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COPYRIGHTS, MP3 AND THE NEW RECORDING INDUSTRY IN BRAZIL

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Abstract:

This article discusses the transformation of the recording industry since the 90s caused by MP3, that, in a first look, has been held responsible for the decline in record sales and to have promoted phonographic pirating on a world scale. In this summary, concepts like authorship and copyrights have been reviewed in light of this technology while at the same time discusses its creative potential and capacity to democratize sound production. Particularly, the Brazilian market has been subject of a major transformation for web usage, with other sound productions models, bringing with them discussions about technological appropriation and digital inclusion inside the Brazilian cultural industry. With the new discussions about copyright that may drastically limit the use of the web as a tool for music distribution, it is necessary to reflect on the issues of copyright and to think in new models of distribution and circulation of music. Recent events as SOPA (Stop Online Piracy) and PIPA (Protect Intellectual Property Act), and the arrest of the founder o Megaupload link to a series of developments that will bring a new approach about copyright in the coming year.

During the twentieth century a number of technologies have caused great changes in music creation and in the recording industry. Among the digital technologies that have been applied in the means of sound production since the 80, the mp3 format was certainly the one which caused the greatest impact on musical circulation, the record industry and the copyright policy. Developed in the 80s, its main feature was the capacity to reduce a digital audio file to 1/10 of its size. This solved the problem of the flow of audio files on the web, allowing their exchange over the net, which still worked at very low transfer rates back then. This file exchange was consolidated with the emergence of the first P2P[2] software in the late 90s. Napster, created in 1999, was the catalyst of all the discussions on file exchange over the network.

Working on demand content was one of the main possibilities foreseen to the web in the 90s, a proposal that was quickly adopted by the music market. Companies like Liquid Audio and Cerberus started trading music in a new form: as only sound information that would be transferred directly to the user's computer when purchased, without being attached to any physical supporting material. In nearly a century, it was the first time that music was sold without any paper or plastic support, something which had always characterized the recording industry until the 90s. However, with the emergence of the P2P software, these companies went into rapid decline and disappeared. It is undeniable that the possibility of distributing music without the need of any physical attachment to a support via the mp3 format brought several changes to the mechanisms previously used in the distribution of music and raised a series of questions related to the creation of music itself. The first and obvious one was that the systems for exchanging files over the network caused a fall in the record sales as VOGEL (2011: 250) demonstrated here.... It is important to note that the values and units sold in 2010 were equal to 1975, a period of historical crisis in the recording market.

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2 A Peer-to-Peer net is constituted by computers or any other types of processing units that don't have a fixed role as clients or servers. On the contrary, they are usually regarded as having the same level, and play the roles of either client or server depending on the transaction being started or received from another peer in the same net.

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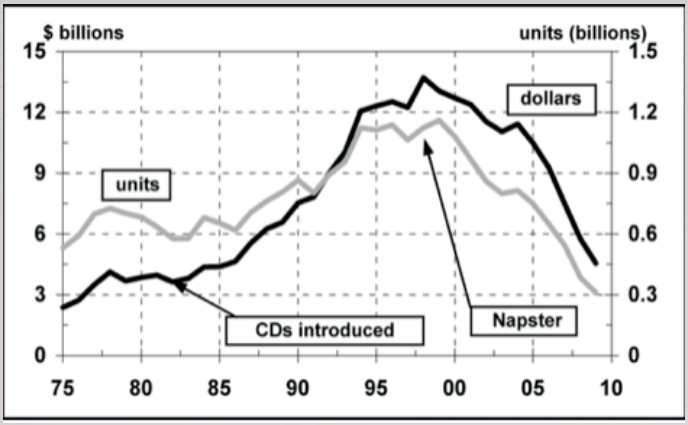

The decrease in sales was only one of the first shocks. The second, and even greater one, was the possibility of distributing musical material on the network without copyright fees. This brought piracy to the fore, since the copyright principle is a major supporting factor in the music and audiovisual industries.

The first patent law was created in 1474 in the city of Venice. Since the emergence of Guttemberg's press, copyright and authorship protection had become new concerns, producing specific copyright legislation in England in 1709 (BURKE, 2003:147). Until the late nineteenth century the question referred only to printed works and publishers; but the twentieth century presented us a dilemma: the infinite duplication of sound, visual and audiovisual works to the public, through industrial and display processes brought by technology. All material produced can generate copyright fees due to its public reproduction. In the Brazilian market, traditionally problematic vis-à-vis this issue, the consolidated data of 2012 showed to the public the amount of 612 million reais collected by ECAD, the Central Bureau for Copyright Collection. This sum is divided as demonstrated here….. In the same year, Brazil sold about R$ 400 million reais in recordings (digital or physical), less than the money collected by copyright. This proves the importance of copyrights directly linked to the work and the artist in the music industry. With the advent of technology for music distribution via web, it has been speculated that the artists could manage this funding source and get rid of the production models of the music industry. Not only the mp3, but also all the digital technologies that emerged from the 90s onwards were concentrated on the processes of sound recording and allowed music to be produced outside large corporate structures.

With all the digital technologies involved in the creation and recording processes, the musician starts, in the first place, to be able to control all the stages that comprise the process of recording and distributing music, from the home studio to the web in a Marxist perspective. This scenario in the late 90s seemed to point to many downloading sites full of works that were marginal to the music industry, breaking the monopoly of the big recording labels and their determinants all over the globe once and for all. However, what happened was quite the opposite: the web was full of legally protected commercial phonogram files. This resulted in a violent arm-wrestling between the labels and the P2P exchange systems, and the losers so far have been both exchange programs and a few users who were sued and in most cases, eventually condemned worldwide. However, these attitudes did not work much, since the number of illegal downloads only continued to grow. Some data released by the RIAA (Recording Industry Association of America) in 2009 pointed to 40 billion tracks shared over the web without the collection of copyrights.

Music sales on the Internet have nearly doubled from 2006 to the present day. In 2006, legal downloads earned revenues of $ 2 billion, according to reports from the recording industry. The 2007 Digital Music Report of the International Federation of the Phonographic Industry (IFPI - International Federation of the Phonographic Industry), affirms that consumers downloaded 800 million tracks in 2006 – a 90% increase compared to 2005 - almost 500 legalized music services on the Internet in 40 countries. The number of tracks available for downloading doubled and reaches more than four millions in the most famous services. In the latest data released by the IFPI, online music sales represented 32% of the labels, circulating U.S. $ 5.2 billion. This demonstrates the importance of downloading in the production chain of the Phonographic Industry, a growth of almost 500% in five years- equivalent to 3.6 billion songs sold. One example that clearly shows all this discussion and its results in the market of on-line sales is that in the beginning of this year, the oldest service of pay-downloads in the world, the I-TUNES, celebrated 25 billion songs sales since 2003. It is important to highlight that in I-TUNES each song costs an average of $1, a price which is very close to a CD track, with an inferior sound quality once it offers its material in the MP3 format (PAIVA, 2006:92). But it seems this has never affected the success of this service. It reveals that the portability and practicality of the downloading systems, invented to work in mobile devices like Apple's I-Pod, the first big sales success of this type, became fundamental elements to the public, who made them the standard reproducers of music nowadays.

Interestingly, when speaking of music on the Internet, everything has to be considered in relation to

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global consumption, because the mp3 is above all the first completely globalized form of music distribution operating in the virtual sphere, without any physical support. In the virtual world, access to information is instantaneous, and any listener can access a song no matter where he is without any limitation. This enabled the experience of music dissemination at speeds that were unthinkable till then. As NEGROPONTE wrote (1995:55), "bits do not get stuck in Customs."

In addition to the issues surrounding music, there are other questions about copyright which are directly connected to the universe of the creative process. Software development made it possible for the musician to work with the events and complete audio loops of other songs, instead of working on each note while composing, something that had begun in the experience of world music in the 80s with the samplers in popular music. This kind of thing is affordable nowadays, as technology and samples became more and more popular even to non-musicians, as they get to know how to properly handle the audio editing softwares. Today, the MP3 provides the web with millions of anonymous samples that end up by being used again by millions of other creators. These samples will not often be fixed in any support: they will exist only until the last time they are deleted, leaving no trace and no clear sign of who the author is. This procedure contradicts more than one hundred years of music recorded in any kind of material support. In the age of ephemera, when there is neither the support of the recorded music nor the support of the musical score, music is no longer preserved and with this, many of the aesthetic paradigms should be rethought. But, what really shows us a major disruption in terms of authorship is the fact that in the digital world no one can specify where exactly the original and the copy are, since digital information is represented by numeric codes and copies will always have the same technical quality of the original. And of course, the impossibility of differentiating a copy from its original not only raises ethical issues of authorship, but also causes a number of problems in the collection of copyright.

An emblematic case in this area, is related to pianist Joyce Hatto, and the series of posthumous recordings produced by her husband, many of them awarded by the most important journals in the area of classical music. Everything was a fraud. Joyce's husband had used recordings of other artists and kept them under her name, bringing up a series of questions about authorship and copyright in the digital universe. If a work cannot be ascribed to an author with certainty, there are no copyrights to be collected from its use. Nevertheless, if a musician composes a song using a series of anonymous loops, and records them as if they were his own, he has the rights over this composition. And to make things even worse, if someone simply uses a recording from another artist, as the case cited above, the person who actually only copied everything can be considered the author without any questioning. It is important to note that the fraud on behalf of that pianist was revealed only because of a technical error - the playback software showed the original name of the interpreter when a critic played the disk on a computer. This episode clearly shows the confusion that exists on this topic nowadays, which is now being rethought by many legal experts in several countries, including Brazil.

In a deeper analysis, this scenario exposes the transformations brought to music in general by the resources of digital technology. Concepts such as authorship have to be rethought and understood in a new perspective, without the preciosity that has always characterized authorship, since in the network the processes are getting more and more collective and ephemeral. Recorded music has always been traded based much more on the physical constitution of its support than on its artistic character. On the one hand, music circulating in the internet is devoid of its support and represents only information and expression; in the end, it is perceived by the public without any link to other expression issues. The artwork of a vinyl record has always been much superior; this quality lost its power with the CD and disappeared in the music on the web, where music has to suffice by itself in most cases. And this kind of music obviously brings with it other concerns, other ways of producing and exchanging that have to be understood by the music industry in general. On the other hand, at this point it seems that the whole world is involved in hunting people who defy the rules of copyright, discussing laws like SOPA (Stop Online Piracy) and PIPA (Protect Intellectual Property Act), which may represent the end of freedom on the web. It is unlikely that so much live music has been produced before, with so many tours at such expensive prices around the world. This may demonstrate a shift in the commercial axis of music, which would pass from the recording, a "place" where the industry has no control, to the concert, where there is no form of "piracy." What is interesting to note here is that technology pushes music back to its origins in spite of all the recording and circulation technologies, so that it can be profitable to the artist once more.

In Brazil, where copyright is governed by the Law 9610/98, there is no formal proposal adopted by the areas in charge of a legal flexibility resulting from all the possibilities of sharing on the web. Not even a formal legislation about

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the use of creative commons was made possible despite a series of discussions stimulated by the Ministry of Culture when Gilberto Gil was the minister. Because of this, many knowledge production and circulation technologies are not embraced in Brazil, where all users are subject to the referred law that criminalizes any form of sharing material. This places Brazil in the fourth position among countries with the worst copyright law in the world, mainly because of the rigid regulations that prevent access to the educational and cultural use of copyrighted works.

There, in Brazil, the copyrights are valid for seventh five years after the author's death, and in the USA for ninety five years after the release of the work, because in 1998 the "copyright term extension act" postponed that period. The European union will prolong this deadline to seventy years next November; but until then, if the recording companies want to keep their rights over works prior to 1963, they should sell them on the market. Perhaps this was what prompted Sony to sell only a hundred copies of a box containing four cds of Bob Dylan recorded before 63.

However, it is undeniable that with digital technologies and the internet, a whole new set of musicians, producers and DJs now have access to the means of production, and mainly to the circulation of sound production. An irreversible process where the entire music industry of the twentieth century and its main issues have to be rethought and rearranged in search of survival in the virtual world, where paper and plastic supports are no longer useful. At the same time, this new virtual marketplace gives a voice and a face to hundreds of excluded groups in the traditional industry, where a great revolution in audiovisual production occurs by the use of these new technologies. And that's what makes this moment we live in so interesting: the search for the ability to survive in the middle of a hurricane that is sweeping away all paradigms: sound creation, distribution, and how the music industry is going to act in the next years. In Brazil, reality points to an increasingly intensive use and sharing in the network as a way to access the audiovisual production, especially outside the established industry. Several companies that provide streaming services by subscription are settling in Brazil, where according to Strategy Analitics Consulting, 30% of the musical revenue, apart from live performances, refers to the consumption off music on computers and mobile devices[3]. There are no statistics about the revenues of artists in these services in Brazil, but the U.S. site Pandora paid 21 cents for the song "Tugboat", performed by Galaxy 500, to be played 7800 times. This leads to a series of questions that will be answered as these services grow, especially regarding figures related to the number of times a song is played, but it is undeniable that for the music industry this seems like a reasonable solution. Some years are needed before these solutions become stable models, and the only concrete thing today, is that the old models of musical trading based on a strict copyright payment system ended. Specifically in Brazil, a revision in the copyright laws is urgent, and the use of the new distribution technologies clearly contribute to the construction and circulation of knowledge in an increasingly digital society. Finally, a provocative remark: it is important to stress that just like technological progress has brought subjects like genetic engineering and ecology to the fore, imposing to the world the need for formulating new rights in the universal declaration of human rights, the technological globalization promoted by the web raises the following issue: shared information is one of these new rights, and not only a financial question to be preserved, like everybody in the recording industry may think and the last hundred years of recorded music have shown us.

3 Available on http://www1.folha.uol.com.br/tec/1224547-musica-por-streaming-ganha-forca-no-brasil-e-atrai-site-deezer.shtml, accessed 04/12/2012.

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