





# Music to my peers

Three years after broadband's first killer application rocked the web, Napster-style, peer-to-peer fileswapping networks are still running rings round the mighty record labels. Despite the threat of a jail sentence, online music piracy continues to mushroom. Guy Dixon investigates

Anyone recently trying to download tracks from Madonna's latest album, *American Life*, using one of the more popular P2P (peer-to-peer) fileswapping services, might have got more than they bargained for. "What the f\*\*\* do you think you're doing?" screeches the ageing pop diva in a bid to deter any further efforts to enjoy her music for free.

This was no opportunistic stunt designed to woo a younger audience by diversifying into gangster rap. Known as 'spoofing' it is simply a variation on attempts by the record industry to swamp P2P networks with hefty files carrying titles of the web's most

sought-after songs. Once downloaded, however, all a disappointed fileswapper gets is a load of empty 'white noise'.

Such tactics sum up the record industry's approach to the threat posed by P2P fileswapping networks. Every time the big five record labels – Vivendi Universal, AOL Time Warner, Sony Music, BMG and EMI – lob awkwardly from the back of the court, they find their best efforts smashed back in their faces.

Within hours Madonna's official website was hacked. In place of the site's usual content were links to pirated versions of her entire CD. What's more, her unwelcome visitor left a calling card: "This is what the f\*\*\* I think I'm doing."

## Glossary

### B Bit rate

The amount of data transferred per second. MP3s are measured in kilobits per second, with 128Kbps being the standard. The higher the bit rate, the higher the sound quality.

### B MP3

Stands for Mpeg layer 3 and it's a compressed audio format. A compression ratio of up to 12:1 on normal audio CDs produces high quality sound.

### B Peer-to-peer or P2P

A sharing and delivery of files (mainly music) among users who are logged on to a file-sharing network. Napster was the first mainstream P2P network. Following Napster's demise, networks such as Kazaa and Morpheus have taken their place.

### B CD ripping

The process of copying audio CDs to your hard drive in WAV format.

### B The big five

The record industry is dominated by five record companies: Vivendi Universal, AOL Time Warner, Sony Music, BMG and EMI.

### B OD2

Leading broadband ISPs in the UK – for example, Telewest, BT Openworld and Tiscali – resell Peter Gabriel's legal subscription-based service.

### B iTunes

Apple's recently launched 99 cents-per-download service, which is only available in the US.

## Record labels vs P2P: the fight continues

Back in May we learnt that interests representing the record labels were experimenting with their own virtual weapons of mass destruction in the form of antipiracy Trojan horses and viruses. The latter are designed to hit the heftiest P2P users where it hurts most – attacking the actual machines used for swapping copyright music. The idea is to lock the fileswapper's PC for up to several hours. The Trojan horses, meanwhile, automatically redirect users swapping copyright tracks to subscription-based sites carrying legal versions of the sought-after track.

In the blink of an eye, news forums dedicated to the cause of free P2P musicswapping were buzzing with links to sites such as Zeropaed, sporting lists of web addresses in the pay of record labels. Conveniently many of the lists come firewall ready, allowing users to block off addresses in a matter of minutes.

Programs such as Peerguardian are also readily available. Originally developed to block spyware employed by some P2P networks, these applications have since been overhauled to block specific web addresses. So fileswappers can now more easily avoid other users offering spoof tracks masqueraded as genuine music.

The biggest coup for the fileswapping community came at the end of April when owners of the P2P networks Grokster and Morpheus managed to convince a US federal judge in Los Angeles that their services were more akin to VCRs and photocopiers rather than their now-defunct P2P precursor, Napster.

Unlike Napster, it was argued, the technology employed by Grokster and Morpheus is inherently decentralised, providing neither the site nor the facilities for files that their users are searching for. Of course, the ruling will be appealed but a final decision could go all the way to the US Supreme Court – a process that may well take years.

## Snowball effect

What's more, the P2P networks themselves have got audiences and balance sheets not normally associated with companies born in the dotcom era.

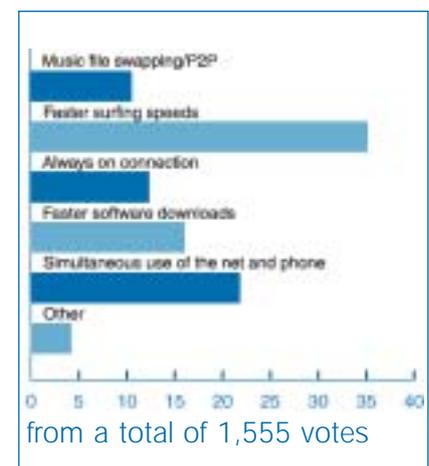
US-based Grokster has independent figures showing 10 million unique users worldwide and an impressive 3.5 million fileswappers online at any one time.

With average visitor sessions lasting around an hour, advertisers are proving understandably supportive. The world's most popular P2P fileswapping service, the Netherlands-based Kazaa, was last year believed to be making around £500,000 per month from advertising on its network. Not bad for a company with minimal overheads.

The P2P networks are also improving. The recently released Morpheus 3.0, for example, has expanded to include an integrated media player, media library and chat facilities, allowing users to find and manage their media without leaving the application. It also sports a 'cluster-hopping' feature that makes it easier to locate obscure recordings.

Even more importantly, P2P's popularity shows no sign of abating. In an average week the world's leading network, Kazaa Media Desktop, is downloaded well over two and a half million times. So far that amounts to a total of a quarter of a billion users – twice the population of Japan.

Even the law-abiding *PC Advisor* readership cited P2P fileswapping as a major reason for upgrading to broadband in a recent poll. More than one in 10 (10.5 percent), claimed it was the single most important factor influencing their decision to abandon narrowband. Almost a billion music files are freely available for download on a daily basis – all without a single euro ending up in the pockets of the record companies.



## Match made in heaven

In short, P2P fileswapping is proving to be broadband's first genuine killer application. According to network management firm Sandvine, around 60 percent of all broadband traffic is taken up by P2P activity. Meanwhile, an in-depth study published by Jupiter Research in May shows that up to 18 percent of European internet users visit P2P fileswapping networks at least once a month.

The community strength of these networks are also providing the record labels with a major headache. If Grokster has 3.5 million users at any one time, that's potentially a collective force of 3.5 million minds turning their not inconsiderable technical talents to the defence of the right to swap music online. When seen in this context it's no wonder attempts by the big five to repress such activity are failing.

Financially sound, increasingly popular and facing an enemy that couldn't shoot fish in a barrel, P2P fileswapping networks are here to stay. Whether you see them as Robin Hoods or a bunch of Fagins corrupting today's computer-using youth, P2P networks have empowered an entire younger generation of computer users. They have proved that the PC is more than a device for revision and a touch of game-playing.

The ability to access practically any music track you can think of at the click of a mouse has taken the home PC to new heights, ushering in a broadband era that places the PC at the nerve centre of digital entertainment in the home.

## Praise marketing and pass the aspirin

It's easy to understand the huge annoyance felt by the record labels. It's not just the fall in global music sales – down seven percent in 2002 (four percent in the UK) – which the record industry blames on P2P networks.

By releasing the contents of a CD a fortnight ahead of its release date, P2P networks are interfering with the science of marketing music. The music industry is a slickly oiled machine predicated on the public buying what they are told to buy when they are told to. Everything needs to be timed to perfection.

So when the Stereophonics fourth album, *You Gotta Go There To Come Back*, found itself doing its own virtual tour of the leading P2P networks weeks ahead of its release date, it put a dampener on the band's initial mini-tour.

The tour had been promoted as a way of previewing the upcoming album, building up to its climax on the eve of the CD's official 2 June launch. Other bands, such as Radiohead and Super Furry Animals, have suffered the same embarrassment – their albums were leaked online up to three months in advance of the official release dates. In short, the record labels no longer dictate the marketplace.

## Calling on the ISPs

The BPI (British Phonographic Industry) has called on ISPs, most notably BT, to make a larger effort in stamping out the practice of P2P fileswapping on their networks.

But broadband ISPs refuse to carry the can for illegal fileswapping. They are much more interested in increasing their customer base rather than kicking miscreant teenagers off their networks. All ISPs point to their terms and conditions, which expressly forbid the use of their service for illegal activity. When you press them about any action taken against P2P fileswappers, however, the silence is deafening.

"It's the end user's responsibility," explains Fergal Butler, Telewest's head of broadband internet strategy. "It's like a car – if you want to break the speed limit that's up to you."

Broadband ISPs are far more concerned about the impact P2P fileswapping has on the performance of their networks. "Peer-to-peer is incredibly inefficient," says Butler. "It's the searching that puts such a strain on the network, in addition to the downloads themselves."

Broadband ISPs are looking at ways to allow fileswapping services to operate more efficiently over their networks, thereby providing a more robust service. The fact that their services are being used by hundreds of thousands of people all happily helping themselves to intellectual property owned by the record labels is of little consequence to a bunch

of ISPs charged with making broadband Britain a reality.

The most an inveterate fileswapper has to fear from their ISP is a polite phone call informing the downloader in question that they are regularly exceeding the single-user capacity and that it might be an idea to reduce the scale of network abuse.

## Cancel my subscription

The leading broadband ISPs point to their recently launched subscription-based music services that, along with leading retailers such as HMV, resell Peter Gabriel's OD2 service. They enjoy a direct billing relationship with their customers – ideal for buying small chunks of digital content. When asked about sales levels, however, the ISPs are all predictably shy.

## MP3 and the law



It is perfectly legal to use a P2P (peer-to-peer) fileswapping website – as long as you don't download copyright material. According to a recent US court ruling, Grokster and Morpheus – two of the world's most popular P2P networks – can't be held responsible for the actions of their users. The judge compared them to VCRs and photocopiers.

Under UK law, you have no legal right to copy a CD to another medium – even if it is for your own personal use (in the car, for example). In the past, record labels have merely tolerated copies for personal use.

Under impending EU legislation, anyone in the UK caught demonstrating techniques that circumvent copyright protection – for example, showing others how to get round protection on discs designed not to play through PC CD drives – could well face a two-year prison sentence.

While OD2 has the largest catalogue of legal digital music in Europe and is the only legal service to offer the opportunity to burn as well as stream and download tracks, customers appear averse to the subscription way of doing things.

It's also somewhat messy. For a start Sony aren't onboard – no Michael Jackson or Bruce Springsteen for you. And if you're after The Beatles, The Rolling Stones or Nirvana then forget it – they're not there either. In theory, subscribers can burn 10 tracks a month for free with additional tracks costing between 99p and £1.49 each. But that doesn't apply to artists belonging to the EMI label, which has granted listening and download rights but not burning privileges.

OD2-based services aren't cheap either – especially if you want to listen to your collection beyond the PC. Asking users to cough up well over £100 per year for the right to build up their dream music collection seems steep.

Unless legal music download services can offer music at substantially less than their CD equivalents, they seem to be on a hiding to nothing.

## Glimmer of hope

Not for the first time, it is the world of Apple and its charismatic CEO, Steve Jobs, that has offered a credible vision of the future. iTunes is the computer manufacturer's online store of 200,000

music tracks. Songs cost 99 cents a pop and more than two million tracks were sold in its first 16 days of going live.

The iTunes library features material from all the big five record labels. Users can browse the library, searching for songs by title, artist or album and then preview free clips before buying. Once you have bought a song you can burn it to an unlimited number of CDs for personal use or download it to a countless number of iPods. What's more, concerns that downloaders would simply cherry-pick hit tracks proved unfounded – more than half of the songs were purchased as part of full-album downloads.

However, iTunes's reach is somewhat limited. Unavailable outside the US, the service is accessible to less than five percent of the world's computer users – in other words, you have to own an Apple Mac and live in the States.

EMI has also recently made some encouraging noises. In the face of declining sales, at the end of April it released 140,000 of its songs for sale online two weeks before they were due in store, thereby pipping the pirates to the post. Artists include Coldplay, Kylie Minogue and Robbie Williams and are available through about 20 online retailers across Europe.

Nevertheless, if you compare both iTunes' and EMI's efforts to the billion MP3 tracks available over free P2P

networks, it feels like too little too late. In short, if the record labels don't pull their respective fingers out soon they could find themselves cut out of the loop altogether.

## Jump through the loop

Madrid-based Puretunes.com, for example, is bypassing the record companies, paying royalties directly to the artists themselves. The company is exploiting loopholes in Spanish copyright law, which it claims allows it to sell music tracks online without the permission of the record labels. The record labels, understandably, dispute this.

Puretunes.com says it will let music lovers download all the songs they want, legally, for \$3.99 a night or \$13.99 a month. The artists will then get a cut of the proceeds. The company intends to distribute its service via Grokster, one of the most popular P2P fileswapping services. However, at the time of going to press, distribution via Grokster had to be shelved shortly after launch because of overwhelming consumer response that flooded Puretune.com's servers.

The best case scenario for the record labels is that one day, illegal P2P fileswapping may simply be built into the cost of legal music downloads in the same way that shoplifting is accepted as wastage by today's retail sector. But until then Broadband Britain will continue to swap away regardless. ■

## PC Advisor says...

**O**kay, so the likelihood of the record industry and P2P (peer-to-peer) networks taking heed of our advice is slim. But that doesn't stop us from putting forward a fair and, in our eyes, ideal solution to the record label vs P2P dilemma.

### B What's yours is yours

Users should be allowed to copy a purchased CD on to any format of their choosing – cassette tape, MP3 player and so on. This should come under some form of 'fair use' category, which should be accepted by the record labels. Downloaded tracks should be as portable as their solid-state counterpart, allowing you to move tracks from one PC to another.

### B Fight for your rights

Users buying their music online in digital format should also have the right to burn it to CD for backup and portability.

### B Share and share alike

Sharing copyright music, whatever the format, among friends and family should be legal. Sharing it with several million is morally wrong and should be punishable.

### B Fair pay

The price of downloaded music should accurately reflect the record company's reduced production and distribution costs. It should be significantly cheaper to buy an album in digital format than purchasing the same CD instore. The consumer is making life easier for the record label and pricing should reflect this.

### B Get your priorities straight

Record labels should spend less time trying to 'kill' the opposition and collectively invest in an effective online legal music distribution service.