

**From:** [REDACTED]  
**To:** [FN-OMB-IntellectualProperty](#)  
**Subject:** intellectual property comments  
**Date:** Tuesday, March 23, 2010 6:23:45 PM  
**Attachments:** [IP\\_evolution.pdf](#)  
[ATT167049.htm](#)

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Victoria Espinel

U.S. Intellectual Property Enforcement Coordinator

OMB

Dear Victoria,

I write to encourage your office to thoughtfully embrace the need for an evolution in the thinking of Intellectual Property - to adapt to new media, new distribution channels, and an advancing definition of what an artist is selling to their customers.

My point of view is informed by a handful of slightly different views on the subject, as my professional activities include:

- Professor of Sound Recording Technology at both the graduate and undergraduate level
- Chair of the Education Committee for the Audio Engineering Society
- Professional Recording Engineer
- Acoustical Consultant, designing spaces for music performance and for the creation of music recordings
- Author

Since the early 90s, I have witnessed revenue streams based on the sale of music CDs evaporate, approaching \$0 with conviction. While this has surely upset the business models of more than one industry, I do not view it as entirely negative. Defending old business models in a world of highly portable, easily distributed works of art is both futile, and short-sighted (note: I do not mean to presume that your office is biased towards such a point of view, I am just making comparison to recent state of thinking on the topic). While piracy has surely happened at a grand scale, revenue streams have been deleted for other reasons.

Music-making capability is being democratized on a grand scale. That is, what used to take a team of experts and a host of specialized gear can now be done by some artists, alone, using off-the-shelf computer hardware and software. Many of these artists have adopted the music recording studio as their instrument of choice, for 'playing' their kind of music, and have - at the same time - elected to make their recordings available for free. While record labels, owners of pre-digital copyrights, understandably sought to obtain royalties for their assets as per past practice, artists have begun to define a new way to interact with their fans. Let us please respect and encourage this.

What is 'sold' today isn't the recording. It is a *relationship* with the artist; a *communication* between artist and admirer, and from admirer back to artist; an *experience* with the artist and many others who share a passion for similar artistic achievements. The music recording isn't the thing people want to buy. They want to buy access to a creator whose primary medium of expression might be music.

The recording, the fixed music recording, is a fundamental way for an artist to reach out for and find resonance with those who may become their fans. The recording may be given away to spread the word. The recording needs to be the calling card, the invitation, and the conversation that an artist has with the lover of their art. The recording needs to attract others who find this style, this flavor, this sonic creation somehow moving or important. The recording needs to be able to work elegantly with the (so-called) web 2.0 - the highly interactive, multithread, viral communication environment - and spread freely. The music recording needs legal permission to be a catalyst.

When permitted by the creator, the use of the music recording in ways not damaging to the quality of the art on personal and commercial websites, in social networks, on video hosting sites, blogs, and all future forms of highly-non-linear, interconnected communications should be recognized, allowed, and even encouraged. Most web-based enjoyment of music is analogous to radio - it is *promotion*, not *consumption*. It may be decoration - feature, or background wallpaper. It may be a large or small statement. It may be the point, or it might be a contributing element. It can only do this well if it is always available. Its pervasiveness needs to be determined by the market's interest in that particular recording.

Freely humming in the ether, the recorded work will find a subset of all who hear it who are so passionate about the piece that they'll *want more*. Following the web-based promotion through all forms of free broadcast, these listeners need only find a way to 'get' more. The recording isn't all they want. They want more recordings. They want better sounding versions of the recording. They want different versions. They want longer versions. They want live versions. They want the original demo. They want value added content and other related media. They want t-shirts and buttons. They want to attend a concert. They want a

backstage pass. Etc. The recording goes out freely to many, attracting the monetize-able few through other value-added products for the artist.

Provide the legal freedom for this to happen and we can return to a world of well-compensated artists, with healthy industries all around them. The old model of having big labels fight to get one of their artists on the Top 40, so that they might sell a million fixed copies of a recording to recoup their investment in the project and pay for those that failed is no longer valid. When sound recordings are allowed, in some form, to float freely and find those that want them, we make a new business model - an exciting new business model - possible. Allowing some sound recordings to act as promotion, not transaction, makes it possible for those artists who might only have 10,000 fans in the world to find most of those 10,000 fans and make a living. The break even is no longer 1,000,000 units sold. The break even gets smaller everyday as recording tools become more sophisticated, and recording artists master their new 'instrument,' the recording studio. A limitless richness of art will surely fill the world.

Giving away some recordings to start a relationship between fan and artist for selling other recordings and any value added forms that anyone might dream of, is the IP call to order for our time.

-Alex Case





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