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The Story of the Invention that Terrified the Music Industry and Transformed Global Culture

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CHAPTER FIVE
Lawyers, Guns and Money

From the prologue of Joseph Menn's book *All the Rave: The Rise and Fall of Sean Fanning's Napster*: "...the legacy of Napster's original technology is hard to overstate. The firm's pirate successors now combine for a bigger reach than Napster had at its peak. The record industry suffers from both declining sales and judicial scrutiny of whether its members conspired to suppress online distribution. Movie companies and others fear with good reason that they will be the next to be "Napsterized." And all manner of academics, start-ups, and giant firms are embracing what's known as peer-to-peer file sharing, hailed by Netscape Communications Corp. founder Marc Andreessen as a "once-in-a-generation idea."

Written in 2003, those words have the weight of prophecy today. With the introduction of the iPod in 2001, Apple had proven that its legendary aptitude at engineering the user experience (as well as creating something that looked and felt gorgeous) was the killer app for taking the MP3 player to the mainstream. With that delivery system spreading like a musical Black Plague, peer-to-peer networks like Napster, its offspring Kazaa, Grokster, Limewire and myriad underground hillbilly cousins grew from annoying "pirates" to full-fledged threats to the revenues of the old-fashioned recording industry.

No industry has been disrupted as violently by Download Culture as the business of recording, marketing, selling and distributing music. From their peak in 1999, U.S. album sales declined twenty percent by the end of 2005. At the same time, by mid-2006 more than ten million people per day were estimated to be sharing music files illegally

via the Internet. To the Recording Industry Association of America (RIAA) the linkage was obvious, and it blamed much of its $4.2 billion in annual piracy-related losses on Internet file sharing. However, the reality, woven from a fabric of peer-to-peer community, independent bands, thousands of lawsuits, MySpace, mash-ups, YouTube and one hell of a sense of musical entitlement, remains a lot more complicated.

The Players in the Drama

Stage left, we have peer-to-peer file sharing, known as P2P. Calling it a once-in-a-generation idea is not hyperbole. Stanford law professor and Internet intellectual property and creativity guru Lawrence Lessig has called P2P "the next great thing for the Internet." And in what may be the ultimate expression of respect for P2P, former White House security advisor Howard Schmidt, now a corporate security consultant, told IT security professionals in mid-2006 that "We [talk a lot] about intrusion detection and antivirus…but one thing we're not paying enough attention to is P2P file sharing networks and how much data we're really exposing inadvertently, which we have no control over."

Control. There's the rub, and the genius, behind P2P. This technology robs record companies, film distributors and others of control over who consumes their product, when and how. That's terrifying for huge corporations whose business has hinged for decades on the fact that they and only they had the muscle to get records into stores or movies into theatres. File sharing has shredded that paradigm like so much mu-shu pork.

The typical computer network works on a spoke-and-hub architecture, where files are downloaded to connected PCs from a central server hub. Shut down the hub and you shut down the network. But with P2P, there is no center to the network; each individual computer is a node. Shut down a few computers and there remain thousands or millions of additional "servers" running in people's basements, home offices and classrooms around the world. Each of these "peers" can choose to make any music files on their hard drives available to the rest of the network to grab and use, free of charge. The result is a vast, amorphous community of amateur pirates quietly passing around a musical bong and hoping the cops won't see.

That's power, and why at its height Napster had 50 million registered users.

Generation D

Stage right, give it up for young people! Download Culture's ascendancy has been on the backs of the thirteen-to-twenty-one crowd. Music sharing and portability are phenomena

of the young, because they have known little else. Just try telling a 14-year-old boy that there was a time when there was no Internet and you had to buy your music on a twelve-inch vinyl LP.

"Napster got kids interested in music again. There was a whole generation in the early nineties that we lost to video games," says Ted Cohen, 57, the former senior vice president of digital development at EMI Group who left in June 2006 to consult with companies on building digital music businesses. "Kids were interested in music again, and if we could capture that enthusiasm and monetize it, it would be a win-win all the way across."

Those young music lovers have fueled sales of sixty million-plus iPods, well over one billion song downloads from the company's iTunes store at ninety-nine cents each, and driven players such as Sony to launch their own legal download services to compete. To today's youth, music is not something anyone can control, but a free-flowing commodity, like oxygen, to be tapped where and when you like. The last thing they see it as is piracy. Like every other aspect of Download Culture, music is one more desire to be fulfilled instantly. Let's call them "Generation D."

There's no stuffing the genie back in this bottle: a Google search under "file sharing" brings back 225 million responses, including P2P networks such as Gnutella, Morpheus, Mute, Overnet, Blubster, and hundreds of others. There's even a company, BigChampagne, dedicated to tracking the most-downloaded songs of the week—sort of a Billboard for the broadband generation. Young enthusiasts, hackers and mash-up artists are both blessing and curse to the music industry.

Ah yes, the music industry. It stands center stage in this conflict, with the RIAA as proxy bad guy for the Big Four major music labels: Universal Music Group, EMI Group, Warner Brothers Music and Sony BMG Entertainment. Arriving at the music swapping, digital download party long after the kegs have run dry, the old guard has been trying to fight back by going on the offensive—primarily with its famous lawsuits against both the P2P networks and a host of college students and other individual users—even as it tries to cut deals with file sharers and educate consumers that "sharing is wrong."

But the train has already left the station for the big, slow recording companies. Yes, they have had some successes: the 2005 Supreme Court verdict against file sharer

Grokster that stated that file-sharing companies could be held accountable for illegal content that passed through their pipes, and the huge 2006 settlement by the parent company of major "piracy" player Kazaa of multiple lawsuits in several countries, resulting in the company's paying more than $115 million in damages to the record labels and claiming to go legitimate. But even these are just fingers in the hundred-year flood of downloadable music. Though the RIAA optimistically claims that illegal file-sharing is "contained" and that legal downloads are up seventy-seven percent, that is clearly spin.

Ten million daily file sharers are one reason. The other is that the music industry is undergoing fundamental changes that will force the record labels to evolve or perish:

- Musical acts, fed up with the industry's blockbuster mentality, are tapping the viral and distribution power to sever ties with the labels and go independent. Singer-songwriter Aimee Mann was one of the first to break out with her SuperEgo Records label in 1999 (and became one of the first artists to join Artists Against Piracy, an anti-illegal download advocacy group). In 2004, the band Wilco went one better and released its record *Yankee Hotel Foxtrot* independently via the Internet after its label rejected it. The record was a smash and the band has released subsequent songs online and encouraged fans to share them.
- Bands have joined together to form United Musicians, founded by Mann, Michael Penn and Michael Hausman, which argues that artists should retain the copyright for their works. This runs counter to every standard recording contract issued since the dawn of time.
- Social networking powerhouse MySpace, which at this writing had more than 90 million registered users, is leveraging its popularity as a place for bands to create websites and promote their music to become its own record label for the new century. Owned by Rupert Murdoch's News Corporation, the potential for promoting records on a network that will soon be as large as the population of the U.S. is staggering.
- Viral video player YouTube has become the newest spot for releasing homemade music videos—both of original music and lip-synched versions of existing tunes,

which has predictably drawn the legal ire of the RIAA. But nothing stops the best videos from propagating to millions of computers via viral energy.

What does all this mean? That the music business is changing radically, permanently, and nothing the big corporate labels do is going to make it go back to what it was. From my perspective, iTunes has done it right: provided the end-to-end solution I had in mind back in 1994. But beyond that, Corporate America continues to play a hopeless game of catch-up. Worse, they are showing the same "circle the wagons and fire at anything that moves" mentality that all entrenched industries do when their longtime business model is threatened. Not that they don't have reason, but can they win?

"This new technology is different than others, like when the motion picture industry was freaking out about VCRs," says Paul Resnikoff, founder and editor of Digital Music News. "This is different; this changes the game. You're not putting something new on the field. You're ripping up the field and throwing the stadium away. Putting massive amounts of files at your fingertips has increased the hunger for music. Teens are finding tunes from the Doobie Brothers and singing along to them. You have people under twenty-one energized to music from the 1970s. No one that age would be listening to America if not for file sharing applications. In terms of direct monetization, it may not help major labels, but in terms of the overall music industry, it's grown it. The question is, how do you capture the revenue from that?"

They Fought the Law...

"We are engaged in one of the biggest behavior modification exercises since campaigns for stopping smoking," says Steve Marks, general counsel for the RIAA and the point man for the industry's lawsuit offensive against file sharing companies and file sharers. That, of course, has been the heart of the industry's attack on illegal file sharing: a torrent of legal actions beginning in 2000 with its legal battle against Napster (which eventually drove the P2P pioneer into the light and into becoming a for-profit legal download business) and continuing in the fall of 2003 with a barrage of suits against 261 individual file sharers.

What set off the cannonade of legal action was not only the furious success of Napster, but its many imitators and the realization by the record companies that their position as middlemen between the musician and the consumer was under attack from the Internet. "Whether its principals are menacingly corrupt and repulsively shallow, or solid, upright businesspeople with a deep love and respect for genius in art and honesty in commerce," writes John Alderman in *Sonic Boom: Napster, MP3 and the New Pioneers of Music*, "it is hard to make the case the music industry is anything other than middlemen. And while no one disputes that the agents of promotion and distribution can add much to the appreciation of works of popular art and culture, it seems natural that middlemen should be replaced when sometime better comes along."

Of course, nothing says the middlemen won't fight like cornered animals. The big players of the traditional music industry, worried about Napster, were thrown into a headlong panic when the "clonesters" like Gnutella started appearing. It quickly became clear that the new P2P file sharing services were more than simply competitors with Shawn Fanning's groundbreaking network—they were insurance policies that, should the RIAA take Napster down via the courts, P2P fans would have other places to go to get their fix of free, illegal music. That was terrifying to the record labels.

Just what is the beef against file sharing, exactly? Simply put, the record labels are essentially sellers of single-use copyrights. They own the rights to the music they produce and distribute, and that ownership allows them to charge music consumers $18 to buy a compact disc at a record store. It would have allowed them to charge radio stations a royalty each time they play a song, but in what must rate as one of the worst business decisions ever, the industry did not sign radio stations to any deals requiring the broadcasters to pay royalties for each song played. Radio stations have to pay ASCAP or BMI (the licensing agents for songwriters and musical artists), but not the record companies—a misjudgment that has cost the labels billions, conservatively. Faced with another licensing decision with Internet radio and file sharing, the industry was determined not to repeat its mistake. It would get a piece of this huge market that seemed determined to steal its property.

Diet Coke Pricing

That was the situation that put me and Cynthia West, as we tried to negotiate a price for major label music releases for legal download via Audio Highway, in a bind. We were constantly dickering with the labels over price. Ten cents a song? That would mean instant bankruptcy? Half a cent per song? Unacceptable to the record labels. And so it went, with no one willing to acknowledge that the rules about pricing and creative control had changed utterly.

"I think the industry's been very myopic in product offerings," says Cohen. "So now we have this multiplicity of products, but we still try and peg the pricing of those products to the physical entity. So, a track's a dollar, because it's basically one-tenth or one-twelfth of the cost of a CD. Everyone uses the bottled water example: 'People will pay for bottle of water, even though water is free.' It goes a step further than that.

"Think about a can of Diet Coke," Cohen continues. "If I stay at a hotel in New York, the W in Union Square, I can go into the Mini-Mart next door, and a Diet Coke is a dollar a can. I can go to the CVS, which is literally fifty feet further away, and I can get a six pack for three bucks, four bucks. If I go in the bar at the W, the same twelve-ounce glass of Diet Coke is three-fifty or four dollars. And if at two in the morning I desperately want one in my room, it's five bucks from the mini bar. Same Diet Coke, different venue, different utility, different benefits. When I'm paying for the Diet Coke in the bar, I'm paying for being in the bar with people. I'm not paying for the Diet Coke. When I'm in my room, I'm paying for the convenience."

When Apple launched its iTunes music download store in June 2004, so-called experts scoffed at its 99 cents per song pricing. With free songs available via dozens of P2P file sharing networks, why would anyone pony up a buck per song? Quality, for one thing, says Resnikoff. "The quality of the files on a lot of the P2P services isn't very good," he says. "You get partial files, interrupted downloads. With the pay services, you get a better product."

Even though iTunes has been proven a success, pricing still bedevils the music giants. What combination of price and benefit will be enough to win the hearts and minds of consumers who now get their music illegally? "We have to get past thinking that every song is worth seventy five cents wholesale," says Cohen. "It may be seventy

five cents wholesale in an a la carte model on an iTunes or a Rhapsody or whatever, but that same song could be forty-nine cents in a different venue, in a different situation."

Send in the Lawyers

The truth is that the RIAA's clients, the record companies, have every right to protect their copyrighted material by whatever means they can. But just because you should do something doesn't mean it's the smartest course of action. So far, the RIAA has been less concerned with winning hearts and minds than with clamping down on file sharers and the companies who enable them via its now-infamous civil lawsuits. But has that tactic done more harm than good?

"From our perspective, it's never been about companies that share versus companies that offer download from a server, or any other technology," says Marks, the RIAA general counsel. "We're often portrayed as attacking technology, but we view ourselves and our mission as being technology-agnostic. The important thing from our perspective is whether the music is being used with authorization or not. So whether that's on a P2P system or something else, it doesn't matter so much the technical means by which the music is getting to the consumer as much as it is whether it's authorized.

"The biggest thing that we've been dealing with the past several years has been the file sharing services," Marks continues. "We tried an education-focused kind of approach, and we found that this only took us so far. We engaged in litigation to enforce the rights of our members. It's more efficient to deal with those who are facilitating and contributing to the infringement than to try and go after every person that may be downloading a copy."

That hasn't stopped the association, however. According to Ray Beckerman, an attorney with the Electronic Freedom Foundation and the firm of Vandenberg & Feliu in New York, the RIAA has filed more than 19,000 lawsuits against individuals for illegally downloading and sharing files. Interviewed by e-mail, Beckerman wrote, "(The RIAA's strategy has definitely not been successful. It has definitely done the four major record labels more harm than good. However, it has done a world of good for the fledgling independent music world, for musical artists who have learned that they don't need the

four major record labels anymore to market their music, and for consumers, who are learning of a whole world of music other than the monopolistic world of the Top 40."

How does an RIAA suit against a private citizen work? I asked Cassi Hunt, 20 a physics student at MIT who was sued by the association for file sharing. Typically, the individuals are young, as befits the file sharing demographic, have little money, and have no idea they are being sued until a few days before their hearing. Their options: to settle for a flat $3,750 or $4,250, or go to court, which almost none of them can afford. The RIAA calls it education and awareness building, but there's little doubt that it's also part intimidation.

"In October last year I received an email from MIT warning me that the RIAA was planning to subpoena the school for my name based on an IP address they claim was sharing music on a p2p called i2hub," writes Hunt in an e-mail for this book. "The tech for i2hub was developed to allow universities to transfer large quantities of information quickly. Before shutting down in the face of a probable suit by the RIAA, it was popular among university students across the country. Along with myself, over 500 other students were targeted. Most attend high-profile schools.

"In mid December, I received a letter from MIT stating they had been subpoenaed and would be forced to give up my name in 14 days (this heads-up is required by law when disclosing student information). MIT has never supported the RIAA targeting its students and has fought against them in the past. Unfortunately, there was little they could do for me...Then in the spring I received a letter stating that I would be named in a lawsuit for sharing music and that if I wanted to negotiate a settlement, to call a number. Nowhere did I see exactly what I'd been accused of sharing, nor how they had come to the conclusion that it was me. Basically, you give us money or we'll bleed it out of you."

Armed Camps

Hunt felt that she had no choice but to settle for the $3,750, and she's launched a website under the tongue-in-cheek URL screwpirates.com to ask others to help her raise the money. "I laughed into the phone when I was told," she writes. "It might as well be

$10,000! I don't have that kind of money. The only reason I'm at MIT is because I get tuition covered by grants and scholarships."

Marks counters that the lawsuits have achieved their desired goal: making people aware that music file sharing is piracy, illegal and hurts artists. "Filing suits against individuals helped us get people to understand not only the moral right and wrong but what's legal and what's not legal," he says. "If you look at the numbers in terms of how many people thought (file sharing) was legal before we started the lawsuits against individuals and how many did shortly thereafter, it's a pretty staggering. You don't see swings in any kind of polls like you did when you asked that question. Before the suit, the numbers were like 30 percent know it's illegal. Afterward, it went up to about 70 percent, which is about where it is at now. So you had a forty-point shift in terms of people understanding what's right and what's wrong, what's legal and what's not."

A year after the Grokster decision, the RIAA and its members can show concrete progress in growing the legal download business. According to a June 2005 press release from the RIAA:

- 367 million individual songs were downloaded in 2005, a 163 percent increase over the previous year. Downloaded albums nearly tripled, to total 13.6 million.
- 170 million master ringtones, mobile downloads, and other music-related mobile content were purchased via mobile phones in 2005.
- Subscription services (Yahoo!, Rhapsody, Napster, Urge) saw a significant leap in membership, with an annual average of 1.3 million subscribers for 2005.
- A study by Pew Internet and American Life showed that 43 percent of music downloaders have tried legal online music services.

But effective or not, the RIAA's legal tactics have created a culture of seething resentment among advocates of creative freedom, musicians and Internet activists. Much of the anger stems from the claim that much of the time, the RIAA has no direct evidence that the individuals it sues have been engaging in file sharing; it simply has IP addresses. But the threat of a costly lawsuit is enough to make the vast majority of lawsuit targets settle, and the specter of a letter from the RIAA has helped keep some people in line.

"Lawyers are not supposed to sign the court papers unless there has been an investigation showing that the person being sued actually did what he or she is accused of," writes Beckerman. "No such investigation has been conducted in any of the RIAA cases."

The RIAA has been forced to drop some cases for lack of evidence, such as the case of Virgin vs. Marson, in which numerous people had access to the same computer connection, so there was no way to determine which one had been engaging in illegal file sharing. But the main effect of the industry's legal offensive has been to create an armed camp mentality on the Internet. It's easy to find dozens of angry articles and blogs on sites ranging from p2p-weblog.com to Beckerman's Recording Industry Versus the People. All over the Web, enraged anti-industry guerillas share info on how to beat RIAA suits, plot legal challenges and exult in defeats for the industry. The industry's' strategy may have put out some fires, but it has also tainted the record labels' legitimate claim to copyright by painting them as the classic Big Corporate bete noir.

Ultimately, says Resnikoff, it's a failing strategy. "The RIAA is trying to change the way that Internet users think about intellectual property," he says. "They're trying to shift the morality outlook that users have, which is that they deserve music for free and they should have it in massive quantities. They've been somewhat successful. Most consumers are aware that they are doing something illegal and that they are compromising the integrity and revenue of the artists.

"But in the end, it's like me talking to you about how going over 65 mph is morally wrong, because it's burns fuel and makes the highways unsafe," Resnikoff continues. "You say, 'Yeah, I agree,' then you go 85 mph to work. If people know file sharing is wrong, why is it continuing to increase? Because music fans continue to develop justifications. They say, 'I buy the albums that I really like, so I support the musicians,' or 'I go see them on tour.' It's a low-powered morality trip that's ultimately ineffective."

Villains or Victims?

It may seem like I'm painting the RIAA and the record labels as the villains of this piece (a role they somewhat deserve based on their David vs. Goliath approach), but they're really not. Like all the other parties in the digital music landscape, they're simply trying

to establish their footing while fault lines rupture around them. Nobody really knows what's going to happen tomorrow, so every player on the scene is throwing something new into the mix, each according to his type.

For its part, the RIAA is now looking closely at YouTube to see if the video community's streaming, sharing model violates the copyrights of songs used for homemade music videos. Will the next round of lawsuits be against the Chinese guys in the Houston Rockets jerseys who lip-synch to the Backstreet Boys' "I Want It That Way"? Or will the record companies start trying to do what they've been unable to do so far: create a profitable business model in concert, not competition, with Internet companies?

Cohen says to a great extent, the labels have been treated unfairly. "I think we missed the boat a bit in terms of figuring out a way early on to get Napster to come to some type of solution," he says. But the revisionist history...there was about a year that nobody talked to anybody. Neither side wanted to cooperate with the other side. The labels, rightly or wrongly, felt that Napster was basically just going to humiliate the music industry in the press.

"I really have taken offense over the last six years at the phrase 'the labels don't get it,'" Cohen continues. "The thing you have to understand is that there's a difference between starting Napster, which is a completely new business with a completely new business model, and taking Sony or BMG or EMI and evolving the business model. You're taking an existing business that has followed a similar approach for forty years, and saying, 'Not only do you have to reinvent yourself, but the people who are providing the creative flow—your artists, who have managers and attorneys and accountants, and who are used to getting large advances based on physical unit sales—all of a sudden hear, 'Here's your share of a penny per play on Rhapsody.' That's a big leap to ask."

For another point of view, I talked to Michael Glenn, the intellectual property attorney who was the first to file the patents on the MP3 player for me. While he defends the importance of copyright protection, he also says that all the actors in this drama are missing out on the key goal: creating greater perceived value in a legal product. "I think the answer is quite simple," he says. "If you're selling a product a reasonable price, then people probably would rather buy it than steal it. And so if I have to buy a bundle of

fourteen songs for eighteen dollars on a CD, when I only want one song, I'm inclined to go to Limewire if I can't find it at the iTunes store. But if I can find the one song I want at iTunes for ninety-nine cents, and I know it's a good quality download, ninety-nine cents is not a lot of money.

"One of the problems the RIAA has is that these guys have been thieves, raking in money plundering teenagers for decades with their business. And all of a sudden the gravy train is coming to an end and they have to have a product that is competitive, and they don't know how to restructure financially."

Many Solutions, Few Answers

Maybe so, but the players in the industry have their own ideas. Digital Rights Management, or DRM, is another response of the record industry. DRM limits how buyers can use media such as music on CD or via download or movies on DVD. Depending on the DRM features, you might not be able to burn a song from a CD to your iPod, or share it with anyone via a computer network. It's a lock-and-key approach to copyright protection..and as you might expect, given how the record industry is demonized on the Internet, it has vocal opponents such as Defective By Design, who claim that DRM will "cripple our digital future."

But DRM is misapplied, says Glenn. "Napster comes along, and they've got millions of people using it, it's a wonderful thing," he says. "All you have to do is put a meter on it. It would have been very easy. In other words, put some DRM into Napster so people could pay for it. They could have done it. Napster wanted to do it. Instead (the RIAA) shut them down."

Today, more efforts are focusing on finding ways to make music more accessible to everyone while still protecting the rights of copyright holders. "Sony BMG is pushing Open MP3," says Resnikoff. "That means no Digital Rights Management. I can give a file to you, you can give it to someone else. It's an experiment. What would happen if you just made files unprotected? Does DRM keep people honest, or are you losing customers by putting locks and keys on files that people would otherwise get for free? Do buyers really care? If you took DRM protection off every song on iTunes tomorrow, would that increase sales volume?"

Yahoo!, a major force on the Internet, is looking at legally sharing music files through its Yahoo! Music unit. And then there's Creative Commons, a nonprofit organization that offers flexible copyright for creative works. Under this scheme, copyright holders can tailor copyright protection to their liking, going so far as to allow no protection at all other than consumer goodwill (which such openness often breeds). It's a kind of open source approach to intellectual property protection.

And then there are the new businesses constantly cropping up to leverage download and the wide-open landscape. DreamMusician, for example, sells downloads of songs that have been stripped of certain instruments so users can add the instrumental parts themselves. And of course there's Internet radio, which is booming. Even the record labels are getting into the act: EMI, Cohen's former employer, agreed in 2006 to license its catalog to Mashboxx, a legal P2P service run by—get this—former Grokster head Wayne Rosso. The more things change...

Vibrant and Alive

And anyway, is all this upheaval really bad for music? I don't think so. A few companies may die off, but music itself has never been more vibrant or accessible, and never have so many music lovers had so much ability to discover new artists and styles. Download Culture is very music-friendly.

It's also good for copyright, because it forces new thinking about intellectual property. "You now the blue state, red state divide we supposedly have in this country?" says Glenn. "We have now the same kind of divide in the intellectual property community. We have people who say information wants to be free, and then we have people saying, 'Well we need to put people in prison if they steal copyrighted stuff. So we've got extremes really fighting with each other, and we need to find a middle ground."

IP guru Lessig has also argued that DRM and other areas of conflict are healthy for copyright and creative freedom, because they break new ground—albeit painfully—in fair use, consumer rights and privacy that might otherwise never be addressed.

Still, it's difficult not to wonder what might have been if the record companies had creatively, aggressively tried to partner with the P2P upstarts from the beginning. After all, they readily admit piracy will never be completely eradicated. "Our goal is not

to eradicate every last act of piracy," says Marks. "That's never been the reality of this industry. It's just not possible, and we've recognized that for decades, long before P2P came along. You know the way we view it is, you've got to keep piracy at a level where it doesn't suck all the oxygen out of the legitimate marketplace. And I think we're moving in the right direction toward achieving that goal. If you look at the numbers and the surveys and the polls that show P2P usage, you have a pretty constant usage by a core group of users that have been doing it for a while, haven't really changed, and are even doing it maybe in larger volume than they did in the past. So there's been containment of the problem, but still I think everybody recognizes there's a long way to go in terms of achieving that ultimate goal of behavior modification. An important piece of that is rolling out compelling, legitimate services."

What kind of services? Ask Ted Cohen. "I think we're moving into a period where the litigation strategy is supplanted by a monetization strategy," he says. "I think we're at a point where while five years ago we would have tried to sue YouTube out of existence, now we're saying, 'Okay, how do we get a share of advertising revenue? Do we get a share of revenue based on hits?' There's a way of monetizing the disruption, instead of trying to litigate the disruption out of existence. That's never going to work again. You're not going to sue YouTube out of existence. You end up with another gorilla like MySpace.

"The consumer is in charge, and morality doesn't play to them at all. And so you either embrace that and end up figuring out a way to share in the revenue stream, because there are revenues being generated, or you leave the money on the table."

