

Not Napster for Science

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If the past is any guide, it will be hard to argue for open access in a month when P2P music swapping is a hot story in the news. Academics and journalists who haven't encountered the idea of open access to peer-reviewed journal articles and their preprints—just the people who need to hear the argument—find it too easy to assimilate this unfamiliar idea to the more familiar one. “Napster for science” is the inevitable, false, and damaging result.

This is such a month. The Recording Industry Association of American (RIAA) sued 261 music swappers on September 8, hoping to scare and deter tens of millions of co-swappers. The lawsuits have greatly intensified the public debate on file sharing and copyright. In fact, the discussion is now broader and deeper, touching on what universities should do, what parents should do, what music lovers should do, what musicians should do, what music companies should do, what courts should do, and what legislators should do.

So this is a good time to say, once more, in public, with emphasis, that open access to peer-reviewed research articles and their preprints is fundamentally different from free online access to music files, despite one obvious similarity.

What makes music swapping interesting is that most musicians don't consent to it and most file swappers don't seem to care. But I don't want to talk about that, really, except as a contrast to the situation with journal articles. Scientists and scholars do consent to publish their journal articles without payment. This has been the rule in science and scholarship since 1665 when the first science journals were launched in London and Paris. Scholarly monographs and textbooks are different, because authors can hope for royalties. For the same reason, most music, film, and software are different. But journal articles are special. Music companies and music lovers would call them peculiar.

The fact that scholars eagerly submit articles to journals that don't pay for them, even journals that demand that authors sign away their copyright, is probably the best-kept secret about academic publishing among non-academics. It's the fact that simultaneously explains the beauty of open access and the mistake of "Napster for science."

This peculiarity of journal articles should draw some of the public attention generated by music swapping. Defenders and critics of music swapping should both hear this intelligence and say, "Really? Scholars do all that work researching and writing, and then give it away to some journal? Either you're lying or free online access to journal articles is completely different from free online access to music." But instead, we tend to hear the opposite. Most people disregard this difference as trifling or technical and equate consensual open access with unconsensual Napsterism.

If "Napster for science" communicates the basic free-of-price idea to a larger public, then isn't it a useful phrase? The answer is No! It's true that music swapping is about free online access to content. That's the important similarity. But it's equally about an army of content creators who resist free online access. It may be about freedom, but it's also about copyright infringement. Careful writers, with careful readers, could successfully compare open access with the first feature of Napsterism and contrast it with the second. But why bother? It's much more effective to define open access in its own right than to yoke it to the better-known but different concept and then try to undo the confusion that results.

Copyrighted scholarship does not face the same mass infringement that copyrighted music does. And yet, like copyrighted music, most copyrighted scholarship is locked away behind economic, legal, and technical barriers. You might think it's ripe for a real Napster attack. But nobody advocates this, least of all the open-access movement. Open access proponents know that the peculiar legal standing of journal articles makes free online access possible without infringement. The simple, sufficient reason is consent. When authors and copyright holders consent to open access, there is no infringement.

With sex, we have no trouble seeing that consent is critical. Sex with the consenting is one of life's great goods. Sex with the unconsenting is a crime. If the public could see this fundamental distinction behind forms of online access and file swapping, then open-access proponents could welcome the comparison to Napster. It would show open access in the best light. "You know that kind of free online access to music that makes most musicians and all studios hopping mad? How cool would it be if they consented to it? Imagine that. That's open access."

Open access is free access by and for the willing. There is no vigilante open access, no infringing, expropriating, or piratical open access.

Of course I'm not saying that all journals consent to open access. Most don't. I'm saying that academic authors consent to write and publish their research

articles without payment. The consent to relinquish payment is directly connected to the consent to open access. Musicians would either lose revenue from open access or fear that they would. That's why most don't consent to it. But because scholars have already relinquished income from articles, they have nothing to lose and everything to gain from open access.

We can go further. Scholars don't just consent to relinquish payment and copyright. They are eager to publish—at least journal articles—even on these harsh terms. Nothing shows more clearly that they write journal articles for impact or influence, not revenue. Their interest lies in making a contribution to knowledge, partly for its own sake and partly because advancing knowledge will advance their careers. This explains why open access serves their interests, and why limiting access to paying customers (the traditional model in scholarly publishing and the RIAA model for music) would violate their interests.

Music swapping was practiced in the age of vinyl, but it took digital music and the internet to make it widespread. It's widespread now because something unexpectedly good happened, not because some creeping criminal malice overtook tens of millions of people. We graduated from the age of vinyl in two stages, first by recording music in bits, and then by creating a worldwide network of bit-swapping machines. This was revolutionary progress from every point of view. Now that we can make perfect copies and distribute them at virtually no cost to a worldwide audience, we should find ways to seize this beautiful opportunity, make it lawful, and enjoy the new access to information that it makes possible.

The RIAA and commercial journal publishers both have reason to fear that the internet will make them unnecessary. They both respond to this fear by making their products harder to use, less accessible, and more expensive, which is surely perverse. The RIAA has now gone even further, trying to intimidate users and make them afraid to take advantage of the power of the internet. If it wins, then digital technology will be like sex in the Victorian age. Virtue will be construed as resistance to all the beautiful temptations. This will chill advances even to the consenting.

I know that some fraction of music swapping carries the artist's consent and encouragement. These artists consent to free downloads because for them (as Tim O'Reilly put it in another context) invisibility is worse than infringement. So while most musicians fear losing revenue from open access, some don't. While most don't consent to it, some do. This fact upsets the digital Puritanism of the RIAA and blurs the moral lines it has tried to draw for music swapping.

It may be that open access to music will increase net sales, and that most musicians below the top ranks of superstardom will profit from it. I'm in no position to say. But it is clear that the RIAA is engaged in self-serving oversimplifications about both the economic interests of musicians and the truth about copyright. The comparison to open access helps us draw at least one lesson: copying digital files is not theft.

It's only unlawful when the files are copyrighted and when the copyright holder refuses consent. But many files are in the public domain, and many carry the copyright holder's consent to free or open access. This is true for growing bodies of both music and scholarship. This is more than lawful; it's wonderful.

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Postscript

In my view, Phase One of the open-access movement is to secure open access to journal articles and their preprints. They're the easiest case or low-hanging fruit because their authors already consent to write and publish them without payment.

However, we should imagine a Phase Two in which we persuade authors and artists who do not currently consent to reconsider. Ripe for persuasion are authors of scholarly monographs, who rarely earn royalties and, even when they do, would benefit far more from the wide audience than the meager checks. Also in this category are programmers who might shift from priced to open source code. Novelists might be persuaded by the experience of the Baen Free Library that the free online availability of the full-text stimulates more sales than it kills. Finally, it might include musicians who decide, with Janis Ian, that free access, wide recognition, and good will generate more sales than high-priced invisibility.

We can also imagine a Phase Three in which we enlarge and protect the public domain by rolling back copyright extensions, establishing the first-sale doctrine for digital content, restoring fair-use rights denied by DRM, and letting federal copyright law preempt state contract or licensing law. While all these steps would be advances for the free flow of information, copyright reform is unnecessary for open access. All we need is consent. All we need for the bulk of science and scholarship is Phase One. All we need for music is Phase Two.

If all we need is consent, and our idea is a worthy one, then all we need is a chance to spread the word about it. We should be able to bootstrap this good idea into reality by explaining, educating, and persuading. Spread the word. (How cool is that?)

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