

The effects of piracy upon the music industry: a case study of bootlegging

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Introduction

I don't think the record company loses one cent on a bootleg. If they go after bootleggers, they're wasting their money. (Max, a bootlegger, in Vettel, 1986)

Each year, the International Federation of the Phonographic Industry (IFPI) releases a figure indicating the global value of pirated music. In 2000, this figure was \$4.2 billion (IFPI, 2001). The IFPI argues that the actual losses suffered by the industry are not fully represented by this figure: 'The value of the pirate market does not indicate losses in revenue to the legitimate recording industry, which are likely to be far greater' (2001). These figures are then used in a strenuous lobbying campaign for the creation and enforcement of tougher copyright laws demanding, for example, restrictions on private copying exemptions, deterrent penalties and the dismantling of compulsory licensing provisions. This lobbying campaign is only likely to intensify in the future in response to online copying and the proliferation of CD burners. The IFPI, and its American equivalent, the Recording Industry Association of America (RIAA) are skilful and powerful lobbyists, and past evidence suggests that policy-makers will continue to be influenced by their arguments.

The effects of piracy are, however, more difficult to ascertain. This is for three reasons. First, the word 'piracy' is a blanket term covering a wide variety of activities, including counterfeiting, pirating, bootlegging, home taping, tape trading and online file sharing. All of these areas of piracy have individual characteristics that make any attempt at synthesis a hazardous and, some might say, misleading venture. Second, the world of

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illegal recordings is not the easiest from which to gather data. As Jeremy Phillips writes:

Unfortunately, counterfeiters do not yet have to file annual returns to the Commission on the scale of their illegal activity, which means that the figures put forward for losses caused by counterfeiting are in danger of being subjective, hypothetical and methodologically flawed. (1999: 275)

Piracy figures are often used for their rhetorical impact rather than as a reflection of reality. Thirdly, and perhaps most importantly, recording industry statistics do not take into account the variety of different meanings and uses that pirated music takes in the day-to-day lives of many people. Music plays an important role in the creation of meaning in many people's lives, and the industry's concern with questions of supply (who owns these recordings?) has neglected important questions of demand (why do people want them?) (Frith, 2002). This results in a distorted impression of the effects of piracy. For example, music industry representatives lobbying for a levy on blank audio tape in the early 1980s (and again for blank digital audio tape later in the decade) argued that every blank tape sold resulted in one less official sale (Frith, 1987: 59). The small amount of non-industry sponsored research conducted into the area, however, indicates that people often use blank tapes in non-displacing activities (for example, Brown et al., 2001; Cohen, 1990).

This article looks at one area of piracy – bootlegging – and discusses its possible effects upon the official industry. It begins by briefly differentiating bootlegging from other forms of piracy, and then provides an overview of the scale of bootlegging and the type of music fans who buy bootlegs. Following this, it discusses the possible effects of bootlegging upon the official industry. Bootlegging is a highly idiosyncratic area of piracy and the discussions here cannot necessarily be extrapolated to other spheres. However, the overall purpose of this article is to highlight the need for further research into the *meanings* of music piracy across a wide variety of settings in order to obtain a more realistic impression of the scale and effects of piracy in the music industry.

An overview of bootlegging

As indicated above, it is important to separate the different types of sound recording infringement from each other in order to discuss the specific effects one form of piracy may have. In the case of bootlegging, there are three features to which attention should be drawn. They are: the content of the recordings; the scale of bootlegging; and the characteristics of the consumer market for bootlegs.

Bootlegs can only be defined by reference to the musical content of the actual recordings. While the legitimate industry lumps all forms of piracy together (and the media often incorrectly report any form of pirated product as 'bootleg'), this serves to blur rather than clarify. Unlike counterfeiting and pirating, which reproduce the sounds of recordings already released by official record labels (and the artwork in the case of counterfeiting), bootleg albums contain recordings that have *never* been given official release. The vast majority of this officially unreleased material is of two types: live concerts (the result of either an audience member smuggling a recorder into the venue, or of a 'line' source, such as a feed from a radio broadcast); and 'out-takes' (studio recordings of songs that did not make it on to the finished album, or alternative versions of songs that were released). The material contained on an artist's bootlegs is thus not the same as that on their official albums. Whether this means that bootlegs should thus be understood as a complement to an artist's official canon, rather than as a substitute, will be expanded upon below.

Having detailed the type of music found on bootlegs, I want now to turn to the issue of how many of these bootlegs are produced. The official industry has regularly portrayed the bootleg industry as a high-level, large-scale crime:

The claim is always that these are all collectors, that they just do it for the sake of the music, that they only do 1,000 or so of each tape, and that a 10,000-unit run is like the maximum they've ever seen. That may be true for some small segment of the bootleg population. But there's definitely big-time commercial criminals involved. They're not investing in four-color glossy jackets for a 1,000-copy run; they do major runs, they do 50,000 to 100,000 units of someone's product. (Joel Schoenfeld, then head of RIAA Anti-piracy Unit, in Vettel, 1986)

Despite such claims, bootlegging has always been a small-scale activity. The exception to this rule was a short period in the early 1990s known as the 'protection gap'. During this time, loopholes in European Union legislation resulted in bootlegs obtaining a quasi-legal status. This meant that bootlegs could be sold at any retail outlet in the EU rather than just specialist record fairs, and resulted in a great increase in bootleg output. However, even during a period such as this, the top selling protection gap CD only sold around 100,000 copies.¹ Today, following the closure of these legal loopholes, the scale of bootlegging has reverted to its normal levels: a regular pressing of a bootleg title is about 500 copies worldwide. A very successful bootleg would then go to a second pressing of another 500 copies, but this is rare. According to Heylin (interview with author, 2 August 1999), anything in the region of 3,000 sales would be considered enormous in bootlegging circles.

There are two comparisons with the legitimate industry that are worth mentioning here. The first of these is with the sales figures of regular

albums. *Born in the USA* (by highly bootlegged artist Bruce Springsteen) sold 10 million copies. The best-selling album of 1998, the soundtrack to *Titanic*, sold 25 million copies. Although these are obviously the more successful titles, a release by a major label has to sell around 300,000 copies just to break even (Lewis, 1990). The greatest successes of the bootleggers would still rank among the most dismal of failures for the mainstream industry. However, perhaps a more pertinent comparison can be made with the number of promotional CDs *given away* by the industry when a new album is released:

Now I don't know the figures but I'm quite sure that more than 1000 promotional CDs get given away when an album gets released. I just read something with Chrissie Hynde saying that Dylan's office had sent her a copy of *Time out of Mind* and she really enjoyed it and I'm thinking 'Hang on a minute . . . Dylan's office sent Chrissie Hynde a copy of *Time out of Mind*? She doesn't review it; she could probably afford to buy her own copy. . . .' They've got to be giving more than 1000 copies away and bootleggers are only selling 1000 maximum worldwide. ('John', a bootlegger, interview with the author, 12 August 1999)²

The sales of bootlegs are comparatively small because the number of fans interested in them is also comparatively small: Heylin estimates the number of fans buying bootlegs worldwide to be between 100,000 and 200,000 (Flanagan, 1994: 46–7). As an indication of the possible market for bootleggers, it may be worth looking at subscription figures for fanzines of the major bootlegged artists. Taking Dylan as an example, the subscription figures (worldwide) of the three main UK fanzines are roughly: *Isis* 1800, *The Bridge* 1300 and *Dignity* 800 (in 2000). Although these figures are not an entirely exact representation of Dylan's bootleg-buying fans, they do provide an indication that the potential area for the market is smaller than the record industry states.³

Although this quantitative data offers some indication of the scale of bootlegging in comparison to the legitimate record industry, more precise figures are difficult to ascertain empirically. What is equally important to take into account if we are to have any indication of the potential impact of bootlegging upon the industry, however, is qualitative data, as it is here that we can discover the meaning of piracy. I shall therefore conclude this brief overview of bootlegging by discussing the *type* of fan who buys bootlegs.

The individuals who collect bootlegs are in general the most committed fans that an artist has: 'bootlegs appeal most to die-hard fans who want everything' (Schwartz, 1995). Fans, Lewis explains, are 'the ones who can tell you every detail about a movie star's life and work, the ones who sit in line for hours for front row tickets for rock concerts' (1992: 1). They are traditionally viewed with hostility, or at least suspicion, by the rest of society (Cavicchi, 1998: 6; Lewis, 1992), a fact that Neumann and

Simpson emphasize concerning bootleg collecting, pointing out that it 'is undoubtedly labeled as a criminal or deviant activity' (1997: 321). Cavicchi's study of Bruce Springsteen fans has shown, however, that bootleg collecting is not a deviant activity, but merely another way creating an ongoing, meaningful relationship with the object of fandom (1998; see also Fiske, 1992). An understanding of this process of meaning creation is critical for a better understanding of the effects of piracy, and I will go into it in more detail below. What is important to highlight here, however, is that it is *fans* rather than casual consumers who are the market for bootleg records. This can be illustrated by actually going and looking for bootlegs: you will not find them in the high street stores as they are a specialist commodity available at specialist record fairs and mail order outlets. They are bought the fans who 'spend an abhorrent amount of money on live entertainment . . . and buying many records' ('Aquaboy', a collector, email to author).

This brief overview has thus introduced three important features of bootlegging that must be considered if we are to gain a more realistic impression of its impact upon the official industry: (1) the music released on bootlegs is music which has had no official release from a legitimate record label; (2) bootlegging is a relatively small-scale activity; (3) the people who buy bootlegs are extremely committed fans who use bootlegs as a way of maintaining an ongoing, meaningful relationship with their favoured artists or bands. I now want to move on to discuss some of the arguments used by the official industry, which suggest that bootlegging has a detrimental economic impact upon the industry. Following on from this, I will put forward some of the potential benefits that bootlegging has for the legitimate industry.

Economic arguments against bootlegging

Given this information on the nature of bootlegging, I want now to discuss the main economic arguments utilized by the recording industry against bootlegging. The two main arguments I shall discuss are: (1) that bootlegs detract from officially released record sales; and (2) that recording artists and songwriters do not obtain any royalty payments from the sale of a bootleg.

The most significant economic argument used by the recording industry against bootlegs is that bootlegging detracts from official sales (for example Edward Will, then legal manager of Warners stated 'It is rubbish when bootleggers say their product has no impact on regular sales' [in Hennessy, 1992]).⁴ The logic of such an argument is that bootleg collectors spend a lot of money on records and, therefore, any money spent on unofficial musical commodities is money not spent on music released by

legitimate record labels. Not only is such an understanding a logical fallacy (collectors do not have a necessarily constant amount of money to spend on music; money not spent on bootlegs may be spent on non-musical activities), it is also based upon a misunderstanding of the type of collector who buys bootleg records. The brief discussion of bootleg fans in the previous section should show why this argument is misleading:

. . . if anybody thinks that if I purchased every single Rolling Stones album in existence, and I have bought all the Rolling Stones albums that have been released in England, France, Japan, Italy and Brazil, that if I have an extra one hundred dollars in my pocket, instead of buying a Rolling Stones bootleg I am going to buy a John Denver album, or a Sinead O'Connor album, they're retarded! (Lou Cohan, a prominent 1970s bootlegger, in Heylin, 1994: 7)

Bootlegs are a specialist commodity bought by individuals with a great interest in their chosen artist(s). This means two things. First, that they are often no longer a 'general buyer' who purchases albums by many different artists. The dedication of these fans means that, if bootlegs did not exist, then the money that would have been spent on, say, Bob Dylan bootlegs would now be spent on Bob Dylan books, or T-shirts, or mousemats (and not necessarily officially produced merchandise: there is a large cottage industry of Dylan paraphernalia produced by fans for those who already own all of the official merchandise). It is not a rare situation (though certainly not the norm) for a fan only to own recordings by one particular artist or band. The purchase of bootlegs should not be understood as taking away from a purchase of an official release by another artist, because that second purchase would never have taken place.

Second, the purchase of an artist's bootlegs does not impact upon the sales of that specific artist's official releases either. The collector's interest in the unofficial recordings of an artist generally stems from an extensive knowledge of their official canon, and thus the majority of bootleg buyers will own all the official releases of their artist(s) before even beginning to buy bootlegs. Back catalogue sales of Bruce Springsteen, for example, will not be damaged by a fan buying a bootleg, because that fan will already own all of Springsteen's old albums, often in multiple (different formats, re-releases, foreign releases and so on). And if CBS decide to re-release his albums in digitally remastered format, then these fans will buy them again. Similarly, bootlegs will not detract from the sales of a newly released album: a fan is not going to buy a bootleg in preference to a new official release. Indeed, as the digitally re-mastered example above illustrates, it is actually bootleg buyers who form the guaranteed market for an artist's new release.⁵ Rather than detracting from official sales, this group is the most reliable market sector. They will even buy new 'Greatest Hits' releases despite the fact that they own all the tracks many times over. This loyalty has been exploited by the record labels (for instance, Bob Dylan, who has

not had an entry in the UK singles chart since 1978, and has released only two albums of self-penned material since 1991, has had no less than four greatest hits packages released in the 1990s, along with two live albums and three 'archive' releases). The following quote illustrates the mentality of the bootleg collector:

I love the band. I buy every official release, even crappy CD singles with dodgy remixes and no proper B-sides, promo items, merchandise, everything. ('Bog', a collector, email to author)

The attitude and loyalty of these fans also works against an argument made by Schwartz that bootlegs may detract from future sales: 'a record company may find that its own plans to someday release performances from the past have been derailed by pre-emptive bootleggers' (1995). However, as should be clear, bootleg collectors will still buy a 'new' archival release, even if they already own the music on bootleg. One collector stated 'if the Stones had released out-takes in 1999 (AS PROMISED!) I'd have bought it even if I already had it' (Tony, letter to the author). This is a typical response: despite the fact that many Dylan collectors already owned the 1966 'Royal Albert Hall' concert on multiple bootlegs,⁶ they still were the first in line to buy the official version released in 1999. Such an attitude can be illustrated by the official sales figures of archival releases: even though most of the material had been around on bootlegs for years, the Beatles' *Anthology* still sold 8 million copies.⁷

In one sense, the over-estimation of the scale of bootlegs by the official industry leads to the argument that bootlegs detract from official sales (the above statement by Edward Will on the impact of bootlegging continues: 'Some bootleg CDs sell to the dealer for as little as six Marks and they can sell in quantities up to 100,000' [in Hennessy, 1992]). If, as the industry claims, a bootleg is selling 100,000 copies, then the industry can conclude that it is not just hardcore collectors, but also a lot of casual punters buying bootlegs. The industry then proclaims that many of these buyers are in fact being duped, being sold poor-sounding, badly packaged and badly labelled CDs of their favourite artists when in fact what they were expecting was a *bona fide* official release. Quite aside from the consumer protection angle – a popular approach with the British Phonographic Industry (BPI) which often utilizes the UK Trading Standards Authority to 'bust' record fairs – this understanding supports the argument that bootlegs affect official sales: the consumer *would* have bought an official release if they had not been misled into buying a bootleg.

During the protection gap years (when, in fairness, Will's comments were made), this claim could be given some credence. At this point, due to loopholes in European copyright law, bootleggers could obtain a legal status if they paid the appropriate mechanical royalties. This resulted in bootlegs appearing in more mainstream outlets (I bought my first bootleg

from HMV), particularly in Italy and Germany. However, bootlegs have traditionally been an underground phenomenon, found in back street record shops and specialist collector fairs. They are quite difficult to find. One fan stated 'bootlegging is an "underground" activity – I went for years totally oblivious to the phenomenon' (Tony, letter to author). It is unlikely that unwitting consumers will discover bootlegs – with the current legal pressure manufacturers are under, it is difficult enough for experienced collectors to find them.

The misunderstanding of the type of collector who buys bootlegs, coupled with the distortion of the scale of bootlegging has resulted in an incorrect conception of bootlegs as a product competing with official releases. However, the argument frequently made by bootleg collectors is that while such an understanding may be appropriate for counterfeit recordings (if someone buys a counterfeit version of the latest Rolling Stones album, they will not buy the legitimate version), this does not hold for bootlegs.⁸ Instead, bootlegs should be seen as complementary to official releases for, as I will discuss below, it is the culture of bootlegging that in part creates the value of the officially released product. For the time being, however, I want to turn to another major argument used by the recording industry in its publicity against bootlegging: the fact that artists being bootlegged obtain no financial reward for their work.

Also, he's [the artist, sic] being cheated financially in very severe terms, because every (bootleg) record that is sold bypasses the artist completely. He receives no royalties, no payment whatsoever. The artist has been deprived of any opportunity to earn an income from his creative efforts. (Bob Altschuer, representative of CBS records, in Vettel, 1986)

Before discussing the economic ramifications of this argument, it is worth briefly mentioning the recording industry's use of such arguments; this seems a particularly fragile glass house from which the industry is casting stones. Major labels often do not seem particularly keen to pay royalties to their own contracted artists for their official releases: the standard recording contract means that artists do not start to receive royalties until the costs of recording have been recouped *solely* out of their royalty account (i.e. the artist has to pay for recording costs) and they often have to accept a lower royalty rate on releases that have been publicized to offset the cost of advertisements. Even after these deductions, labels still seem reluctant to pay out royalties. In a recent US Senate hearing, founder member of the Byrds, Roger McGuinn, stated that he had made literally nothing from royalties throughout his career (Hartington, 2000: DO1). It has been suggested that the recording industry systematically underpays artists: popular music lawyer Don Engel states 'I would venture to say, except by accident, there isn't an honest royalty statement issued by a

major recording company in the business today' (quoted in Heylin, 1994: 383).

More pertinent to this article, if record labels are concerned about artists losing royalties to bootlegging, then their behaviour during the protection gap era makes little sense. The protection gap occurred because labels could release bootlegs if they paid mechanical royalties to the songwriters. Labels such as Kiss the Stone established a royalty account into which they paid mechanical royalties but these were never collected by the record companies.⁹ Many current bootleggers desire a return to the situation whereby they are granted some rights to put out the bootleg by paying mechanical royalties (Heylin, interview with author, 2 August 1999). The record industry is against this, however, for it would confer some legitimacy on bootlegging. This undermines the industry's argument that artist royalties are a great concern for them.

Official industry (mis)uses of an argument do not, however, necessarily make it false. I want now to analyse the argument about royalties in more detail. The first question to raise is whether an artist can lose royalties on something she has chosen not to release: if an artist was not intending to win any financial reward from a piece of music, it is difficult to see how her position has changed merely because someone else now gets to hear that performance. As shown above, it is not as simple as equating one bootleg sale with one lost royalty payment from an official sale. However, even to suggest that the artist has received no financial reward for their work is a sleight of hand. The majority of bootlegs are of live performances and these tend to involve someone smuggling a recording device into the venue and recording the show. If this is so, then the artist (and his record label) has received payment for that performance in the shape of ticket sales (not including the revenue generated from sales of concert souvenirs such as T-shirts). The artist (and her record label) have in fact received significant income from the performance that features on a bootleg.

But even if we accept the record industry argument, how much do artists actually 'lose' in royalties due to bootlegs? We have already mentioned the small scale of bootlegging: let us assume that a successful Tom Waits bootleg sells 2000 copies worldwide. Bootlegs in the UK currently retail at around £15 for a single CD. The biggest profit margin in that figure is for the retailer, who gets a mark-up of approximately 50 percent (Flanagan, 1994: 47). This means that the manufacturer sells his supply of CDs for approximately £7.50 each. Once his costs have been taken into consideration, this leaves a profit of between £5.00 and £6.50 per disc (say £6 to make the maths easier). This gives the manufacturer £12,000 profit on this (big-selling) title. Now, if we assume that Tom Waits has been granted a royalty rate of 10 percent by his record label then, if this release had been an officially sanctioned one, Waits would have received £1200 in royalties.

Now, this is some money, and if 10 Tom Waits bootlegs were released in a year (though it is extremely unlikely that they would all sell 2000 copies), then it becomes a not insignificant amount of money. However, when one considers that bootlegs tend to be of the more successful artists, this is not a figure of major consequence: in the context of the income that someone like Waits, Dylan or Neil Young has received for songwriting and from official royalties, it may prove to be an insignificant amount.

This is an argument often repeated by bootleg collectors: 'As of July 1993 McCartney's worth was said to be \$636 million. This is the same man opposed to bootlegging because bootlegs take money from his pockets. Right' (*Belmo's Beatleg News*, October 1993: 4, quoted in Schwartz, 1995). It is not an especially attractive position. However, a stronger case can be made by utilizing an argument concerning copyright law made by Rotstein (1993). Rotstein's article is concerned with how copyright law currently works against the public making creative use of established cultural elements. To counter this, Rotstein suggests reformulating the traditional conception of the idea/expression dichotomy in terms of 'convention' and 'modulation of convention'.¹⁰ This means that those elements of a work that can be considered generic would receive less protection than the more specific elements of a work. This would be the case even if the rights holders had created the convention:

Acknowledging that the terms 'idea' and 'expression' really mean 'convention' and 'modulation of convention' could encourage a debate over whether certain elements of highly successful texts should, in fact, receive less protection than the current system of copyright affords. Those literary critics who challenge the copyright system bemoan the artist's inability to exploit cultural icons (for example, the 'Superman' character). If the issue is cast in terms of 'idea' and 'expression', it is easy for a court bound to a modernist notion of 'work' to characterize such popular characters as 'expression', thus affording copyright protection to the owners of the characters without exploring in any detail the countervailing social policies favoring lesser protection. Yet if, as I have suggested, 'idea' means 'convention', then the copyright system must confront the question whether a character like Superman has become a cultural convention, and if so, whether that necessarily means that Superman should be available to all. (1993: 773)

It could be argued, however, that this way of thinking prevents the creators from fully exploiting an idea's commercial value:

The counterargument to this might be that a text, like Superman, that has become highly conventional will ordinarily have reaped huge financial benefits for the copyright owners. It would thus not be unfair to permit the culture, which has, through mass consumption of the text (for example, through such diverse activities as repeated viewing of the text, word-of-mouth, idolization) adopted aspects of the text as its own, to exploit those conventional aspects. (1993: 774)

I now wish to use this argument in favour of bootlegging. The vast majority of bootlegs are of very successful artists.¹¹ Rather than assuming that their position is due to the intrinsic worth of their music (as Rotstein describes it, being ‘bound to a modernist notion of “work”’), we should also take into consideration the role of the public (particularly fans) in helping create the artist/star text. The literature on fandom has helped show that being a fan is not a passive experience but rather a continual process of meaning creation (for example, Cavicchi, 1998; Fiske, 1992). Through the active process of being a fan, bootleg collectors have consumed, engaged with, developed and *helped to create* the artist-star whose bootlegs they now create and buy.¹² This will almost invariably have involved a considerable amount of expense. If the public has helped create the star to the point where he is successful enough to create a demand for bootlegs, it would similarly ‘not be unfair’ to allow the public the right to make and buy bootlegs unhindered. And, as with the Superman example, it is likely that the artist being bootlegged will have already reaped significant financial reward for their work.

Bootlegging, at worst, creates negligible economic disadvantage for the major labels and minor disadvantages for the stars who are bootlegged. The argument that bootlegs have a detrimental effect on official sales is based upon a misunderstanding of the nature of the cultural commodity and of those collectors who buy them, which leads to a mislabelling of bootlegs as competitors to official releases, rather than complementary goods. The argument that artists receive no royalties from bootlegs has more basis in reality, but can be countered by a number of arguments which suggest that a bootlegged act will already have obtained financial reward from the work being bootlegged. This counterargument is given more support in the following section, where I shall outline some of the ways in which bootlegging can have a positive economic impact upon the official industry.

Potential economic benefits of bootlegging

The three potential benefits of bootlegging that I shall outline here are: (1) bootlegs enable the industry to hold on to a particular type of fan; (2) bootlegs act as underground promotion for both established and upcoming acts (this is related to notions of artistic authenticity, which are crucial in determining the value of the officially released commodity); (3) bootlegs have acted as an impetus for a large number of official (and successful) releases.

One positive effect is that bootlegging helps maintain a consumer attitude among a demographic group that conventionally buys fewer records. Music is not the dominant consumer force it was in the 1960s and

1970s and, with many other competing leisure attractions, the declining consumer attitude towards popular music is a problem for the industry. Bootlegging at least maintains one (small) segment of consumers who would probably be lost to the industry otherwise, because it keeps collectors in the habit of buying new records. Bootlegs give these fans a product to consume, and keeps them in touch with other forms of music consumption (e.g. ticket sales). As stated in the previous section, fandom is an ongoing process. It is not a stop-start relationship merely ignited by the release of an album by an artist every two or three years. Without bootlegs to maintain their interest, it is conceivable that these collectors, like most of their peers, would just stop buying records (and T-shirts) altogether. One of the reasons bootlegs did not appear until 1969 is because, up to that point, acts released three singles and two albums every year. Fans therefore had enough material to satisfy their consumer desires. Now that the average gap between major releases is a couple of years, it is difficult to maintain the same sort of on-going relationship with an artist's work and it is possible that, with no ongoing relationship to the star, consumers would drift away during the intervening period. Bootlegs help maintain the relationship during the artist's 'off' period, thus maintaining a stable market for when any new album is released.

So one way that bootlegs help the industry is that they keep interested in music people who would normally have moved away from record buying. The more significant way that bootlegs are beneficial, however, is the way they work as underground promotion for bands and artists. Bootlegs feature as good publicity for established stars:

A lot of bands see tapes made by fans as free advertising. I know I discovered a lot of bands this way. ('Janb', a collector, email to author)

In Dylan's case the bootleggers are the best PR going. Sony doesn't put any PR into Dylan anyway and I'm sure Dylan's office would be disappointed if bootlegging stopped because I can't see how else word gets around to sell some of the concerts if it wasn't for the underground. ('John', a bootlegger, interview with author, 12 August 1999)

Sometimes this form of promotion is used explicitly, as in the case of Bruce Springsteen's early career. In 1976, Springsteen was involved in a legal case with his management that effectively barred him from entering a recording studio for two years. His energies at this time therefore went into his live performances, but he was unable officially to release a live album. He thus broadcast on FM radio five entire shows (three hours plus) from his 1978 tour to maintain the interest of his fans. Springsteen knew that these shows would be bootlegged: they would only be broadcast on local radio and he was thus reliant on bootleggers to give him national exposure. When beginning 'Sandy' one night, Springsteen dedicated it to all the Jersey girls who would one day hear it through 'the magic of bootlegging'

and when he came on stage at the LA Roxy in July, he started the show by shouting 'bootleggers roll your tapes, this is gonna be a hot one' (Heylin, 1994: 135–8; Thompson, 1999: 33).¹³

Bootlegs act as underground promotion because there is a critical kudos attached to being bootlegged. Being bootlegged labels you as a live act, which is important for notions of authenticity within rock music.¹⁴ Furthermore, bootlegging has an underground cachet attached to it, positioning the artist on the side of the rock 'n' roll outlaw rather than the corporate suit.¹⁵ Again, this has important repercussions for notions of authenticity. Bootlegs, from many artists' and critics' perspective, are a good thing. As Flanagan states, 'if you ain't bein' bootlegged, you ain't happenin' (1994: 38). These notions of authenticity are extremely important in creating the value of the artist's official releases.

Although the majority of bootlegs are of established and successful stars, bootlegs can also help up-and-coming bands develop a following and a critical reputation. There are many tapers who record bands like this as one way of documenting a music scene. A historical example of this is the importance of bootlegging to both the New York and, particularly, the English punk movements. Bootlegs were an important aid to Patti Smith's and Television's early careers and, because of the speed with which bands formed and dissolved during these movements, bootlegs are often the only way to hear certain line-ups of bands. Many bands, particularly in America's local scenes, get their first exposure through bootleg singles, such as Seattle bands Mudhoney and, more famously, Nirvana (Flanagan, 1994: 38). All of this serves to create a consumer community interest in underground bands, particularly bands that allow the taping of their shows, as this can quickly create a community of fans. Even if the fledgling bands do not yet have a recording contract, this form of promotion should still feed into ticket sales:

I think it helps individual bands because it creates a sense of community that encourages more active interest in the band. ('J', a collector, email to author)

Through the critical kudos attached to being bootlegged, and the way that this will feed into official record sales and concert ticket sales, bootlegs can actually feature as a good form of publicity for both established and new artists.

The final way that bootlegging can be seen to have a positive impact upon the official industry is by acting as an impetus for official releases. This is particularly the case in the last ten years when the language of bootlegging has become commonplace within the official industry. However, much earlier than this, the official release of live recordings developed primarily as a response to bootlegs: in 1969, London Records rush-released the Stones' *Get Yer Ya-Yas Out* to have something on the shelf to compete with the first live rock bootleg, *LiveR Than You'll Ever*

Be; Lennon's 1969 album, *Live Peace in Toronto* was released solely to suppress bootleg recordings (it did not succeed); Dylan and the Band's 1974 live album, *Before the Flood*, (so called because it was before the flood of bootlegs of the tour) remarkably managed to get released before any bootleg from that tour had been released.

By the mid-1970s, labels were trying to use live recordings as a way of promoting their roster, particularly new acts. Despite the oxymoronic title, labels began promoting the 'official bootleg', which were 'promotional use only' recordings of live shows, delivered to radio stations and labelled as 'not for sale'. One prominent example of using such a recording to break a new act was a recording made of an Elvis Costello show at the El Mocambo club in Toronto.¹⁶ These 'official bootlegs' were an attempt to acquire the underground status attached to bootlegging and the tactic has been explicitly used by artists such as Aerosmith (*Live Bootleg* in 1978), Paul McCartney (*Unplugged: The Official Bootleg* in 1991) and Rick Wakeman (*Official Live Bootleg* in 1999).¹⁷

It was in the 1980s, however, that the influence of bootlegging became most noticeable in the official industry, with the development of the 'archival' release. Since the late 1970s, sales of contemporary chart hits have diminished, and the record industry has become increasingly dependent upon its back catalogue to maintain profitability. The success of the CD format has proved a lifebelt for the industry as record buyers have replaced their vinyl collections. Once the CD was introduced, however, the labels needed some way of persuading consumers to buy them. The digital-quality sound was obviously enticing but the industry felt that those customers most interested in sound quality would already have substantial vinyl collections and would be reluctant to replace them. The addition of bonus tracks to the CDs was one way of enticing these consumers.

The CD, and the new awareness of the attraction of 'previously unreleased' tracks heralded a new phenomenon in the industry: the box set. In 1985 CBS released *Biograph*, a deluxe Dylan set which offered 53 tracks, including 17 that had never before been officially released. Despite being expensive (£55 for a three-CD set), *Biograph* proved to be a commercial success. It had the attraction of a more extensive greatest hits selection, with the bonus of the unreleased tracks to encourage collectors to buy the set.¹⁸ This was followed in 1986 by a Bruce Springsteen box set, *Live 75-85*, which brought together live recordings that had initially appeared on various bootlegs (including many of those mid-1970s FM broadcasts). The box set was taken to a new level in 1991, again by a Dylan release. Columbia released *The Bootleg Series vols. 1-3*, a three-CD box set featuring 58 previously unreleased Dylan tracks. There have been many similar releases in the last 10 years.¹⁹

Such releases have not been limited to box sets, there have also been many newly packaged single CD reissues, such as those by the Byrds, the

Band and Elvis Costello, as well as archive CD releases such as the Beatles' *Anthology* and *Anthology 2*. One single album by the Beach Boys – *Pet Sounds* – has been developed into a four-disc set. There can be little doubt that these types of releases have, at least in part, been inspired by bootleg recordings and have proved a commercial boon to the legitimate industry. These releases attempt to cash in on the notions of authenticity that are bound up in bootlegs, which can be illustrated by the rise of bootleg terminology within the mainstream music industry. A decade ago, many record buyers would not have known what an out-take was. Today, the term is commonplace. 'Complete' also seems to be a new buzzword in popular music – consumers want a 'complete account' of the recording sessions. This is particularly so with pre-rock music such as Sinatra's *Complete Reprise Studio Recordings*, or *The Complete Hank Williams* from country music, or *Robert Johnson: Complete Recordings* in blues. The change in tone in the music industry is evident in the pages of the UK magazine, *Record Collector*. Traditionally, this magazine has been anti-bootleg and has only featured officially released albums in its articles. In recent years, however, while still refusing officially to condone bootlegs, the magazine has regularly featured articles on the recording sessions and live performances of some of rock's biggest names – the very material that you can only hear on bootleg.²⁰

The rise to prominence of the archive release in the 1990s is at least in part the result of the efforts of bootleggers and collectors over the years, to the point where some of the now officially released material has come from bootleg sources!²¹ Much of the material now proving so lucrative to the industry would not even exist without bootlegs.

Conclusion: judging the effects of piracy

The overall effects of bootlegging are impossible to ascertain with accuracy, but what should be clear from the preceding sections is that bootlegging could have some positive economic effects upon the official recording industry which balance out any perceived disadvantages to the industry. The ideology of bootlegging has certainly proved beneficial to the official industry over the last 30 years. The purpose of this article, however, is not to 'prove' whether bootlegging helps or harms the industry. Rather, it is to highlight that the effects of piracy are complex and multi-faceted, and the statistics released by the official industry do not reflect their complexity. The arguments I have made here about bootlegging almost certainly do not hold for the effects of, say, counterfeiting or MP3 use. There are likely to be other factors, however, that need to be considered when judging the effects of those other forms of piracy. For example, the lack of an affluent middle class in the Ukraine needs to be

considered when judging the effects of counterfeiting in Eastern Europe. Similarly, the effects of MP3 usage cannot be considered in wholly quantitative terms: we must also consider how people use MP3 and how it relates to their conventional musical consumption (for example, see Brown et al., 2001). Research into piracy in the music industry must reflect the various forms of musical and legal meanings that individuals attach to music, and their consumption of it. Music is a commodity that requires legal protection, but the meanings given to that commodity are not merely the ones set out by those who produce it.

Notes

Thanks to Simon Frith for his comments on this article, and to Martin Kretschmer for his contribution.

1. These figures were given to me in an interview with Clinton Heylin (2 August 1999), the leading authority on bootlegging and author of *Great White Wonders* (1994). Though obviously difficult to verify, they match the general impression of scale that emerged in interviews with bootleggers and collectors. Flanagan reports that *Ultra Rare Trax* sold 'in excess of 100,000' (1994: 47).

2. The Mechanical Copyright Protection Society (MCPS) permits 300 promotional copies to be free from mechanical royalties so this could be expected to be the maximum number of promotional copies distributed. However, a label can claim for any amount of free goods in an artist's contract, so there is scope for this figure to be higher. A former Polygram employee told me that, for a promotional campaign he worked on, the label gave away 850 promotional copies in three days.

3. It is inexact because a few fanzine buyers do not collect unauthorized material of any kind, more of them will be tape traders who refuse to buy bootlegs, and some of those who do buy bootlegs will not buy the fanzines. Traditionally, however, fanzines have been the primary source of information for unauthorized recordings (although they are now being surpassed by the Internet) and offer a general indication of the bootleg market.

4. Note that in this article I am not dealing with the foremost argument used against bootlegging – that the artist has the right to determine what is heard by the public – as I am concentrating here on economic arguments. In other recent work, however, I have outlined how this type of aesthetic argument functions as the primary rhetorical strategy through which record labels maintain control of the musical commodity (see Marshall, 2001, 2002, forthcoming 2004).

5. Some bands (notably the ones that permit fans to tape their shows) understand this position and do not see collectors as a commercial threat. For example, Pearl Jam manager Kelly Curtis:

The only argument I've ever heard [against bootlegs] is that bootlegs hurt record sales. I just don't believe that. Anyone who's going to buy a bootleg is going to buy whatever you put out. They're still going to want the studio finished version. (quoted in Flanagan, 1994: 38)

6. The show was actually recorded in Manchester.

7. <http://www.dotmusic.co.uk/artists/spicegirls/news/November1999/news12003.asp> (last visited 9/1/01)

8. However, as I shall discuss in the conclusion, the argument about counterfeiting may not be this straightforward.

9. In some instances they had no choice as the bootleggers' royalties were part of a lump sum paid to the record labels by the Italian and German collecting societies. Where they did have a choice, they did not collect.

10. Briefly, the idea/expression dichotomy – a central tenet of copyright law – means that formal expressions can be copyrighted (the precise juxtaposition of words in a poem, for example), but the underlying ideas cannot. The purpose of this is to allow the public free access to the ideas created by artists while at the same time giving the artists some protection for their intellectual property. The dichotomy is theoretically problematic, however, and in practice does not liberate ideas effectively as more and more ideas are decided by the courts to be protectable as expressions.

11. In approximate order, the most bootlegged artists are: the Rolling Stones; Bob Dylan; Led Zeppelin; the Beatles; Bruce Springsteen; Prince.

12. A similar argument has been made by Wilf (1999), regarding the public's role in the creation of trademarks.

13. Curiously, when Springsteen's legal troubles were over, and he released the official album *Darkness at the Edge of Town* in 1979, he suddenly turned against bootlegs and was involved in a major court case against one bootlegger, Vicki Vinyl, who was found guilty of bootlegging those same FM broadcasts.

14. 'Authenticity' is a central concept in popular music studies. It refers to the notion of artistic value within popular music and is often understood in juxtaposition to the industrial concerns of the music industry. What is viewed as authentic can vary between genres, but in all cases there is something that guarantees the 'specialness' of the music and aids the consumer understanding that their favourite artist is not just another commodity. In this way, the authenticity of an artist/record is what makes the musical commodity valuable (see Frith, 1988; Frith and Horne, 1987; Marshall, 2001, forthcoming 2004).

15. As long as the artist does not complain about them. This is one of the reasons why record companies often have a problem getting artists to stand up in court against bootlegging.

16. These records, Costello at the El Mocambo included, invariably found their way onto actual bootleg releases. The Costello set was eventually given an official release in the box set *My Aim is True*.

17. A search for 'bootleg' on www.amazon.com on 9 January 2001 revealed 54 albums containing the word 'bootleg' in the title.

18. Despite its success, *Biograph* was still upstaged by a bootleg. During 1985, a 10-album bootleg box set called *Ten of Swords* was issued focusing on Dylan's 1961–6 work. This was compared favourably to *Biograph* by many commentators (including Cameron Crowe, who had written the booklet for the official release!). *Rolling Stone* magazine ran an article praising *Ten of Swords*, causing a very public spat between CBS and the magazine. See Goldberg, 1986: 13; Harrington, 1986: C1).

19. For example: Genesis, *Archive 1967–1975*; David Bowie, *Bowie at the Beeb*; John Lennon, *Anthology*; Jimi Hendrix, *Experience Hendrix*; Little Feat, *Hotcakes and Outtakes*.

20. Thanks to Dai Griffiths for pointing this out to me.

21.

The Beatles at the BBC – entirely taken from bootlegs. It has to be, because the BBC only own two master tapes. There are 60-odd Beatles BBC sessions – they don't have any of them. They're long gone, so the only sources they've got are

the bootleg sources, and virtually everything on the *Beatles at the BBC* is taken direct from an Italian nine-CD box set. (Heylin, interview with author)

The Italian set to which Heylin refers is *The Complete BBC Sessions*, issued by Great Dane Records. The box set had over 240 tracks on it and came with a 36-page colour booklet containing full track details and explanatory essays. Recent official releases by both Van Morrison and Bob Dylan have also used bootleg sources.

21. It is currently unclear what positive effects MP3 or other online formats may have for the legitimate industry (for example, much reduced distribution costs). See Kretschmer et al. (2001) on this issue.

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