
Napster vs. Record Labels, Sci-Hub vs. Publishers, Part 1: Parallels

By RICK ANDERSON | JAN 3, 2018

BIG DEAL | BUSINESS MODELS | COMMERCE | CONTROVERSIAL TOPICS | COPYRIGHT | ECONOMICS | ETHICS | HISTORICAL | INNOVATION
| SOCIAL ROLE | WORLD OF TOMORROW

Let me begin by revealing my secret identity. I'm in kind of an unusual position as a librarian and scholarly communications commentator because I also have a parallel life as a music critic. Since 1990, I've been writing music reviews for newspapers, weeklies, syndicates, and online publications. Between 1997 and 2012 I wrote thousands of reviews for the *All-Music Guide* (<http://allmusic.com>), and since 1999 I've published a little thing of my own called *CD HotList: New Releases for Libraries* (<http://cdhotlist.com/>), which has a loyal (if not huge) international following of music buyers in public and academic libraries. Most of the people who read my music writing are unaware that I also write about scholarly communication, and vice versa.



I share this information about my secret double life because every time someone compares the fate of the music industry with the (surely inevitable) fate of the scholarly publishing industry, it makes me think about parallels and differences between Napster *vis à vis* the music industry and Sci-Hub *vis à vis* scholarly publishing. In today's post I'll discuss some of the similarities that I believe exist between the two situations; [tomorrow's](https://scholarlykitchen.sspnet.org/2018/01/04/napster-vs-record-labels-sci-hub-vs-publishers-part-2-differences/) will address some important differences (<https://scholarlykitchen.sspnet.org/2018/01/04/napster-vs-record-labels-sci-hub-vs-publishers-part-2-differences/>).

Some Things That Are Similar

Deep Diversity Underlying Superficial Homogeneity. Because I've worked closely with hundreds of record labels over the past few decades I've always found it kind of frustrating to hear people talk disparagingly of "the record industry" as if it consisted entirely of Sony and Warner and Universal, or even as if Sony and Warner and Universal were typical record labels. They weren't, not even during the heyday of the record industry; they were conspicuous outliers in a marketplace that consisted largely of small independent labels, most of which I promise you've never heard of, and most of which operated on a shoestring as labors of love and made little if any profit for their owners. Of course, the ecosystem of labels was more diverse than that; it didn't consist only of a handful of behemoths and a mass population of tiny, unprofitable indies. Record labels existed along a broad spectrum of size and profitability, which is exactly the point: to praise or cast aspersions on "the record industry" as if it consisted only of one kind of company was ridiculous, but the ridiculousness of doing so was only obvious to people who were actually familiar with it — people like me, who worked closely with a large number of those labels on a daily basis, and who watched friends and colleagues lose their jobs and livelihoods as their small businesses succumbed to the collapse of the industry. To those who knew little or nothing about that industry, it seemed clear that it consisted largely of fat, greedy, bottom-line driven corporations. Obviously, a very similar dynamic prevails today in the conversation about "publishers." [Nearly 75% of scholarly and scientific publishers are nonprofits \(http://192.168.1.1:8181/http://www.stm-assoc.org/2015_02_20_STM_Report_2015.pdf\)](http://192.168.1.1:8181/http://www.stm-assoc.org/2015_02_20_STM_Report_2015.pdf). (Of course, not all nonprofits are equally unprofitable, and some of them are, in fact, quite profitable — but, as is the case with the record industry, those are the exception rather than the rule.)

Strong and General Desire for Access to Content. Lots of people want access to published scholarship, and lots of people also want access to music.

A Public Perception (Sometimes Accurate) of Corruption and Gouging. There are striking parallels between the popular rhetoric about record labels during the Napster years and that about publishers now, during what we must unfortunately think of as the Sci-Hub era: labels were popularly castigated as fraudsters and gougers (<https://www.npr.org/sections/therecord/2011/03/09/134391895/the-legacy-of-the-cd-innovation-that-ate-itself?ft=1&f=100>). Again, the parallels with today's scholarly communication environment is obvious. This rhetoric contributed then, as it does now, to an atmosphere in which defending labels or publishers in any way tended to mark one out as a Running Dog of Big Content, even if most of what you were actually defending were small, nonprofit operations.

There are striking parallels between the popular rhetoric about record labels during the Napster years and that about publishers now, during the Sci-Hub era.

A Massive and Potentially Profitable Shift in Standard Format. One of the most interesting parallels between the histories of the music and scholarly journal industries is the shift in format that each of them underwent in the 1990s. During that decade, the default format for music recordings finally settled on the compact disc; during the same period, scholarly and scientific journal publishing shifted decisively to the Internet. For record labels — especially those with long histories and deep catalogs — the shift to CD offered a huge financial opportunity as record owners proved willing both to pay higher prices for the new format and even to replace their old LPs and cassettes with CD versions of the same recordings. For publishers, the online environment gave them access to new and expanded markets and also allowed them to monetize their “back catalogs” (by selling online access to backfiles, either independently or through third-party brokers like JSTOR).

Bundling. This is another of the most fascinating parallels between music and scholarly publishing. In both contexts, content has tended to be bundled: individual songs bunched together and sold as albums in the former context, and individual articles bundled together and sold as journal subscriptions in the latter — not to mention, much more controversially, the practice of bundling subscriptions themselves into large subject packages and even larger Big Deals. In both music and scholarly publishing, this bundling is often invoked as one important motivator of copyright piracy: “Why should I have to pay big bucks for access to a bunch of stuff I don't want in order to get access to the stuff I do want?” One reason Napster proved so popular was that it allowed users to download only the specific songs they were interested in. (Sometimes this is even evoked as the *primary* reason for Napster's success, though I think that's incorrect, as I'll discuss further tomorrow.)

Increasing Dominance of Big Companies. Although for decades in the mid- to late 20th century there was a thriving market of independent record labels, a decreasing number of major labels commanded a growing share of sales (http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1595&context=cmc_theses) during that period, and that trend sharpened during and after the Napster era (https://en.wikipedia.org/wiki/Music_industry#Consolidation) as companies thrashed about for survival strategies in a tanking market. Today we see a similar consolidation trend in journal publishing (<https://scholarlykitchen.sspnet.org/2017/08/23/revisiting-arms-race-journals-publishing-heats/>), one of the most dramatic examples of which has been the recent merger of Springer and Nature.

Difficulty of gauging the direct financial impacts of piracy. The degree to which Napster contributed to the implosion of the record label marketplace in the early 2000's is debatable, mainly because it's so difficult to gauge. Correlations are easy to see, but causation is not, and attempts to analyze the impacts of Napster and other peer-to-peer copying networks on the music industry's fortunes have come to mixed conclusions. The same is true with Sci-Hub and publishers. Are any libraries canceling their subscriptions in favor of using Sci-Hub? Almost certainly not; we librarians may be increasingly ambivalent about the moral demands of copyright law (<https://blogs.library.duke.edu/scholcomm/2016/03/03/some-radical-thoughts-about-scihub/>), but we haven't joined the pirate hordes either. Are individuals canceling their own subscriptions, or refraining from buying subscriptions, because they're confident that they'll be able to get access to the content for free from Sci-Hub? That's harder to say. The latter is more likely than the former, I believe. But I think it's even more likely that Sci-Hub is largely being used by people who would never have subscribed to the journals they're stealing from to begin with — as well as by people at subscribing institutions who don't want to deal with the (very real) annoyance of authentication.

In tomorrow's posting I'll discuss some of the dissimilarities between these two situations (<https://scholarlykitchen.sspnet.org/2018/01/04/napster-vs-record-labels-sci-hub-vs-publishers-part-2-differences/>), and then offer thoughts on a couple of possible implications of these similarities and differences.



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Discussion

28 THOUGHTS ON "NAPSTER VS. RECORD LABELS, SCI-HUB VS. PUBLISHERS, PART 1: PARALLELS"



Hi, Rick. I would add another similarity – a basically copyright respecting consumer frustrated by their experience accessing what they wanted when they wanted it. In the case of the music industry, individuals wanted singles, but were forced to purchase albums. When iTunes came along, and they were presented a convenient, reasonably priced alternative that allowed them to purchase only what they wanted, when they wanted it, at a reasonable price, behavior shifted back to respecting copyright. I would posit the same for the researcher community. It is a basically copyright respecting community, but there is not, as yet, an equivalent of iTunes that enables them conveniently to get what they want, when they want it, from one place, at a reasonable price.

By JOSH FREEMAN | JAN 3, 2018, 8:47 AM



But that is not what happened. iTunes brought a very small sliver of music usage back into the copyright monetization realm, but piracy was still the primary mode of consumption. I think it's wrong to romanticize copyright violators as frustrated fans, who only want to do the right thing, if only the greedy capitalist world would let them.

By JOSEPH ESPOSITO | JAN 3, 2018, 10:04 AM



Having been in and around that world at the time, Joseph, I am not sure I agree with your characterization. Did iTunes end piracy immediately? Of course not. Did it end it completely? Of course not. But it did give those who wanted an easy way to gain access to music in a convenient, legal manner an option to do so. Are there people who are going to go for the free – for any type of digital content – no matter how easy we make it for them to purchase legally? Of course. That doesn't mean we shouldn't constantly look for better ways to make it easier for those who would prefer to be legal.

Here is a quick take from Billboard on the impact of iTunes:

<https://www.billboard.com/biz/articles/news/1559622/seven-ways-itunes-changed-the-music-industry>

By JOSH FREEMAN | JAN 3, 2018, 10:18 AM



The Billboard article you cite talks about cultural/economic changes but doesn't say anything about impact on piracy, which remained rampant despite the rise of iTunes. What has made a real difference is the presence of free streaming services and the growth of YouTube:

<http://www.latimes.com/business/la-et-ct-state-of-stealing-music-20150620-story.html>

Neither of these involves the consumer paying for music, however, and piracy still continues at a significant rate:

<https://www.digitalmusicnews.com/2015/07/16/if-you-think-piracy-is-decreasing-you-havent-looked-at-the-data-2/>

More here as well:

<https://www.digitalmusicnews.com/2016/05/05/what-music-piracy-really-looks-like/>

By DAVID CROTTY | JAN 3, 2018, 11:19 AM



I think that even more than iTunes, streaming services such as Spotify, Pandora and Google Play Music brought people back to the realm of law-abiding music consumers (an approach Apple eventually emulated). As I didn't own an iPhone, I found iTunes majorly inconvenient from a use and portability perspective. I spent ages ripping all my CDs to MP3s, and I may on occasion have acquired music illegally. But once I could pay a reasonable monthly fee and access all my music from any device, selectively download it, and gain access to music I wanted on a temporary basis (for a special occasion, or because my kids were into a particular song) at no extra cost, I was very happy to pay a monthly fee. I wonder how costly or realistic it would be for publishing to move to this sort of model. Pricing would have to be somewhat different for institutions, but we are already seeing evidence-based e-book purchasing, where you pay a discounted fee to get access to the entire package for a time in order to gauge usage, and then you can buy the things people actually used. What if, instead of subscribing to bundles, we could get all Elsevier journals for a base fee, and pay on top of that for articles downloaded? Or if individuals could pay \$50 a month for unlimited access to Elsevier or Nature titles? I've worked before for consultants and nonprofits who would definitely pay for something like this, but simply can't afford \$50 per article. I think there's a huge untapped market outside of academia for this. Big publishers have never been interested in it, and now SciHub is filling the void.

By HEATHER | JAN 3, 2018, 1:07 PM



I've worked before for consultants and nonprofits who would definitely pay for something like this, but simply can't afford \$50 per article. I think there's a huge untapped market outside of academia for this. Big publishers have never been interested in it, and now SciHub is filling the void.

This is the exact pitch that DeepDyve has been offering to publishers since its inception in 2010. Despite offering access to more than 10,000 journals from 150 publishers for \$49 a month, uptake remains fairly low, which continues to make me question whether this "huge untapped market" actually exists.

By DAVID CROTTY | JAN 3, 2018, 1:31 PM



Heather, you raise some thoughtful and really interesting questions. One of them jumped out at me:

What if, instead of subscribing to bundles, we could get all Elsevier journals for a base fee, and pay on top of that for articles downloaded?

Minus the added fee for articles downloaded, you've basically described the Big Deal, which is much maligned in libraries — even by those who participate in it. The problem with it is not the value, but that base price. Pricing varies by institution, of course, but at virtually any institution that takes advantage of it, the package price breaks down to a miniscule cost per article, and even if you break the price down only into those articles that are actually downloaded, the cost per download is typically very small as well (I know of one institution that paid roughly 25 cents per download for its Elsevier content; at my current institution, the per-download cost is more like \$2 or \$3). So why do we feel such antipathy for the Big Deal? There are several reasons, but one of them is that cost-per-download is more of a value measure than a cost measure—for an institution like mine, the package costs hundreds of thousands of dollars every year. Higher use drives down the cost per download (making the package an arguably better *value*), but doesn't drive down the actual *cost* of the package. And, of course, that actual cost rises every year. Some people hate the Big Deal mainly because they hate Elsevier, and the Big Deal sends a lot of money in Elsevier's direction. Others don't hate it at all in principle, but can't figure out how to keep paying for it.

In response to one other of your questions:

Or if individuals could pay \$50 a month for unlimited access to Elsevier or Nature titles? I've worked before for consultants and nonprofits who would definitely pay for something like this, but simply can't afford \$50 per article.

I'm not surprised that you know of information professionals who would willingly spend \$50 for access to Elsevier or Nature titles, but I'd be surprised if there's a critical mass of customers for this among the general public. (As Questia learned, to its dismay, there wasn't even a critical mass for this kind of product among college students.) That would make a *very* interesting survey topic, though.

By RICK ANDERSON | JAN 3, 2018, 2:04 PM



Josh, this is an issue I'll be discussing a bit further tomorrow, in Part 2.

By RICK ANDERSON | JAN 3, 2018, 10:25 AM



Great article, Rick! Thank you! Looking forward to the second part with the differences.

Including ResearchGate in the comparison would help find even further similarities and gain richer insights. Below a few more similarities:

- * Like ResearchGate and unlike SciHub, the founding team of Napster has at some point actually agreed to cooperate with record labels.
- * Like ResearchGate and unlike SciHub, Napster was swimming in venture capital money.
- * Like both ResearchGate and Napster, the content on Napster was provided via users.
- * A transformation from a pure content-industry into a service-industry was/is happening: both record labels, and publishers were/are gradually embracing technology and their new role as service-providers. The shift in both situations is a reaction provoked by industry-outsiders.
- * The anti-piracy rhetoric of labels and publishers is very similar.
- * [just a curiosity] A large Germany-based corporation seeks a compromise in the negotiations with the new entrant: Bertelsmann invested heavily in Napster in late 2000, SpringerNature and ResearchGate announced they are planning a cooperation in later 2017.

By ALEX NAYDENOV (PAPERHIVE) | JAN 3, 2018, 10:28 AM



The pro-piracy rhetoric of Napster's and Sci-Hub's defenders has also been very similar, ranging from whooping, fist-in-the-air support to a sort of winking "those darn kids!" indulgence.

By RICK ANDERSON | JAN 3, 2018, 10:38 AM



looking forward to how this series develops. The word copyright is used in many contexts. A music artist creates an original work, which is subject to copyright, and through selling it via a record company, tries to make a living. The copyright is to protect the artist's income, and enable them to create more original works. A scientist has an original idea, writes it up for a journal in a standard, non-original form, and hopes to get indirect impact from it, by giving it (including the copyright) free of charge to a publisher who sells it to the research community. The scientist's income is not directly dependent on selling the article, but indirectly on communicating the idea. Most ideas are built on ideas from others (shoulders of giants), so are journal articles really copyrightable?

Section 102(b) of the US Copyright Act: In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

By MARTIN HICKS | JAN 3, 2018, 10:30 AM



I'll be discussing your points about the financial impacts of piracy a bit more in tomorrow's posting, but to answer your direct question:

Most ideas are built on ideas from others (shoulders of giants), so are journal articles really copyrightable?

Yes, they are. Ideas themselves are not copyrightable, but the written expression of an idea is — even if it's not 100% original, as, of course, very few ideas are. This is one of the most fundamental principles of copyright.

By RICK ANDERSON | JAN 3, 2018, 10:41 AM



We addressed this back in 2013:

<https://scholarlykitchen.sspnet.org/2013/08/06/is-access-to-the-research-paper-the-same-thing-as-access-to-the-research-results/>

There remains a difference between the results of research and the story written about those results. It remains a bit mind-boggling why so much effort has gone into providing free access to the stories and so little into providing free access to the results themselves.

By DAVID CROTTY | JAN 3, 2018, 11:03 AM



It should be noted that not everyone who is affected by piracy is a scientist, for whom papers are fairly ephemeral products and not a potential source of future income, other than insofar as they affect the chances of securing grants and contracts. In many ways, papers are really about personal marketing for the real intellectual property, which is the patents. In the humanities and social sciences, the position is much nearer to that of the artistic creator. The journal article, or monograph, is the real intellectual property, the created product or innovation. As such, there is much more genuine concern for the integrity of the text and format, which is jeopardized both by demands that link OA and Creative Commons and by straightforward piracy. The latter compromises the downstream control of a creator over their product, at least for the lifetime of copyright, and any royalty income that may be available from it. I don't make a lot from re-use rights in my various works – but, over the years, it has been a non-trivial amount that no-one is talking about compensating me for. At my age and career stage, I can choose to ignore the attempts by funders and universities to expropriate my intellectual property and publish as an independent, but this also allows me to criticise the indifference of many colleagues to these issues. We are not all well-funded biomedical scientists who will make money in other ways.

By ROBERT DINGWALL | JAN 3, 2018, 11:12 AM



Thanks, Robert, those are good and important points. I'll be touching on them (less thoroughly than you just have) in tomorrow's posting.

By RICK ANDERSON | JAN 3, 2018, 11:24 AM



Mr. Hicks:

Most everything is built on the shoulders of others.

By HARVEY KANE | JAN 3, 2018, 2:33 PM



I appreciate your tackling this subject again. I've been following this subject for years, not from the viewpoint of one involved in scholarly publishing, but from the perspective of scientists who are not in academia (e.g. many are at small biotech companies) and cannot afford access to the literature at the level they really need to do their best science. This has serious negative implications for drug development and similar fields. I covered this topic in some depth in a recent blog post, which you can access here: <http://www.lymanbiopharma.com/page38/?post=sci-hub-vs-ipubsci-another-look-at-accessing-unaffordable-science-journals#poster-top>

By STEWART LYMAN | JAN 3, 2018, 5:54 PM



Please explain to me why publishers should subsidize commercial biotech companies.

By JOSEPH ESPOSITO | JAN 3, 2018, 6:27 PM



Speaking as a scientist who provides gratis review and editorial services to commercial publishers, I would prefer to be subsidizing commercial biotech companies.

By JOHN HAWKS | JAN 4, 2018, 4:21 PM



Just out of curiosity then, John — why are you providing those services to commercial publishers? Unless you're being compelled to do so in some way, I would imagine you could limit your volunteer work to nonprofit publishers, or even (if you really prefer) to commercial biotech companies.

By RICK ANDERSON | JAN 4, 2018, 5:05 PM



Please explain why the public should fund research that is then given to big publishers to make a huge profit on and which the public then has to pay(again) to read?

By JOE | JAN 6, 2018, 1:45 PM



This is not an accurate statement. The public does NOT fund the publications. In some cases it funds the research, not the publication. In any event, the reason publishers publish articles is because researchers want them to. Submissions are the proper metric. Your argument is simply uninformed.

By JOSEPH ESPOSITO | JAN 6, 2018, 3:47 PM



As always, it is important to separate out the actual research results from the stories written about those results: <https://scholarlykitchen.sspnet.org/2013/08/06/is-access-to-the-research-paper-the-same-thing-as-access-to-the-research-results/>

By DAVID CROTTY | JAN 6, 2018, 7:52 PM



Many answers to your question are here: <https://scholarlykitchen.sspnet.org/2017/06/20/revisiting-book-review-economics-shapes-science-paula-stephan/>

By KENT ANDERSON | JAN 8, 2018, 6:38 AM



Any thoughts on this comment by Ross Mounce?

“Another misleading Skitch post. You can't ‘steal’ electronic journal articles. Using a word like “stealing” in the context of Sci-Hub is wilfully incorrect. Copyright infringement is not stealing. Making extra additional copies is not the same as subtraction (theft/stealing)”.

<https://twitter.com/rmounce/status/948828027458375682>

By GRAHAM STEEL | JAN 4, 2018, 4:53 AM



Yes. He needs to take this argument up with the U.S. Code (specifically Title 18, Part 1, Chapter 113, section §2319, “Criminal Infringement of a Copyright”), which discusses copyright infringement as a category of “stolen property” and provides for penalties including up to ten years of imprisonment in egregious cases. Copyright infringement is certainly considered stealing under the law, at least in the U.S.

By RICK ANDERSON | JAN 4, 2018, 7:17 AM



I would respond that this is the bog standard “red herring” (https://en.wikipedia.org/wiki/Red_herring) response to any article about copyright infringement, meant to distract away from the points being made by raising a factually incorrect point over a technicality. It is an argument usually made by those with little legal knowledge. There is enormous legal precedent for referring to copyright infringement, and other crimes involving intangible and nonrivalrous property as “theft”. More detail here: <http://www.copyright.com/2013/09/why-copyright-infringement-is-theft/>

By DAVID CROTTY | JAN 4, 2018, 8:15 AM



Rick, I haven't visited before but I found your post intriguing. I had actually thought the SciHub case is more similar to Mobilism.org vs. the book publishers, you are right that there are definitely some parallels to the music industry.

I can't imagine Elsevier and others of the big journal providers are losing as much as they say to academics and libraries alone. Schools and colleges are not stopping their subscription to journals in favor of SciHub. Elsevier in particular I think is actually causing piracy by making articles and journals less accessible to the public (both in cost and searching ability). If I want to read a study that was talked about on the news, depending on the journal, one article can cost up to \$40. It's not that I want to go to SciHub, it's that I either go there or go without. Their ridiculous fees just cost them my business, not unlike the Sonys of the record world when they were charging \$20-\$30 per CD.

The fix seems pretty obvious, since iTunes did it for the music world, Amazon Kindle did it for the book world, and Ravelry did it for the knitting/crochet pattern world – sell a product at a reasonable cost to the public, and they stop going pirate and go legit because they have an option that previously didn't exist to them. The movie world is going through this with the explosive growth of Movies Anywhere and Vudu, in addition to streaming services like Netflix and Hulu.

In fact, several smaller academic journals I've seen have already made this move. One of my favorite history journals in Italy made their articles available for a few euro each. I bought an article quite easily about my ancestors home town, and have subscribed to their newsletter and bought a few more articles since I get their announcements of each issue. A medical society made their papers online and I was able to purchase a paper to assist me with interpreting a genetic sequence. I wrote the author and found even more information to assist me with my health condition.

People want access to these journals. The smart journals will adapt and make better models, and the conspicuous behemoths like Elsevier will either adapt, die, or become a laughingstock (to borrow a music example, the Metallica of the publishing world).

By KATE BENDER | JAN 4, 2018, 11:57 PM



The mission of the Society for Scholarly Publishing (SSP) is to advance scholarly publishing and communication, and the professional development of its members through education, collaboration, and networking. SSP established The Scholarly Kitchen blog in February 2008 to keep SSP members and interested parties aware of new developments in publishing.

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