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## **The Juxtaposition of Good and Bad or: Legal and Illegal Downloads. The MP3 Format and its Chances for Musicians and Fans.**

Since its invention by the Fraunhofer institute<sup>1</sup> some years ago, the MP3 format for wave file compression has stirred up musicians, record companies, and the music business as a whole. Remember: One minute of an audio file in wave format in stereo with 44,1 kHz sampling rate, which gives a CD-like quality, will take about 10 MB, thus a short song in wave file format uses 30 to 50 MB, a file size which is nearly impossible to transfer over the Internet unless there is a cable internet connection, a cheap flat rate and still lots of time.

By compressing the usual wave-material down to one eleventh, the MP3 format offers new chances. Now, transfer comes into more reasonable ranges, but still you have to be very patient. Depending on internet connection, modem or ISDN, transfer capability of all devices, and general bandwidth of the net at the time of the download, a three-minute-song still may need up to 20 minutes for transfer.

As the title of my paper suggests, there are two ways of looking at downloads of MP3 files: There is good and bad, legal and illegal, or in other words, there are chances for musicians as well as for fans and music lovers.

Starting with the good and legal side of this invention, the MP3 format offers chances for musicians. To be more precisely, I am not going to talk here about all the famous artists that everybody knows, all the artists that became famous by radio, by records, by TV. So musicians like The Beatles, Deep Purple, Tina Turner or Britney Spears are not the subject of the legal side. This side is the new market place for thousands and thousands of musicians that are more or less completely unknown to the public. You will not find their CD's in stores; you will not hear them on the usual radio stations. These musicians take the chance of a new way of distributing their music.

For the first time, musicians are now free to distribute their music without a record company contract, without spending a lot of money for public relations. They might get known world wide with just one click. In the case of MP3.com, for example, the greatest provider of legal MP3 files, a registration offers many advantages for musicians. Besides short biographies, pictures and other pieces of information that are published in the net, the musicians can decide what shall happen with their music. They can choose songs from their repertoire that they legalize for free

download. Daily there are about 400 new songs in the listing.<sup>2</sup> Downloading these songs is not only legal; the musicians think it is desirable, for it will make them all the more famous.<sup>3</sup> There will be, of course, no or not much income, because the usual CD that is available in record stores, does not exist here.

But there is an alternative: As some MP3 files are free for downloads and function as appetizers, other songs can be ordered on CD's as well. These CD's that are manufactured by MP3.com, are often in a special format that combines normal audio tracks and MP3 tracks, so it can be played in any CD player and in computer CD-ROMs or in MP3 players for additional songs and extended playing time. In addition, these CD's are comparatively cheap with about only 6 US Dollars. If a fan likes the free downloads, he might possibly order the CD as well. With providers like MP3.com, musicians encounter a new market to distribute their music without a record company or a label. Some of the offered special CD's name virtual labels, often meant as a refusal of the usual music business industry. Therefore, we find label names such as „We Don't Need No Stinkin' Lable Records“ by the band “Sutrobath”.<sup>4</sup>

In addition, MP3.com offers so-called “Payback Earnings”, when an original and registered MP3 song is played for example, in a retail store.

MP3.com makes sure that the musicians who have published their songs as MP3 files have full copyright of their music. A free download is possible and desirable, also a reasonable number of copies for private use. Unauthorized commercial distribution or public performance is not allowed.<sup>5</sup>

These legal downloads do not only offer chances for musicians, but also for fans and music lovers: As the music of the MP3-artists is not available in usual CD shops, not sponsored in music magazines or in radio or TV, most of the public does not know it at all. Therefore, it is something special and unique and as music lovers are always looking for something new they like, there is a great chance of finding it among the legal MP3 music.

The quality of this music that is still relatively or completely unknown to the public does not differ much from the material we can hear on the radio: There will be songs you like and songs you dislike, there are many files of superb and interesting arrangements in all styles. Even music lovers and music sociologists will see the chance: Listening to songs that nobody else has might be a stimulus to search for new talents and sounds.

Among MP3.com, a great number of musical styles are offered that might suit even eccentric musical preferences. MP3.com as the pioneer

of legal MP3-files<sup>6</sup> offers many search functions that help to find a certain style. The starting page lists genres like:

Alternative – Blues - Books & Spoken - Children's Music – Classical – Comedy – Country - Easy Listening – Electronic - Hip Hop/Rap – Jazz – Latin – Metal - Pop & Rock - Urban/R&B - World/Folk

By clicking on one of these, several subgenres will be listed, which lead to corresponding links. These subgenres include the overwhelming number of more than 200 styles. Beside the main ones as Reggae, Punk, Metal or Jazz there are specials for Rockabilly, Old School Rap and many, many others. Imaginative expressions such as Renaissance, Lounge, Noise, Hawaiian und Horrorcore let us foresee what musical style might be behind it. Another listing with main and subgenres makes clear which subgenre belongs to which main style.<sup>7</sup>

All files are shown with title, musician, style category and file size. Previews allow listening to files before download and will give help for the decision if the download may be worth it. Here, there are two preview options, a “Lo Fi“ and a “Hi Fi“ version. Lo Fi is suitable for a normal Internet connection with a modem starting with 28,8 transfer rate or for ISDN, the Hi Fi version is possible for quick cable connection and networks only. The Lo Fi version offers a streaming play with a sampling rate of 22 kHz and thus is a bit muddy sounding, but for a first impression, it is more than sufficient and it is unpretentious for computer processors and streaming.

By selecting a certain musician or band, all available files of this artist are listed together with the above mentioned biographies. In many cases, these biographies are of full-length and detailed, often several pictures are included and musical influences as well as opinions of the musicians on their music are given. These pieces of information might be useful when one does not know the band and is looking for new music in a certain style. As a rule, the musicians also give their e-mail addresses, so that it is possible to contact them and communicate about their music.

With the link “Email Song“, it is possible to vote for a certain song. The results of these voting can be seen in a list called “Daily Top 40“. These Top 40 lists are available for nearly all musical styles. If one is interested in opinions and polls and likes to know what other people like to hear, this is the right address. Therefore, these listings offer interesting material for studies in musical sociology.

As there are many other providers for legal MP3 files and downloads besides MP3.com, this new market is developing quickly.

Now let us turn to the bad side, illegal, but still full of chances. In this case, the chances are for fans and music lovers only, not for musicians.

The state of affairs is unmistakable: Without authorization of the artist, it is prohibited to distribute works that are under copyright, because the artists and music publishers will then have a loss of income. Therefore, there are two aspects of illegal transfer: At first, works - in our case sound files - have to be made available for upload which is the first part of the illegal distribution and the more serious one. An unauthorized upload is strictly forbidden. Secondly, the download of these files that are illegally distributed is not allowed as well, but here the law is not so clear. Often it is said that a download is not a criminal act if you draw one copy only, listen to it for private use, and there is no further distribution.<sup>8</sup> Other lawyers claim that even pure downloads are a crime, similar to stealing something.<sup>9</sup> Still others claim that it cannot be possible to have a legal copy of some work of art that has been copied before illegally. There can be just one legal copy for private use, and that is the one from the original itself, and even this can only be possible or allowed if one is the owner of the original.<sup>10</sup>

The question of legality for audio file transfer arose in June 99, when Shawn Fanning introduced his Napster software for exchanging mp3 files.<sup>11</sup> Within a short time, there were more than 40 million users.<sup>12</sup> The term "Napster" seems to have become a kind of horror-term for record companies and musicians and it is famous since the band Metallica started to accuse the illegal downloads of their songs. "Napster" even became a verb, like "Do you napster?"

Why has Napster become so very popular? Beside the chance for free access to a vast number of songs, there seems to be no song that is not available on Napster. Even rare bootleg recordings, alternate mixes, sold out maxi CD's and other material are offered. For example songs by Rosco Gordon, the American Rhythm & Blues singer of the fifties, are no longer available in record shops, even not in those that specialized on that style. In Napster, no problem. Live rarities from Deep Purple's tour with Joe Satriani? In Napster, no problem. The unpublished Metallica-song from the movie "Mission Impossible 2"? With Napster, no problem.

Already in December 99, the record industry lead by Sony, Warner, BMG, EMI and Universal, accused The Napster Company and asked for compensation.<sup>13</sup> In October 2000, the Bertelsmann Company joined with Napster,<sup>14</sup> presumably with the aim, to find new customers for their products and to earn money. From then on, it has been planned that users will have to pay for downloads. After several legal proceedings, where, among other matters, Napster boss Hank Barry offered a billion dollars

to the record companies as a compensation, a first agreement resulted in a filter that was meant to cancel out all copyrighted files. Still now, this filter does not work properly and even some software tools are available that try to switch the filter off completely.<sup>15</sup>

Napster came into trouble not only because of the copyright question, but also because it is a central system: although private users share their harddisks to exchange files, a central server provides the list of users. As it was easy to find out this central server, it was as easy to blame it alone. There are other central systems that work similarly, like AudioGalaxy. Here, even interrupted downloads can be started anew. The most famous decentral system is Gnutella, where a user will be connected to several other users without a central server. In this case, it is much more complicated or impossible to track transfers.<sup>16</sup>

The innovative system “Mojo Nation” uses a different way of transferring files. A single file is spread into a number of many short fragments, which are saved on the harddisks of several users. When a download starts, these fragments will be put together again. Therefore, this kind of system will work only with many users who share their harddisks and where everyone is uploader and downloader at the same time.<sup>17</sup>

Besides these Napster-clones, there are several other systems, and the number of those that work with decentral systems is increasing rapidly. All these Napster-clones will have trouble with the copyright question sooner or later. But the more the music industry is looking for legal ways to transfer music that should be paid for, the more inventors will try to find systems that work like the old Napster did. Tools like “Napigator” or “Wrapster” offer new possibilities for users. “Napigator” allows the search for a special server, with “Wrapster” it is possible to change or pack nearly every thinkable file to an MP3-file. This lead to more trouble, as picture files can be converted as well and there were rumours about pornographic pictures hidden as MP3 files.<sup>18</sup>

Meanwhile, the industry announced that it will not be possible to burn songs on CD that have been downloaded from the new Napster/Bertelsmann system. A new file format that will be used for transfer might include a copy protection.<sup>19</sup> There are two sides of this invention as well: For instance, Sony accuses Napster because of the copyright damage; Sony is, on the other hand, one of the major manufacturers of MP3 players. Something seems to be inconsistent here.<sup>20</sup>

The MP3 trouble is just a fraction of a greater one: The copying of illegally burned CD's affects the music industry much stronger than

MP3 downloads. Up to 90 percent of the damage to sales volume is due to copying.<sup>21</sup>

In case you want to download a complete CD, the download of all the tracks might last many hours and will lead to enormous telephone costs, at least in Germany or other countries where local calls are not free or very cheap as in the U.S. In addition, the downloader still has no CD, no cover, no pictures, and no lyrics. In case he looks for everything on the web, burns his CD, and prints the covers, the actual price for this illegal CD might be higher than the legally bought version, not to think of the time he might have spent.<sup>22</sup>

Interestingly, a study says that Napster-users buy more CD's now than the days before Napster, or than other CD buyers in general.<sup>23</sup>

Bertelsmann plans to have at least two of paying for downloaded songs: A so-called "Basic Membership" will allow a certain amount of loads for about three to five US Dollars per month, with a "Premium Membership", the user is free to download as much as he wants for about six to ten Dollars. Bertelsmann will then be ready to give about a billion Dollars to the music industry for licence.<sup>24</sup> If all the titles will be available then as before, remains unclear by now.

Let us think about some alternatives: A similar problem of copyright started with the invention of tape and cassette recorders. Nowadays the price of these devices includes a certain small amount as a licence. This will be the rule for CD burners as well soon, maybe even for harddisks. As the downloaded songs will be on the harddisk first, duty payment for licence whenever you buy a harddisk might be possible. In other words, a general duty on personal computers might settle the problem, as every computer has at least one harddisk drive. Extra harddisks will need extra duty then.

Or imagine a Napster clone were advertisements are popping up. In case this will not disturb the download, the licence might be financed this way.

Or: Whenever you buy a CD, the copyright licence is included. You will not pay for something that you do not buy, but this might be exactly the case with a constant membership. You have to pay even when there is not a single song you downloaded. One can think of a payment for each individual download, that is, for example, fifty cents per title, or for downloading time, let us say one Dollar for five minutes, or a combination of the two: Short song up to three minutes, fifty cents, songs from three to six minutes, one Dollar, and so on. Here, I would prefer the version that pays individual tracks only as the time version is unfair against longer titles.

Some artists invented their own ways of dealing with the MP3 question: David Bowie offered an album as download on his homepage before the official release date, but the usual CD price had to be paid for the download.<sup>25</sup> The band Public Enemy offered bonus tracks in the web that were not included on the CD.<sup>26</sup>

I would like to give Mr Neil Young the chance for a closing sentence. He seems to have no problem with MP3 and Napster at all. He does not care about his lost royalties, because it is his opinion that: "...MP3 sounds miserable and therefore no one should pay for it."<sup>27</sup>

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- MP3.de: <http://mp3.de/>
- DocRoc/Yahoo Musik: Napster: Das war's! at: [http:// de.news.yahoo.com/010213/56/1c9w7.html](http://de.news.yahoo.com/010213/56/1c9w7.html) (February 13th, 2001)
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Notes:

<sup>1</sup> Cf. Pahl, Stefan. MP3 – Hier spielt die Musik! in: PC go! 7/1999 p. 86; see also: Wieden, Yvonne. Der Erfinder. Karlheinz Brandenburg entwickelte MP3 fürs Netz – und revolutionierte so das Musikgeschäft. in: Online Today 12/1999, p. 58.

<sup>2</sup> Cf. Lassak, Frank. Keine Chance für B-Seiten. in: PC Online 10/1999, p. 46.

<sup>3</sup> Cf. Hartung, S. 48.

<sup>4</sup> Cf. <http://artists.mp3s.com/artists/5/sutrobath.html>

<sup>5</sup> Cf. <http://artists.mp3s.com/artists/5/sutrobath.html>. (Diese Copyright-Formel findet sich auf allen Pages, die eine Band oder einen Musiker vorstellen und die MP3-Dateien enthalten.)

<sup>6</sup> Cf. <http://www.mp3.com/>

<sup>7</sup> Cf. <http://genres.mp3.com/music/genres.html>

<sup>8</sup> Cf. Schuhmacher-Deutzmann, Nils. Rechtslage nicht eindeutig geklärt. (Interview PC Praxis with the lawyer Schuhmacher-Deutzmann), in: PC Praxis 3/2001, p.37.

<sup>9</sup> Cf. Bongardt, Dirk; Meyer, Detlef; Gelin, Rene; jf. Napsters Testament: Der Download geht weiter. in: PC Praxis 5/2001, p. 81.

<sup>10</sup> Cf. Hanika, Jan; Helmiss, Andreas. Alles über MP3: So geht's/Kopieren erlaubt? in: PC Welt 10/2000, p. 144.

<sup>11</sup> Cf. Walter, Guido; Winkelmann, Marc. Napster Nepp: Die geheimen Pläne. in: Tomorrow 7/2001, p. 20.

<sup>12</sup> Cf. Puscher, Frank. MP3-Filesharing. P2P: Die Anarchie kehrt zurück. in: Internet World 5/2001, p.32.

<sup>13</sup> Cf. Walter, Guido; Winkelmann, Marc. Napster Nepp: Die geheimen Pläne. in: Tomorrow 7/2001, p. 20; see also DocRoc/Yahoo Musik: Napster: Das war's! at: <http://de.news.yahoo.com/010213/56/1c9w7.html> (February 13, 2001)



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- <sup>14</sup> Cf. Walter, Guido; Winkelmann, Marc. Napster Nepp: Die geheimen Pläne. in: Tomorrow 7/2001, p. 20.
- <sup>15</sup> Cf. DocRock/Yahoo musik: Neue software umgeht Napster-Filter! at: <http://de.news.yahoo.com/010315/56/1fof2.html> (March 15, 2001)
- <sup>16</sup> Cf. Grollmann, Dominik. Die Napster-Alternativen. in: Internet World 5/2001, p. 36-37.
- <sup>17</sup> Cf. Bongardt, Dirk; Meyer, Detlef; Gelin, Rene; jf. Napsters Testament: Der Download geht weiter. in: PC Praxis 5/2001, p. 80.
- <sup>18</sup> Cf. Bongardt, Dirk; Meyer, Detlef; Gelin, Rene; jf. Napsters Testament: Der Download geht weiter. in: PC Praxis 5/2001, p. 84.
- <sup>19</sup> Cf. Yahoo/Yahoo Musik: Ende von MP3 in Sicht. at: <http://de.news.yahoo.com/010414/3/liz3y.html> (April 14, 2001)
- <sup>20</sup> Cf. Duhm, Ulrike; Fischer, Günther. Kampf um MP3. in: COM! Online 6/2000, p. 29.
- <sup>21</sup> Cf. Dohse, Thore; Malbeck, Nicola. MP3: Viel Lärm um nichts? / Interview with Magnus von Zitzewitz, Vice President of Universal Germany, in: Tomorrow 7/2000, p. 226.
- <sup>22</sup> Cf. Seetzen, Robert. Geklaute Töne. in: PC Intern 4/1999, p. 36-37.
- <sup>23</sup> Cf. Hanika, Jan; Helmiss, Andreas. Alles über MP3: So geht's/Kopieren erlaubt? in: PC Welt 10/2000, p. 145.
- <sup>24</sup> Cf. Möller, Erik. Napster-Nutzer sind bereit, für ihre Musik zu zahlen. (Interview with Bertelsmann-spokesman Frank Sarfeld), in: c't - Magazin für Computer und Technik 6/2001, p. 156.
- <sup>25</sup> Cf. Brunn, Michael. MP3. Musikrevolution online. Wie MP3 die Musikwelt verändert. in: PC Intern 11/1999, p. 39.
- <sup>26</sup> Cf. Wittmann, Albert. Mit MP3 zum Erfolg. in: Online Today 12/1999, p.144.
- <sup>27</sup> Cf. Fischer, Günther. Hast du noch Töne? (Interview with Neil Young), in: COM!Online 3/2001, p. 26.