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Technology, the Internet and the Evolution of Webcasters...Amazon Revisited

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Technology, the Internet and the Evolution of Webcasters...Amazon Revisited

TECHNOLOGY, THE INTERNET AND THE EVOLUTION OF WEBCASTERS...
AMAZON REVISITED

Jessica Michelle Ciminero, Esq. *

INTRODUCTION.....110

 I. *Intellectual Property Issues that Result from a Shifting Landscape*.....110

 A. Background: Legal Definitions – The DPRA & DMCA.....111

 1. Music Copyright Law: Licensing113

 II. *The Revolution of Digital Music Distribution: Webcasters Versus Traditional Radio*.....115

 A. Amazon Music Unlimited – Alexa, Will Amazon Win the Battle Over Digital Music
 Distribution?117

CONCLUSION: EVOLUTION.....119

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I. INTRODUCTION

With advances in technology, Internet music distribution services are in a constant state of change with new services being introduced to the market, and current services either striving to maintain their dominance or attempting to catch up. This article will discuss the various methods of digital music distribution, as well as the intellectual property issues that result from this shifting landscape. This article will revisit Amazon's position post launch of Amazon Music Unlimited in 2016 and analyze how this may impact the (r)evolution of webcasters.

II. INTELLECTUAL PROPERTY ISSUES THAT RESULT FROM A SHIFTING LANDSCAPE OF MUSIC DISTRIBUTION

It is increasingly evident that more and more obstacles will surface “when anything based on precedent and tradition, as well as [resistance] to change, comes face to face with technology.”² Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (DPRO)³ and the Digital Millennium Copyright Act of 1998 (DMCA)⁴ in an attempt to align copyright laws with the increasing trend toward online music services as “part of a general strategy of control over access to digital content.”⁵ The DMCA “created a new species of legal rights, sometimes called ‘paracopyright,’”⁶ which provides that “[n]o person shall circumvent a technological measure that effectively controls access to a work protected under this title.”⁷ Nonetheless, despite efforts to bring the law up to speed with a technological world, the reality is such that “technology advances faster than the law,”⁸ and because of this there exists an inherent “lack of understanding and clarity as to how the law should be, or is, applied to new sets of facts.”⁹

² Karen M. Lee, The Realities of the MP3 Madness: Are Record Companies Simply Crying Wolf?, 27 RUTGERS COMPUTER & TECH. L.J. 131, 158 (2001).

³ See generally Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336 (1995).

⁴ See generally Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998).

⁵ Jack M. Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society, 79 N.Y.U. L. REV. 1, 18 (2004).

⁶ Id.

⁷ 17 U.S.C. § 1201(a)(1)(A).

⁸ Megan M. Carpenter, Space Age Love Song: The Mix Tape in a Digital Universe, 11 NEV. L.J. 44, 46 (2010).

⁹ Id. at 47.

The more that copyright law looks like an old man unable to keep up, the further those opposing viewpoints become entrenched. As notions of copyright become demonized, myths proliferate; including that copying music for any reason is bad. These gross misunderstandings of the law are harmful. . . . We are the consumers and creators of content, and they are supposed to be the law – the essential purpose of which, ironically, is to support the creation and development of that content.¹⁰

A. BACKGROUND: LEGAL DEFINITIONS – THE DPRA & DMCA

The DPRA provides definitions pertinent to music streamed via the Internet. First, a digital transmission is defined as one that is “in a digital or other non-analog format,”¹¹ and a digital audio transmission is one “that embodies the transmission of a sound recording.”¹² The DPRA also defines a digital phonorecord delivery as “each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording.”¹³

Classifying the distribution method of digital audio transmissions as streaming or downloading is material for purposes of copyright law and determines various legal implications, such as its licensing requirements, which will be discussed below. A download is “a complete transfer of audio content from the [I]nternet onto a computer hard drive” granting the user the capability of listening on demand.¹⁴ Streaming, on the other hand, is a “continuous transmission of music over the Internet in real time so that listeners hear the music as it is transmitted to them from a website or other source.”¹⁵

Streaming then gets broken down further into interactive versus non-interactive classifications. The DMCA defines an interactive service as “one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is

¹⁰ *Id.*

¹¹ § 5, 109 Stat. at 348; see also § 101 (defining transmit: “to communicate . . . by any device or process whereby images or sounds are received beyond the place from which they are sent.”).

¹² § 3, 109 Stat. at 343.

¹³ § 4, 109 Stat. at 348 (specifying that it “does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.”).

¹⁴ Shane Wagman, *I Want My MP3: Legal and Policy Barriers to a Legitimate Digital Music Marketplace*, 17 J. INTELL. PROP. L. 95, 100 (2009).

¹⁵ David J. Moser & Cheryl L. Slay, *MUSIC COPYRIGHT LAW* 252 (2012).

selected by or on behalf of the recipient.”¹⁶ By contrast, with a non-interactive service, “the user experience mimics a radio broadcast . . . [and users] are provided a pre-programmed or semi-random combination of tracks, the specific selection and order of which remain unknown to the listener.”¹⁷ Next, there is a breakdown of subscription versus non-subscription based music services. The DMCA’s definition of a subscription service is one “that performs sound recordings by means of noninteractive audio-only subscription digital audio transmission”¹⁸ and a non-subscription transmission as:

made as part of a service that provides audio programming consisting . . . of performances of sound recordings . . . if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is *not* to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.¹⁹

Webcasters exist in various shapes and forms falling within the above-mentioned defined categories. Traditional Internet webcasters play music “solely to an Internet audience and . . . [are] not interactive or on-demand.”²⁰ However, most noteworthy are personalized Internet webcasters, which are on-demand, interactive or subscription-based.²¹ This type has been coined the ‘celestial jukebox’ – “a technology-packed satellite orbiting thousands of miles above Earth, awaiting subscriber's order – like a nickel in the old jukebox, and the punch of a button – to connect him to any number of selections from a vast storehouse via a home or office receiver.”²²

¹⁶ § 405, 112 Stat. at 2898; see also § 405, 112 Stat. at 2899 (defining a transmission: “either an initial transmission or a retransmission.”).

¹⁷ Sugo Music Grp., FAQ / WHAT IS NON-INTERACTIVE DIGITAL STREAMING (INTERNET RADIO)?, <http://www.sugomusic.com/faqs/what-is-non-interactive-digital-streaming-internet-radio-2/> (last visited Apr. 29, 2017).

¹⁸ § 405, 112 Stat. at 2899 (offering “a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis” for promotional purposes is permitted).

¹⁹ § 405, 112 Stat. at 2898 (emphasis added).

²⁰ Raffi Zerounian, *Bonneville Int’l v. Peters*, 17 BERKELEY TECH. L.J. 47, 53-54 (2002) (explaining some webcasters have a “predetermined format,” while others “have skip forward functions and playlists.”).

²¹ See id. at 54; see also Carpenter, supra note 8, at 50 (noting additional features, such as playlists that can be made and shared “through iTunes or other websites such as Mixcloud, tracks.com, Playlist, Opentape . . . and MixTape.me.”).

²² Paul Goldstein, *COPYRIGHT’S HIGHWAY: FROM GUTENBERG TO THE CELESTIAL JUKEBOX* 199 (Hill & Wang 1994).

Significantly, no permanent copy of the media is stored on a user's computer with these streaming jukeboxes, but rather they produce ephemeral copies – “temporary, buffer copies” – stored on the computer's RAM (random access memory).²³

1. MUSIC COPYRIGHT LAW: LICENSING REQUIREMENTS

“In a society where cultural revolutionaries often rail against ‘the Man,’ copyright law itself is portrayed as ‘the Man.’”²⁴ In order for webcasters to operate legally, they must assess which licenses are required to be secured for two copyrights under 17 U.S.C. § 102(a) – for the underlying musical composition as well as for the sound recording. Because the musical composition is a copy under the Copyright Act, the exclusive rights that attach include the rights of reproduction and public distribution.²⁵ Sound recordings, however, are treated differently and are afforded the right of public performance “by means of a digital audio transmission.”²⁶

As mentioned above, the type of transmission an Internet music service offers – downloading or streaming – will determine which type of license(s) must be acquired. § 115 sets forth guidelines to obtaining reproduction and distribution rights to the underlying musical composition (the nondramatic musical works) via a compulsory mechanical license in exchange for royalty rates set by the Copyright Royalty Board.²⁷ Per the statutory language, this license is not available for sound recordings. To reproduce the sound recording, a master use license is required.²⁸ As such, while a copyright owner's public performance right is not triggered by a download,²⁹ services that offer downloading of digital music files are nonetheless required to secure licenses for both the composition as well as for the sound recording.³⁰

²³ Neil Conley, The Future of Licensing Music Online: The Role of Collective Rights Organizations and the Effect of Territoriality, 25 J. MARSHALL J. COMPUTER & INFO. L.409, 430 (2008).

²⁴ Carpenter, supra note 8.

²⁵ § 106(1), (3).

²⁶ § 106(6); see also § 114 (noting the limitations on the § 106(1)-(3) exclusive rights in sound recordings: clause (1) “is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording” and clause (2) “to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality.” These rights “do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds” nor do they “apply to sound recordings included in educational . . . [public broadcasting entity] radio programs” so long as copies of the programs are not publically commercially distributed).

²⁷ See Moser & Slay, supra note 15, at 76-83; see also 17 U.S.C. § 115(a)(1) (stating the “primary purpose in making phonorecords [must be] to distribute them to the public for private use”).

²⁸ The Harry Fox Agency, WHAT IS A MECHANICAL LICENSE?, http://www.harryfox.com/license_music/what_is_mechanical_license.html (last visited Apr. 29, 2017).

²⁹ Moser & Slay, supra note 15, at 255.

³⁰ See Wagman, supra note 14 (noting iTunes as an example: because it functions as a retailer, it “does not pay mechanical licenses directly . . . the record label pays the mechanical royalties instead.”).

Alternatively, streaming music does trigger the public performance right.³¹ Certain streaming services are subject to compulsory licenses and others are subject to negotiated performance licenses, often managed by performing rights organizations³² – licenses for musical compositions managed by ASCAP, BMI, and SESAC and licenses for the sound recordings by SoundExchange.³³ The distinction in licenses is based upon the characterization and nature of the streaming service, primarily whether or not it is interactive.³⁴ A non-interactive webcaster must obtain a sound recording license and a public performance song license.³⁵ Interactive webcasters, on the other hand, are not able to obtain a compulsory license; rather the DMCA sets forth “a statutory right for webcasters to be eligible for a license for copyrighted sound recordings.”³⁶ This distinction was due to Congress’s conclusion that “interactive services were more likely than noninteractive services to cause harm to conventional record sales.”³⁷ The rationale was that consumers’ varied interaction capabilities would lead to the likelihood that they “[would] not buy a recording of the song, whether on a CD or through a digital download.”³⁸ However, this fear might be misplaced, as individuals may also use webcasters as a means to sample music in order to decide whether or not to purchase it.

³¹ Moser & Slay, *supra* note 15, at 255.

³² See *id.* at 108-13.

³³ See generally ASCAP Payment System, <https://www.ascap.com/help/royalties-and-payment/payment/whocollect> (last visited Apr. 29, 2017); see generally BMI and Performing Rights, http://www.bmi.com/licensing/entry/business_using_music_bmi_and_performing_rights (last visited Apr. 29, 2017); see generally SESAC, Licensing FAQs, <https://www.sesac.com/Licensing/FAQs.aspx> (last visited Apr. 29, 2017); see generally SOUNDEXCHANGE, <https://www.soundexchange.com> (last visited Apr. 29, 2017).

³⁴ See Moser & Slay, *supra* note 15, at 126-27.

³⁵ Sugo Music Grp., *supra* note 17; see also Moser & Slay, *supra* note 15, at 76.

³⁶ Webcaster Alliance, Inc. v. Recording Indus. Ass’n of Am., Inc., 2004 U.S. Dist. LEXIS 11993, at *2 (N.D. Cal. Apr. 1, 2004) (citing § 114(d)(2)) (noting further that the “license is ‘compulsory’ as to the copyright holders but ‘voluntary’ as to the webcasters.”).

³⁷ Tyler Hardman, *Webcasting and Interactivity: Problems and Solutions*, 17 B.U. J. Sci. & Tech. L. 290, 297 (2011) (referencing S. Rep. No. 104-128, at 17 (1995)).

³⁸ Conley, *supra* note 23, at 432.

III. ANALYSIS: THE (R)EVOLUTION OF DIGITAL MUSIC DISTRIBUTION: WEBCASTERS VERSUS TRADITIONAL RADIO

With the Internet and new media sources, of which “[t]he past thirty years has seen an explosion,”³⁹ has come momentous changes in how we purchase, share and listen to music. Although Congress expressed a fear of displacement of conventional record sales, in this Digital Age where digital music may become the new ‘conventional,’ the concern becomes whether the music industry would suffer even if there were a complete shift of sales methods. The IFPI Global Music Report showed that by 2015 digital music revenues accounted for 45% of global revenues, whereas physical sales only accounted for 39%.⁴⁰ In fact, this 10.2% increase of digital revenues to \$6.7 billion marked “the industry’s first measurable year-on-year growth in [twenty] years” with global revenues rising 3.2% to \$15 billion.⁴¹

Music Watch had projected that in 2016 “the average music customer in the United States [would] pay about \$67 . . . on recorded music,” which is an increase from the \$55 in 2015, working its way back up to the \$80 seen “around the peak of the CD market” in 1999.⁴² Moreover, according to Nielsen’s 2016 U.S. Year-End Report, on-demand audio and video music streams have increased 39.2% from 310.1 billion streams in 2015 to 431.7 billion in 2016, and with this increase in streaming activity total digital consumption has increased by 8.9%.⁴³ Lastly, as an additional example of the path to this new norm, “2016 saw the first album to chart based solely on streaming activity.”⁴⁴

³⁹ *Fox Television Stations, Inc. v. FCC*, 613 F.3d 317, 326 (2d Cir. 2010), cert. granted in part, 131 S. Ct. 3065 (2011), vacated and remanded, 132 S. Ct. 2307 (2012).

⁴⁰ IFPI GLOBAL MUSIC REPORT 2016: STATE OF THE INDUSTRY 4, 8-9, 11 (2016), <http://www.ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2016> [hereinafter IFPI REPORT 2016] (noting that digital revenues constitute “more than half the recorded music market in [nineteen] markets” and “digital channels now [account] for 66[%] of the market”).

⁴¹ *Id.* at 4, 8.

⁴² Ben Sisario, *Amazon and Pandora to Gauge Music’s Value in the Internet Age*, N.Y. TIMES (Sept. 11, 2016), <http://www.nytimes.com/2016/09/12/business/media/amazon-and-pandora-to-gauge-musics-value-in-the-internet-age.html> (citing data from MusicWatch).

⁴³ 2016 NIELSEN U.S. MUSIC YEAR-END REPORT (2016), <http://www.nielsen.com/us/en/insights/reports/2017/2016-music-us-year-end-report.html>; see also BUZZANGLE MUSIC U.S. 2016 MUSIC MID-YEAR MUSIC REPORT (2016), <http://www.buzzanglemusic.com/us-2016-mid-year-report/> (emphasizing this is “the first period in which streams from audio services like Spotify and Apple Music exceeded video streams from YouTube, Vevo and the like.”); see also IFPI REPORT 2016, *supra* note 40, at 4, 11 (marking another first: the first time the industry has seen streaming become the leading revenue source in the United States with worldwide streaming revenues rising 45.2% representing 43% of all digital music revenues).

⁴⁴ 2016 NIELSEN U.S. MID-YEAR REPORT (2016), <http://www.nielsen.com/us/en/insights/reports/2016/2016-us-music-mid-year-report.html> (noting “Chance the Rapper debuted at #8 in its first week with 57 [million] audio streams.”).

Today's brave new technological world, with its increasingly widespread use of webcasters, offers many advantages to users. With traditional radio, the audience capable of listening is limited, for example by their location to access a particular radio station.⁴⁵ Then came the Internet. "The Internet is not a thing; it is the interconnection of many things – the (potential) interconnection between any of millions of computers located around the world"⁴⁶ and by early 2017 there were over three billion Internet users worldwide.⁴⁷ These billions of Internet users have the option to listen at any time to a vast number of stations being broadcast across the globe.⁴⁸ 1994 marked the beginning of this trend to online streaming of terrestrial radio stations and today there now exist over 400 legal online music distribution services worldwide.⁴⁹ Webcasters provide additional benefits not achievable by traditional radio such as increased access for users and increased exposure for musicians.⁵⁰ As a result of the opportunities revealed by the Internet, "p2p [(‘peer-to-peer’)] users have assembled the ‘greatest library of recorded music ever,’ including many uncopyrighted, unavailable, and out-of-print titles."⁵¹ Since the infamous Napster litigation, peer-to-peer file sharing networks have been trying to persevere and avoid the same downfall. However, even after Napster was shut down, "its roughly forty million users did not sign off – they simply migrated to other file-sharing services."⁵² At a practical level, when one peer-to-peer file sharing service, like Napster or LimeWire, is shut down, another service will soon emerge – and they have, in masses.⁵³

⁴⁵ See Karen Fessler, Webcasting Royalty Rates, 18 BERKELEY TECH. L.J. 399 (2003).

⁴⁶ A. Michael Froomkin, The Internet as a Source of Regulatory Arbitrage, in BORDERS IN CYBERSPACE 129, 130 (1996).

⁴⁷ WORLD INTERNET USAGE AND POPULATION STATISTICS, <http://www.internetworldstats.com/stats.htm> (March 25, 2017) (calculating 3,731,973,423 users on March 31, 2017).

⁴⁸ See Hardman, *supra* note 37, at 292; see also Jon Pareles, With Streaming, Musicians and Fans Find Room to Experiment and Explore, N.Y. TIMES (Dec. 22, 2016), <http://www.nytimes.com/2016/12/22/arts/music/streaming-album-bon-iver-kanye-west-frank-ocean.html> (citing reports from the International Federation of the Phonographic Industry that 68 million people paid for music streaming subscriptions by the end of 2015 and projecting by 2017 the number would rise to 100 million subscribers worldwide).

⁴⁹ Find Music Services, <http://pro-music.org/legal-music-services.php> (last visited Apr. 25, 2017); see also Hardman, *supra* note 37, at 303.

⁵⁰ See Andrey Spektor, How ‘Choruss’ Can Turn Into a Cacophony: The Record Industry’s Stranglehold on the Future of Music Business, 16 RICH. J.L. & TECH. 3 (2009).

⁵¹ Hannibal Travis, Building Universal Digital Libraries: An Agenda for Copyright Reform, 33 PEPP. L. REV. 761, 824 (2006) (quoting Frank Ahrens, Music Industry Reluctantly Yielding to Internet Reality, WASH. POST, Nov. 27, 2003, at E01) (adding that "[f]ile-sharing programs let Internet users do much more than [merely] substitute MP3 downloads for CD purchases, including . . . sample albums before buying.").

⁵² Spektor, *supra* note 50, at P6.

⁵³ See, e.g., 14 LEGAL AND FREE MUSIC DOWNLOAD WEBSITES, BEEBOM, <http://beebom.com/legal-and-free-music-download-websites/> (last updated Sept. 28, 2016); see also, e.g., List of Streaming Media Systems, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_streaming_media_systems (last modified Mar. 31, 2017).

A. AMAZON MUSIC UNLIMITED – ALEXA, WILL AMAZON WIN THE BATTLE OVER DIGITAL MUSIC DISTRIBUTION?

Although an initial response to the question ‘which webcaster will you choose to fulfill your music fix?’ might be Spotify or Pandora (or now Apple Music, perhaps), Amazon Music is the subtle beast that may be inching its way toward the top of this digital music distribution battle. Amazon Music’s driving competitive factor has been its prices since its first launch in 2014 when it bundled its music services Amazon MP3 and Amazon Cloud Player/Cloud Drive into, simply, Amazon Music – which now includes Prime Music.⁵⁴ While Prime Music’s catalog started at around one million, not only has it doubled to “a growing selection of [two] million songs,”⁵⁵ but now Amazon has also introduced its more premium streaming service Amazon Music Unlimited to the market where users can “unlock tens of millions of songs” and new releases every week.⁵⁶

Amazon Prime members can log into their account to purchase nearly anything. With Amazon’s bundled service users can shop, stream television shows, watch movies, and now listen to music. Amazon, with all of these services and features in one convenient location, has itself perfectly situated to out-shine its competitors, especially when taking into consideration its enormous user base – 183 million unique visitors as of March 2017.⁵⁷

⁵⁴ See Chris Welch, Amazon Prime Music is No Spotify Killer, But It Doesn’t Need To Be, THE VERGE (June 12, 2014, 4:00 AM EDT), <http://www.theverge.com/2014/6/12/5802810/amazon-prime-music-hands-on>; see also Ben Sisario, Amazon Pairs Its Speakers With Streaming Music, at a Bargain Price, N.Y. TIMES (Oct. 12, 2016), <http://www.nytimes.com/2016/10/12/business/amazon-music-apple-spotify.html> [hereinafter Sisario, Amazon Speakers] (exemplifying Amazon’s position of strength: “For years, Amazon has . . . [sold] more CDs and vinyl albums than any other retailer.”).

⁵⁵ Id.; Prime Music, <https://www.amazon.com/gp/dmusic/promotions/PrimeMusic> (last visited Apr. 29, 2017).

⁵⁶ Prime Music, supra note 55; see generally Amazon Music Unlimited, <https://www.amazon.com/gp/dmusic/promotions/AmazonMusicUnlimited> (last visited Apr. 29, 2017).

⁵⁷ comScore Rankings, Mar. 2017, <https://www.comscore.com/Insights/Rankings> (placing Amazon ahead of Apple’s 144,968 visitors and Pandora’s 84,173 visitors); see also Douglas A. McIntyre, Amazon’s 182 Million Visitors Among Its Huge Advantages, 24/7 WALL ST. (Dec. 6, 2016, 6:20 AM EST), <http://247wallst.com/retail/2016/12/06/amazons-182-million-visitors-among-its-huge-advantages/>; see also Ben Sisario, Amazon’s Streaming Music Aims for More Casual Listeners, N.Y. TIMES (Nov. 10, 2015), <http://www.nytimes.com/2015/11/11/business/media/amazons-streaming-music-aims-for-more-casual-listeners.html> (citing estimates from the Consumer Intelligence Research Partners that Amazon Prime has 44 million subscribers within the United States).

If users are already paying the minimal \$10.99 per month (or \$99 per year) for the benefits of Prime membership, it begs the question why they would then also pay an additional \$9.99 per month for Spotify Premium, for example, or pay an additional \$4.99 per month for Pandora Plus or \$9.99 for Pandora Premium, when Prime Music offers a very comparable experience at no additional cost.⁵⁸ Prime Music, like the paid subscription version of Spotify or Pandora, offers ad-free, on-demand music with “unlimited skips and offline playback” as well as “playlists curated by [their] music experts, [and] personalized stations to fit every moment.”⁵⁹

If Prime users want to spend an additional monthly expense, they can conveniently remain with the one service and pay only an additional \$7.99 per month (or \$79 per year) to upgrade to Amazon Music Unlimited – where again, its features and benefits are strikingly similar to Spotify, and even Apple Music.⁶⁰ Like Spotify, Amazon Music Unlimited offers users the ability to create playlists, download for offline streaming availability and use an unlimited number of skips.⁶¹ Furthermore, similarly to Apple Music, Amazon Music Unlimited users’ previously purchased music from Amazon will be displayed and stored together with new music from the streaming service in the users’ personal online library. Lastly, in keeping current with our ever-evolving technological world, each of these services have apps for mobile devices, and now where Apple has Siri, Amazon has Alexa and Prime users can listen to music with Amazon Echo, Echo Dot or Amazon Tap.⁶²

⁵⁸ About Amazon Prime, <https://www.amazon.com/gp/help/customer/display.html?nodeId=200444160> (last visited Apr. 1, 2017); Spotify, Go Premium, <https://www.spotify.com/us/premium/> (last visited Apr. 1, 2017); Information About Pandora Subscriptions, <https://help.pandora.com/customer/portal/articles/84834-pandora-one> (last visited Apr. 1, 2017).

⁵⁹ Prime Music, *supra* note 55.

⁶⁰ Amazon Music Unlimited, *supra* note 56; see also Amazon Music Unlimited Family Plan, https://www.amazon.com/gp/dmusic/promotions/AmazonMusicUnlimitedFamily/ref=dm_us_prime_lp_fourpack (last visited Apr. 29, 2017) (offering for \$14.99 per month, or \$149 per year, for a family plan for up to six members, which Apple Music similarly offers); see Apple Music Membership, <http://www.apple.com/apple-music/membership/> (last visited Apr. 29, 2017).

⁶¹ Amazon Music Unlimited, *supra* note 56.

⁶² Prime Music, *supra* note 55; see also Amazon Music App, https://www.amazon.com/gp/b/ref=pe_2756650_210990030_pe_ecg5/?&node=2658409011 (last visited Apr. 29, 2017).

For Echo users, Amazon again has an edge on competitors in terms of price – Amazon’s rate of \$3.99 per month “is far lower than has ever been charged for what is essentially a complete catalog of music online.”⁶³ While a new entrant to this market should strive for a distinguishing feature to set itself apart from the competition (along with ensuring complete compliance with all applicable copyright laws), Amazon is in a position of power in this battle over the digital music market and can instead offer a service that is up to par with its competitors and capitalize on its own pre-established advantages.

IV. CONCLUSION: EVOLUTION

With the advent of music via the Internet, “[t]he more music people are exposed to . . . the greater chance they will find something they like. The more people discover music they like, the more likely they are to purchase that music.”⁶⁴ From cassette tapes to online playlists, not *everything* has changed – it is still just as:

the olden days, [when] boys and girls used to spend hours using double cassette decks to carefully craft mix tapes to share in order to express their innermost longings in an artsy way. It sometimes led to love and inadvertently increased record sales by sharing a little taste of previously undiscovered bands.⁶⁵

What has changed is that in today’s Digital Age we can find webcasters nearly everywhere – competition is thriving, as it should, because after all, “how much do we love this thing called music?”⁶⁶

⁶³ Sisario, Amazon Speakers, *supra* note 54 (adding “one of the most popular commands on the service is simply, ‘Alexa, play music,’ which generates a Pandora-like playlist based on a customer’s past listening.”).

⁶⁴ Carpenter, *supra* note 8, at 72.

⁶⁵ Eliot Van Buskirk, 8 Best Ways to Share ‘Mix Tapes.’ WIRED (Oct. 26, 2009, 6:04 PM), <https://www.wired.com/2009/10/best-8-ways-to-share-mix-tapes/>.

⁶⁶ Press Conference Video: Daniel D’Addario, How Jay Z’s Tidal Press Conference Showed He’s Out of Touch, TIME (Mar. 31, 2015), <http://time.com/3765268/tidal-music-jay-z-beyonce/>.
