

WHEN YOU LET INCUMBENTS VETO INNOVATION, YOU GET LESS INNOVATION

MIKE MASNICK*

Innovation is a difficult thing to measure or spot at the moment it is occurring. There are so many moving variables, and any innovation, inevitably, unseats an incumbent of some sort, and often that incumbent fights back against innovation, sometimes making compelling arguments that the innovation will cause more harm than good. But holding back innovation is rarely an effective long-term strategy. At the moment innovation occurs, it is often derided, and rarely is it seen for the benefits that eventually emerge. Measuring it directly is equally troublesome. If Craigslist, for example, leads to the collapse of the newspaper classifieds business, do we measure that as anti-innovation, destroying a multi-billion dollar business and replacing it with a hundred million dollar one? Or do we rightfully celebrate all the new things that Craigslist has enabled, and the ability for many more people to make use of such forum-based advertising, often for free, such that they are left with more money to spend elsewhere?

Because of this, innovation is often best judged in retrospect, rather than in the moment. Given a chance to look back and understand the various factors at play, we can look not just narrowly at its impact in one small area of a wider market. With time and perspective, it is often easier to view the entire market, to see the wider impact—the push and pull, and the action and reaction—and to see how innovation happened. Or didn't happen.

Michael Carrier's detailed and thoughtful article, "Copyright and Innovation: The Untold Story,"¹ is an excellent and well-needed addition to the research and history concerning the negative impact on innovation created by the major record labels and their attack on a variety of internet attempts at innovation, starting with the successful legal attack on Napster. Carrier talks to many of the leading players in the digital music space—innovators and investors on one side, and those representing the labels on the other—and crafts a useful narrative and history highlighting just how much innovation has been held back by the legacy players in the recording industry over the past couple of decades.² The stories

* Founder and CEO, Floor64; Founder & Editor in Chief of Techdirt.

1. Michael A. Carrier, *Copyright and Innovation: The Untold Story*, 2012 WIS. L. REV. 891.

2. *Id.* at 893–95.

within Carrier's article have been told, repeatedly, among friends within the startup world, at conferences, and (all too frequently) at bars, lamenting the lost world of opportunity and possibility. To have it put together nicely in a well-researched article, pulling together the key findings from so many of the key players who were in the middle of it all, is an invaluable addition to the literature and understanding of how overbearing copyright laws have been a major hindrance on innovation.

INNOVATION INVOLVES THROWING A LOT OF THINGS (IDEAS?) AT THE WALL TO SEE WHAT STICKS

The process of innovation is messy and unpredictable. It is not well understood in advance. Those who claim they can predict what innovations will succeed and which will fail are rarely right in the long run. That said, certain larger trends in how innovation tends to work are quite clear throughout history. Disruptive innovation and markets often develop in a swarm of experimentation. A market need is felt, or new technology enables something wonderful, and many different players (usually led by young, fearless startups often unencumbered by legacy issues that might slow one down) jump in and try to build the business around the opportunity.

A rapid and sometimes ugly process of trial and error ensues, in which many different ideas, approaches, products, and services are created rapidly and tossed out into the marketplace to see what sticks. Most will fail. Some will catch on briefly, only to stagnate, fade away, and die. A few will move the needle. They will be embraced and will inspire users, consumers, partners, investors, and more with the possibilities presented. This is not a static thing, but an ongoing and dynamic process. The first one through the door is never the last one standing because there rarely is a last one standing. Others will take the innovation of the first successful mover and adjust, build, and innovate.

This highly competitive crucible of continually trying new things, failing fast, finding what works, and innovating again on top of that is often fueled by venture capital investment, allowing a variety of different players to enter the market quickly, to see what works, and to discard those that don't work quickly. This kind of rapid and valuable innovation only works well if a few key ingredients are present:

- The ability to quickly start up new companies and try out new ideas with few barriers to entry;
- The support infrastructure necessary to make this possible—whether it is technology, people, money, services, etc.; and
- The lack of unnecessary or artificial hurdles in the form of overbearing regulations.

Without those factors, innovation is inevitably hindered and slowed down. We have seen these factors come together many times in producing all kinds of unique and wonderful innovations in the online world. The search engine market, so integral to today's Internet experience, involved multiple players trying new and different approaches. In the early days, there were startups and services like Lycos, Alta-Vista, WebCrawler, Inktomi, Excite, and more. Google was actually somewhat late to the party, but was able to learn from the mistakes of the earlier players. Similarly, in the social networking space, we saw early players like SixDegrees give way to a second generation that include Friendster, LinkedIn, Ryze, and more, followed quickly by MySpace, and eventually Facebook.

Each step up the ladder involved new entrants, jumping in with a different approach. They did not need permission. They did not face overwhelming legal or regulatory fights. They could embrace the infrastructure of the Internet combined with a bit of venture capital and a clear regulatory environment that allowed them to innovate. Their early days were not limited by lawsuits from incumbents, or the need to secure permission or licensing. Rather, they innovated rapidly. Some failed. Some succeeded. And the public was much better off in the long run.

WHEN INCUMBENTS HAVE VETO POWER, THAT FALLS APART

What is quite clear throughout the interviews that Carrier describes is how the digital music market does not and cannot function in the same manner as described above. Rather than a low barrier to entry, incumbents (mainly in the form of the major record labels) can use copyright as a form of veto power on innovation.

In fact, the industry and its supporters have argued that copyright law should be designed directly for this very purpose. Ralph Oman, the former Register of Copyrights, recently suggested in an amicus brief filed in a copyright lawsuit that Congress should consider any new technology that impacts legacy content industry business models illegal until Congress decides to declare them legal.³ According to Oman, “[c]ommercial exploiters of new technologies should be required to convince Congress to sanction a new delivery system and/or exempt it from copyright liability.”⁴

Similarly, copyright law itself, at the urging of legacy players, appears to often be designed to block such innovation in favor of existing

3. Brief for Ralph Oman, Former Registrar of Copyrights for the United States, as Amicus Curiae Supporting Petitioners at 17, *WNET, Thirteen v. Aereo, Inc.*, No. 12-2786-cv, 2012 WL 4509870 (2d Cir. Sept. 21, 2012).

4. *Id.*

players. Many people don't realize, for example, that a section of the Copyright Act dealing with royalties includes the surprising statement that the Copyright Royalty Board must, among other factors, look to protect existing businesses from the impact of innovation.⁵ It defines the role of the copyright judge as "[t]o minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices."⁶

By definition, this gets in the way of the normal process of innovation. It allows the existing leaders to block innovation rather than encourage it. It gives them a position of control against disruptive innovators, even if they might change the industry for the betterment of the public and creators.

And this is what clearly comes across in what happened with the major record labels and the post-Napster era, as described in Carrier's article. The industry knew well that it could use copyright as a weapon to retain control over how the market worked and to block any form of disruptive innovation. And they used it at every opportunity. The successful lawsuit against Napster was just the tip of the iceberg.

THE *NAPSTER* CASE SET THE EXACT WRONG BLUEPRINT FOR THE RECORD LABELS

What is clear, in reading through the evidence Carrier presents, is that the results of the *A&M Records, Inc. v. Napster, Inc.*⁷ case gave the RIAA and the major labels it represents the exact wrong blueprint. It gave them the *false hope* that they could really stop innovation via aggressive legal action. By succeeding almost entirely in its lawsuit against Napster, the industry believed, falsely, that it could stem the tide of Internet innovation. As Carrier details, many execs simply did not want to deal with the changing marketplace and were just looking to hang on long enough to get out.⁸

The impact went beyond the general intimidation around the idea that the major record labels *might* sue to the strong belief throughout the industry that the major labels *would* absolutely sue. It was just a matter of when. If you weren't getting sued, you weren't doing much innovative.

The amazing thing, however, was that the labels and the innovators viewed the entire dynamic differently. To the record labels, the lawsuit was the first step in a complex *bargaining negotiation*. The labels wanted

5. 17 U.S.C. § 801(b)(1)(D) (2006).

6. *Id.*

7. 239 F.3d 1004 (9th Cir. 2001).

8. Carrier, *supra* note 1, at 925–27.

control and to be able to limit disruption, and the game plan was relatively simple: sue first (and sue big) to get the upper hand, and then use that as leverage in trying to negotiate a deal; “the deal” would generally involve a huge upfront payment, massive royalties, and a big chunk of the equity.⁹ The labels would then make massive demands about impossible levels of digital rights management as well as the kind of tracking they needed.¹⁰

If, as often happened, the innovators refused those terms, then no problem, the site would die. If, as happened occasionally, innovators took up that deal, that was great for the labels. They got some cash, got to pretend they were embracing innovation, and then watched while the company they now had an equity stake in dwindled into nothingness. The ownership stake was supposed to encourage the labels to help the innovators survive, but the labels appeared to view pretty much every startup as the next possible Napster, to be limited before it got too powerful.

KILLING THE GOLDEN GOOSE

Throughout all of this, a unique pattern emerged. The labels would always massively *overvalue* their own content, while simultaneously *undervaluing* the various innovative services. Phrases along the lines, “without our music, they’d be nothing” were heard frequently in arguing why it was all about the content. The truth, however, is that it was the combination of the two that were important. Yes, the services needed the music to work, but so too did the labels need these new services to adapt to a changing marketplace.

This should have been obvious from the fact that people would flock to these new services, yet failed to show up to the record labels’ own attempts to innovate or provide something new. However, as soon as any service showed any kind of promise, even if “licensed,” the labels would seek to kill the golden goose by claiming that the rates were unfair, and the innovators were making money unfairly off the backs of the copyright holders (by which they meant the labels, not the musicians, of course).

9. See Michael Robertson, *Why Spotify Can Never Be Profitable: The Secret Demands of Record Labels*, GIGAOM (Dec. 11, 2011, 9:00 PM), <http://gigaom.com/2011/12/11/why-spotify-can-never-be-profitable-the-secret-demands-of-record-labels/>.

10. Michael Arrington, *Behind the Scenes: Record Label Demands from Amazon*, TECHCRUNCH (Apr. 29, 2011), <http://techcrunch.com/2011/04/29/behind-the-scenes-record-labels-demands-from-amazon/>.

Take, for example, the brief heyday of music video games like *Guitar Hero* and *Rock Band*. For a year or two, the recording industry fell head over heels in love with these games, because people were playing them quite a bit, and they were (briefly) willing to pay a slight premium to get access to music from well-known bands and musicians. Rather than build on that, the industry did two things: it focused all of its attention on those kinds of games, absolutely flooding the market and making people get sick of the game genre, and demanded much higher royalties.¹¹

The viewpoint seemed to be that there could be almost no benefits for the innovators. Nearly all of the benefits had to accrue to the labels, or it would be seen as a problem. In fact, the one exception that got through was iTunes, and that was quickly seen as a “problem” by the labels, even as it was dragging them, kicking and screaming, into the marketplace for digital music. The view is one of an extreme zero-sum world, where if someone else is benefiting, it must mean that the labels were losing out. They didn’t even hide this view of the world. Doug Morris, then head of Universal Music (now head of Sony Music) explained to a *Wired* reporter that investing in new innovations that weren’t paying money upfront meant that “someone, somewhere is taking advantage of you.”¹² As laid out in the article, Morris was uninterested in technology, and didn’t even know how to hire a competent technology person, so his focus was on making sure everyone paid up immediately.¹³ Anyone making money in the music world without first paying a massive cut were dubbed “thieves.”¹⁴

SEARCHING FOR THE NONEXISTENT MAGIC BULLET

Part of this was just endemic to the way the recording industry worked in the past. The roadmap for success was very clear. You signed a bunch of artists, figured out which ones were starting to get traction, and then threw a large sum of money behind them to make them big and have them sell lots and lots of albums, with a large chunk of the album sales revenue going back to the label.

11. Mike Masnick, *Did the Record Labels Kill the Golden Goose in Music Video Games?*, TECHDIRT (Feb. 10, 2011, 7:33 AM), <http://www.techdirt.com/articles/20110209/17034813033/did-record-labels-kill-golden-goose-music-video-games.shtml>.

12. Seth Mnookin, *Universal’s CEO Once Called iPod Users Thieves. Now He’s Giving Songs Away*, WIRED, Nov. 27, 2007, available at http://www.wired.com/entertainment/music/magazine/15-12/mf_morris?currentPage=all.

13. *Id.*

14. *See id.*

This view is somewhat at odds with the nature of an innovative market. In the innovation realm, you see a lot of experimentation and many different revenue streams all mixing and matching. You see different things work for different people, and you get a much more differentiated market. It's not as easy, but it's often much more interesting.

But, in a world where the game was “sell as many albums as possible,” this idea didn't make much sense. The industry instead just kept looking for that magic bullet, and then doing everything possible to suck everything out of what it believed to be the next big thing. The music video game market has already been discussed, but the same thing was true of ringtones for a few years in the mid-2000s. Labels realized that people were buying ringtones—often for much more than the cost of the same song on iTunes—just to have it on their phone. Unfortunately, the labels got the wrong message out of this. The reasons why this market worked for a while were twofold. First, for music fans it was a *form of expression* showing the outside world what they liked. Second, it was just ridiculously more convenient. But, rather than thinking of ways to make other markets more convenient and more about expression, the labels suddenly started talking about how the ringtone market was going to be their savior. And, in response, they tried to quickly raise the royalty rates for ringtones,¹⁵ speeding up the eventual crash of that market by making it less attractive to partners and consumers alike.

Once again, this was all antithetical to an innovative market. Betting on a single solution and not letting the market play out holds back the messy creative competition that leads to true long-term innovations. The legal victory in the *Napster* case only served to give the labels a very useful tool in exerting this kind of control, and trying to focus all attention on a single “magic bullet,” which it could then squeeze dry.

SQUEEZING THE LIFEblood OUT OF INNOVATION

All of these actions resulted in a real climate of fear among innovators, as Carrier deftly illustrates with quote after quote. They made the digital music industry inhospitable to innovators and investors alike. Entrepreneur Tyler Crowley recently wrote up the impression he got as an entrepreneur talking to entertainment industry executives over the past

15. Mike Masnick, *Recording Industry's Next Trick? Killing Ringtone Sales*, TECHDIRT (May 25, 2004, 11:43 AM), http://www.techdirt.com/articles/20040525/1141208_F.shtml.

few years, which highlighted this viewpoint nicely.¹⁶ He discusses how innovators and developers have “islands of opportunity”—areas which they can build on to innovate. He notes that many of these “islands” are quite welcoming and often lucrative: Facebook, Microsoft, Apple, Google, and others all actively seek out developers and innovators, and make it quite easy to build on their platforms.

The recording industry has long been the exact opposite of that. As Crowley explains in discussing the “music biz island,” it is not a welcoming place:

Now, we also know of Music Biz Island which is where the natives start firing cannons as you approach, and if not sunk at sea, one must negotiate with the chiefs for 9 months before given permission to dock. Those who do go ashore are slowly eaten alive by the native cannibals. As a result, all the tugboats and lighthouses (investors, advisors) warn to stay far away from Music Biz Island, as nobody has ever gotten off alive. If that wasn’t bad enough, while Apple and Facebook Island are built with sea walls to protect from the rising oceans, Music Biz Island is already 5 ft. under¹⁷

This is not a welcome place for innovation or innovators.

HOW IT MIGHT HAVE BEEN DIFFERENT

The impact is clear on the economy as well. With such a hostile environment, venture capitalists will not invest. Carrier gives multiple examples of investors and innovators highlighting how problematic this is in the world of innovation.¹⁸ And we are just now starting to see how much of an impact these overbearing copyright laws can have on innovative investment.

Here, the impact of a different court case, a decade after the *Napster* case, might be instructive. While *Napster* was brought down by a ruling in the Ninth Circuit, a 2008 ruling regarding technology and copyright in Second Circuit had a very different result. *Cartoon Networks v. CSC Holdings*,¹⁹ often called the *Cablevision* case, also involved a technology that legacy players in the entertainment industry (this time, television studios) argued was a tool of infringement. The product was as a remote

16. Tyler Crowley, *Islands of Opportunity*, STEEPDECLINE’S POSTERUS, <http://steepdecline.posterous.com/islands-of-opportunity> (last visited Apr. 21, 2013).

17. *Id.*

18. Carrier, *supra* note 1, at 914–17.

19. 536 F.3d 121 (2d Cir. 2008).

digital video recorder (DVR) offered by cable company Cablevision.²⁰ The product worked like a local DVR (such as a TiVo) in letting a home viewer record shows and play them back.²¹ However, rather than having the box under your TV, it sat in a data center run by Cablevision.²² In the end, much to Hollywood's disappointment, Cablevision prevailed in the Second Circuit and the United States Supreme Court refused to grant certiorari to hear a further appeal.²³

This provides us with a counterfactual case study—a technology that was accused of enabling mass infringement, but which the courts found legal instead of illegal. And research into the space shows that the result of the ruling was a very rapid and noticeable increase in venture capital funding into the market. A research report by Professor Josh Lerner compared venture capital investing in the United States and in Europe before and after the *Cablevision* ruling.²⁴ The report showed that the ruling in *Cablevision* likely meant \$728 million to \$1.3 billion more invested in cloud computing in the United States over the two-and-a-half years following the ruling than would have been expected otherwise.²⁵

Not all of that is productive investment, but, as noted earlier, in innovative markets where the idea is to test a lot of ideas quickly, see what fails, and then build on what succeeds, having that much money providing fuel to the engines of innovation clearly speeds up the process of innovation. As Carrier's article demonstrates, following the *Napster* case, we had the exact opposite. Venture capitalists wanted nothing to do with any company that it thought might attract the attention of the record labels. Since it was viewed as a “when” not “if” of getting sued, these investors knew that significant sums of money would go towards litigation or paying off the labels' demands for “entry,” rather than towards actual innovation. And so the investment went elsewhere.

THE PYRRHIC VICTORY

The most unfortunate part in all of this is that innovation was exactly what the record labels needed most during this time period. The victory over *Napster* may have won the battle, but it clearly lost the

20. *Id.* at 123.

21. *Id.* at 123–24.

22. *Id.* at 125.

23. *Id.*, *cert. denied*, 129 S. Ct. 2890 (2009).

24. Josh Lerner, *The Impact of Copyright Policy Changes on Venture Capital Investment in Cloud Computing Companies 1* (Analysis Group White Paper), available at http://www.analysisgroup.com/uploadedFiles/Publishing/Articles/Lerner_Fall2011_Copyright_Policy_VC_Investments.pdf (Last visited Apr. 29, 2013).

25. *Id.*

labels the war. Matt Mason has explained that throughout history signs of “piracy” were almost always a leading indicator of innovation.²⁶ It was evidence that technology had changed in a way that allowed the public to do things they couldn’t do before, which they wanted to do, but which were not allowed by the law or by legacy companies standing in the way.

The problem is that the labels thought that, via legal victories, they could erase these ideas from the mind of the public. Or that they could “educate” away these desires. History has shown time and time again that this has never worked. When people understand what technology allows, they will stop at very little to get it. The only legitimate choice for the companies and individuals disrupted by this is to look at ways to embrace the innovation and to ride the wave. This is the central message of Clayton Christensen’s *The Innovator’s Dilemma*,²⁷ which Carrier weaves into his paper.²⁸

Instead, however, the labels were emboldened by the victory in *Napster* and went down a long path of trying to block as much innovation as possible through the strategies described earlier. But when the public knows that the innovation exists, they don’t forget it. They don’t get “educated” away from it. They gravitate towards it. And that’s exactly what happened. While the record labels fought nearly every legitimate attempt at building an online music business, the public just went elsewhere—often unauthorized. While the labels proceeded to play a still-ongoing game of Whac-a-Mole to stomp out those unauthorized players, for each one killed a bunch of new contenders quickly sprung up.

If the recording industry had embraced this as a sign of what people wanted from the early days, it would have been a very different world. They could have joined with the venture capitalists in driving greater investment and trial and error. They could have been seen as great innovators themselves, rather than be in the generally hated position they are in today (compounded by the surprising decision a few years after *Napster* to start suing individuals directly for alleged copyright infringement).

Today, a dozen years later, we are just starting to see the kinds of innovation that should have been in the marketplace right after *Napster*. The heir apparent to *Napster* (both in technological basis and in leadership) today is Spotify, a service that uses peer-to-peer technology to build a *licensed* music player that lets people listen to most of the

26. MATT MASON, THE PIRATE’S DILEMMA: HOW YOUTH CULTURE IS REINVENTING CAPITALISM 35–38 (2008).

27. CLAYTON M. CHRISTIANSEN, THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL 173–74 (1997).

28. See Carrier, *supra* note 1, at 925–30.

songs they would want to hear either on a free-with-ads basis or for a small monthly fee without ads (and with some other features).

The ability of this kind of innovation to help the industry move forward is clear. It is instructive to look at Spotify in Sweden, where the company is based.²⁹ Sweden was also the initial home of The Pirate Bay,³⁰ considered by many in the legacy entertainment business as enemy number one when it comes to copyright infringement online. Rates of infringement in Sweden were quite high as The Pirate Bay's popularity soared (in part due to a highly publicized raid by the Swedish government, at the urging of U.S. diplomats).

After Spotify was launched in Sweden, however, a funny thing happened: music infringement among young people plummeted.³¹ Surveys showed that the percentage of people using infringing sites for music dropped to around 20% in Sweden, while Spotify shot up to 40% within two years after the launch (and it is now near 50%).³² Some have argued that this decline was, instead, due to stronger copyright enforcement laws in Sweden, but, if that were true, we would see similar declines across other copyright-intensive industries. Yet, in the software field, which has been a strong proponent of greater enforcement as well, infringement rates showed no change at all over the same period.³³

From this, it seems clear that it was the innovation in the form of Spotify that resulted in declines in music infringement. And yet, so many of the actions of the record labels have been to block or slow down that kind of innovation. While unlike so many others in the space Spotify has been able to survive so far, the labels demanded huge upfront payments and a large chunk of equity, similar to the demands from others as well. And, as in past cases, there have been indications that the labels are seeking ever higher royalties from Spotify as well.

29. Ben Rooney, *Berlin's Coolness versus Stockholm's Experience*, WALL ST. J. (Dec. 5, 2012, 3:31 PM), <http://online.wsj.com/article/SB10001424127887324640104578161082340627810.html>.

30. MASON, *supra* note 26, at 55.

31. Ernesto, *Music Piracy Continues to Decline Thanks to Spotify*, TORRENTFREAK (Sept. 28, 2011), <http://torrentfreak.com/music-piracy-continues-to-decline-thanks-to-spotify-110928/>.

32. *Id.*; Mark Hefflinger, *Report: Nearly Half of Young Swedes Use Spotify*, DIGITAL MEDIA WIRE (May 19, 2011, 12:53 PM), <http://www.dmwmedia.com/news/2011/05/19/report-nearly-half-of-young-swedes-use-spotify>.

33. BUS. SOFTWARE ALLIANCE, *SHADOW MARKET: 2011 GLOBAL PIRACY STUDY* 8 (9th ed. 2012), *available at* http://globalstudy.bsa.org/2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf.

WHAT COULD HAVE BEEN

The end result of all this is really quite unfortunate for those who believe in the value and importance of both music and innovation. It seems clear that greater innovation was exactly what the recording industry desperately needed. Yet, thanks to a somewhat reactionary response to the appearance of Napster in the 1990s, and a quick and complete legal victory over that disruptive form of distribution, the record labels have mainly focused on a strategy of lawsuits and intimidation against innovation.

Whenever any bit of innovation calls attention to itself, even if it helps the industry to adapt and to make money, it is often stomped out quickly by ever-increasing demands. This has done little to help the industry really embrace what the technology allows. While we see brief glimmers of hope in new services, it is unclear if any of them will ever truly be profitable under such burdens.

Furthermore, we have clearly lost out on tremendous innovations that never even moved forward as both investors and innovators realized it just wasn't worth trying. Considering that nearly every innovation that the entertainment industry has warned would destroy it due to piracy (at different times it has declared radio, television, cable television, the VCR, the DVR, the MP3 player, and Internet video as being massive threats to the future of the industry) has later turned out to be a huge boost to the bottom line, it is unfortunate that these other, unknown innovations have been effectively stymied.

In 1982, the head of the Motion Pictures Association of America, Jack Valenti, told Congress, "I say to you that the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone."³⁴ It was a tiny four years later that revenue from home video surpassed revenue from the box office for the movie industry.³⁵

Allowing the innovation to happen had tremendous positive impact for the industry who fought it, as well as movie makers and the general public. Just think what a different world we might live in today if the same had happened in the music industry, and the record labels had

34. *Home Recording of Copyrighted Works: Hearing on H.R. 4783, H.R. 4794, H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705 Before the H. Comm. on the Judiciary, 97th Cong. 8 (1982)* (testimony of Jack Valenti, President, Motion Picture Association of America, Inc.).

35. Home video revenue (both rentals and sales) in 1986 was \$4.38 billion; box office revenue was \$3.78 billion. *Industry History: A History of Home Video and Video Game Retailing*, ENTERTAINMENT MERCHANDISE ASSOCIATION, <http://www.entmerch.org/press-room/industry-history.html> (last visited Apr. 21, 2013).

embraced Napster when it had the chance back in the late 1990s. The world would likely be a very different, more innovative place.