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Pop Song Piracy: Disobedient Music Distribution Since 1929

Barry Kernfeld
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In his illuminating, balanced and readable historical overview, Barry Kernfeld traces the parallel and, more often than not, conflicting trajectories of music corporations and individuals or groups that have sought to circumvent official channels of music distribution.

The presented material is neatly organized into three sections: Printed Music, Broadcasting and Recordings in which the author describes in chronological order various forms of song products and modes of distribution, from song sheets, "fake" books and pirate radio, to phonograph records, cassette tapes, CDs and mp3s. The history of their invention, evolution and demise does not confine the analysis within a technological framework, which, albeit important, has not always been crucial, for example in the case of "fake" books and pirate radio (9). Similarly, although we are informed that copyright has been an essential prerequisite for the emergence of unofficial distribution models and networks, by relying upon the existing literature on the topic, Kernfeld has opted to minimize legal jargon and instead attempts to draw and reflect upon the "big picture" (xi).

Thus, the successive and overlapping nature of different music products and systems of dissemination is conveyed vis à vis the recurrent motif of initial prohibition and later assimilation, which historically represents the industry's typical reaction to unauthorized music distribution. Variations on this main theme include tolerance and assimilation (pirate radio, for example), or attempts at prohibition and subsequent obsolescence (phonograph records, for instance). Historical circumstances notwithstanding, Kernfeld's account shows that the struggle over the control of songs has always resulted in favour of the alternative distribution systems.

What has been overlooked, says Kernfeld, in both the industry's approach and scholarly texts on the subject is that the central principle which underpins unofficial - or disobedient - distribution has not always been the desire to make a profit but, rather, the functional and creative appropriation of existing products, models and technologies. For example, whereas the disobedient distribution of CDs mainly involved copying and profiting, song sheets and "fake" books represented unofficial commodities that served practical functions which official sheet-music could not. Kernfeld's analysis is thus rooted within two opposing categories of disobedient music distribution: "equivalency", which involves mere copying and profit-making, and "transformational" use, which constitutes innovative ways of circulating and consuming music. Apparently,

transformational uses spring out of a need for greater accessibility and functionality, hence their eminent success.

The industry's initial response has always been a consistent refusal to acknowledge the transformational characteristics of new products and the original ways of music dissemination, before ultimately succumbing to their admittedly ingenious (and profitable) qualities. The fact that the music industry has been slow to pioneer or even adopt such apparently inventive ways of music distribution was the outcome of its traditional technophobia (147) as well as its persistence to try and convince the world that equivalency and transformational use are identical, that is, mere copying and nothing more. In fact, this has been the central tenet of copyright whereby song owners "own any type of product that captures or conveys some aspect of that song" (5). However, both of the aforementioned reasons reflect an explicit concern with profit losses generated either by new official song products driving established ones into obscurity or by the direct questioning of music monopolies through the unauthorized promotion and sale of transformational products. Indeed, it seems that the real threats most of the time did not involve equivalency as the act of album bootlegging, a transformational use par excellence, shows (172).

Not only does the author convincingly demonstrate that the two poles of disobedient song distribution incorporate discreet aims and practices, but also proves that at times we are presented with an equivalency/transformational use continuum rather than distinction. Although the illegal copying of recorded music seems to exemplify equivalency, boundaries could be blurred, for instance by the unofficial creation of song compilations, the production of out-of-print albums or the problematic definition of what constitutes individual use (219-220). Corresponding terminology further exposes these contradictions as well as the problems faced by the monopolists: in the past, piracy and bootlegging have been used interchangeably, thus signifying the same thing, namely equivalency. Due to the fluid, contested definitions of piracy and bootlegging these terms cannot provide a reliable conceptual framework for the historical consideration of disobedient music distribution (175). Although the book unavoidably focuses upon the history of debates that have taken place in North America and Europe since 1929, it also acknowledges that globalization has influenced and in most cases facilitated disobedient music distribution, with alternative distribution systems taking advantage of the numerous discrepancies among and between national laws and the transnational loopholes that these created.

A large part of the book is based upon media accounts and reports that illustrate the detailed press coverage of unofficial music distribution and testify to the strong public interest in the topic. According to the author the relatively recent lack of detailed media coverage is difficult to explain, considering that the unauthorized distribution of songs still is a ubiquitous and global phenomenon (191). However, what matters is that the music industry, despite its failure to combat music piracy through law enforcement, has been conducting a successful moral campaign based upon ambiguous claims concerning its financial losses. Ironically, in their effort to impose specific moral standards and classifications music corporations had to confront mainstays of ethical conduct, such as religious and educational institutions, which were heavily involved in music photocopying (84-85).

Although Kernfeld explicitly avoids the trap of technological determinism, the implicit notion of progress that runs throughout his analysis somewhat inhibits the consideration of such questions as: what is the potential for the unmediated music distribution of physical song products - "a path not taken" (35-36)? Are all music products destined to be replaced by new ones and become obsolete? How should we perceive the still extensive use or resurgence of such artifacts as vinyl records, and how do music consumers relate to them? The consideration of these ideas could provide additional insights into the ways in which music listeners interact with song products and embrace different forms of musical appreciation, thus giving rise to alternative or disobedient modes of song distribution.