

Independent Music after *Metallica v. Napster, Inc.*: Seeking Liberation in the Music Streaming Simulacrum

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Abstract

In this paper, I note the ways in which being a musician has changed in the aftermath of the digital downloading and file-sharing developed by Napster pioneer Shawn Fanning through the lens of the *music streaming simulacrum*—my term for what has unfolded since. I contrast the present environment with the potential that emerged with this technology. I theorize the music streaming simulacrum as *opaque, flat, and hegemonic*—a parody of both industry and culture that is incomprehensible by a single human being, militates against deeper connectivity between artist and listener, and exerts outsized power over human behavior and decision-making in a particular domain. I draw on my personal experience as a critical social theorist and veteran recording artist to describe life and art in this environment. In reaching a dialectical conclusion that independent artists both gain and surrender greater autonomy than in the past, I sketch alternatives that connect back to the promise and difficulties of earlier modes of musical production and consumption.

Seeking Liberation in the Music Streaming Simulacrum

I write as someone with the dubious privilege of being both a critical social theorist and a recording artist. The *Metallica v. Napster, Inc.* lawsuit, which tragically pitted nineteen-year-old Napster creator and plaintiff Shawn Fanning against perhaps the wealthiest and most enduringly popular hard rock/thrash metal band in history, *Metallica*, began in April of 2000, almost to the day that I decided to strike out on my own as an artist (I am almost two years younger than Fanning). I compose my own music, play the instruments, write and sing the lyrics, record and produce the music, and release it. I started doing so on streaming platforms in the fall of 2022. I have also worked in the industry as a promoter, venue operator, live sound tech, booking agent, busker (performing in pubs, coffeehouses, farmer's markets, and even on streetcorners and sidewalks), and occasionally live session musician on vocals, guitar, bass, drums, keys, or harmonica. Not to brag. Well, maybe a little—it was the central focus of my life for many years until I found myself burned out and broke in 2012, compelling me to reconsider my life course and ultimately return to academia.

Theorizing the shifts in how music is distributed and experienced would be impossible without harkening back to this pivotal moment in music history, and having lived and created through the transition offers some experiential insight. This paper details the rise of what I call the *music-streaming simulacrum*. If a simulacrum is a kind of imitation or substitute reality, then the music-streaming simulacrum is a representation, a cheapened knock-off of the creative world and the music industry. As file-sharing technology gradually gave rise to streaming networks in the aftermath of that historic lawsuit, it created new contradictions. In scholarly terms, this brief paper is something of a dialectical postmodern

autoethnography. It is *dialectical* in that I attend to the “best” and “worst” features of how music-as-media transmitted through cyberspace unfolded in the wake of *Metallica v. Napster, Inc.* from the lens of a niche independent recording artist, with attention to other relevant elements of the industry and to the capitalist mode of production itself. This is in the Marxian spirit of analyzing capitalism simultaneously for its best and worst—the “best of times and the worst of times,” to paraphrase Charles Dickens—without losing sight of either one (see Ahmad 2000). I find in the current political economy of music streaming numerous contradictions that I term *postmodern* in their outlines, drawing specifically on the concept of the *simulacrum* from Jean Baudrillard (1983) to describe these contradictions as products of the *music streaming simulacrum* and its properties. This work is *autoethnographic*, being rooted primarily in a systematic examination of my own experiences as someone who has pursued a music career outside the traditional channels of record labels, commercial radio, and other key aspects of the mainstream industry. To do autoethnography is to draw on personal experience to understand cultural experience (see Ellis, Adams, and Bochner 2011). To get at the promise and possibilities that arose with the original incarnation of Napster, I start with what making and streaming music looks like today, focusing heavily on Spotify as the number-one streaming service at present. I then draw on the realities outlined there to describe in the second section what the *music streaming simulacrum*, as I am terming it, looks like in terms of its three major properties: *opacity*, *flatness*, and *hegemony*. In the final section, I reconnect these developments to the original development of Napster and the historic lawsuit, outlining some possibilities and challenges that arise in terms of liberating potential for artists and for listeners.

Next to Nothing? The Costs of Making Music

In June 2024, Spotify CEO Daniel Ek took to X/Twitter with the message that “content creation” costs “next to nothing” in this era. Despite added context that calls into question this interpretation of his words, independent artists were outraged, and Ek tried to walk back these comments days later. This was only a few days before the announcement that Spotify was increasing prices again (Quiroz-Gutierrez 2024), this year also adding an optional higher fidelity add-on for an additional five dollars US per month (*Radio Ink* 2024). If, as Stewart, Smith, and Denton (2012) argue, social movements can be studied in terms of how activists use language to persuade, then a nascent social movement emerged on social media among many of my fellow independent artists: “Fuck Spotify.”

This simple slogan betrays a deeper revulsion and concern. Spotify is the largest music streaming service out there now; it competes with the likes of what Napster has become (Napster having re-emerged in 2016 after a long and tortuous path from that *Metallica* suit) and represents the primary means by which most music is discovered and consumed today. My fellow independent musicians complain about Spotify, but most of us are loathe to pull our music from its service because, as a fellow traveler pointed out to me recently: “When you meet someone who is interested in your music, the first question they ask is: are you on Spotify?” Streaming emerged from those Napster-era file-sharing technologies, ostensibly promising a more horizontal, collaborative network of sharing creative work, allowing us independents and industry outsiders to connect meaningfully with audiences and bypass some of the exploitative practices of the past.

According to Billboard Music (2023), over 100,000 songs are uploaded to Spotify *every day*, and over 80 percent of artists (including the author of this paper, presently) have fewer than 1,000 monthly listeners (Stassen 2024). Among changes on Spotify that took effect in 2024, the platform demonetized (corporate speak for *not pay you for*) the roughly seven-eighths of songs on the platform with fewer than 1,000 streams in a 12-month period (Swingle 2024). It also pushed for a crackdown on “fake engagement” and other practices designed to artificially inflate an artist’s stream count (and manipulate the Spotify algorithm to give those who engaged in these practices even greater attention thereby—more later). This has resulted in chaos. Stream counts can be manipulated without an artist’s knowledge or consent, and their distribution services are placed in a difficult position—some have increasingly opted to remove artists’ songs from the platform with nothing resembling due process or investigation

(see Hemmings 2024). Spotify is a business, but most of the songs it hosts earn no profit for artists or for the platform.

When Ek told us denizens of independent music that what they did cost “next to nothing,” he’s not wrong. Making music requires an instrument, and an instrument can be purchased for a few hundred US dollars; even recording music, which was unattainable for less than six figures a few decades ago, can happen for less than a thousand US dollars. Most people in affluent countries could afford to make music if they wanted to. Arditi (2020) echoes this using the language of critical theory in his description of the “means of musical production”—it is not making music that is, itself, costly (60-3). It is every step away from play and creation and toward monetization and professionalization that incurs costs. Whether recording in a home studio or a professional studio, music is not “finished” just because it has been recorded. Songs are sent to an audio engineer for mastering after recording, which ranges from 50-100 USD per song and sometimes costs significantly more because sometimes the mastering process reveals flaws in the original mix that must be corrected, revised, and resubmitted for additional cost. With over 100,000 songs uploaded to one platform each day, there is great pressure to make sure your track is loud and clear. Then, monetizing music means turning it into intellectual property owned by the artist. Copyright application is 65 USD; each release must be copyrighted at or near the time of its release. The music must also be sent to a distributor, who will charge the artist an annual fee, a fee per release, and perhaps both, to release music to multiple streaming platforms and can monetize music—typically also taking a (relatively small) cut of the artist’s earnings in addition to the up-front or annual fees. The “serious” artist is also affiliated with a Performance Rights Organization, such as BMI, ASCAP, or SESAC, who work as part-publisher and part-bill collector on behalf of artists to collect additional revenue and royalties owed artists any time their music appears anywhere.

That is the basic machinery of monetizing music. Navigating the industry with any chance of recouping these investments is, to put it mildly, challenging. To recap, monetizing your own music in the most inexpensive and basic terms will cost over a thousand dollars US, and likely significantly more, for a one nine-song album (after spending that initial roughly two thousand dollars US on instruments and basic recording equipment). With a Spotify average payout per stream is about *four-tenths of one cent* US, that doesn’t begin until a song reaches a thousand streams, it is difficult to see how much of anyone at all, let alone the artists themselves, ever make money off music. That is because they mostly don’t. In 2023, Dani Filth, longtime frontman of extreme metal titans *Cradle of Filth*, lamented that post-2006, when streaming really began to take off, making a living became ever more challenging, claiming that out of the approximately 25 million Spotify plays his band registered the year before, he saw maybe 20 pounds GB in payouts (Kennelty 2023). Trent Reznor, founder, and composer of *Nine Inch Nails*, offers an immanent critique of Adam-Smithian capitalism via streaming, claiming, “We’ve had enough time for the whole ‘All boats rise’ argument to see they don’t all rise” (quoted in Rigotti 2024). Granted, bigger artists are also paying out management, record labels, bandmates, handlers, and others through their royalty payments, but if *even they* cannot earn much money off streaming and have found that music as a way to make a living is dying, it is difficult to see how smaller artists can. I chose these artists not just because I listen to them a lot (I do) but because they are large enough to make a living (or at least to have made a living off the music at one time) but are “niche” enough that they represent voices not heard in mainstream pop music territory—where, presumably, music is still quite lucrative for a small few. Taylor Swift, for example, became the world’s first billionaire singer this year (Martin 2024). An industry in which almost no one is earning significant income, or in many cases, any income at all, while a small handful prosper, is a simulacrum of an industry. It has the appearance of an industry to the public but is substantively devoid of what would be expected of an industry—namely, that a significant fraction of the people who work in it can actually earn a living.

Living in the Music Streaming Simulacrum

Whereas the original Napster technology allowed for a decentralized network through which people could share files (including, but not limited to, songs), what I call the music streaming simulacrum

is a complex involving artists, distributors, performance rights organizations, dozens of social media and streaming platforms, and a whole cottage industry of resources designed to “help” artists market their music and develop a following. As David Harvey (1990) prophetically remarked regarding the globalizing economy: “The structure of this global financial system is now so complicated that it surpasses most people’s understanding” (161). Something parallel has happened to the music streaming economy. In the words of Frederic Jameson, the “postmodern” condition or the “logic of late capitalism” involves a “repudiation of depth,” an invalidation of the deeper dimensions of human experience and even the ability to investigate them—“depth is replaced by surface” (1992:62). The logic of the music streaming simulacrum also parallels this. In Baudrillard’s (1983) terms, we belong to a world defined by “generation by models of a real without origin or reality: a hyperreal...the map precedes the territory” (1). It is in these conditions that the musician in a streaming era creates an economy that is mystifyingly opaque to individual understanding, that superficializes the human connection, and in which the conditions of the “hyperreal,” the models set forth by social media and streaming platforms themselves, define and constrain the creative horizons of artist-as-brand and art-as-content.

The repudiation of depth, meaning, and understanding, replaced by an ever-shifting world of competing stories, is a world in which the death instinct—*Thanatos*—is triumphant. Because it is a world in which no external criteria of truth or of meaning can be referenced, it is a world that risks being ultimately determined by power, by force. The streaming simulacrum, while seeming to liberate musicians from the constraints of “old-fashioned” record labels, handlers, and the trappings of the music industry, serves to reproduce and extend the underlying logic of domination (re)produced by its systems. As Arditì (2020) notes, “Digital music is the music business as usual” (112). When Dani Filth and Trent Reznor say that “the music industry is on its knees,” and that, “it is mortally wounding many artists,” these are not merely the metaphorical trappings of artists with frequent dark and sadomasochistic lyrical themes in their work. Per Herbert Marcuse (1955), the logic of the death drive is ascendant; as this logic has unfolded, it has given human beings unprecedented dominance of both a nature defined as external to themselves, as well as one another (144). Art and artists are transmuted into passive objects by the music streaming simulacrum. The ancillary and increasingly abstract elements that constitute the hyperreality of streaming reproduce the broader problems of late capitalism. These facets fade into the background as the artist (content creator) can access a broader audience than ever before, and audiences have unprecedented access to the world’s creative oeuvre. The music streaming simulacrum thereby obscures the relations of domination in cloaking its machinery from both artists and listeners.

The music streaming simulacrum has three major properties: first, it is *opaque*, meaning its true machinations are so complicated that they simply cannot be adequately grasped by an individual human being. Second, it is *flat*; it militates against the generation of authentic human connection between artist and listener, reducing artists to brands and art to content. Third, it is *hegemonic*: even as artists may choose to participate in or resist streaming, the underlying logic of the music streaming simulacrum structures the relationship between artists, listeners, and the broader political and economic landscape.

As for the *opacity* of the streaming simulacrum, it lives at the sociological level, the level of human social interaction, manifesting across many different interactive contexts. I receive hundreds of royalties reports every month from dozens of streaming platforms and multiple social media outlets. Some of these show a “payout” in the amount of 0.00000000 USD. Others show fractions of a cent here or there, occasionally a few dollars. There is a quarterly royalty check from my Performance Rights Organization, which is reliably more (but far from what I would need to make even an impoverished living as an artist). How did I make four cents off that song I released two years ago...on Facebook this month? Why did YouTube pay out two dollars on this video in just a couple of days? The payouts correlate with the number of views or streams, but weakly and inconsistently; it would take a full-time job to calculate and keep complete track of where the money is coming from and how it gets to me via my distributor (who also gets a small cut). I guess it’s fortunate I don’t make much money because *I simply don’t know how I get paid*. Some aspiring businesspeople would probably laugh at this; others might see themselves in it. The global economy is stupendously complicated, and revenue sources are diverse and ever-changing. In an economy where most wealth is as intangible as social media content creation (living in

the blinking lights in computers and shifting in fractions of a second), the underlying economic system and its machinery foreground a transition toward simulacrum.

The *opacity* contributes to *flatness*. A business operator, at least in the idyllic world of Adam Smith's capitalism, wants to know who their customers are, and customers want to know who is delivering products and services. People sometimes forget Adam Smith was a humanist and moral philosopher; he argued that human beings build trust and sympathy through repeated interactions—put simply, it just doesn't make sense for us to try to cheat someone who we will later need to rely on not to cheat us (Smith 1759). Much as I receive royalty reports from my distributor, I receive frequent (daily or more) updates from platforms like YouTube or Spotify on how my "content" is doing. I can learn about how old the people who watch or listen are, their gender, and even what else they're into. I can see how many times different songs have been streamed today, in a week, in 28 days, in the past year, where listeners are listening from (city and state), and how they've discovered my work.

Maybe it's alarming for listeners to know that artists, record labels, and others within the simulacrum have this much access to their information, but it's deceptive. The music streaming simulacrum is populated by unknown but probably large amounts of fake engagement—that is, it's hard for artists to know whether the person on the other end of the screen is, in fact, an authentic human listener. Messages from bots clog up artists' social media feeds, scammers use fake links to sell nonexistent merchandise on behalf of artists without their consent or even knowledge, and many of the streams on any given artist's page may have been paid for, generated by precarious, low-paid labor in "click farms" that charge a fee to stream the same content again and again. Estimates of how much of this is going on vary widely and are almost certainly overly conservative because it is undoubtedly so widespread.

The practice of buying streams, coupled with the all-important streaming metrics such as Spotify's monthly listeners and streaming counts, inevitably creates an ongoing "arms race." I would speculate, based on extensive observation and experience, that few artists, particularly "serious" artists who have management and/or label backing, *don't* use some form of dubious or fake engagement. As these types of engagement became more widely available and cheaper (you can buy a thousand or more "quality" views/listens outright from any number of places for the cost of a fast food value meal), they allowed smaller artists to get in on the scam; and since music in a streaming era is centrally a "numbers game," this pressures both larger and smaller artists to participate because "everyone else is doing it" or because "if I don't do it, they will and I'll lose." Artists can also be added to "botted playlists," which drive up streams artificially, without the artist's consent or even knowledge—if caught, artists' music is removed from the platform, often without much recourse, even if the artist did not participate in any way in manufacturing this fake engagement.

In describing the digital turn as "business as usual," Arditi (2020) notes a trend that portends significant problems with these kinds of practices. In the digital streaming era, the value of a "brand" and the "content" created is defined by numerical data. Labels and their reps look for artists with lots of views or streams as indicators that they're popular and that they have good business sense. But it's difficult to know in many cases whether any of these numbers represent authentic levels of human engagement. I invite the reader to examine the artist's page on Spotify. It will include the artist's monthly listeners and the artist's top five songs with their number of streams (unless the total is less than 1,000 streams to date, in which case >1,000 appears instead). It is difficult for artists and those who scout them to know for sure how authentic these numbers are. At the same time, these numbers drive both perceptions of an artist's popularity and commercial viability.

This is *flatness a la* Baudrillard—with the simulacrum, almost a parody of reality, the map precedes the territory, and the hyperreal, in its "false" reality, comes to define reality for artists and listeners. Artists and labels are rewarded, both monetarily and in terms of the algorithm, for using fake streams so long as they get away with it, but in artificially inflating the data that determine an artist's popularity, this falsity constructs a musical (and economic) reality. *Fake streams fuel the realization of artistic dreams*. At the same time, ongoing in-depth engagement between artist and listener becomes difficult or impossible, given the ubiquity of these practices. Buying streams, as I have insisted to new and independent artists in my own communities, hurts none more than it hurts the artists themselves in the end. It might be a

quick payday if you're not caught, and it results in getting your music picked up by the algorithm or even getting scouted by a label, but more likely, you're spending more money buying these streams than you can make in royalties even if you're not caught (and you're risking getting your music taken down). At the same time, you receive data on listeners that is worse than useless because fake engagement distorts who is listening (because it's hard to know once you open the door to fake engagement whether or to what extent real people are listening at all). Demographic data can help artists know who is listening, who likes their work, and who to market their work to. Fake engagement fatally corrupts this data. Large and established artists can, meanwhile, use these kinds of engagement to make themselves look even bigger, capturing an even larger market share by artificially inflating their own streams. They know better who their audience is already, and the algorithm is already disproportionately tuned to their influence (rule number one of the algorithm: more attention is better and earns even more attention), so they're less affected by these practices.

The music streaming simulacrum is, finally, *hegemonic* in the sense that it exerts outsized control over human behavior in a particular domain. Despite what I've written here, as a listener, the first place I go to hear new music is Spotify. I am among millions of artists who feed their music through the music streaming simulacrum, hoping to build an audience and cultivate enough cultural prestige to draw record label attention, earn revenue, and often both. Though "getting signed" no longer appeals to me, if I left the simulacrum, I still fear I would become a nonentity—this is what keeps us playing even though we seldom win. Ultimately, a small number of tech giants dominate the market, and the viability of our art is utterly dependent upon them. In place of engaging with audiences or even earning revenue, we spend our time figuring out how to manipulate opaque algorithms and clamoring desperately for attention in the music streaming simulacrum.

Do It All. Even Free. In Search of Alternatives

The music streaming simulacrum, being a parody of industry, culture, and a means of human connection, is *rhizomatic*, with a seemingly freestanding logic seeming to exist everywhere at once (see Cannella and Koro-Ljungberg, 2017). It is cheaper, easier, and more efficient than ever for artists to get music out there without having to rely on the traditional channels of record label backing; artists also surrender their livelihood and creative control to an opaque, flat, and hegemonic network of algorithms. Artists both gain and sacrifice ever more of their autonomy at the same time. That is the dialectic and the contradiction. How can we build organized resistance against a network of ubiquitous proprietary algorithms? What does liberation look like?

Digital downloading and file-sharing, the kind of technology that Metallica was suing 19-year-old Fanning over in 2000, emerged when the era of the CD had already reached its peak and was beginning its decline. From the perspective of capital, the download era was short-lived, spanning just four years centered around 2013 before giving way to interactive streaming (Rosenblatt 2018). Some artists, including the aforementioned Trent Reznor of *Nine Inch Nails*, abandoned record labels and direct-distributed music to fans *for free*; Reznor publicly told his fans to "go ahead and steal my music" (Sandoval 2007). This is one alternative. A second alternative is to move away from the music streaming simulacrum in favor of traditional media. If you asked me about *Metallica v. Napster, Inc.* in April 2000, I would have sided with *Metallica*. You can't run a business by giving things away, so goes the conventional wisdom, and digital downloads promised *no* financial return (and ate away what return might happen with selling albums). I was going to make an album, get it pressed on CD, and find an audience for it all by myself. And on February 26, 2002, I did for the first time. Pressing an album is a costly undertaking. Like other things that can be bought in bulk, the more you buy, the cheaper the per-unit cost. This means that the majors could always edge out the smaller artists because it costs next to nothing per unit to produce one hundred thousand CDs at a time. A small musician would have to order at least a thousand to get their per-unit cost manageable and would need to sell at least several hundred CDs to break even, and that's before accounting for marketing budgets, storage, shipping, and handling, web design—not

to mention the hours spent standing in line at the Post Office.

Industry secret: many musicians did not (and do not) primarily earn revenue from album sales. The recordings and the concerts are vehicles for merchandising—plastering band logos, designs, faces, and images on T-shirts, stickers, and other collectibles—and product placement (I still laugh at the irony of *The Who's* “Eminence Front” being used to sell luxury cars). Even Vinyl and CDs increasingly take on the aura of “collectibles,” purchased by people who are intensely “into” an artist or have a collector’s mindset, compelled toward what is rare, unique, or expensive. Some independent artists are more selective about where they platform their music and how much of it they stream, or they take other steps to steer their fans toward buying physical media.

Every time I submit a new release to my distributor, I have the option of limiting or expanding access to my music: what platforms, streaming only, streaming and digital downloads, releasing a limited number of tracks and making the rest available only on physical media, or my new favorite: *Do it all. Even unpaid.* When I check this box, I know my music can be everywhere, and people can listen to it on all platforms, whether they pay for it or not. And when I see major genre-adjacent artists like *Cradle of Filth* and *Nine Inch Nails* not making money and giving their music away, I know I need not hold out hope, like *Metallica* did when they sued Fanning, that jealously guarding streaming revenue (for me, often fractions of pennies at a time) is the answer. Whether artists make their music more freely shareable and democratically accessible, as Fanning did with Napster 25 years ago, or work to transition to other forms of media, we don’t escape the music streaming simulacrum. However, these efforts allow alternatives to persist and develop in parallel.

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