Left Behind
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Many assume that in digital network culture a process of “disintermediation” is displacing traditional gatekeepers like record labels and the media and policy regimes they depend on, such as terrestrial radio broadcasting and copyright regulation. However, we see in the case of internet radio that the still powerful corporations and cultural assumptions associated with established media strongly influence definitions of new media. Actually, I argue, ‘old media’ like terrestrial radio have not been “left behind,” but shape ‘new media’ like internet radio, most importantly at the level of policymaking discourse. Despite internet radio’s more open and participatory technological affordances and economic logics, its copyright royalty regulations assume an oligopoly model that serves the interests of existing distribution intermediaries like major record labels and broadcasters over new participants. “Left behind media,” then, remain embedded in policy regimes and reverberate through policy discourses, with important consequences.

Policy is an especially important force in shaping new media, as regulatory definitions and classifications establish a ‘common sense’ of a medium and effectively delimit who uses it and what they do with it. It is well worth noting, then, that the policy framework for today’s new media is actually one built for ‘old media’ and ask what effect this has. Here, I would like to discuss the example of internet radio and the copyright royalty regulations brought to bear on it. Important technological differences separate internet radio from terrestrial radio, providing a more interactive experience for users: a flexible digital architecture allows standard features like user ratings, pausing, skipping, embedded links, and downloading, as well as personalized streams and social networking capabilities. Importantly, though, there is nothing inherent to webcasting’s technological affordances that should make it like the ‘few-to-many’ industrial model of broadcasting— it is just as possible and common to be modeled as ‘many-to-many.’

However, even in light of a very different technological architecture from terrestrial radio, internet radio services purposely limit the degree of interactivity possible by design: direct manipulations of the stream of music are limited in user interfaces, users cannot directly choose tracks to play, and users cannot permanently save the temporary audio files they stream without purchasing them. All of these uses are afforded by the architecture itself (and are therefore accessible by hacking), but are not coded as possibilities within the interface.

Why are these limitations placed on the technological possibilities? Internet radio is actually rewarded for maintaining an identity as ‘radio,’ especially within the context of copyright regulation. In order to qualify as ‘radio’ to get in on the statutory licensing agreements that allow broadcasters presumptive use of copyrighted music, a service has to fall below a certain threshold of interactivity, as defined by the DMCA , including exactly these limitations.

Despite this technological shaping toward being ‘radio,’ broadcast policy is still a poor fit with internet radio. Under statutory licensing agreements, terrestrial broadcasters only pay royalties to song composers, but webcasters, along with satellite and cable radio, also pay royalties to the song’s recording artist, and internet radio pays a lot more than satellite or cable. Also, with heavy influence from major record labels, the Copyright Royalty Board in 2007 raised royalty rates so high that they threatened to run virtually all webcasters out of business.

The disconnect here between policy and practice comes down to how the economic logics of internet radio run contrary to the principles of oligopoly that have traditionally governed radio. With more affordable and accessible technologies, there is a lower barrier of entry into webcasting, in contrast to capital-intensive, government-licensed, highly-concentrated broadcasting. Further, the "long tail" economics of the internet leave little economic advantage for webcasters to stick to mass-appeal programming with a dependence on major labels, as webcasters are able to aggregate large audiences over a multitude of niche streams.

The economics of internet radio, then, differ from traditional radio in ways that encourage more content and diversity. This makes webcasting a difficult fit within corporate liberal US media policy that above all maintains stable markets, discourages shifts in the status quo, and protects large established corporations from disruptive new entrants. Indeed, the major labels have intervened intensely in the policymaking process in the hopes of remaking internet radio in the image of terrestrial radio, a comfortably arranged market of a few big players.

Despite the fact that the technological affordances and economic logics associated with internet radio appear to allow it to "leave behind" the structures of old media, policy is shaping it to the oligopolistic mold of terrestrial radio. While Congressional intervention has led to more reasonable royalties, the copyright regime remains that puts more of a burden on internet radio than the already big few in satellite, cable, and terrestrial radio and this policy structure can still work to whittle down new participants in internet radio.