

SCRIPT-ed

Volume 1, Issue 2, June 2004

**Special Symposium on the Law and Music,
Downloading and Filesharing - 'A Gig with a
Difference'**

*Playfair Library, University of Edinburgh
held on the 29th April 2004*

Alex Kapranos

lead singer, Franz Ferdinand

Charlotte Waelde

Co-Director, AHRB Research Centre for Studies in Intellectual Property and
Technology Law

Lilian Edwards

Co-Director, AHRB Research Centre for Studies in Intellectual Property and
Technology Law

Andres Guadamuz

Co-Director, AHRB Research Centre for Studies in Intellectual Property and
Technology Law

DOI: 10.2966/scrip.010204.335

© 2006. This work is licensed through [SCRIPT-ed Open Licence \(SOL\)](#).

Read an explanation of music downloads technology [here](#) . You can also see some pictures from the event [here](#).

Alex: Kapranos

“Hello everyone. Before I start, could I just establish a little thing? Could I see a share of hands to see who here has had experience of downloading music? If you have, could you please raise your hand?” (*pausing for hands to be raised. Giggling from the audience*) “O.K., I thought so. Most of us know what it is and we do it. I think if we start talking about this on that premise we are off to a good thing.

“Music has only been packaged in the form of a physical container for about a hundred years or so, since the development of the shellac record disc. The fact that it’s being freed from the physical container by digital technology can only be a good thing.

“This technology is a serious threat to the music industry and, thank God, it’s going to change things. That can only be an exciting thing. The last change we had that was on this level was when we first saw those shellac discs and they almost destroyed the publishing industry. People didn’t want to sit around pianos anymore with sheet music and play each other tunes. They wanted to listen to these fantastic discs with this amazing new wind up technology. It must have been quite an astounding time.

“When I first discovered peer to peer technology, I was excited as well. It appealed to everything about my love of music. It allowed me to find out about new music, when I wanted to, at any time I wanted to, but, most importantly, it allowed me to discover music through association with music I knew already. This is how I found out about music in the real world: if I’d mention to a friend I liked Roxy Music, they’d say, ‘Oh, well, you should probably check out the solo stuff that Brian Eno did’, and then that would lead somebody else to say ‘well, you should probably listen to *Talking Heads* records etc. You know, one person tells you one thing so you could listen to another thing and that’s what I found the best thing about the file-sharing attitude that you could - through association with one sort of music - find out about new music. And you could do it quickly.

“Napster was fun when it first appeared – people chatted online about the music that they liked, music that they genuinely liked as well and why they liked it. There was another program round about at the time called AudioGalaxy, which was one of the first after Napster to suffer the legislation. I thought that it was even better because it set up its own system of links and biographies, within the genres of music. If you liked *The Clash*, for example, it would say ‘you should probably check out the *Buzzcocks* and *Pil* and *Magazine*’ etc. If you’d never heard of these bands before, it was a fantastic way of finding out about them.

“In fact, I see file sharing as being very much like radio. It allows you to hear new and old music for free. It’s not the ideal format for repeated listens, and it lacks the physical charm of owning an object like a CD or even better, an LP, with all of its artwork and physical tangibility, but it’s a medium that introduces you to things that you may not have already heard. Some people are happy to spend the whole of their lives with music that comes entirely from the radio. We all know people who don’t buy records, don’t buy CDs - they just listen to the radio when they want to listen to music. But that’s not what most people do. Most people want a little bit more.

“To understand a musician’s perspective on this issue, you first have to understand what makes people want to write and perform music in the first place. Basically, it is

an inexplicable urge. You just want to do it. Basically it's good fun to make up tunes and then sing them. Then there is the greater desire to somehow touch other peoples' lives and to entertain them, either in a shallow way by making them dance or hum your tunes, or on a deeper level, like all art, helping them to understand in some way what it's like to be a human being. Either is equally valid.

"Then, finally comes the desire to support yourself from what you do - to earn money. If you ask the majority of musicians, you will find that this is genuinely the least important of all motivators. It certainly is amongst the musicians *I* know. They play music because they love playing music, and most musicians I've known over my lifetime have had crappy jobs with which they've supported themselves while they did the things that they really loved which was playing music. The exceptions, where the motivator *is* money... for those exceptions, the music they play is usually crap.

"Therefore most musicians would rather have people hear their music than gain financial reward... therefore most musicians support and indulge in peer to peer technology. It's so obvious! Every musician I know loves music - of course - they love the idea of peer to peer technology, because it allows them to get their hands on what they love and to do it easily.

"As for the legal side of this whole debate - the reason why we are all together in this room - well, that issue is for the industry to deal with and not for the musicians. The industry's only existed for a hundred years. Musicians have existed for thousands of years. It's their problem, it's not really ours. We are going to exist no matter what. Good luck to them! I don't know how they are going to deal with it. I don't really care to be honest. As far as I am concerned, ever since it came into existence, the record industry has made unimaginable amounts of money via contracts that are always weighted against the people that write and record the music for them.

"Home taping didn't kill music. I'm sure most of you will have seen those logos on the old LPs, the skull and cross bones thing, where you've got the cassette and the crossbones on between them. It was laughable. Of course home taping didn't kill music. What a ridiculous idea! If anything, that made us love music more. I remember when I was a kid and I first got my hands on a tape machine that I could make compilation tapes on: it was amazing. I made my friends compilation tapes - 'you've got to listen to this stuff' and then they'd make tapes for me. It all fuelled a love of music because that's how we enjoy music. We share music with each other and that's at the heart of the way we appreciate music as human beings. And in the end, this actually benefits the industry.

"One of the flaws at the heart of the paranoid-heavy legislative attitude of the industry is the presumption that all music fans are thieves. That's sickening as well, because not everybody wants to steal music. People do want to pay for it. When my own band were in the States on tour recently, our album had not been released, yet we were playing to sold out shows and the audiences knew all the words of the songs and were singing along... and why did they know? It was because they'd downloaded the files. They'd downloaded the songs already. And, as a musician, that's a positive thing. It's a great thing that they knew about what we were doing and they knew about it through word of mouth as well, which is fantastic, it's the most organic way to find out about anything new. But are we to presume that these people are thieves? I think that is offensive. So many of these people I talked to after shows said 'I downloaded your album, and I can't wait to go out and buy it when it comes out.'

“Another flaw is the presumption that the technology can be beaten. It can’t. It’s quite simple: it can’t be beaten. As soon as someone develops an encryption device, someone else, equally smart will develop a crack for that device. If people want to copy music, they will. It’s that simple, you can’t stop them.

“The industry can only respond by developing in a way that is more nimble and more appealing than its illegal competitors. A good example of this is iTunes, at the iTunes site where they have a dollar a song approach. You pay a dollar and you can download a song. I think this is a fantastic idea. For me, personally, an idea I love, because I am a big fan of the 7” single, I like the idea that you can listen to a song or a piece of music in its own right. I think it’s great that people only download or buy the tunes that they want to hear rather than having to pay fifteen quid for an album which, let’s face it, is likely to have a couple of good tunes and a pile of crap to fill up the rest of the space.” (*audience giggles. Someone from the panel probably comments on the Franz Ferdinand album*) “There are obvious exceptions to this rule.” (*audience laughs*).

“Now, as you can probably all gather, I am quite in favour of downloading and file sharing. I see this as positive thing between lovers of music. That does not mean, however, that I am in favour of unscrupulous opportunists making a fast buck from selling what belongs to somebody else. And that’s important. And I think that should be at the heart of this debate as well. We should be concentrating the focus of any legislation, if there is to be legislation. I think legislation needs to be directed towards the people or the organisations which are trying to generate revenue through selling something which doesn’t belong to them. Not through people who are sharing things. And the question we need to ask is, is it an issue of profit? The essential word is profit here, who is making profit from these actions. There is a great difference between kids swapping their favourite songs and websites being set up to generate large amounts of cash through peddling files illegally. I’m talking particularly of groups who generate revenue via advertising and spyware. The example that pops in my head is KaZaA. Yes, there needs to be legislation against these people because they are making money through something that doesn’t belong to them. There is no love of music here, only a love of money, and the industry is right to control their copyrights.

“And I think that is it. We need to ask that - that is the most important question: where is there a profit? {If there is a profit...} If nobody is making a profit then leave them alone. If they are making a profit, do they have a right to make that profit? If they don’t have a right to make a profit then you should legislate against them. Thanks.”

Question and answer

Lilian Edwards (chair): “Yeah, I have a whole bunch of questions to ask Alex. “I wanted to pick them up a couple of points. One is I like this idea that you also mentioned to the BBC, that the Internet is like the radio. It’s the way we are hearing these songs and then going to a shop to buy them, because that’s the way I would like to use downloading myself.

“The fact however is that when songs are actually played on radio the artist gets some revenue.”

Alex: “Yeah, that’s true. Particularly, the writers of songs get a reward. But, for most positions it is primarily a tool to find out about the music. And yes, of course, you’re

not generating revenue through file sharing on the Internet but you do have the benefits that reap rewards.

Lilian: “You mentioned near the end of your piece, and as Andres has also mentioned, the new downloading music systems which are paying. The legal ones, the iTunes and the MyCokeMusic, and I think Tesco’s is going into this market as well - it’s an interesting time. Would you feel as good about your fans downloading your music for free, if you knew that they could very easily download it from one of these systems - you know, for some reasonable amount. If they could download the whole album for 4 quid instead of, whatever it is, £13.99 at HMV? Would you then feel so good about them trying it and loving it? Taking it?”

Alex: “I think it’s up to the people. The point I was trying to make when I was talking earlier is I think it’s wrong to presume that most people want to ‘steal music’. I think it is a morally wrong presumption to make out that “everybody is a thief”. And I think that people are quite willing to pay for music. Not everybody is. Of course when they want to go the shop and shoplift the CD. You know this is just...”

Lilian: “Some people would always take it from their friends to borrow it and not pay for it, so you know there’s no change there.”

Alex: “Yeah, of course. That’s one of the points I was trying to make, like if somebody wants to steal music they will. You can’t stop them from doing that. I think the response that the industry has to take is rather than saying ‘no, you can’t do this’ and be heavy handed about their approach, they need to set up an alternative which is more nimble, more user-friendly, which is more fun to use than the illegal counterparts. And that’s why I think similarly that iTunes is doing very well. I’m glad to hear AudioGalaxy is back, too.”

Lilian: “O.K. Well, I mean, that begs the next obvious question to me, which is do we still need record companies? I mean, what would you think about - you’ve already got *FranzFerdinand.co.uk* or *.com* haven’t you? What about if you set it up your ISP, to let your fans legally download your stuff from it for whatever you regard as a reasonable amount that would pay you some kind of wage, you know. Do we still need record companies? Is this something you are willing to talk about on record?”

Alex: “Yes, sure. I think you do. I don’t think they are going to exist in the way they have done for the last 50 years or so. I think, well obviously, this is going to completely change. But you still need some kind of organisation, which will distribute, assimilate this music to the wider population. Yes, I think there is still a need.”

Charlotte: “Sorry, It was a question leading on from there, because – you are signed to a record company, aren’t you?”

Alex: “Domino.”

Charlotte: “‘Domino’! That’s right! What do you think your record company has done for you? And would you be in the position you are now, sitting on this panel talking about music downloads if it did not be for your record company?”

Alex: “Definitely, I probably wouldn’t be, because what record companies tend to do is that they turn to put money on front, which gives you the ability to record what it is you’ve written and what it is you perform. Yes, that’s the point I’m trying to make, it’s that you still need some kind of organisation that will back the artists and

distribute their music for some kind of profit. It's just not going to exist in the way it exists at the moment."

Lilian: "O.K. I'll just ask one more question and then pass it out forward to questions from the audience. One of the other alternative models that's going around at the moment, apart from the idea of the paying services like iTunes and Codemusic, is the idea that everyone should be able to give away their music for free, so everyone can enjoy it, download it, sample it, remix it – which is something we haven't talked about at all - but the artists should be able to get back their money, their living wage by means of some kind of levy system. There will be some kind of tax on, for example, on blank CDs, on broadband time, on Internet access, maybe on the chips in computers that people use to download, what would you think about that kind of system?"

Alex: "That's a good example of sort of like a more lateral approach which I think is essential. It does sound very positive. It sounds like a good thing. Another thing that occurred me at one point would be, maybe some sort of voluntary donations system. If some of these sites which allowed peer to peer technology and file-swapping if they set up some kind of system that allowed a donation to a pool then that could be a positive thing too."

Lilian: "In fact actually some study has worked out that, I think, if you paid 6 dollars a month at the moment you could basically afford to keep the current profits of the record industry going. In British terms, that works out at about 40 quid a year. Another suggestion I've seen is that that could be tacked onto your TV licence. I mean, how many people here would be willing to pay 40 or 50 pounds a year on their TV licence so they could download any music they wanted, any time, without fear of being sued. I would." (*pausing for hands to be raised*) "God! A fair few! O.K. Alright. Do you want to?..."

Charlotte: "I was just going to bring up a question that was referred to before. And this is to do with sort of alteration of your work, remixing your work. Putting your work in a different form, being performed by somebody else. Now, of course, part of what the music companies want to do and indeed part of what many artists want to do is to be able to control that, to stop people doing that. Do you have any strong views on that?"

Lilian: "What do you think of the remix, The Grey Album?"

Alex: "I think some of this stuff is good. I mean, all of this kind of mash-ups or stuff like. You get some interesting things. I think it's a bit sad when musicians get a bit too precious about people re-interpreting what they do. It suggests that they are not very happy with their own thing."