

# Downloading is Killing Music: The Recording Industry's Piracy Panic

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In the 1980s, the British Phonographic Industry (BPI) directed an international media campaign that asserted “home taping is killing music.” The recording industry argued that the cassette tape “was alleged to signal the demise of recorded music” (Drew 2013:7). The cassette tape as a medium was said to be on the verge of killing the recording industry, but BPI provided no data to substantiate the claim. The “home taping is killing music” campaign came at a moment of economic recession that contributed to a reduction in music sales. And yet, the recording industry continued to grow. “For all its complaining about lost revenues, the major music corporations quickly resumed a pattern of steady growth following the recession of the early eighties” (Garofalo 1999:346). According to data from the global trade organization representing major record labels, the International Federation of Phonographic Industries (IFPI), despite a slight decline in 1980, global recording industry sales remained strong and grew throughout the 1980s (Figure 1). Since the launch of Napster in 1999, the recording industry has repeated the same tired tropes about file-sharing killing music, but in neither case has music died.<sup>1</sup>

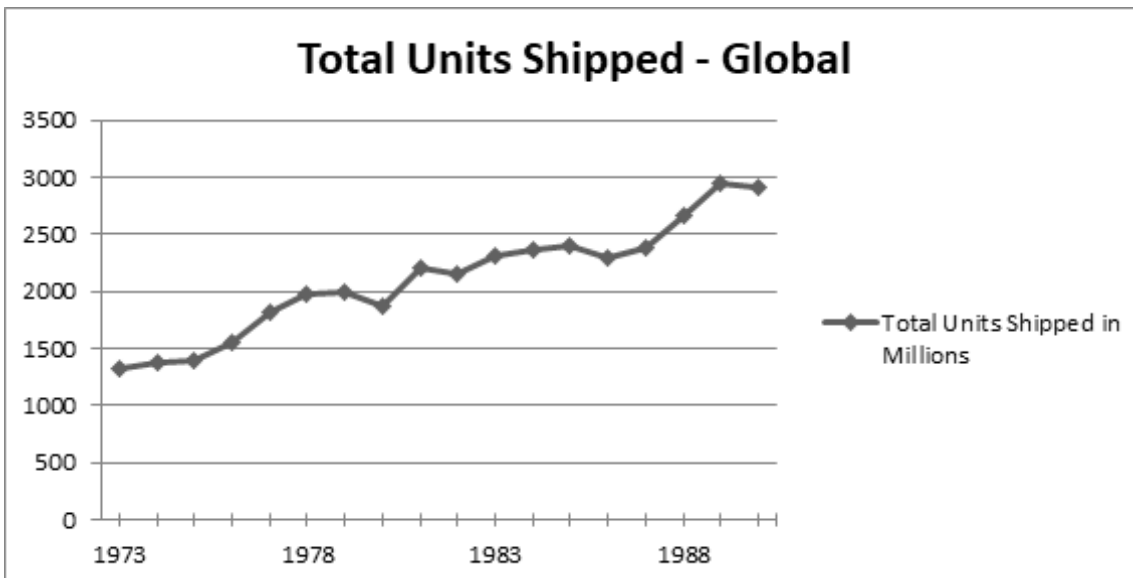


Figure 1 - Total units shipped from 1973-1990 according to the International Federation of Phonographic Industries (IFPI) Annual Reports (IFPI 2001)

<sup>1</sup> This article is a modified version of an article published in *Civilisations Journal*. Reprinted with permission: Arditi, David. 2014. “Downloading Is Killing Music: The Recording Industry's Piracy Panic Narrative.” Edited by Victor Sarafian and Rosemary Findley. *Civilisations, The State of the Music Industry*, 63 (1).

Napster, a short-lived peer-to-peer (p2p) file-sharing program, sparked a global war on digital piracy in 1999 led by the IFPI and its nation-state-based affiliates. The recording industry contended that not only did Napster facilitate music fans the easy exchange of music files (i.e., mp3s) online, but also that file-sharing is an act of copyright infringement, or “piracy.” As a result, claims that music would die permeated news media, legislatures, and popular culture in the United States. However, according to the IFPI’s data (Figure 2), despite a brief dip, total unit sales more than doubled between CDs’ peak in 2000 and the iTunes boom by 2010 in the United States. In 2024, music consumption is exponentially higher, even though it no longer makes sense to discuss unit sales during a streaming distribution regime. Despite these impressive numbers, the Recording Industry Association of America (RIAA) and the IFPI contended that the recording industry lost revenue and profits.

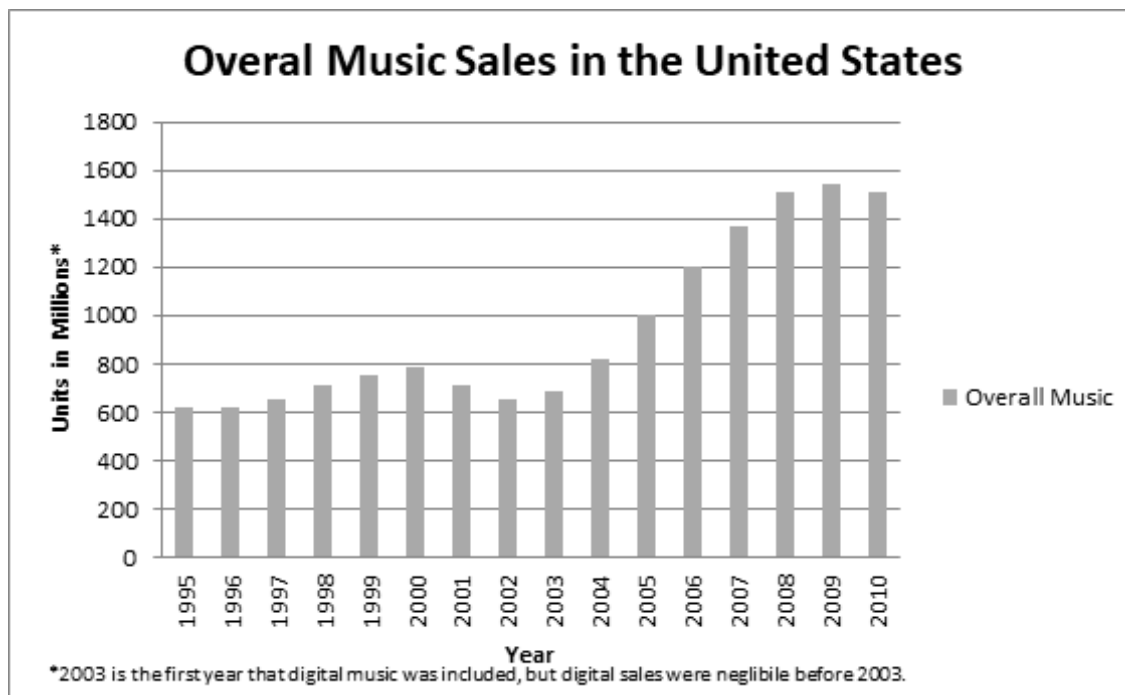


Figure 2 - Overall music sales in the United States according to Nielsen SoundScan (1995-2010).

To make the claim that the recording industry was in decline, the recording industry constructed what I call the “piracy panic narrative.” The piracy panic narrative is a rhetorical construct that helps to obscure the material reality of the recording industry by positioning major record labels and their recording artists as the victims of widespread crime in the form of piracy. Major record labels and their trade associations argued that file-sharing is piracy; piracy is stealing, and this stealing negatively impacted the musicians whose music file-sharers downloaded. Finally, the recording industry insisted that this piracy would lead to the death of music—in 2024, we can show they were demonstrably wrong (Bayley 2024)<sup>2</sup>. The piracy panic narrative is a “calculated political strateg[y] to psychologically demonize opponents to make them appear to be ‘bad’ people. Because these bad people are doing bad things, they must be punished the way bad people are: by being sued, by paying exorbitant damages, and in some cases by going to jail” (Patry 2009:44). By placing the recording industry in the position of a

<sup>2</sup> The IFPI Global Music Report reports that recorded music grew by 10.2% in 2023, its ninth consecutive year of growth (Bayley 2024); the original article was written nine years ago. This evidence corroborates my claims in my previous work (Arditi 2012, 2014c, 2014b, 2014a, 2015, 2017, 2020, 2021).

victim, the piracy panic narrative appealed to the average person's common sense understanding of the political economy of the music industry. In turn, the recording industry concealed its actual financial data while lobbying governments and international organizations to create laws and rules that dealt with the so-called piracy problem. This narrative was perpetuated by news media in the framing of news stories about file-sharing and digital music. For instance, in "RIAA Takes off Gloves in Mounting Its Fight against Music Thieves" Lee Gomes of the Wall Street Journal contends that file-sharing is stealing in the title alone. Within the article he asks "Are music downloaders basically honest people who are simply yearning to breathe free of the inconvenience and high prices forced on them by the tyrannical music industry? Or are they just trying to get something for nothing? Freedom fighters, or thieves?" (Gomes 2003). The central point of this question was to position everyone that wants a commodity without paying for it as a thief. As I will show in this paper, not only is the position of this news article aligned with the RIAA's position, but it also fails to see the broader cultural, historical, and legal position of this narrative.

## Panic Narratives

The recent piracy panic narrative is not alone in constructing opponents in the worst possible light as there is a long history of constructing social deviants and political opponents as folk devils in panic narratives. In *Folk Devils and Moral Panics* (2011), Stanley Cohen provides one of the first accounts of the ways through which people who do not subscribe to societal norms are demonized. While Cohen's work is on youth subcultures, his theories are applicable to a much broader range of deviants. Cohen explains his schema as follows:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. (Cohen 2011:p.1)

Applying this schema to the case at hand, pirates emerged as a threat to intellectual property ownership. Aside from the connotations already associated with being a pirate, the mass media stereotyped kids with computers as deviant nerds who did not respect the normalized trip to the record store. Politicians and university officials, along with Metallica<sup>3</sup> and Britney Spears, constructed the moral parameters of piracy. Think tanks and trade associations stood in the position of experts on the issue to diagnose the problem. Finally, an approach of legal prosecution was executed, while a parallel non-deviant form of consumption (i.e. iTunes) emerged for those who do not want to be perceived as deviant.

If the problem were limited to accusations of piracy, then the moral panic itself would have received little traction (i.e., who cares if people are downloading music?); however, the recording industry used the moral panic to legislate and litigate against file-sharing. Erich Goode and Nachman Ben-Yehuda claim that moral panics are inherently political as different power holders attempt to negotiate the legal system by labeling particular behaviors as deviant (Goode and Ben-Yehuda 2009). "Designating certain acts as criminal serves at least three functions," Goode and Ben-Yehuda explain, "first, it *legitimizes* a certain category's definition of right and wrong; second, it *symbolizes* the respectability of one category *vis-à-vis* another; and third, it *punishes* members of one category for engaging in behavior" (Goode and Ben-Yehuda 2009:p.119). A moral panic was needed to define file-sharing in the first two functions, but before the state could punish individuals for a criminal offense, the activity needed to be an actual crime. In turn, the moral panic was used to create the legal structure to punish file-sharers as stakeholders attempted "to crystallize [their] views into the legal structure – to pass laws compatible with, or prevent

<sup>3</sup> Metallica's very public crusade against file-sharing (Thigpen and Eliscu 2000) is ironic because, as Rob Drew explains, Metallica became popular as a result of the "heavy metal tape-trading network" (Drew 2013:9). Drew contends that Metallica actively benefited from avoiding major labels and the copyright system in 1982 by trading their tapes.

the passage of laws incompatible with, its own ideological, moral, and political-economic system” (Goode and Ben-Yehuda 2009:120). The piracy panic narrative was used to change music listening habits and change the laws that govern those habits.

Beyond constructing a panic about a particular activity, panic narratives stem from a moral position. Not only are pirates out there lurking on computers in dark rooms with Cheetos crumbs on their keyboards, a *Rolling Stone*'s article states they could be your church-going neighbor (Dibbell 2000). Julian Dibbell described the recording industry's newest pirate as:

the music lover who simply sees no point in paying for recorded music. Until now this person was typically found on college campuses, where massive bandwidth and wide-open networks have long encouraged undergraduates to seek their music not in megastores but on their peers' hard drives. But as DSL and cable modems bring high-speed Web access to the masses and as programs like Napster simplify the online file-sharing process, the non-CD-buying music fan is increasingly popping up in other demographics.(Dibbell 2000)

The protagonist of Dibbell's story was Mary Long, a woman who Dibbell described as a “churchgoing” woman who teaches preschool at her church. Long is quoted in the article after being asked if she worries about the ethics of downloading music: “Oh, sometimes – but I get over it” (Dibbell 2000). By pointing to a woman who teaches preschool at a church, *Rolling Stone* claimed that Long is morally pure; this was an appeal to morality that is the archetype of moral panic since morality is “a view of right and wrong” (Goode and Ben-Yehuda 2009:110). Therefore, what Dibbell implied was that there is a well-founded ethical position behind being against file-sharing. However, not only does piracy lack a clear-cut ethical position, but the term itself is a dubious substitute for an actual legal category (copyright infringement) that may not even be relevant to Long's downloading practices.

Yet the piracy panic narrative was never specific about what constituted piracy. What is piracy? The next section provides a brief overview of piracy or, rather, what is claimed to be piracy.

## Piracy

Part of the problem with the piracy panic narrative was its reliance on a term (piracy) to describe an act (downloading music) while the act of downloading music is not actually piracy in the US. On the one hand, the term piracy is used to refer to a recognizable legal category of copyright infringement, but on the other hand, the term is rarely used to address an actual violation of law. By setting aside the metaphorical baggage associated with the term “piracy,” we can separate connotations from denotations. Copyright infringement is the unauthorized *commercial* reproduction and distribution of copyrighted material (Lessig 2004; Litman 2006), but instead of using the term “copyright infringement,” people repeatedly refer to “piracy.” I emphasize commercial here because it denotes the exchanging of a good for monetary compensation. If we were to substitute the term piracy for copyright infringement, piracy concerns the reproduction of music without permission from copyright holders for profit. This type of “pirate” runs compact disc “chop shops” (Lessig 2004:62), which print CDs without permission and sell them on the black market without compensating copyright holders. However, p2p file-sharers do not exchange music files for monetary reward but instead, share music as part of a community. Labeling this activity as piracy distorts the activities of the users and creates ambiguity in the use of the term.

As a legal category, piracy does not refer to a violation of copyright law. The only reference to piracy in the U.S. legal code refers to piracy of the high seas (18 USC Chapter 81), like Blackbeard. And yet, commentators, politicians, industry affiliates, academics (Al-Rafee and Cronan 2006), and even the U.S. Federal Bureau of Investigation (FBI) refer to “piracy” as an actual offense. For instance, the U.S. FBI has an “Anti-Piracy Warning” seal that comes affixed with the text: “The unauthorized reproduction or distribution of a copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by fines and federal imprisonment” (Anon n.d.). While the text that accompanies the FBI's seal describes the context of

copyright infringement, the Anti-Piracy Seal itself does not refer to “piracy.” Even this statement is a stretch because it implies that copyright infringement can occur “without monetary gain.” However, Title 17 of the U.S. Code repeatedly discusses copyright infringement in terms of commerce. In fact, Title 17 USC § 1008 specifies that “No action may be brought under this title alleging infringement of copyright . . . based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings”; the device that this sentence refers to is a digital device. The law is clear that in order for an action to be considered copyright infringement, it must involve commerce. Not only is U.S. law silent on this type of piracy, but international law only refers to piracy of the high seas as well. “The absence of the words ‘piracy’ and ‘pirate’ from these texts<sup>4</sup> of international copyright law,” Suzannah Mirghani contends, “can only mean that the semantic association of the word ‘piracy’ with ‘copyright infringement’ is a discourse formation that has occurred largely outside of official copyright law” (Mirghani 2011:117). Since there is no actual reference to piracy in copyright law and copyright infringement only refers to commercial reproduction, the fact that piracy is so prevalent in the popular lexicon in relation to copyright infringement points to the construction of a moral panic.

In order to compensate for the fact that noncommercial reproduction of copyrighted material is not an infringement, copyright industries deploy the piracy panic narrative. In effect, they argue that copying music without authorization deprives copyright owners of the money they would have made by selling the music. In other words, they argue that their “property” is being stolen. However, William Patry explains that copyright is not a property right; it is a regulatory privilege. Patry contends that “for its entire history in the United States, copyright has never been regarded as a property right. Instead, copyright has always been a regulatory privilege granted by the grace of Congress (or in other common law countries by Parliament), as a very limited grant originally just for literary works, and conditioned on rigorous compliance with formalities” (Patry 2009:110). Patry argues that metaphors “such as pirate are used for the very grown-up purpose of branding one side in a debate as evil, and the other as good” (Patry 2009:91). Since copyright is not a property right, copyrighted material cannot be stolen by making copies; rather, the only way to steal copyright material is to steal the physical good, but that would not be a violation of copyright law.

When the RIAA pursued Napster in the US judicial system, it sued on the idea that Napster was a pirate website, itself. This argument is probably most relevant to the actual existing copyright law. The argument was that by creating a program that enables the unauthorized reproduction of copyrighted material with the end goal of making a profit, Napster was, in fact, no different than factories producing CDs without authorization from copyright holders. However, the lawsuits against Napster (Langenderfer and Cook 2001) and the later lawsuit against Kazaa were never about individual file-sharing but rather about the role of a third party facilitating copyright infringement for commercial gain.

File sharers are not pirates under the law because they do not participate in the commercial exchange of copyrighted music. To make a parallel between file-sharing and piracy, the RIAA must first connect its argument to commercial use, thereby enabling it to get a foothold on the law. In order to make that argument, the RIAA and the major record labels contend that the inaction of not buying is stealing. Again, the industry used metaphor to make this connection; the RIAA insisted that file-sharing is not “like” or “similar to” stealing; it “is” stealing (Patry 2009). Once the industry equated file-sharing with the connotation of stealing, the link to piracy was far easier to believe. The problem is that the refusal to pay for something is not and has never been a form of property theft. If I choose to go to the library and read a book, I am not stealing from authors. If I hear my neighbor’s stereo and decide to stop and listen, I am not stealing music. To contend that these activities are theft, and by extension piracy, is to ignore the law.

Moreover, no one has been prosecuted for downloading music in the United States, but the recording industry, media outlets, and some scholars (Robertson et al. 2012) repeat the phrase “illegal downloading.” File-sharing websites have been prosecuted under the argument that they allow individuals to copy music without authorization from copyright holders and profit from advertisements on their

<sup>4</sup> Suzannah Mirghani also refers to the 1709 Statute of Anne, the 1886 Berne Convention for the Protection of Literary and Artistic Works, and the U.K. Copyrights, Designs and Patents Act of 1988 (Mirghani 2011:117).

websites. For a time (2004-2009), individuals were litigated for file-sharing; however, the RIAA did not file lawsuits against downloaders but rather filed suits against people who were *uploading* their music to file-sharing sites. This is an important distinction because the discourse is always about downloaders when, in fact, uploaders are the ones prosecuted for copyright infringement. Furthermore, too few of these cases against people who upload music have been tried in U.S. courts (none in the Supreme Court) to determine whether or not the action is illegal under copyright law.

Since the term “piracy” is not used in the legal category of copyright infringement and does not point to a crime being committed, the term is deployed only to stir a moral panic by labeling people as folk devils that threaten the entire intellectual property system. The next section focuses on ways that the media acts to perpetuate the piracy panic narrative.

## Media Filters

“Would you go into a CD store and steal a CD? It’s the same thing, people going into the computers and logging on and stealing our music.” – Britney Spears (Quoted in Ahrens 2002)

One of the main ways to articulate and perpetuate a moral panic is through the media (Cohen 2011; Goode and Ben-Yehuda 2009), and the media play the primary role in perpetuating the piracy panic narrative. Edward Herman and Noam Chomsky’s “propaganda model” (2002) is a useful tool for looking at the role of news media in the piracy panic narrative. In *Manufacturing Consent* (2002), Herman and Chomsky outline five media filters that, in effect, censor media content in the United States. Specifically, I think three of the filters are utilized in the piracy panic narrative:

1. the size, concentrated ownership, owner wealth, and profit orientation of the mass-media firms;
2. advertising as the primary income source of the mass media;
3. the reliance of the media on information provided by government, business, and ‘experts’ funded and approved by these primary sources and agents of power. (Herman and Chomsky 2002:2)

The first of these three filters, pertaining to the ownership and control of mass media, is at work in the piracy panic narrative but is outside the scope of this paper; this type of analysis would involve tracing the ownership overlap between major news outlets and major record labels. However, the two remaining filters can be directly connected to the piracy panic narrative through the perpetuation of the narrative. To that end, the recording industry not only purchased advertisements in major news publications but also bought advertisements specifically to advance the piracy panic narrative in major news outlets. Furthermore, the recording industry consistently placed its “experts” in positions where the media had easy access to them. As a result, the news reports on digital file-sharing were lopsided towards the piracy panic narrative.

According to Britney Spears (quoted above), downloading music through file-sharing websites is stealing, plain and simple. Spears’ statement was part of an advertising campaign at the apex of the Recording Industry Association of America’s (RIAA) battle against file-sharing in 2002. This ad campaign included one-page ads in newspapers, as well as TV and radio commercials across the United States. “Nearly 90 singers and songwriters have signed the newspaper ad, and several have lent quotes to the campaign. The group is diverse, including opera tenor Luciano Pavarotti, hip-hop superstar Eminem, country music’s Dixie Chicks and former Beach Boy Brian Wilson” (Ahrens 2002)<sup>5</sup> Additionally, the ad campaign itself generated its own news after reporters wrote stories about the ad campaign, many without any counter perspective to balance the industry’s rhetoric. This ad campaign was part of the broader piracy panic narrative. By labeling file-sharers as property thieves, the piracy

<sup>5</sup> This quote refers to the group being diverse, but it is only possible to say that group is diverse as far as genre. All of the artists listed are artists that have gold and platinum-certified albums.

panic narrative creates both a victim—the artist—and a victimizer—the fan; this places musicians directly against their audiences, fans, and consumers—i.e., the people who always already financially support these musicians.

While the advertisements appeared to be articulating the opinions of major recording artists and were sponsored by various industry organizations, the “major record labels [were] footing the campaign’s bill” (Ahrens 2002). Since the recording industry used advertisements to launch a campaign against file-sharing, there should be no expectation for the news to publish articles that contradict the advertisements. According to Herman and Chomsky’s second media filter, news organizations are not likely to provide news reports that run counter to their advertising sponsors because the advertisers will pull their advertisements. Since the recording industry was one of the advertisers in the magazines and newspapers publishing articles about the advertisement campaign about piracy, the propaganda model explains that providing counterbalancing perspectives in those articles would run against the interests of the magazines and newspapers.

This advertisement campaign is a strong articulation of the piracy panic narrative because statements such as Spears’ are purely rhetorical. William Patry argues in *Moral Panics and the Copyright Wars* (2009) that by constantly repeating piracy metaphors, the copyright industries attempt to do more than reframe the debate; they permanently try to associate file-sharing with stealing. Downloading music from peer-to-peer file-sharing programs is not the same thing as stealing; in fact, legally, it is not even property theft. Copyright law is a “regulatory privilege” (Patry 2009:110), not a form of property law. It cannot be compared to property theft because when a user downloads music, they are not taking something away from another user; the original user still has the ability to listen to the downloaded music and still allow others to download their music. However, by restating the recording industry’s perspective on piracy, newspapers and magazines help to perpetuate the panic narrative.

Of course, this is only one dimension of the recording industry’s argument; the RIAA went deeper into the theft analogy by monetizing music. Part of this argument was that if consumers paid for a CD, they paid a recording artist to listen to their work, but if that same person didn’t pay for music, they were refusing to pay that recording artist for their work. This is problematic for two reasons. First, it conflates the act of listening to music with a need to pay. Second, it ignores the role of record labels in profiting from the labor of many recording artists without monetarily compensating them. While no one asserted that Spears is a copyright lawyer or legal scholar, her voice (and others’ voices) spoke in these ads as a victim.

The title of *Rolling Stone’s* coverage of the superstar advertising campaign, “Don’t Steal My Music” (Healy 2002), is instructive to how the piracy panic narrative permeates the discussion. By titling the article “Don’t Steal My Music,” *Rolling Stone* positioned file-sharing as stealing. While the title itself is rather sarcastic, it still acts to equate file-sharing with piracy and stealing. Furthermore, this article draws attention to an advertising campaign that did not need extra publicity to catch the attention of the public. After explaining the industry’s position, Healy tepidly cites a member of Dashboard Confessional as not caring where fans get his music as long as they listen. This final quote in the article, while seemingly providing a counterpoint to the recording industry’s position, does little to counter the piracy panic narrative. Since the article is centered upon the notion that file-sharing is stealing, even if the article is mildly sarcastic in tone, it cedes ground to the position that file-sharing is, in fact, stealing. And yet, the article itself is unnecessary because the *Rolling Stone* issue contained a full-page advertisement claiming that piracy is stealing. In this way, the advertising media filter ensured that the content of the magazine agreed with the sponsors of the magazine.

### **Piracy Panic Narrative and So-Called “Experts”**

Aside from the moralization of file-sharing as a criminal act, the piracy panic narrative became embedded in deeper structures that changed the norms and understanding of cultural consumption. The RIAA used a number of strategies through which it targeted particular groups to stop file-sharers and

situated piracy as an overall menace to society. From education programs in K-12 and University policies that prohibited the use of file-sharing programs (Dana 2003) to think tank research that demonstrated a link between “piracy” and decreased employment in the cultural industries, the RIAA waged a full ideological war on file-sharing. It has executed this plan by “the reliance of the media on information provided by government, business, and ‘experts’ funded and approved by these primary sources and agents of power” (Herman and Chomsky 2002:2). In short, Herman and Chomsky demonstrate that think tanks position their experts in a way that makes them easily accessible to news outlets. To that end, entertainment industry trade groups used reports and data from these experts to demonstrate the link between piracy and employment, profits, revenue, and overall consumption; however, all of this research relied on the music industry’s own data.

Here, I would like to focus on the ideological contradictions adopted by the AFL-CIO (the American Federation of Labor and Congress of Industrial Organizations) in its own war on piracy. To that end, the AFL-CIO published a series of documents that contend that piracy caused a decline in jobs in the copyright industries. While other politically left-leaning constituencies have embraced file-sharing and fought positions that situate file-sharing as piracy, the AFL-CIO fully embraced the piracy panic narrative for fear that it is hurting workers. As I will demonstrate, the AFL-CIO’s position is embedded in the piracy panic narrative and based on faulty evidence.

On the “Policy & Research” section of the Motion Picture Association of America’s (MPAA) website, there is a report under “Independent Reports” by the AFL-CIO. The fact sheet, entitled “Intellectual Property Theft: A Threat to U.S. Workers, Industries, and Our Economy,” outlines a position that accentuates and reinforces the piracy panic narrative. The AFL-CIO claims that “The theft or piracy of copyrighted films, television shows, theatrical productions, and music costs the U.S. entertainment industries billions of dollars in revenue each year. That loss of revenue hits directly at bottom-line profits and those who earn their living in these industries” (“Intellectual Property Theft” 2013). Both the title of the report and the language in the report tie copyright infringement to theft and piracy, then it connects this “theft” to job losses and other economic hardships. Of course, the immediate problem here is that, as discussed above, copyright infringement cannot be theft because copyright is not a property law but rather a regulatory privilege. Therefore, this portrayal of what may or may not be copyright infringement as always-already intellectual property theft characterized an unambiguously ideological position as a moral position to affect behavior. Using an appeal to childhood morals that stealing is wrong; the AFL-CIO then makes the rhetorical turn that this theft is harming American workers.

However, the AFL-CIO failed to make a compelling case that this “intellectual property theft,” in fact, hurt workers and neglected to recognize that it is the basic logic of capitalism that causes workers to lose their jobs. The primary source for “Intellectual Property Theft” is a study conducted by Stephen Siweck of the Institute for Policy Innovation<sup>6</sup> entitled “The True Cost of Copyright Industry Piracy to the U.S. Economy” (2007). Siweck’s study deserves a sustained critique because a number of studies, reports, and even academic essays cite him as the primary source to demonstrate a causal link between job losses and piracy. Siweck connects all layoffs across the copyright industries with piracy. However, there were a number of broader structural changes that took place on the part of cultural industries (and industries more generally) that resulted in the layoff of workers. Siweck uses federal jobs data to show that 375,000 fewer people had jobs in the copyright industries in 2005 because of piracy (Siweck 2007); the irony of this statistic is that in a 2006 report for the International Intellectual Property Association, Siweck found that the U.S. added more than 30,000 jobs in the copyright industries (Siweck 2006).

The AFL-CIO and other reports used Siweck’s data to state that 375,000 jobs were lost, but Siweck’s data were only hypothetical assessments of how piracy impacts the industry based on Regional Input-Output Modeling System (RIMS II) multipliers. Using the RIMS II data from the US Bureau of Economic Analysis is an attempt to show the effects of an activity on different economic indicators; it is only a hypothetical statistical calculation. However, RIMS II does not work even as a hypothetical

<sup>6</sup> It is important to note that the Institute for Policy Innovation (IPI) is an American think-tank with a conservative ideological position founded by former GOP Rep. Dick Armey. According to the IPI website, “Though IPI is a non-partisan organization, we approach policy issues from a consistent philosophical viewpoint of individual liberty and responsibility, free markets, and limited government” ([http://www.ipi.org/about\\_ipi/](http://www.ipi.org/about_ipi/)).



calculation in this situation because the aggregate data is too diverse. Additionally, trying to calculate the impact of piracy on jobs was too abstract for RIMS II because there was no clear legal definition of what counts as piracy, and there was no good data on the impact of file-sharing on purchasing music (or consuming it in other ways). While using RIMS II multipliers obscures real data, this did not stop economists from making arguments about the impact of piracy on jobs.

Siweck says that all of those 375,000 jobs that do not exist in the cultural industries are a result of piracy; however, there is a stronger correlation between industry practices and layoffs than piracy and layoffs. Here are some examples.

- a. Mergers: The year in question is the same year that Sony and BMG Music merged. That merger laid off more than 2,000 workers in the US (Newman 2005); subsidiaries push that number higher as, for instance, Sony-BMG closed Epic Records Nashville for an additional 20 jobs lost (these add up with more subsidiaries). The merger between Atlantic and Elektra (both subsidiaries of Warner Music Group) in 2004 resulted in the firing of 184 workers (Christman 2004). Additionally, LiveNation, with all of its growth (i.e., acquisitions), laid off 300 employees, and Clear Channel contributed an additional 200 for the same reasons in 2005. These are just some examples of results of mergers that have no correlation to piracy.
- b. Globalization: One perennial problem with layoffs in the United States is the effect offshoring manufacturing jobs has on American workers. During the period that parallels the rise of online file-sharing, there was also an unprecedented shift in manufacturing to the Global South. CD pressing plants closed down in the United States and opened in China, for instance. This resulted in thousands of jobs lost in the music industry over the past two decades in the US. This is to say nothing of the result of new manufacturing machines in these CD pressing plants that displaced workers.
- c. iTunes (and other digital services): People began buying/streaming more “legitimate” music online than they purchased at brick-and-mortar retailers. As a result, there were fewer CDs manufactured. With fewer CDs manufactured, there were fewer workers doing the manufacturing. Again, this has nothing to do with piracy but rather the logic of capitalism (i.e., increase profits by eliminating workers).

These are just some of the issues with trying to calculate the impact of “piracy” on employment in the recording industry. Yet the main problem is that Siweck never answers the question: why are these layoffs a result of piracy? Or, how do we know that these layoffs are a result of piracy? An interesting point about this being listed as an “Independent Report” is that the data itself came from the MPAA, the RIAA, and other copyright industry trade associations because Siweck used industry-provided data to calculate revenue.

Unfortunately, the news media and think tanks were not alone in constructing folk devils to leverage the piracy panic narrative; academics helped to construct the narrative, too. For example, two essays in the *Journal of Business Ethics* attempt to identify the characteristics of these digital pirates based on their responses to other ethical questions. In “Illegal Downloading, Ethical Concern, and Illegal Behavior,” the authors conducted a survey that asked a series of questions to determine the ethical compass of the participants (Robertson et al. 2012). Among the activities that the researchers asked participants to rank<sup>7</sup> were “drinking a can of soda in a store without paying for it,” “returning damaged goods when the damage was your fault,” “getting too much change and not saying anything,” and “burning a CD rather than buying it;” then participants were asked to say how often they participate in particular activities such as “used marijuana,” “shoplifted,” “not worn a seatbelt,” “driven 20km/h + over the speed limit” (Robertson et al. 2012:224–25). Finally, participants in Robertson et al.’s study were asked about their downloading habits. Unsurprisingly, Robertson et al. found that people who

<sup>7</sup> The survey participants were asked to rank statements on a five point scale. 1 means that they “strongly believe it IS wrong” and 5 means that they “Strongly believe that it is NOT wrong”

“illegally” download music are more likely to participate in other illegal behaviors, and yet 74% of survey respondents admitted to “illegally” downloading music. This survey and the subsequent study construct folk devils out of music downloaders by making them sound as though they spend most of their free time breaking the law; this is mistaken because 74% of respondents are lawbreakers. An earlier study published in the *Journal of Business Ethics* came to similar conclusions after measuring how ethically an individual responds to a series of questions (Al-Rafee and Cronan 2006). These studies helped to construct what a pirate looked like and how ethical they were in other situations by first constructing the act of downloading music as a deviant behavior.

## Conclusion

The effect of the piracy panic narrative was not only that the general public believed that file-sharing was a deviant/unethical behavior but also that the recording industry was successful at using that narrative to change the law in the United States. While public apprehension has slowed legislation like the Stop Online Piracy Act (SOPA), the US courts, by and large, interpreted file-sharing (at least in its uploading variant) as a crime. Additionally, the Digital Millennium Copyright Act (DMCA) was interpreted in a way that forces Internet Service Providers (ISPs) to block RIAA-identified file-sharers. At this time, there is a green paper circulating in Washington, D.C., which marks the beginning of the process of “updating” copyright law (IPTF 2013). The Department of Commerce’s Internet Policy Task Force (IPTF) describes its goal as “to ensure that the Internet remains both an engine of creativity and innovation and an environment where copyrighted works are adequately protected against piracy” (IPTF 2013). The contradiction in this language is that even if “piracy” is defined as unauthorized reproduction for commercial purposes, the express goal of creating new legislation cannot be to protect against illegal activity because if the activity (i.e., file-sharing) is illegal, then there would be no need for a new law.

As a result of the piracy panic narrative, the recording industry used its hegemonic position within the broader music industry to assert its power in digital consumption and production. Public confusion based on industry discontent created a situation where the public believed that file-sharing was immoral and illegal. Since this moral panic about piracy asserted that file-sharing is illegitimate, there was widespread support to write laws that made file-sharing illegal. There would have been minimal impetus for the state to legislate on file-sharing without the moral outrage of the public. With the moral panic, the recording industry encouraged policy changes that changed music listening practices for the foreseeable future. The effects of the new policies pushed by the recording industry are now beginning to change music. In essence, the result of file-sharing was not that pirates killed music but rather that the industry itself used the piracy panic narrative to kill music by creating legislation that maintains the major record labels’ hegemonic position in the broader recording industry.

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