Chapter 1
A Promising Model for the Music Business

1.1 The Popular Liberation Movement in Music

1.1.1 Pros and Cons of Liberated Music

In 1999, when Shawn Fanning created Napster,¹ there was a whiff of revolution in the music sector. Exchanging music files over the Internet became much easier.² Purchasers found they could buy at one-fifth of the price of buying CDs in a shop. The Rio player, which accepted compressed music, had been invented and meant you could do without discs altogether. Young people were quick to take advantage. Seventy-five per cent of the price of a sound recording on disc may consist of distribution costs.³ When, with the coming of the Internet, Napster, and the MP3-format, popular to this day, that became avoidable, it seemed clear that the expensive discs would be uncompetitive, and that either sales would fall or their price would drop.

It seemed that the leading music companies, the ‘major labels’,⁴ which at that moment had almost totally taken over the music industry, were facing an inevitable price meltdown. Their business, which included expensive techniques of promotion and trade, would react negatively to a narrowing of the market and the appearance of alternative distribution channels. Legal manufacturers had already been suffering losses from clandestinely copied discs which sold at one-third to one-fifth of the

¹Eighteen-year old Shawn Fanning created the Napster programme after friends complained it was difficult to search for music and download it on the Internet. From July 1999, Napster offered a facility for exchanging music files in MP3-format user-to-user rather than via a central server. The server merely made it possible to search for music on the computers of other users connected to the Internet. For further details see Appendix 1, Sect. A1.9.2. Media Metrix reports that in July 1999, digital music had 4 million listeners in the USA; less than one year previously, there had been only a few hundred thousand. Some of the recordings circulating free of charge in the Napster network were protected by copyright. Napster ran into trouble 5 months later when, on 7 December 1999, the Recording Industry Association of America sued it for “direct and indirect infringement of copyright”.

²It was possible to exchange music files over the Internet prior to this, but peer-to-peer networks made it a good deal simpler.

³See Appendix 1, Sect. A1.6.

⁴At that time there were 5 major labels: Warner Music, EMI Group, Universal Music Group (UMG), Bertelsmann Music Group (BMG) and Sony. On 19 July 2004, the European Commission gave approval for the merging of Sony Music and BMG, which was part of the Bertelsmann AG group. One week later, the merger was sanctioned also by the US Federal Trade Commission for ensures compliance with antitrust legislation. Today there are 4 major labels: Warner Music, EMI Group, Universal Music Group (UMG) and Sony BMG.

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price of branded discs. Despite the extensiveness of counterfeiting, it had proved possible to restrict it to less prosperous territories and contain it through ordinary methods of policing. A much greater threat was posed by music freely spread over the Internet by consumers themselves.

Although the Internet is not by any means accessible to all music lovers, you do not need to download digital music yourself. It only takes one person to copy music on to a CD, costing less than $1, for it there and then to become available to the many. It was universally predicted that the leaking of music through the Net would bring down prices. Nobody doubted this. The only question was what was going to happen to the majors. It seemed they would either have to transform themselves, or face ruin. None of the experts imagined that not only would the main players not lose their dominant position, but they would manage to keep the price of music at almost its old level. Legal CDs cost $13–20 retail back then, and so they do today. A single track costs just over $1, which is close to the price of the same musical composition legally acquired over the Internet. The changeover took place smoothly, and was controlled by the hegemons of music themselves.

How did the major labels do it? Their opponents seemed to be holding all the trumps by offering a highly convenient service for the transfer of music files. On their side they had the ubiquitous availability of high-speed Internet, increasingly pro-active users, new technologies for digitising and compressing music, and the convenience of searching online. All these things together made it a good 10 times faster to find and acquire music as against buying discs in a shop. There was, in any case, a widespread belief on the part of the public that the $15 price of a legal CD included a massive profit taken by the majors. If pirated discs could be sold at, say, $3, and one-tenth of that was the cost of the blank, it seemed plain that legal media could not decently cost more than $8–10, and anything over that was profiteering. Music lovers also did not take kindly to the padding out of albums, which seemed parsimoniously to include only one and a half hits, while the rest was ballast put in to justify the price.

This aroused a sense of rebelliousness against the dominance of the major labels, and the Internet community set about exchanging music with abandon, totally ignoring the rights of its creators and proprietors. This was very much in line with the ideology of the Internet community, which regarded copyright as a relic of the past. The Internet was a land where communication was free and unregulated from outside; it had been won from the tawdry world of business practice, and a majority of its adepts believed that it should in principle be protected from the baneful regulations of the private sector. In their view this was just something the offline world would have to come to terms with.

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5On the scale of piracy, see Appendix 1, Sect. A1.8.1.
6From 2004 the price began to fall slightly. See Appendix 1, Paragraphs A1.5.2.1 and A1.5.2.2.
7This is not the case, but consumers may believe it is.
8In the course of a survey carried out by the Pew Research Center March–May 2003, 79 per cent of US users who downloaded music replied that they did not pay for it, and roughly two-thirds gave no thought to the matter of copyright.