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### **Music Fans and Copy Protection**

This roundtable is centered on three questions, each addressing a different party involved in the copy protection of recorded popular music— music fans, major record labels, and digital music distributors— and the role each has in the apparent rollback of “digital rights management.” I will speak to the complex relationship these players have with the waning system of DRM— each plays a part not necessarily presumed— but I will also question whether DRM has truly suffered much of a setback at all.

The question this discussion begins with is, “Under what circumstances do music fans resist copy protections?” Put simply, music fans resist DRM when it does not allow them to do the things they want to do with their music. The mp3 format allows a greater degree of control for fans over the music they have. Many fans have come to expect this control— new and easier ways of sharing, collecting, and interacting with their music— but much of it has been diminished or taken away entirely in the DRMed formats developed and utilized by the major labels and digital distributors. When music fans directly encounter restrictions holding down their expected degree of control over their music, they come to resist DRM. A recent example is the outcry of affected music fans from Microsoft’s announcement (later reversed) that they would shut off their MSN music license servers— which would have forever locked users’ music out of any device other than their current one.

Nevertheless, the assumption that music fans are resisting DRM in substantial and meaningful ways, and that its rollback is a direct response to this, remains problematic. It is the *cause célèbre* of digital culture activists, but unfortunately they represent only a very vocal minority. Step outside of academic circles and away from the blogs, and one will find typical music fans who simply do not know or not care about DRM. Believe it or not, the Diggnation is not exactly representative of our actual nation. Millions of fans buy music from Apple iTunes’ DRMed catalog, even in the face of the wide availability of DRM-free music from both “legitimate” commercial distributors, such as Amazon MP3, and “pirate” noncommercial distributors, such as file-sharing and file-hosting services.

This brings us to the second question, “When have music labels dropped copy protection?” Any movement away from DRMed formats by the major labels is not, in reality, a direct response to fans. Regardless of how activists or the labels themselves might relate the situation, it is not as if Edgar Bronfman read a bunch of forwarded Boing Boing posts and decided to do something about it. In actuality, the issue for the major labels may be that DRM has worked too well for their own good. When Apple got the major labels on board with their digital distribution by agreeing to copy protect every song sold on its iTunes Store, it was doing more than easing piracy fears— through its FairPlay DRM, it was tying iTunes music sales to its market-dominating iPod. Years later, this arrangement has put Apple at the head of the negotiating table: no longer just the distributor begging for content to sell, the overwhelming success of the iPod has made Apple the most powerful player in the digital music market, allowing it to dictate to the major labels pricing and availability conditions.

When the major labels have dropped DRM, it has been in an attempt to weaken Apple's control over the digital distribution market and undermine its power. By offering digital music in DRM-free mp3 format— as all of the Big Four now do on Amazon MP3— the major labels are returning to open, interoperable format music that will work on any music device, including the iPod, to draw consumers away from iTunes. This is the real reason behind seeing more DRM-free major label music: a desperate, last-ditch effort to unseat Apple in digital distribution, not a magnanimous overture to fans. It is rather conspicuous that only one of the Big Four (EMI) offers DRM-free music on iTunes.

Our third question is, “What is the disposition of digital music distributors towards DRMed formats?” DRM can be a boon to technology companies that become digital distributors able to lock fans into walled gardens of content format, software, and hardware, shown by Apple with FairPlay and iPod+iTunes. Whatever “Thoughts on Music” Steve Jobs has shared publicly, Apple's actions have not reflected his supposed distaste for DRM: beyond the novelty of the “iTunes Plus” EMI catalog, Apple offers no other DRM-free music, even from independent labels who have requested it. Other digital distributors, however, have embraced DRM-free formats: eMusic is happy to serve the (albeit small) market for exactly the independent label mp3s that Apple does not carry. Further, Amazon has used a DRM-free orientation to help it break into the digital music distribution market as the major-label-anointed iTunes killer.

Finally, however, this whole discussion assumes that DRM is, in reality, effectively disappearing— which it is not. The rumors of DRM's death have been greatly exaggerated. While the major labels and certain digital distributors have shown a willingness to make music available in non-copy-protected formats, the vast majority of music sold today still includes DRM. Further, the majority of current distribution methods involve DRM and as the industry continues to look toward “subscription” based business models and away from “pay-per-download,” DRM looks to make a very real resurgence.