

**To:** Nielsen Business Media, Inc. ([tm-pto@ssjr.com](mailto:tm-pto@ssjr.com))  
**Subject:** TRADEMARK APPLICATION NO. 77355665 - DIGITAL MUSIC LIVE! - 03669-T0111B  
**Sent:** 2/28/2008 10:59:17 AM  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/355665

**MARK:** DIGITAL MUSIC LIVE!

**\*77355665\***

**CORRESPONDENT ADDRESS:**

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**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Nielsen Business Media, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET NO :**

03669-T0111B

**CORRESPONDENT E-MAIL ADDRESS:**

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**OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:** 2/28/2008

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5)

appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**Substantive Refusal – Section 2(e)(1) – Descriptive:**

Registration is refused because the proposed mark merely describes the subject matter and intended user of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.*

A term that describes the subject matter of a publication is merely descriptive under Section 2(e)(1). *In re National Recreation Association, Inc.*, 181 F.2d 221, 85 USPQ 281 (C.C.P.A. 1950) (THE PLAYGROUND descriptive of magazine); *In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213 (TTAB 2000) (PSYCHOLOGY PRESS merely descriptive of books in field of psychology).

A mark that describes an intended user of a service is also merely descriptive within the meaning of Section 2(e)(1). *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984); *In re Gentex Corp.*, 151 USPQ 435 (TTAB 1966). The Trademark Trial and Appeal Board has consistently held marks merely descriptive when they describe the audience or the class of purchasers to whom a publication is directed. TMEP §1209.03(i).

The proposed mark is DIGITAL MUSIC LIVE! for "Workshops and seminars in the field of music; Publishing of electronic publications." DIGITAL MUSIC refers to the nature of music recorded on, or by, digital means and goods. LIVE means "Broadcast while actually being performed; not taped, filmed, or recorded: *a live television program.*" The mark is descriptive because the wording identifies services such as workshops and seminars and publications that will contain live digital music. Please see the attached webpage evidence from Google.com and from The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

Because the wording DIGITAL MUSIC LIVE! is descriptive of the subject matter of the workshops, seminars and publication services, registration is refused under §2(e)(1).

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

**Advisory: Amendment to the Supplemental Register:**

In order to overcome the refusal under Section 2(e)(1), the applicant may choose to amend the application to seek registration on the Supplemental Register. *However*, the applicant should note that a mark in an application under Trademark Act Section 1(b) is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 or statement of use under 37 C.F.R. §2.88 has been filed. 37 C.F.R. §§2.47(d) and 2.75(b); TMEP §1102.03. When a Section 1(b) application is amended to the Supplemental Register, the effective filing date of the application is the date of filing of the allegation of use. 37 C.F.R. §2.75(b); TMEP §§206.01 and 1102.03.

/Anne Gustason/  
Trademark Examining Attorney  
U.S. Patent and Trademark Office  
Law Office 117  
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**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the

assigned examining attorney.

## Digital Music: Problems and Possibilities

[William Fisher](#)

last revised: October 10, 2000

[Note on the origin and purposes of this essay](#)

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### I. Introduction

Almost all music is distributed today in digital, rather than analog, form. Until recently, most digital music was sold in containers called compact discs. Developed and refined between 1965 and 1985, [compact-disc technology](#) swept the consumer market during the late 1980s and early 1990s, displacing almost completely long-play vinyl albums. In the past few years, a new method of distributing digital music has become increasingly popular: transmission of containerless files via the Internet, followed by storage on home computers. Music distributed in this manner typically is replayed either through [stereo systems](#) attached to the home computers or through [portable devices](#) analogous to the "walkman."

The technology that has made this new method convenient and popular is [MP3](#), an audio compression file format. Musical files compressed using MP3 occupy approximately 1/12 of the disk space occupied by uncompressed files, enabling them to be transmitted faster and stored more easily. Two groups have embraced MP3 technology especially enthusiastically. First, musicians unable to obtain recording contracts with the major record companies have found that, at modest cost, they can record their material in MP3 format and then make it available over the Internet. Second, high-school and college students have discovered that they can obtain on the Internet MP3 copies of most of the songs of their favorite musicians. A high percentage of the MP3 recordings available in this manner were prepared without the permission of the owners of the copyrights in the music.

This essay attempts to sort out the legal issues presented by this new technology. [Section II](#) catalogues its social advantages and disadvantages. [Section III](#) analyzes the various legal challenges that have been or might be brought against users of the new technology. [Section IV](#) suggests some ways in which the legal and business landscape might be reconfigured to handle better the combination of opportunities and dangers presented by the new technology.

### II. Benefits and Costs

Widespread adoption of the technique of distributing digital music via the internet -- either in MP3 format or in some other form -- would give rise to five important social and economic advantages.

1. [Cost savings associated with "disintermediation."](#) Currently, most of the retail price paid by a consumer for a compact disc goes to the manufacturer of the disc itself, the distributor of the disc, the retail store where she purchased it, or the record company that produced the recording. The composer and the recording artist (often the same person) rarely receive more than 16% of the purchase price. If the music were distributed over the Internet by the artist himself, almost all of costs associated with making and distributing discs could be eliminated. The result: musicians could earn more or



- price. If the music were distributed over the Internet by the artist himself, almost all of costs associated with making and distributing discs could be eliminated. The result: musicians could earn more or consumers could pay less or both.
2. [Elimination of overproduction and underproduction](#). Under the current system, the record companies must guess how many copies of each CD consumers will demand. Distribution of containerless digital files over the Internet would eliminate this problem.
  3. [Convenience and precision](#). The many annoyances associated with buying music in retail stores (travel time; the disappointments when CDs are out of stock; etc.) would all be eliminated by Internet distribution. The less substantial annoyances associated with mail-order purchases of CDs (waiting for delivery; being forced to purchase an entire CD when one is only interested in a few tracks) would also be eliminated. Consumers would get exactly the music they wanted (and none of the music they didn't want) instantly.
  4. [Increase in the number and variety of musicians](#). The set of musicians who would like to make their music available to the public and the set that significant numbers of consumers would like to hear are both much larger than the set hired by the recording companies. The opportunities available to new artists and to bands that appeal to "niche" markets would increase rapidly through widespread adoption of the new technology.
  5. [Semiotic democracy](#). In most modern capitalist countries, the power to make meaning, to shape culture, has been concentrated in relatively few hands. One of the great cultural benefits of the Internet in general lies in its tendency to decentralize this semiotic power. In two respects, Internet distribution of digital music would contribute to that decentralization. The first, already mentioned, consists of the expansion of the set of musicians who can reach wide audiences and the associated diminution of the cultural power of the "big five" record companies. The second consists of the ease with which "consumers" of digital music can manipulate it, recombine pieces of it, blend it with their own material -- in short, can become producers. The next generation of compression formats -- [MP4](#) -- promises to increase radically those opportunities for interaction and iteration.

Regrettably, distribution of digital music via the Internet also has one, very substantial drawback: It undermines the ability of music creators to earn money. Two circumstances, in combination, give rise to this problem. First, MP3 files are unsecured. In other words, nothing prevents a person who has acquired (with or without permission) an MP3 file to make an unlimited number of copies of it. Second, unlike the copies of musical works made using analog technology (such as ordinary cassette tape recorders), the copies made using digital technology are perfect. In other words, each copy is identical to the original. The result: unauthorized, perfect MP3 copies of copyrighted recordings are widely available on the Internet for free.

The proliferation of unauthorized free copies has frightened both the recording industry and [many musicians](#). The laments of the recording companies leave many observers unmoved. It is [commonly said](#) that the major recording companies have been engaged in oligopolistic pricing for years and can stand to forego some profits. Even if that is true, however, the pleas of the musicians merit our attention. A dramatic reduction in their revenues both may deprive them of a [fair return for their labors](#) and may create precisely the state of affairs that copyright law (according to the dominant theory thereof) was designed to prevent: [socially suboptimal production of musical works because of their nonexclusivity](#). In short, Internet distribution of digital music may result, not in an increase in the amount and variety of music available to the public, but in a decrease.

### III. The Inconclusive Legal Campaigns

During the past three years, the [Recording Industry Association of America \(RIAA\)](#) and [its cousins in other countries](#) have tried valiantly to halt the unauthorized distribution or use of digital music. The industry has waged this war on four fronts: against individuals engaged in nonpermissive downloading of copyrighted MP3 files; against the manufacturers of the machines used to play MP3 files; against the operators of "pirate" Web sites; and against the growing group of intermediaries that assist users in locating and obtaining MP3 files. To date, none of these struggles has been decisively resolved. On the first two fronts, the forces embracing the new technology are currently winning; on the third and fourth, the forces seeking to limit uses of the new technology are currently winning. But the outcomes of all four campaigns remain in doubt.

**A. Copyists.** The legal case against a person who, without permission, downloads an MP3 copy of a copyrighted song to her hard drive is very strong. The [current version of the American copyright statute](#) protects both "musical compositions" and "sound recordings." Thus, both the composer of the song in question and the artist who recorded it -- or (most likely) [the organizations to whom they have assigned their copyrights](#) -- are in legal positions to challenge the downloading. Have the entitlements of the copyright owners been violated? The answer is clearly yes. The sets of entitlements associated with copyrights in "musical compositions" and "sound recordings" are somewhat different, but both encompass exclusive rights to make verbatim reproductions of the entire song. The copyist has plainly abridged those rights.

Only one colorable legal argument is available to the copyist: the contention that the downloading (like the home recording using a VCR of a copyrighted television program) should be excused as a "fair use" of the copyrighted works. The doctrine upon which this argument rests is notoriously vague and unpredictable, requiring the application, on a case-by-case basis, of an ambiguous, multi-factored test. But the unauthorized downloading of MP3 files is a relatively rare instance in which application of the doctrine can be predicted with confidence. In combination, the facts that (1) the copying involves no "transformation" or parody of the copyrighted works, (2) the entire copyrighted song (not an excerpt thereof) is being duplicated, (3) the material in question is more creative than "factual," and (4) this

behavior, if it became widespread, would surely erode the "potential market" for the copyrighted work would doom the copyists' fair-use defense.

To date, however, this powerful set of arguments has been invoked by copyright owners only rarely. [Three circumstances](#) explain the relative quiet on this front. First, it is difficult to locate the persons who download MP3 files. Second, the recording industry is understandably reluctant to antagonize its principal customers. Third, a prohibitively large number of copyright suits would be necessary to make any material inroads into this increasingly widespread practice.

There are signs, however, that these circumstances may not shield the copyists indefinitely. Many of the most enthusiastic downloaders are students in universities, which, relying on logs of students' online activities, have begun to initiate [disciplinary proceedings](#) against them. So far those sanctions have been relatively mild ([including writing essays on copyright law](#)), but more serious penalties may be in the offing.

**B. Equipment Manufacturers.** The second potential target of the recording industry consists of the manufacturers of devices used to download or playback MP3 files. If the industry were able to remove from circulation the machines essential to the trafficking in illicit files, they would not need to bring unpopular suits against individual copyists. So far, however, this strategy has not succeeded.

The most promising lawsuit of this sort was brought by the RIAA against Diamond Multimedia, the manufacturer of a portable MP3 player called [the Rio](#). Similar in form and function to a "walkman," a Rio enables its owner to download 60 minutes worth of MP3 files from his hard drive and then listen to them while exercising, commuting, etc. Conceivably, the RIAA might have accused Diamond of engaging in "contributory copyright infringement" -- on the ground that it manufactured and sold a device whose principal use, in practice, was to engage in copyright infringement. However, the defeat of the closely related argument in the 1984 [Sony case](#) apparently dissuaded them from making such a claim. Instead, they relied upon an obscure provision of the Audio Home Recording Act of 1992 (AHRA), which, as part of a [complex compromise between the proponents and opponents of digital audio tape recorders](#), mandates the inclusion in any "digital audio recording device" of a "Serial Copy Management System" designed to prevent the device from making multiple copies from a single copyrighted work. The case, though peculiar, was close -- but in the end the manufacturer prevailed. Last year, [the Court of Appeals for the Ninth Circuit found in favor of the defendant](#), ruling that the AHRA did not apply to the Rio device, because the computer hard drive from which the Rio records cannot be considered either a digital audio recording device or a digital music recording within the meaning of the Act. Moreover, according to the court, because MP3 files are not coded with generation status or other copyright information, and because copies cannot be made of the files downloaded to the Rio, the SCMS would serve no useful function.

For the time being, this ruling has halted the efforts of the recording industry to bring to heel the manufacturers of machines that facilitate nonpermissive copying and performance of digital files. However, the doctrine of contributory copyright infringement, bypassed in the Rio litigation, remains available if machines dedicated more exclusively to infringing behavior ever come on the market.

**C. Pirate Sites.** The third of the four targets consists of the operators of so-called "pirate" Web sites -- sites on which unauthorized MP3 files have been "posted," thus making them readily available for downloading. The recording industry has had a good deal more success on this front than on the two just described. The legal arguments that the industry can deploy against the pirates are even stronger than the arguments it might deploy against the individual copyists. Like the copyists, the pirates are making verbatim copies of copyrighted songs, thus infringing both the copyrights in the underlying musical compositions and the copyrights in the recordings. In addition, some (not all) of the pirates are making money from their operations (e.g., through advertising), thereby further weakening their already very weak fair-use defenses. Next, the pirates may well be deemed to have violated the [Digital Performance Right in Sound Recordings Act of 1995](#). Finally, some will run afoul of the 1997 No Electronic Theft (NET) Act.

Unlike individual copyists, pirate Web sites can be identified with relative ease. Using the doctrinal weapons described above, the recording industry has moved successfully against several. In the United States, the RIAA has sent "cease-and-desist" letters to many site operators; almost invariably, the recipients of the letters have shut down their operations. [In other countries, similar tactics by parallel organizations have had similar results.](#)

In the past year, the recording industry has also been able, at least on occasion, to invoke the aid of governments in pursuing pirates. In November of 1999, the Justice Department secured its [first conviction under the NET Act](#) of a student operating a pirate site on his university's server. Special criminal statutes and specialized offices within the police departments of Japan and Hong Kong have been deployed against similar miscreants.

**A variation on the theme:** As suggested above, the legal issues presented by the typical "pirate" site are not especially interesting or difficult. By contrast, one website enabling users to gain access to copyrighted music without the permission of the copyright owners presents much more complex questions. In January of 2000, the pioneering company, [MP3.com](#), introduced [two new services](#), both of which allowed a customer to assemble on MP3.com's servers a personal database of her favorite music and then to ["stream"](#) selections from that database to any [MP3 player](#). The first system -- the "Instant Listening Service" -- allowed her to purchase a CD from one of MP3.com's ecommerce partners and at the same time to load digital versions of the music contained on those CDs into her personal online



Listening Service -- allowed her to purchase a CD from one of MP3.com's electronic partners and at the same time to load digital versions of the music contained on those CDs into her personal online account. The second system -- the "Beam-It service" -- enabled her to insert a CD from her home music collection into the CD drive on her home computer, which in turn communicated to MP3.com the contents of the drive. MP3.com then registered the track information and placed a copy of the music contained on the CD into her password-protected database. Thus, in order to access any of the music files stored on the MP3.com server, a customer must either purchase a "hard copy" of the CD from one of MP3.com's partners or prove that she owns the CD (or has access to a copy of it). The benefit of these systems to consumers, argued MP3.com, is that they did not need to fill up scarce storage space on their hard drives with MP3 files, that their music libraries were not vulnerable to computer crashes, and that they could listen to music in their libraries from any computer, not just their home computers.

The record companies [took umbrage](#) and [brought suit](#). They pointed out that, to construct the database of MP3 files from which customers' personal music libraries were assembled, MP3.com had made verbatim copies, without permission, of the copyrighted songs contained on 40,000 compact discs. MP3.com conceded as much but argued that, because each customer was obliged, in one way or another, to pay for a CD before she could obtain access to the MP3 versions of its contents housed on the company's website, neither the recording industry nor the musicians it ostensibly represents had any legitimate grounds for complaint. The record companies responded that, by using borrowed CDs to activate the "Beam-It Service," customers could easily gain access to music they had not purchased.

In the end, the judge who heard the case did not reach the tricky question of whether [the security devices incorporated in the system were effective](#). In April of 2000, [Judge Rakoff ruled](#) that, by copying the CDs without permission, MP3.com had plainly violated section 106 of the Copyright Statute. Rakoff then rejected MP3.com's claim that its actions should nevertheless be excused as a "fair use." In his view, (a) the company's actions were "commercial" and "nontransformative" in character, (b) the material copied was highly creative and thus deserved strong copyright protection, (c) the entirety of the copyrighted works in question had been reproduced, and (c) MP3.com had "usurped" an important secondary market for copyrighted songs. All four of the factors traditionally used to assess fair-use defenses thus disfavored MP3.com. Consequently, he granted a preliminary injunction against the continued operation of the system. In the wake of the decision, MP3.com reached [settlement agreements](#) with all but one of the record companies that had brought the suit, agreeing to pay them approximately \$80 million in damages and modest royalties whenever copyrighted songs are copied on and then "streamed" from the MP3.com site in the future. The remaining company, UMG Recordings, insisted upon proceeding to trial. In September of 2000, Judge Rakoff found that MP3.com's behavior had constituted "willful" copyright infringement and [ordered the defendant to pay UMG \\$25,000 per copied CD](#). Total damages under this formula could exceed \$250 million. MP3.com has promised to appeal. Will this judgment, assuming it stands, put the company out of business? Perhaps not -- although [its stock price has dropped precipitously](#). But the ruling will surely act as a deterrent to other firms considering innovative ways of distributing digital music.

**D. Intermediaries.** The final target of the recording industry's efforts consists of Internet intermediaries that help Web surfers locate free MP3 files for downloading. The importance of these intermediaries is plain: unless the copyists can find copies of songs in which they are interested, they will not be able to "steal" them -- and may thus be induced to buy them instead. Sensing this, the recording industry early [brought pressure to bear on the popular search engine Lycos](#), arguing that, by providing users an indexed list of MP3 files available on the Internet, Lycos had run afoul of the Digital Millennium Copyright Act. Lycos backed down, and its MP3 index has since been reduced to little more than a collection of dead links.

But success on this front proved short-lived. Far more serious than the threat posed by Lycos is the danger to the recording industry presented by the emergence of a new type of intermediary: peer-to-peer copying systems. By far the most famous of these is [Napster.com](#). Napster is not a traditional search engine, but a protocol that [enables individual computer users to share information](#) concerning the contents of their hard drives. Specifically, it enables a user interested in obtaining an MP3 copy of a particular song to search the drives of other Napster participants for the song in question -- and then, after locating a copy, to download it to his or her own drive. The service has proven extraordinarily popular, especially among college students. A high percentage of the [traffic on many university networks](#) now consists of Napster searches and downloads.

Aware that its system facilitates the nonpermissive reproduction of copyrighted material, Napster has employed various tactics to minimize its exposure to liability: it [neither stores nor caches](#) any digital music (infringing or otherwise) on its servers; it trumpets a "[Copyright Policy](#)" in which it disclaims responsibility for the activities of its subscribers and insists that they promise not to violate the law, and it has promised to "respond expeditiously to claims of copyright infringement committed using [its] service." Unimpressed, [the RIAA filed suit](#), accusing Napster of both contributory and vicarious copyright infringement.

In its defense, Napster has made three legal arguments. First, it has invoked the protection of sections [512\(a\) and 512\(d\)](#) of the Digital Millennium Copyright Act (DMCA), which provides to the operators of "transitory digital network connections" and "Information Location Tools" "safe harbors" against liability for copyright infringement. Second, Napster argues that peer-to-peer copying of digital files using its system constitutes "the noncommercial use by a consumer" of "a digital audio recording device," which, pursuant to [section 1008 of the Audio Home Recording Act](#), cannot constitute copyright infringement. Because its members are not engaged in copyright infringement, Napster argues, it plainly cannot be liable for contributory copyright infringement. Finally, Napster insists that [a significant percentage of the uses of its system](#) involves lawful copying of musical files -- either because the owners of the copyrights in the songs in question do not object to (indeed, encourage) the duplication of their works or because the character of the copying is such as to make it a "fair use." Consequently, Napster argues, its system is manifestly "capable of substantial noninfringing uses," and thus is immunized against liability for contributory copyright infringement by the decision of the Supreme Court in the [Sony](#) case.

At the trial-court level, Napster's arguments fared badly. In April of 2000, [Judge Marilin Patel rejected Napster's invocation of DMCA 512\(a\)](#). On August 10, [Judge Patel rejected all of Napster's remaining](#)

At the trial-court level, Napster's arguments fared badly. In April of 2000, [Judge Marilyn Patel rejected Napster's invocation of DMCA 512\(a\)](#). On August 10, [Judge Patel rejected all of Napster's remaining arguments](#) and granted a [preliminary injunction against the continued operation of the system](#). The Court of Appeals for the Ninth Circuit has been somewhat less hostile. One day after Judge Patel's second ruling, the Court of Appeals stayed the imposition of the injunction pending an appeal. [Oral argument](#) on the appeal was heard on October 2, 2000. The tenor of the questions asked by the three-judge panel (although surely not a reliable predictor of the judges' votes) suggested they were more receptive than Judge Patel to Napster's position. [A decision should be forthcoming soon](#).

A great deal is at stake in this litigation. If Napster prevails, the many victories of the recording industry in its war against pirate sites will be for naught -- because henceforth, pirate sites will be unnecessary. The array of MP3 material available through the Napster system vastly exceeds that available from any individual pirate -- or even from all of the pirates combined. If the RIAA prevails, the traffic in illicit MP3 files will surely slow down -- at least for a while. And the RIAA will be in a much stronger position as it [mounts legal attacks on cousins of Napster](#), such as [Scour.com](#).

However, even an outright victory by the RIAA in its struggle with Napster will not end peer-to-peer copying. Systems such as [Gnutella](#) and [Freenet](#), though not as convenient and efficient as Napster, provide comparable services. Because these alternatives do not rely upon a centralized system of servers and search engines, they are [far less invulnerable to legal attack](#). In short, Judge Patel was probably correct when, in her second opinion in the Napster case, she analogized the lawsuit to a tort claim brought by a farmer against someone who had burned his field; meanwhile, a wildfire threatened to engulf the entire farm.

#### IV. What to Do?

If the war described in the [preceding section](#) is allowed to run its course, the public will almost certainly suffer. If the recording industry prevails, it will deprive us of many of the potential [social and cultural benefits](#) associated with the Internet distribution of digital music. If the recording industry loses, we may be left with [less music](#) than we would wish.

To avoid these two undesirable outcomes, we must try to think more imaginatively. Specifically, we must try to identify ways of simultaneously (a) allowing digital music to circulate freely and (b) providing composers and musicians adequate financial incentives to continue to produce music. Six possibilities of this sort are now on the horizon. They are arranged below in a sequence from the least attractive to the most attractive. But the principal argument of this essay is that we should not be satisfied with these options -- but should, instead, continue to seek better ones.

**1. The internet distribution to sales of containers.** The first option would be to overturn -- either through a ruling by an appellate court or through federal legislation -- Judge Rakoff's controversial ruling in the MP3.com case. [Serious arguments have been made](#) that the "Instant Listening" and "Beamn-It" services enabled consumers to obtain access to copyrighted music more easily and did not significantly injure the owners of the copyrights in that music. Under those circumstances, the recording companies' insistence that they have the right to control this new mode of music distribution seems hard to defend.

The defenders of MP3.com may well be correct. However, the services in question, though ingenious, represent at best a modest advance in methods for distributing digital music. Assuming that they work the way MP3.com says they do, they will protect the revenues of the music companies and the musicians even in the absence of license agreements. But they will fail to take advantage of most of the potential benefits of the new technology. Specifically:

- They result in no ["disintermediation"](#). Consumers pay just as much -- and musicians earn just as little -- as before.
- They do not solve the problems of [overproduction and underproduction](#).
- They result in some increase in [convenience and precision](#) -- although not as much as online purchase of individual containerless tracks.
- Because of effect #1, they will not increase the [quantity or variety](#) of music available to the public.
- They will have little or no impact on [semiotic democracy](#).

For real progress, we must look elsewhere.

**2. Tax and Royalty System.** Had they won, the plaintiffs in the [Sony](#) case likely would have sought the establishment of a system under which each purchaser of a VCR paid a fee, which would then be distributed (in a fashion analogous to the regime employed by ACAP and EMI) to the owners of the copyrights in movies and television programs -- in amounts roughly proportional to the frequency with which each movie and program were taped. In the [controversy over digital audio tape recorders](#), the recording industry did better, persuading Congress to create such a system as a part of the Digital Audio Home Recording Act.



One could imagine a similar legislative compromise to the problems presented by the Internet distribution of digital music. Congress could require that all purchasers of things used in the acquisition or performance of containerless digital music pay fees, which would then be distributed to the owners of the copyrights in musical compositions and recordings in rough proportion to the frequency with which they are copied. What sorts of "things" would be likely targets for such a tax? They would include (in order of plausibility): MP3 playback devices (portable, car, and home); access to internet service providers; hard drives; and general-purpose microcomputers. The logistics of distributing the proceeds of such a tax would not be simple, of course, but it's been done in analogous circumstances before and thus presumably could be done again.

Such a system would have the following substantial advantages:

- It would provide musicians (and composers) an alternative source of revenue. If the tax were set at the right level, this revenue could be sufficient to replace altogether the monies now collected in the form of copyright royalties -- thus ensuring [the preservation of incentives for composers and musicians to ply their trades](#).
- The foregoing effect would make it plausible for the courts -- or, better yet, Congress -- to reject all four of the campaigns mounted by the recording industry against unauthorized trafficking in MP3 files. That, in turn, would enable society at large to reap all of [the potential social benefits](#) of the Internet distribution of music.
- Under such a system, downloads of musical files would no longer be illegal. Because consumers (and providers) would no longer have any incentives to conceal their activities, tracking the frequency with which particular materials are copied (for the purpose of allocating fairly the tax revenues) would be easier and more accurate.

The system would, however, have some serious disadvantages:

- Because many of the "things" listed above are used both by consumers of MP3 files and by nonconsumers -- and because even dedicated MP3 devices (like portable players) are used by their purchasers with varying degrees of frequency -- such a system would result in unfair cross-subsidies. Nonusers and light users would, in effect, pay much of the fares of the heavy users.
- Such cross subsidies would, in turn, result in underconsumption of certain forms of technology and overconsumption of others.
- The Internet is a global phenomenon, but Congress' reach is limited. The results: only a portion of the world market in music would be reshaped by this system, and mobile targets of the tax (e.g., ISPs) would likely move "offshore."

In sum, a tax-and-royalty regime would likely be better than what we currently have, but would also have serious flaws.

**3. Secured formats.** As [several scholars](#) have observed, the developers of many sorts of new ideas are abandoning intellectual-property law as the principal method for protecting their creations in favor of either [contracts or technological shields](#). The sellers of movies, software, [databases](#), and even [genetically altered plants](#) are giving up on copyright and patent protection and turning instead to "private" deals and encryption.

The music industry appears to be following the same trend. Two years ago, sensing the danger posed by unauthorized MP3 trafficking, a group of hardware and software companies and representatives of the recording industry joined forces in hopes of developing a new compression format that would enable music providers to control in various ways the ability of users to copy or alter the material encoded thereby. The [Secure Digital Music Initiative \(SDMI\)](#), as this venture is called, has not proceeded as quickly as its members had hoped, and [knowledgeable observers](#) are now suggesting that it will have more difficulty developing a common, secure platform than was originally anticipated. However, the project is finally beginning to bear fruit. Compact discs bearing SDMI phase I watermarks are now appearing in retail stores (although whether the watermarks degrade the music remains contested). The project is now considering (and [has invited hackers to try to break](#)) four candidates for its Phase II encryption system.

The absence of a widely-agreed-upon encryption protocol has not prevented a few enterprising companies from developing their own "secure" MP3 systems and using them to sell containerless music:

- Last year, San Francisco-based [Mjuice](#) developed such a system and used it to offer subscribers "a robust music catalog of 30,000 licensed tracks from more than 70 major and independent record labels, including Atlantic, Elektra, Bad Boy, Loud, Mammoth, Roadrunner, DreamWorks, Alternative Tentacles, Zomba, Jive and ANTRA." Copy-protected versions of these songs could be downloaded (for fairly steep prices), and then replayed on home sound systems. In March of this year, [ArtistDirect acquired Mjuice](#) and will likely use the encryption technology to exploit its association with four of the "big five" recording companies.
- Microsoft has introduced its own secure format to compete with MP3. [Windows Media Audio \(WMA\)](#) was introduced in the summer of 1999. The format features copyright protection and uses a digital certificate to tie each copy of a song to the PC used to create it. The new, popular [Media Player 7](#), which plays WMA files, plays a prominent role in the Windows Millennium Edition. Record companies have already embraced the technology. In July, EMI released more than 300 singles in the WMA format over the Internet to be downloaded for a fee, echoing Sony's smaller offering earlier in the year. A substantial collection of WMA-format music is now available from [Musicmaker.com](#).

earlier in the year. A substantial collection of WMA-format music is now available from [musicmaker.com](http://musicmaker.com).

- Yet another encryption system, relying upon a combination of hardware and software, was recently announced by [Cirrus Logic and Intertrust Technologies](#). [America Online](#) (AOL) has included that system in its newest version of the AOL software. The software permits recording companies to include security information in digital music files. InterTrust's technology also will be included in AOL's Winamp media player.

Once [MP4](#) (which contains an encryption option) becomes widely available, more enterprises of this sort will likely appear.

Would the development and general acceptance throughout the music industry of a secure compression format enable us to escape the dilemma in which we currently find ourselves? Yes and no. It surely will have major potential benefits:

- Most likely, it would overcome the reluctance with which the recording industry has thus far contemplated distributing music online. Already, several "authorized," secure, internet music stores have appeared on the Internet, using one of the proprietary encryption systems. If a common encryption protocol becomes available, that number will surely multiply. That, in turn, would enable us to reap most of the [benefits of Internet distribution](#) discussed at the outset of this essay: [lower music prices](#), better compensation for artists, [elimination of over- and underproduction](#), [greater precision and convenience](#) in the marketing of music, and (perhaps) a [wider array of music](#) available to the public.
- Technological copy protection of musical files, like all forms of encryption, would enhance the ability of music suppliers to engage in price discrimination -- in other words, to divide the world of music consumers into subcategories and then charge the members of each group what they are able and willing to spend. In its current form, copyright law makes implementation of marketing strategies of this sort difficult; encryption would make it easier. [This effect has some potential social and economic benefits -- as well as some potential drawbacks](#).

Widespread distribution of digital music in encrypted form would, however, have two important, related social drawbacks:

- It would enable the producers of music to eliminate or curtail the freedoms currently enjoyed by music consumers under the auspices of the fair-use doctrine in copyright law. By abandoning copyright law in favor of encryption as the mode of shielding their works against nonpermissive copying, alteration, etc., the producers could override the privileges that consumers now enjoy. To the extent those privileges reflect important public interests, this effect would highly unfortunate. Various proposals have been advanced for mitigating that effect. None, however, would be easy to implement -- particularly on a global scale.
- Adoption of this system would seriously reduce the potential of Internet distribution to foster [semiotic democracy](#). One of the great advantages of the new medium is the malleability of musical material made available to consumers -- a malleability that the newest forms of unsecured compression formats are increasing. The opportunities for creativity made possible by that malleability would be forfeited through adoption of the SDMI strategy.

Again, it seems that this approach, though better than the current arrangement, leaves much to be desired.

**4. Subscriptions.** In a forthcoming article, Jonathan Zittrain sketches a world in which consumers no longer buy copies of musical works, but instead pay the music distributors each time they wish to listen to particular songs.

Songs are not "sold" in even the colloquial sense of the word; rather, they are "licensed"—both from a legal and technical standpoint. Compact discs have joined 8-tracks, cassettes, and phonograph records in the dustbin; their replacements are small, generic "jukeboxes" linked by the Net to a central repository of songs managed by a publisher.

An individual authenticates herself to a jukebox—perhaps with a fingerprint or carefully scrawled signature on its back with a stylus—and then may access specific songs that fall under her monthly payment plan. She will be granted access to the music archive only after parting with personal information about herself, including name, age, address, and phone number. . . .

As she selects songs, her tastes are noted, allowing offers for "special" songs not included in her monthly plan to be specifically targeted to her tastes and sent to her across all media. The songs she asks for are "streamed" to her player as she listens, and do not remain there any more than a song stays inside a radio after it is over.

An inaudible signal is embedded in the music; if she holds a microphone to her headphones and thereby makes an imperfect, analog copy to an old-fashioned cassette, her name and a unique identifier will be "in" it, permitting prosecution for copyright infringement if the copy is found. Her user license agreement provides an alternative path for the music owner to pursue fast-track damages, including the sending of a signal to her jukebox that permanently disables anyone from using it until the matter is settled.

In the unlikely event that she were to abuse her access to the system by hooking up her jukebox to an amplifier and playing the music at a backyard party outside her California apartment, a cheap listening post on the beach's lifeguard chair could be monitored by ASCAP, which would use a watermark decoder to know instantly that she was behind the cacophony—and that the particular performance had only been paid for at the "portable personal use" rate rather than the "noncommercial party" rate. . . .

A more likely event is that she will fall behind in her monthly payments, in which case her access to any music—streamed that which is heard over old-fashioned analog "public" radios—will be



A more likely event is that she will fall behind in her monthly payments, in which case her access to any music—except that which is heard over old-fashioned analog “public” radios—will be cut off automatically. (This may soon happen; her monthly rate just doubled since her graduation from college and corresponding loss of student discount status.)

Several of the social advantages associated with the SDMI initiative would also be secured in a world of this sort:

- [lower music prices and \(perhaps\) better compensation for musicians](#);
- [elimination of the over- and underproduction of music containers](#);
- [greater precision and convenience](#) in the marketing of music;
- a [wider array of music](#) available to the public; and
- myriad opportunities (suggested in Zittrain's last paragraph) for [price discrimination](#).

Many people, however, find this image unattractive. Like the SDMI initiative, it would impose severe constraints on people's ability to manipulate in creative ways the music they “consume.” Fair-use privileges would disappear. Finally, as Zittrain's evocative account makes plain, it would both depend upon and help to foster a society vastly less protective than our own of privacy and anonymity -- in which the [tracking of people's behavior and preferences](#) is routine and surveillance is common.

**5. Advertising.** Many internet businesses ([browsers, search engines, portals, and websites](#)) make money, not by charging users directly, but instead by providing services to the public for free, thereby attracting lots of visitors, and then selling advertising to e-commerce and “real-world” enterprises that hope, in turn, to sell products or services to those visitors. This model was, of course, pioneered by network television and radio, and has simply been adapted for use in the new environment.

Music distributors are beginning to explore applications of the same marketing strategy:

- [Mjuice](#), for example, employs a “download wizard,” which displays advertisements on subscribers screens while they are downloading Mjuice's (secure) MP3 files.
- [Internet Underground Music Archive](#) uses a similar method of embedding advertising banners into streaming audio tracks.
- [EverAd](#) has gone further. Its “Play!” system embeds advertisements in MP3 files. Users download the files to their hard drives in the usual fashion. Then, each time they play the tracks, banner ads appear on their computer monitors. In July of 2000, EverAd announced its partnership with [Launch.com](#), an established website offering digital music for downloading. EverAd's business plan calls for an even split of the ad revenues between it and music distributors. In turn, artists get a piece of the distributor's share.
- In September of 2000, [MP3.com](#) announced an [agreement with Adergy](#), a retail and grocery store advertising company that will enable MP3.com to offer customizable audio advertisements. In June, MP3.com signed a partnership with an ad tech company AdAce that will allow MP3.com's musicians to create and buy ads on the site.

This strategy, still in its infancy, shares the substantial social and economic advantages of the two strategies just discussed.

In other respects, it seems superior to any of the systems we have examined thus far:

- Unlike SDMI, it would facilitate (although not require) the distribution of music “for free” -- which, in turn, would dramatically increase its accessibility.
- Unlike the “subscription” system, it would not depend upon or promote systems of surveillance.

The advertising strategy does, however, have two features that limit its attractiveness. First, it would likely (although not inevitably) be associated in practice with some form of [encryption](#). Otherwise, the recipients of the music would quickly strip away the embedded advertisements and listen to the music unadorned. The copy restrictions necessary to prevent this behavior would, in turn, give rise to the same problems that afflict the two previous strategies: curtailment of fair-use privileges; and threats to semiotic democracy.

Second, many musicians -- and many listeners -- would most likely regard the intertwining of music and advertisements as [corrupting](#). Commercials already adorn most forms of contemporary culture -- from [sailboats](#) to buses to [movies](#). Do we really want them permanently affixed to our music as well?

**6. Doing well by doing good.** It certainly would be nice if musicians were willing to release their creations to the public in uncontaminated, unsecured form. We would be able, thereby, to reap all of the advantages -- and avoid all of the disadvantages -- of the systems considered thus far. But, for the reasons reviewed at the outset of this essay, we cannot expect musicians to do so if they would forfeit, thereby, the ability to earn any money. Is there any way in which we can obtain music in the forms most valuable to us, while still preserving the monetary rewards and incentives for creativity? Three closely



related options are imaginable. None is perfect, but (especially in combination) they are promising.

**a. Join the Club.** The first option is suggested by [David Bowie's innovative website](#). Visitors to the site are invited to become "members" of the Bowie "community." Persons who sign up are provided information about the artist and encouraged to participate in chat rooms with other fans. In addition, they are offered a wide variety of products and services, loosely related to Bowie's artistry. [DavidBowieStore.com](#) is a fairly traditional ecommerce outlet, featuring Bowie-related T-shirts, posters, videos, sheet music, mousepads, etc. [BowieNet](#) is an ISP, offering Internet access, unlimited email addresses, and 20 megabytes of personal webspace. [Bowieart.com](#) offers (for quite substantial prices) Bowie's own paintings, prints, and sculpture. Finally, [BowieBanc](#), in partnership with USABancShares.com, offers checking and savings accounts, Mastercards, CDs (i.e., 6.65% 12-month "certificates of deposit," not compact disks), and loans. Some of these products are unavailable elsewhere, but others (e.g., ISP access and checking accounts) can be obtained more cheaply from other sites. Why, then, would visitors buy them from Bowie? Presumably, because [they enjoy participating in the group](#) and wish to lend their support to the artist. Each time they present their credit cards at check-out counters, they see Bowie's smiling face -- and take satisfaction from it. The profits that this scheme provides Bowie would enable him, if he wished, to offer his music in downloadable form for free. At present, he is not doing so -- but rather directs visitors interested in his CDs to [a traditional online retailer](#). But he could. And other established artists could do the same.

**b. Tip Jars.** Many museums, historical sites, theatres, [public radio stations](#), and churches survive financially, not by charging visitors, but by requesting donations. Radio stations and religious organizations typically ask listeners and parishioners to contribute "what they can", other organization "suggest" a specific amount. Musicians could operate websites on the same basis.

Suppose you wanted to obtain a copy of the most recent release from [Joshua Redman](#). You type his name into [your favorite search engine](#), and the first entry that appears on your screen is his "official" website. When you click on the entry, you are presented with a complete list of his recordings (including the most recent release) in unsecured, compressed, downloadable form, accompanied by the following notice:

If you wish, you may download my music for free. However, I will be able to continue offering it in this form only if you are willing to make a modest donation for access. I suggest 50 cents per song, or \$3 for 10.

If people paid, the resultant stream of revenue would equal the stream that Redman currently obtains from the sales of compact disks. (Recall that less than 16% of the retail price of CDs reaches the pockets of the musicians.)

Would people pay? The anarchic culture of the Internet, combined with the anonymity of downloading (the absence of the embarrassment one feels walking by the museum guard without depositing anything in the basket), suggest no. Gratitude toward the musician, respect for the modesty of the fee, and a recognition of the benefits of keeping such a system alive suggest yes. These conflicting hypotheses just beginning to be tested. Four websites -- [Paypal](#), [TipJar](#), [E-gold](#), and [Fartunes](#) -- now offer [various systems](#) that assist consumers in making "tips" and assist musicians in collecting them. As yet, only a few thousand dollars have moved through these channels. Whether this model is viable thus remains to be seen.

**c. Mailing Lists.** Consumers might be more willing to pay modest amounts for access to unsecured music if they were able thereby to obtain ancillary benefits. Like what? News about the artist, opportunities to participate in discussion groups, and notices of new releases are all options. But best of all would be advance concert tickets. Suppose, for example, that when "donating" a fee to Joshua Redman, you submitted (along with your credit card number) both your email address and your "real" address. The next time Redman scheduled a concert in your vicinity, you would then receive via email an announcement of the performance and an offer to purchase up to four advance tickets. A significant percentage (perhaps a third) of the seats in the concert hall would be reserved for people like yourself -- i.e., people who previously had paid for the rights to download Redman's recordings. Would arrangements of this sort increase consumers' willingness to make donations? It seems likely.

**Looking Forward.** The six options sketched above are not incompatible. For the foreseeable future, it is likely that each one will have a following among some musicians and recording companies. Nor, we hope, is this list exhaustive. Innovative musicians and agents will likely soon imagine others.

For the reasons we have outlined, some of the options are better -- from the standpoint of society at large -- than others. In particular, the last of the six, though untested and vulnerable, holds out the greatest promise for reconciling musicians' legitimate interest in preserving their incomes with the public's interest in obtaining inexpensive unsecured containerless digital copies of musical works. Our hope is that a strategy of this general sort -- or some other system not yet within our field of view -- will eventually displace the systems that currently dominate the industry.

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Today's Top MP3 Artists

1. Jack Johnson



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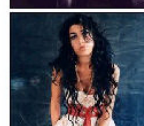
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The latest album from Danish duo [the Raveonettes](#) is a dark, fuzzy, psychedelic twist on the classic girl group sounds of the '60s. You can download their song "Dead Sound" absolutely free between now and Monday, February 25th. If you like it, get their album [Lust Lust Lust](#) for just \$7.99.



1. **Late 4 Us** by Chrisnan
  2. **Low (Feat. T-Pain)** by Flo Rida
  3. **Falling Slowly (Album...** by Glen Hansard and Mark...
  4. **Love Song (Album Vers...** by Sara Bareilles
  5. **Paralyzer** by Finger Eleven
  6. **No One** by Alicia Keys
  7. **Tattoo (Main Version)** by Jordyn Sparks
  8. **Rockstar** by Nickelback
  9. **Hey There Delilah** by Plain White T's
  10. **How Far We've Come (A...** by Matchbox Twenty
  11. **Shadow Of The Day (Al...** by Linkin Park
  12. **Don't Stop The Music** by Rihanna
  13. **Bubbly** by Colbie Caillat
  14. **Before He Cheats** by Carrie Underwood
  15. **Into the Night (Album...** by Santana Featuring Cha...
  16. **Falling Slowly** by Glen Hansard and Mark...
  17. **New Soul** by Yael Naim
  18. **The Way I Am** by Ingrid Michaelson
  19. **Kiss Kiss (Main Version)** by Chris Brown featuring...
  20. **Apologize** by Timbaland
  21. **With You (Main Version)** by Chris Brown
  22. **See You Again** by Miley Cyrus
  23. **Ready, Set, Don't Go** by Billy Ray Cyrus feat...
  24. **The Pretender** by Foo Fighters
  25. **Love Like This** by Natasha Bedingfield F...
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1. **Jack Johnson**
  2. **Once (Motion Picture ...**
  3. **Amy Winehouse**
  4. **Radiohead**
  5. **Pink Floyd**
  6. **Led Zepplin**
  7. **Michael Jackson**
  8. **Glen Hansard and Mark...**
  9. **Robert Plant and Alis...**
  10. **The Raveonettes**
  11. **Foo Fighters**
  12. **Vampire Weekend**
  13. **Sara Bareilles**
  14. **Kanye West**
  15. **The Beach Boys**
  16. **Linkin Park**
  17. **Elton John**
  18. **Tom Petty**
  19. **Chrisnan**
  20. **Elvis Presley**
  21. **Alicia Keys**
  22. **Johnny Cash**
  23. **Metallica**
  24. **Jay-Z**
  25. **Carrie Underwood**
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**Today's Top MP3 Albums**



1. **Music From The Motion...** by Once (Motion Picture ...
2. **Sleep Through The Static** by Jack Johnson
3. **Juno - Music From The...** by Various Artists
4. **Back To Black [Explicit]** by Amy Winehouse
5. **Vampire Weekend** by Vampire Weekend
6. **Across The Universe** by Various Artists
7. **Raising Sand** by Robert Plant and Alis...
8. **The Swell Season** by Glen Hansard and Mark...
9. **In Rainbows** by Radiohead
10. **Golden Delicious** by Mike Doughty
11. **Lust Lust Lust** by The Raveonettes
12. **The Wall** by Pink Floyd
13. **Little Voice** by Sara Bareilles
14. **There Will Be Blood** by There Will Be Blood
15. **Greatest Hits** by Tom Petty
16. **Step Up 2 The Streets...** by Step Up 2 The Streets
17. **OK Computer** by Radiohead

**Black History Month: Featured Artists**



1. **Miles Davis**
2. **Aretha Franklin**
3. **Mary J. Blige**
4. **Martin Luther King**
5. **Nas**
6. **Jay-Z**
7. **Marvin Gaye**
8. **Stevie Wonder**
9. **Kirk Franklin**
10. **John Coltrane**
11. **Robert Johnson**
12. **Charlie Parker**
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14. **India Arie**
15. **Billie Holiday**
16. **Public Enemy**
17. **Leadbelly**

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17. **UK Computer** by Kadionead
  18. **The Reminder** by Feist
  19. **Echoes, Silence, Patience** by Foo Fighters
  20. **American Gangster [Ex...]** by Jay-Z
  21. **Detours** by Sheryl Crow
  22. **Daughtry** by Daughtry
  23. **Watershed** by k.d. lang
  24. **We Brave Bee Stings a...** by Thao
  25. **Lupe Fiasco's The Co...** by Lupe Fiasco
- > See All Top MP3 Albums



17. **Leadbeary**
18. **Ella Fitzgerald**
19. **Louis Armstrong**
20. **Mahalia Jackson**
21. **Muddy Waters**
22. **B.B. King**
23. **Bobby Womack**
24. **Isaac Hayes**
25. **Kanye West**

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### Hot New Pop Songs



1. **Falsetto [Explicit]** by The-Dream
2. **He Said She Said (Alb...** by Ashley Tisdale
3. **If I Had Eyes** by Jack Johnson
4. **Low** by Flo Rida
5. **Realize** by Colbie Caillat
6. **Wake Up Call** by Maroon 5
7. **I'll Be Waiting** by Lenny Kravitz
8. **How Far We've Come (A...** by Matchbox Twenty
9. **Hold On** by KT Tunstall
10. **Scream** by Timbaland
11. **Umbrella** by Rihanna
12. **Suffocate [Explicit]** by J. Holiday
13. **Music Is My Hot, Hot ...** by CSS
14. **Say (All I Need)** by OneRepublic
15. **Flashing Lights [Expl...** by Kanye West



### Hot New Rock Songs



1. **Msery Business (Albu...** by Paramore
2. **Good Times, Bad Times** by Godsmack
3. **Almost Easy (Album Ve...** by Avenged Sevenfold
4. **If Everyone Cared (Al...** by Nickelback
5. **Tick Tick Boom** by The Hives
6. **Shadow Of The Day (Al...** by Linkin Park
7. **Is There a Ghost (Album)** by Band Of Horses
8. **If I Had Eyes** by Jack Johnson
9. **Carcinogen Crush** by AFI
10. **Tranquelize** by The Killers
11. **Back In The Saddle (f...** by Sebastian Bach
12. **3's & 7's** by Queens Of The Stone Age
13. **Ladies and Gentlemen** by Saliva
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live<sup>2</sup>

**PRONUNCIATION:** lɪv

**ADJECTIVE:** **1.** Having life; alive: *live animals*. See synonyms at **living**. **2.** Of, related to, or occurring during the life of one that is living: *a live birth; the live weight of an animal before being slaughtered*. **3.** Of current interest or relevance: *a live topic; still a live option*. **4. Informal** Full of life, excitement, or activity, lively: *a live crowd at the parade; a live party*. **5.** Glowing, burning: *live coals*. **6.** Not yet exploded but capable of being fired: *live ammunition*. **7. Electricity** Carrying an electric current or energized with electricity: *live cables lying dangerously on the ground*. **8.** Not mined or quarried; in the natural state:

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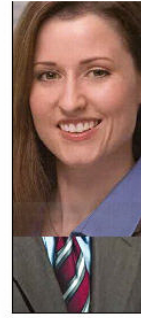


*live ore.* **9a.** Broadcast while actually being performed; not taped, filmed, or recorded: *a live television program.* **b.** Involving performers or spectators who are physically present: *live entertainment; a live audience.* **10.** Of, relating to, or containing living, often modified microorganisms: *a live vaccine; live yogurt cultures.* **11.** Printing Not yet set into type: *live copy.* **12.** Sports In play: *a live ball.*

**ADVERB:** At, during, or from the time of actual occurrence or performance: *The landing on the moon was telecast live.*

**ETYMOLOGY:** Short for *alivc.*

**OTHER FORMS:** **live'ness** —NOUN



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