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# Everybody Hates Rainbows

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# 10.

## Everybody Hates Rainbows

D.E. WITTKOWER

“The Culture Industry.” Does that phrase make you as uncomfortable as it makes me? Culture shouldn’t be an industry; it should be something natural and organic. Culture is our communal history and legacy; the context in which we learn and grow, and to which we may contribute. In the past, our culture might have consisted of the stories we learned as children, the songs we all sang together, perhaps traditional clothing or dances. In some sense, it’s hard to imagine today.

Our culture, to whatever extent we have a culture, might still consist of stories (Disney), songs (the *Jeopardy!* theme), clothing (Prada), and dances (The Electric Slide). But these elements are integrated within the marketplace, and, if not produced out of an explicit profit motive, they are at least taken up into a system of economic control and exploitation.

It’s a strange thing to consider that an element of culture as basic as, for example, the song “Happy Birthday to You,” has an owner. I’m not making this up. It’ll be under copyright until the year 2030. That’s why big chain restaurants don’t sing it—they’d have to pay royalties. Oh, and who owns it? Half the rights are held by AOL Time-Warner. The other half is owned by the estate of Patty Hill Smith (died 1946) who wrote a different song (in

1893) which “Happy Birthday” was based on. Consult Snopes if ye doubt.

When Theodor Adorno and Max Horkheimer came up with the phrase, “the Culture Industry,” they used it to describe how profit-motivated capitalist production had fundamentally changed the role that art played in our lives. Instead of offering an alternative to the very limited view of the world offered by our lives as economic actors, industrially-produced music and film helps to integrate us even further into the cycle of mindless production to support mindless consumption. “Amusement under late capitalism,” they wrote in 1944, “is the prolongation of work.”

Since then, of course, many things have changed. The movie studios have had to open up to indie films and alternative entertainment options, and the whole game will undoubtedly change even more in a couple years when the YouTube generation takes over. The monolithic system of record labels, radio stations, and payola has been broken, and, while a great many cultural choices are still in the hands of a very few huge corporations, finding alternate media outlets is becoming easier and easier. Despite this, Adorno and Horkheimer’s fundamental point is as relevant as ever: as long as cultural products are industrial goods, they will be basically inhuman and dehumanizing. They wrote then that “personality scarcely signifies anything more than shining white teeth and freedom from body odor and emotions.” As long as we continue to confuse self-identity with brand-recognition, even something as personal as our experience of music will suffer from a fundamental disconnect.

But alternate, less industrialized ways of making and enjoying music are becoming more prominent, and, even though Adorno and Horkheimer might not have been too hopeful about what this might mean, I think it might offer us a way towards a healthier relationship with art. Let me tell you why.

## **House of Cards**

With digital media, it’s become possible to encounter music in many different forms and contexts. From streaming media and MySpace to leaks and BitTorrent, the context of record label-based centralized sales distribution is being torn down at every front. The days when it made sense to think about music as an

object for sale (an “album”), just like an apple or a pair of pants, are long gone, and the RIAA’s ad campaigns will never bring them back.

We post songs on our Facebook pages, we share tracks with our iPods and Zunes,<sup>1</sup> and, yes, we illegally download. In a way, musical recordings are becoming more like what they used to be—one of a number of different ways that different forms of music and performance enter our lives. Regardless, the CD is becoming an increasingly unimportant site for us to encounter and enjoy music.

There has always been a kind of basic tension here, though. Music is expressive, and the idea of transforming something fundamentally *communicative* into a *commodity* for sale has always been a bit of a house of cards. For example, consider what’s happened in print publications. There’s a similar tension there between information as commodity and as communication, and with the new opportunities for self-publication and open access, a great deal of the material which used to be bought and sold is now downloaded or accessed online. Think of all the books that Wikipedia—for better or worse—has replaced in the life of the average student!

And even within a purely market-mediated experience of music, the fan has always encountered music as an expression and a communication—from the fan-perspective, music as a commodity has always been only a necessary evil and an unwelcome precondition. In musical subcultures, economic factors are usually viewed as directly hostile to what listeners perceive as the “real” value of music. Otherwise, the charge of having “sold out” wouldn’t make any sense—after all, shouldn’t we be happy that musicians who we like will be able to enjoy a larger following?

Once there was a glimmer of hope that this evil will no longer be necessary, listeners, unsurprisingly, rushed to embrace these alternate, de-commodified modes of listening and enjoying music.

1 Sorry to use an obscure term here. “Zune” is a word that was used for a short time in late 2006 to early 2007 in the United States—it referred to an object that was able to wirelessly share songs. It is suspected that some of these may actually exist in the hands of consumers, although studies have been inconclusive. Some believe that one can be seen in frame 351 of the so-called Patterson-Gimlin film.

At the turn of the century, the sudden freedom from economic constrictions opened our desktops and playlists to virtually limitless world of new and exciting sounds, and although things have certainly changed since those heady days of Napster—and most music fans today continue to regard commodification as a necessary evil—still, the public perception of the role of economics in music has been permanently altered. I think there's something to be said for comparing the current digital rights management (DRM) efforts to trying to get the toothpaste back in the tube, but that's a discussion for another day. Whether or not the effort to close down filesharing is doomed, it is clear at least that there is now a real desire on the part of fans to think about music as just another object for sale in the marketplace.

### **Jigsaw Falling into Place**

Rightly or wrongly, there's a strong public perception that labels pass on stunningly little of music profits to musicians. But what's the alternative model? Should bands treat their recorded music as little other than advertisements for performances, and should we start to think of music as a service rather than a product? Should we go back to a patronage model, where shares of an album are sponsored by fans? Are online ad-based revenues enough to keep bands going? Could they use an up-sale model, where additional content or access can be purchased? Perhaps a shareware model will work, where a great many fans might choose to donate just a few dollars, or where long-tailing can support a project just on a relatively few dedicated hard-core fans.

These models have been tried by different artists, such as Jonathan Coulton, Trent Reznor, and Maria Schneider. These models have succeeded, but this success has been limited to relatively small and loyal fan bases, and these models remain unfamiliar and strange to the majority of listeners. To succeed on a large scale—large enough of a scale to offer alternative business model attractive to a wide variety of musicians—they would need a familiar public face and a prominent success story. With *In Rainbows*, the shattered and fragmented system of music distribution and acquisition began to look, to some, like a jigsaw puzzle falling into place. Radiohead, a highly regarded band with a very strong inter-

national following, was adopting a DRM-free, pay-what-you-feel downloadable distribution model! They would show that it can be done; that this is, at least in one prominent case, a viable business model.

The fit, for the fan, was a very natural one. Instead of paying for the object on the basis of the costs incurred—or perhaps just the industry-standard pricing model—you would pay for your own perceived use-value that the product delivered. What could be more fair from a consumer perspective? Of course, the problems were numerous. Most notably, you were asked to pay upon download, *before* listening to the album and determining its value to you. But still, this was a hopeful sign that real change might be on its way.

To the industry, of course, this looked like a dangerous betrayal. If it succeeded, this would only feed the perception that labels are unnecessary intermediaries, and would cover over the supposed necessity of paying all the producers, executives, marketing people, lawyers, and so on. Legitimizing a user-consumer-centered sales model further undermined the basic business model of the industry. At the same time, the fact that Radiohead reverted back to a traditional sales model rather than seeing the experiment through made this respect for and legitimation of listener-centered pricing into a mere gimmick to increase hype. So, in the end, it didn't really make anybody happy. Trent Reznor, for example, called it “insincere” and a “marketing gimmick,” while—on the other side of the issue—James Blunt suggested that the pay-what-you-feel approach would “devalue” music, saying “I’ve got to pay a band and a producer and a mixer.”

The labels have grounds for complaint—after all, they are playing in accordance with the rules. Of course, they helped make up those rules through lobbying Congress, but they are the rules. Furthermore, they did spend a good deal of money producing and marketing music that they have a legal basis to expect to be able to sell. Just because it's free to download doesn't mean it was free to make, and they have a legitimate expectation to be able to recoup their costs. The bigger issue, of course, is whether the business model is sustainable in the digital age, and whether it is exploitative and undeserving of protection or preservation.

So, how do we adjudicate between these different claims—that music is a commercial product to be bought and sold, and that is communication and should be free, and artists should be supported in some other way? Who deserves what here, and are the established property rights to be respected and preserved?

### Reckoner

In political philosophy and in applied ethics, we regularly deal with the question of how to justly distribute limited resources. Probably the most famous and influential philosophical perspective on distributive justice is that of the American philosopher John Rawls.

Rawls's 1971 book, *A Theory of Justice*, really changed the conversation going on in political philosophy. He put forth an ideal of 'justice as fairness': he wanted to construct an ideal of justice appropriate for liberal democracies; one which would not be dependent on any particular ideas of right and wrong, or of the nature of the "good life." He claimed that, if we were able to ignore our own self-interested assumptions, based on the part of society in which we find ourselves and what we stand to gain or lose, we would all agree to distribute limited resources such as economic and political opportunity approximately as follows:

1. Everybody gets a robust set of basic rights and freedoms; as great as can be given alike to everybody, and
2. Whatever inequality there is should benefit the least among us.

How does he get to these principles? Let's start with his claim that we all basically agree on the egalitarian principle that we should all, ideally, have the same rights and opportunities as each other, and nobody should enjoy special benefits or favors. But if we were to, for example, all enjoy the same *income* no matter what we did, then we'd all be worse off! We wouldn't feel we were rewarded for our efforts, and we wouldn't be motivated to achieve greater things, and our entire economy and society would stagnate and suffer.

So, even on an egalitarian basis, inequality is good, at least to some extent. But to what extent? There's a classic problem in utilitarian theories of distributive justice—it has a number of different forms, but one of them is this: imagine a group of four people in a room. They have a pleasant conversation for an hour, resulting in, say, ten *hedons*, or arbitrary units of happiness (just assume we can measure that, okay?) per person, for a net gain of forty hedons. Okay, now imagine that they're sadists. If three of them torture the fourth, we get, say, a gain of a hundred hedons each for the three torturers, and a loss of two hundred hedons for the fourth poor fellow, for a net gain of 100 hedons. So, if we use a pretty basic (and silly) interpretation of utilitarianism's basic claim that the right action is the one that results in the greatest overall happiness, then it seems that the utilitarian would have to prefer that the sadists torture the fourth fellow.

Now, that's not fair to the utilitarian position, and Rawls knows better than to use such a simplistic example, but it does demonstrate his point: we need to take into consideration the importance, not just of net gain of benefit, but of how that gain is distributed among persons. So, he says, we should allow inequality to increase *only* until it comes at the expense of anybody within the society. So, that rules out the sadist circumstance, and the four are left just having a pleasant conversation. In which, presumably, they politely avoid talking about how much they'd like to put the screws to the fourth fellow.

That's the basic idea. Having a fair system of distributive justice would guarantee a basic set of benefits to everybody, and would only allow as much inequality as is still for the best for everybody. In the abstract, this sounds pretty uncontroversial. But what would this mean in practice? Let's look at the question of distribution of wealth.

If some of us have wealth holdings, for example, of around \$190,000, and others of around \$5,500, then it is hard to see how even roughly similar kinds of opportunities for education, competition in the marketplace, or success in general could be enjoyed throughout our society. Those are, however, the median holdings of the uppermost and lowest quintiles of our population (as of 2002, sorted by income).<sup>2</sup> So those two very disparate and

2 US Census Bureau data, taken from "Net Worth and the Assets of Households: 2002," available at <http://www.census.gov/prod/2008pubs/p70-115.pdf>.



unequal groups represent forty percent of our society—the rest of us are in the middle somewhere. Furthermore, this inequality has a clearly racial component: the median net worth of non-Hispanic White households is \$87,056, while that of Black householders is \$5,446.

Even if you think that explicit racism and bigotry is widespread in the US today, this still doesn't seem like enough to explain this inequality. Instead, we need to say this: the rich tend to get richer, and the poor tend to stay poor. So, if we want the kind of real freedom of opportunity that would allow the legacy of racist disenfranchisement to even out, in time, we need to narrow the gap between rich and poor. Rawls's perspective would clearly call for a redistribution of wealth through something like a progressive income tax, or some other way of lessening the advantage of those born wealthy, and providing expanded opportunities for those born poor.

### **Up on the Ladder**

The predictable response is that it would be unjust to treat wealthy individuals differently in order to benefit others in society. Surely, after all, a basic principle of justice is that like cases should be treated in a like manner, so how can you justify taxing people at different rates? Don't we have basic property rights? If I obtained my holdings without force or fraud, how can the government be justified in taking a disproportionate share of them? With regard to the racial inequality, rich Whites, placed high up on our ladder by the accidents of birth and family might ask: I didn't enslave anybody, why should I have to pay for the crimes of dead people who happen to share my skin color?

There is clearly something to be said for this response. This comes into even sharper relief when we look at the example of affirmative action. From a larger perspective, we see systematic disadvantages in the market. While this takes many forms, perhaps the most dramatic is the cycle of poverty in Black America, where those from impoverished backgrounds are less likely to have the same educational and economic opportunities, leaving them with little time and energy to raise their own children, who grow up in depressed areas with underfunded public schools. At

the same time, from the smaller, local perspective, the employer might ask, “why should I hire the person I think is less qualified just because he shares a skin color with a group of people who tend to suffer from disadvantages?” The White job applicant might ask, “why should I be disadvantaged just because of my skin color?”

There are many arguments on both sides here, and very good points have been made about, for example, how ‘reverse discrimination’ is not wrong in the way that racial discrimination is wrong, or how our rights in the marketplace are all based on having a healthy marketplace, so economic redistribution or affirmative action are justifiable because they are necessary for there to be a healthy marketplace. These may be right, but they cover over an important point: if we respect universal basic property rights, then the wealthy are right to complain of unequal treatment; and if we think skin color should be irrelevant, then acting on the basis of whiteness is wrong too.

In my view, the problem isn’t that one side is clearly fair and the clearly unfair—the problem is that the *world* isn’t fair. If we pay attention to the social problems, we violate individual rights and fail to respect those who happen to be advantaged. If we pay attention to individual rights, we allow people remain in the cycle of poverty, and for racial and economic disparities to widen. Either way, we fail to respect what seem to be to be serious claims about what is just and unjust. Personally, I’d rather work towards social justice, even if it means failing to properly respect individual rights, because the way in which the wealthy and privileged suffer is inconsequential compared to the way in which the poor and disadvantaged suffer. To put it a bit overdramatically, I’d rather disrespect property rights than have people live without enough food or safe housing. It’s not a simple matter, and both sides deserve to be taken seriously, but that doesn’t mean that there isn’t a right choice.

### **Go Slowly**

Now, what would Rawls say about *Rainbows*? It’s a very different case, of course, but I think we can see a few places where Rawls’s discussion of distributive justice helps us think about how *In*

*Rainbows* might help us go slowly towards finding a good solution here.

Can we give everybody the right to listen to music as they please, and to download and share music as they see fit? In other words, to have the right to enjoy music as a part of our *culture*, rather than as part of an industry?

Let's look back at Rawls's first principle. Rawls thinks we should all hold whatever liberties can be given alike to everybody. Back when only a big record label would be able to support, develop, and promote artists, we, arguably, couldn't all hold this right, because it interfered with the centralized machinery necessary to create that music. Back then, it very well might have made sense to say that it was dangerous and harmful to undermine the standard album-as-consumer-good model. Now, though, many other models are viable, and we can't claim that it's irresponsible to suggest to fans that the relationship between listening to artists and supporting artists is negotiable, and might take various different forms. We might want to say instead that we all now ought to have the right to listen, to rip, to share, and to burn.

Where does that leave the artist? Well, it leaves the artist looking for new ways to support herself. Is that fair to the artist? Maybe it doesn't seem like it is, but, on Rawls's view, we can't justify limiting the freedom of others unless it benefits them in the end, and the old model of restricting listeners just isn't a necessary limit anymore. Models like those that *Rainbows* point us towards can allow artists to survive and support themselves without doing so at the expense of fans' free relationship to music.

I say the same thing here as I said above about affirmative action. Is this fair to everybody? No, probably not—but, hey, it turns out the world isn't fair, and that just means we need to figure out which claims about fairness are more important. And, in my view, having a free relationship to music, and to culture in general, is more important than ensuring that musicians can keep making money in the way they have been. Musicians made a living before the DRM-restricted download, before the CD, before the tape, the 8-track, and before vinyl as well. What we stand to lose is not music, or the possibility of making a living as a musician—what we stand to lose is only the narrowly commodified relationship to music that has been in place for the last few decades or so. And good riddance, I say.

Labels certainly don't need to wither and die either. When the way that we think about rights changes, this can certainly force some people with legitimate claims into unfortunate positions. For example, after the Emancipation Proclamation, I'm sure there were a good deal of Southern plantation owners who were upset about the way that their business model had been undermined. And why not?—they were conducting business on the basis of what had been the law. But rights are more important than profits, and the farmers who lost their slave labor adapted or went under.

As our thoughts about the rights of listeners changes, labels need to adapt to the new environment. They need to start to think of their business as providing services rather than products. They, in the end, are in the business of finding, developing, and promoting musical talent and creativity. As artists find new ways to support themselves, labels—no longer the only show in town, so to speak—will have to find new ways to provide valuable services to musicians. The current movement towards “360 deals”—contracts which give labels a cut of concert, licensing, and other revenues—might allow labels to remain profitable even as listeners are increasingly unwilling to think of music as an object to be bought and sold. They will only have to start thinking of themselves as service providers rather than gatekeepers, and to offer better, fairer deals to artists in order to remain relevant.

All in all, *Rainbows* suggests the possibility of a different future for music—a future with new rules and perhaps with fewer profits, but certainly with more freedom. Maybe there's no pot of gold at the end of it, but over this rainbow, at least some of our dreams might come true.

Music is part of our cultural heritage, and part of our social interaction. The song which we sing along with is one which we should be free to share, perform, and remix. Every song is an expression, and a part of a conversation, and nobody should have the rights to tell us what we can and cannot do with words and sounds dear to us, and which speak to our hearts.

Yet, music is an industry, and managers, employees, and stockholders have made investments of time and money, within an established legal regime, which they have a legitimate expectation to be able to recover. Songs are commodities in our society, and music given away undermines the viability of the system.

So, where do we go from here? We must go slowly; we must find new ways of supporting artists, and we must oppose legislation that cuts us off from our culture and that supports labels to the detriment of artists. If we can find a clear path forward, together, our culture may be ours again.