

DRAFT

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## DON'T JOIN THEM: BEAT THEM!

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Two recent NYT opeds (Friday, June 25, 2004) told the music industry to surrender in its war on illicit P2P filesharing and embrace a new distribution model. The correct approach, said the professorial authors, is to allow free distribution of music while levying a fee on Internet users. The money collected would then be divvied up among the creators of music according to a formula developed by the fee-levying government authority.

This idea is sweeping academia, and it has a certain attraction. But, on examination, its plausibility gets thin quickly.

Even when the focus is limited to music, there are intractable problems of establishing a level of fees or a formula for distribution that bears any resemblance to consumer preferences or artists' incentives in a real marketplace.

And music is the current focus only because a song can be transferred over existing Internet connections in a short time. As broadband becomes generally available, other creative products will become ripe targets -- movies, games, software, and books.

How would a fee system divide the pot among these products? And how in the world could one devise a system that would be seen as fair by Internet users, who have wildly different levels and patterns of use, let alone the artists? What

allocation system could possibly accommodate game players and opera buffs, fans of heavy metal and readers of avant garde literature, or provide proper incentives for the production of all these items?

Does anyone really believe that a government board would produce a workable system?

In reality, we already have a fine system for producing creative products. It works, not perfectly but quite well, by assigning limited property rights to creators and letting consumers license these rights in the market place, putting their own money on the table to reward the creators who respond to their set of preferences.

The Internet is not a challenge to this model but a wonderful opportunity to extend and enhance it.

While Internet distribution imposes some new kinds of costs, stripping out the dead weight of physical transportation should enable creators to deliver products at lower prices, just as pipelines deliver oil at a lower cost than trucks. Competition will ensure that consumers benefit from these savings.

Furthermore, with access to the entire world's population, viable markets for every taste can be put together. If only 100,000 people in the world like a

particular style of music, that will be enough to support a band.

The growing technology of micropayments will allow the sale of mass market products for pennies apiece. Or, for rarer tastes, the fans can band together and pay a few dollars each, or even a few tens of dollars each. One of the most important weaknesses of the Internet fee idea is that it does not allow for this trade-off between mass appeal at a low price and limited appeal at a high one. Everyone would ride in a subcompact rather than a limousine.

The road to this creative heaven is clear. Content creators must provide their wares over the Internet and share cost savings with consumers. Micropayment technologies must be perfected. And the illicit filesharers who want to deprive us of the benefits of the new technologies must be suppressed.

The first two parts of this triad are well in train. The last one is in doubt, not least because the professoriat is trying hard to convince the public that illicit file sharers are freedom fighters.

This impression must be reversed. A refusal to recognize the standards of conduct necessary to make great social systems work -- such as the economy in general or the production of creative work in particular -- is not a badge of superiority but an act of juvenile vandalism.

Those who want to destroy a system based on markets and intellectual property must be told that they are destructive, just as someone who strews garbage across Central Park should not be called a performance artist.

To the extent that education and social pressure do not work, content should be protected with digital rights management and anyone who cracks it to take the work for free should be sued.

Those of us who want to live in the content heaven that is within our grasp, thanks to the Internet, owe it to ourselves, and to each other, not to be cozzened by utopian abstractionists.