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FORUM

Who are the Pirates? The Politics of Piracy, Poverty, and Greed in a Globalized Music Market

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Introduction

In the wake of the aggressive campaign against Napster, in the name of intellectual property rights, the record industry—more precisely the Big 5 labels (BMG, Warner, Universal, Sony, EMI), along with the IFPI (International Federation of the Phonograph Industry), National Academy of Recording Arts and Sciences (NARAS), Latin Academy of Recording Arts and Sciences (LARAS), and Recording Industry Association of America (RIAA)—is on the attack worldwide against CD pirates. The IFPI estimates that, in the year 2000, one in every three CDs purchased throughout the world was pirated (IFPI 2001). That adds up to more than 1.8 billion units!

If this were not such a serious issue, their position might be laughable as the record industry uses the media to cry foul and plead for public support after years of raking artists and consumers over the financial coals. Just last year, the major labels were cited for using pressure tactics against music retailers to keep the cost of CDs higher than necessary. The Federal Trade Commission ruled that the record companies have violated fair trade practices by intimidating store owners into not advertising CDs below a certain price, leading to antitrust suits being filed by 28 of the 50 United States against the Big 5 ("Musicland"). These practices have added more than $500 million to CD prices since 1997!

In 2001, after an article in the *Los Angeles Times* shed light on an all-but-forgotten tactic used by the industry to control airplay—payola—yet another example of the record companies' unfair and unethical trade practices was revealed to the public. Subsequently, the Federal Communications Commission and the Justice Department launched an in-depth investigation into the allegations of payola between independent promoters and radio stations. With such a history of unfairness and one-sided contract negotiations with artists, greed, the lust for power, price gouging, and price fixing, the industry has worked hard to earn its unfavorable reputation.

Now let us consider this coercive industry in control of a universal entity, such as a global music market, with fixed pricing structures applied unilaterally across the board. This raises some complicated issues of how the concept is applied across a variety of nations all with extremely differing economic, cultural, and

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social realities. With the United States holding the lion's share of the world music market at 37 percent (IFPI 2000), it has assumed the position of enforcing policies and standards that in many countries are economically unrealistic. The unilateral imposition of these standards upon nations throughout the world is no less than a form of neocolonialism and economic oppression. Unfair price fixing and unilateral policies cause financial hardships for members of the underclasses wishing to consume the product. In Latin America, where music holds such an intrinsic role in cultural expression, purchasing the product at suggested list price is simply impossible for the majority. The idea of a global music market is not a new concept. The international music market has existed for nearly a century. And the record industry has always held control of production and distribution. The world's music consumers were simply forced to pay whatever price was placed on the product. With the adoption en masse of the cassette recorder in the 1970s and CD technology in the 1980s, the playing field began to change. By the mid-1990s, CD technology had advanced to the point where CD burners were coming as standard equipment in personal computers and standalone duplicators were in every stereo store. For the first time in the history of the music industry, consumers could now actually dabble in production. And through Internet file-sharing applications, the consumer could now also achieve a certain amount of distribution that was previous unavailable. With this shifting terrain, the record industry began to feel its stranglehold on consumer music habits being threatened.

So, using the defense of intellectual property rights as their battle flag, IFPI, NARAS, LARAS, and the RIAA have all banded together to "stamp out" music piracy on a global level. Thus far they have been successful in getting the Clinton Administration to issue laws covering the new media of Internet music (No Electronic Theft Act, NET) and other laws that are falling in favor of major record labels and their traditional distribution conglomerates. They are currently seeking the administration to apply political and perhaps economic pressure if necessary on nations where piracy is rampant. From an ethnomusicological perspective, this intercultural dynamic raises some very interesting issues of power structures, ethics, and the relation between greed and poverty. As a preview of a larger project currently underway, this study presents a brief examination of this dynamic between the United States, Mexico, and Brazil, and strives to draw closer to the definitive answer to the question: "Who are the pirates?"

What's wrong with this picture?

In a wash of articles surfacing recently in the newspapers of the world, and in publications by the IFPI, record companies are crying foul and posing as normally benevolent companies falling victim to a technologically changing world. They complain about the increased sale of CD burners, and the quantity of CD-Rs in circulation, but receive a surcharge of $2 and $12 from each CD burner sold and a 2 percent surcharge from the sale of each CD-R. In 1994, these surcharges exceeded $34 million, and *every* artist with whom I spoke never received any payments from these fees. The industry argues for the protection of their artists' intellectual property rights, rights that they control, and in most cases have been wrested away from their rightful owner, the artist. In a guest column on the NARAS website, posted by Miles Copeland, he gives a pathetic plea for a reassessment of the public image of the record industry. Citing a per CD cost of $15 against a wholesale selling price of $10, Copeland paints the record industry as having been unfairly labeled greedy (NARAS). From a purely business perspective, anyone running a record label that consistently loses $5 per CD should most likely consider a career change. But it doesn't stop there.

In his open letter to the public, entitled "Building Bridges with Music," in the premier issue of *Grammy Latino* (1997), the LARAS Magazine, NARAS CEO and President Michael Greene claims that piracy accounts for 50 percent of all music purchases made in Latin America. While piracy is certainly rampant in Latin America, his figure of 50 percent lacks empirical evidence and remains an exaggerated estimate meant to reflect favorably upon an industry that is painting itself as "victimized" by criminals. Greene bases his figures on the imaginary figures provided annually by the IFPI He continues by claiming "the entire music food chain is starved" as the foreign bandits reap the benefits of piracy (24). How ridiculous is such a statement coming from a man who, on the periphery of the industry, annually receives an income of nearly $2 million as the director of a *nonprofit* organization? It is overt mistruths, like this and like Copeland's, that have earned the recording industry its image as a ravenous, heartless vampire. Greene calls for solutions to piracy that "must be tailored to the very specific, yet fluid political and economic environments existing in each country" (24). By this, he is not referring to tailoring the price structure, but to tailoring the means of coercion. In March 2001, the industry was successful in coercing the Brazilian government into a Presidential Decree instituting an "Interministerial" Anti-Piracy Committee, under the Ministry of Justice, aimed at coordinating the country's different enforcement agencies (IFPI 2001). In his infinite naiveté, Greene goes on to dismiss the existence of a strong middle class in Latin America (an embarrassment in itself for the then-President of LARAS) and cites the disparity of income between the classes as the principal reason for piracy. He is not far off, but at no point does he acknowledge that this class dynamic has been constructed deliberately, on a global level, by the world's wealthy, a class of which he is part, as a means of maintaining power and control.

In the case of Brazil, Greene claims that pirated recordings account for 45 percent of all sales, and in Colombia the estimate of pirated sales has reached an astonishing 86 percent (25). Once again, no written records support these percentages aside from the estimated numbers provided by the IFPI Greene concludes his letter with a call to every citizen in "even the smallest communities" to join in the battle against piracy. In an exuberant display of self-importance, he is essentially requesting that every man, woman, and child on Earth, despite their economic reality, expend their energy and effort to insure the continuity of his luxurious lifestyle. That is what is truly at stake.

Greene cites disparity of wealth and inconsistent enforcement of copyright laws by officials as the main contributors to the situation. Nowhere in his letter does he admit that record executives and publishers are highly overpaid members of an exploitative industry that has historically appropriated the intellectual properties of others and has parlayed them into vehicles with which to satisfy their greed and the lust for power. At no time does Greene admit that perhaps the prices being charged for commercial CDs, which are considered inflated by US standards, are entirely unrealistic given local economies throughout Latin America. Never does he even consider the high cost of the products as a possible reason for piracy. As a case study let us consider Brazil.

Piracy myths and truths

In a *New York Times* article, Larry Rother paints a very different picture of the situation:

> The latest releases of Britney Spears, Madonna, U2 or the Back Street Boys can cost up to R$36.25 (Reais) (US$14.50) in record shops here [Brazil], but that doesn't stop anyone from hearing them. Street vendors, operating from simple metal stands, offer the same titles for R$6.80 ($2.75). (Rother 3)

This phenomenon is not restricted to imported music. The latest releases by the national artists sell for about the same price, averaging R$30. In a nation where the monthly minimum wage is R$140–200 (US$70–100), paying R$36 for a CD is absolutely out of the question. "It is the avarice, the unyielding rapaciousness of the record companies, that foments the violation of recording copyrights in Brazil," said Nehemias Gueiros, Jr., an intellectual property rights lawyer and former record company executive. "When you have a predatory price policy incompatible with the economic reality of a country, then you are simply paving the way for piracy." In regard to the high prices, Antônio Carlos Manfredini, an economist at the Getúlio Vargas Foundation, said:

> The higher price for recordings here [Brazil] is maintained not so much with Brazil itself in mind, but to avoid sales to the United States and Western Europe, it's simply not worth it to them to threaten their markets in the North by means of aggressive pricing in Brazil. (Rother 3)

This statement reveals Brazil's reality of trying to deal with the globalized price structure imposed on the world by the US/European/Japanese music industry. As a result of these high prices, record company profit margins in Brazil may be even higher than they are in the United States. Gueiros, an ex-executive at Sony and BMG before opening his own law firm and boutique record label in Rio de Janeiro, calculates that the average producer's cost of a CD in Brazil, which includes royalties, is kept lower than in the United States at less than $3 (Rother 3). It is commonly accepted by Brazilian economists and industry forecasters, that profits in Brazil would soar, and piracy would wane, if record companies would trade profit-per-unit for volume sales. In rebuttal to Greene's accusation that local officials are not doing enough, Manfredini states:

> In a low-income country, the regulatory authorities have difficulty protecting the rights of both producers and consumers, and so there is not an institutional structure to control price fixing and other abuses perpetrated by the same companies that complain that their rights are not being protected when piracy results. (Rother 3)

This is an interesting statement that reveals the greed of an industry that wants protection for its price gouging and protection from opposition to that gouging. So, in other words, what the industry wants is for governments to oppress the masses in order to preserve their economic pillaging of the lower classes. The painfully obvious truth that seems difficult for the industry to grasp is that in "low-income" societies throughout the world, music pirates are not seen as the bandits Michael Greene and the industry claim them to be. They are, in many cases, Robin Hoods, freeing music from its economic raptors and returning it to the people. Brazil is, after all, a country that defines and expresses itself through song as much as any other in the world, which means that Brazilians view any attempt economically to limit access to music as an attack on their culture and national identity.

Mexican pirates

In another case study, let us consider Mexico. The IFPI released figures in its June 2001 update that state that pirated CDs account for more than 65 percent of all music purchases made in the country during the year 2000. The IFPI states that, owing to "poor coordination between the key enforcement agencies, a lack of commitment to intellectual property offenses by the judiciary and a lack of deterrent sentencing in the courts," (IFPI 2001 7) piracy continues to grow. Comparing the Mexican gross national product per capita of $4,748 with the $33,933 of the United States (IFPI 2001), illuminates in dollars and *sense* the disparity between the social classes of each country. The difference of $29,185 makes selling the same product for the same price in both societies an absurdity. The case of Brazil is even worse, with the difference being $30,496. Third on the list of priorities against piracy, the IFPI claims that Mexican pirates account for annual losses of more than $220 million. What is ironic is that upon closer inspection, Mexico posted a real growth rate in retail sales of 13 percent compared with that of 6 percent in the United States and to Brazil's depressing –44 percent. Units sold in Mexico during 1999 reached 72.8 million and yielded earnings of $626 million. When combining these figures with the $668.4 million from Brazil, we see that the record industry reaped $1,294,400,000 last year from these two Latin American countries that surprisingly *still* occupy the third and fourth places on the IFPI's hit list against piracy. The IFPI has stated that their top priority in Mexico is effective antipiracy enforcement. What this actually means has yet to be seen. As in the case of Brazil, Mexico's so-called lack of commitment seems to evidence an unwillingness to be coerced by multinational corporations into enforcing policies that are designed as mechanisms to economically pillage the underclasses of the country. Mexico is no less musical than Brazil, and limiting access to music to those who can pay the price is the same attack on Mexican culture and national identity.

Final thoughts

Citing the 80 percent increase in the sale of CD-R blanks in 2000 as the main reason for the increase in piracy, the IFPI has not been as forthcoming with figures on the amount of money raised from the 2 percent surcharge that trickles back to the industry from those CD-Rs, nor the surcharge made from every burner that made the copies. Imagine the revenue generated if the sales of CD-Rs are up 80 percent and in 1994 revenue was $34 million! Yet, no distributions were made to the musicians of the member labels of the RIAA. The interesting thing here is that those surcharges are being paid to the RIAA to offset any projected loss in retail sales owing to copies being made by consumers. This was intended to free the listener from these problems. What happened to that agreement? One more note: if piracy is eradicated, will the RIAA stop receiving the surcharges? I doubt it. One thing inherently wrong with the figures thrown around by the industry is that nowhere has it been proved that every CD-R sold is being turned into a pirated product. The main issue here is not the quantity of CD-Rs in circulation, but the reason *why* so many are used to duplicate music. Apparently the world's music consumer has found an option to the price gouging of the industry. The CD-R offers a previously unavailable choice, a response to the economic oppression perpetrated against consumers by the world's wealthy. To the "low income" societies throughout Brazil and Mexico, and even the United States, the CD-R represents liberation and freedom of choice. Therefore, it is not necessary to be an economist to see that if we abandon the mind washing we received while growing up that taught us that the normal order of society was for a small faction of the population to control the majority of resources, and for the masses to struggle to obtain them, *and* we apply a *trickle-up* rather than a trickle-down theory, it becomes quite clear who the pirates actually are.

Works cited

Greene, Michael. "Building Bridges with Music." *Grammy Latino* 1 (1997): 22–25.
IFPI. *The Recording Industry in Numbers 2000*. London: IFPI, 2000.
——. *The Recording Industry in Numbers June 2001*. London: IFPI, 2001.
"Musicland Named in Label Suit." Available online: http://twincities.bcentral.com/twincities/stories/2000/08/14/weekinbiz.html. Accessed 14 August 2000.
NARAS. http://www.grammy.com, 2000–2001. Accessed 20 May 2001.
Rother, Larry. "In the Land of Sun and Music Pirates Play Robin Hood." *New York Times* 20 May 2001: §4, 3.

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