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Available at: http://digitalcommons.law.villanova.edu/mslj/vol9/iss1/5

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Symposium Discussion

DISCUSSION ON THE RECORD INDUSTRY'S PERSPECTIVE

By

KEVON GUCKMAN* AND BERNARD RESNICK**

Resnick: I went right here actually, I never dreamed when I was in... Professor Sirico's Property Class... right over here, Professor Lloyd's Trademark Class that in the dim and distant past all those years ago, I never dreamed that I'd be here addressing 200 people who need credits so badly that they're willing to read the newspaper on Saturday morning. For those of you who are just here for the credits - you can sleep through this, don't mind me. You know we'll just keep doing our thing up here. And for those of you who have an interest, maybe we can help you out a little bit. This is my little MP3 player machine here in my hands, and I'm going to play you a song that is a group that I represent. It's signed to Kevon's label. Alright it's a rap group called Major Figures, they're on Ruff Nation Warner Brothers Records... and here's the interesting thing - this is from Napster. Ok? This is their single that sold over 125,000 copies. It maybe should have sold about 400,000 copies, but because of Napster... somebody like me or you can go out and get this stuff for free and download it onto your computer, your CD player, your MP3 machine... call it what you wish. I think that's fascinating technology. I'm not necessary against Napster, I think their site's, you know, problem content to it, and we'll get into that in a little bit. I think that its very, very important to understand how brilliant Shawn Fanning is, and how his system managed to not only incorporate varied and different parts of computer technology such as instant messaging, peer-to-peer file sharing center, but also managed to completely avoid the

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establishment of a recording industry which is something that only a brilliant nineteen year-old would want to do and be able to pull off. For those of you who heard a little bit about Shawn earlier in the discussion today, I think the part that you probably didn’t hear . . . the end of it . . . was that he dropped out of college and bought a black suit and moved to California and became a millionaire, and hopefully he’ll not spend all of his money by the time he’s twenty-two. I think he has a bright future as a programmer, whether or not he has a bright future of running businesses remains to be seen. Basically what I do for a living is I’m an entertainment lawyer, represent people with talent, and Kevon . . . who is my partner for today, is the head of a record company called Ruff Nation Records. And many times he and I will have to go head to head negotiating deals against each other and it can be an adversary relationship, but ultimately once the deal is done, we’re on the same team, and we want the same thing to happen, which is for the artists that I’m representing and he’s promoting and putting out – to succeed. Because when they succeed his company makes money, the artist makes money, maybe they’ll pay their legal bills and I’ll make some money. You know, so ultimately we can and do often work together on this kind of stuff. And as Susan brilliantly highlighted earlier, there’s really four main categories in which the song writer/musician makes money in the record business. Can play gigs, play live concert performances, you’re lucky if you get paid tonight – most bands do not make profits on the road, most tours are not mounted to make a profit they are mounted to promote the sales of recordings. The second way you can make money is you can sell t-shirts and hats and do merchandising and endorsements of products if you’re willing to be a corporate sell-off, it also tends to become short-term income usually associated with the nightly performance. The third and fourth categories are the ones that are really affected by something like the Napster situation – that is sales of recordings, which Susan went through a little bit, and our outline has details of that. As well as, what we call music publishing, which all stems from ownership of the
copyright. Basically, in a record company context, there are multiple different ways that recordings can be sold, that's in the outline, you can all read so take a look at that. And in the music publishing context there's six major subcategories in which music can be offered for sale to the public. I think that rather than go through all of those details, it's more important for Kevon and I to open up broader context of the business model and where this is from the standpoint of the record companies and their ultimate goals and how they ultimately compete with each other and we will also try to answer the question that was raised before and some other issues. So Kevon would you like to say a few things now about the business model itself.

Glickman: I would. First I'd like to say I'm very impressed with the turnout today, and I want to thank the Villanova Law School in . . . (inaudible) professional and the terrific preparation of the other panelists up here. It's very obvious that everybody has done their homework and I think the audience seems really knowledgeable and it seems like everybody has an opinion about Napster. But I want to take it out of the context of . . . you know it's obvious that there's an argument that the record companies are loosing money, and then you can make an argument that it's getting exposure. But I think there's a bigger . . . there's a bigger business picture and even though we might be even somewhat political. So . . . for me, any student of popular culture knows that these new technologies are usually created by entrepreneurs in their garage, whatever, and then they build it up and build it up and the major companies either crush the person or buy them out. And this is to be seen as many, many times with new things. The major labels, of which there are six of them, have been watching this new technology and investing in a bunch of different companies to secure the digital rights management and they've been watching this thing with the idea that sure when somebody comes up with something big enough we're just going to crush or take it over and make it our own, in the meantime they've been sitting out of it. When I started this new company with Warner Brothers a year and a half ago, they didn't have any way to download
music for promotion or for sale. So I said, that I wanted to do it somewhere else . . . there was a little label called A Top of Pop, run by a guy named Al Teller, which has since closed along with many other of these startup internet driven things like Artist Direct. But . . . what Napster has done is . . . is really a John Henry story because this kid has created a brand that is so powerful and so strong that it can’t be killed. So what’s happened is BMG, Bertelsmann’s Music Group, has said, “Well look, we can’t beat you, we’re going to join you,” and they partnered up with him. And the reason why I believe they partnered up with it, was what’s going on with . . . with consolidation all over the world. There used to be more record companies, now there are actually five, and I’m just going to list them for you so you know how it works. Ok you have Sony Entertainment which is in Japan, . . . alright Bernie I’ll name the company you name the country. Alright. EMI – England, UK – and everybody knows that they pride . . . they’ve been on . . . they’re looking for a strategic partner or for sale for several years. You have BMG . . . now that’s the Bertelsmann’s Music Group in Germany who bought what used to be the RCA Record Company . . . they have Clive Davis’s new . . . JM Records, they have distribution deal with Jive . . . they’re a power house. There is Warner Brothers, which is now merged with AOL – those are Kevin’s friends, they’re from America, and even though everyone does flips and twists to get into American blue jeans and to be a part of American pop culture – that’s the only one of the five that’s still owned by American money, really. And then there was Seagrams, the Canadian Liquor Company that bought Universal, and Universal has just merged with a French Media Conglomerate called The Vendia. So what I believe is going on here, is not so much the battle over Napster and all the legal issues that have been framed very well up here, so I’m going to stay away from that . . . what I think is happening on just . . . in a competitive business environment is that . . . there’s a battle over the future networks, whatever you want to call it, you might call it cable, broad band, wireless, whatever it is – you have these five companies that are positioning them-
selves so that they can battle down the line. And... what it's about ultimately it might end up being about ad dollars, because when you took a look at Time Warner and AOL, they make their money in advertising. AOL has a subscription service, but ultimately they want ad dollars. So... by Napster starting a subscription service, or AOL talking about... they haven't raised their subscription services for several years and if they raise it like one dollar next year, it creates like a billion dollars of revenue. Is how to tie these... how these five companies compete on a global level and how can they... who's going to have the strongest brand and who's going to have the access to the advertising dollars, and the people that are going to get the advertising dollars are the sites that are the most heavily visited. And those sites that are going to be most heavily visited are the ones with the strongest brands, and that's why... we can't kill them... Napster can't be killed. But what is happening is, there's no... since its so competitive between the five major labels and now BMG is tied up with Napster, and Time Warner and AOL... it's not like they're just in a rush to sit down and figure out ways to share the income because there's very smart people at all these companies and they could do it if they wanted to, and they will. It will happen, very soon. But... the great thing about the Napster is that it has us talking. It has people talking about the music industry and the music industry is an industry that is absolutely obsessed with growth, you know, then they have the competitive CD's, and we have growth every year. We've got to show more Unisol, and so... rather than taking a position for or against Napster, I've always taken the high road in that — my responsibility is I'm a quote "Content Provider." I make the music. Right? So if I don't make that music... and it's not going to be on Napster or it's not going to be in the stores period — so I've rationalized, well let me just concentrate on the music and let the big guys figure out how to solve and settle it. And I can tell you that... it will get settled, but right now just the fact that it's... it's a really stimulating conflict is definitely good for the music business — I guarantee you it will be sorted out.
Resnick: Alright let me ask you this question, Kevon . . . how can Napster prevent artists under a label or your label from making money – what specifically happens at Napster that cuts into profits at Ruff Nation and Ruff World.

Glickman: Well obviously they can download a song for free, which they might have to . . . pay to digitally download it.

Resnick: The counter argument obviously, from the perspective of those who like the “free music” is . . . well I wouldn’t have heard about that group had I not gone to Napster and now I’m such a fan that I might pay for it to get or I might go to a concert or I might, you know even go . . . God forbid go buy the record for twelve dollars.

Glickman: And that’s all good too.

Resnick: Ok, now. Let me ask you this question. In association with . . .

Glickman: Let’s keep in mind that I give away 10,000 copies of free records every week . . . just in the hopes that somebody might DJ my client.

Resnick: But what you give away is not the entire album, right.

Glickman: Sometimes.

Resnick: Or you give away mostly singles.

Glickman: They can take a single off Napster or . . .

Resnick: And that’s what I wanted to get into, about how Napster isn’t necessarily a bad thing for either a record company or independent artists. You may have heard of the group that I played on the MP3 player and maybe you didn’t. You may have heard of other groups that, you know, aren’t household names and you may not have, and for someone who represents groups on the way up – or who is an independent company starting out with brand new groups – it may not be the worst thing in the world to offer some of the music through a service like Napster, as a sample, just like any sales person . . .

Glickman: Every record company does now through the website.

Resnick: I think the problem now with Napster is not just the . . . that particular sample of the music or sample of the product to be offered – but that the record company has no control over all of the product being offered.
And then someone cannot only . . . I mean I have friends that go onto the Napster site, download every single song from an album, burn them to a CD, make a color copy on their laser printer of the album cover art, and give it to their kid, instead of having to go spend fifteen dollars and if you do that, that means Kevon’s kids aren’t going to go to college right?

Glickman: It’s all very good . . . there’s going to be a subscription service, it’s all going to be figured out how to distribute . . . it’s just . . . what is taking so long, is the record companies like doing business a certain way and they’re not . . . they’re slow to change until they know that it’s going to be able to be somewhat the same way that it was before.

Resnick: Let me ask you one of the tougher questions, though, that people tend to like to ask heads of record company if they can ever get them in a room in the daytime. In terms of what you just said, we’ll all get it together, they’ll eventually work it out, the record companies have their own way of doing things – isn’t this like VHS and Betamax fifteen to twenty years ago, except now there’s five companies that want to each control their own electronic distribution system and that’s why it hasn’t been agreed upon? And in addition to that – another tough question. Isn’t it the fact that . . . that the record companies were actually forced into getting into the electronic distribution business by somebody like Napster? They were dragging their feet for years weren’t they?

Glickman: Not dragging their feet – investing and watch it to see which of these entrepreneurs are going to come up with a system that’s going to work. They all . . . the major labels . . . have multiple investments in a bunch of different developing things, and some prefer different technologies over it. But again, for me, if you want to look down the line and where we’re going with this – it’s not so much whether is this copyright infringement, is this fair use – I believe it’s going to turn out to be control of the . . . what we look at as the future networks, and where are people going to spend their ad dollars . . .
that's... if you want a long-term range from me – that's what it comes down to.

Resnick: Alright, let's talk about the settlement offer now, Kevon. As part of the proceedings that have gone on in the last week, and this is part of what makes it so interesting to do a panel discussion like this, is that everyday we have to change what we're going to talk about, in the past week it [has] been a flurry of facts just back and forth between us to figure out what's the latest news. But in the wake of the settlement offer... a Napster offer, I think it was a billion dollars, $150 million dollars a year... I think its $150 million dollars to each of the five major... $50 million to smaller companies and all that – in light of that settlement offer – the major record companies have been sort of lukewarm in their reception and there [has] been recent articles in last week's BILLBOARD MAGAZINE, and articles in the major music industry conference last month in France, called Medan, talking about how it's not necessarily going to be received very well. Why isn't the record industry so interested in that kind of an offer? Do you have a comment on that?

Glickman: Well I think that they are, but anything that gives BMG, who's the partner of Napster an edge or perceived edge over the other major global conglomerates, they're not going to be in a rush to settle.

Resnick: Given the fact that the five major companies control over seventy percent of all the records sold worldwide – do you think that part of the reason that there is... a lukewarm reaction to the settlement offer is that it just simply isn't enough money compared to the $50 or $100 or $200 billion dollars this business makes?

Glickman: Well I mean the... the settlement is for going forward, not for like the previous infringement, so maybe it isn't enough money, but again, its competition is, Time Warner AOL... going to want to support BMG/Napster which in a few years could be as powerful a site as AOL. You know, basically it's BMG saying what's our response going to be, how are we going to compete with Time Warner, how are we going to compete with Universal Avandi, and I just think this is a long-term range –
why else would it. That’s why BMG went and made them a partner as opposed to trying to close them down like the other companies. They saw . . . you look around when you’re that big and you have anti-trust things, there’s only certain companies that you can merge with and get it through the regulations but still have that same power. So I really think it’s about setting up for the future.

Resnick: So in a sense, what we’re saying, surprisingly is that we’re not necessarily as anti-Napster as one might think – there is some sympathy for Napster and their ilk and you know . . . a Napster and a company like that can be very, very powerful when you have 60 million users and you have an unknown group, it’s not the worst thing in the world to have 60 million potential customers for your group, because if you can sell 5 or 10 or 15,000 downloads maybe a company like Kevon’s might be interested in making a deal with you. I think also that . . . in terms of . . . you know, whether Napster necessarily a copyright infringement you have to analogize that to someone going to the public library, where for the past 200 years people have been able to go, borrow, copyrighted materials without paying for it. Yes, it’s true that you can’t . . . you aren’t supposed to go out and make 100’s of copies and make it available to everybody else, but . . . the argument would obviously be that it has not really cut into sales and put Barnes and Noble out of business . . . and it hasn’t put other major books sellers out of business, in fact there’s a public library, which is publicly funded by the way. I think that’s also something that we have to think about in terms of being a little bit sympathetic to a company that does what Napster does. Now let me take it into an even broader context, and let’s go beyond just the record side of the business, and talk a minute about other types of intellectual property. Most of you may not actually, you know, be in the record business, but what if you’re in the book publishing business, what if you’re in the film business, or the television business, or if you’re in any business which distributes photographs or . . .

Glickman: Now the big thing is . . . needlepoint patterns.
Resnick: Needlepoint patterns, ok. Let's say you're in needlepoint patterns business, ok? What's to stop someone from applying the peer-to-peer file sharing technology to the needlepoint pattern business? Then all of a sudden if you've spent a lot of time developing your particular needlepoint pattern – what happens is that anybody on the web with access to KnitOnePearlTwo.com can go download your pattern, and then you haven't made a sale. And I think that's the really interesting thing . . . I mean broad possibility . . . of something like a Napster is that it enlightens me to how incredibly . . . as viral or dangerous this could be . . . where anything that could be protected, any type of content, if someone just takes that process of computerized file sharing and expands it a little bit. All of a sudden we've got . . . on this machine here I've got books . . . Susan mentioned the ART OF WAR, I've already downloaded that from the Web for free and it's on this machine right here, yes, it's public domain book. I would never dream of downloading something that was not public domain and not paying the content provider for it – nevertheless it's free. Books, photographs, movies, all that kind of stuff are just as easy to download and transfer as music files.