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The New Distribution Oligopoly:

Beats, iTunes, and Digital Music Distribution

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Digital music distribution changed everything, and yet it changed nothing. Stoking the techno-utopian vision of the Internet in the late 1990s, Napster signaled the promise of a decentralized music distribution system that eclipsed the authoritarian stronghold of the major record labels' distributors. People thought that by exchanging music as bits and bytes, the recording industry oligopoly would be overthrown as musicians gained the capacity to distribute music to fans directly, part of what Tom McCourt and Patrick Burkart term the "internet nirvana theory."[1] The Internet brought the possibility of a robust music commons where everyone has access to all music; a commons which could be used to create new culture.[2] But the Digital Millennium Copyright Act (DMCA) was signed into law in 1998 restricting the free flow of digital information using Digital Rights Management (DRM) before Napster was even developed. Where major record labels always controlled distribution under physical media regimes, the DMCA, along with repressive surveillance of peer-2-peer (P2P) file sharing networks,[3] has allowed the major labels to reestablish their dominance in the digital era.

As Nicholas Garnham[4] substantiates in relation to the film industry, the availability of media content is severely limited by distribution networks. While reproducing media content is cheap, access to distribution networks is restricted and expensive. The scope and expense of extensive distribution networks, Garnham contends, helps to construct oligopolies for media corporations and allows them to wield power over the content distributed on these networks. In the recording industry, small record labels and independent artists have had a difficult time getting their albums to record stores and retailers across the United States, but major record labels have developed the networks, relationships, and infrastructure to distribute their artists in a near-universal manner.[5] The Internet was supposed to disturb the major labels' stronghold on distribution by placing the capacity to distribute music online in a decentered manner that liberates musicians from labels. Disintermediation—the elimination of intermediaries in the distribution chain—would eliminate the need for distributors. What happened to the capabilities of the Internet to bypass major record labels' distributors? How does distribution work through digital networks? In what ways have major record labels reasserted their dominance through digital distribution?

In this essay, I contend that major record labels have reestablished their dominance by directing music listeners (i.e. consumers) to a limited number of websites. Control of the means of distribution for music in the digital era arrived in two forms so far. First, distribution became highly concentrated as iTunes became the largest music retailer, ever. Second, as increased speed and capacity of Internet and Communication Technologies (ICTs) have developed the ability to stream music anywhere, streaming music and subscription services are quickly becoming the new dominant forms of music distribution, exemplified by Beats Music. As the role of intermediaries change with the online distribution of music, major record label artists continue to have a distribution advantage over independent musicians; the development of streaming and subscription services has only increased this distribution gap.

iTunes

Virulent resistance was the major record labels' public stance toward Internet music distribution as they attempted to shut down every service that people developed. From the shuttering of MP3.com, a music retail store that only sold authorized independent music, and the closing of Napster to the draconian lawsuits against individual file-sharers that began in 2003. While the recording industry worked feverishly to close all digital distribution models that did not advance its preferred business model, it worked in the background to develop "legitimate"[6] music retail websites.[7] In Steve Knopper's account of talks between label executives and Steve Jobs, Knopper contends that Apple forced the major labels into the digital era.[8]

Disintermediation appeared to be the enemy of the recording industry, but in actuality, major labels were developing systems through which they could retain tighter control of the distribution system.[9] The timing of the lawsuits against individual file-sharers is illustrative of the major labels' overall strategy. After the iTunes Store launched in April 2003, the RIAA began issue warnings about the imminence of lawsuits in June, and those lawsuits against P2P users began in September of 2003. The International Federation of Phonographic Industries (IFPI) explains that "lawsuits against individual file-sharers have changed attitudes, begun to reduce file-sharing in some countries, and stimulated legitimate services."[10] Furthermore, the IFPI states that "it was in 2003 that legitimate online services really took-off in the US. This was driven initially by the success of Apple's iTunes Music Store."[11] With the development of an online retailer that major labels perceived as "legitimate,"[12] there was a concerted effort to force file-sharers into the mold of productive (i.e. consumptive) music listeners.

iTunes, Apple's online music store, works as the perfect vehicle for recording industry distribution. It provides a hyper-concentrated distribution network that the industry has dreamed of since it began working with larger retailers from Sam Goody, Tower Records and Virgin Records to the big box stores (e.g. Best Buy, Walmart and Target). With large retailers, labels could interface with a music buyer for a particular retailer who in turn makes purchasing and stocking decisions for the retailer nation-wide. This is a dramatic change over developing the infrastructure to interact with mom-and-pop record store retailers across the country. Fulfilling orders to every record store in every town across the United States was a logistical challenge and created a massive barrier for independent artists to distribute their music.[13] As Kembrew McLeod identifies "the major label system dominated the music industry because it owned the means of production and distribution."[14] The promise of the Internet was that this barrier could be overcome. For instance, after forecasting the "death of the major record labels," Matthew David claims that the "gatekeeper function" of distribution networks is in decline and undermines the labels' oligopoly.[15] David projects that the record labels are worse off today because of the digital transformation and he goes as far as to claim that the late 1990s were the "golden age for the recording industry."[16] McLeod fosters this position as well by claiming that "these technological changes do threaten to help break the music monopoly that has existed for a century, something that, at the very least, will increase the diversity of music available to music fans"[17]; however, according to my research, the industry appears to be stronger financially today than before as a result of their expansion of the means of consumption and control over distribution.[18] In place of the geographic barrier, the recording industry constructed the wall that is iTunes.[19] iTunes is now the "Walmart" of digital music retail[20] and it stands as the largest music retailer ever.

Yet, what I am arguing stands against the conventional wisdom. Distribution to mom-and-pop record stores was impossible on a large scale for independent artists. On the other hand, iTunes ostensibly allows independent artists to post their music online. However, the only way for an independent artist to post music to iTunes is through a third party that acts as a distributor. The most popular distributor has been CD Baby, which acts as both an online store and digital distributor for independent musicians.

However, CD Baby charges $35 to join, takes 9% of all music sales, and $4 for every album sold.[21] This is similar to what can be expected from any retailer, but when the music is sold through iTunes, for instance, these fees are in addition to those charged by the retailer. On the other hand, recording artists signed to major labels do not have these additional fees. Mom-and-pop record stores always allowed local artists to have shelf space in their stores at no added fee, so this is a new inequity. In effect, CD Baby is a new form of intermediary in the digital era.

But the problem with the digital music distribution system is not only that CD Baby charges a fee. If that were the only problem with iTunes, I would call it moderately successful at providing a platform for independent musicians. Rather, iTunes is also problematic because it places major record label content front-and-center. iTunes works actively with major record labels to feature their artists. *Billboard* magazine reports that home-page placement on iTunes is the fifth best platform for selling music behind performances on the Super Bowl, Grammy Awards, or "Saturday Night Live," or a commercial during a major TV event.[22] In order to get this coveted position, musicians must be "backed by a comprehensive, compelling plan" which is put in place by a major record label.[23] Labels have close and consistent contact with the people who manage iTunes' home page and it is virtually impossible for an independent artist to make the home page. As a result, label supported artists maintain an oversized advantage over independent artists in accessing consumers despite the fact that digital distribution does away with extensive distribution networks.

Beats Music

As I write this, the era of digital downloads from iTunes is quickly fading. "A decade after the launch of iTunes," a *Billboard* article announces, "the download is being replaced by a laundry list of online alternatives."[24] According to Nielsen SoundScan, "track sales declined 12.5 percent to 1.1 billion and are down 17.5 percent from the high of 1.34 billion in 2012."[25] Streaming and subscription services are quickly becoming the main site of music consumption. Advertisement supported streaming services and subscription services provide music fans seemingly infinite access to music libraries. Through services such as CD Baby, independent musicians appear to be given the opportunity to compete on equal ground with major label recording artists, but again the hope does not materialize; rather the apparatuses of distribution place independent musicians at a greater disadvantage. The temptation of what seems free (whether through ads or subscriptions) has now supplanted what used to be free as music fans shift from file sharing to streaming. Major record labels have tightened the Big Three major record labels' oligopoly (Warner, Universal, and Sony) through this shift. While still a new service, Beats Music exemplifies the oligopolistic aims of subscription services.

The opportunity to stream nearly unlimited music through the Internet presents a new endless source of consumption for major record labels. Subscription services increase the amount that consumers spend on music. "The average consumer spends about $40 per year on recorded music. If the average consumer signs up for a streaming service, he or she will spend as much as $120 per year."[26] Record labels see this not only as a 200% increase in the amount that consumers spend, but they also suspect that consumers will continue to purchase at least part of that $40 per year on recorded music. "Unlike one-time sales, subscriptions generate steady cash flow and provide a convenient benchmark by which to measure growth,"[27] which leads to the sustained consumption of this service. Beats Music is a subscription music service that functions by permitting subscribers to access its service for a fee. A single subscriber can pay $9.99/month or $99/year to access Beats Music on up to three devices. AT&T customers can subscribe as a family of up to five members on up to 10 devices for $14.99/month or as an individual at the same rate as if they subscribed through Beats Music directly. Beats Music can expand consumption while simultaneously limiting access to circulation.

Subscription services effectively change the political economy of the recording industry. Tom McCourt and Patrick Burkart foresaw this shift in 2003 as they wrote that "distributors will gain a huge new revenue stream, eliminating material costs, overheads and geographic boundaries while creating opportunities for subscription and licensing systems that require perpetual repurchase of their goods and services."[28] As the amount that people spend on music increases, the actual cost of the commodity decreases because of disintermediation. Since people are not purchasing CDs, LPs or tape cassettes at retail stores, a number of costs are eliminated. By far the most noticeable is a negligible cost for the delivery of each song on a subscription service whereas a CD costs $1-2 for the packaging and an additional dollar for distribution.[29] While digital music still has some distribution costs in the form of servers and the people who work at the servers and online retail, the elimination of physical intermediaries decreases the cost to sell music. Whereas digital downloads still constitute a commodity, consumption through streaming and subscriptions are ephemeral services that one pays for no matter how much music one consumes.

While Beats Music has not had the success in the number of subscribers as many predicted,[30] the service was interesting enough for Apple to purchase for $3 billion.[31] This purchase signals the strength of online subscription services. Apple recognizes that the business of music distribution is moving from digital purchases to online streaming, and Apple has ceded market share to Spotify without having a competing service. While iTunes Radio increased the streaming market share for Apple,[32] its main competitor is Pandora[34] and radio actually helps promote sales.[33] People want to have access to a large catalog of music on their phones and computers. By purchasing Beats Music, Apple acquired a music subscription streaming service that can rival Spotify. It points to the desire by Apple to begin thinking about the next transformation of the recording industry.

However, it is important to note that subscription services do not give unlimited access to independent music. First, an independent artist must use a service, such as CD Baby, to have their music supported by Beats Music and other subscription services. Second, the curators in Beats Music create playlists of major label artists, so again, there is little to no room for independent music in subscription services. Finally, artists receive payment for their music streams based on the total number of streams.[35] For Katy Perry or Taylor Swift, this is a substantial pay-out, but for independent artists who receive 120 streams,[36] they get the equivalent of one digital track sale on iTunes. While the promise of the Internet was to establish a level playing field for all music, the reality has been the reinforcement of the major record labels through digital platforms. Disintermediation destroyed physical boundaries while constructing new barriers that stop music from entering the musical commons.

Notes

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