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To Share or Not to Share

File sharing has changed the way students get music
and raised a question: whose music is it, anyway?

By Gerry Boyle '78

Her parents' generation may wax nostalgic about Woodstock or following the Grateful Dead, but Marley Orr '04 has her own memories of days and nights of musical abandon.

Napster.

It was 2000, Orr's first year at Colby. Students had turned each other on to the new concept of Internet file sharing, which allowed them to download thousands of songs, from pop hits to the most obscure releases. Napster provided a central directory that told users what music could be found on other users' computers. Find a music file on the index, hit "download" and a short while later—Voilà!

"I loved it," said Orr, who grew up watching her mother tape music off the radio. "It was the best thing in the world for me because I was dumping thousands of dollars on CDs. You could type in even a typo or something and you would come out with something in Germany or someplace. They had absolutely everything you could possibly find. Everything."

If it seemed too good to be true, it was. Napster, in its freewheeling, free-for-the-taking form (it's since been recast as a paid music service), was shut down by record companies who went to court, arguing that Napster was violating copyright law. But the court fight that ended free Napster—and spawned subsequent file-sharing lawsuits, subpoenas, fines and threats of jail time for college students and others—couldn't stop the newest iteration of music-copying technology from becoming a permanent fixture in the lives of

millions of people around the world.

Even on Mayflower Hill, where central control of Internet access puts the squeeze on file sharers, music downloading is alive and well, as much a part of students' lives as picking up a cell phone. "Since the collapse of Napster, it's been a stream of different applications that are constantly developing, until somebody closes them down and finds out," said Greg Dupuy '04. "As soon as [a file-sharing company] gets sued, another one pops up."

The preferred file-sharing application that week, Dupuy said, was a Web site administered in Slovakia.

Slovakia? Applications? For older generations whose "file sharing" meant copying a favorite record album onto a blank cassette (that actually was made legal by the Audio Home Recording Act of 1992), the new technology may be a strange new world. And while nobody at Colby cared if you taped your roommate's copy of *Abbey Road*, the College now is the keeper of the conduit that connects Colby's computers to the outside world. As such, the College is caught in the crossfire of a battle that pits the recording industry against those who download music—and movies and TV episodes—for free.

If this technological revolution found you napping, don't feel bad. Even the computer experts were caught off guard when students (at Colby and elsewhere) joined the file-sharing ranks in such numbers that Internet transmission lines were overwhelmed.

For those who are interested, a brief recap:

It was four years ago, and two T1 Internet lines were in use at Colby: one for administrative and academics needs, one for the residence halls. The line for administrators and faculty was adequate, but technology people at Colby soon noticed that the line connecting residence halls to the outside world was almost always overloaded. "It was saturated," said Ray Phillips, director of information technology services. "There was so much Napster going on that nobody could do anything else."

Colby policy prohibits the College from monitoring what individuals look at on the Internet or the content of files they share. But the College can monitor general Internet traffic patterns. When Napster surfaced, Phillips's colleagues looked at the types of Internet connections being made by students and figured out how the network was being used. While they couldn't tell which Internet ports were responsible for the most traffic, the technical people did get a pretty good idea of what was going on, "that it was just a constant stream of stuff being downloaded," Phillips said.

Talking to students confirmed the diagnosis: everybody was doing it. As Orr recalled, "Even though Napster was huge, the network [at Colby] was still kind of slow so I would just pick twelve songs and then I would leave my room and go about my day. I would come back and they'd all be downloaded."

Life was good. But Phillips began warning students that what they were doing had some serious drawbacks. "It used up a limited

resource so that legitimate academic applications of the network were seriously degraded,” he said. “You couldn’t do research. You couldn’t use the Web. It was a playground. . . . It’s also engaging in copyright infringement.”

Every semester, Phillips sent out warnings that downloading music from the Internet could be illegal. Students could be prosecuted and fined, even jailed. “The problem with that warning was that, in fact, nobody was actually being prosecuted,” he said.

When the warnings went out, file sharing dropped slightly, then quickly bounced back up. When students found it hard to resist Napster’s musical candy store, the College stepped in. Colby created prioritized queues in the residence-hall connections to the Internet. Web browsing was in the top queue, while file sharing was at the bottom. When students needed bandwidth to search the Internet, file sharing was bumped. “It achieved exactly what I had hoped,” Phillips said. “The Napster users were complaining and the Web browsers were not.”

And then the Napster users got more bad news. The file-sharing service was taken to court and lost. End of story? Hardly.

By the time Napster landed in court, peer-to-peer (P2P) file sharing had multiplied. This next generation doesn’t need a central directory; instead users connect directly with clusters of other users. They communicate but the fact that the practice is decentralized makes it very difficult to stop or to show that something illegal is happening on a large scale. And as defenders of the practice point out, there are many legitimate uses for file sharing. Some artists *want* their work to be shared. Andrew Will ’04, for example, freely admits he has used P2P file sharing to offer fellow file sharers music—by the Colby Eight.

So the end of the first Napster didn’t end problems at Colby; it just replaced one set with another. In 1999 Colby registered its network in accordance with the Digital Monitoring and Copyright Act. The result was that Colby wasn’t liable for what its students were doing, but students’ computers could be scanned for copyrighted materials. Soon the complaints were, if not pouring in, then coming in a steady stream of 10 a week. Most were from the recording industry; some were from the Motion Picture Association of America, which tracks pirated movies and television shows. The downloading deputies tracked illegally copied material to Colby through the Internet protocol numbers assigned to the College and to individual computers on its network. “They couldn’t see who owned it, who operated that computer, but they could determine the network address,” Phillips said.

But Colby could see. The College found itself in the business of notifying students that they were in violation of copyright law and could be prosecuted. Students were told they could protect themselves by signing an affidavit saying they wouldn’t supply copyrighted material in the future.

Of course, some pleaded innocent, saying a roommate or friend must have shared the pirated material. Others couldn’t be traced,

like the person who installed file-sharing software on a computer in Lovejoy 100.

Things seemed to be working smoothly in the file-sharing department at Colby, and then in 2003 the music industry decided to get tougher. The industry started going after students directly, using fast-track subpoenas allowed under the Digital Millennium Copyright Act, the industry’s weapon of choice in going after college file sharers. “When this started happening, we became even more vigorous in our warnings to students,” Phillips said. “They were now in a different level of legal peril.”

That subpoena process was thrown out by a federal court in December. But Colby, in its *in loco parentis* role, already has done some technological tinkering in its effort to keep students from getting in file-sharing trouble. Last year Colby limited all of its incoming P2P applications (KaZaa, Morpheus, Gnutella and others) to a very limited bandwidth—one megabit per second. Outgoing file sharing is limited to one kilobit per second, or one one-thousandth of a megabit (by comparison, Colby’s Internet bandwidth or capacity is 20 megabits per second). As a result, “the outgoing file sharing is virtually zero,” Phillips said. “One of our reasons for doing that is that people who are in most jeopardy are those who are serving files to other people. They are the pushers. They’re not just consumers, they’re providers. We ratcheted down the network so it is a very small cocktail straw.”

In January the recording industry was dealt a setback when a federal court ruled that the so-called “fast-track” subpoena provision of the Digital Millennium Copyright Act could not be used if the music was on computers that were not accessible by the service provider. That is the situation at Colby, where, as of February, three copyright infringement complaints had been received for the year. Each complaint identified computers on campus that had been used to share between 250 and 1,000 songs. According to Phillips, recent subpoenas (the next level of threat) have targeted computers that had made more than 1,000 songs available, and no one at Colby has been sued for file sharing. He speculates that Colby may have been spared legal action because of its narrow file-sharing bandwidth or because of its visible effort to discourage file sharing. “I think we have just been lucky,” Phillips said.

But the conflict between artists and those who want their work for free isn’t going away. According to an article published in February in *The Chronicle of Higher Education*, college students appear to be downloading as much music as they did a year ago, despite the music industry’s attempts to crack down.

The file-sharing cat is out of the bag and subpoenas, lawsuits and bandwidth restrictions won’t stuff the cat back in. You might as well have told Alexander Graham Bell to stop talking on the telephone.

Marley Orr has heard all of the arguments against downloading music and has gotten the occasional lecture from her older brother, a professional jazz musician. He argues that recorded music is the



artist's property and taking it is flat-out wrong. But Orr contends that file sharing is part of the culture, the best way to keep up with what is new and cool in music, and it provides a way to sample music without buying entire CDs for single songs. "People are one-hit wonders," Orr said. "I can get the one Avril Lavigne song I do like and forget about her."

Besides, she said, "most of the artists I download are dead. Stevie Ray Vaughn is not coming back."

In fact, many college-age music downloaders do feel an obligation to support musicians by buying their CDs. But the bigger the artist, the smaller the obligation. "With most independent music, indie rock and a lot of punk rock, too, it's sort of a moral commitment to support the artist through CD sales," Dupuy said. "Much more than your Top Forty artist. I don't think downloading has hurt them. For independent artists, it's a huge boost."

In other words, Outkast is seen as fair game for downloading. But Dupuy's favorite band, The Flower Kings? Go buy the CD.

Andrew Will said he simply can't afford to buy every CD that he *might* like, though he does believe in supporting up-and-coming artists who need a fan base. He also is loyal to certain artists—Dave Matthews, Ben Folds—and owns all of their CDs. But that leaves a wide swath of music to peruse and share. "I think music is a fantastic thing and it should be out there," Will said. "That's kind of how I justify it to myself."

But are students sidestepping the ethical questions associated with illegal file sharing? Isn't there something wrong with taking an artist's work without paying for it?

Maybe, but there are reasons why file sharing so easily falls into a gray area, said Cheshire Calhoun, Dana Professor of Philosophy at Colby. For one, people who share music files know they're not alone and therefore can fall under the influence of what Calhoun and other philosophers call "moral drift." So many people are engaged in the same activity that it no longer seems unethical. "This is so conventionalized that it is very difficult to have a sense that what you're doing is wrong," Calhoun said.

In addition, harm done by file sharing is produced by many, many people acting collectively so one person's actions seem minuscule and relatively harmless, she said. The fact that file sharing is something done by so many people also makes it less likely that individuals will refrain of their own volition. "Why should I restrain myself when there's no guarantee that other people are going to restrain themselves?" Calhoun said. Add to that the natural tendency for people to discount harm done to someone or something that is out of sight and you've got a problem.

But Calhoun points out that consumers who download music for free may be holding a double standard in that their access to free music is dependent on many other people actually buying music. A file sharer doesn't want the industry to suffer and record fewer artists. "They need for there to continue to be lots of people who are still buying CDs,"

Calhoun said. "But they want to make an exception for themselves. . . . They become free riders on other people's purchases."

These arguments aren't lost on Colby students, though they counter that file-sharing programs like Napster and KaZaA expose listeners to new types of music. Andrew Will, for example, said file sharing opened his ears to "drum and bass," a form of techno music coming out of England. Footnote: not all genres are equally represented in file-sharing networks. "The pop stuff is easy to get because everyone has it," Will said. "The classical stuff is easy because everyone knows it. The jazz not so much because it's most known by an older crowd and they're not setting up a P2P file sharer."

Maybe not yet. But as Will's generation gets older, it's likely they'll consider a file-sharing program as indispensable as cable TV. A small but growing number of colleges and universities—Pennsylvania State

University led the way—now offer students free subscriptions to the new Napster 2.0, the pay-to-play version of the music service that emerged after the court case. That may be one way for an institution to prevent music piracy: swallow hard and pay for it.

But stamping out file sharing? Consider students like Greg Dupuy, who is technologically savvy enough to build his own digital recording studio in his single in Dana Hall. Dupuy shares music but limits access to others in the network. "I usually put just the [CD] track number and title," he said. "Because then if you search for the artist, you're not going to find my computer. I just don't want people taking up all my bandwidth."

Or Will, who patiently explained how people set up different types of servers.

"I have an FTP server on my computer," he said,

"which means that instead of the 'http,' to get to mine you do 'ftp' and then you put my IP address, which Colby gives us."

Still with him? Will reels off a string of digits like most people would recite their telephone number. He has given his friends individual accounts on his server, then allowed them access to certain files, mostly photos. He rarely shares music that way, he said. "Only by request."

While Will and other students acknowledge that pirating music in some ways is unethical, they say there is something inherently wrong with limiting access to the world of music. The industry, rather than trying to change that way of thinking, may try to take advantage of it. Legitimate music downloading services like Apple's iTunes Music Store are gaining users, and industry giant EMI was set earlier this year to offer its catalogue to P2P users through a new subscription music service, Wipit. When it comes to music technology, the times, they are a-changin' and it doesn't appear they'll ever change back.

"There's all this brouhaha about the artists not making the money they deserve, and the ethics of it all," said Marley Orr. "Honestly, for me music is such a big part of my life. . . . This is a cultural thing for me. If I'm limited, that's a frustrating thing for me. I don't want to be limited. . . . This is a part of our lives."

At least that much is music to the industry's ears.

