

On P2P File-Sharing: A Major Problem – A Chinese Perspective

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ABSTRACT. P2P (Peer-to-Peer) file-sharing or file-swapping has led to many disputes about copyright laws and has become “a worldwide problem.” This paper first describes the development of P2P and then discusses some of the disputes concerning Chinese copyright laws. Given the difficulties in implementing copyright laws in China and many other countries, this paper next analyzes the reasons why and the conditions under which P2P developed, its impact on music production, and some other general economic, social, and ethical implications of this technology. The paper recognizes, on the one hand, the significance of P2P as an advanced technology for popularizing music and sharing human and spiritual values with more people, on the other hand, it points to several critical issues caused by the current illegal use of this technology for sharing copyrighted music files: e.g., the serious damage to music production and the infringement on copyright holders’ interests. It is hypothesized argue that the technological conditions, social demands, and problems with the current type of music production have deepened the present crisis, and a new type of music production is sought. Legislation should enhance such a development, support P2P technology in the interest of the public, protect copyrights, and regulate P2P stakeholders’ interests in a balanced manner according to the ethics of law.

P2P (Peer-to-Peer) file-sharing or file-swapping has led to many disputes about copyright laws and has become “a worldwide problem.” This paper first describes the development of P2P and then discusses some of the disputes concerning Chinese copyright laws. Given the difficulties in implementing copyright laws in China and many other countries, this paper next analyzes the reasons why and the conditions under which P2P developed, its impact on music production, and some other general economic, social, and ethical implications of this technology. The paper recognizes, on the one hand, the significance of P2P as an advanced technology for popularizing music and sharing intellectual, social, cultural, and philosophical values with more people. On the other hand, it points to several critical issues caused by the current illegal use of this technology for sharing copyrighted music files: e.g., the serious damage to music production and the infringement on copyright holders’ interests. It is argued that the technological conditions, social demands, and problems with the current type of music production have deepened the present crisis, and a new type of music production is needed. Legislation should enhance such a development, support P2P technology in the interest of the public, protect copyrights, and regulate P2P stakeholders’ interests in a balanced manner according to the ethics of law.

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Part I. P2P file-sharing in Mainland China and Taiwan

Since the second half of 2000, China has slowly but surely embraced P2P. At the end of 2003, Chinese Internet access number totaled to 79.5 million, computer hosts numbered 30.89 million, and broadband customers amounted to 17.4 million.¹

There are 100s of P2P networks now, and only a P2P provider's registered users reaches 10 million.² As the cost for installation of broadband goes down and computer speeds become faster, users now have more convenient access to the Internet and the number of P2P file sharers has increased dramatically. Already, many copyright laws have been issued and amended; the importance attached to protection of copyright is much greater than in the past. Many of the issues connected with P2P in China are similar and related to those in other countries.

The development of P2P in China

Since Ezpeer, Taiwan-based P2P company, Shenzhen-based Workslink, and since the RIAA (The Recording Industry Association of America) sued America's Napster, and Gnutella burst on the scene, China has begun to embrace P2P. Among 100s of P2P networks in China³, some are very popular, such as Ezpeer and Kuro in Taiwan, Workslink and Openext in Shenzhen, PP365, 100 bao and Toperson in Beijing, Jelawat in Shanghai, and RealLink in Wuhan. Though some USA-based P2P providers, such as Kazaa, have many Chinese users, they are not as popular because they are English-language based.

The files that can be shared using these networks are extensive, including programs, songs, movies, e-books, games, pictures, etc. These ISPs have users usually from 500,000 to 10 million. Ezpeer, for example, operating in Taiwan, Hong Kong and Mainland China, has over 4 million users, including 500,000 in Taiwan. Its new users are increasing at a rate of around 20,000 per month. While operating in Shanghai for just one month, Ezpeer attracted 50,000 new users. Most ISPs provide free programs and services. Some require monthly fees for their programs and services. Others have different policies for different areas. Ezpeer, for example, charges for their services in Taiwan, but currently offers them for free on the mainland.

Chinese P2P providers predict that P2P technology will first enter people's daily lives through basic applications (e.g., file-sharing), thereby leading corporations to adopt the technology. Providers, therefore, are concentrating on building and

improving P2P networks used by individuals. Later, they will aim at attracting larger enterprises.

The disputes caused by P2P file-sharing in China

Legal issues connected with P2P in Mainland China and Hong Kong

In May 2001, just at the beginning of P2P providers' emergence in China, the MCSC (Music Copyright Society of China), the governmentally recognized music copyright authority, sent a legal demand to one hundred personal music sites, requiring them from this very day to delete all infringement music files on the sites, to cease all infringement acts, and to confer with MCSC on settling the infringement problem as soon as possible. If they did not comply, MCSC threatened to sue them. A few personal music sites decided not to renew their activities, but some providers did not confer with MCSC on the issue of the infringement. MCSC tried to make contracts with some large sites for legal music and indicated it would later adopt some other means to prohibit smaller illegal sites.

In January 2003, three Hong Kong-based music companies filed the "first lawsuit against P2P". They sued cnp2p.org, an information company, for unauthorized music file-sharing. The infringement songs totaled to 319 pieces. Cnp2p admitted its infringement but argued that it had a "copyright declaration" to the file-sharers, and required users to delete downloaded songs within 24 hours. Moreover, all its services were free, and the provider earned no direct income from the service. However, the court ruled that, although Cnp2p did publish the copyright declaration and the warning to users, the company still had legal responsibility. The company lost the suit and was ordered to pay compensation of 370,000 Yuan. Cnp2p is one of the most famous music ISPs and ranked second in the list of top amusement sites in Mainland China. The sentence left many music ISPs in a precarious position.

Since economic reform, Mainland China has established a rather complete legal system of intellectual property protection. Now, there are not only the laws for protection of the copyright in traditional media, but also for digital formats. With respect to foreign computer software and works, legal protection also extends to 50 years according to interna-

tional pacts.⁴ It is worth noting that the Copyright Law of P. R. China (2001 revised edition) clearly defines “the right to distribute information by the Internet” as one of copyrighters’ legal rights. Thus, laws not only protect copyright, but have also evolved to meet the demands of the information age.

The legal actions concerned with P2P, especially initiated by MCSC, stirred debate in China. One issue centers on the question of infringement. Some people have argued that personal music sites do not constitute infringement, even though users were not authorized to use the copyrighted songs, because, according to the Copyright Law, the users used another’s “published works for personal study, research or enjoyment” and they did not seek to make money. Others responded with two arguments. They pointed out that “reasonable use” was limited to personal use; it did not extend to third parties, families, working units, etc. Placing copyrighted music files on networks so that others could freely download this music and distribute these files on network went far beyond “personal use.” Furthermore, according to Provision 2 of Article 46 of the Copyright Law, those who copy or publish copyrighted works without the copyright holders’ explicit permission incur civil liability and can be punished by the “Copyright Administration.” (Administrative bureaus for copyright protection, which have been established by the central and local government, have a legal duty to protect copyrights and to punish those who infringe upon copyrighted works protected by law.) Therefore, those personal sites that used copyrighted music without permission, even if their purpose was not making money, could still be charged in civil courts.⁵

The legal debates about P2P concern other issues, such as MCSC’s legal status, as a prosecutor, given that it is a national copyright management organization, not a legal group of copyrighters. Also, some critics have objected that the group is not truly representative since it has only 2500 members and many musicians do not belong to it. Another issue involves the legal argument for royalties. Until now, only 15 sites (3%), including Sina and Sohu, have agreed to pay music royalties. Many small sites do not pay because of the price. Sohu pays 23,000 Yuan for 400 songs (50 Yuan for a song) annually. This fee is small in its eyes, given that it earns over 10 million Yuan of ad revenue each quarter. Paying royalties,

however, is difficult for small sites that may download 10,000–100,000 songs. They lack advertisements and have no other income. Experts have suggested that such firms should pay royalties. The extent of royalty payments requires much discussion. In addition, MCSC should provide legal arguments for the charges.⁶

Legal issues of P2P in Taiwan

Conflicts and debates about copyrights in Taiwan are less clear than on the mainland and in Hong Kong. In August 2003, the IFPI (International Federation of the Phonographic Industry) Taiwan filed a lawsuit against a user of Kuro, accusing her of having downloaded 970 MP3 songs.⁷ The user argued that she paid a monthly fee to Kuro and had no intention of pirating copyrighted files. Kuro claimed that, according to the new version of *the Taiwan Copyright Law*, file-swapping falls within the scope of reasonable use; moreover, there is no MP3 music file data on the server, so the provider’s business model is not illegal. Kuro emphasized that the monthly fee it collected covered its service and programs. It contended that its fee was minimal, because it wanted to reserve a margin for copyright payments. IFPI Taiwan argued that, according to the new version of the Copyright Law, it is a crime for users to download more than five songs or music worth over 30,000 New Taiwan dollars; that Kuro and other companies advertised that “download+burn=Kuro,” thereby encouraging its members to violate the copyright law. IFPI also contested Kuro’s claim that, since there was no copyrighted data on its server, it had not violated the law, and so IFPI would have to sue individual users. Since Europe and RIAA in the USA sued users as well as the providers, IFPI’s position is not unprecedented. The lawsuit has not yet been decided.

It seems that in Taiwan: (1) The Copyright Law has been amended to give some concessions to file-sharing users while still maintaining the protection of copyrights; (2) Some P2P networks have adopted a commercial model in which they hope to co-operate with copyrighters; and (3) The IFPI is imitating the RIAA, an approach that has intensified the conflicts between the providers and copyright holders.

In summary: on the one hand, copyrights are protected legally in China and the copyright

organizations have initiated legal actions against music piracy, arousing public hostility in Taiwan and stimulating debates in the mainland. On other hand, P2P providers in China have developed the following strategies. First, they are paying attention to the copyright issue. Some require downloaders to respect copyright as a precondition for using the program (e.g., Jelawat). Others say that their service merely provides an opportunity for listeners to try out copyrighted songs, so downloaders should delete them within 24 hours. Still other providers (e.g., workslink) maintain that they merely provide a searching function, and so take no responsibility for the searched contents. In general, the P2P providers in China have recognized copyrights, but most of them seem to be trying to escape legal troubles by contending that they are not in any way responsible for any infringements. Second, the providers have learned to organize themselves. Early in December 2001, the China P2P Organization, China P2P League (cnp2p.org), was established. The organization initiated by Workslink, and joined by Ezpeer and Kuro, published the “*China P2P Manifesto*”. It says, “Our goal is to construct a China-based P2P network. The network will allow users to be hosts, not guests, of the Internet, and they can enjoy free choice, equal-sharing, and mutual assistance via the P2P network.”⁸ Nothing, however, seems to have happened after the *Manifesto* appeared. Since the China P2P League seems to be interested only in issuing propaganda, the Alliance for Promoting P2P Industry,⁹ which was planned after the Kuro lawsuit, must be said to be IFPI’s real antagonist just as P2P United is the real foe of RIAA in the United States.¹⁰ Unlike the China P2P League, this Alliance knows exactly for what it is fighting.

Other problems

P2P not only generates problems when it comes to interpreting and enforcing copyright laws. It has caused many other problems, such as:

- a. Vast quantities of pornography.* Although providers can filter pornographic material, many providers permit these materials to pass through.
- b. Unfair Competition.* Since not all sites adhere to the copyright law, their laxity injures copyright holders and also leads them to compete unfairly with other legal sites.

c. Unjust Distribution. It is estimated that, by 2005, 20% of worldwide music sales will be through online downloading. In China, the number will reach at least 3 billion Yuan.¹¹ How should expenses and profits be distributed among copyright holders, providers, and users? Is the distribution of 20% royalty to copyright holders suggested by Ezpeer fair? How much of the expense should users bear? If individual users have paid a monthly fee, are they immune from being sued?

d. Over-protecting Copyrights. Other people worry that not only music websites but also literature websites and news websites may face copyright problems. If all the contents of a site, including a picture should be authorized use, how could a provider run a website? So this is not just a problem with music networks.

In sum, though the copyright laws all have been amended over time, many problems remain. Some are specific to a single country, such as MCSC’s legal position as prosecutor, but many issues are common to other countries. For the following reasons, we should consider P2P issues on the international level. First, the users of P2P programs go beyond national or local boundaries. There are Chinese users of USA’s ISPs, mainland users of Taiwanese programs, and users of all programs in any part of the world. Second, legal actions against P2P file-sharing, as chairman and CEO of IFPI recently noted, “will almost inevitably have to take place internationally as well.”¹² Third, both copyright organizations (MCSC and IFPI) and P2P providers and users all pay attention to the conflict within the USA. They share their lessons and experience. Therefore, not only is P2P a common problem faced by many countries, but also it raises many issues that transcend one country, qualifying as “a worldwide problem”.¹³ So our discussion should not be limited in one country.

Part II. Reflections on P2P file-sharing and associated problems

According to the copyright laws, be they in China or the States, sharing copyrighted material is definitely illegal. However, the difficulty lies in enforcing the

laws. As a social phenomenon, ethics judges laws as either good or bad. The ethical application of the law needs to be based upon economic facts. In the case of copyright laws related to P2P file-sharing, determining the ethical and legal usage requires exploring the relation of music production with P2P technology to what is going on in the process of music production. Moreover, what copyright law protects is property. If copyright (considered as property) can be infringed upon, then the general principle that private property is inviolable will be compromised. Therefore, unlike other applied ethics issues such as cloning, P2P touches upon an issue concerned with the basis of market economy. Now the issues of P2P file-sharing look more like the conflict between P2P industry (with the explicit or implicit support of their users) versus record companies, and the two parties cannot be simply divided according to different nations. In the eyes of the RIAA, MCSC or IFPI, P2P file-sharing definitely deprives record companies and authors of their just earnings. It is stealing. It seems that one group has robbed another of its rights but P2P supporters think their actions are justified. Such a clash of social groups seems to be expanding. It is estimated that in no more than five years, the same fate will befall the movie industry.

Copyright laws, such as the DMCA of USA, the PRC Copyright Law (2001), and Copyright Law of Taiwan (2003), have all been revised to reflect the changing forms of copyright protection. From the added provision by Copyright Law of Taiwan, which allows users to download no more than five pieces of copyrighted songs or songs worth no more than 30,000 ND, we can see that P2P is being accommodated somewhat, although five pieces are far from meeting users' demands. From the perspective of P2P United, it is essential to amend DMCA.¹⁴ Indeed, it is difficult to enforce the law and impossible to punish millions of users swapping copyrighted files. RIAA tried a policy of persuasion, which also indicates the difficulty. Prof. Richard De George rightly raises the question of "Whether the present law can be enforced if millions of users are trading copyrighted material." (De George, 2003.)¹⁵ How are we to understand the difficulty? Do copyright laws protect a right that should not be protected? Have copyrights and copyright laws obstructed the development of technology and public

good? So should the laws be changed to what P2P United requires? To address the problem, we must explore the relation of copyrights with P2P technology to the mode of music production, to see whether copyright laws have injured other groups' rights and then consider their ethical and legal standing, adequacy.

The impact of P2P application on music production

Music companies have contended that P2P file-sharing usually decreases the sale volume of music CDs, while P2P supporters often argue that file-sharing actually helps to sell music CDs. The RIAA maintains that over US\$300 million were lost by Napster.¹⁶ However, according to Forrester Research, Napster increased CDs sales by 8% in the first quarter of 2000 over 1999.¹⁷ Music consumption is influenced by many factors, and it's difficult to explain it using only one factor. It seems that we should start from a more basic economic fact and analyze it with some concepts of Karl Marx's *Theory of Capital* because what P2P share are music commodities.

1. A commodity, according to Marx, has three essential features: value, use-value, and exchange as a commodity. A music file shared by P2P users has both use-value and value (the socially necessary labor-time embodied in a commodity), but it is not exchanged as a commodity. Thus although the music file was originally produced as a commodity, P2P file-sharing changed its commodity nature. It is no longer a commodity. While it retains value and use-value, from the Marxian perspective, the music file is no longer a commodity, at least in the process of the file-sharing. Since it is not a commodity, it has only use-value for users and its value is covered up and neglected. Moreover, a commodity's value should be acknowledged before its use-value is realized. In the case of file-sharing, its value is realized just as a use-value.

2. An exchange of a commodity requires those who perform the exchange to be owners of the commodities being exchanged. The owners have legal rights to the commodities, so they can exchange their goods with each other. In the case of file-sharing, however, the sharers have no legal rights to the files. They merely decide to upload and

download the files. Both the uploaders and downloaders of the files act not as representatives of the music commodities (i.e., not as the owners of these commodities), but as users or consumers of them. So both uploaders and downloaders have what might be called an “intent-relation” to the files but no legal “right-relation” to them.

3. The general formula for capital in Marxist thinking is $M-C-M'$ where M =money and C =commodities. The first M stands for an initial sum of money and the last M' represents a sum greater than the first M . Marx argued that only when the last M' was fulfilled by selling the commodities that embodied the labor value could the normal flow of a capitalistic economy continue. According to this formula, the labor value embodied in a commodity is realized in the circulating realm of commodities. Because in the realm of circulation, however, the files shared are not as commodities, their value is not realized.

Thus, according to the *Theory on Capital*, file-sharing: (1) changes the nature of music commodities into public goods; and (2) hampers the realization of M' in the realm of circulation. Therefore, file-sharing endangers the industry's survival.

So, it is obvious that, from the legal and ethical points of view, maintaining the production of music file-sharing is problematic. It is illegal because the sharers are not the owners of the shared files nor are they authorized by the owners. It is unethical because what users share is not theirs. It is stealing because what they obtain belongs to others. In a word, their actions infringe upon owners' rights and interests.

If such infringement were to extend to the film industries and other sectors, then the whole market economy would face a very serious challenge.

The conditions and causes for prevalence of P2P file-sharing

The legal and ethical response to P2P file-sharing in many countries is understandable. Why has P2P file-sharing prevailed? Why do millions of people illegally engage in the practice, regardless of the legal consequences? Some explain that the reason is users don't want to pay. That could be a reason. Why, though, are people able freely to share files? This technological loophole requires further consideration.

In order to engage in P2P file-sharing, people must have powerful multimedia computers with high speed, cheap costs, smooth broadband, easy Internet access, and P2P software. In addition, there must be millions of people sitting before computers who want to be amused through the Internet. It follows that:

1. The prevalence of P2P file-sharing shows that the technological conditions for sharing various files in digital as mentioned above is largely present, making file-sharing available, easy and inexpensive. Even in China, all of these conditions exist to some degree and are developing at an astonishing speed. According to China Internet Network Information Center (CINIC), by the end of December 2003, compared with the data from the previous half a year, our Internet users totaled 79.5 million, an increase of 20.4 million users. The growth rate was over 48%; the number of sites 595,000, a rate increase of 60%; computer hosts 30.89 millions, growth rate 48%; broadband customers amounted to 17.4 million, increase rate 164% or 22% of the total internet users.¹⁸ So these conditions make P2P file-sharing possible in China as well as in other countries.

2. P2P file-sharing technology is well suited to meet people' demand for free amusement via the Internet. Amusement on Internet becomes the main purpose for accessing it. According to the 13th Survey Report by CINIC, obtaining information is still the primary purpose for Chinese users' accessing Internet, when compared to the 12th survey 6 month ago, this group slightly declined. The amusement number went up, becoming the second most common purpose.¹⁹ Among those communities searching for amusement, P2P file-sharing is a way to communicate among these groups. A university student in the US posted that P2P music file-sharing has become a way of university life; many young Chinese netizens concur.

People want to meet their demands for amusement in an easy, inexpensive way and P2P technology can be used for this purpose. Therefore, we can assume that, in the absence of copyright and other legal obstacles, P2P users will continue to increase, as, e.g., Ezpeer added 50,000 users only within one month in Shanghai.

The advantages of P2P and the weaknesses of traditional music production

Decisions as to the production of material goods, which songs should be produced, and how to produce them, are still made by music companies. In this case, music production exhibits the following weaknesses: (1) a few people make productive choices for the majority; (2) as a result, there is a risk that the choice will not be accepted by the majority (although the market will convey demand, it usually lags and is quite changeable); (3) the music companies try to minimize this risk by selling songs in albums, thereby transferring the cost of the risk or wrong decision-making to music consumers; (4) the regulation of music markets fails in some degree, since consumers have to buy songs in albums, so the demand is not communicated exactly through feedback. This mode of decision-making can mean the death or neglect of new artists, given that it is based on a few people's judgment.

Given these weaknesses, the circulation of music production capital benefits the few – the producers – and not the majority. That this unreasonable mode of production and marketing should have lasted for so long is surprising. This mode seems more common in the music market than in other fields, such as books and movies, because songs can be put and sold in an album.

P2P technology strikes at the heart of this mode of production. First, it helps new musicians to become known on the Internet without record companies' permission. Second, music consumers can make choices themselves by listening to songs online and downloading what they like. Third, if uploading and downloading can be understood as reproduction, e.g., one kind of production, and listening to songs as a type of consumption, then by P2P networks, consumption and production are simultaneous. We do not have the minority companies producing songs with the majority of persons consuming them. Instead, the majority of persons both consumes and produces them. No longer are people buying songs in albums chosen by music companies. They are making their own choices. So people have more freedom of choice and feedback from their demand will be more meaningful because their choices are clearer.

P2P strikes at what can be produced and at how the production should occur, "consumerizing" and socializing this production. Whether an item should continue to be produced and consumed is now being determined by consumers. While it is true that P2P file-sharing complicates enforcement of copyright laws and impedes the circulation of capital, technological conditions, popular demand, and the weaknesses of normal music production encourage P2P file-sharing. Moreover, technological conditions can be helpful in overcoming the weaknesses of normal music production. Therefore, we should not simply blame or thwart P2P technology. To some degree, weaknesses in the music industry have deepened the present crisis.

The technological, social and ethical implications of P2P

P2P is not just the result of technological conditions, the way of meeting people's amusement demands, or the negative response to the weaknesses of current music production. It implies a technological evolution that is driven and pushed by social and ethical ideals. In his book: *What Will Be, How the New World of Information Will Change Our Lives*, Dertouzos (1997) predicts and describes the future. Several of his points touch upon my topic²⁰:

1. *Market of information.* What will people do if they and their organizations have computers and if all of those computers are connected? A market of information will emerge: people with computers will freely trade and exchange information and information service; human life will be greatly improved by easier, cheaper and higher qualitative chances. The emerging markets will then be an ideal place where everybody can trade, sell and exchange their goods. There will be no need to control it using a centralized authority.

2. *Democratization of arts.* All arts in the world should and can be enjoyed by all people in the world. People should be encouraged to experience and to create art. Information technology can bring artist's works to people all over the world at a cost far less that what would be charged today. Information is doomed to change and extend our amusements in a different way.

3. *Market of information starts in the fields of business, amusement and health protection.* Because there are

huge demands, infrastructure can be adapted to the demands. Serious activities are going on in these fields. As big malls for real commodities, big websites are not sufficient to meet consumers' demands. So decentralized exchange of information can be used to overcome this weakness.

Dertouzos (1997) not only predicts changes but also argues for the necessity and justice of these tendencies and of the ideal implicit in these developments. Information technology is tending toward decentralization and this tendency is offering an easier, cheaper and qualitatively better way of enabling people to share the arts of the world. P2P shows some characteristics he predicted, although P2P networks still seem far from being a market of information and for the creation of art, given that what the users are exchanging are already created copyrighted files.

Call for a new type of music production

In light of the social and ethical implications of the P2P technology and given the likelihood that P2P will remain prevalent and popular, it's reasonable to think about and to call for a new type of music production. In fact, such a new type implies that the role of the players in the P2P market will change in the following ways:

1. Music companies will shorten their process of music production. The production process usually divides into two parts: the creative production or R&D and the reproduction of the music. Both processes occur in the studios or in the factories of music companies. Now, the creative part can still occur in studios, however, P2P shifts the reproduction to the Internet and to the whole world. So, for music companies, the whole process of production gets shortened because they will be focused only on R&D, while the reproduction will proceed globally and individually. This new type of reproduction seems to combine customized handiwork products and service with the benefits of general production.

2. P2P companies, rather than traditional music companies, will occupy a dominant position in the new type of music production because they have the P2P software that can be used to exchange, share or

trade all kinds of files. So in a sense, P2P software functions as a currency in the world of information. Since P2P companies hold the information currency, they also hold their users and file-sharers and enable music reproduction, general music production, and circulation. They, therefore, dominate the music, and even the information market. Traditional music companies, by contrast, hold only copyrighted music. In the traditional type of music production, music companies are both ISPs and CSPs; the two roles are combined in the form of the music CDs. P2P, however, changes the form of CDs into the format of MP3, leaving only CSPs for the traditional music companies. Thus, by means of the P2P software, the information currency, the ISPs insert themselves between traditional music companies and music consumers. Therefore, P2P as ISPs are playing and will continue to play a more important role than CSPs in the market of information.

3. Downloading and tailor-buying music CDs will become the primary way to consume music. The reason is simple: on the one hand, many factors are conspiring to make P2P the preferred mode, while, on the other hand, if users like the downloaded files, they will keep them on CDs, which is a way of tailor-buying the music. Of course, the price should be competitive, service should be convenient, and the catalogue should be as complete as possible.

In summary, P2P is tending toward a new type of music production that fosters a free market in information and that promotes the ideal of the democratization of arts. This new type of music production needs a new set of norms for the various players' rights and duties. Although the cycle of music capital and the role of players will be different in this emerging market, we should still consider the problem of copyright. Only if we address this ethical and legal problem can the music capital circulation be continued. So the following last section will discuss this problem and the new norms.

Ethical analysis of P2P stakeholders and the problem of copyright law

Law, as a social phenomenon, can be judged in light of ethics. The ethics of law requires laws to embody

justice. Justice includes three aspects. First, it requires that a demand be justified – e.g., that it not injure others' interests. Second, it requires that a justifiable mean exists to meet the demand. Third, it requires that the distribution of benefits and burdens be justified. Justice embodied in legislation has three principles: public good, public will and fairness. "Public good" refers to the common, general, and whole interest of different peoples or groups. It combines different interests and orders various rights and duties. "Public will" means the public recognition of and desire for the public good. It dictates that legislation reflect this public recognition and desire; legislation should not merely embody the interests of a few groups. "Fairness" mandates legislation that expresses different interests, while equally protecting all justified interests and effectively balancing various, possibly conflicting interests. Justice as embodied in the law of property also requires three principles: the principle of utility, which mandates the effective use of resources to improve social well-being; the principle of fairness, which protects people's right to their works; and the principle of freedom, which honors and ensures people's freedom and right to dispose of their property as they see fit.²¹

According to legal ethics, especially the ethics of legislation and property law, copyright should still be protected because a person has ownership rights in his or her works. On other hand, it could be argued that P2P, with its many advantages described in above sections, has become a public good. Online surveys, user responses, and P2P providers' organizations suggest that users and providers also have interests related to P2P technology, interests expressed in the statements of P2P United.²² So legislation should equally protect all justified interests, while fairly expressing different groups' interests. It is worth analyzing the various players as P2P stakeholders so that their rights and duties can be protected.

1. *P2P users.* As we have seen, P2P technology provides many advantages for users. They naturally hope to develop and use this technology. Their interests and will should be reflected in the law. Their current infringements, however, cannot be justified. Sharing is possible only when one has something to share. Since P2P file-sharing cannot replace music creation but merely reproduces others'

creative work, this process risks injuring the music creators' interests. If the creators cease their artistic production and break off capital circulation, then users will have no new files to share. In this sense, the P2P technology threatens the interests of both users and creators and so poses a threat to the public good. Furthermore, as many users swap copyrighted music, CD consumers get hurt, for producers will transfer their production costs to CD consumers, who will effectively be forced to underwrite P2P users' illegal activities. Finally, while aspiring musicians' careers are boosted when their songs are shared by P2P users, the fact remains that this activity infringes upon artists' freedom to benefit from their works and to control the use of these works. That is why budding musicians often initially support P2P but later argue against file-sharing. So the present practice of P2P file-sharing of copyrighted files accords neither with the principle of justice or the ethics of legislation and property law.

2. *P2P providers.* They are developing P2P and stand to benefit from it. They have an obvious interest in developing and promoting P2P – they gain eyeball, advertisement, and user fees. While Napster provided free software and service, it reaped indirect advertisement income. Thus ISPs want to change copyright laws, to set aside copyright barriers, and to improve the P2P market. On the other hand, ISPs do not seem to care much about controlling file-sharing, for such control is costly. That accounts for why ISP's presently are pushing to override copyright law rather than to adopt measures for controlling file-sharing. Although, however, P2P providers are siding with P2P users, and although the two groups' interests are related to each other now, this tactic of evading copyright laws is not helpful to the development of P2P market in the long run. The principle of justice dictates that a stakeholder must obtain something justly and should not injure others. Whether centralized or decentralized, what P2P providers obtain by current illegal file-sharing are the copyrighted files at copyrighters' expense. According to the principle of fairness, which considers who benefits and who gets burdened, P2P companies are getting the benefits now but not taking any relevant responsibility or any burdens. Controlling file-sharing will directly benefit copyrights, while the lack of controls would seem to benefit P2P providers in the short run.

According to the principle of fairness, the cost of control should be a co-burden on P2P providers and copyrighters. Their rights and duties should be defined legally.

3. *Music industry.* Obviously P2P file-sharing has influenced the music industry in the many ways touched upon above. Current measures such as filing lawsuits against individual users may be unable to solve the problem. What technology has brought consumers will never be given up, and consumers have a right to express their will through legislation. The technology provides the possibility to overcome the weaknesses of traditional music production. Saying that the law should protect copyright is not equivalent to saying that it should protect traditional types of production and profit-making. It is not even to say that P2P technology should be eliminated. Music companies need the support of social capital: consumer resistance to buying new CDs reveals that the RIAA's lawsuits have injured their social capital. Music fans are the RIAA's social capital, having supported the industry for a long time. It should be pointed out that P2P music fans and their communities were and still will be the huge social capital for copyright holders. Damaging the social capital that the music industry depends upon suggests that the industry's lawsuits are not in accordance with the first ethical principle of property law – namely, to use resources effectively. Copyright based on individual and group's labor, from a socialized music production, consumers, ISPs, are all as the factors in the process. P2P providers and users continue the production with their software, networks, computers, time and energy. They thereby save costs of general reproduction and contribute to effectively using music resources and to social well-being. According to the principle of justice, their contributions should be considered. With regard to the distribution of benefit and burden, we should not just consider copyright holders' benefits, but also include the other stakeholders. We should also consider how all stakeholders can co-construct the new market. Ezpeer and Kuro want to co-operate with IFPI to solve the copyright issue. It's unwise of the latter to turn a deaf ear to their suggestions. P2P file-sharing is a new type of distribution. It opens a huge market. This market and the technology need to develop together.

In general, we are still operating in a market economy. Property rights form the basis of this economy and should be protected. Moreover, what P2P shares is the result of authors' and artists' creative effort. There is no creative labor in uploading and downloading. The current method and scope for using copyrights can be changed and should not be protected. P2P technology makes reproducing works, including copyrighted material, less costly; P2P networks help music production become more socialized. Both of these consequences can and should benefit consumers. So it is important to understand and explain copyright law according to the ethics of law and to treat of the rights and duties of all P2P stakeholders. There are various efforts to address the problems (e.g., Apple's iTunes, the new Napster legal download site, MCSC's contracts with music sites, etc.). If we want to such efforts acceptable, it is important not only to hear all affected parties²³ but also to regulate the parties' rights and duties in a balanced manner according to the ethics of law.

Conclusion

P2P is an advanced technology for popularizing music and sharing things of human and spiritual values. However, the current illegal use of this technology has caused serious damage to music production and infringe on copyright holders' interests. The technological conditions, social demands, and the problems with current type of music production have deepened the present crisis and suggest that a new type of music production is needed. Legislation should enhance such a new development, support P2P technology in the interests of the public, protect copyrights, and regulate P2P stakeholders' interests in a balanced manner according to the ethics of law.

Notes

¹ "13th Statistic Report on the Internet Development in China," Jan. 2004, <http://cnnic.net.cn>.

² According to 100bao.com, registered users reached 10 million as of Sept. 23, 2003.

³ According to a journalist's recent count, there are 244 free music sites now. Cf. <http://it.enorth.com.cn/system/2004/03/16/000750603.shtml>.

⁴ The laws are: The People's Republic of China's General Rule of Civil Law (April 1986); The People's Republic of China's Copyright Law (Sep. 1990, and revised Oct. 2001); Provisions of Manufacturing Rights of Digital Works (March 2000); The People's Republic of China's Regulations for Implementing the Copyright Law (May 1991 and revised Sept. 2002); The People Republic of China' Criminal Law, People's Supreme Court's Explanation of the Applied Laws in the Cognizance of Some Issues concerns the Copyright in Computer Networks (Nov. 2000).

⁵ <http://www.sina.com.cn> 2001/06/28 eNet.

⁶ Zhang Kaihua: "Half An Hour on Economy: There is no Free Music on the Internet", www.People.com.cn

⁷ Cf. *Industries and Commerce Times*, December 5, 2003.

⁸ China P2P League established in Beijing. <http://www.sina.com.cn> 2002/04/01.

⁹ Alliance for Promoting P2P Industry has established, 2003/12/15.

¹⁰ Alliance for Promoting P2P Industry has been established, 2003/12/15.

¹¹ New China Net, 2003/10/09, "The First Network Lawsuit and Its Significance. 21st Century Economic Report.

¹² "European File Swap Lawsuits inevitable," *TheRegister*, December 16 2003, <http://www.enn.ie/news.html?code=9384933>.

¹³ Sumner Lemon, "Music Piracy Poses a Worldwide Problem In Taiwan, Two Popular Paid Music Services Are Actually Illegal, *IDG News Service*. Monday, December 15, 2003

¹⁴ Slyck Interview With P2P United, October 7, 2003, <http://www.p2punitd.org>.

¹⁵ Richard. T. De George, *The Ethics of Information Technology and Business*, Blackwell Publishing, 2003, p. 147.

¹⁶ Cited from *Xinmin Wanbao*, Aug. 4, 2000.

¹⁷ Shawn Tully, "Big Man Against Big Music, *Fortune*, Aug. 14, 2000, pp. 176–192.

¹⁸ Thirteenth Statistical Report on the Internet Development in China, Jan. 2004, <http://www.cnnic.net.cn>.

¹⁹ *Idem*.

²⁰ Michael L. Dertouzos, *What Will Be, How the New World of Information Will Change Our Lives*, New York: Harper Collins Publishers, Inc. 1997.

²¹ Liu Hua, *Ethics of Law*, Henan: Henan People's Publishing House, May 2002.

²² Slyck Interview With P2P United, October 7, 2003 <http://www.p2punitd.org>.

²³ Richard T. De George, *The Ethics of Information Technology and Business*, Blackwell Publishing, 2003, pp. 1461–1447.

Acknowledgment

The author would like to thank Prof. Daryl Koehn for revising the entire manuscript in English.

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