were launched in the 1970s during a period of economic recession. Secondly, he points to changes in technology and distribution – including emerging forms of audio equipment such as cassette players, and the increasing hours of television broadcasting. Lastly he makes the case that ILR was overregulated. Crisell notes, “The ILR stations were too tightly regulated by the IBA, which was itself constrained by a government that had not grasped the fact that (radio) was no longer used in the way it had been before the arrival of television and transistors.”¹⁴² The government did not seem to be aware that there was a desire for radio to offer specific (rather than general) forms of music and entertainment. In addition, it would prove very difficult for small localized stations to carry the same breadth of content as the BBC, as they had to rely solely on advertisements for revenue.¹⁴³ In effect, the ILR stations were subject to state approval and operated under a strict regulatory regime. It can be argued that the new stations were a war machine-type extension of state authority rather than a challenge to its broadcasting hegemony.

It seems safe to say that offshore piracy did not entirely disappear after the *Marine Act*, although it was initially severely curtailed. New forms of land-based pirate stations began to emerge in the late 1970s. This was, in part, due to the emerging availability of affordable and portable transmitters. Such mobile transmitters (which could rebroadcast a signal sent from a nearby location) could be temporarily set up on top of apartment buildings making them difficult to detect. By the mid-1980s, transmitters could either be built by those who had the know-how or purchased for as little as £200.¹⁴⁴

In terms of content, the new pirates were perhaps a reaction against the wide-ranging forms of popular music that featured on the BBC. Simon Reynolds writes that, during the early 1980s, pirate radio had a second “boom period,” with new stations that “specialized in the soul, reggae, and funk marginalized by the BBC’s national pop station, Radio One.”¹⁴⁵ Dick Hebdige has written that not only did the national BBC service neglect black music, (which by this point also included hip hop) but the independent and local stations did as well.¹⁴⁶ Clearly Hebdige is making a case that pirate radio during this period could be read as emerging subcultural phenomena. The new do-it-yourself stations were looking to voice particularized forms of music that had been neglected by mainstream broadcasters. While noting that some of the stations were “for-profit narrowcasters,” Sarah Thornton adds that, “To a large degree, the stations did indeed cater to those culturally disenfranchised by age or race.”¹⁴⁷ The low cost of radios (in comparison to night clubs or live concerts), made tuning in to pirate radio an affordable and highly accessible form of entertainment.¹⁴⁸ According to Reynolds, by the late 1980s there were some six-hundred pirate stations operating in England – over sixty in London alone.¹⁴⁹

The Dread Broadcasting Corporation (DBC) is perhaps a telling case study that points to the how pirate radio in England was evolving. The small-scale part-time station was originally set up to play reggae – a genre of music that appealed to a cross-section of young listeners and the large West Indian community that had settled in London throughout the 1960s and 70s. While both Capital Radio and Radio London had reggae shows by the early 1980s, John Hind and Stephen Mosco argue that those shows did not seem authentic to London’s Jamaican community.¹⁵⁰ In contrast, they recall that the disc

jockeys on DBC had come up through the local sound systems and had been highly influenced by the contemporary style of Jamaican broadcasters and sound system operators. The programming was patterned off ‘Dread at the Controls’ a highly successful Jamaican reggae program hosted by the popular singer and producer Mikey ‘Dread’ Campbell. This style would have been familiar to recently transplanted Jamaicans as well as to members of the community who grew up in England (tapes of Campbell’s radio show made their way into the hands of UK enthusiasts). A part of this style involved jingles, sound effects and echo (of the type used in Jamaican dub reggae) as well as a particular type of disc jockey banter.¹⁵¹ This ‘dub’ broadcasting sensibility also resonated with the (similarly alienated) punk community who, by this point, were actively consuming Jamaican records. The station eventually expanded its broadcasting hours and roster of disc jockeys and ultimately featured a variety of (neglected) genres. However, in late 1983 and early 1984, the station was raided by the broadcasting authorities on multiple occasions and had its transmitter confiscated.¹⁵² These raids meant that operating costs were incurred in the form of fines, legal expenses and equipment replacement.¹⁵³ While the station ceased operations in 1984, one of its disc jockeys, following in the path of the early offshore pirates, went on to work at Radio One.

By the mid-1980s, the Musicians’ Union had become less concerned with the pirate stations. Union representatives during this period would refer to the issue as being of ‘minor importance.’¹⁵⁴ Hind and Mosco make the case that musicians had come to accept the role of the pirate stations.¹⁵⁵ Radio play, even on pirate stations, was seen as an important form of publicity. As such, the clandestine stations could be seen as a form

of loss-leader whereby the artist would gain exposure at the expense of collecting broadcasting royalties. This notion became increasingly important as some pirate stations began to be seen as the cutting edge of emerging music scenes. The potential value of play on pirate stations was compounded by the fact the stations were becoming increasingly tied to specific genres and niches. In contrast to exposure on a legitimate station with a general listenership, play on a pirate station would be directed to the specific enthusiasts and consumers of a given musical genre. In addition, this sensibility meshed with the way in which early hip hop music was being promoted. Frequently, emerging artists would give out free informal demo cassette tapes of themselves performing as a way to attract both fans and the interest of record companies. Likewise, the reggae industry had for many years operated on the notion that records should be previewed on sound systems before they were available for sale to the public.

As pirate radio became more of a land-based activity in the 1970s and 80s, the British government pursued a number of new legal routes to curtail and control the new stations. The bulk of these new measures were enacted during the Conservative administration led by Margaret Thatcher. Many of the new regulations came in the form of amendments to the *Wireless Telegraphy Act* of 1949. The original Act essentially made it illegal to either send or receive radio signals without appropriate licensing. The Telecommunications Bill (1984) built on the provisions of the 1949 Act, and it added new powers to the monitoring and regulating authorities. Hind and Mosco have reflected that, “the 1984 Act (Section 76) gives the police powers to arrest without warrant a person who has committed, or is suspected with reasonable cause to have committed, an offence under the Section.”¹⁵⁶ They also add that the 1984 Act granted authorities the

power, for the first time, to seize broadcasting equipment. It has been argued that these new provisions perpetuated rivalries between the pirate stations whereby stations would inform authorities about their would-be competitors.¹⁵⁷ The *Broadcasting Act* of 1990, which made it illegal to advertise on pirate radio, both updated and amended the *Marine Act* (1967). By this point, the Department of Trade and Industry (DTI) was charged with tracking down the illicit stations. However, given the neo-liberal tendencies of the Thatcher government, further steps in the deregulation process were also taken as emerging, or preexisting, commercial stations could bid for local and national licensing. This meant that the pirate broadcasters with sizable urban followings could, if they were able to raise sufficient funds as part of the bidding process, become authorized stations. Of course, bids were subject to the approval of IBA regulators – which, given a cautious selection process, meant that many of the stations to gain approval were conservative in nature or mimicked pre-existing BBC services.¹⁵⁸ By this point, the state broadcasting authorities had adopted two approaches – to alternatively shut down stations or to bring them, via an amnesty, within the framework of a regulatory regime. While arguably such amnesties did not curtail piracy overall, they did have a degree of high-profile success.

One of the larger pirate stations that pursued the legitimacy-over-closure option was Kiss FM. The station had started in the mid-1980s and quickly became an influential hub of the dance music scene in London. By 1987, the station had more listeners than Radio One and was second to Capital FM in terms of popularity.¹⁵⁹ Thornton notes that the station was “the largest and most celebrated instance of a pirate station going legal and consideration of their transition illuminates the subcultural logic which distinguishes between the thrill of the illicit and the banality of the condoned.”¹⁶⁰ After eventually

winning a licensing bid (which initially had been denied), the station became legal in 1990. As with all subcultures that gain a degree of commercial acceptance, the question became how to reconcile the alleged underground nature of their activities with mainstream advertising. Was rave culture, an entity that was assumed to have an illicit and secretive element to it, a force that could be translated to a wide audience? Reynolds argues that the legitimized Kiss was not able to maintain a close relationship with its listeners and, as a result, a multitude of new dance music-oriented pirate stations appeared in the early 1990s. Looking back he recalls: “Abandoning the last vestiges of mainstream pop radio protocol, the new stations sounded like ‘raves on the air’: rowdy, chaotic, and with strong audience participation, enabled by the spread of the portable cellular phone.”¹⁶¹ Conversely, Thornton comes to the conclusion that Kiss both maintained its core-audience credibility and managed to attract millions of listeners.¹⁶² These opposing perspectives point to both the complexities and shifting relationships associated with subcultures. Perhaps the complex notion of how war machines can operate both outside and within states might be an apt way to consider these multifaceted interactions. Additionally, Gallant’s notion that there is not always a clear line to be drawn between legal (state) and illegal (pirate) activity seems prescient.

In many ways, rave culture and pirate radio became strongly linked in the 1990s. As it had become illegal to advertise on the pirate broadcasts, the stations increased their ties to unofficial club nights and informal outdoor raves.¹⁶³ Thornton notes that many of the broadcasters adopted the names of the quasi-legal events that they helped to promote.¹⁶⁴ This notion is reminiscent of Hardt and Negri’s description of the openings provided by informal economies. In some cases, the stations occupied the grey area that

existed between illicit activity and business promotion. Some of the stations were linked to, or outright owned by, emerging dance music record labels. Reynolds makes a number of connections between pirate radio and various forms of illegal activity. He lists aspects of “rave’s black-market economy” which included: “uncleared samples, dodgy warehouse raves, pirate radio, drug dealing, bootleg tracks, and no-permission, no-royalty mix tapes.”¹⁶⁵ Drawing on Deleuze and Guattari’s notion of ‘desiring machine’, and Hakim Bey’s conception of ‘temporary autonomous zones’, Reynolds argues that rave culture, of which pirate radio was a key linking component, represented a “decentered, non-hierarchical assemblage of people and technology characterized by flow-without-goal and expression-without-meaning.”¹⁶⁶ In part this argument indicates that even though rave might have existed solely for the sake of its own existence and perpetuation, it did have emancipatory elements – even if that flight was either inward looking or linked to one’s environment only in an abstract manner. However, Reynolds also concludes that pirate radio also had more tangible elements of resistance. He reflects that, “perhaps what’s most subversive about the pirates resides not on their crimes of trespass on the airwaves or their renegade worldview, but in the way they transgress the principles of exchange value, commodity fetishism, and the personality cult that govern the music industry.”¹⁶⁷

By many accounts, in the early 2000s, pirate radio has thrived in Britain. Many stations continue to be linked to emerging dance music niches and subgenres and as these particular forms of entertainment have multiplied so have the stations. However, broadcasting authorities continue to actively pursue the clandestine operators. In the early part of the decade, the pirate stations were monitored by the Radiocommunications

Agency (RA). In 2002 alone, the Agency raided some 209 stations, and the numbers of cases they investigated increased dramatically in the early 2000s compared to the mid-1990s.¹⁶⁸ RA representatives have pointed out that the pirates are “anti-social” in that their signals interfere with legitimate radio broadcasts.¹⁶⁹ Elsewhere it has been reiterated that the pirates often compete with each other via the theft or sabotage of gear belonging to competitors. Authorities also stress that the pirates endanger both buildings and themselves by illegally tapping into the electric grid. At the same time, some of the artists who have made their way into the British mainstream have fully acknowledged how pirate radio enabled them to build their careers. In fact, it is common for aspiring club disc jockeys and rappers to pay to have programs on the pirate stations.¹⁷⁰ In many ways, pirate radio is still linked to subcultural notions of integrity and authenticity. The BBC continues a trend started in the 1960s as it still hires away many of the more popular pirate disc jockeys.¹⁷¹ Perhaps most interesting of all is that many of the pirate stations are now setting up in rural areas, as the airwaves in places like London are perceived to be overcrowded.¹⁷² It would seem that no amount of either state enforcement, or absorption into legal broadcasting channels, can curb pirate activity. Perhaps the air, like the sea, cannot be fully striated. Heyman and Smart’s assertion that there is a divide between states claiming legal hegemony and actually achieving it seems particularly relevant. Clearly the pirates continue to influence and shape legitimate broadcasting and to serve as an alternative force to both conventional radio (in terms of content and aspects of deregulation) and the recording industry.

CONCLUSIONS

It was perhaps ironic that BBC Radio Essex recently marked the fortieth anniversary of the *Marine Act* by assembling a number of the original pirate disc jockeys for a series of customized offshore broadcasts. Was this merely a hollow gesture of nostalgia, or perhaps a belated acknowledgement of the key role that pirate broadcasting has played in the development of radio and music in the UK? Perhaps it points to the complexity of the relationship between state-backed official broadcasters and those operating outside of its parameters. The multifaceted nature of these questions can perhaps be seen in the career of John Peel who broadcasted on Radio One for over thirty years. Prior to joining the BBC, Peel had worked in commercial broadcasting in the United States and for the pirate station Radio London. However, Peel managed to find a high degree of freedom within the BBC system. He became notorious for helping to expose up and coming (often highly unconventional) bands and was one of the first disc jockeys in the UK to actively play Caribbean and Asian music. He noted that he often received more resistance from listeners than from the BBC itself. Perhaps Peel's presence, in part, allowed the BBC to make the case that it catered to youth and alternative audiences. The idiosyncratic disc jockey seemed somehow to be both a part of the BBC and a challenge to rigid broadcasting norms. While Peel was linked with a number of non-mainstream artists (particularly during the punk era), John Street has made the argument that the disc jockey might ultimately be associated with the conception of the BBC as a public service provider.¹⁷³ Stephen Barnard has written that Peel represented "the Reithian principles of encouraging audiences to discriminate in their listening and of bringing the more difficult and demanding to their attention."¹⁷⁴

It is useful to consider the notion of hegemony when examining pirate radio. In this case, the state absorbs the changes that are taking place both within and outside of its jurisdiction. The concept of hegemony also implies that the change takes place over long periods of time and involves a multitude of interlocking relationships. Ultimately there is no clear victor in the battle between state-sanctioned and illegitimate broadcasters, but more of an ongoing relationship that has the arrows of influence pointing in a variety of directions. A post-subcultures reading on this idea, which pays attention to the roles of media, industry and technology, seems particularly appropriate. Deleuze and Guattari's twin concepts of war machine and apparatus of capture are also useful. Pirate radio both challenges broadcasting norms and ultimately helps to shape the development of new conventions. The state absorbs or 'captures' various elements of pirate broadcasting (including genres of music, presentation styles and personnel) activity and as a result is changed by the inclusion. Arguably, this can also been seen in the increasingly deregulated nature of British radio. At the same time, new challenges and forms of resistance continually materialize. Both broadcasting and the recording industry are continually challenged and constantly influenced in unexpected ways. Is pirate radio a democratizing force or merely a series of new business models – new micro-monopolies? While it may be useful to see the BBC as a rigid state-influenced arborescent structure and the pirates as representing a rhizome-like diffused web, there is a great deal of overlap, interaction and transformation. It seems likely the proliferation of pirate stations will go on, in that popular music continues to be increasingly niche- and subgenre-driven and the recording industry continues to fragment into new forms of distribution. In addition, unofficial broadcasting is in the process of becoming

increasingly complex and illusive in the Internet era of on-line audio streaming, netcasting and podcasting. If there is an emerging on-line ‘information commons’, one is left to wonder whether pirate radio will be an element of, or on-going challenge to, that increasingly smooth space.

CHAPTER 3 - INTERNET DOWNLOADING

INTRODUCTION

The interactions of law, government and musicians have involved a spectrum of concerns ranging from noise bylaws to issues related to censorship. It should be noted that there was a music industry before the advent of recorded music – both in terms of live performances and the publication of sheet music. While most of the current legal arguments seem to surround recorded music, recordings themselves faced resistance when they first became widely available in the early 1900s. It was argued at the time that both the records themselves and disc jockeys would threaten the livelihood of live performers and the viability of music venues. Similar claims were made when radio stations and radio networks initially gained popularity. What is certain is that an entirely new form of music industry was built up around recorded music. While currently there are significant alterations taking place in radio (involving Internet and satellite delivery) and the music retail sector, this section's main focus will be on the distribution of music. The aim is primarily to consider the industry and markets within North America and how power dynamics related to the industry might be shifting. While it seems certain that the Internet and new forms of technology are transforming the music industry, a number of questions remain unanswered. Is the industry becoming more open and 'democratic'? Is the business adapting to new forms of distribution or alternatively becoming outmoded? Does the music industry point to the larger changes taking place within the culture industries and capitalism in general? The intention is to address these questions by considering the piracy of music on the Internet, and what the increased availability of digitized music means for record companies, artists and consumers.

The illegal copying, or bootlegging, of recorded music is a phenomenon that predates the digital era. While early bootlegs were often illicit recordings of live concerts, they could also take the form of studio outtake collections or duplications of commercially released songs and albums. Such recordings were difficult to make and distribute in long play (LP) form, as the equipment required to both press and duplicate this format was costly and required a degree of expertise. However, in spite of these limitations and the expense involved for both producers and consumers, such recordings could often be found through mail-order businesses or independent record stores. These recordings appealed to devoted fans of particular artists – often enthusiasts who had previously purchased all available legal recordings. With the advent of cassette tapes in the mid-1960s, bootleg recordings also appeared in this format (although cassette tapes lacked the fidelity of LPs they allowed consumers to make, and pass on, their own copies – something not necessarily in the best interest of bootleggers). As early as 1971, the *International Federation of the Phonographic Industry* (IFPI), a global body representing the recording industry, began to consider the threat posed to artists by bootleggers.¹ While the IFPI focused on markets in both Europe and North America; they also drew attention to the replication of copyrighted material in developing countries. In the case of activities taking place in developing countries, calls were made for trade sanctions.² This quest can be connected to the perceived importance of having equilibrium and uniformity in inter-state policing. However, within the realm of rock music, it should be noted that a number of groups encouraged the recording of their concerts. Perhaps the most significant example was the Grateful Dead who allowed and encouraged their fans to record their performances. The notion was that the trading of concert tapes among

fans would help both to foster a community around the group and promote their official records and concerts. For the live tape enthusiast community (a distinct subculture), the recordings, which had avoided the processing and remixing of the recording studio, had a higher degree of authenticity compared to commercial recordings. More recently, unsigned hip hop artists have used home-made and self-distributed cassettes to attract the attention of potential fans, concert promoters and record companies.

The widespread availability of cassette tapes became associated with the ‘home taping’ controversy of the late 1970s and 80s. The industry began to become concerned that the purchasers of LPs would be able to copy the records onto tape and then pass these copies on to others (inhibiting the sale of additional LPs). Although there was little in the way of concrete evidence to back up the claim, the IFPI began to lobby for the imposition of a levy on both blank tapes and recording machines.³ The notion was that the levy would be used to compensate artists for revenue lost to taping. This issue became a growing concern with the arrival of digital audio tape (DAT) and the prospect of much higher quality duplications. The Recording Industry Association of America (RIAA), a group affiliated with the IFPI and which represented the industry in the United States, successfully lobbied for a levy on blank DAT tapes.⁴ Of course, it was pointed out at the time that not all DAT cassettes were used for recording music, and some questioned why the levy should be applied to uses which may have no connection with commercial music.⁵ The net result of the industry lobbying was the *Audio Home Recording Act* (1992), which divided the levy among performers, publishers and, receiving the largest portion of the duty, record companies.⁶ Even prior to the arrival of DAT, the recording industry in Britain had started a publicity campaign to draw

awareness to the issue of home taping. In the United States, imported albums, such as the debut album by The Clash (CBS, 1977), came with a warning that stated “Home taping is killing music … and it’s illegal.” The warning was accompanied by the symbol of a cassette tape (resembling a skull), which had two crossed bones beneath it. Reebee Garofalo has noted that while the cassettes allowed the industry to enter into new international markets, the format was also linked to both home taping and bootlegging.⁷

During the 1970s, there were also significant changes happening within the production of music itself. For instance, as Jamaican reggae began to become popular around the world, a certain set of artistic conventions spread to other genres of music. In Jamaica it was not uncommon for artists and producers to reuse and recycle the music portion of songs, or ‘rhythms’. Often disc jockeys and consumers would purchase singles based on the rhythm rather than the singer involved. In this environment, the notion of songs as fixed entities, or having definitive versions, began to be challenged. This concept of recorded music being flexible was further extended with the notion of dub – where songs would be remixed and have effects added to them. Needless to say, this (communitarian) model of updating pre-existing songs did not easily fit into conventional notions of copyright and points to a grey zone between legal and illegal business practices. At the same time, many of these (re)mixes were done exclusively for particular sound systems and not officially released to the general public. While the rhythms operated as a form of ‘commons’, the more exclusive remixes of these songs could boost the popularity of a particular sound system and, as such, maintain a degree of scarcity. Furthermore, informal global networks emerged which sold or traded cassette tapes of sound systems. Both remix and dub became a part of the dance music subculture

in the United States and England. Arguably, this aesthetic sensibility can be linked to the notion of music being transformed from (fixed) hardware to (flexible) software. The popularity of dance music can be linked to the proliferation of music subgenres that took place in the 1980s and 90s. Sarah Thornton has noted that, “rather than homogenizing tastes, dance clubs nurture cultural segmentation.”⁸

While dance music and independent labels were operating at the margins of popular music in the 1980s and 90s, two transformative events took place within the mainstream that served to consolidate the industry. By the late 1990s, following a series of mergers and buy-outs, the mainstream music industry consisted of five multi-national corporations. These companies controlled over eighty percent of the industry’s output.⁹ In at least two instances, these mergers entailed electronic hardware manufacturers purchasing record companies. Mark Poster traces these mergers to the development of DAT in that the electronic firms felt the product had stalled because the hardware manufacturers were unable to secure content for the new players.¹⁰ In an effort to offer product lines that included both music and music players, the solution entailed buying up companies that provided content. During this period there were a number of active independent labels, but often the smaller companies had to rely on the majors for distribution. Furthermore, indy labels (independents who frequently risked developing unconventional artists) would often have their more popular acts poached by the major labels. When Sony (which had previously absorbed CBS and a number of other companies) and Bertelsmann linked in 2003, the ‘big five’ became the ‘big four.’¹¹ Given the global scope and reach of the mainstream music industry, it is perhaps not

surprising that authors such as Adam Haupt have made comparisons between the industry and Hardt and Negri's all-encompassing notion of Empire.¹²

A second key development in the late 1980s was the arrival of the compact disc (CD). In part, the original motive behind the introduction of CDs was to enable labels to resell their back catalogs – as it was hoped that music enthusiasts would replace their vinyl records. The industry change from LP to CD was not a consumer-driven transformation. By the late 1980s, the music business had put in place a no-return policy on LP records – making it increasingly difficult for retailers to carry the older format.¹³ Perhaps not coincidentally Sony and Philips were involved in the development, and eventual manufacturing, of both CDs and CD players. While the initial costs of converting manufacturing facilities to digital technology was considerable, the new CD format quickly became cheaper to produce than vinyl and carried with it a significantly higher profit margin.¹⁴

While it is beyond the scope of this project to examine the history and variations of copyright law with respect to music, a short overview of recent developments might be helpful. The traditional notion has been that copyright protection will encourage both the invention of new products and the development of intellectual property. The idea was that copyright would benefit both individual creators and society as a whole.¹⁵ However, it should be noted that copyright law, which has historically emphasized a single author and private property, has never totally meshed with the production of contemporary music.¹⁶ As copyright is based on control and scarcity, the recording industry was, to some extent, able to control unauthorized reproduction of songs in the LP period. Clearly this has changed in the era of digitized music. Richard Barbrook points out that, "As

information separates from physical products, copyright loses its apparent basis in nature.”¹⁷ Furthermore, the previously held notion that copyright can continue to control both the time and place of exposure to materials is being challenged in the era of digital content.¹⁸ As it was becoming apparent that digitization and the Internet would forever alter the delivery of entertainment, the music industry participated in the development of two key pieces of legislation in the late 1990s. The first was the *Copyright Term Extension Act* (CTEA) which lengthened the legal monopoly enjoyed by copyright holders. This Act essentially ensured that any preexisting recorded music would not fall into the public domain.¹⁹ A number of writers have pointed out that one of the key lobby groups involved in the Act, the Disney Corporation, had a significant interest in preventing their characters from falling into the public domain.²⁰ The second entertainment-related Act to make its way through Congress in 1998 was the *Digital Millennium Copyright Act* (DMCA). The DMCA, in part, made it illegal to bypass or distribute software that would help to circumvent copyright measures installed by content providers.²¹ This was particularly significant at the time as manufacturers were increasingly using forms of encryption to prevent the unauthorized copying of various forms of intellectual property. Such measures have had mixed results and can always be bypassed by computer-hackers willing to invest the time. As Barbrook concludes, “Since there is no technological fix for protecting copyright, the media corporations can only preserve their wealth in one way: state power.”²² Equally significant, parts of the DMCA would also eventually allow the RIAA to subpoena information on suspected file-sharers from internet service providers (ISPs).²³

In spite of the Clinton administration's statements that the Information Superhighway should be controlled by self-regulating private forces, intellectual property laws became increasingly defined and implemented in the mid-1990s. The administration's White Paper (1995), which is generally seen as favoring content providers, set the tone for both domestic and global policy.²⁴ It is important to note that while the initial proposals failed to pass in Congress, they were still presented to the World Intellectual Property Organization (WIPO) and became part of the Copyright Treaty of 1996. This acceptance on the global stage would clear the way for the DMCA. Brodi Kemp notes that, "The WIPO Copyright Treaty functioned as both a vehicle for extending a national agenda abroad and the tool of a set of domestic interests to force a second round in a domestic fight."²⁵ Kemp has also described how content providers seek to influence trade policy and have had a clear influence with respect to World Trade Organization (WTO) trade-related aspects of intellectual property rights (TRIPS).²⁶ WTO member countries are obligated to comply with standardized forms of intellectual property protections. In this instance, we can see both the continuing hegemonic influence of the United States and the desire on the part of copyright holders to have policing that is uniform and consistent on a global scale.

The RIAA has been at the forefront of the music industry's battle against piracy in the United States. According to the organization's website, their mission is to "foster a business and legal climate that supports and promotes our members' creative and financial vitality."²⁷ The RIAA further states that their members "create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States."²⁸ RIAA tactics involve a spectrum of activities ranging from

public awareness campaigns and lobbying for new forms of copyright protection to lawsuits against copyright violators. Its hegemonic position has given the association a great deal of power and made it the target for artists and consumers who resent what is perceived as the status-quo and litigious nature of the music industry. A number of writers commenting on the contemporary music business argue that the RIAA (in conjunction with lawmakers) is much more interested in protecting a highly-concentrated business monopoly than in being sensitive to the needs of artists and consumers.²⁹ Rather than being led by consumers, there is a sense that the RIAA drives the industry and that the association views recorded music purchasers as passive entities. In spite of these image problems, and newly emerging forms of on-line digital music delivery systems, the RIAA was trying to de-emphasize the issue of piracy and focus on new opportunities for music distribution as recently as 1999.³⁰

NAPSTERIZATION

While music remained linked to a physical or tangible medium, its distribution was relatively easy to monitor and control. This situation changed drastically when peer-to-peer (P2P) file-sharing started to become popular on the Internet in the late 1990s. The rise of these early websites (or on-line bulletin boards) coincided with the explosion of subgenres operating in the margins of popular music.³¹ John Alderman makes the case that the mainstream industry was no longer interested in developing new artists by the late 1990s.³² While music files had been traded on-line prior to the arrival of Napster, the near instantaneous popularity of the site altered both the distribution and consumption of music. While industry-backed organizations such as the RIAA viewed the posting and

‘sharing’ of songs on-line as theft, others maintained that Napster empowered end-users to determine both the variety of music available and the context in which it would be consumed.³³ In some ways the latter notion is reminiscent of Benjamin’s take on the diminishment of aura associated with the mass production of film. In the manner that resembles a decentralized rhizome, the consumers of popular music could now circumvent the major-label bottleneck associated with the distribution of popular music.³⁴ In fact, it could be maintained that this new form of user-driven distribution, whereby fans could bypass the physical products of the recording industry, made the major record companies obsolete overnight.³⁵ It is significant to note that the original intention of Napster was not to challenge the recording industry norms on a large scale. Creator Shawn Fanning had intended for the software to be used only among his immediate friends, although it quickly spread throughout the Internet. It was not until mid-1999 that Fanning’s uncle came to see the commercial potential of Napster and began to seek out investors.³⁶ Although Napster is often sited as an altruistic endeavor to challenge the hegemonic recording industry, at its origin it more closely resembled a social network which quickly transformed into a capitalist venture. If the original Napster could be interpreted as a war machine, this notion seems more tied to its end-users rather than its creators.

It is clear that the RIAA viewed Napster as a threat, as it took legal action against the website in late 1999. This was not a straightforward proposition as the Napster website did not contain any music. The site merely facilitated the connection of people looking for particular songs with people who had these songs on their computers. However, the RIAA made the case that Napster was responsible for “secondary liability”

– essentially knowingly aiding others who are engaged in illegal activity.³⁷ This charge, in part, includes the legal concept of “vicarious liability”, where it is assumed that the accused offender has the option of preventing the illegal activity they are facilitating.³⁸ Louis Barfe makes the observation that “In many ways, Napster’s worst mistake was to set itself up as a conventional business, because it gave the industry something to sue.”³⁹ Even though Napster was not directly making money from the illicit downloading of music, it clearly intended to develop streams of revenue from the users that were engaged in this activity. In their defense, Napster lawyers cited the case of *Universal City Studios v. Sony Corp. of America* (1979), where the early manufacturers of VCRs were not deemed to be responsible for the activities of end-users.⁴⁰ Although the Napster case went through an appeal process, the Courts finally sided with the recording industry. Ultimately, it became legally difficult for Napster to justify its existence outside of facilitating copyright infringements. Prominent Republican Senator Orrin Hatch (Utah), who had been involved in drafting the frequently cited DMCA, but who also had a key advisor working for Napster, seemed to side with the website – making the case that ultimately such issues should be sorted out by market forces.⁴¹ His comments point to the complexity of the relationship between Washington insiders and the recording and film industry. Such is the global influence of the United States that the decision against Napster influenced similar cases in other countries.⁴² Given an onslaught of digital technology, perhaps the biggest question to come from the lawsuit was: why didn’t the industry attempt to absorb Napster rather than shut it down. As Barfe has pointed out, many providers of content would be pleased with the prospect of a zero-cost distribution mechanism.⁴³ However, it can be argued that the technology at the time did not offer the

copyright safeguards the industry craved. Arguably, the industry opted to maintain its top-down unidirectional arborescent business form rather than risk a diffused and potentially uncontrollable rhizomic model.

It is certain that the on-line forms of music downloading that followed Napster took on increasingly rhizome-type forms. The emerging sites took on a true P2P configuration in that they avoided centralized servers (part of Napster's legal troubles). Richard Spinello and Herman Tavani point out that, "Unlike server-based technology, with peer-to-peer software such as KaZaA, any computer in the network can function as a distribution point."⁴⁴ Andrew Leyshon, noting the decentralized configuration of sites such as Freenet and Gnutella, has described them as "acentered."⁴⁵ Similarly, Barbook points out that P2P is a post-Fordist arrangement which stands in sharp contrast to the entertainment industry's desire to maintain a Fordist distribution model.⁴⁶ Gnutella was even more diffused in that the software was 'open-source', enabling end-users to customize it or build on it in ways that suited them. Such a non-fixed and elusive software concept meant that it would be increasingly difficult for organizations like the RIAA to shut down file-sharing sites.⁴⁷ By the time file-sharing services were discovered, they could have mutated into a variation of a pre-existing site or a new website entirely. By 2004 it was estimated that over a billion songs were being illegally downloaded each week.⁴⁸ Despite the transient nature of the post-Napster networks, the sites needed to have some sort of identity and constant presence to be findable and useful for users. This meant that the P2P sites continued to be vulnerable to lawsuits. All of the large-scale post-Napster download services eventually faced similar outcomes in the courts. As with the previous case, the websites were not able to successfully claim that

they were merely providing a service or maintain that they were not aware of what activities their users engaged in.⁴⁹ If one considers the language of Deleuze and Guattari, it could be argued that the music industry's 'striated' conception of the Internet contrasted with the file-sharing community's desire for 'smooth' cyberspace.

It is clear that music enthusiasts who engage in illegal downloading have a variety of reasons for their activity. It has commonly been argued that CDs are overly expensive (especially in recent years as the prices of black media have become more obvious) and that the industry neglected its supporters by not quickly fulfilling the needs of the on-line community. A case can be made that in the post-Seattle 'No Logo' climate, a certain degree of consumer skepticism had developed towards large multi-national corporations which seemed to be both corrupt and unresponsive to the general population on a variety of levels. A similar case could be made for rich and out-of-touch rock stars. Taking a social contract perspective, Kembrew McLeod has observed that, "People will stop supporting musicians and other artists only when the concept of community breaks down, not because of the introduction of a new technology."⁵⁰ It could also be argued that the non-tangible nature of digital music contributed to a shift in mentality. In part, this might be related to the anonymity that on-line users enjoy. Some have made the case that it is not so much that the file-sharing community doesn't understand copyright as that they don't see it as applying to themselves in any concrete way.⁵¹ Many users of download sites maintain that the Internet could be a participatory and self-regulating autonomous zone.⁵² There was also a subculture element to early file-sharing, as users would gain credibility by posting new songs quickly as well as by offering a large and well-organized back-catalog for others to share.⁵³ However, given the exponential

popularity of music downloading, one might wonder at what point a subculture became culture or what Hardt and Negri describe as the multitude.

It is certain that developments and standardizations in technology are interconnected with the advent of music downloading. As Internet connections became faster, computer processor speeds increased, and storage devices such as hard drives became larger, it became increasingly easy (and affordable) to download music. In addition, downloading software became both readily available and straightforward to use. In some ways these emerging technologies demystified and deskilled both the creation and distribution of music. At the same time, it might be argued that the desire to download files from the web (music, video, and data) actually drove new developments in technology.⁵⁴ However, it is also important to recall that digitizing music was an industry initiative. It is this very transition that would eventually undermine the scarcity (or aura) that had previously been associated with music bound to physical playback media. While the RIAA was trying to curtail the activities of downloading sites, they also launched an unsuccessful effort to block the production of portable MP3 players. This put the industry in the position of appearing to block the development of new technological developments.⁵⁵ However, the relationship between these emerging technologies and the music industry is a complex one. For instance, companies such as Sony are involved both in the recording industry and in the production of CD burners and blank CDs. Barfe points out that this phenomenon is not exactly new, as companies such as Sony and Philips were making duo-tape decks that could duplicate cassettes in the 1980s.⁵⁶ While illicit music downloaders and bootleggers often argue that they are circumventing large entertainment corporations, they are, in part, contributing to these

very same companies. Perhaps this is a demonstration of the depth and reach of Empire as well as the absorption of war machines. These contradictions are compounded as much of the hardware and software associated with music downloading would eventually allow the industry to track and monitor on-line copyright violations.

Another approach the music industry employed to control the downloading of songs was Digital Rights Management (DRM). Spinello and Tavani note that, “At a most basic level, DRM will prevent access to creative works, usually by means of encryption” adding “access is enabled for legitimate users through the use of passwords or similar mechanisms.”⁵⁷ In part, this meant that it could be possible to limit the transfer of legitimately purchased songs from one playback device to another. This example, which points to the interconnections of smooth and striated space, was an attempt to re-establish the scarcity associated with tangible forms of recorded music. It is also firmly linked to the DMCA which makes it illegal to bypass such copy protection measures.⁵⁸ Again, there is an overlap with the download community, as content providers often challenged hackers to find flaws in new forms of DRM.⁵⁹ Furthermore, as Patrick Burkart and Tom McCourt have noted, it is the ‘legitimate’ consumers of music and video who ultimately pay for the development of new variations of DRM.⁶⁰ Mark Poster makes the case that the DRM is finally a political, rather than moral, issue. He asks the question: “What limitations have to be imposed on the rest of society in order for the culture industry to maintain predigital controls over cultural objects?”⁶¹ Furthermore, the music industry attracted a great deal of adverse publicity when it was discovered that forms of DRM could inhibit the legitimate use of CDs. Ultimately the issue would prove divisive within

the industry as some labels eventually began to offer DRM-free downloads (sometimes at a higher cost) in an effort to increase market share and appease music enthusiasts.

While the music industry sought to control and limit the distribution of music on the Internet, it eventually endeavored to use the smooth aspects of the technology in various forms of marketing and promotion. In some cases, particularly in the realm of independent music labels, songs were intentionally leaked on-line in an effort to generate interest (amongst prominent on-line reviewers and bloggers) around forthcoming releases.⁶² Elsewhere, songs would be made available for free to the general public. The notion is that these songs would act as loss-leaders and that a favorable reaction would eventually lead to the sale of CDs.⁶³ In addition, labels would anonymously hype new releases in chat rooms and post favorable on-line reviews on newsgroups and interactive websites. Perhaps even more interestingly, research companies have been established that electronically monitor file-sharing software in an effort to track the on-line activities of users.⁶⁴ This collected data is, in turn, sold as potential marketing information to content providers. BigChampagne, one of the more prominent companies engaged in this activity, describes their service to potential industry clients in the following way: "In short, we collect information about how and where people enjoy popular music, movies and other stuff, and then we analyze the information to tell you what titles are most popular, who's interested, and why."⁶⁵ This type of data has allowed record companies to engage in very tightly focused forms of advertising and has further enabled them to gather information for lawsuits. As with the purchasing of some brands of CD burners and blank media, downloaders may not be entirely circumventing the Empire-like reach of the major corporations behind the mainstream music industry.

While the music industry has had mixed results with respect to curtailing downloaders, it has been somewhat successful at framing its argument within the mainstream media. In contrast to the notions of file-sharing and information distribution, media reports frequently talk about piracy and the theft of intellectual property. The RIAA's website frequently uses the word 'theft', stating that "It's commonly known as piracy, but it's a too benign term that doesn't even begin to adequately describe the toll that music theft takes on many artists, songwriters, musicians, record label employees and others whose hard work and great talent make music possible."⁶⁶ Elsewhere, the RIAA has made a more nationalistic argument pointing to the number of downloaders overseas and arguing that intellectual property is one of the United States' greatest assets.⁶⁷ The industry has also implied that there are connections between piracy and both internet-based pornography and computer viruses.⁶⁸ In an even more extreme case Jay Berman, the CEO of the IFPI, has hinted that piracy funds other types of illicit activities such as the drug trade and terrorism.⁶⁹ In 2004, the RIAA successfully obtained permission from the Federal Bureau of Investigation (FBI) to use its logo on the back of compact discs.⁷⁰ The emblem is accompanied by the message 'FBI Anti-piracy Warning: Unauthorized copying is punishable under federal law.' While the RIAA's language has framed a great deal of the coverage that the issue of music downloading has received in the mainstream media, it remains questionable how effective they have been at influencing consumption patterns. While 'piracy' and 'intellectual property' have become naturalized by their frequent usage, that does not necessarily mean that the terms are being interpreted in ways desired by the industry. Clearly such descriptions are

loaded, and a case can be made that terms are often used by people or companies who wish to maintain a specific monopoly.⁷¹

Much of the language surrounding this issue has served to obscure the extent to which file-sharing takes place and the degree to which it has altered the sale of recorded music. Some studies have pointed out that the evidence regarding file-sharing hurting the recording industry remains inconclusive.⁷² It has been suggested that the introduction of the CD in the late 1980s represents an abnormal growth period for the industry (in part due to consumers replacing their vinyl records and tapes), and that it should not be basing sales projections on this period.⁷³ Furthermore, a recent Industry Canada-backed report indicated that the individuals who downloaded music are the same people who purchased the majority of legitimate recordings. The study further notes that, “Among Canadians actually engaged in it, P2P file-sharing increases CD purchasing.”⁷⁴ An extensive study in the United States has drawn similar conclusions and noted that the popular music industry has always had boom and bust cycles. The report, which was published in the *Journal of Political Economy* in 2007, suggested that a number of other factors were at work with respect to declining CD sales including: “industry cost-cutting”, the industry failure to adopt new technologies, and competition from other forms of media and electronic devices (DVDs, cell phones, video games, etc.).⁷⁵ The US study was unable to make a firm link between downloading and the sales of CDs, and challenged the RIAA’s often repeated assertion that each illegal download is the equivalent of a lost sale.⁷⁶ Perhaps what is most troubling about these reports is that they seem to suggest that the RIAA, in fact, might be legally pursuing the very forces which are sustaining the industry.

WEB-USERS & DOWNLOADERS

For music enthusiasts, file-sharing and downloading have meant access to an infinite amount of content. Music consumers can go on-line and find an endless variety of artists and (sub) genres. It seems certain that the digitalization of music reflects a shift to post-Fordist forms of production, distribution and consumption. Never before has there been so much variety and choice with respect to recorded music. No matter how small or localized the genre, or subculture, music can be found on-line. Arguably, within popular music, there is no longer a distinct canon. This particularism does not mean that there are no longer popular artists, but it does seem to suggest that the core of popular music is becoming more diffused. This stands in sharp contrast to the music industry's desire, particularly in the 1980s, to promote an increasingly small number of superstars. While sometimes it appears that this trend toward variety has gone largely unnoticed by the major labels, there has recently been an increasing recognition of the 'long tail' phenomenon. Popularized by Chris Anderson, the long tail theory suggests that while there will always be artists who sell well, in the digital/non-tangible era, the entertainment industry can also capitalize on an infinite number of micro-markets.⁷⁷ As the content industry moves away from physical goods, Anderson describes the notion of "infinite choice", adding that "Abundant, cheap distribution means abundant, cheap, and unlimited variety – and that means the audience tends to distribute as widely as the choice."⁷⁸ While it remains to be seen if this notion will point to the future of recorded music, it does seem to be an indicator of a changing mentality with respect to expectations.

It seems certain that a large number of users now view the Internet as a form of collective commons. This notion seems particularly overt in social-networking websites such as MySpace and user-content supported sites such as YouTube. In both cases information is posted for free (although advertising is a factor on each site) with the expectation that the information will be shared among enthusiasts. In some ways this notion is reminiscent of the idea of ‘public domain.’ As with Hardt and Negri’s notion of multitude, Anderson argues that via peer networking and recommendations there is an emerging “wisdom of the crowd,” and that “These new tastemakers aren’t a super-elite of people cooler than us: they are us.”⁷⁹ In part, there is the notion that the traditional industry gatekeepers (record labels, music reviewers) can now be bypassed by more democratized models. This idea seems very rhizome-like in that it suggests an assortment of people coming together over common interests in an informal and non-hierarchical way. Likewise, as this is a multi-directional form, it has been argued that it represents the ways in which fans are looking to more directly (and intimately) communicate with the artists they enjoy.⁸⁰ In the era of non-fixed and interactive products, Internet users are generating content (websites, blogs, etc.) as well as assisting in the distribution of content. If web users are able both to produce and to distribute music, this brings into question the utility of the traditional music industry.⁸¹ Barbrook makes the case that the web is not actually owned by anybody in particular and thus it “could become the common property of all.”⁸² Strangelove echoes this sentiment, noting that the increasing amount of on-line downloading may ultimately “have severe consequences for an economic system based on the legal fiction of private property.”⁸³

If the Internet is a sort of commons, it can also increasingly be interpreted as a gift economy. Via file-sharing websites users are both able to obtain material and, theoretically, to share the songs on their own computers with an infinite number of people. Again, this is seen as a form of social-networking. Echoing the Deleuze and Guattari conception of rhizomes, Barbrook notes that “quite spontaneously, most people are opting to share knowledge rather than trade media commodities over the Net.”⁸⁴ Markus Giesler remarks that, “Napster’s cybergiftingscape provided the sociotechnological grid that embeds the myriad of cybernetic gifts and organizes the social interaction between donors and recipients.”⁸⁵ While Leyshon agrees that the cyberspace is, in part, a ‘postscarcity economy’, he also makes the case that this particular gift economy is atypical in that the giver of the gift does not lose their original file or piece of information.⁸⁶ This point is built upon by Lessig who questions the difference between sharing files with specific ‘friends’ and sharing with on-line ‘friends’ in general.⁸⁷ Taking a much more optimistic point of view, Giesler points to a recipient-driven “gifting rhizome” whereby information is being exchanged in a variety of directions.⁸⁸ He also makes the case that a portion of the on-line community police themselves in an attempt to make sure that those downloading songs also make available files of their own.⁸⁹ While the notion of a high-tech gift economy might have utopian overtones, it does seem related to aspects of on-line activity with respect to recorded music. As such, the notion is a clear challenge to the status-quo arborescent configuration of the traditional mainstream music industry. Arguably, the idea also reflects the concept of multitude where alternatives to the norms of global capitalism emerge.

In the post-Napster environment, downloaders have had to use a number of alternatives to obtain music files. Most recently, the BitTorrent protocol has enabled users to transfer large files. This protocol has been particularly useful with respect to video files and films, in that these files can be broken down and absorbed from a number of on-line locations. As BitTorrent consists of a variety of interactive networks, it has the legal advantage of being even more diffused than previous download websites.⁹⁰ In recent years, a number of websites have emerged which help Internet users locate specific BitTorrent files. Some of these sites also enable users to identify fake files which might appear as on-line decoys.⁹¹ As with many of the earlier file-sharing sites, these BitTorrent directors, or indexing sites, do not contain any pirated content – they contain ‘torrents’ which are bits of information about specific data files. One of the sites which has garnered a great deal of attention is ThePirateBay.org. The website is, in part, located in Sweden – a country assumed to have relatively lax laws with respect to intellectual property. A spokesperson for the site maintains that he doesn’t actually know where many of their servers are physically located.⁹² The organization’s website points out that the site does not contain any illegal material and thus cannot be accused of any copyright violations.⁹³ While they have been raided in the past (in part due to prompting from authorities in the United States), the site continues to operate. Foucault’s remarks about the desire for policing equilibrium seem to be relevant in this instance. In addition, it is again useful to consider Heyman and Smart’s description of the gap between state claims of legal hegemony and evidence frequently pointing to the contrary. As with some of the pirate radio stations of the 1960s, The Pirate Bay utilizes some of the romantic language and imagery associated with sea piracy. The organization’s logo is a

ship and on the ship's flag is a co-opted, or détourned, version of the anti-piracy cassette with crossbones warning logo used by record labels in the 1980s.

Even amongst supporters of music downloading it is often acknowledged that the Internet is not a neutral zone nor does it represent a level playing field. For instance, there is the issue of the 'digital divide' whereby the democratic aspects of the Internet are limited to those that have the option of access or can afford the equipment to gain that access. To what extent does the Internet represent new social networks, and conversely, to what degree does it reflect the pre-existing economic hierarchies and the reach of Empire? Furthermore, there is evidence that some of the seemingly smooth and neutral aspects of on-line computing (search engines, user content and website recommendations) are subject to corporate manipulation.⁹⁴ These associations are reminiscent of Inda and Rosaldo's description of 'awkward connections' and Appadurai's account of 'disjunctive relationships.' While computers attached to the Internet can absorb information and files, the same equipment can be used to monitor on-line activities. David Bell has noted how computers can be used as "tracking devices" and has discussed how the web has the potential to be a "super-panopticon."⁹⁵ Such suggestions bring up the entire issue of what has recently become known as 'net neutrality.' One significant activity that alters net neutrality is the ways in which Internet providers give priority to certain types of information in an effort to conserve on-line resources. This phenomenon is known as 'traffic shaping.' Internet providers are able to prioritize files that do not use BitTorrent protocol, and thus can, at least in a limited fashion, limit the transfer of material that might be pirated.⁹⁶ This is particularly

significant as, in the contemporary era of merger and amalgamation, many content providers are also Internet providers.

In a period of increased legal action against file-sharing and facilitating sites, there is some evidence that the groups involved in such activities are dividing into smaller formations. In some cases, groups engaging in file-sharing are beginning to resemble private clubs, whereby access is only granted to small numbers and prospective members must know pre-existing members to join.⁹⁷ This seems to indicate a move away from the idea of a commons, and more closely resembles a set of discrete, or private, subcultures. This phenomenon has been described as the “Gnutella paradox”, meaning that in order to gain anonymity, users are making file-sharing locations more difficult to find and, as a result, less functional on a wide scale.⁹⁸ This transition toward smaller closed-off groupings also means that users will ultimately have access to less music. As Jack Goldsmith and Tim Wu point out, “A service for mass file-sharing has the greatest effect on national copyright law if it is easy to find and easy to use.”⁹⁹ Goldsmith and Wu go on to argue that this increasingly narrow, private and specialized conception of file-sharing is ultimately helping to enforce copyright law by keeping large numbers of users away. To engage in these smaller file-sharing communities requires both the appropriate social connections and an increased level of computing skill. This activity ultimately brings into question the idea of the Internet representing a smooth space or a rhizome. While these private groups might resemble war machines, it is questionable to what extent such activity is actually challenging conventional forms of commodity exchange. Furthermore, while such ‘darknets’ are both illusive and secretive; this has not prevented them from being infiltrated by industry-backed legal firms.¹⁰⁰

ARTISTS & THE NEW SCARCITY

One of the most significant aspects of on-line music is that it has opened the way for artists to become involved in their own promotion and distribution. This development can be linked to what Appadurai has referred to as the proliferation of public and private mediascapes. Artists have their own websites (which often include music downloads and merchandise) and employ social-networking sites such as MySpace to generate additional publicity. While the content on such websites is often supplied by enthusiasts rather than the artists themselves, it all serves to promote musicians in new ways. Emerging performers such as Lily Allen and the Arctic Monkeys have successfully built on-line fan bases. In addition, more experienced artists such as Wilco, Public Enemy and Carbon/Silicon have used their websites as businesses to distribute music – often offering a variety of both free and pay downloads as well as CDs. As early as 1999, popular singers like Tom Petty were providing fans with free samples, or previews, of forthcoming releases.¹⁰¹ In some cases, downloaders were required to sign up for mailing lists (which promote concerts and official records) to receive this material.¹⁰² David Bowie has posted a variety of content on his website – including free songs, concert videos and contests.¹⁰³ Elsewhere, artists have allowed fans to remix their songs as part of contests which serve to both build up the content on websites and generate media attention. Linked to the post-subculture idea of niche marketing and self-promotion, independent musicians have also used the interactivity of sites such as MySpace to organize and promote tours. In many ways, performers have been much more adventurous than the recording industry in the on-line realm. As Barfe notes, “Now

every personal computer is capable of becoming a multi-track recording studio, mastering operation and a global distribution network.”¹⁰⁴ Many artists feel that the Internet has allowed them to overcome the single greatest limitation associated with recorded music: distribution.

While most artists have embraced on-line promotion and legal forms of distribution, the issue of piracy remains divisive. Some musicians feel that websites such as Napster have helped to promote their careers. Perhaps the most notable exception to this notion has been the heavy-metal group, Metallica. Siding with the sentiments of the RIAA, the group threatened legal action against Napster in 1999. The group made the case that it was Napster’s file-sharing site which actually represented big business.¹⁰⁵ The band charged that Napster had “hijacked” their music and that the site had failed to secure the group’s permission to post its material.¹⁰⁶ Essentially the public argument was that Metallica alone should be able to control their creations. As part of their legal action, the group provided the names of individual people who had illegally downloaded their songs.¹⁰⁷ This action prompted many at the time to wonder how, and to what extent, the band was spying on its fans. While there was a degree of fan backlash (especially from those who had been expelled from Napster as a result of the group’s action), the group maintained that they had been annoyed by the fact that some of their (unfinished) songs had been leaked on-line. This argument has struck many commentators as disingenuous as the group had, in part, gained early popularity from the distribution of sub-legal performance tapes.¹⁰⁸ In a similar fashion, popular hip-hop artist and producer Dr. Dre actively spoke out against illegal music downloading. Here again, there seems to be a contradiction as it was clear that Dr. Dre thought the use of digital sampling (an activity

that was the subject of a number of lawsuits at the time) to construct hip-hop music was perfectly acceptable.¹⁰⁹ Both Metallica and Dre, who had degrees of social capital-based anti-authority personas, encountered credibility issues as they appeared to be siding both with big business and the RIAA and against music fans.

In sharp contrast to groups such as Metallica, Prince has spoken favorably about downloading and has indicated that the on-line revolution is a way to challenge the corrupt hegemony of mainstream record companies. During a period of dispute with his record company, Prince performed with the word ‘slave’ written on his face and elsewhere has referred to the industry as a ‘plantation’ system.¹¹⁰ On his website, Prince reflected on sites such as Napster by stating, “From the point of view of the music lover, what’s going on can only be viewed as an exciting new development in the history of music … and fortunately there does not seem to be anything the old record companies can do about preventing this evolution from happening.”¹¹¹ This sentiment has been echoed by Public Enemy rapper, Chuck D. Chuck D has argued that more exploitation has taken place in the relationships between record labels and artists than on-line.¹¹² A case can be made that both Prince and Chuck D are examples of nomadic war machines as they seek to increase the smoothness of music distribution. Public Enemy was one of the earlier groups to see the merits of having a comprehensive website, an independent recording label and forms of on-line distribution. While both artists have alluded to the role race has played in the recording industry, writers such as Peter Drahos and John Braithwaite have been more explicit on the subject. The authors note that, “A white business culture which understands the power of intellectual property rights became a free-rider on a musically innovative black sub-culture which did not.”¹¹³ While this is

clearly a valid point, one can't help but feel that artists such as Prince and Chuck D, in part, gained their fame via their prior relationships with major labels. As established artists they perhaps no longer need the backing associated with the mainstream industry. In 2007, Prince distributed free copies of his new CD with a UK newspaper.

The issue of using recorded music as a loss-leader came to the fore of the industry in 2007 when the multi-million selling group Radiohead opted to make their new album, *In Rainbows*, available as a pay-what-you-want download. Having fulfilled a multi-record deal with EMI, the group decided to self-release its music rather than renew with EMI or seek out an alternative record label. Much of the media coverage surrounding *In Rainbows* suggested that by bypassing the music industry entirely this release would revolutionize the music business and possibly lead to the demise of the major record labels.¹¹⁴ However, the group announced shortly afterwards that the songs would eventually be coming out on a conventional CD and that the free download would only be a temporary offer. In addition, there was also some sniping amongst fans that the free MP3s were of a low quality and that they were clearly designed to entice the future purchase of an officially released CD. A music industry bulletin estimated that the average price paid for each download of *In Rainbows* was £3.88, while an internet-monitoring company put the average sale price at just over £1.¹¹⁵ While these figures remain in dispute, and seem very low, it is likely that these figures are in line with the profits Radiohead made on each CD they sold while with EMI. However, *In Rainbows* sold the numbers it did based, in part, on the media stories surrounding its unconventional release and on music enthusiasts wanting to support such a bold initiative. In the future it seems likely that artists, especially if there is a multitude of pay-what-you-can releases,

will have to revert to advertising in order to promote new releases. Furthermore, as with Prince, it can be argued that Radiohead were in a position to make such an offer to their fans due to the fact that they were already an established international recording act – a level of popularity partly attributable to the band's association with EMI. Such a business model, while challenging the existing arborescent structure of the music industry, seems more appropriate for the perpetuation of recognized artists than the development of new ones.

Perhaps what is becoming increasingly apparent is that the scarcity associated with popular music is not solely attached to songs. In the case of Radiohead, when the offer of downloads disappeared, fans visiting their website were invited to purchase (for the sum of £40) an *In Rainbows* discbox which included an LP version of the album as well as extra songs, photographs and lyrics. It seems certain that in a digital universe where scarcity can no longer be associated with audio recording, artists are in the process of more vigorously adopting other forms of merchandising (t-shirts, books, DVDs, etc.). One particular area where the notion of scarcity remains intact is in the realm of performance. Ticket prices for established artists have increased greatly in recent years, and an entire secondary market (on websites such as eBay) has developed to resell concert tickets to people willing to pay more than the original asking price.¹¹⁶ Perhaps tellingly, recently some popular artists have made a bid to capture a portion of the revenue generated from resold tickets.¹¹⁷ The entire notion of music enthusiasts paying large sums of money seems to be a reversal of Benjamin's notion regarding the decline of aura in the mass age. With a de-emphasis on physical recordings, the aura associated with music is being transferred from tangible objects to the presence of artists themselves

(performances, autographs, and public appearances). While it has been noted that the digitization of music has had a democratizing effect on popular music, it could also be argued that the more popular stars are becoming increasingly tied to wealthy patrons who can afford to bypass the ultimate distribution bottleneck – physical access.¹¹⁸ In many ways, these artist-driven capitalist models seem to more closely resemble the consolidation of Empire than the participation and interaction of multitude.

It should also be noted that not all artists and music enthusiasts are entirely pleased with the democratizing aspect of digital technology and on-line music distribution. As the recording and on-line posting of music has become affordable to a vast number of performers, the Internet has become flooded with (often free) music. Arguably this high degree of competition has made it increasingly difficult for artists who want to pursue a sustainable career in music. Commentators such as Andrew Keen maintain that the decline of traditional cultural gatekeepers (the recording industry, mainstream media outlets, music publications) is part of an emerging on-line “cult of the amateur.”¹¹⁹ Keen also argues that there is a sense in the age of ‘user generated content’ that everyone should participate regardless of their level of talent or degree of commitment. He sees this as emblematic of a narcissistic culture and while he views the Internet as valuable and essential, he cautions that in some ways its seemingly participatory nature is actually a “faux-democratization.”¹²⁰ This notion, where opinion is valued to the same degree as expertise, applies to both the production of music and the way in which it is being reviewed on-line. If each individual is their own on-line disc jockey, some fear that consumption patterns will become increasingly narrow and isolated despite an ever increasing abundance of music.¹²¹ The suggestion, which may be

linked to Appadurai's comments on the unpredictability of cultural flows, seems to be that the profusion of music might actually both make it mean less and be devalued. Questions also arise about popular songs being societal touchstones. What does it mean for society as a whole if there are no common cultural markers? Other industry commentators maintain that in an era of intangible data, music has become divorced from those physical things which give it meaning and context (CD liner notes, etc.).¹²² Of course, the difficulty faced by commentators such as Keen, and by some artists who are skeptical about the web as a cure-all for the musicians, is that they appear to support the traditional music industry status-quo even when this is not necessarily the case.

CAN THE EMPIRE STRIKE BACK?

While the sale of recorded music has continued to decline in the 2000s, the traditional recording business has begun to employ a variety of tactics (both old and new) to maintain and transform the industry. Some approaches have involved a consolidation of power, partially with respect to legal actions; others have entailed off-loading aspects of the industry (particularly in the area of distribution) to companies not within the major label system. While the RIAA continues to represent the core of the industry, there is increasing evidence that a number of artists and labels have pursued innovative and unconventional methods of distribution on their own. In particular several record companies have begun to focus on revenue streams (advertising, television and film licensing) that are not directly related to the sale of recorded music. In many ways, the RIAA's persistence with legal action has meant that the association continues to be highly controversial both within and outside of the industry, particularly now that these

legal threats are increasingly targeting end-users. However, the organization has in recent years stepped up both its legal and media campaigns against music piracy. While the industry seems to be contracting the scope of its operations, it continues to attempt to extend its legal reach. Arguably, the industry itself has become a State-oriented war machine in that it continues to both challenge and absorb its opponents.

Although it is commonly known that the RIAA pursued legal action against download sites such as Napster and KaZaA, the organization also attempted to curtail early, potentially legal, alternative forms of music distribution. The industry leaders employed war machine-type tactics to capture or control territory they considered their exclusive domain. During the so-called dot.com era, a number of start-up companies emerged that attempted to provide a variety of on-line MP3 distribution systems. Many of these firms faced either legal action or the prospect of being bought up by mainstream labels, and in some cases both. MP3.com was a case in point. The company's website offered to allow its members to access music (which the users had previously purchased) via any device that had on-line access. However, this system required that MP3.com build a central database of music, which was the source of its legal problems. While the initial massive legal action against the site was launched by a number of labels via the RIAA, Universal Music refused to settle and eventually sued the company on a per-song basis – a suit that was estimated to be for \$54 million.¹²³ In what seemed an unexpected turn of events as it emphasized the close relationship between legal and illicit business practices, Universal ended up purchasing MP3.com, which had been devalued by pending legal action, in 2001.¹²⁴ In yet another twist, Universal sued the lawyers who had advised them that MP3.com represented a legal and legitimate business. Clearly this follow-up

legal action was designed to send a message to any legal firm considering representing one of the dot.com companies involved in music distribution.¹²⁵ Similarly, the major labels were involved in a suit against the venture capital firms that had temporarily financed Napster.¹²⁶ While the labels seemed intent on disrupting the dot.com companies (either via absorption or legal action), in the majority of cases, as with Universal and MP3.com, the labels abandoned the would-be distributors. As Burkart and McCourt have noted, “The companies turned instead to music clearing houses – third parties, such as iTunes and Microsoft music store that broker catalog content from the Big Four but are owned and operated independently of them.”¹²⁷

In mid-2003 the RIAA expanded its legal tactics and began to pursue the end-users of pirated songs. The association began by fining 261 individuals for copyright violations.¹²⁸ The fines, which arguably were intended as a form of deterrence, ran as high as \$150,000 per song.¹²⁹ It is estimated that, between 2003 and 2008, as many as 30,000 individuals have been contacted by the RIAA.¹³⁰ At the same time the organization began actions that would require Internet service providers to hand over the names of individuals suspected of being involved in piracy. Noting the legal success the RIAA had against Verizon, Lessig echoes Appadurai’s notion of ‘disjunctive relationships’ by stating that, “with a simple request to a judge, and without notice to the customer at all, the identity of an Internet user was revealed.”¹³¹ Of course, to some degree the deterrence factor of such lawsuits was offset by the negative press coverage the RIAA received from the legal action. This was particularly the case when it became known that among those initially fined were a 12-year-old girl and a 71-year-old grandfather.¹³² As most accused illicit downloaders could settle the RIAA claims against

them by paying between \$2,000 and \$4,000, most have opted to do so.¹³³ Lessig makes the case that such legal actions exploit the American legal system as it becomes easier for those accused to settle than to fight the charges against them.¹³⁴

The first case to challenge one of the industry fines made it through the courts in 2007. Jammie Thomas of Minnesota maintained that she had not engaged in file-sharing on KaZaA but ultimately lost her case and was fined \$222,000 – some \$9,250 for each song involved in the suit.¹³⁵ While the RIAA seemed to have achieved a significant legal victory, the media made much of the amount of money involved in the suit and frequently pointed out that the RIAA had essentially bankrupted a single-mother. A number of songwriters, and people within the industry, went on record as stating this was not an appropriate method of combating piracy.¹³⁶ Nevertheless, in 2007 a bill was introduced in Congress to increase funding for anti-piracy programs. The bill's sponsor, Ric Keller (R) of Florida, was reported as saying that piracy "costs our economy billions of dollars, thousands of jobs, and we lose a great deal of tax revenue."¹³⁷ At the same time, industry representatives in Europe (with the tacit support of the French government) are lobbying for laws that will place responsibility for policing illegal downloading on ISPs and, in some cases, allow for measures that disconnect repeat offenders from the Internet.¹³⁸ It remains uncertain to what extent these laws will be enacted and to what degree they may influence policy in the United States. It does seem certain that the conception of the Internet as a smooth space can be questioned. Additionally, such legal and policy activities also point to the continued relevancy of state law enforcement and the inter-state harmonization of policing.

During the period in 2003 when the RIAA began to actively pursue end-users, it also set up an amnesty plan in order to curtail file-sharing. Arguably this was a press-relations effort to present the association in a less harsh light.¹³⁹ Under the plan named ‘clean slate,’ people who had illegally engaged in file-sharing in the past were obligated to delete all of the songs they had downloaded and agree to avoid this type of activity in the future. However, the project was of limited success as it was announced at the very same time that the association had filed over two-hundred lawsuits against file-sharers. From the beginning, it was uncertain as to whether or not these pending cases would fall under the amnesty scheme.¹⁴⁰ Furthermore, groups such as the Electronic Frontier Foundation (EFF) noted that the RIAA agreement did not guarantee that individual recording labels would not pursue legal action against downloaders.¹⁴¹ In addition, it was suggested that the individual RIAA member labels could legally access the names of people who had signed up for the clean slate program.¹⁴² As a trade association rather than a sovereign power or copyright holder, the RIAA did not technically have the ability to grant amnesty in the legal sense of the word. Many of these undermined elements of the program prompted an individual to file a ‘fraudulent business practice’ suit against the RIAA.¹⁴³ Ultimately the case became moot as clean slate proved to be both unpopular and ineffective and was dropped by the RIAA within a few months. The program is reminiscent of the way in which broadcasting authorities in the UK had tried in the late 1980s to bring the pirate stations into the legitimate realm by offering licenses and protection from prosecution. These programs also bring to mind Deleuze and Guattari’s notion of apparatus of capture or perhaps more specifically Bonta and Protevi’s conception of ‘apparatus of capture of activity’.

While the RIAA has pursued colleges and universities with respect to illegal downloading for years, this campaign has also intensified. The organization has made the case that, in 2006, college students were responsible for 1.3 billion illegal downloads and that this number represented as much as two-thirds of the music they obtained in total.¹⁴⁴ Via RIAA mail-outs and publicity campaigns, universities have been encouraged to report instances of file-sharing on school networks and to block access to P2P websites. While some universities have refused to interact with the RIAA, others have installed subscription-type advertisement-supported legal downloading software in an effort to encourage students to legally obtain music. Other schools have adopted legal pay-per-use systems in which students are charged for the service.¹⁴⁵ While it is certain that not all universities support the actions of the RIAA, they do have an interest both in avoiding legal action and in saving costs with respect to bandwidth usage.¹⁴⁶ However, as Poster has pointed out, this has become a contentious issue on campuses around the United States.¹⁴⁷ The question has become: to what extent are universities committed to the free transfer and exchange of information, and to what degree is it acceptable for schools to police, or at least to allow the monitoring of, student activities? The actions against universities have also had a media campaign element. A posting on the RIAA website, in part, states, "According to non-profit research group Institute for Policy Innovation, global theft of sound recording cost the U.S. economy \$12.5 billion in lost revenue and more than 71,000 jobs and \$2 billion in wages to U.S. workers per year."¹⁴⁸ While the RIAA seems to have made in-roads on university campuses, in late 2007 its legal tactics were challenged by the University of Oregon. Not only did the school refuse to hand over the names of students alleged to have illegally downloaded songs, it caught

the attention of lawmakers by maintaining that the RIAA is attempting to bypass privacy laws and proper investigative procedures.¹⁴⁹

While the RIAA has been active in the courts, the recording industry has also employed the smooth spaces of the Internet both to thwart illegal downloading and to advertise to potential consumers. As previously noted, firms such as BigChampagne have been employed to monitor downloading and internet traffic as a method of gathering research data for advertising campaigns. In addition, the industry has hired companies such as MediaDefender to flood the Internet downloading sites with inoperative decoy music files. The aim is to make the downloading process time-consuming, difficult and annoying. Equally significant is that a portion of these trick files are set up to contain advertising.¹⁵⁰ These types of activities are generally not openly discussed by the industry as they acknowledge that illicit downloaders and purchasers of legitimate recordings are often the very same people.¹⁵¹ As Kembrew McLeod has pointed out, “File traders unknowingly are working – for free, and at the risk of being sued – in an ongoing focus group.”¹⁵² In one particular case, rap artist Jay-Z teamed with Coke to make a promotional clip that was specifically intended to be transmitted by on-line decoy files.¹⁵³ Jay-Z’s lawyer has stated, “While peer-to-peer users are stealing the intellectual property, they are also an active audience … this technology allows us to market back to them.”¹⁵⁴ In 2005, Columbia Records issued a Neil Diamond CD which carried a particular form of copy protection that also contained spyware – software which secretly gathered information about the purchasers of the CD.¹⁵⁵ However, when the spyware was discovered and reported, the music business attracted a great deal of negative publicity. This was also the case in late 2007 when it became common knowledge that

MediaDefender had, in spite of previous denials, and in conjunction with law enforcement officials, set up a fake website in an effort to entrap illegal file-sharers. Many of the tactics, which are connected to the twin notions of war machine and apparatus of capture, point to the ways in which there is a fine line between the legitimate and illegitimate aspects of the industry.

The recording industry has also continued to maintain close ties with influential political figures in the United States. For instance, Congressman Howard Berman (D) of California helped to promote a bill to limit piracy in 2002. Berman had previously received campaign contributions from a number of content providers, including AOL, Sony and Universal.¹⁵⁶ Prominent Republican and noted industry supporter, Orrin Hatch, had also received contributions from AOL.¹⁵⁷ Hatch has gone on record as advocating the destruction of computer equipment involved in illicit file-sharing if no other method of curtailing these activities can be found.¹⁵⁸ Lessig has made the point that the industry has been using both Congress and the courts in what is ultimately an attempt to stifle online innovation and development.¹⁵⁹ Similarly, Barbrook has made the case that the industry is attempting to maintain a Fordist approach in a post-Fordist era.¹⁶⁰ He points to the regional, national and worldwide nature of American politics, stating that political representatives are “determined to help their local media corporations to compete successfully within the global marketplace.”¹⁶¹ This notion seems to align with Hardt and Negri’s conception of Empire and the multi-level ways in which governments and capitalism interact. While the United States is not an over-arching global leader in their conception of Empire, it does have undue influence with respect to global trade relationships. In addition, the interaction between industry and states points to a

seemingly ambiguous relationship – one that is conflictive according to neo-liberal rhetoric and yet at the same time contains a recognition that the state is acting for industry's overall benefit. Hardt and Negri observe that, "This conflict is really a happy, virtuous dialectic from the perspective of total social capital."¹⁶²

Within the industry itself there have been a number of ways in which the record companies have extended their presence. In post-Fordist fashion this has not been achieved by acquiring new companies but by forming partnership arrangements with pre-existing media outlets. As already noted above, the core recording industry is largely distancing itself from digital distribution by passing this (arguably risky) aspect of the business along to other companies. Key record labels have signed a multitude of arrangements with content distributors such as Apple's on-line store. There have also been a number of agreements with cellular phone companies, which often entail giving phone purchasers a temporary subscription to on-line music. As recently as December of 2007, Nokia announced a package that would allow users to download an unlimited number of songs on the Universal label. For their part, Universal will receive a share of profits from the sale of the phones.¹⁶³ Some industry commentators have noted that these types of arrangements might indicate that it is no longer viable for labels to sell music directly to individual users.¹⁶⁴ Elsewhere, record labels have intensified their focus on 'synchronization' rights – licensing music to films, advertisements, video games and television programs.¹⁶⁵ This form of remote-control distribution has the benefit of putting the difficult and costly act of piracy monitoring in the hands of intermediary content providers. These types of 'cross-licensing' agreements are not without their legal implications. Although it abandoned its investigation in 2003, the U.S. Department of

Justice considered whether these arrangements violated anti-trust laws. The Department concluded that it “found no impermissible coordination among the record labels as to the terms on which they would individually license their music to third-party services.”¹⁶⁶

As a way to maintain interest in both tangible and intangible music, the recording industry has been exploring a number of ways in which to add value to recorded music. With respect to CDs, labels continually add bonus material – in the forms of archival videos and booklets as well as codes that grant purchasers access to ringtones and other forms of downloadable material. Much of this has been an effort to re-establish the scarcity and aura associated with tangible commodities. Labels and artists are also opting to release a multitude of live recordings on DVD, knowing that they are both desirable to fans and not as easily copied as CDs. In the digital era, DVDs also have the benefit of being relatively easy and inexpensive to record and produce. Of course, this notion of adding value has also set off a degree of competition and controversy among record labels. For instance, some labels have, in an effort to make their material more attractive and user-friendly, begun to release downloads without DRM protection. In addition, EMI has begun to offer MP3s at a higher bit-rate. As these files have a more vibrant sound quality, the label is able to charge more for them than its regular lower bit-rate downloads. This phenomenon may represent an emerging niche market. It seems conceivable this notion, coupled with developments in file-compression technology, will inevitably lead to a hierarchy of MP3s. The industry has also engaged with some more conventional approaches. At times, consumers receive a note within their CD cases thanking them for purchasing music and supporting artists. The RIAA have also launched a campaign that points out that the prices of CDs have actually decreased in

‘real terms,’ and that they represent a good value for money when compared to other forms of entertainment.¹⁶⁷

Even though iTunes operates externally to the Big Four, its emergence has been one of the most significant industry developments in recent years. Although the industry had previously squashed third-party digital distributors, Apple seemed to have offered a package that was organized, comprehensive and secure. Apple itself had the added advantage of a playback machine that was user-friendly, mobile and featured a high-storage-capacity – which meant that even if the company made little or no money selling music on-line it could make substantial profits from the sale of hardware.¹⁶⁸ While Apple pitched itself as a piracy remedy to the music industry, it also has had a certain rebel or subcultural image which was compounded by advertising slogans such as “Rip, mix and burn. After all it’s your music.”¹⁶⁹ For independent artists in particular, iTunes provided unprecedented global distribution.¹⁷⁰ And yet the Apple model was not without detractors both within and outside of the industry. Some industry insiders saw the notion of selling all songs for the same price as overly limiting and unfair to some of the more popular artists who could, in theory, command higher prices.¹⁷¹ As well, some music writers observed that at 99 cents per download, iTunes cost as much as buying a CD and didn’t have the added benefit of a tangible object and sleeve notes.¹⁷² McLeod points out that, “With the iTunes model, record companies pass along the nonexistent manufacturing and distribution costs to the consumer (who has less freedom to copy the song because of iTunes’ copy-protection technology).”¹⁷³ In a sense this model – which employs both Internet flows and sets up divisions and limitations – can be associated with the potential co-existence of smooth and striated spaces. However, McLeod fails to

acknowledge that by enabling users to purchase songs, they are no longer obligated to purchase entire CDs by a single artist. In a post-Fordist manner consumers are able to mix and match to suit their tastes. While this idea appeared new, it was arguably a return to the idea of selling singles – a phenomenon that virtually disappeared during the CD era. Significantly, by mid-2005, a mere two years after its launch, iTunes was distributing more downloads than the most popular of illegal file-sharing sites.¹⁷⁴ With other entities such as Microsoft, Wal-Mart and Amazon now offering music downloads, there are bound to be still more changes on the horizon. This distribution breakup will be compounded in the future as Amazon is promising to offer a variety of per song download prices.

Perhaps the most widely discussed ‘post-iPod’ model within the industry is the possibility of setting up music subscription models. The notion is that home users would pay a flat rate each month (possibly as part of their cable or high-speed service bill) and receive unlimited access to music. In other words music, like cable television, would take on the form of a utility.¹⁷⁵ Again we can see the ways in which smooth and striated spaces might actually connect and overlap. The notion is that this system would be a way to offer illicit downloaders an affordable and easy-to-use alternative. This scheme has both advocates and detractors within the industry. Some feel that such a distribution model would diminish the overall value of the music and that it would be impossible to get rival labels to agree on a single subscription model.¹⁷⁶ There is also the outstanding question of who would collect the subscription fees. If this task falls to the ISPs, clearly they will want a measure of compensation for their services.¹⁷⁷ In addition, if a fee is attached to cable or Internet provider bills, there is a risk of a backlash from those

subscribers who may not engage in file-sharing and are angered by the additional fees. Furthermore, in many parts of the world such utility rate increases need to be approved by regulatory bodies.¹⁷⁸ This notion is potentially further complicated by anti-trust issues as, in many regions of the United States, entertainment companies such as AOL are the local Internet service providers. This proposal is a reminder that states continue to play a regulatory role and that the very smoothness of cyberspace remains uncertain. While many in the industry see the subscription model as inevitable, how it might be implemented remains unclear.

While a comprehensive and universally accepted form of music distribution system remains elusive, the industry has begun to look inward and focus on highly specific forms of marketing and promotion. As with many artists, the industry is placing a renewed emphasis on forms of scarcity not linked to recordings. As labels have begun to emphasize licensing, there has been a concerted effort to market performers as brands. Arguably, as the core of the music industry is transitioning from the supply of music to the manufacturing and maintenance of artist's images, it increasingly resembles Guy Debord's notion of spectacle or Appadurai's conception of mediascapes.¹⁷⁹ Perhaps the most overt example is the emergence of the '360° Deal', or 'multiple rights' agreements, whereby artists who receive contracts give up a portion of the revenue they earn from merchandising and live concerts in exchange for the promotion that labels are able to provide.¹⁸⁰ Recently the head of the UK branch of Sony-BMG stated in the press that, "The old-style, royalties-based major-label deal is dead ... I'm willing to give up my revenue if artists are willing to give up theirs."¹⁸¹ While the labels are moving away from music distribution, they are becoming increasingly involved in capturing various

aspects of promotion and marketing. This may involve releasing music, but that is likely to be only one element of an overall brand development. Arguably this is a re-emphasis rather than a significant change in that the industry has always had post-Fordist elements and has tended to emphasize design and development rather than tangible production.¹⁸² For artists, the emerging scenario would seem to be beneficial in that they only have to deal with a single entity which handles nearly all aspects of their careers. Furthermore, they potentially have access to funds which could help with the initial costs of touring.¹⁸³ As such, labels have taken on the roles previously assigned to agents and press-relation personnel. While most such “holistic” agreements involve emerging artists, even veteran performers such as Madonna have recently opted for a 360° Deal.¹⁸⁴ Perhaps it is significant that this multi-year contract was signed with a company known for concert promotion rather than one of the Big Four labels.¹⁸⁵ However, this is a business model the Big Four are currently embracing. While the sales of CDs continue to decline, and much of the current transition would seem to suggest that the reach of the major labels is contracting, in some areas their scope of control and influence is becoming increasingly deep. The industry is currently demonstrating a degree of creativity and flexibility its detractors have argued it didn’t possess.

DOWLOADING CONCLUSION

With respect to the business of music, perhaps the single most important question to be addressed in the digital era is whether or not demand for music needs to be manufactured or created. Can demand be self-generated within the smooth spaces of the web, or does it still need to be generated within more traditional, and centralized, business models? It

seems certain that the answer to this question will determine the future configuration of the music industry. It is difficult to imagine that artists will be able to transcend local markets without some sort of financing and concerted publicity effort. This would seem to be increasingly true in an era when cyberspace is becoming increasingly crowded with (often free) music. Clearly, the core companies within the music industry, and many emerging artists, are recognizing this dilemma which might explain the increasing number of 360° Deals. At the same time, both pirate radio and file-sharing seem to reflect a desire for music enthusiasts to have a say in what music they hear and to interact with the process of music production. In different ways, both pirate radio and music downloading critique arborescent conceptions of music distribution. This developing sensibility seems tied to popular culture and presents a set of challenges to top-down distribution structures. Arguably, this notion of infinite choice challenges both existing monopolies and status-quo industrial capitalism. It would appear that the very notion of a fixed and unidirectional recording (associated with CDs), in contrast to interactive performances and electronic devices, does not fit into contemporary conceptions of entertainment. Of course, this does not mean that a backlash will not take place – of the type already seen in the vibrant market for used vinyl records, which retain a hint of exclusivity and tangibility. What is certain with respect to popular culture is that, in spite of the most careful planning and marketing by the industry, success and hits remain difficult to predict and control.

Regarding the distribution of music, it remains questionable whether the Internet can be conceived as a rhizome. Arguably, cyberspace has elements that are both rhizomic and arborescent. In terms of its random, unexpected and diffused aspects, the

notion of rhizomes seems to align with the sense of speed and immediacy associated with on-line culture. However, the spaces on the Internet and the associated technology to allow access have elements that are both liberating and controlling. Clearly, the Internet can be used for the transmission of goods and ideas as well as for forms of surveillance and marketing – with the potential to encompass these functions simultaneously. One is also left wondering whether cyberspaces are real or imagined communities. Are the spaces opened up on the Internet about integration or atomization? At what point, or at what scale, does the notion of sharing cease to have concrete meaning? These issues remain uncertain. Perhaps the subgenres and subcultures interacting on the Internet can be conceived as rhizomes within themselves – a question that seems all the more important as file-sharing seems to be becoming an increasingly clique-oriented and closed-off activity. Drawing on Walter Benjamin, and considering the mass duplication and transmission of on-line information, one is left to wonder whether the music industry is becoming democratized and user-driven, or whether the aura associated with music and musicians is being absorbed into other forms of commodities. Is the on-line music community a gifting rhizome or a false collective as Adorno might argue? Clearly these issues are part of a larger debate with respect to the democratic, legislative and corporate forces interacting on the Internet. What is certain is that cyberspace is contested space. As Michael Strangelove has argued, when considering Internet communications, one must weigh and balance the characteristics that are dystopian with those that are utopian.

CHAPTER 4 - OVERALL CONCLUSION

In many ways, this project demonstrates the need to adopt a multi-disciplinary approach when considering the evolving political economy of the music industry. The distribution of music has aspects that fall into the interacting realms of sociology, politics, economics and cultural studies. For these reasons this thesis has employed a variety of hegemonic (subculture, post-subcultures) and post-hegemonic (Deleuze and Guattari, Hardt and Negri) theories. What these seemingly unrelated ideas have in common are the twin notions of articulation and affect in that they allow for the possibility of variety of forms of agency, negotiation and interaction. As such, these theories can be seen as offering a spectrum of philosophies rather than a set of discrete ideas. Arguably, the theories overlap in fashions that are similar to the ways in which various aspects of the music industry interrelate. Together they offer ways which help to describe and analyze what is a complex topic in a constant state of flux. What this project makes clear is the complexity of power relations in a scenario where pirate radio and file-sharing continue to persist regardless of the various campaigns launched against them.

Throughout this project, post-subculture theory has proved to be a particularly valuable tool of analysis. In both case studies, the divide between subcultural activities and their opposition (or co-option) is complex and blurred. Is it possible, or even desirable, to disentangle these seemingly opposed forces? Post-subculture theory has the benefit of exploring these hybrid relationships in ways that are not confined to class or specific locations. These interpretations also point to the potentially ambiguous nature of subcultural activity. The question remains: to what extent are the actions of pirates forms of resistance and to what degree are they new patterns of consumption?

Furthermore, post-subculture theory considers the relationship between cultures and macro-political activity – movements which may or may not be progressive and virtuous. With respect to the magnitude of illicit music downloading, questions arise as to whether it is a subcultural activity when a significant percentage of the population engages in it. Has the original, perhaps utopian, conception of a ‘creative commons’ or ‘gift economy’ been lost in this transition? Are the relationships around pirate radio and file-sharing challenging hierarchies or merely indicators that forms of consumption are constantly in flux? In each instance, the very notion of traditional subculture is stretched, as it could be argued that both activities in their origin were, in part, the product of affluent social networks. Of course, these quest-for-capital origins do not explain the motives or aspirations of the end-users in either case. Arguably, recorded music has become the found objects in a large scale détournement project.

It is in the very ambiguity of resistance that Deleuze and Guattari’s concept of war machine seems to be particularly useful. Of particular importance is the authors’ assertion that war machines are not merely forces in opposition to states – they can also be forces by which states capture territory or activities. They make a distinction between the state’s power of appropriation and the resistive powers of metamorphoses. This project has repeatedly pointed to the ways in which such external forces have been confined – with the BBC employing both styles and personnel drawn from pirate radio, and record labels converting the activities of illicit downloaders into marketing and monitoring devices. Similarly, it needs to be recalled that companies within the Big Four profit from the sale of CD burners and blank media. In both case studies, we can see how smooth and striated spaces are both linked and interconnected. Likewise, in both

instances there was an attempt to offer transgressors forms of amnesty in an effort to bring illicit activities within regulatory frameworks. In this respect, Bonta and Protevi's interpretations of how informal economic activities might be brought into the capitalist system is particularly useful. Deleuze and Guattari's conception of rhizomes was helpful in considering the complex and multifaceted nature of both radio airwaves and cyberspace. The most significant limitation to employing this notion is the conception that rhizomes are, in contrast to arborescent forms, not hierarchical. Perhaps it is more useful to envisage rhizomes and aborescent configurations as idealized forms rather than concrete entities. While perhaps not a perfect fit for either case study, conceiving of activity and relationships as rhizomes offers some explanation as to how seemingly fixed networks expand and interact in unpredictable ways.

What is most interesting about Hardt and Negri's notion of Empire is that its all-encompassing nature allows for a large variety of forces and counter-forces. The notion of Empire might be classified as post-hegemonic in that it presents a conception of highly diffused power. In a sense, there is the possibility of multiple resistances which may or may not be tied to each other. Its potentially offsetting force is that of multitude, where the actions of individuals within Empire (even if these actions are disperse and unconnected) have a degree of political power and influence. This notion seems particularly prescient when one considers the numbers and variety of seemingly isolated file-sharers influencing the direction of the music industry. Given the Empire/multitude relationship, it becomes easy to see the ways in which communications networks might be conceived of as both high-tech panopticons and spaces of liberation. However, with respect to multitude, it seems difficult to imagine the ways in which such diffused forms

of resistance, conceived as the ‘genius of the multitude’, might add up to viable social or political movements. Can a multitude act ‘in concert’ as Hardt and Negri claim? Do networks by their nature have a built-in potential for innovation? These issues remain unclear. Laffey and Weldes’ critiques of Empire provide an added degree of insight. They question Empire’s smooth spaces and point out that the United States remains a dominating global presence. With respect to this project, these arguments are particularly relevant when one considers the US influence in both global policing and intellectual property laws. In addition, Alain Joxe’s take on the chaotic aspects of Empire seems applicable to the current state of the music industry. However, what is most significant about the notion of Empire in the era of neo-liberal globalization is that it points out the ways in which power does not always appear in overt and hegemonic ways. Furthermore, the notion of multitude is a reminder that power is not confined within individuals alone.

While the twin notions of Empire and multitude should be viewed more as interwoven rather than binary opposites, the work of Hardt and Negri does seem confined within traditional Marxist theory. It is perhaps for this reason that some of the globalization theories linked to anthropology have added more resonance to the file-sharing case study. Echoing Joxe, they seem to point to the more unpredictable and disordered aspects of cultural flows. Crucial insight was gained from Appadurai’s notions of scapes and disjunctive relationships. Likewise, Inda and Rosaldo’s conception of awkward connections was helpful. In both instances there was a suggestion that relationships can be conceived of as interactive, indeterminate and temporary. These notions of fluidity are particularly important when considering the complex relationship

between content providers and both pirate radio operators and internet downloaders. Often drawn on the concept of imagined communities, these ideas provide ways to interpret the development and conditions of heterogeneous on-line society. These concepts, which are reminiscent of the meshed aspects of smooth and striated spaces, are a reminder that globalization is not a uniform, linear or systematic process. Clearly the aim is to consider the more nuanced aspects of global trade and interaction. As with subcultural theory, there is a conception that such activities have interacting local and global components. This can be seen in the way in which highly localized music scenes gain world-wide exposure on the Internet. The notions of scapes and flows also stress the importance of agency and the significance of examining the daily activities of people.

From the perspective of political economy, both cases point to the flexibility of institutions and capitalism. This is particularly evident when considering the origins and multifaceted aspects of both pirate radio and on-line file-sharing. In each case, early activities were linked to both venture capitalism and illegal activity. These relationships point to the innovations and openings taking place in the informal economy. As has been noted throughout this project, there seems to be a close and overlapping association between state-sanctioned and illegal activity. It also seems safe to say that the music industry is neither static nor is changing in entirely unrecognizable ways. Given their post-Fordist flexibility the core businesses are able to tailor their activities to changing business environments. This can be seen in the ways which the BBC has absorbed elements of pirate radio, and more recently in the 360° strategy approach of record labels. Clearly, in both case studies, mainstream outlets are being expanded but the innovations are taking place in informal sectors of the economy. And yet, this 'capturing' is never so

complete as to stop the war machines operating in smooth spaces. In spite of the intentions of corporations and institutions, it seems to be the end-users who have most effectively employed the tools of war machine. At the same time, the content providers continue to exercise and stretch their legal influence both within the United States and globally. It seems certain that this deepening and extension of copyright law will influence other sectors of the economy in an era where capitalism is becoming increasingly tied to intellectual property, service sectors and non-durable goods. As part of a highly interactive mediascape, the music industry is simultaneously imposing legal changes and having new business models imposed on it.

An overt theme that has emerged from this study is the changing nature of protest and resistance. In the case of England in the 1960s, it seemed as if pirate radio articulated dissatisfaction with government. The administration was portrayed as a stumbling block that was preventing the masses from enjoying their music of choice. This is slightly misleading as it is important to recall that the BBC's content reflected a number of competing forces (some of whom were musicians). However, the success of the pirate stations demonstrated that there was a call for the commercialization of music. In the current era, corporations are now painted as entities which are curtailing the activities of music enthusiasts. In this instance, corporations are viewed as top-down institutions that are not responsive to contemporary trends in either content or distribution. Arguably, this transition reflects a post-Seattle attitude that seems to attribute more social and economic ills to corporations than to governments. Whether this transition in protest targeting and resistance reflects a shift in power in the era of globalization remains an open question. One might also draw a parallel between this

phenomenon and the transition from a society of discipline to a society of control. This notion would suggest that power is simultaneously becoming increasingly present and diffused. Furthermore, Heyman and Smart's contention that states are ultimately 'incomplete' and 'fractured' offers additional insight. This idea seems to stand in contrast to the seeming monolithic and omnipresent nature of corporations. However, as Laclau and Mouffe have reminded us, struggles always have a 'partial character.' Ultimately, forms of resistance, like industry itself, are not homogenous, and make take on a variety of characteristics and perspectives.

One area that would seem to merit further study is the idea that the popular music industry no longer has a distinct core or canon. A proliferation of musical genres and the quest for variety is what seems to link both of these cases. Although post-subculture studies offer some insight into this phenomenon, a detailed examination would entail looking at Internet downloading in a more comprehensive way – one that went beyond merely analyzing how downloading is affecting the sale of music. What are the connections between these forms of particularism and piracy? Are we in a post-blockbuster era, or are new on-line canons appearing? How are market openings being identified by either pirates or businesses? What role does a desire for immediacy play in such activity? It seems possible that subgenres are also connected to increased desire for intimacy with artists – possibly a return to pre-mass age auras. Perhaps these micro-activities add up, in a fashion similar to multitude, to form a larger picture. Alternatively, the splintering of music genres might be the product of increasingly sophisticated niche marketing (as in the cases of 360° contracts and long tail selling). If this is the case, it would seem that increasingly sophisticated forms of narrow-marketing will be required to

sustain the traditional industry. To what degree is piracy about cheaply reproducing mainstream products as compared to initiating innovation? It needs to be recalled that both of these cases involved venture capitalism at their outsets. In terms of particularism, what is the relationship between altruism and opportunism? One might also consider the ways in which pirate-inspired perspectives are currently influencing websites comprised of user-generated content. Are such sites examples of freeform rhizomes or are they cases of captured activity? It would seem that the answers to these questions merit additional study and point to the increasingly intricate nature of the music business and cultural industries in general. The complexity of transformation within the industry is that it can encompass a quest for profit, methods that strive to avoid capital's reach and various points in-between those two poles. What is certain is that these questions clearly cannot be broken into the binary notions of capital and resistance.

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