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Sharing music files: tactics of a challenge to the industry

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Sharing music files: Tactics of a challenge to the industry

by Brian Martin, Chris Moore, and Colin Salter

Abstract

The sharing of music files has been the focus of a massive struggle between representatives of major record companies and artists in the music industry, on one side, and peer–to–peer (p2p) file–sharing services and their users, on the other. This struggle can be analysed in terms of tactics used by the two sides, which can be classified into five categories: cover–up versus exposure, devaluation versus validation, interpretation versus alternative interpretation, official channels versus mobilisation, and intimidation versus resistance. It is valuable to understand these tactics because similar ones are likely to be used in ongoing struggles between users of p2p services and representatives of the content industries.

Contents

Introduction

Until the 1990s, the music industry played a leading role in the distribution of recorded music. Our focus here is on the "big four" record labels — Sony Music Entertainment, Universal Music

Group, Warner Music Group and EMI — as well as industry representative organisations, including the Recording Industry Association of America, the Motion Picture Association of America and the International Federation of Phonographic Industries [1].

The development of the Internet and MP3s – digitally compressed music files – opened up an alternative mode of distribution: using the peer–to–peer (p2p) protocol for uploading and downloading MP3 files from a network of users who have made their music collections available for download by any other user. The dominance of the MP3 music file format was largely the result of the conveniently small size of the compressed file and its distribution by Napster file–sharing software, which became hugely popular between its release in 1999 and its first closure in 2001. The industry was strategically paralysed as it wrestled with the new logic of digital distribution and online retail, and fundamentally failed to grasp the new opportunities the Internet provided the industry in selling music to consumers. The still highly profitable business model of the music industry rejected the MP3 format, preferring instead a range of streaming music options and online services that crippled the potential of the technology. Its legal campaign eventually forced Napster to change to a fee–based service (Alderman, 2001; Menn, 2003; Merriden, 2001), but file–sharing continued using other sites and software. Other file–sharing services, including Grokster, Kazaa and MusicCity, have faced similar challenges from the industry and each time new alternatives arise (Abelson, *et al.*, 2008). On the strengths and limitations of the social movement in support of file sharing and cyberliberties more generally, see Burkart (2010).

Here we focus on the methods used by the two sides in the ongoing struggle over music files. We use a framework that is convenient for studying a wide variety of struggles over injustice, such as censorship, job dismissals, sexual harassment, massacres, torture and genocide (Martin, 2007). In these and other areas, powerful perpetrators commonly use many or all of the following methods to inhibit outrage:

- cover up the action;
- devalue the target;
- reinterpret what happened by lying, minimising, blaming and framing;
- use official channels to give an appearance of justice; and,
- intimidate or bribe the people involved.

Consider the example of torture. Governments that sanction torture hide its practice (cover up the action). They label the victims as criminals, traitors or terrorists (devalue the target). If challenged over their treatment of prisoners, governments may reinterpret what happened by claiming that torture techniques were not used (lying), minimising the effects, blaming rogue operators, or saying the interrogation methods were legitimate (framing). Occasionally they hold formal inquiries into allegations of torture, which may whitewash the actions or apply penalties to low–level perpetrators but almost never to policy–makers (official channels). Finally, they may threaten whistleblowers and offer rewards to those who co–operate (intimidation and bribery). All these methods were used in relation to the torture of prisoners at Abu Ghraib by U.S. guards, revealed in 2004 (Gray and Martin, 2007).

In response to these five types of methods of inhibiting outrage, targets can use five corresponding types of counter–methods:

- expose the action;
- validate the target;
- interpret what happened as an injustice;
- uavoid or discredit official channels; instead, mobilise support; and,
- resist intimidation and bribery.

This model looks at perceived injustices as struggles over adverse reactions, which can be called outrage, concern, anger or disgust. If the perpetrator's tactics are insufficient to minimise outrage, the original actions can be said to backfire: the perpetrator is worse off than if no action had been taken. The injustices involved in file–sharing are neither so dramatic nor so widely abhorred as in the case of torture, but the same sorts of methods can be observed.

Backfire can occur in struggles over digital technologies. For example, in 2001 Dmitry Sklyarov was arrested over the development of software for cracking Adobe's encryption for e–books. Online activists mobilised against this action, framing it as a major injustice and creating more support for the digital rights movement, thus making the arrest counterproductive for Adobe and the government prosecutors (Postigo, 2010).

The actions of 24 February 2004, known as 'Grey Tuesday', are a clear example of backfire against the music industry. In response to attempts by EMI to prevent distribution of *The Grey Album*, a widely–praised mashup album produced by artist DJ Danger Mouse (Brian Burton), copies were simultaneously made available for download on numerous Web sites. Grey Tuesday was widely reported by media outlets and including CNN, MTV and *Rolling Stone*, significantly increasing public awareness of the protest against EMI and distribution of *The Grey Album* [2]. The case against Burton drew further attention to his musical ability, and he was hired by Damon Albarn to produce the second album by the Gorillaz, a band then signed to EMI.

In analysing the controversy over file–sharing, it is important to note that what counts as injustice — or unfairness, inappropriate behaviour, or any other negative label — varies from person to person. Some observers think sharing of proprietary music files is an injustice: they see it as illegal and an attack on artists or on an industry that serves artists and listeners. Others believe file–sharing is legitimate: the injustice, in their eyes, is the restriction on free exchange. Heavy–handed attempts to prevent or penalise it constitute an additional injustice. The subtitle of an article on Napster sums up this perspective: "Many music fans consider trafficking in music downloads fair revenge on the industry for exorbitantly priced CDs and concert tickets, content restrictions, disrespect for consumers and corporate bullying of artists" (D'Entremont, 2003).

Throughout the struggle over file–sharing, competing senses of justice or morality have been one of the key matters at stake. The side whose perspective eventually becomes dominant has a great advantage. Changes in perceptions are quite common. Torture is almost universally condemned today, but that was not always true. Campaigners such as Amnesty International have helped shift public opinion against torture.

File–sharing today involves competing injustices (Martin, 2008), namely the injustice of file–sharing versus the injustice of restraints on file–sharing. But there is a significant asymmetry in the struggle: the music industry is far more powerful than proponents of file–sharing, at least in terms of money, legal legitimacy and institutional location.

There is also a split in the industry itself, with some artists supporting file–sharing but others opposed. This divide is often located between established artists and new and emerging artists. Lilly Allen, a British music artist, attacked file–sharing on a blog she set up for that purpose: "File–sharing eats away at opportunity for new artists: by cutting off income at the most crucial, cash–strapped point in their careers and by limiting A&R's ability to sign new acts outside of the mainstream" (Chivers, 2009). Ironically, Allen's own success as a performing artist was in part due to her free distribution of copyright–infringing mix–tapes of other people's music. After an overwhelmingly hostile response from her readers, Allen shut down her blog after the one post and withdrew from other social media sites. The response to Allen's blog is an indication of the significant level of support for p2p options. Many independent artists, non–mainstream acts and less well–known bands use MP3s on their Web sites and deliberately seed them on P2P networks to distribute their music and gain audiences. Allen herself used the free music–streaming feature of MySpace early in her career to gain status and increase her audience.

In the next section, we give an overview of the rationale for the backfire model and its application to file sharing. Then, in the following five sections, we examine the tactics of the struggle under the successive categories of cover–up versus exposure, devaluation versus validation, interpretation struggles, official channels versus mobilisation, and intimidation versus resistance. After this, we comment briefly on strategy at the levels of the user, activists and the file–sharing movement. The conclusion summarises the analysis of tactics and spells out some implications for action by file–sharers.

The backfire model

In the social sciences, most attention is given to description and explanation, in other words to answering the questions what and why. Researchers commonly analyse the role of policies, purposes, consequences and social structures, whereas tactics and strategy are neglected. Jasper (2006), in his examination of strategy, says that social scientists avoid addressing human agency. The backfire model is a way of classifying, predicting and evaluating tactics, namely actions taken when choices are available; Jasper would call this strategy. Jasper focuses his attention on the uncertainties and contingencies in strategic choice, whereas the backfire model is built on observations of regularities.

The foundation of the model is the observation that people predictably react to something perceived as unjust with outrage, concern, disgust or some other negative emotion. Not everyone reacts the same way, but many people do react this way, in most societies (Moore, 1978). What is considered unjust can vary from time to time and place to place, but reactions will be similar.

Non–violence researcher Gene Sharp (1973) observed a manifestation of this reaction to injustice. He documented many cases in which police or military forces used violence against peaceful protesters. For example, in South Africa in 1960, white police shot and killed dozens of black people in the town of Sharpeville who had joined a rally against the racist pass laws (Frankel, 2001). Sharp found that when such police actions were the culmination of a non–violent protest campaign, they often boomeranged against the government, resulting in greater support for the movement. Sharp called this phenomenon political jiu–jitsu, after the sport of jiu–jitsu which involves turning the momentum of the opponent to their disadvantage.

The backfire model can be considered an extension and elaboration of Sharp's concept of political jiu–jitsu. The first step is to note that though massacres and beatings can result in political jiu–jitsu, in many cases they do not (Martin, *et al.*, 2001). The question then is why people do not react so strongly to an apparent injustice. Through investigation of numerous cases, Martin (2007) found that powerful perpetrators commonly used methods to inhibit outrage. As discussed earlier, these methods can be classified into five types: cover–up, devaluation, reinterpretation, official channels and intimidation/bribery. He and others have applied this framework to many topics, such as censorship and environmental disasters, outside Sharp's focus on violence versus non–violence.

The model offers a prediction: when powerful groups do something potentially perceived as unfair, they are likely to use some or all of the five methods to inhibit outrage. The model also recommends a set of counter–tactics, as presented earlier: exposure, validation, interpretation, mobilisation and resistance. Essentially, the model addresses a situation involving perceived unfairness, looking at tactics to inhibit or promote popular outrage. In some struggles, there is an additional dimension: some of the tactics used are themselves seen as unfair, most commonly cover–up and intimidation.

Given that the same pattern of tactics is found in such as wide variety of arenas, for example sexual harassment, job dismissals, torture and war, it is reasonable to expect to find the same sorts of tactics in the struggle over file–sharing. In this area, there is an additional complication: there are competing injustices. On the one hand, the industry and some observers see the primary unfairness as file–sharing itself; on the other, file–sharers and other observers see the primary unfairness as denial of file–sharing.

In this preliminary examination of tactics in file–sharing struggles, we looked at each of the five categories and found evidence of the tactics used on each side. This is discussed in the following five sections.

Cover–up versus exposure

Perpetrators typically try to hide any of their actions likely to be perceived as unjust. This is especially true of those with few resources: small–time criminals seldom announce their crimes. Powerful perpetrators, such as governments and corporations, commonly hide actions that are widely stigmatised, such as torture and exploitation. When they are open, there is a risk of triggering mass opposition, as in the U.S. government's 2003 invasion of Iraq (Martin, 2004).

The tactic of cover–up in the file–sharing struggle is most obvious when users exchange proprietary MP3s covertly to avoid prosecution. This cover–up is selective: within the file–sharing community, downloads can be carried out openly, whereas secrecy and disguise are more likely to be used in relation to outsiders.

File–sharing as an activity became much more well known with the rise of Napster and other centralised p2p software. This visibility served a dual function. On the one hand, it had the unintended consequence of making file–sharing more vulnerable to attack by the music industry; on the other, it publicised the advantages and opportunities of file–sharing, greatly increasing participation and support. Whether to go public with an activity that is stigmatised by powerful groups but potentially has a mass base depends on the balance between vulnerability to attack and the potential for recruiting support. In Napster's case, the overall effect was to increase support.

File–sharers are not the only ones using the tactic of cover–up. The music industry hides, by not discussing it, the possibility of a viable alternative to big–business dominated distribution of music. Imagine an altruistic, open music industry. It would publish figures on the number of artists whose songs are recorded, sales in different markets and the breakdown in returns to artists, companies and retail outlets. It would also — and this is the big omission — publish information on how a file–sharing alternative would operate.

Another thing the industry might want to hide is its attacks on file–sharing sites (such as hiring third parties to track users or 'seed' virus–infected and otherwise malicious copies of files) and users, given that these might cause resentment. However, the industry has publicised its legal actions, using them to set an example for others. As will be discussed later, this may have been counterproductive.

Devaluation versus validation

If a victim of injustice is perceived to be less than honourable — for example as criminal, disturbed or subhuman — then in some people's eyes the injustice won't seem as serious. Powerful perpetrators often try to devalue targets by applying derogatory labels to them, disseminating discrediting information or setting them up in compromising situations.

Some people believe the world is just (Lerner, 1980). Therefore, when something bad happens, they assume the victim is to blame: for example, someone living in poverty must be lazy or someone raped must have been provocative. Blaming the victim is a way of maintaining their belief in a just world.

In the struggle over file–sharing, the music industry has used devaluation extensively by labelling file–sharers as thieves, pirates and criminals. This is the language associated with property, applied in this case to copyright, a type of so–called intellectual property.

In 2004, the Motion Picture Association of America (MPAA) produced a widely shown movie trailer that shows someone breaking into a car with the voice–over "you wouldn't steal a car," someone grabbing a handbag with the voice–over "you wouldn't steal a handbag," along with several other examples. The trailer concludes with the image of someone at a computer downloading a video, with the warning "Downloading pirated films is stealing. Stealing is against the law." The ambience of the advertisement is dark, jumpy and foreboding. The characters act furtively. The music is ominous. The message of the ad is that file–sharers are just like other criminals [3].

In 2009, the RAND Corporation — a large U.S.–based think tank — released a report titled *Film piracy, organized crime, and terrorism* (Treverton, *et al.*, 2009). Funding for the report was provided by the MPAA. As the title suggests, the report seeks to associate file–sharing with organised crime and terrorism. The key focus is on profits made by organised counterfeiting operations. The implication is that those who purchase counterfeit materials are financing violent crime.

Whereas the link between selling counterfeit items and violent crime may be considered tenuous, the RAND report seeks to go further: "the terms 'piracy' and 'counterfeiting' are used interchangeably in this report, although they can mean different things" [4]. This conflation of terms is despite there being no direct linkages made to profits from file–sharing in contrast to counterfeiting which is usually for illicit gain. The report implies that the free distribution of files via the Internet, without money changing hands, provides material support for terrorists. The term piracy is also used to equate file–sharing with the black market in physical copies of music, movies and software.

File–sharers have their own labels and means for devaluing the music industry and its representatives. One technique is defacing official Web sites with slogans such as "Kill the RIAA," namely the Recording Industry Association of America, a leading opponent of file–sharing. Among file–sharers, "... the RIAA is consistently positioned as an enemy combatant, foreclosing the possibility of negotiation or cooperation" (Logie, 2003). However, file–sharing discourse seldom reaches a mass audience such as viewers of movie trailers.

The opposite of devaluation is validation: raising the status of the person involved. File–sharing participants are validated when they are humanised — given faces, motivations and personal details — and shown to be behaving like anyone else, namely not like criminals. Criminals are commonly stereotyped as being lazy, uncaring and selfish, without jobs, living off their proceeds. (This stereotype is highly inaccurate, for example missing most white–collar criminals.) The former president of the MPAA, Jack Valenti, is notorious for equating the struggle against file–sharers to a "terrorist war" (Logie, 2003). But few file–sharers fit criminal stereotypes. Let's say you know a file–sharer who is:

- a fully employed professional;
- loves music;
- likes helping others; and,
- buys CDs regularly.;

This doesn't fit the usual picture of a criminal. Maybe this could be you!

If you know quite a few file–sharers, you will develop a mental picture of them, and it is likely to be quite a different picture from the furtive, antisocial, uncaring criminals painted by music industry advertisements. Sometimes people given these sorts of contrary messages develop a bifurcated image: file–sharers are bad, in the abstract, but in reality they are no different from you or me.

The implication here is that to counter the industry's demonisation of file–sharing, it is very powerful when respected individuals are open about their participation. This occurs when a

doctor or social worker or teacher — anyone in an occupation with a positive image — comes out supporting file–sharing. It occurs when individuals who are role models for friends, in any occupation, give their support to file–sharing. Artists that openly support and promote file–sharing, including Radiohead, Nine Inch Nails, The Smashing Pumpkins and 50C, challenge the industry's attempts to devalue file–sharers.

Another challenge to devaluation is to make fun of derogatory labelling, as in the U.K Channel 4 satire "Video piracy — you wouldn't steal a handbag," by The IT Crowd which was broadcast in 2007. The comedy skit shows a series of absurd actions that "you wouldn't do" — such as "you wouldn't go to the toilet in a policeman's helmet". This parody has become part of the motivational poster Internet meme that suggests p2p users would indeed steal a car if they could download it.

Interpretation struggles

Lots of reasons are given for file–sharing — and for limitations on it. These can be called justifications, rationalisations, reasons, arguments or interpretations. Presenting and countering interpretations is the most obvious facet of the struggle over file–sharing. Here we focus on just two key topics: costs of file–sharing to industry, and alternatives to the industry model.

The content industry says file–sharing is illegal, an infringement of copyright that is equated to theft. The industry gives several rationales for the necessity of copyright. The industry claims copyright violation reduces sales of CDs, thereby harming artists, who receive fewer royalties. Lower sales also reduce the industry's ability to support new artists. File–sharing, according to the industry, is unfair to recorded artists, because they have intellectual property rights in proprietary recordings. The artists and industry put work into producing the recordings, and it is unfair that others can obtain free access.

This is the basis for the incentive argument that has been used to justify the expansion of copyright and other intellectual property rights through the international trade agreements that enforce exclusivity of access. The International Federation of Phonographic Industries (IFPI) has attempted to frame the actions of file–sharers as damaging livelihoods, claiming, for example, that "record companies invest as much as 20 percent of their turnover in developing artists — investment which is funded by legitimate sales of recordings" (IFPI, 2009). But the IFPI says nothing about large industry profits or executive salaries.

Music industry spokespeople say it is losing a huge amount of money due to file–sharing. During the recent trial targeting The Pirate Bay (TPB) Web site, a BitTorrent indexing site located in Sweden that facilitates file–sharing, John Kennedy, chairman and CEO of IFPI, was reported as referring to "the 'significant damage to the music industry as a whole' that the unauthorised service is causing … Asked about the compensation claims of the music companies against The Pirate Bay defendants — totalling €2.1 million in respect of a sample of 23 titles — Kennedy said they were 'justified and maybe even conservative because the damage is immense'" (IFPI, 2009).

The actual amount was a key issue of contention during The Pirate Bay trial. In a commentary for CNET News, Declan McCullagh (2009) described determining an actual figure as "one of the most difficult tasks for companies that sell copyrighted music … So they have been known to — how to put this delicately? — exaggerate."

Critics of industry claims say such figures are exaggerated because they assume incorrectly that every file shared would otherwise have been purchased. The Business Software Alliance (BSA), RIAA and MPAA all continue to make claims about the huge size of the revenue and job

losses as a direct result of file–sharing, despite credible reports that these figures are exaggerated, inflated and occasionally erroneous. For example, the U.S. Government Accountability Office (2010) concluded that three prominent U.S. government estimates of the economic loss from file–sharing could not be substantiated, and that "most experts observed that it is difficult, if not impossible, to quantify the economy–wide impacts," negative or positive. Other reports, from sources with no apparent vested interests — from Australia (Hayes, 2006), Britain (Goldacre, 2009; Orlowski, 2007) and the OECD (Williamson, 2007) — also question industry figures.

There's also a bigger issue at stake: is the music industry, as it has existed pre–file–sharing, necessary for or an impediment to music distribution? The industry and most other people had simply assumed the industry was necessary. It didn't have to be stated. Critics were those who argued for industry reform, pointing out the problems with oligopoly, conservatism and corruption such as payola. The two sides of the picture were (1) industry pretty much as it is; and, (2) a reformed industry. The rise of file–sharing introduced a new way of framing the alternatives: (1) the industry; and, (2) direct marketing via file–sharing. This framing poses a dire threat to the industry [5].

For industry to openly argue against the new framing runs the risk of helping others realise there is an alternative. That's why industry spokespeople seldom cast the debate in these terms, but instead have argued in ways that assume the industry's own existence. For example, making claims about the financial loss to the industry assumes its existence. This suggests that the most powerful arguments for file–sharing are ones that help reframe the debate to the question of whether industry is needed. For example, saying, "The industry has exaggerated its losses due to downloading" assumes the industry's existence. Saying, instead, "When file–sharing replaces commercial distribution, there's more money for artists and more music for listeners" questions the necessity of the industry as it exists.

Official channels versus mobilisation

When a powerful perpetrator attacks a weak target, many people feel this is unjust. Their outrage can be reduced when they believe fairness is being ensured by bodies such as ombudsmen, courts or expert panels. However, these mechanisms often favour those with more money and power. Furthermore, they move matters from the public stage to narrow arenas where experts such as lawyers take centre-stage. Formal processes usually are slow, which means that public outrage dies down while the matter is being considered. For all these reasons, powerful perpetrators often prefer that targets refer matters to official channels. Sometimes they set up official channels themselves to allay concern.

This use of official channels does not seem apparent in the struggle over file–sharing. The main official channel involved is the courts, as the music industry sues p2p users and BitTorrent indexing Web sites. But the courts are not being used to reduce outrage: instead, they are a principal means of attack.

In January 2008, civil and criminal charges were filed in Swedish courts against The Pirate Bay by IFPI, representing 1,400 record companies. IFPI considered The Pirate Bay to be "the number one source of illegal music, following successful court actions against two previous high profile unauthorised services, Grokster and Kazaa" (IFPI, 2009). The trial of The Pirate Bay is the latest instalment in aggressive legal actions against individuals and groups involved in file–sharing, labelled by industry as criminals.

Targets of attack often turn to official channels for redress. This is often a mistake. Whistle–blowers, for example, when they suffer reprisals for speaking out, typically take their concerns to an appeal body such as an ombudsman, auditor–general or anti–corruption agency. These

seldom provide an effective response (Martin, 2003). It is far more powerful to take the matter to public audiences.

Likewise, for file–sharers who come under attack, it is far more powerful to seek publicity than to defend in the courts. Of course, sometimes defending in courts is necessary, but it shouldn't be the only response. Court cases can be also used as a creative means of publicity, though the effectiveness of such an approach is inconclusive at best. For example, during the Pirate Bay Trial, the defendants updated Twitter accounts from the courtroom, seeking to increase awareness of the trial through the viral spread of information through the use of the #spectrail hashtag [6].

The music industry has the financial resources and can hire top lawyers and pursue cases for years. No individual or small group can match this financially. But coming under legal attack this way will be seen as unfair by some people. Therefore, campaigning will usually be an effective response, galvanising the group attacked and enabling them to organise into a more powerful and vocal political force.

Intimidation versus resistance

Powerful perpetrators often act in ways that intimidate their targets. Most individuals are frightened when they are taken to court by a large company. Sometimes acquiescence is the wisest path for an individual. But to generate outrage, it is essential that at least some decide to resist. The most obvious example of intimidation is legal action by the music industry against Napster, other file–sharing sites, and individuals. A recent example was the targeting of Mininova, previously one of the largest BitTorrent indexing Web sites, by Stichting Brein, a Dutch–based pro–copyright lobby group. In August 2009, the Dutch Court of Utrecht ordered the site to remove links to copyrighted material or face a €5M fine (Associated Press, 2009). These, and similar, actions have certainly deterred many of those targeted.

Even more important is the example set for others: high–profile legal actions alert potential targets that they might be next. They are made more effective with low–level actions including e–mail notices of copyright infringement sent to users tracked via their Internet Protocol (IP) addresses on unencrypted BitTorrent networks. Some users, in response to threatening notices, learn to find the content elsewhere, obscure their IP address or change service providers. Some university administrators, fearful of legal action, have instituted policies to prevent file–sharing by staff and students.

Intimidation can be quite effective in dampening the expression of outrage, but sometimes it can have the perverse effect of stimulating resistance. If threats and punitive actions are seen as excessive, this may lead to greater support for the targets. This seems to have occurred with the industry's legal actions against individuals. When hundreds of thousands of people are sharing files, how fair is it for any single person to have to fight a court battle or pay a huge fine? The perception of unfairness is compounded when some of the targets claim innocence — as in the case of Tanya Andersen, a single mother on a disability pension who said she never downloaded any files, but nevertheless was hit by a legal claim from the RIAA for US$1 million in damages.

Intimidation was quite obviously the intent when in 2006 Swedish police, allegedly in part due to pressure by the U.S. government and the MPAA, raided the offices of The Pirate Bay and the Piratbyrån to take possession of the computer hardware supporting the BitTorrent indexing site (Li, 2009). The Piratbyrån, a political network of artists, activists, hackers and information technology professionals associated with The Pirate Bay, describes itself as an ongoing conversation, as opposed to an organisation, promoting file–sharing and a free digital culture through opposition to current ideas about copyright. Publicity about the raids triggered

international support for the Piratbyrån. In the 2006 Swedish elections, the newly–formed Pirate Party received almost 35,000 votes, "making it the third largest political group not represented within Sweden's parliament" [7].

To challenge intimidation, it is vital that some people resist. Of course, file–sharing continues, despite legal intimidation, at a very high rate, but most of this is covert [8]. Resistance, to be effective in the overall struggle, needs to be known to others. In this way, the others are given the courage to resist as well.

Some file–sharers operate entirely in private, but others tell their friends about what they do. Networks of friends are a powerful incentive to persist in the face of intimidation. Others are more public about their resistance. An open declaration of illegal activities is a form of civil disobedience. It can empower others to do the same. It is also a reframing of file–sharing from an illicit activity to a courageous defiance.

Levels of strategy

The music industry, in attacking file–sharing, runs the risk of causing outrage and triggering even greater opposition. It has available to it five sorts of methods to inhibit outrage over its actions: cover–up; devaluation of file–sharers; reinterpretation; official channels; and, intimidation. In response, file–sharers and advocates of file–sharing have a corresponding set of counter–methods.

To better understand the struggle, it is useful to distinguish strategy for file–sharers at several levels: the user, activists and the movement. At each level, characteristic methods are used.

At the level of the ordinary user, someone who shares files now and then, the main goal is to enjoy the benefits of file–sharing and the main strategy is to avoid reprisals. This means keeping a reasonably low profile, communicating mainly with like–minded people. There is little direct engagement with the industry.

Activists are those taking steps to bring about change beyond their own immediate situation. File–sharing activists might promote distribution of file–sharing software, contribute to public debates, or assist individuals targeted with legal actions. Some of them develop new file–sharing software and set up Web sites. A few become spokespeople for file–sharing. Activists are involved in all the methods of exposure, validation, interpretation, campaigning and resistance, namely countering the main tactics of the industry.

The movement level involves collective action. It includes groups that establish and run major file–sharing operations, develop campaigns and make public stands.

To be more effective at any given level, it is valuable to look up one level, see the wider context and adjust actions accordingly. At the ordinary user level, it is valuable to see what activists do and learn from them. At the activist level, it is valuable to look at the movement level and coordinate with what occurring there. At the movement level, it is valuable to look at other movements and at global trends.

Conclusion

We have analysed the struggle over the p2p sharing of music files in terms of tactics used to minimise or increase outrage. There are two potential sources of outrage grounded in contrasting assessments of unfairness: music industry leaders and their supporters say it is unfair for proprietary material to be distributed for free; file–sharers say that their activities are harmless and that industry attempts to control content are a restraint on musical creativity.

We have used a framework for classifying tactics commonly used by powerful perpetrators to inhibit outrage over their actions, namely cover–up, devaluation, reinterpretation, official channels and intimidation. We focussed on methods used by the music industry to defend its position and counter–methods used by advocates of file–sharing. The main techniques initially used by the industry were devaluation and reinterpretation. For example, industry leaders labelled file–sharers as pirates or criminals — the technique of devaluation — and said file–sharing was a violation of copyright that harmed artists — the technique of reinterpretation.

However, devaluation and reinterpretation were not enough to deter file–sharing, so industry leaders turned to intimidation, including suing selected individuals. This tactic may have been based on a misjudgement about attitudes to file–sharing: industry leaders may have believed their own rhetoric about file–sharers being criminals. But many users saw file–sharing as an ordinary activity, not harming anyone. This would be analogous to the photocopying of books or sheet music or the tape–recording of television shows, both of which have been illegal in many countries. When laws are widely violated and unenforced, attempts at selective enforcement quickly cause resentment.

Probably the most significant reinterpretation technique used by industry has been to frame the issue as a question of harm to industry, thus obscuring the possibility of a different distribution model. The music industry has not employed cover–up to a great degree. Indeed, it has publicised its legal actions against users. Again, this can be considered a miscalculation based on a false sense of public opinion about the fairness or otherwise of file–sharing. Finally, industry has not used official channels to dampen outrage over its actions, but instead used them — specifically, legal actions — as a method of attack.

In summary, our assessment is that industry has been most effective when using methods of devaluation and reinterpretation. But it has not used cover–up or official channels in ways to reduce outrage, and its use of intimidation has inflamed opinion against it. Legal actions have sometimes succeeded in the short term, but with the longer–term consequence of hurting industry's reputation, in particular by positioning industry as the perpetrator of injustice.

Supporters of file–sharing have countered industry tactics by exposing tactics adopted, by presenting an alternative interpretation of the effects of file–sharing and by resisting legal threats. Probably the most effective counter–method by the file–sharing community has been exchanging information. Industry has played into the hands of file–sharers by launching major legal actions — Napster and The Pirate Bay are the most prominent examples — that become sources of grievance. It is obvious but worth noting that those who share files are also good at sharing information. If the Napster and The Pirate Bay sagas had been restricted to courtrooms, with no wider coverage, they might have damaged file–sharing activities without negative public consequences for the industry. Instead, they became platforms for ongoing exposure and mobilisation of support. These cases have been counterproductive for industry, and in this sense are analogous to the McLibel trial, in which MacDonald's sued two activists for defamation and ended up with its reputation severely damaged (Curry Jansen and Martin, 2003).

Another possibility is that the trials have stimulated software developers, sympathetic to file–sharing, to find ways to get around legal constraints. In the long run, this is also counterproductive for industry [9].

This analysis of tactics offers some ideas for file–sharers to become more effective in their reaction to prosecution by the industry. One possibility is encouraging well–respected individuals, from various walks of life, to speak openly in support of file–sharing. This would help counter industry's ongoing efforts at devaluation. Another possibility is giving more

attention to alternative models for music distribution, in other words framing the issue in non–industry terms. In terms of court cases, the implication of the backfire model is to put lots of effort into campaigning and not let court agendas become dominant. The Pirate Bay trial, like the McLibel trial, provides an interesting example of how to use a court case to increase publicity: awareness of the issues increased even though the defendants were convicted. Finally, resisting intimidation is crucial for file–sharers. For those who are threatened or sued, information and support needs to be readily available about options, both to acquiesce quietly or, for those with the capacity, to resist with the greatest reputation cost to the industry.

Our examination here is preliminary. We have given examples of tactics used on each side of the struggle over file–sharing, but much more could be investigated, including studying other episodes of peer–to–peer challenges to industry. We have pointed to tactics used, but not tried to examine their effectiveness, which requires establishing criteria for effectiveness and gathering relevant evidence, something likely to be much more difficult than simply finding evidence of tactics used. Note however that even the gathering of evidence about tactics can be challenging, because cover–up and intimidation are themselves often hidden.

There are bound to be further stages in the struggle over sharing of music files. For those who want to think strategically, it is useful to think through a range of options in terms of the counter–methods of exposure, validation, interpretation, mobilisation and resistance.

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Notes

1. For the purposes of our analysis, we do not consider other sectors and contributors to the internationally dispersed music industry, including independent artists and "indy" record companies. We also do not consider the growing global music festival sector, live music

performance industries or the overlapping role that music plays within other content industries.

2. Demers, 2006, pp. 140–142. A mashup is a seamless blend or combination of two or more songs into a new piece of work. Such works are often considered to fall within the fair use provision of existing copyright law. *The Grey Album* was a mashup of samples from The Beatles self–titled LPs (commonly known as *The White Album*) and *The Black Album* by Jay–Z. An *a cappella* version of the latter was released in order to encourage remixing.

3. For a critique of the language of theft applied to copyright, see Loughlan, 2007.

4. Treverton, *et al.*, 2009, p. 3.

5. On the politics of framing, see Lakoff (2004).

6. Twitter is a microblogging and social networking service. Hashtags on Twitter are searchable keywords that enable filtering of a Twitter news feed.

7. Li, 2009, p. 289.

8. Another example of covert file–sharing is what can be considered public–private networks. These range from college intranets through to more formalised Usenets and file–storage services such as RapidShare. Usenets are decentralised discussion groups with no central server, sharing a philosophical and technological approach with the BitTorrent protocol. Initially forums for discussion, many have morphed into subscription–based, often invitation only, private networks for file–sharing.

9. Thanks to Tom Rawlings for this point.

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