## The Napster Cantata

### By M. E. Kabay, PhD, CISSP

#### Assoc. Prof. of Computer Information Systems

#### Norwich University, Northfield, VT

#### Copyright © 2001 M. E. Kabay. All rights reserved.

As we watch the current battles between advocates of free distribution of software and music, it seems to me that we ought to be clear on the arguments being presented by those in favor of such liberation of intellectual property. Perhaps the following ripostes will provide responses to the cant being peddled by these people (or possibly just to generate hate-mail).

### 1 Everyone's doing it.

That's simply not true: not everyone breaches copyright. Furthermore, the fact that some people are violating laws and norms of civility is irrelevant to whether they ought to be doing so. What did your parents tell you the last time you tried that excuse ("Aw Mom / Dad! Everyone's staying out late / using drugs / driving without a license / shoplifting / plagiarizing.") to violate the law or to ignore a family standard of integrity? The number of people who use other people's work without recompense does not make this action right or even legal. Ethical behavior is not conditional on popularity.

### 2 We won't get caught.

So what? That's irrelevant to whether they ought to be doing it. Being caught has no bearing on whether an act is moral or legal: what do you think hit-and-run accidents are all about? Knocking someone over with your car is OK as long as you don't get caught? Doing bad things gets to be a habit regardless of whether anyone finds out about it. And companies that tolerate any kind of illegality by their employees while on company time or on company systems are opening themselves up to blackmail, denunciation, and lawsuits.

## **3** It's the music / software industry's fault: if they don't want theft, they should charge less.

First of all, even shareware authors get cheated by people who use their software without paying for it — and these are packages for which the authors ask for a few dollars. Secondly, the owner of the software or of the music copyright has no obligation to meet someone else's view of appropriate pricing. Thirdly, no one has a right or entitlement to use intellectual property without an agreement with its owner; if you don't like the price, find a more cost-effective alternative within the law. Fourth, it is just plain rude to disregard the express wishes of software designers or musicians by using their creative output without their permission. Would you do this if you were face-to-face with these people? If not, examine your motivations and justifications.

## 4 It's the producers' fault: if they don't want theft, they should make it technically impossible.

And if someone hits you over the head with a baseball bat, it's your fault for allowing them to do so? Since when does the victim of a deliberate criminal action bear the weight of condemnation? How would you feel if someone entered your home by breaking down the door and then used your TV, leaving a note saying that their unpaid and unauthorized use of your property was entirely your fault for not having a steel door? Criminal hackers, for example, go out of their way to violate security measures on the systems they compromise; every attempt to defend against intrusion is met with vigorous activity to find ways around the defenses. How can anyone seriously accept the notion that the victims are to blame in such cases?

### 5 It doesn't hurt anyone.

Yes it does. Software vendors, for example, including individual entrepreneurs and employees, suffer from having half to seveneights of their potential sales eliminated through theft. How would you like it if you were trying to earn a living providing a service or a tool — and half the potential clients simply stole your product without paying you anything at all? And furthermore, every theft of intellectual property makes the next theft even more likely (hence the "everyone's-doing-it" argument above).

### 6 It only hurts a company — I wouldn't steal it from an individual.

Oh, Robin Hood, eh? The company isn't a machine, it's a group of people who agree to work together according to terms they agree on. Steal from the company and you steal from employees, owners and other stakeholders. You may even hurt honest users by contributing to higher prices. I once met a criminal hacker who earnestly assured me that he would steal a radio from a business office if it had a corporate asset sticker on it but not if it were the property of an employee there. Where's the line you're drawing? Would you steal from a corner store owned by Mom and Pop? How about it they had one employee? three? fifteen? And if this is such a big political and ideological issue, why not use the standards of civil disobedience and present yourself for legal action instead of violating copyright in secret?

# 7 The music industry is violating the rights of the musicians, so breaching copyright is a Good Thing.

Many people feel that musicians are being violated by the big music distributors' stranglehold on copyrights and distribution; see for example "The Battle for the Heavenly Jukebox" by Charles Mann in the Atlantic Monthly

<http://www.theatlantic.com/issues/2000/09/mann.htm >. However, taking the musician's work without recompensing anyone at all hardly seems like a principled stand against greed — rather the reverse. It reminds me of people who listen to Public Radio but never contribute anything to support the stations and the programs: who, exactly, is supposed to do so? And using the categorical imperative, if no one pays for music, or if everyone steals intellectual property, the results would be bad for everyone.

### 8 Our theft is helping the software / music industry increase their sales.

And when they ask you to help them with their marketing strategy, you can propose this model and discuss it. It is truly bizarre to think that forcing a marketing strategy on unwilling participants is an acceptable action. How would you feel if you were running a store and someone else decided to take your products and give them away without your permission because "the give-away is a great loss-leader and you'll recoup your losses with increased visibility and sales"?

### 9 No software / music / art should ever be copyrighted — it should always be free.

Do you earn a salary or do you ever plan to do so? Why don't you donate your time instead? Did you pay for your computer? But why? Why not decide that computer hardware shouldn't be patented — it should be always be free? Since when did people who buy their computers, drive purchased automobiles and own VCRs decide they're in favor of communal property and voluntary labor? And who gave these people the right to determine that other people's labor should be free? If you want to give away your music, do so. If you want to copy music by bands that have released it for free distribution, do so. But don't claim to be following a principle that you won't apply to your own labor.

## 10 But I need it and I don't want to pay for it.

Even if you could define need so flexibly as to include your wish to use someone else's tools or art without paying for them, how does that justify theft? Are you going to rob a bank tomorrow so you want — oh, excuse me, need — a car? Or why not just mug someone so you can have their jacket? Why should the use of the Internet and special software negate our normal attitudes towards fair dealing with other people? Cyberspace is not a place, it's just a word for a method of communications; normal obligations and constraints that govern civil society are hardly to be ignored simply because we're using modems and T1s.

\* \* \*

We should challenge those who use sloppy thinking in condoning their own or others' abuse of other human beings' work. Here is a hierarchy of questions (based on the work of Kallman and Grillo\*) that we can all use in making ethical decisions:

- Are there explicit laws making the proposed action illegal?
- Are there formal guidelines such as codes of ethics or policies that bear on the issue?
- Who gains and who suffers from the action?
- Would you be proud to have your name broadcast on national TV with a description of your act?
- Would you like to tell your boss about what you're doing?
- Would you be happy to describe your behavior to your parents or to others in your life whose opinions you respect?
- Would you object to having the proposed action be done to you?
- Does your proposed action violate standards of trust? integrity? truthfulness? gratitude? justice? kindness?
- Are you treating other people with respect by engaging in the proposed action?
- Do you approve of the consequences if everyone acted as you are proposing?

In summary, stealing other people's intellectual property is illegal, unethical, and rude.

Now go tell your kids about this.

\* Kallman, E. A. & J. P. Grillo (1996). Ethical Decision Making and Information Technology: An Introduction with Cases, Second Edition. ISBN 0-07-034090-0. xiv + 138. Index.