

June 18, 2012

Letter to Emily White at NPR All Songs Considered.

563 Comments

Recently Emily White, an intern at NPR All Songs Considered and GM of what appears to be her college radio station, [wrote a post on the NPR blog \(http://www.npr.org/blogs/allsongs/2012/06/16/154863819/i-never-owned-any-music-to-begin-with\)](http://www.npr.org/blogs/allsongs/2012/06/16/154863819/i-never-owned-any-music-to-begin-with) in which she acknowledged that while she had 11,000 songs in her music library, she's only paid for 15 CDs in her life. Our intention is not to embarrass or shame her. We believe young people like Emily White who are fully engaged in the music scene are the artist's biggest allies. We also believe—for reasons we'll get into—that she has been badly misinformed by the Free Culture movement. We only ask the opportunity to present a countervailing viewpoint.

Emily:

My intention here is not to shame you or embarrass you. I believe you are already on the side of musicians and artists and you are just grappling with how to do the right thing. I applaud your courage in admitting you do not pay for music, and that you do not want to but you are grappling with the moral implications. I just think that you have been presented with some false choices by what sounds a lot like what we hear from the "Free Culture" adherents.

I must disagree with the underlying premise of what you have written. Fairly compensating musicians is not a problem that is up to governments and large corporations to solve. It is not up to them to make it "convenient" so you don't behave unethically. (Besides—is it really that inconvenient to download a song from iTunes into your iPhone? Is it that hard to type in your password? I think millions would disagree.)

Rather, fairness for musicians is a problem that requires each of us to individually look at our own actions, values and choices and try to anticipate the consequences of our choices. I would suggest to you that, like so many other policies in our society, it is up to us individually to put pressure on our governments and private corporations to act ethically and fairly when it comes to artists rights. Not the other way around. We cannot wait for these entities to act in the myriad little transactions that make up an ethical life. I'd suggest to you that, as a 21-year old adult who wants to work in the music business, it is especially important for you to come to grips with these very personal ethical issues.

I've been teaching college students about the economics of the music business at the University of Georgia for the last two years. Unfortunately for artists, most of them share your attitude about purchasing music. There is a disconnect between their personal behavior and a greater social injustice that is occurring. You seem to have internalized that ripping 11,000 tracks in your iPod compared to your purchase of 15 CDs in your lifetime feels pretty disproportionate. You also seem to recognize that you are not just ripping off the record labels but you are directly ripping off the artist and songwriters whose music you "don't buy". It doesn't really matter that you didn't take these tracks from a file-sharing site. That may seem like a neat dodge, but I'd suggest to you that from the artist's point of view, it's kind of irrelevant.

Now, my students typically justify their own disproportionate choices in one of two ways. I'm not

trying to set up a “strawman”, but I do have a lot of anecdotal experience with this.

“It’s OK not to pay for music because record companies rip off artists and do not pay artists anything.” In the vast majority of cases, this is not true. There have been some highly publicized abuses by record labels. But most record contracts specify royalties and *advances* to artists. Advances are important to understand—a prepayment of unearned royalties. Not a debt, more like a bet. The artist only has to “repay” (or “recoup”) the advance from record sales. If there are no or insufficient record sales, the advance is written off by the record company. So it’s false to say that record companies don’t pay artists. Most of the time they not only pay artists, but they make bets on artists. And it should go without saying that the bets will get smaller and fewer the more unrecouped advances are paid by labels.

Secondly, *by law* the record label must pay songwriters (who may also be artists) something called a “mechanical royalty” for sales of CDs or downloads of the song. This is paid regardless of whether a record is recouped or not. The rate is predetermined, and the license is compulsory. Meaning that the file sharing sites could get the same license if they wanted to, at least for the songs. They don’t. They don’t wanna pay artists.

Also, you must consider the fact that the vast majority of artists are releasing albums independently and there is not a “real” record company. Usually just an imprint owned by the artist. In the vast majority of cases you are taking money directly from the artist. How does one know which labels are artist owned? It’s not always clear. But even in the case of corporate record labels, shouldn’t they be rewarded for the bets they make that provides you with recordings you enjoy? It’s not like the money goes into a giant bonfire in the middle of the woods while satanic priests conduct black masses and animal sacrifices. Usually some of that money flows back to artists, engineers and people like you who graduate from college and get jobs in the industry. And record labels also give your college radio stations all those CDs you play.

Artists can make money on the road (or its variant “Artists are rich”). The average income of a musician that files taxes is something like 35k a year w/o benefits. The vast majority of artists do not make significant money on the road. Until recently, most touring activity was a money losing operation. The idea was the artists would make up the loss through recorded music sales. This has been reversed by the financial logic of file-sharing and streaming. You now tour to support making albums if you are very, very lucky. Otherwise, you pay for making albums out of your own pocket. Only the very top tier of musicians make ANY money on the road. And only the 1% of the 1% makes *significant* money on the road. (For now.)

Over the last 12 years I’ve watched revenue flowing to artists collapse.

Recorded music revenue is down 64% since 1999.

Per capita spending on music is 47% lower than it was in 1973!!

The number of professional musicians has fallen 25% since 2000.

Of the 75,000 albums released in 2010 only 2,000 sold more than 5,000 copies. Only 1,000 sold more than 10,000 copies. Without going into details, 10,000 albums is about the point where independent artists begin to go into the black on professional album production, marketing and promotion.

On a personal level, I have witnessed the impoverishment of many critically acclaimed but marginally commercial artists. In particular, two dear friends: Mark Linkous (Sparklehorse) and Vic Chesnutt. Both of these artists, despite growing global popularity, saw their total incomes fall in the last decade. There is no other explanation except for the fact that “fans” made the unethical choice to take their music without compensating these artists.

Shortly before Christmas 2009, Vic took his life. He was my neighbor, and I was there as they put him in the ambulance. On March 6th, 2010, Mark Linkous shot himself in the heart. Anybody who knew either of these musicians will tell you that the pair suffered depression. They will also tell you their situation was worsened by their financial situation. Vic was deeply in debt to hospitals and, at the time, was publicly complaining about losing his home. Mark was living in abject squalor in his remote studio in the Smokey Mountains without adequate access to the mental health care he so desperately needed.

I present these two stories to you not because I am pointing fingers or want to shame you. I just want to illustrate that “small” personal decisions have very real consequences, particularly when millions of people make the decision not to compensate artists they supposedly “love”. And it is up to us individually to examine the consequences of our actions. It is not up to governments or corporations to make us choose to behave ethically. We have to do that ourselves.

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Now, having said all that, I also deeply empathize with your generation. You have grown up in a time when technological and commercial interests are attempting to change our principles and morality. Rather than using our morality and principles to guide us through technological change, there are those asking us *to change our morality and principles to fit the technological change*—if a machine can do something, it ought to be done. Although it is the premise of every “machines gone wild” story since Jules Verne or Fritz Lang, this is exactly backwards. Sadly, I see the effects of this thinking with many of my students.

These technological and commercial interests have largely exerted this pressure through the Free Culture movement, which is funded by a handful of large tech corporations and their foundations (<http://www.ibiblio.org/cccr/docs/990B-2008.pdf>) in the US, Canada, Europe and other countries.* Your letter clearly shows that you sense that something is deeply wrong, but you don't put your finger on it. I want to commend you for doing this. I also want to enlist you in the fight to correct this outrage. Let me try to show you exactly what is wrong. What it is you can't put your finger on.

The fundamental shift in principals and morality is about who gets to control and exploit the work of an artist. The accepted norm for hundreds of years of western civilization is the artist exclusively has the right to exploit and control his/her work for a period of time. (Since the works that are almost invariably the subject of these discussions are popular culture of one type or another, the duration of the copyright term is pretty much irrelevant for an ethical discussion.) By allowing the artist to treat his/her work as actual property, the artist can decide how to monetize his or her work. This system has worked very well for fans and artists. Now we are being asked to undo this not because we think this is a bad or unfair way to compensate artists but simply because it is technologically possible for corporations or individuals to exploit artists work without their permission on a massive scale and globally. We are being asked to continue to let these companies violate the law without being punished or prosecuted. We are being asked to change our morality and principals to match what I think are immoral and unethical business models.

Who are these companies? They are sites like The Pirate Bay, or Kim Dotcom and Megaupload. They are “legitimate” companies like Google that serve ads to these sites through AdChoices and Doubleclick (<http://www.popuppirates.com>). They are companies like Grooveshark that operate

streaming sites without permission from artists

(<http://www.guardian.co.uk/music/musicblog/2011/dec/12/grooveshark-music-site>) and over the objections of the artist, much less payment of royalties lawfully set by the artist. They are the venture capitalists that raise money for these sites. They are the hardware makers that sell racks of servers to these companies. And so on and so on.

What the corporate backed Free Culture movement is asking us to do is analogous to changing our morality and principles to allow the equivalent of looting. Say there is a neighborhood in your local big city. Let's call it The eNet. In this neighborhood there are record stores. Because of some antiquated laws, The eNet was never assigned a police force. So in this neighborhood people simply loot all the products from the shelves of the record store. People know it's wrong, but they do it because they know they will rarely be punished for doing so. What the commercial Free Culture movement (see the "hybrid economy") is saying is that instead of putting a police force in this neighborhood we should simply change our values and morality to accept this behavior. We should change our morality and ethics to accept looting because it is simply possible to get away with it. And nothing says freedom like getting away with it, right?

But it's worse than that. It turns out that Verizon, AT&T, Charter etc etc are charging a toll to get into this neighborhood to get the free stuff. Further, companies like Google are selling maps (search results) that tell you where the stuff is that you want to loot. Companies like Megavideo are charging for a high speed looting service (premium accounts for faster downloads). Google is also selling ads in this neighborhood and sharing the revenue with everyone except the people who make the stuff being looted. Further, in order to loot you need to have a \$1,000 dollar laptop, a \$500 dollar iPhone or \$400 Samsung tablet. It turns out the supposedly "free" stuff really isn't free (<http://scholarlykitchen.sspnet.org/2012/06/13/not-free-not-easy-not-trivial-the-warehousing-and-delivery-of-digital-goods/>). In fact it's an expensive way to get "free" music. (Like most claimed "disruptive innovations" it turns out expensive subsidies exist elsewhere (<http://www.pcmag.com/article2/0,2817,1628049,00.asp>.) Companies are actually making money from this looting activity. These companies only make money if you change your principles and morality! And none of that money goes to the artists!

And believe it or not this is where the problem with Spotify starts. The internet is full of stories from artists detailing just how little they receive from Spotify. I shan't repeat them here. They are epic. Spotify does not exist in a vacuum. The reason they can get away with paying so little to artists is because the alternative is The eNet where people have already purchased all the gear they need to loot those songs for free. Now while something *like* Spotify may be a solution for how to compensate artists fairly in the future, it is not a fair system now. As long as the consumer makes the unethical choice to support the looters, Spotify will not have to compensate artists fairly. There is simply no market pressure. Yet Spotify's CEO is the 10th richest man in the UK music industry ahead of all but one artist on his service.

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So let's go back and look at what it would have cost you to ethically and legally support the artists.

And I'm gonna give you a break. I'm not gonna even factor in the record company share. Let's just pretend for your sake the record company isn't simply the artist's imprint and all record labels are evil and don't deserve any money. Let's just make the calculation based on exactly what the artist should make. First, the mechanical royalty to the songwriters. This is generally the artist. The royalty that is supposed to be paid by law is 9.1 cents a song for every download or copy. So that is \$1,001 for all 11,000 of your songs. Now let's suppose the artist has an average 15% royalty rate. This is calculated at wholesale value. Trust me, but this comes to 10.35 cents a song or \$1,138.50. So to ethically and morally "get right" with the artists you would need to pay \$2,139.50.

As a college student I'm sure this seems like a staggering sum of money. And in a way, it is. At least until you consider that you probably accumulated all these songs over a period of 10 years (5th grade). So that's \$17.82 dollars a month. Considering you are in your prime music buying years, you admit your life is "music centric" and you are a DJ, that \$18 dollars a month sounds like a bargain. Certainly much much less than what I spent each month on music during the 4 years I was a college radio DJ.

Let's look at other things you (or your parents) might pay for each month and compare.

Smart phone with data plan: \$40-100 a month.

High speed internet access: \$30-60 dollars a month. Wait, but you use the university network? Well, buried in your student fees or tuition you are being charged a fee on the upper end of that scale.

Tuition at American University, Washington DC (excluding fees, room and board and books): \$2,086 a month.

Car insurance or Metro card? \$100 a month?

Or simply look at the value of the web appliances you use to enjoy music:

\$2,139.50 = 1 smart phone + 1 full size ipod + 1 macbook.

Why do you pay real money for this other stuff but not music?

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The existential questions that your generation gets to answer are these:

Why do we value the network and hardware that delivers music but not the music itself?

Why are we willing to pay for computers, iPods, smartphones, data plans, and high speed internet access but not the music itself?

Why do we gladly give our money to some of the largest richest corporations in the world but not the companies and individuals who create and sell music?

This is a bit of hyperbole to emphasize the point. But it's as if:

Networks: Giant mega corporations. *Cool! have some money!*

Hardware: Giant mega corporations. *Cool! have some money!*

Artists: 99.9 % lower middle class. *Screw you, you greedy bastards!*

Congratulations, your generation is the first generation in history to rebel by *unsticking* it to the man and instead sticking it to the weirdo freak musicians!

I am genuinely stunned by this. Since you appear to love first generation Indie Rock, and as a founding member of a first generation Indie Rock band I am now legally obligated to issue this order: *kids, lawn, vacate.*

You are doing it wrong.

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Emily, I know you are not exactly saying what I've illustrated above. You've unfortunately stumbled into the middle of a giant philosophical fight between artists and powerful commercial interests. To your benefit, it is clear you are trying to answer those existential questions posed to your generation. And in your heart, you grasp the contradiction. But I have to take issue with the following statement:

As I've grown up, I've come to realize the gravity of what file-sharing means to the musicians I love. I can't support them with concert tickets and t-shirts alone. But I honestly don't think my peers and I will ever pay for albums. I do think we will pay for convenience.

I'm sorry, but what is inconvenient about iTunes and, say, iTunes match (that let's you stream all your music to all your devices) aside from having to pay? Same with Pandora premium, MOG and a host of other legitimate services. I can't imagine that any other legal music service that is gonna be simpler than these to use. Isn't convenience already here!

Ultimately there are three "inconvenient" things that MUST happen for any legal service:

- 1.create an account and provide a payment method (once)
- 2.enter your password.
3. Pay for music.

So what you are really saying is that you won't do these three things. This is too inconvenient. And I would guess that the most inconvenient part is....step 3.

That's fine. But then you must live with the moral and ethical choice that you are making to not pay artists. And artists won't be paid. And it won't be the fault of some far away evil corporation. You "and your peers" ultimately bear this responsibility.

You may also find that this ultimately hinders your hopes of finding a job in the music industry. Unless you're planning on working for free. Or unless you think Google is in the music industry—which it is not.

I also find this all this sort of sad. Many in your generation are willing to pay a little extra to buy "fair trade" coffee that insures the workers that harvested the coffee were paid fairly. Many in your generation will pay a little more to buy clothing and shoes from manufacturers that certify they don't use sweatshops. Many in your generation pressured Apple to examine working conditions at Foxconn in China. Your generation is largely responsible for the recent cultural changes that has given more equality to same sex couples. On nearly every count your generation is much more ethical and fair than my generation. Except for one thing. Artist rights.

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At the start of this I did say that I hoped to convert you to actively helping musicians and artists. That ultimately someone like you, someone so passionately involved in music is the best ally that musicians could have. Let me humbly suggest a few things:

First, you could legally buy music from artists. The best way to insure the money goes to artists? Buy it directly from their website or at their live shows. But if you can't do that, there is a wide range of services and sites that will allow you to do this conveniently. Encourage your "peers" to also do this.

Second, actively "call out" those that profit by exploiting artists without compensation. File sharing sites are supported by corporate web advertising. Call corporations out by giving specific examples. For instance, say your favorite artist is Yo La Tengo. If you search at Google "free mp3 download Yo

La Tengo" you will come up with various sites that offer illegal downloads of Yo La Tengo songs. I clicked on a link to the site www.beemp3.com where I found You La Tengo's entire masterpiece album *I Am Not Afraid Of You And I Will Beat Your Ass*.

I also found an ad for Geico Insurance which appeared to have been serviced to the site by "Ads by Google". You won't get any response by writing a file sharing site. They already know what they are doing is wrong. However Geico might be interested in this. And technically, Google's policy is to not support piracy sites, however it seems to be rarely enforced. The best way to write any large corporation is to search for the "investor's relations" page. For some reason there is always a human being on the other end of *that* contact form. You could also write your Congressman and Senator and suggest they come up with some way to divert the flow of advertising money back to the artists.

And on that matter of the \$2,139.50 you owe to artists? Why not donate something to a charity that helps artists. Consider this your penance. In fact I'll make a deal with you. For every dollar you personally donate I'll match it up to the \$500. Here are some suggestions.

Nuci's Space. This is Athens Georgia's home grown musician health and mental health charity. This would be a nice place to donate money if you were a fan of Vic Chesnutt.

<http://www.nuci.org/>

Music Cares. You can also donate to this charity run by the NARAS (the Grammys).
<http://www.grammy.org/musicares/donate> (<http://www.grammy.org/musicares/donate>)

Health Alliance for Austin Musicians. Friends speak highly of this organization.

American Heart Association Memorial Donation. Or since you loved Big Star and Alex Chilton, why not make a donation to The American Heart Association in Alex Chilton's name? (Alex died of a heart attack) https://donate.americanheart.org/ecommerce/donation/acknowledgement_info.jsp?campaignId=&site=Heart&itemId=prod20007
(https://donate.americanheart.org/ecommerce/donation/acknowledgement_info.jsp?campaignId=&site=Heart&itemId=prod20007)

I'm open to suggestions on this.

I sincerely wish you luck in your career in the music business and hope this has been enlightening in some small way.

David Lowery