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In Pop Song Piracy: Disobedient Music Distribution since 1929 Barry Kernfeld presents a historical framework to understand how different forms of music piracy were created and how they affected the music industry. Kernfeld argues there is a repeating pattern in the music industry as musicians, consumers, and corporations constantly debate who owns music. Kernfeld labels the different steps of this repeating pattern for dealing with music piracy as “prohibition, failed containment, and then ultimate assimilation into business as usual” (218). Individuals continually create innovative methods of producing and distributing music, which threatens and forces major music corporations to respond by finding ways to maintain control and profitability of their products. Music corporations argue that music piracy causes a decrease in profits and should be considered stealing. After persistent lobbying and substantial legal action, these major corporations have established strict legislation pertaining to music piracy and copyright. Producers and distributors are then left with no choice but to submit to the legal powers of these large capitalist entities.

In addition to presenting the history of music piracy over the last century, Kernfeld presents the terms of equivalency and transformational use (7).
Kernfeld defines transformational use of music as creating new methods of recording or distributing music “in which the same song (with authorship unquestioned) is formatted in ways that challenge existing systems” (7). Kernfeld believes that transformational use of music is not necessarily stealing because it changes the original song, thereby, creating a new product. That said, Kernfeld also argues that equivalency—meaning the illegal production and distribution of copyrighted products to be sold for profit—does not create a new product and therefore is stealing (7). Kernfeld’s method of differentiating new music from stolen music leaves a substantial grey area where certain releases can be argued to achieve either transformational use or equivalency. This will be discussed further later in this review.

Kernfeld organizes his book into three different sections: Printed Music, Broadcasting, and Recordings. In each section, he highlights the different ways of illegally distributing music through these three mediums and how these processes challenge the existing systems of distribution established by major music corporations. Although major corporations have found ways to combat music piracy, Kernfeld ends the book with a discussion of the music industry’s persistent tardiness in adopting innovative technologies and procedures that might allow them to eliminate music piracy, which begs the question: “Will the music industry recover from online song sharing?” (221).

The first section of the book, titled “Printed Music” contains four chapters that describe the different forms of printed music piracy, such as song sheets, fake books, and music photocopying. In the first chapter, Kernfeld discusses how many musicians, songwriters, and other Tin Pan Alley workers created and sold song sheets that thereby helped create a dominating force in the music industry capable of predicting which songs would be considered hits.

At the same time of Tin Pan Alley’s success, the rise of radio and film created a demand for song sheets because individuals wanted to learn and sing along to their favorite popular songs. Major record labels saw song sheets as a threat because they did not receive money from the song sheet sales of their music. Kernfeld closely details how the music industry and bootleggers fought over the ability to produce and profit from selling song sheets. In 1929 The American Society of Composers, Authors, and Publishers (ASCAP) filed their first complaint against song sheets with the United States’ district attorney, claiming that “song sheets were being sold on the street at a price of five cents a copy” and that sales were “substantial enough to interfere with [that] of legitimate copyrighted copies” (27). Over time, bootleggers were legally prosecuted, but jail sentences and fines were so small that it was worth the risk to
continue producing and distributing sheet music for many individuals. Eventually, music corporations decided to release their own song sheets and ensured that copyright laws secured their ownership of the product so they could pursue legal action over anyone producing and distributing illegal song sheets of music.

In 1941 major labels started prosecuting retail stores for selling song sheets and caused a decline in song sheet distribution as a major source of illegal music distribution (36). Kernfeld strategically and convincingly uses Tin Pan Alley as an example of how printed music was assimilated into the existing music industry business model, which at the time had primarily focused on recorded music. Kernfeld’s method of situating the story of Tin Pan Alley in the course of music history allows readers to easily follow printed music’s path through the repeating patterns of “prohibition, failed containment, and then ultimate assimilation into business as usual” (7).

Section two of the book is called “Broadcasting,” and it contains a single chapter on pirate radio in Northeastern Europe. Pirate radio was an effective form of illegal music distribution because it “failed to pay requisite licensing fees for the public broadcasting of recorded songs” (109) and it addressed the interests of the youth unlike public radio, such as the British Broadcasting Corporation (BBC), considered boring and unappealing by many young people (112). Pirate radio began as an uncensored opportunity to share sounds and ideas through radio waves, but these stations eventually started selling ad spaces and playing “Top 40” pop music content because to do so was more profitable (112-113). Kernfeld concludes this section by arguing that the trend of acquiescing to major corporations and capitalist motives demonstrates that “the ultimate goal [of pirate radio] was to sail the course and win a license to broadcast from land” (122). Although Kernfeld only spends one chapter describing the story of pirate radio in Europe, it allows us to understand the power of pirate radio and how it challenged music distribution norms and music corporations by broadcasting music without paying royalties to copyright owners.

Section three of the book includes five chapters that describe how phonograph records, tapes, bootleg albums, compact discs, and song sharing have created new ways for distributing music. In Chapter Six Kernfeld discusses the process of copying phonograph records and argues that this is an example of “equivalency” because one sells a copy of the original album without altering anything (6). That said, it was hard to punish makers of illegal phonographs because the Copyright Act that existed until 1976 only protected published music...
and not recordings (130). The failure of the music industry to keep up with technological advances hurt them as they tried to prosecute offenders and recover losses from illegal phonographs.

Kernfeld continues his argument in Chapter Seven, examining how tapes once again changed the music industry and the definition of illegal forms of producing and distributing music. It was much simpler and easier to create fake tapes than phonographs. Tapes, however, were also quickly replaced by compact discs because people did not have to rewind and worry about the tape tangling. Following this discussion, Kernfeld shifts his examination to compact discs by arguing that they should be considered similar to tapes, because they also provide a low-cost and easy method to illegally distribute music. CDs grew quickly in popularity, because it was very easy to create fake CDs at home, which allowed anyone to become an illegal producer and distributor of music. In 1968 California passed the first law making it illegal to copy and sell fake tapes, records, discs, film, and other recorded products. Five years later, the Copyright Act of 1972 created a national ban and increased punishments for illegal production and distribution of recorded products (162). This was an attempt by music corporations to stop illegal forms of music distribution, but it was not very successful. As Jyh-Shen Chiou, Chien-yi Huang, & Hsin-hui Lee explain in their article, “The Antecedents of Music Piracy Attitudes and Intentions,” “it is estimated that almost 40% of all CDs and cassettes sold around the globe in 2001 were pirated copies.”

In Chapter Eight Kernfeld presents the interesting argument that although mix CDs, like compilation albums, do contain copyrighted materials, these albums hold different sets of songs that create a different product separate from the original album on which each single sing is found. Kernfeld believes that illegal compilation albums are both an example of equivalency and transformational use because copyright protected music is inserted into another product without being altered and then sold for a profit that the copyright holders would never see. Compilation albums can be transformative pieces of work as well, as the songs become part of a new album that can be seen as a completely separate product from the albums in which the songs were originally published. A recent example of transformational music is Danger Mouse’s *Grey Album* where Jay-Z’s vocals from *Black Album* and the Beetles’ instrumentals from

their *White Album* are blended together. Although it can be argued that Danger Mouse altered the original music enough to create a new piece of music that is not an exact representation of the original works, Danger Mouse and his fans received cease and desist letters ordering them to stop distributing the album over the internet or legal action would be taken. Although Kernfeld feels that transformational use of music may be permissible, music corporations and copyright holders “refuse to endorse transformational use because the new song product threatens to undercut existing price systems and profit margins” (6). A capitalist system that seeks to maximize profits does not allow for the idea that altered pieces of music constitute a legitimate and independent piece of work, however, Kernfeld’s idea of transformational use “challenges the notion that popular artists and recording companies should have monopolistic control of their cultural products” (200).

In Chapter Ten Kernfeld concludes his book with a discussion of online song sharing. He argues that song sharing’s virtual and instantaneous nature poses a “threat to control and profitability of song distribution” by major labels and artists (200). Song sharing is “the greatest threat facing the music industry worldwide today” and as a result the International Federation of the Phonographic Industry (IFPI) estimates that music sales declined by over six billion dollars between 1998 and 2003 (78). Song sharing is the most recent example of a new system of distribution of music that challenges the existing structure of the music industry. Song sharing, however, does not follow the “pattern of contested distribution, followed by the assimilation of a new song product into a legitimate sphere, and the obsolescence of the old” in the same way as fake books, song sheets, tapes—and now CDs, do (78).

Many scholars have theorized different reasons for why song sharing has been the most damaging form of music piracy to the music industry. Jyh-Shen Chiou states that consumers who illegally share and download music do not realize they are infringing upon copyrights laws when they download songs from the Internet. Chiu argues that because the Internet creates a division between products and their copyright owners, people are more likely to download music rather than pay for an original or physical copy. Kernfeld’s work reinforces Chiu’s conclusions but with a slight extension. His work

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suggests that online song sharing became a form of distribution that allowed people the privacy and freedom to illegally share and download music, especially given it requires more effort for the music industry to track and prosecute illegal producers and consumers. Although different arguments for why song sharing has devastated the music industry exist, all revolve around the disconnect that the internet creates between people and the outside world, because individuals cannot see the harm they cause corporations and artists through illegal downloads.

Kernfeld states that the prosecution of producers and distributors of different forms for piracy—song sheets, fake books, fake tapes and CDs—was quite weak, because as few individuals were actually caught and punishments were not harsh enough to prevent people from joining this illegal business. The manner in which the music industry has prosecuted illegal online distributors and downloaders is no different. As the work of David Matza, Gresham Sykes, and Nick Mokey states, “36 million Americans admitted to downloading music or video files,” but there is a “one in 8,129 chance” that someone will get caught for downloading music as the total number of piracy lawsuits for illegally downloading music ranges between 18,000 and 35,000, depending on one’s source.4

Although individuals who illegally download music are unlikely to get prosecuted, the situation is much different for larger entities that enable millions of songs to be illegally shared by millions of people through an online source. Kernfeld, similar to other scholars like McCourt and Burkhart, details how major music corporations prosecuted Napster for its online file sharing system and after paying millions of dollars in penalties to copyright owners and record labels, Napster assimilated to a capitalist model by becoming a legal online file sharing system.5 Indeed, online song sharing breaks the repeating pattern of music piracy that Kernfeld presents because music corporations have not found a way to make online song sharing profitable and therefore have not successfully assimilated it onto their business model.


A current example of a fairly successful attempt by corporations to respond to online piracy is the music-streaming service, Spotify. This online music provider gained much of its popularity in the late 2000’s, which might be why Kernfeld does not mention Spotify in his book. That said, Spotify fits Kernfeld’s criteria for an online music distribution system that is legal, distributes the music of major corporations, and earns a profit for the copyright holders (usually the music corporations rather than the actual song writers). Daniel Ek, C.E.O. of Spotify, states, “Spotify doesn’t sell music; it sells access to it. Instead of buying songs and albums, you pay a monthly fee (9.99 or 4.99 for students) or get served an ad every few songs if you’re on the free tier.” With over 50 million users around the world and 12.5 million paying subscribers, Spotify has raised half a billion dollars for investors and paid over 2 billion dollars to artists and song owners. Although supporters and users of Spotify are happy with the company’s progress, there are others who think the company drains the music industry of money. Many musicians, most notably Taylor Swift, are openly against Spotify and argue that it threatens the music industry because it does not pay artists enough money.

Although Kernfeld does not address the rise and effects of streaming services in his book, his argument would have benefitted from certain scholarly discussions of the advantages the subscription model provides to music corporations and copyright holders. McCourt and Burkart discuss the “lucrative” subscription model that Spotify and many other streaming services utilize. They argue that online subscription services “provide an enhanced marketplace for record companies because goods may be copied and transported over the internet at marginal costs and unwanted goods may easily be disposed.” They continue that these sorts of services provide “sizeable cross-promotional and cross-industrial channels for marketing products” and “maximize revenues from those who use the service infrequently, while encouraging increased use among heavy users, and allow the provider to charge higher rates to

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7 Ibid.

8 Ibid.

advertisers”.

All that being said, Kernfeld would rightfully argue that Spotify and other similar online music distributors are yet to adopt a free system of music distribution because that would “threaten or undercut existing price systems and profit margins,” and that is a risk music corporations are unwilling to take (6).

Throughout the book Kernfeld argues that the music industry consistently fails to keep pace with technological advances, and the International Federation of the Phonographic Industry (IFPI) would agree, although major music corporations appear to now be catching on. Major labels usually invest in artists through advances, covering recording costs, video production, providing tour support, marketing, and promotions. However the IFPI suggests that labels should start focusing the “fight against piracy” on Internet Service Providers, Search Engines, Litigation, Legislation and Advertising. In addition, they should also focus on transforming record labels’ “business models for the digital age” by investing and working with online download stores, subscription services, music videos, and “The Next Generation Radio Experience” because these spaces offer possible revenue from advertisements, streams, and purchases. There are an increasing number of streaming sites all over the world, which might reflect major corporations’ acceptance that streaming sites are a way of assimilating online file sharing into business models.

Kernfeld’s work creates a useful foundational body of knowledge for future scholars interested in music piracy. Although it is unknown if the music industry will ever find a way to control song sharing, Kernfeld’s presentation of the history of music piracy in the Western world and important shifts in music piracy allow us to theorize a solution to this issue. It would be interesting to hear Kernfeld’s opinion on current innovations in the music industry, like Spotify and other streaming services that attempt to create new forms of music distribution and recover some of the profits lost through online song sharing. Kernfeld’s

10 Ibid., 294-95.


work will benefit anyone interested in working in the music industry, because it provides a sense of the negative aspects of working with major labels and some of the struggles musicians face. Kernfeld’s use of real life events concerning music piracy creates a credible narrative of music piracy over the last century in an easy and enjoyable read that will that will enrich the reader’s understanding of the role of piracy in the history of the major music industries.

For Further Reading


McLeod, Kembrew. “Confessions of an Intellectual (Property): Danger Mouse, Mickey Mouse, Sonny Bono, and My Long and Winding Path as a _________________________________
