

# Stealing from thieves

 By [Stephen Hollis](#)

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Digital music sales were seen by many as the saviour of the music recording industry after rampant piracy and illegal file sharing in the 1990's threatened to derail one of the most important and versatile industries.



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Between 1999 and 2001, the most prominent peer-to-peer file sharing network of the time, Napster, allowed user access to and the sharing of copyright protected musical works and recordings through their online network. When hard rock giants, Metallica, discovered that one of their unreleased demo tracks found its way to broadcast on radio stations without their knowledge and consent, they conducted investigations and were shocked to find their entire back catalogue of studio material was available for illegal downloading and sharing amongst Napster members, which totalled more than 80 million.

Napster was effectively shut down in 2011 by a US Court order, following copyright infringement actions brought by Metallica, Dr. Dre and some American record companies. Napster was not the only online file sharing operator that infringed copyright in recorded music at the time and the gauntlet was laid down to the music recording industry with a stark warning that, unless urgent action is taken, music piracy and illegal file sharing could threaten to disrupt and even put an end to the global music recording industry as we knew it.

## Industry's response

The most immediate response by the industry was an attempted crackdown on illegal music users. The major recording labels at the time, EMI, Sony, Universal and Warner, instituted copyright infringement actions against thousands of individuals (mainly in the USA) that shared digital music unlawfully, resulting in many landmark court cases.

The industry also developed and adopted so-called Digital Rights Management (DRM) technology that sought to prevent the copying of recorded music by embedding software in digital music files that restricted the manner in which the files could be accessed, copied and shared through different playback devices.

Needless to say, these technical restrictions turned out to be more of an annoyance to the legitimate music owner for whom the seamless delivery of purchased music to various playback devices is an important benefit of owning music in digital form.

In 2007, EMI unexpectedly removed all DRM technology from its music files and two years later, the other three mentioned major record labels followed as independent research showed that EMI's digital music sales increased during that period. Clearly, legitimate music users did not appreciate the restraints placed upon the manner in which they could use purchased music under DRM.

## **Combating piracy**

Record companies realised that the key to combating piracy and illegal file sharing in music may not only be found in courtroom battles, but also in the development of new business models whereby music fans may enjoy the full benefits of accessing purchased music by utilising the latest technology. The launch of iTunes in 2001 provided some of the answers to growing music user trends and changed the manner in which fans bought music.

Through a user-friendly interface, users could listen to and purchase music files that could be seamlessly accessed from and communicated between various devices of the user's choosing. By allowing selective purchasing of individual tracks, music consumer trends changed direction from album-only sales to single track sales.

It took some time for iTunes to be introduced to the African market and this was largely due to delays insofar as the completion of negotiations relating to the regional licensing and sub-licensing of musical content were concerned. iTunes eventually entered the South African marketplace (and that of other African countries) in December 2012. The availability of an easy-to-use, cost effective manner for music fans to access, purchase and stream music via multiple devices, created and secured revenue streams from digital sales for rights holders of music recordings.

## **Decline in digital sales**

According to Nielsen Soundscan, the system mostly relied upon to gather and analyse music sales data, digital music sales saw a decline in 2013 internationally - for the first time since the launch of iTunes. Track sales decreased by 6%, while album sales dropped by about 8%. Interestingly, the revival of vinyl sales showed growth of 33%, although this represents a small piece of the music sales pie. Content streaming services through providers such as YouTube and Spotify increased by a massive 32%, signalling yet another spiking trend amongst music users.

According to Soundscan, the revenue equivalent gained from this music streaming may be estimated at approximately 59 million album sales. Music rights holders have been quite vocal in recent times about the legalities of content streaming, however, and raised concerns that the revenues generated from online streaming services do not reach the artists and/or copyright owners of the music.

Music critics are not too concerned with the slight drop that affected digital music sales in 2013 as they feel that a bit of a drop was perhaps predictable after Adele's mega-hit album, 21, was finally knocked out of the top 10-album charts after two years of dominance in 2011 and 2012. During this time, Adele sold about 11 million copies of that album. In 2013, other artists managed to pick up the 'blockbuster slack'. Justin Timberlake's 'The 20/20 experience' was the best-selling album with 2.4 million copies, followed by Eminem's 'The Marshall Mathers LP2' which sold 1.7 million.

## **Winning back ground**

Despite not having a mega-album hit to rely upon in 2013 to boost record sale figures, we have certainly witnessed (since 2001) that the licensed use and sale of recorded musical works and the smart distribution thereof to the end user by utilising the trending technology of the time, is an effective manner to win back some ground from the land grabbed in the 90s by music pirates.

Iron Maiden's holding company, Iron Maiden LLP, was one of only a handful of music companies that managed to outperform the general music sector according to figures released recently by the London Stock Exchange.

One of the reasons for this was a very successful end-of-2013-tour of South America, culminating in sell-out shows in Brazil where overall tour profits are estimated between 20-30 million USD. The band became aware that their music was increasing in recent years in the South American market where illegal music sharing and piracy is rampant.

This was through their analysis of download and file sharing statistics obtained from websites engaged in clear illegal activities. Instead of 'sending in the lawyers', the band focused extensively on South American tours in recent years. After the conclusion of their recent tour of South America, they boasted to have added five million online fans to their already existing legions.

## **Reputation generated profits**

One of the band members quipped that it was like 'stealing from thieves' when profits were generated on the strength of a reputation which may be attributed, in part, to the thriving practices of piracy and illegal file sharing through which Iron Maiden's music was communicated frequently in the emerging South American economies, including Brazil.

Metallica is an example of a group who may have lost some popularity through their well-publicised court battles with Napster. Some of their fans felt that their approach was fuelled by greed and self-interest, rather than self-preservation.

It will be interesting to see how the music industry adapts to the latest developments in technology and consumer trends in 2014. Through the effective licensing of intellectual property rights and the seamless sale and delivery of musical products to end users, the calm seas of the traditional music pirates may very well have become more hostile and, in some instances, at least, these waters have shown signs of receding.

## **Next immediate threat**

The recording industry may very well owe some gratitude to Apple Inc. and iTunes for paving the way on how to deal with the immediate threat presented by music piracy. While this battle continues, the next most immediate threat may be the manner in which online content streaming is dealt with.

In my view, the key to achieving sustainable success is to ensure that intellectual property rights are well defined and understood by all relevant stake holders (from the backup singers and dancers to the lead performers and their recording labels); that these rights are secured through effective license agreements and their revenue streams are protected through transparent collection systems.

In fact, it may very well be the education of the music end users which could swing the tide in the direction of the music rights holders. There are many true music fans and by supporting artists through paying for the music they want to listen to and by viewing their live performances, they will ensure the long-term success of the artists and the industry as a whole.

## **ABOUT STEPHEN HOLLIS**

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