

*"Modern capitalism has to manifest itself as flexible and even eccentric. Everything is geared towards gripping the emotion of the consumer. Modern capitalism seeks to assure us that it operates according to the principles of free creativity, endless development and diversity. It glosses over its other side in order to hide the reality that millions of people are enslaved by an all-powerful and fantastically stable norm of production. We want to reveal this lie."-
Nadezhda Tolokonnikova of Pussy Riot's prison letters to Slavoj Žižek*

15 Years Since Napster and What Have We Learned?

2013 began with the suicide of Aaron Swartz, hounded to death by the government for "stealing" scientific articles to distribute them for free. The year proceeded with the imprisonment of Chelsea Manning for revealing evidence of US government war crimes. Next came Edward Snowden, narrowly escaping prosecution for exposing a vast network of government surveillance and the subsequent scandals which have yet to subside. Curiously then, as the year drew to a close, a flurry stirred when several well-known musicians expressed misgivings about Spotify. Thom Yorke made the statement: "it's the last fart of a dying corpse" in reference to Spotify and the music industry it serves. This view was attacked by Dave Stewart who said songwriters should welcome Spotify because it promised something rather than nothing and would eventually restore the earnings, lost due to the decline in sales of recorded music, that copyright provides songwriters. Then David Byrne entered the fray with his comment: "the internet will suck all the creative content out of the world", an argument supporting Yorke's, yet broader in its indictment not only of Spotify but of the technology on which it is based. Byrne was then contradicted by Dave

Allen who said we all need to adapt to the new technologies and see the opportunities they present instead of bemoaning the losses they've imposed.

The quality of the music these people make is not a question (I happen to like some of it very much), nor is their integrity. What is a question is what qualifies them to speak? And *to* whom and *for* whom are they speaking? Ever since the infamous Napster vs. Metallica lawsuit in 1999, there has been a continuous din which to a large extent has missed the point, or rather, deliberately obscured it. First, there is the problem of identifying the "dying corpse"-is it the music industry or is it capitalism? Second, is the internet (or any technological development) responsible for musicians' woes or is it, again, capitalism that should be held accountable? Third, why is it that musicians always appear in the media arguing about their circumstances at exactly the same moment massive attacks are being mounted on civil liberties and new laws extending Intellectual Property (IP) regimes are being proposed? Is this a coincidence? After 15 years a pattern emerges: whenever governments or business (the same thing really) want to launch a new offensive-especially one concerning legislation or treaties-musicians are certain to appear lamenting their plight. But what connects the hardships many musicians do indeed face to the suicide of Aaron Swartz? How does Swartz's political act stand in relation to musicians' clinging desperately to copyright's dubious "protection" in the vain hope they might get paid something for their songs? How does government surveillance of everyone connect to the punishments meted out to teenagers downloading music or films?

This is where Tolokonnikova's remarks, quoted above, are illuminating. Furthermore, her position is supported by evidence gathered in last 15 years providing abundant examples of both the "eccentric" appearances and enslaving realities of capitalism. Two studies published in 2013 not

only explain what's actually happened in the music industry, they raise more fundamental questions about economic and legal structures dominant in society as a whole. The first study comes in the form of a book, *The Death and Life of the Music Industry in the Digital Age*, which painstakingly documents the actual course followed by this industry and its biggest players since the advent of the internet. Core findings include:

"Price Waterhouse Cooper estimated the 2007 value of 'music driven' industries at US\$130 billion (PWC 2007). A later study (Winzek, 2011) estimated that while the record industry is in decline, the combined value of a broader range of music industry sub-sectors, encompassing recording, live performances, publishing and others has actually risen from US\$51 billion in 1998 to more than US\$71 billion in 2010. This represents an overall growth of 40 per cent across those sectors over that 12 year period. Thus, it is important to note that music has an economic relevance that extends far beyond the scope of record sales, and such data indicates a global music industry that is actually growing rather than one in decline."

Leaving aside the description, in copious detail, of how this transpired the simple fact that three giant corporations continue to dominate music production, promotion and distribution puts the lie to all the fantastic hyperbole proclaiming their imminent demise. Furthermore, the key mechanism for this continued dominance is not technological at all. Instead, it is the legal fiction known as IP, more specifically: copyright. And this where the second study comes in.

Researchers at the Northwestern University School of Law conducted a survey of 5000 musicians to discover what role copyright played both as an incentive and as actual remuneration in their professional lives. Entitled, *Money From Music: Survey Evidence on Musicians' Revenue and Lessons About Copyright Incentives*, the study

came to a striking conclusion: "For most musicians, copyright does not provide much of a direct financial reward for what they are producing currently. The survey findings are instead consistent with a winner-take-all or superstar model in which copyright motivates musicians through the promise of large rewards in the future in the rare event of wide popularity. This conclusion is not unfamiliar, but this article is the first to support it with empirical evidence on musicians' revenue". The researchers discovered something else as well: virtually all previous discussion of this subject had been conducted without evidence. The leader of the team, Peter DiCola, expressed astonishment that policy makers, legal scholars and industry spokespeople, all make the most sweeping claims without any empirical data to support them.

What these studies show is that while copyright has been sold as a means of protecting authors from being "ripped off" and providing incentives for performing creative labor, the result has been the enrichment of a tiny handful and the impoverishment of the great majority. Furthermore, the studies conclusively prove that technology has not led to greater equality but rather, it has reinforced already existing inequalities, indeed, exacerbating them further. This inevitably raises a question of context: historical, legal, economic and political. Could these outcomes have been predicted in 1999 based on an analysis of the music industry in the previous 100 years? How do issues such as the criminalization of file sharing and the prosecution of young people for "stealing" music connect with, on the one hand, freedom of information, open access and sharing, and on the other, the persecution of Assange, Manning and Snowden (among many others) and the government surveillance these whistleblowers have exposed? One thing, however, is immediately clear: blaming the general public or the internet for the problems faced by musicians is big mistake. For one thing, it lets the

real culprits off the hook, for another, it prevents musicians joining their only trustworthy means of support, namely, their fellow citizens. Especially under conditions of crisis, musicians face the age-old question: "Which Side Are You On", and allying with the music industry is of course one choice. But increasingly, musicians are discovering that the only real protection or incentive they can hope to gain is from their audiences, those people who need what they do and will support them doing it. And audiences are people, not markets. This is why the greatest rewards are not quantifiable in monetary terms, nor can they be taken away by unscrupulous business people unless they are willingly surrendered. They are the products of an exchange between performers and audiences based on mutual need and they are nourished by continuous, collective effort. This is of course an old story but one worth recalling in the present circumstances.

Recollection is especially necessary when some musicians now harken back to the "good old days" when the Majors, with all their faults, still acted as "gatekeepers", "tastemakers" and brought the world some great music. This is wrong on so many levels it is difficult to know where to begin unravelling it. Perhaps Little Richard is a good place to start: "I didn't get paid-most dates I didn't get paid. And I've never gotten money from most of those records. And I made those records: in the studio, they'd just give me a bunch of words, I'd make up a song! The rhythm and everything. "Good Golly Miss Molly"! And I didn't get a dime for it." Present day despair does not justify rewriting history and the history of the music industry is among the most despicable examples, littered by the corpses both literal and figurative of not only individual talents but of the cultural legacies of oppressed people. So it's worth recalling that on the most fundamental level, the claims made at the dawn of the internet era *could not* be true and that was foreseeable in 1999. Indeed, there was abundant

evidence from an earlier period in history that predicted what course would be followed by all the social actors in the current replay of a drama originally scripted then.

Welcome to the Hit Parade

This period can be defined as the late 19th and early 20th Centuries with the invention of the phonograph and the radio. The advent of these technologies made it necessary to reform the very weak and largely unenforceable copyright law then prevailing in the United States. This was accomplished-over considerable opposition-in 1909 and supplemented with a Supreme Court decision in 1917. Now, the legal details are not here essential to the basic point that this law established the economic and political structures upon which the music industry was built. Economically, because it linked together three industries-manufacturers of phonographs and radios, publishers (hitherto confined to sheet music, piano-rolls and orchestras for the sale of their wares) and advertisers of all kinds. Politically, because it provided state sanction and legitimacy to what otherwise would be viewed as mundane business ventures, requiring no new legislation to implement. It furthermore solidified the mutual dependence of government and business making the music industry effectively an arm of the State. This symbiosis proved highly effective, generating enormous profits, especially between 1919-1932, whereupon, the Great Depression laid waste to the music industry (and much else, of course). The process resumed again following WWII, reaching unprecedented heights in the 1960's and 70's whereupon it faced another large-scale obstacle in the crisis of 1973 and the attendant slowdown of expansion. This was countered by digitalization.

What digitalization enabled was a repetition of the original process which had by 1980 saturated the market

with radios, phonographs and vinyl records. All the same means were employed-first with CDs and later with computer files. All the same structures were maintained and expanded, ultimately spanning markets far more vast than had hitherto been possible to the point where they became literally global. Of course, there were new entrants in the field-Steve Jobs and Apple repeated what Emile Berliner and the Victor Talking Machine Company did originally with record players and Edwin Armstrong and Westinghouse did with radio. To sell iPods and iTunes, Apple made deals with all the major copyright holders-at that time four, now three, major corporations-Sony, Warners and Universal. In other words, none of this is new, let alone revolutionary. Jobs himself admitted that he was using these older business models, indeed counting on them, as they had proven so successful in the past.

The crucial point here is twofold: copyright was necessary to, on the one hand, make profitable use of the music necessary to attracting customers for the gadgets being sold while, on the other, maintaining the dominance of the means of promotion and distribution enjoyed by a few giant corporations. This, in turn, greatly enhanced the propagandistic efforts of the State. Inculcating belief in the inherent goodness of America and the wisdom of its policies was always an essential component of the sales effort, especially in regards to mass culture. In the face of all the hand-wringing and doom-saying about the demise of the music industry, the stunning fact is that this dominance has been maintained and expanded. Furthermore, the strengthening of IP regimes necessarily flows from the strategy for all the same reasons it was promulgated in the first place. The only difference now is that the capabilities of computers, fibre-optic cables and satellite transmission, have rendered certain limitations inoperative. Thus, the transmission of information of any kind is now possible with such speed and range that it has become necessary to

extend copyright, patent and trademark to every conceivable thought or deed, aiming ultimately at the private ownership of life itself (the human genome, seeds, and of course, songs). It should be noted here that before *Napster vs. Metallica*, the alarm had already been sounded by, among others, Vandana Shiva. Speaking on behalf of the majority of the world's population living in the Global South and to a large extent employed in agriculture, Shiva alerted the world to the machinations of giant pharmaceutical and agriculture firms that were bent on both expropriating traditional knowledge concerning plants and their nurture, to the replacement of these plants and practices with patented seeds and pesticides that would destroy millennia of creative development on the part of millions of human beings. Shiva first published *Biopiracy: the Plunder of Nature and Knowledge* in 1997. It should be further noted that John Perry Barlow published his *A Declaration of the Independence of Cyberspace* in 1996. These examples make clear that there were eloquent voices expressing the true breadth and depth of the issues at stake well in advance of all the hype and hoopla that flooded the media following *Napster*. Most important, their prognoses contained not only the threats but also the potential, especially of mass participation in political struggle, that the new situation provided. There is, however, another dimension to this situation that has arisen since 1999.

What Exactly Is Piracy?

Along with mutating technologies, and intimately bound up with their proliferation, is the reemergence of piracy as a concept and a practice. It is not a coincidence that at precisely the same time "piracy" was being attached to the behavior of millions of young people in the Global North, maritime piracy resurfaced off the east coast of Africa. While the constituencies are completely different

the underlying causes of the two disparate phenomena are linked: globalizing capitalism has ruined untold millions with its merciless expansion involving everything from the dumping of nuclear waste, to overfishing, to the extraction of minerals vital to the making of iPhones. It has begun to dawn on many young people in the Global North that the "freedoms" they enjoy as a result of the internet are paid for by the suffering and death of human beings in other parts of the world. But the link is not only a moral one.

The purpose of using piracy to designate what was hitherto known as "copyright infringement" or "counterfeiting" is not only to demonize people engaging in such practices, although that is certainly one purpose. More importantly, it is to extend the definition of piracy from its formerly exclusive usage in the Law of the Sea to include actions against IP. Piracy is defined by international law as *sui generis*-meaning, of its own kind-having no corollary in other criminal law. Secondly, its scene is the high seas which belong to no country meaning no flag may protect a pirate. Thirdly, a pirate is, according to the law of nations, an enemy of mankind. This justifies any nation pursuing a pirate anywhere, even if this involves invading a territory to apprehend the pirate. Now, numerous recent cases (Richard O'Dwyer, Kim Dotcom, Rapidshare) have amply demonstrated that this is precisely what the US government is attempting to do. Up until now, it has not launched invasions of the UK or New Zealand but it has attempted to force these governments to extradite the "pirates" to the territorial US where they can be prosecuted.

Legally, however, the US is on shaky ground because, currently, international law explicitly excludes from the definition of piracy such activities as pirate radio, pirating of copyright, patented or trademarked materials or, for that matter, any other activity not proscribed in the legal definition of piracy. In order to amend legislation and secure legal sanction the US (and allied governments) need

to establish an equivalence in law between piracy as it was traditionally defined and those acts that have hitherto been mainly subject to civil litigation, not criminal prosecution. This is the significance of the recent attempts (and defeats) of such legislation as SOPA, PIPA and ACTA. As this is being written a new attempt is underway: The Trans-Pacific Partnership (TPP). As Julian Assange stated upon Wikileaks' release of the relevant documents: "The US administration is aggressively pushing the TPP through the US legislative process on the sly. If instituted, the TPP's intellectual property regime would trample over individual rights and free expression, as well as ride roughshod over the intellectual and creative commons. If you read, write, publish, think, listen, dance, sing or invent; if you farm or consume food; if you're ill now or might one day be ill, the TPP has you in its crosshairs."

Lining up celebrity musicians to join in these assaults on civil liberties persists. Perhaps it is not surprising since some celebrity musicians are themselves extremely wealthy, finding common cause with ruling elites. But in the case of some who are famous, in part for their anti-authoritarian or populist message, it is peculiar, to say the least. How proprietorship in a song can take precedence over freedom of expression, let alone peace and justice, raises more than moral issues. It brings to light the devious means by which copyright was originally sold to the masses as well as the real purposes of all IP regimes. Instead of the protections and incentives IP law ostensibly guarantees authors and inventors, exactly the opposite is in fact the case. IP law ensures that the "author" or "inventor" of a book or a formula is not necessarily the person who actually did the work, but the owner of the copyright or patent. Thus, Bob Marley is not, according to law, the author of "No Woman, No Cry" since he wrote that song as a "work for hire". The author is none other than Universal Music. The same is true for the millions of researchers at universities throughout the

world who must sign contracts guaranteeing that inventions or discoveries they make automatically become the property of either the university or private firm that is financing the research. At the very least, musicians should inform themselves about the relevant law and industry practices before joining in campaigns orchestrated by their bosses. Better yet, all creative people should ask themselves what ends their creativity serves and how we got from file sharing of music to massive state surveillance in a few short years?

Clearly, one route is by way of the utterly predictable capitalist crisis. For, as everyone knows, another thing that happened since 1999 is the Great Crash of 2008. Instead of looking at the internet or file sharing as the reason for the declining fortunes of musicians one might gain more insight by visiting Detroit. Or Cleveland. Or Baltimore. According to a recent NY Times article: "In all, more than half of the nation's 20 largest cities in 1950 have lost at least one-third of their populations." While some may still cling to the sanctity of Steve Jobs and Bill Gates, it has not escaped everybody's notice that we have been subjected to 40 years of neoliberal assault. The results are now in. War without end, deepening austerity, state surveillance and global warming. How all this can be attributed to internet file sharing begs credulity. But why the extension and criminal enforcement of IP is vital to ruling elites is abundantly clear. Amidst what may be the terminal crisis of capitalism, the construction of regimes of global dominance based on fundamental capitalist principles such as private property and possessive individualism is necessary and inevitable.

The Growth of a Movement

Resistance is also necessary and inevitable. And it is growing. Indeed, it is the strength and effectiveness of a

movement that led Aaron Swartz to say in his Guerrilla Open Access Manifesto, "With enough of us, around the world, we'll not just send a strong message opposing the privatization of knowledge — we'll make it a thing of the past." These are the people who've learned and taught the most important lessons of the last 15 years. These are the ones musicians should be joining since they comprise not only a large audience but one that will comprehend the difficulties musicians face and seek solutions beneficial to musicians and audiences alike. Such solutions must include credit and economic support for musicians, certainly, but the cost need not be the shackling of creativity on the plantation of intellectual property.