

**FREE THIS CD!!!**  
**The FAM Manifesto**

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**v1.3**  
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## INTRODUCTION

The Music Industry is in a state of crisis. Business models that once supported a growing \$40 billion industry are now obsolete. Sales of recorded music are plummeting, while sales of recordable media make consistent gains. Artists are in revolt, demanding that they be compensated fairly for their work, or at the very least, have recourse to leave exploitative recording contracts.<sup>1</sup> At the same time young people, once the lifeblood of both the talent and consumerist frenzy that fed the ever-growing, behemoth major labels, have taken their seemingly insatiable desire for content to the Internet, where music flows almost as freely as manna.

To observe the music business today is to see the sad image of an aged warlord, wounded in battle, still defending himself with eyes gleaming, sweat desperately clothing fevered skin, teeth bared in a grimace worthy of the dragons of yore...and guns blazing. He will fight to the end. Too bad he doesn't realize he's already dead.

In the throes of ignominious demise the Recording Industry Association of America has identified the root of The Industry's woes. It is not over-priced product and inefficient business practices, the result of years of price-fixing and limited competition.<sup>2</sup> Neither is it fewer annual releases and low-quality product.<sup>3</sup> No. The problems of the record business have, in fact, nothing to do with the biz itself. The blame can be and has been squarely laid at the feet of those who ravage the high and turbulent seas of technology and sound: Pirates!

We first envisioned FAM back in 2001, after recognizing the hopeless state of the Recording Industry, a business that has now resorted to suing children for doing what technology has made natural. At the time our first company, ASAFO Productions was but a feisty little startup, determined not to go "pop" along with the rest of the Internet bubble. We wanted to make music that meant something to people – music that meant something to us. We wanted to empower other artists to not only make a living making music they believed in, but also to do so outside of the exploitative arrangements typical of most record deals. We started out "conducting the business of music for independent music professionals." We wanted that music to be heard and we wanted to make it big.

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<sup>1</sup> Future of Music Coalition. "Major Label Contract Clause Critique." 3 Oct. 2001.

<<http://futureofmusic.org/contractcrit.cfm>>

<sup>2</sup> MNDaily.com. "Court Finds Record Labels Plotted to Raise CD Prices." 15 Oct. 2002.

<<http://www.mndaily.com/article.php?id=3590>>

Thurston, Baratunde. "The CD Price Fixing Settlement Explained or How Oligopolies Invest."

<<http://www.mndaily.com/article.php?id=3590>>

<sup>3</sup> In an article in Sound and Vision Magazine, James Wilcox cites George Ziemann of azoz.com who argues that the recent decline in record sales is a product of higher CD prices and fewer commercial releases, as opposed to a result of downloading. Wilcox also notes the effect of consolidation in the radio promotion market on reducing consumer choice in music.

Wilcox, James K. "Where Have All The CDs Gone?" Sound and Vision Magazine. June 2003. Sep. 2003  
<[http://www.soundandvisionmag.com/article.asp?section\\_id=2&article\\_id=453&page\\_number=1](http://www.soundandvisionmag.com/article.asp?section_id=2&article_id=453&page_number=1)>

But we were broke. We couldn't afford to pay ourselves salaries, much less invest in developing talent. We spent every drop of our savings in surviving the 2000 market crash that saw so many Internet dreams go up in a blaze of imagined glory (and money). Our potential investors went out of business, our friends hightailed it back to school and Corporate America, and our parents couldn't afford to lend us any more loot.

Yet for some reason we simply would not give up. Call it tenacity, courage, or plain stupidity; we just couldn't call it quits. "We? The radical ASAFO warriors who were destined to fundamentally alter our world and make it a safer place for music? Give up?" Hell no.

Did I mention that we were broke? And since we were effectively bootstrapping our way into the world of business, we quickly learned to save every penny we could. There were lots of ways to do this. Rather than renting office space, we converted part of our house into an office. Rather than each of us paying separate rents, we all moved back under the same roof and business truly became personal.

And as opposed to spending a wad of cash we didn't have on installations of Microsoft network software, we ran GNU/Linux. Red Hat was selling it for a fraction of what Windows cost and although we could have downloaded and configured it ourselves, we splurged and spent the \$60 for the convenience of a couple of shrinkwrapped CDs.

It was thus that ASAFO came into being: a business born of a tenacious dream for a better world for musicians and cradled early in the arms of the Free Software Movement. From these revolutionary roots sprang FAM.

Before we explore FAM and the form of the revolution it represents, let's discuss human consumption of music. The Music Industry as it currently exists is based largely upon an artificial experience. In a "natural" state, you or I could go hear (and hopefully enjoy) a musical performance, but once the show was over, it was over. If either of us had the particular faculty, we might have been able to reproduce the performance on our own from memory or perhaps with the aid of a decent system of notation. The fact remains that at the end of the show, the performance would only continue to exist in the hearts & minds of listeners. You simply could not take it with you.

Technology has made it possible for a person to play a facsimile of a musical performance outside the immediate context of that performance. And as the technology has improved, we have been able to refine this portable performance phenomenon so much that many artists today sound better on wax than they do live.

We should acknowledge that it is wholly unnatural to go home with a musical performance. Technology has made this anomaly the norm. It is around this "technologically-facilitated-anomalous-phenomenon" of recorded music that today's business of music is based.

Technology has continued to advance, but the modes and structures of business that it has given rise to have remained largely the same for the greater part of the 20<sup>th</sup> Century. With each innovation in music-related technologies we have seen consistent resistance to change from the recording industry. Radio was to be the death of the record biz; and the audio cassette was to labels what VHS was to the movie studios: more death.<sup>4</sup> Yet people still buy and listen to music, just as they buy and watch films, and the major labels are just as dependent upon radio airplay as the studios are upon video sales and rentals. Advances in technology have forced the Entertainment Industry to adapt, but since the advent of recording, there has been no technology that has required a fundamental shift in our understanding of what music is and how human beings consume it.

Until now.

Technology has radically expanded our artificial world of music consumption. Now not only can we listen to a particular musical performance over and over again at will, but any of us can readily copy and share it with friends and strangers over small or vast distances without so much as rising from our seats. It is now possible to replicate that performance without noticeable loss of fidelity from the original recording, and to access oceans of musical works with a few clicks of a mouse.

Innovation has fundamentally altered the nature of the recording business. It is a business born of the development of recording technology, and one predicated upon control over access to this technology, control over distribution of the products of this technology, and control over the pricing and promotion of said products. Today's technology has evolved to a point that has removed this control from the Record Industry. And just as the old Industry was born of the inevitable advance of technology, so must a new World of Music be brought forth. It is in answer to the call of innovation then, that we present FAM: a system of licensing music that does not seek to turn back the clock on technological advance, but to embrace it. The concept is radical in its simplicity and revolutionary in its implications for the production, marketing and consumption of music.

This book is an introduction to a new music industry. It was not written for the RIAA, nor was it written for Sony BMG, "Warner-Bronfman", Bronfman's Warner, Dreamworks-Universal or whatever reconfigured conglomerate hopes to "ride out" the wave of terror that has struck to the core of the Music Industry. This book is neither for the A&R men nor the accountants. It's not a book for those who walk the corporate halls that have claimed what once was music as their wholly owned right and product. Neither is it for those artists who wish the Internet would behave so they could go back to the old-fashioned way of making money: piecemeal and at the whim of a company to which they owe their lives, livelihood and more. This book was not written for any of these people, though some progressive minds among them will likely cop a copy, read and re-read and think: "hey...this makes sense...we can make money from this" only to be shut down or ignored by a higher-up too invested in the world as it was to imagine it as it could be.

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<sup>4</sup> Consumer Electronics Association. "VCR." *Digital America*.  
<[http://www.ce.org/publications/books\\_references/digital\\_america/history/vcr.asp](http://www.ce.org/publications/books_references/digital_america/history/vcr.asp)>

This book was not written for “them.” “They” will eventually come around of necessity or they won’t, and they’ll be out of the game. This book was written for the so-called “pirates.” For the college kids who want more and better access to more and better music. For the DJs who routinely throw every license known to woman and man to the winds in search of that right mix to keep the party movin’. This book is for the hustlers, who keep two fingers on the pulse of public opinion and move music to the masses on the real street no matter what may be said on Wall Street. It is for the “bootleggers” of the developing world who make money in ways and places Tower Records & HMV couldn’t stand to do business. This is for the geeks who saw a different vision of “free” and who knew that a GNU world was in the making. It’s for the teenagers who will break every code ever created to “protect” the vibration of airwaves, and who thus put lie to the myth of DRM.<sup>5</sup>

Finally this book was written by and for the Artists; those impassioned souls who make music not for the sake of fame or fortune, but because it means something. It was written because we ultimately believe they deserve to be able to make a living making good music.

In the recent film “Pirates of the Caribbean,” the evil captain of the dread pirate ship the Black Pearl delivers an interesting line when he reveals the true nature of the infernal crew he commands. He tells their captive that “there be monsters here.” The Record Industry has equated the sharing of music between music lovers with the murderous actions of brigands on the high seas. But unlike the film, if you look at today’s so-called “pirates” closely, you will soon realize that most resemble neither thieves, nor murderers, but the future. They look like you and me. In the film we realize that one man’s pirate ship, is another’s freedom.

This is the statement of those who would set music free:

We who stand for Freedom, for Access, for beautiful, funky, creative, intimate and radical Music, present this statement to the world: That music should be readily accessible to all who would enjoy its spiritual and material fruits. That artists should be respected and fairly compensated for their work. That more than a select and elite few should be able to make a living, making, mixing and moving music.

This is the FAM Declaration. We are the Future.

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<sup>5</sup> Digital “Rights” Management more accurately referred to as “Digital Restrictions Management” – technological solutions designed to limit usage and reproduction of digital media.

## Chapter 1 : The Music Biz - Then & Now

Ten years ago the world of music was far different from what it is today. Few of us had heard of MPEG-1 Layer III (aka MP3). The Internet had been in existence for decades, but the newly created World Wide Web had not yet launched the average citizen into cyberspace. Grunge had shaken the creative dust off of a stagnant Rock scene and Hip Hop was in the midst of making underground music mainstream.

Ten years ago was a good time to be a record label. The Telecommunications Act of 1996 had not yet been passed and thus had not given birth to today's grossly consolidated radio market. This meant a label could get a tune on the air for a fraction of the state-sanctioned payola they owe ClearChannel today.

Ten years ago it still cost a lot of money to make a record. But not as much money as it costs now. Music videos were important, but they were produced on a smaller, cheaper scale. Promotion was important, but independent labels still played a key role in finding new talent, serving niche markets and bringing the stars of tomorrow out of obscurity. Majors could invest in "proven" talent, rather than building brands from what would seem like scratch.

These were the days when a record did not have to go platinum to make money. These were the days before industry consolidation had helped send the overhead of running a major label into the stratosphere and put the suits in charge of making music. These were the days when labels like Motown, Def Jam, Island and Geffen were still more "indy" than they were "Universal," and the days before artists like Ani DiFranco and Master P had proven unequivocally to the world that artists could be independent too.

In 1993 it cost a lot of money to make a record, to distribute it and to promote it. The costs were so high that the idea of an artist sustaining a career making original music outside of the aegis of a record label was even more laughable to most than the concept of "copyleft" music is now. The labels had the money to make music viable from start to finish, and as such they were the only game in town.

As the 1990s progressed, the labels would see record growth. With the advent of the CD as the first popularly accepted digital format, consumers moved to update their old tapes and LPs with this new, convenient, high-fidelity alternative. Spurred by the major labels' decision to effectively stop producing vinyl, CD sales in the US rose from 800,000 copies in 1983 to 288 million in 1990.<sup>6</sup> By 1999 domestic shipments of CDs had surpassed 900 million.<sup>7</sup> Despite periodic consumer griping over price and quality of product the labels

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<sup>6</sup> Kot, Greg. "Twilight For the CD" *Chicago Tribune - Online Edition* 30 March 2003. March 2003. <<http://www.chicagotribune.com/technology/chi-0303290329mar30,1,5203554.story>>

<sup>7</sup> RIAA 2003 Yearend Statistics <<http://www.riaa.com/news/marketingdata/yearend.asp>>

were releasing, the 90s saw the record business grow to a nearly \$40 billion a year business.<sup>8</sup>

Despite the overall growth of the record business during the 1990s, artists continued to suffer under exploitative contracts. Such high profile artists as Toni Braxton and TLC declared bankruptcy in the 90s, despite selling millions of records.<sup>9</sup> At the same time, advancing technology made it increasingly possible for artists of all stripes to record high quality music at significantly reduced costs.

Technology paved the way for a series of other crucial changes in the music marketplace. The combination of convenient CD reproduction equipment with increasingly affordable recordable media gave a major boost to “bootleggers” (aka “more pirates”) of all stripes. Consumers could readily create new playlists from their existing CD collections and burn them onto blank discs. Commercial “bootleggers” large and small, could now not only mass produce their product, but do so cheaply and at high-quality.

The rippling effects of advances in CD reproduction technology alone might eventually have pushed the major labels to amend their business models. Unfortunately for these companies, and most fortunately for the rest of us, a series of other technologies conspired to further test the limits of the Record Industry’s entrenched practices. First, the birth of the World Wide Web provided a cheap promotion and distribution vehicle for artists. The Web would prove to be a revolutionary force in business and society as a whole, but the recording industry was slow to recognize and capitalize upon its potential.

The development and subsequent popularity of the MPEG Audio Layer-3<sup>10</sup> codec would again catch the Recording Industry on its heels. The rise of the aptly-named, but ultimately ill-fated MP3.com in the late 90s would become a symbol of the industry’s inability to change and a harbinger of its predilection for strong-arm legal tactics – a tendency that would ultimately and ruthlessly target children and corporations alike. The majors saw MP3 technology as a threat to their hold on distribution. In tandem with their legal mugging of the first in a series of promising (though perhaps misguided) startups, launched the Secure Digital Music Initiative, better known to the world as SDMI and to we at ASAFO, and many of our peers, as “the dumbest thing ever.”

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<sup>8</sup> Record sales in the US alone grew from \$10 billion in 1993 to \$12.24 billion in 1997, accounting for almost a third of the \$38 billion global market.

Krasilovsky M. & Shemel S. *This Business of Music: The Definitive Guide to the Music Industry*. New York: Billboard Books, 2000.

<sup>9</sup> Some speculate that these artists filed for bankruptcy not simply due to financial mismanagement, but rather as the only recourse to escape contractual terms that did not fairly compensate the artists for their work:

Collins, Wallace, Esq. “Bankruptcy: An Extreme Remedy For Unfair Contracts.” *Outersound University* < <http://www.outersound.com/osu/contracts/bankrupt.html>>

<sup>10</sup> While revolutionary in its impact on the music biz, MP3 doesn’t provide truly CD-quality audio and is today only one of many formats for encoding music. A higher quality alternative is the OGG Vorbis format, which is also non-proprietary. Visit <http://www.vorbis.com/> to learn why Vorbis is better.

The goal of SDMI was to develop a common, secure and unbreakable codec for the transmission of digital music – sound familiar? It is the solution the majors are still seeking today, years later. The Recording Industry’s investment in this project would eventually return abject failure amidst infighting among the majors and the general “difficulty” (read impossibility) of developing an impermeable means of securing the transmission of music.

While SDMI was in the midst of wasting the hard-earned money of misguided multinational corporations, a formidable new gnat arose to annoy the hell out of the majors and introduce music lovers to a new way of experiencing music online: sharing it. The product of the vision and ingenuity of 19-year-old Shawn Fanning, Napster quickly became the killer app of online music, replacing MP3.com as resident media darling and Recording Industry punching bag. The service allowed people to swap music via the company’s central servers. With a peak membership in excess of 50 million people, Napster was an unprecedented illustration of the potential of the Internet and related technologies to essentially alter the nature of human consumption of music. In response to this profound insight into not only what consumers want, but how to give it to them, the Recording Industry Association of America (RIAA) proceeded to uncompromisingly destroy the fledgling juggernaut. On July 11, 2001 a federal judge ordered Napster to cease enabling file-transfers through its service unless it could achieve a 100% effectiveness rate in identifying and filtering copyrighted music from its servers<sup>11</sup>. The now emaciated startup had achieved a 99% effectiveness rate. It was thus that the Recording Industry effectively strangled one of the most promising ventures of the Internet age. It was also thus that the Recording Industry effectively sealed its own fate.

With the fall of Napster arose a number of pretenders to the throne of file-sharing. Services like Aimster, Grokster, Morpheus, Limewire, Bearshare and Kazaa sought to pick up where the pioneer had been thrown off the digital music train. But with one key difference. These new services employed peer-to-peer (P2P) file-sharing technologies, which unlike Napster, did not transfer music through centralized servers, but rather enabled users to share directly between each other’s computers. While their catalogue and usability did not rival that of Napster, its demise spurred music fans to migrate to these new options. The increasing availability of high-speed broadband Internet connections, particularly on college campuses served to facilitate consumer use of P2P. Unfortunately for the majors, the P2P services proved more difficult to kill in the courts than was their predecessor. In 2003, courts in the United States and Europe would find that P2P services like Kazaa were not liable for the content that consumers shared over their networks.

In destroying Napster the RIAA unleashed a much more formidable adversary in P2P. In the final quarter of 2003 Kazaa alone would boast 3 to 4 million users at any given time. At first release of this book, the industry has not yet given up its pursuit of legal recourse against these companies, and we don’t anticipate that it will any time soon. Recognizing the losing nature of the battle, however, the Recording Industry has determined to pursue

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<sup>11</sup> <http://web.utk.edu/~smarcus/History.html>

a softer target: you. In the wake of the April 2003 MGM v Grokster decision in which a federal judge ruled that the makers of Morpheus, Grokster and Kazaa software products were not liable for copyright infringement by their users, the RIAA decided to pursue lawsuits against these individual users. Having already bullied ISPs into releasing the information of individual users without a full subpoena process,<sup>12</sup> the record companies used their DMCA-enhanced<sup>13</sup> powers to pursue individual file-sharers.

This brings us to the present day. A day when multi-billion dollar companies sue 15-year-old girls for doing what technology has made natural.<sup>14</sup> A situation that could have been early averted had the industry had the foresight to buy and contain Napster, rather than destroy it and in so doing unleash the even greater potential of its peer-to-peer offspring. And having learned little from their previous experience these companies now seek to destroy not only the P2P services, but also the financial and legal futures of their customers, and in so doing they give fuel to the nascent fires of anonymous P2P.

Much then has changed in the Recording Industry over the past 10 years. The table below illustrates some of the key elements of this biz that have shifted and some key things that have not:

	10 Years Ago	Today
<b>Cost of Production</b>	High	Low
<b>Cost of Distribution</b>	High	Low
<b>Cost of Promotion</b>	High	<b>High</b>
<b>Control of Pricing &amp; Access</b>	Content Owners	? <sup>15</sup>
<b>Industry Dependence on Catalog Sales</b>	High & Thriving	In Jeopardy
<b>Artist Revenue from Record Sales</b>	Low	<b>Low</b>
<b>Overall Industry Revenue</b>	Growing	Declining

Note that while the costs of both production and distribution have diminished, the cost of promotion remains high. It is still the primary barrier to entry into the mainstream of this business for independent artists. It is in response to this challenge of promotion that we

<sup>12</sup> this decision was subsequently reversed in a Dec appellate court ruling. See <http://www.epic.org/privacy/copyright/verizon/> for more details.

<sup>13</sup> The Digital Millenium Copyright Act radically enhanced the power of copyright holders to pursue copyright infringement in digital media.

<sup>14</sup> Furia, Joe. "Local Teen Singing The Blues After Being Sued For Downloading Music." *Komo 4 News*. 17 Nov. 2003. <http://www.komotv.com/news/story.asp?ID=28363>

<sup>15</sup> Control of pricing and access no longer rests with content owners. While the rise of P2P demonstrates this it also leaves the question "who," if anyone, is now in control. Time will tell whether "The Marketplace" will become the dominant force in this arena.

present FAM, and a vision of a different World of Music.

## Chapter 2 : What is FAM?

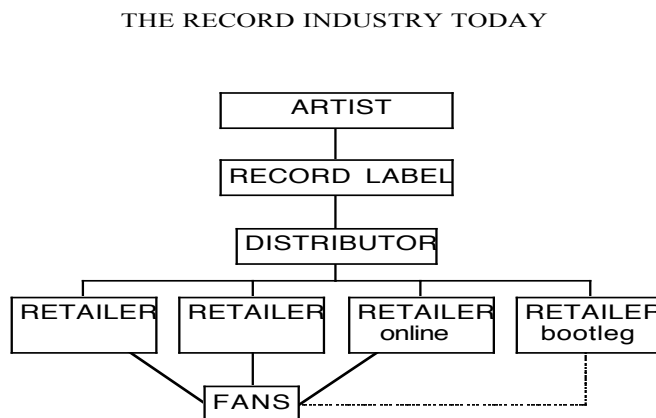
Currently when an artist signs to a major record label, they grant the label exclusive rights to the master recordings produced while the artist is under contract. This means the label has the sole right to manufacture and distribute any recordings the artist makes during the term of her contract.

FAM Licensing fundamentally alters this model. Rather than grant exclusive rights to an external party, the artist keeps the copyright to her recorded work and issues it under an umbrella license. Interested parties may then distribute this work for commercial or non-commercial purposes without paying royalties to the copyright holder.<sup>16</sup> Such parties might include record labels, publishers, technology companies, students, schools, promoters, retailers, independent distributors, or any variety of people and institutions.

An artist releasing a record under the FAM License would neither cease to sell recorded music nor to have their recorded music sold. They would be granting others the non-exclusive right to distribute their music and would at the same time retain the right to do so themselves.

The purpose of FAM Licensing is not to give away music for free. It is to reduce the costs of promoting talent, by incentivizing others to invest in this promotion. It assumes a shift in the perceived value of recorded music, from the actual recorded product, to the associated brand – a shift that is already in increasing evidence in the music industry and which is today necessitated by advances in technology.

At its root the FAM model alters the nature of music distribution in a manner that works with, rather than against shifting technology. The following chart illustrates a simplified version of the current distribution model in music:

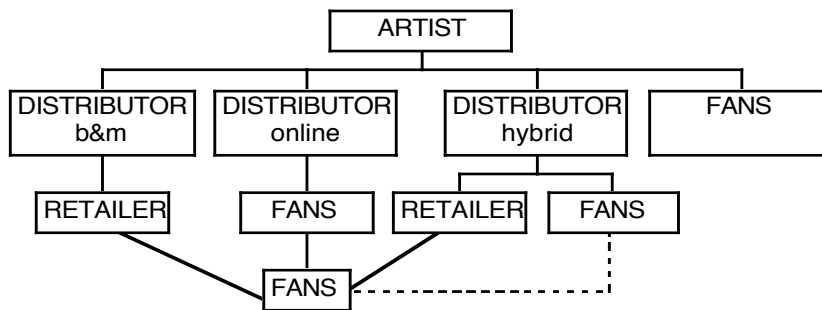


<sup>16</sup> Certain key restrictions apply. We will explore these further in Chapter 7: “What Does FAM Do?”

Note that the Label has a singular relationship with a distributor. Here we are assuming a major label, which in fact owns a distribution company<sup>17</sup>.

The next chart is an example of how distribution would be structured under the FAM model:

THE RECORD INDUSTRY UNDER FAM

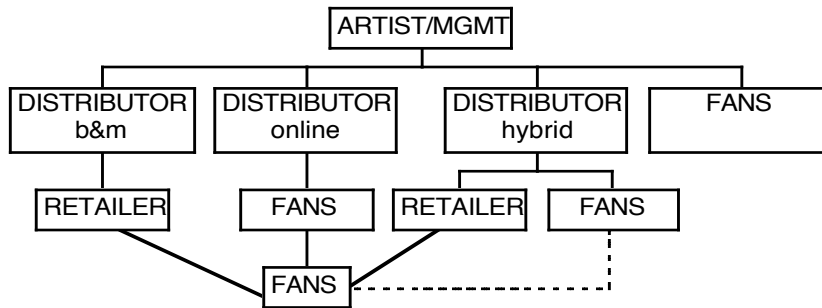


There are a few obvious differences in this system, one of which being the elimination of the “bootleg” retailer. Another is the distribution channel that exists between Fans. Under the FAM system, both “bootlegging” and filesharing would be incorporated as organic parts of the business.

Another obvious difference in this model is the absence of the record label. The record label is not eliminated under this system, but its functions are distilled thereby changing the nature of these companies. As the major labels currently maintain integrated distribution businesses, under FAM we recognize that a “distributor” may in fact be owned by what is today a major. The relationship between artist and label, however, would be fundamentally altered. Labels would no longer have exclusive rights to the distribution of an artist’s creative output. Rather, they would enter into new types of relationships with artists, that might be significantly less intimate than in the current system or significantly more so. In the former scenario labels would focus more directly on the distribution of music and less on promotion and artist development, and in the latter they might become something closer to “business partners” much in the way that managers currently operate today. Taking this evolution into account, we might also then consider the FAM marketplace to be structured as follows:

<sup>17</sup> These label-owned distribution companies do enter into deals with foreign sub-distributors.

## THE RECORD INDUSTRY UNDER FAM



In reality we anticipate that the FAM system will initially exist in tandem with a number of other models, as it does in various permutations today. We believe that ultimately the combination of technological advance and the advantages of FAM Licensing will eventually result in the bulk of the old music industry either dying out or becoming a part of a new marketplace dominated by FAM and other Free Music licenses.

In the following chapters we will explore the significance of the proposed shift in the structure of music distribution and in the subsequent change in the relationship between artists and labels.

## Chapter 3 : The Artist's Case

Under the FAM Licensing model, money is made in much the same ways it is made in the Music Industry today. The key difference is that the sale of pre-recorded material is no longer at the core of the revenue model. This is not as radical a shift as it might appear to be. In looking at the revenue streams for artists at various stages in their careers, we can see why:

Artist A: early stage, unsigned

Revenue streams – performances, record sales at concerts, merchandise

Artist B: early stage, signed to major label

Revenue streams – performances, merchandise, publishing

Artist C: established star, signed to major label

Revenue streams – performances, royalties from record sales, merchandise, publishing, endorsements

Artist D: superstar

Revenue streams – performances, royalties from record sales, merchandise, publishing, endorsements, ancillary businesses (eg. clothing line, film career etc.)

If we consider solely sales of recorded music<sup>18</sup> we will likely find that:

Artist A: makes money only from CDs she sells herself at her shows

Artist B: is unrecouped<sup>19</sup> and thus does not make any money from CD sales.

Artist C: is recouped and makes money from CD sales.

Artist D: makes more money from her other revenue streams than from CD royalties.

By FAM Licensing her music, and thereby granting others the right to distribute it on an effectively non-royalty basis<sup>20</sup>, Artist A does not lose any money on record sales provided she licenses her music to someone who is not selling to her live audience. Since the bulk of her record revenues come from units she sells at live concerts, the fact that “Promoter Y” is selling her CDs out in the Midwest, where she has never performed, does not in fact take a dime from the artist’s revenues.

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<sup>18</sup> For purposes of this argument we will use the still popular CD format as representative of recorded music. We in fact anticipate that the marketplace will rapidly make CDs obsolete.

<sup>19</sup> “Recoupment” is the financial recovery of monies invested in the production & promotion of an artist by their label. It is most often calculated at a rate based on the artists’ percentage royalty rate. See <<http://www.nydailynews.com/entertainment/story/60991p-57008c.html>> for a summary of how record royalties are applied and distributed.

<sup>20</sup> Some restrictions do apply, most notably on mechanical & synch royalties.

If Promoter Y is in fact selling directly to Artist A's live audience, then provided this audience likes her recorded music, she is likely to see a rise in demand for her live appearances and a consequent rise in her performance fees and frequency. Because performance fees actually make up the bulk of her income, this winds up being to the artist's advantage. She will be gaining added performance revenue for a relatively low promotional cost as measured in "lost" record sales – sales which in fact are not lost since her primary avenue of distribution is at live shows, and hence her record sales will most likely be a direct corollary to her frequency of performance. Additionally, if Promoter Y turns out to be better at selling Artist A's recorded music to her live audience than is Artist A herself, the artist can redirect her promotional dollars into an area in which she may see a better return, without losing crucial performance revenues.

Artist B, being signed to a major label, might not initially see how life under FAM would benefit her. Under the FAM system, she would be operating largely as an independent. Her career development would be dependent upon her personal resources and those available to her management team. It would be unlikely that Artist B's lifestyle as an indy would exhibit the level of apparent material opulence she might initially enjoy as a label protégé.

Yet despite the tickets to swanky events, the limos at her door and a glossy new video ready for MTV, the fact remains that Artist B doesn't make any money from the records she sells through her label.<sup>21</sup> Like Artist A, she gets paid to play and that's pretty much it. Artist B's primary advantage is that she has the support of a major financial and promotional engine, which if oriented in her favor can provide her an initial degree of exposure that will bring in larger performance fees and greater social capital and brand recognition than that enjoyed by Artist A. But if she does not quickly show a profit for her label, it is likely that Artist B will be dropped. As a relatively unknown talent, that has proven unable to produce a profit for one large multinational, it is highly unlikely that Artist B will be picked up by another.

While missing out on some of the ostensible material perks of being with a major, Artist B could nonetheless have benefited both creatively and financially under FAM. As an independent artist, she would not have been stuck with a label that is unable to promote her music to a level necessary for her to "break-even." Rather she could have shopped her FAM Licensed music around in order to find the most effective distribution partners, with whom she could negotiate further promotional opportunities. Remember, because she is unrecouped Artist B does not make any money at all from her record sales. Under FAM she would have maintained the option to sell her records directly to fans, and having sold one unit on her own, she would have earned more money from record sales than if she had sold 200,000 through her label.<sup>22</sup>

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<sup>21</sup> NY Daily News. "A Music Industry Case Study." 19 Feb. 2003.  
<<http://www.nydailynews.com/entertainment/story/60991p-57008c.html>>

<sup>22</sup> Still don't understand why? Check this out:  
Albini, Steve. "The Problem With Music." Negativland.com. <<http://www.negativland.com/albini.html>>

Our final two cases are those of Artists C & D, both of whom have successful arrangements with major labels. These artists do not ostensibly benefit from FAM licensing but they are instructive in understanding its potential benefits. Both artists have a broader range of revenue streams and make more money from each individual stream than do our previous two examples. This advantage is due to one factor: notoriety. They are well-known and can therefore charge more for a wider range of services.

## Chapter 4 : The Change

The cases of Artists C & D, who are able to make larger revenues from a broader variety of revenue streams bring us to the core of the FAM principle. The end goal of the current business of music is not in fact to sell music, but rather to sell products through brands created using music. These products include CDs, films, t-shirts, action figures, cars, downloads, digital music players, soft drinks and more.<sup>23</sup> The better known the artist, the more of these products he or she can sell.

The FAM Licensing model recognizes and accepts that the music industry uses music in order to sell other products. Yes, record companies do make money from selling records, but for the most part artists don't. According to RIAA statistics less than 10% of the records released by its member companies ever make a profit, and this fraction of the business pays for the other 90%<sup>24</sup>. Why would anyone continue in a business where more than 90% of its investments are unprofitable? Because historically, a label could sell that 10% over, and over and over again. Record companies have made their money from selling Beatles back catalog and Bob Marley reissues. They made their money when you went out and replaced all your old LPs with CDs. This is why they have doggedly retained the rights to the master recordings that artists make under contract. In case they had a hit, they could recycle it and keep making money.

Until now. The previous system was dependent upon the record company retaining control over both the means of production and distribution. Their massive promotional engines would develop the worth of a given brand, the high cost of production would limit competition and their lock on the avenues of distribution would ensure that they would be the only parties to profit from their continuing investment in the music.

The Internet has shattered the monopoly the Record Industry has historically had over the avenues of distribution. It is now possible for consumers to access, copy and redistribute recorded music wholly outside of mainstream revenue pipelines. The advent of digital downloading, followed by peer-to-peer sharing, followed now by anonymous peer-to-peer sharing (and who knows what's next), has removed the control the Record Industry previously held over the means of distribution and thereby reduced the value of any investment in recorded music.

At the same time technology has radically reduced production costs, facilitating the creation of increasing amounts of recorded music, and the concomitant potential to satisfy the musical tastes of a broader consumer base.

The FAM model recognizes that:

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<sup>23</sup> Apple. "Apple and Pepsi to Give Away 100 Million Free Songs." *Apple.com*. 16 Oct. 2003. <<http://www.apple.com/pr/library/2003/oct/16pepsi.html>>

<sup>24</sup> RIAA. "Cost of a CD" *RIAA.com*. <<http://www.riaa.com/news/marketingdata/cost.asp>>

- a) the value of music no longer lies primarily in the exclusive rights to promotion of pre-recorded material.
- b) the market for music as a whole, is growing and will continue to grow.

We further recognize that recording artists and companies investing in them must restructure their business models in order to survive and thrive in an evolving marketplace.

## Chapter 5 : Get Money

There are five primary areas in which artists get paid under FAM:

**Live performance:** a staple of any musician's revenue, live performance is where the rubber meets the road for everyone from Britney Spears to Dookey and the Funky Boyz (I made this name up, so don't even try to sue me, "Dookey"). Artists get paid either a flat guarantee for an engagement, a percentage of ticket sales, or a combination of both depending upon their degree of clout. Bands like the Grateful Dead never made much money selling records, and yet they set records for selling tickets to live engagements. Like the Dead, most recording artists make more money from playing live shows than they do from record royalties.

**Merchandising:** T-shirts, posters, stickers, branded drawers. Bands will sell you damn near anything you will buy, and merchandising is not only a proven means of bringing in revenue, it is also a great way to build brand awareness and a relationship with fans (I know I wasn't the only one scared of those kids with the "Iron Maiden" T-Shirts back in junior high). Sales of merchandise are another revenue stream that both independent and signed artists benefit from, regardless of whether or not their records are profitable. Since most of these records are not profitable (see Chapter 4) merchandising is a crucial revenue stream for any artist hoping to make a living making music.

**Publishing:** for artists who write their own music, publishing is an important and potentially substantial source of income. Every time a song is played on the radio, in an elevator, at a club, or on TV the writer of the song and the publisher<sup>25</sup> get paid. The performing rights societies (in the US they are ASCAP, BMI & SESAC), monitor airplay of this music in a variety of venues and distribute royalties to songwriters and publishers according to the relevant society's particular calculus<sup>26</sup> of their proportion of play. Publishing is important because it does not necessarily require incremental investment in a song in order to see a return.

For example, if I were part of a world famous band that broke up 10 years ago, I would no longer be making live performance revenue from that band. Since we are no longer touring, retailers will be less likely to hold on to my merchandise and these sales will eventually dry up. But if I own the performance rights to a hit song my band recorded back in our hey-day, and Hip-Hop's latest pop sensation decides to record a rhyme over

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<sup>25</sup> These are the parties that own an interest in the copyright to the song. A song is considered "published" when it is made available for sale to the public. A publisher facilitates the publishing of music (not necessarily in print, though this is one element of publishing) and generally "administers" the copyright. For more information on what publishing is visit: <<http://www.starpolish.com/advice/article.asp?id=21>>

<sup>26</sup> Each songwriter & publisher can only be affiliated with one performing rights society. Each society employs a different method of calculating royalties.

it, I am going to get paid every time that new song is played.<sup>27</sup> If the remake is also a hit I am in the money again...and if 10 years from now someone records another version, I am in the money...again. I may be raising sheep on a hemp farm somewhere, but so long as “the man” has my address I will still be getting checks.

Publishing is a crucial revenue stream largely for this reason. A recording artist who writes a hit song may well be set for life, irrespective of whether or not her subsequent records sell squat. The catch here is that in the United States performing artists don't receive publishing royalties as they do in Europe, for example. This means that an American artist who sings the hell out of a song, but who either didn't write it or for whatever reason relinquished his ownership of the song, will not receive a dime in publishing in U.S. Territories. This is why many of the artists you listen to on “Oldies 1-0-0-whatever” wound up working at Wal-Mart. Anyone up for lobbying Congress on this one? If you are, get in touch with the Future of Music Coalition (<http://futureofmusic.org>), as they are on the job and could use your support.

**Endorsements:** this is the stuff “hoop dreams” are made of. If you get big enough for someone to believe that your image can help them sell their product, you can get paid big bucks to smile for the camera. But endorsements aren't only handed out by Coke & Pepsi. An artist who has a strong local following can attract endorsements from local businesses. This revenue stream is primarily available to artists who have already proven their marketability.

**Record sales:** the sale of pre-recorded media (eg. CDs, tapes, vinyl) is what most people think of when they think of revenues in the Music Industry. And indeed they are an important source of revenue for recording artists. But only for a few of them. As we stated in the previous chapter, the vast majority of artists (90% plus) don't make money from record royalties.

That's a brief rundown of the primary revenue streams for musicians in today's world. In case you haven't noticed, the above-mentioned revenue streams are in fact the same as those discussed for artists at various levels in Chapter 3. How then does FAM change the way in which artists get paid? The answer is simple:

It doesn't.

FAM identifies the fallacy in artists', fans' and many entrepreneurs' current perception of the nature of revenue distribution in music, and offers a promotional tool with which musicians and people investing in music can increase their revenue. In other words, FAM gets money the old fashioned way...by paying attention to where it's coming from. How much money a particular artist makes, will depend entirely on how creative he or she is in managing her business. But in “freeing” the rights to her music this artist opens up a world of marketing opportunities that may not be readily exploited within the

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<sup>27</sup> The late great Rick James must have had 'nuff love for MC Hammer. “U Can't Touch This” made them both a bundle with its sample of the bass riff from James' “Super Freak.”

confines of our current approaches to copyright.<sup>28</sup> Sound crazy? Its not. And we're not the only ones who think this way.

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<sup>28</sup> Note that FAM Licensing does not represent a shift from current copyright law. It functions within the limits of the law, but empowers users to relinquish certain rights thus allowing and encouraging usage of copyrighted material in ways that current approaches to copyright do not permit.

## Chapter 6 : A Radical Idea?

At the time of first publication of this book, the FAM concept has been presented to both lay and industry audiences in the United States, Europe and West Africa. Everywhere we go we run into variants of two questions:

- a) How are you going to make money?
- b) What makes you think this is going to work?

We hope that we've done initial justice to the first question in the last chapter. If you want more detail on that tip you may have to hire us, or someone else who can think outside of the old school box.

Then again, maybe in order to get some really good answers to that first question, you need to find someone firmly rooted in the old school. In fact, it was in looking to our past that we found our peculiar vision of the future as well as the answer to that second question – we think this is going to work, because it already does.

### Free As In Music

The word Revolution brings to mind different images depending on who you ask. Some think of protest, others of opportunity; some of social upheaval, Ché Guevara, Gil Scott-Heron and my television set. Still others envision rapid social change fueled by discontent in the working class, sparked by a manifesto (at least we do). In the world of Free Software, the latter is almost exactly what happened. In 1984, Richard Stallman wrote his GNU Manifesto, which was the start of the modern Free Software Movement.

In this portion of our manifesto, we are partly paying tribute to those (Stallman and others) who have paved the way before us. This revolution is long overdue in the music world, and had the Free Software Movement not been in such good health as we ignite our own, we would have much further to go than we do now.

The entire text of Stallman's 1984 GNU Manifesto is included as an appendix to this book. The document is certainly worth reading, and I encourage anyone with the means to purchase a copy of Stallman's Free Software, Free Society to learn much more than we'll say here about the underpinnings of that movement. For now a short summary will suffice for our purposes.

Stallman outlines that the GNU Project will be a complete replacement for the Unix operating system, eventually also replacing every piece of software used on this system. He goes on to point out that the GNU System (which, laughably, stands for "GNU's Not Unix") would not be public domain!

This nuance is somewhat important to point out – the GNU General Public License (a somewhat later addition to the project) specifies that software licensed under its terms are subject to copyright law. It then goes on to point out that the terms of the license do not allow any restrictions to be added to who may use, modify, and/or redistribute the software.

Stallman concludes with two important sections: a call for assistance, and a description of how all computer users will benefit.

The history of the Free Software Movement is rife with wonderful examples of software that have been Licensed under similar terms. These examples range from the Apache Web Server, used to power nearly two-thirds of the websites on the Internet today, to the R Project, a lesser-known statistical package licensed under the GNU GPL, to Red Hat Linux, the biggest commercial success for Free Software in the marketplace, and a new powerhouse in enterprise and desktop computing.<sup>29</sup>

Since it would take the rest of several books to delve into the intricacies of even one of these projects, we'll now fast-forward to the early 1990's, when the two marketplaces (Music and Software) were enduring unprecedented growth in both market size and innovation. A Major Shift occurred in both Music and Software.

### *Major Shift*

One of the most important shifts in the marketplace that affected the Free Software Movement early in its evolution was the general availability of cheap network connections, and powerful desktop computers.

I'm smiling as I write this, thinking of all the Musicians who are reading it and starting to nod off a little bit – maybe some eyes are glazing over...

But bear with me for just a bit longer. Imagine for a moment, that recording an album had always been prohibitively complex and expensive. Imagine that a Recording Studio required hundreds of thousands of dollars of equipment, several experts in a wide variety of fields, plus all the musical talent an individual or a band could muster. If I'm smiling now, it's because the musicians reading this are thinking "wait - the music industry really was like that!"

Writing software used to be strikingly similar. It required expensive facilities, specialized training, plus a software engineer with the talent and expertise to tackle a new problem. The shift that began in the eighties and continues into the present, is that the expensive facilities and specialized training are becoming more and more irrelevant. In seeing the disturbing tendency of market forces to create new boundaries against openness and innovation where the old ones were collapsing, Richard Stallman wrote the

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<sup>29</sup> Red Hat Linux is a version of the GNU/Linux operating system (GNU with Linux as the kernel).

GNU Manifesto.

It doesn't cost \$200,000.00 to record an album any more. Part of the reason we're writing this book, is that technology has changed. The Recording Industry has evolved to its present form in order to protect the investment of record executives and investors in record companies. But today, when an artist can record her own album for a small fraction of that cost, and effectively distribute and promote it wholly outside of a major label, perhaps some new models are in order.

### **Radical Riddims**

Just as FAM has taken its cues from the pioneering work of the Free Software Movement, so does it flow from deep roots in the music world. Artists and labels have given away music for years in order to raise the public profile of an artist and to sell other products, from tickets to t-shirts, to more music. Radio is in part based on this very principle. Let people hear some of the music without paying, and they will be more likely to seek out and pay for more of it.

Now the fact is, the music we hear on the radio is not actually “given away.” It is in part paid for by advertising dollars. It is also in part subsidized by the massive radio promotion budgets of the major labels. So labels not only give music away over the radio, they in reality pay to give it away<sup>30</sup>. Mind you the labels are not entirely stupid. They pay for radio airplay because it has proven to be the most effective means to date for them to market talent, new and old. But when FM radio first came around, it ostensibly heralded the death of the record business.<sup>31</sup>

Radio is not the only means by which music has been and continues to be “given away.” CD Singles and music videos are not necessarily profitable items in themselves, and singles sales have seen a significant decline in recent years.<sup>32</sup> But companies make and invest in distributing these items because they help to promote their artists’ brand.

Another area in which music has been “given away” historically has been in the live arena. Despite the death of Jerry Garcia and their subsequent break in touring, The Grateful Dead were “second only to the Rolling Stones in touring revenues for the 1990s”<sup>33</sup> in part due to their liberal taping policies. Not only did The Dead allow people to tape their shows live, they actually encouraged it.

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<sup>30</sup> Boehlert, Eric. “Pay For Play.” *Salon*. 14 March 2001.  
<<http://dir.salon.com/ent/feature/2001/03/14/payola/index.html?sid=1018446>>.

<sup>31</sup> Firth, Simon. “Industrialization of Popular Music.” *Popular Music and Communication*. Ed. James Lull. Newbury Park: Sage Publications, c1992. 55.

<sup>32</sup> The year-end RIAA figures for 2003 indicate a significant boost in CD single sales over 2002, but these sales remain at less than half of 2001 levels.

<sup>33</sup> Waddell, Ray. “The Dead Still Live For The Road.” *Billboard*. 2 July 2004.  
<[http://www.billboard.com/bb/feature/article\\_display.jsp?vnu\\_content\\_id=1000562397](http://www.billboard.com/bb/feature/article_display.jsp?vnu_content_id=1000562397)>

Current jam bands like Phish, Widespread Panic & The String Cheese Incident have taken this liberal approach to taping to new levels.<sup>34</sup> In 2003 LivePhish.com sold upwards of a million dollars worth of MP3 downloads of their live shows, made available only days after a performance.<sup>35</sup> But why would anyone buy an MP3, when you can get that music for free? Well, doubtless many people did get the music for free, and yet the loyal following that Phish developed in part by giving away music, is today loyal enough to willingly pay for something they don't necessarily need to.<sup>36</sup>

Even more central to the development of the principles behind FAM were certain trends in Hip-Hop and Dancehall. Not only have Hip Hop artists "given away" their music for decades, but they have encouraged others to market and sell this music on a non-royalty basis. When a DJ puts together a mix tape featuring some of the hottest beats and MCs out, neither the producer nor the rapper are making money from the sale of these units. Yet the mix tape circuit has spawned some of the best and best-known MCs in Hip Hop. From Tupac and Biggie Smalls to Jay-Z and 50 Cent, some of the most famous names in the Hip Hop game got their start on a "bootleg" mix tape being sold by someone who had their ear to the streets and a mind for what would rock the party.<sup>37</sup>

That understanding of how to get a party started and how to keep it flowin' has led Jamaican selectors to make extended mixes of popular grooves for years. Each DJ knows his "Sound"<sup>38</sup> needs to have the latest beats in order to keep the people movin'. And so selectors since the days of Coxson Dodd<sup>39</sup> have hired artists to sing on original tracks or to lay down vocals over established beats. A selector might have five or six different artists throw down a chant over a dancehall groove and pay each of them peanuts for their time. These artists would see no kinds of payment for the spinning or distribution of these records. But as people come to know and love a certain artist's voice or rhyme or delivery, this same "unpaid" artist could reach the point where he might charge \$10K for an hour's worth of his time in a studio session. These very grassroots have spawned artists like Beenie Man, Bounty Killa, Buju Banton and Sean Paul.

The argument here is not that artists should not be paid for their work. On the contrary,

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<sup>34</sup> Freedman, Michael. "Steal My Music, Please." 7 Jul. 2003.

<<http://www.forbes.com/forbes/2003/0707/090.html>>

<sup>35</sup> Grossberg, Josh. "Phish Spawning Big Music Downloads." 8 Aug. 2003. <

<http://www.eonline.com/News/Items/0,1,12295,00.html>>

<sup>36</sup> Convenience is also a factor here, as is an element of the "impulse" buy. The quality of the official Phish recordings is also higher than that of most live fan recordings. These same principles are behind the new ClearChannel "Instant Live" program, which provides live recordings of concerts, immediately following the event.

<sup>37</sup> 50 Cent has discussed the role that mixtapes and "bootleggers" have played in his own success in various interviews. You can find one such interview in the October 31, 2003 edition of Davey D's FNV Newsletter (FNV Hip Hop Newsletter #152. "50 Comes to the Bay and Speaks His Mind). <<http://www.daveyd.com/>>

<sup>38</sup> Short for Sound System, the name given to DJ crews in Jamaica, known for their massive speakers and open air dancehall jams. It is in these Sounds that Hip Hop pioneer, DJ Kool Herc had his roots, and from this system that he introduced his own innovative sound to the Bronx; a sound that helped give birth to Hip Hop.

<sup>39</sup> Pioneering Jamaican producer and Sound System owner, who did early works with such talents as Bob Marley and The Wailers.

the FAM License is designed to protect artists' ability to be compensated for their art. It is for this reason that the license is very specific about attribution of credit for work done. The point we are making here is one that every independent artist knows or should if they have any intent to succeed. The business of music is ultimately about notoriety. And from mix tapes, to jam band jams, to Jamaican DJs, many artists have successfully leveraged the networks of others to increase their name recognition and their subsequent ability to "sell" what they do.

## Chapter 7 : What Does FAM Do?

FAM helps artists to expand the distribution of their music. It removes many restrictions that hinder this distribution, but retains certain key protections for artists. Here is a brief breakdown of what FAM does and does not do:

### FAM Does

- Apply to recorded musical performances
- Allow commercial or non commercial distribution
- Protect publishing rights
- Require attribution
- Apply to original & derivative works
- Encourage remixing, sharing & artistry

### FAM Does Not

- Apply to music synched to video
- Require payment of record royalties
- Remove requirements to pay mechanical royalties
- Remove requirements to pay other publishing royalties
- Condone “stealing”
- Sue your kids

Music distribution, as a business, has changed radically in recent years. 100 million downloads sold by Apple and counting<sup>40</sup>; many times that traded over illicit networks (and yes, still counting), as well as "bootleg" albums sold all over the world in numbers the marketplace can only begin to guess.<sup>41</sup>

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<sup>40</sup> Apple.com. “iTunes Music Store Downloads Top 100 Million Songs.” 12 July 2004.  
<<http://www.apple.com/pr/library/2004/jul/12itunes.html>>

<sup>41</sup> The IFPI estimates that in 2003 one in three CDs sold were “illicit,” valuing such sales at about \$4.5 billion in 2003.  
IFPI.org. “Music Pirate Sales Hit 1.1 Billion Discs But Spread of Fake CD Trade Slows.” 22 July 2004.  
<<http://www.ifpi.org/site-content/press/20040722.html>>

In this digital age, illicit copying and redistribution are much more insidious than ever. Copies of music are traded in lossless formats – a copy of the original is, in fact, as high quality as the original itself in many cases.

The FAM Revolution brings an end to illicit copying and redistribution.

The FAM Revolution ends illicit copying and redistribution in a way that RIAA's law suits cannot, in a way that Digital Rights Management cannot, and in a way that industry advertising never will. The FAM License does this by explicitly authorizing copying and redistribution of recorded works, thus offering artists and entrepreneurs the opportunity to develop relationships with formerly illicit distributors.

Over the long-term, these “bootleg” distribution networks will evolve to favor those distributors who do the best job of meeting the needs of music consumers.

## Chapter 8 : Foundations

The Free Software Movement, has seen the rise of three unique and distinct models that all work equally well in fomenting the creation, adoption, use, and refinement of Free Software. Instead of the single model of the Proprietary Software Company, that marketplace also finds itself home to For Profit Free Software Companies, Individual or Independent Software Developers, and Software Foundations. It is to the third model that we now turn our attentions.

The words "software foundation" sound somewhat paradoxical. In general, we expect a foundation to be engaged in promoting some public good. We expect software to annoy us and cost us money. As it turns out, one of the ways that the Free Software Movement has come to terms with the marketplace has been through these foundations, and they present an interesting case study for the Free Music Movement.

The way they work: some person or group of people develop a piece of software, and license it under a Free Software License. How this comes to be is a longer discussion for a different document, but it suffices to say that there are now tens of thousands of such projects, of varying size and scope.

As the projects grow to maturity, they are often marketed, sometimes quite successfully, by for-profit companies. They are also often adopted by independent computer users. Generally as this happens, there are more and more features added by people using or selling the software. Software Foundations coalesce around these communities to provide the following:

- support for out of pocket costs (web hosting, etc.)
- defense of free software licensing
- basic distribution services
- a place for individuals and organizations to contribute financially
- pay for core developers (sometimes)

These software foundations are legally precluded from showing a profit, which introduces some interesting nuance into the marketplace. Most obviously, they foment the development of private industry around them – for-profit companies crop up to profit from the work of the foundation, and these companies are able to almost completely externalize the costs of research and development; a significant benefit.

There isn't a whole lot of activity in the Foundation Space for popular music yet. However, it is already clear that there is plenty of room in the broader marketplace for such foundations. Foundations could share primary responsibility for administration of free Recorded Performances, footing the bill for creation and distribution, enforcing the terms of the licenses, and allowing artists themselves to reap the benefits.

It is in support of such endeavors that we propose the FAM Foundation. The following is

a summary of its function:

The FAM Foundation exists to promote the unrestricted availability of high quality recorded performances through advocacy, infrastructure, and direct funding of FAM Licensed projects.

### **Advocacy**

In the early stages, advocacy will include two main components: direct advocacy by representatives of the FAM Foundation to groups and individuals, and online educational materials about Free Music licensing.

The foundation will spearhead online advocacy through an informational website at <http://famfoundation.org>. An authoritative copy of the FAM License itself will always live at <http://famlicense.org>, also maintained by the FAM Foundation for the license and materials directly related to it.

### **Infrastructure**

The FAM Foundation will provide legal, logistical, and administrative resources to people involved in all stages of FAM Licensed music.

Legal support includes compliance verification for people and organizations that are sharing FAM Licensed performances as well as legal defense for any FAM Licensed performances that should come under attack. We do not anticipate this will be a large portion of our operation in the beginning, as there are currently few FAM Licensed materials, but over time it may prove to be important, as it has become in the Free Software movement.

Logistical and administrative resources will include online “how-to” documents and email assistance. The Foundation will develop publicly accessible online registries of recorded performances licensed under FAM.

### **Funding**

The main purpose of the FAM Foundation will be to solicit and manage contributions from government, non-profit, commercial, and individual interests, and to use these contributions to fund the creation and promotion of FAM Licensed materials. Advances in technology, have reduced the costs of producing music. The Foundation will therefore seek to promote the production of high quality recorded performances for a fraction of the production costs incurred by major labels.

The Foundation will initially make two types of grants:

- a) grants to artists for recording and promotion of original performances
- b) grants to producers for remixing FAM Licensed materials.

In addition to Foundation-sponsored, competitive grants, the FAM Foundation will also provide an escrow service for recording artists. Artists will be able to solicit tax-deductible contributions from fans and/or potential investors. The Foundation will hold these funds in escrow for a set period of time and make disbursements once an artist's stated reserve price has been met, or alternatively return funds to investors upon expiration of the predetermined time-period. The interest from holding these funds and a potential fee for the service will be used towards the goal of ultimately making the FAM Foundation a self-sustaining enterprise.

Together, these three cornerstones of advocacy, infrastructure and funding will provide a cultural, legal, and commercial foundation for the FAM Revolution.

## Chapter 9 : The Revolution

In speaking of the FAM Licensing Model we regularly use the language of revolution. Yet we've also argued that in many ways this is nothing new. The principles behind the project have proven roots in the Free Software Movement as well as in the Hip-Hop and Dancehall communities. Further, we've argued that even mainstream labels have given away music for years in order to raise the profile of their talent. And while the FAM system benefits from changes in technology, it does not itself represent a technological innovation.

So what the hell is so revolutionary about this thing? Isn't it just a conceptual hodge-podge of ideas that have been floating around for years? How can one license revolutionize an entire industry?

One license can't. But FAM is not simply a license, neither is it merely a potpourri of wishful and idealistic thinking. We believe that the FAM model is the logical progression of copyright in a modern world where it is no longer possible to strictly control access to and distribution of musical works. In such a world the value of copyright is not in the so-called "property" itself, but in its ability to influence human thought, action and productivity. Music, like software, is a tool with which we can shape the world around us. From Apache web servers to Tupac bootlegs, we believe the "free" world of copyleft is only just beginning to show its promise.

And so FAM itself does not represent a revolution. FAM is a part of a revolution already under way. What we have done is look at a changing world and think "how do you make, mix and move music in this world?" And how do you make money doing so? Here's a look at the world as we see it:

### Make, Mix, Move-it

We've previously discussed the historical lock on the means of production, promotion and distribution of music and the current breakdown of established systems. Today an artist who previously could not bring music to market without the aid of a wealthy benefactor can make records in her basement. Not only can she produce her own work, but through the Internet she can promote and distribute it to audiences previously unreachable to an independent musician. The example set by artists like Ani DiFranco and Master P who have established viable and thriving businesses outside the "mainstream"<sup>42</sup> of the music business is one that will be increasingly replicated by talented and entrepreneurial artists the world over.<sup>43</sup>

<sup>42</sup> Margolis, Lynne. "Independent's Day." *Christian Science Monitor*. 11 April 2003. <<http://www.csmonitor.com/2003/0411/p13s02-alm.html>>

<sup>43</sup> Barbosa, Marco Antonio. "Racionais MCs: high speed against the tide." *All Brazilian Music*. 17 Jan. 2002. <[http://www.cliquemusic.com.br/en/News/News.asp?Status=MATERIA&Nu\\_Materia=3413](http://www.cliquemusic.com.br/en/News/News.asp?Status=MATERIA&Nu_Materia=3413)>

FAM is a tool for those artists who are looking to make their own way in the new World of Music. It is increasingly difficult to get signed to a major label, in part due to the current economic woes of the music business. At the same time it is increasingly feasible to reach out directly to fans and consumers. In a 2002 article, acclaimed songwriter Janis Ian described the rise in traffic to her site as well as sales of her music, after she began offering free downloads of her work.<sup>44</sup> A memo outlining the preliminary findings of a recent study conducted by the Pew Internet Project, indicates that 83% of artists surveyed have offered free downloads of their music online.<sup>45</sup> I recently went to a concert by the incomparable Prince and every last attendee was handed a CD of his latest record “Musicology” upon entry.<sup>46</sup> Prince is not doing this because he is dumb.

In a FAM world, artists can make works available for the public to use and consume as they wish. Some of these works will be distributed commercially, some will be given away for free, others will be bundled as a value-add to other products (like tix to a Prince concert). The challenge for these artists is not to find the best way to “protect” their copyright, it is to find innovative ways to bring their music to the marketplace. Not only is this our challenge, it is also our opportunity. A friend of mine is a successful young author in Taiwan with over thirty books to his name. In recent years he has bundled original music with a number of his works. In so doing, he has offered a promotional opportunity for the artists he partners with, while adding value to his own work.

As an artist, why wouldn't I want my music distributed with books that appeal to an audience that might dig my sound? As a matter of fact why shouldn't every novel, political commentary, biography and how-to-text be accompanied by interesting and relevant original music? Why shouldn't every E-Greeting be accompanied by real songs written by serious artists, as opposed to rinky-dink tunes that you can't wait to turn off? Why shouldn't Hallmark cards feature original music celebrating the many moods and modes of life? And how would it hurt an artist to have her best love song heard by a million people on Valentines Day?

It is not only artists who benefit in a FAM flavored world. The current margins on Internet downloads are low for the technology companies providing these services.<sup>47</sup> Imagine if budding online music services could offer a body of material that they didn't have to pay record royalties on? It would be in their financial interests to promote FAM licensed material, thus offering artists further avenues for increasing their brand

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<sup>44</sup> Ian, Janis. “The Internet Debacle – An Alternative View.” *Janisian.com*. May 2002.

<[http://www.janisian.com/article-internet\\_debacle.html](http://www.janisian.com/article-internet_debacle.html)>

<sup>45</sup> Rainie, L., & Madden, M. “Pew Internet Project Data Memo: Preliminary Findings of a Web Survey of Musicians and Songwriters.” *Future Of Music.org*. May 2004.

<<http://futureofmusic.org/research/datamemo.cfm>>

<sup>46</sup> For the record I already bought a copy of “Musicology” months ago. I will give this one to a friend who couldn't make the concert. Spread love.

<sup>47</sup> Even a “successful” model like that of Apple's iTunes Music Store is currently contingent upon sales of iPods as opposed to actual downloads:

Atkinson, B., Kubricka, D., Lui, E., Sharif, I, Wittenburg, G. “The Apple iTunes Music Store.”

<[http://page.mi.fu-berlin.de/~wittenbu/uni/itunes\\_paper.pdf](http://page.mi.fu-berlin.de/~wittenbu/uni/itunes_paper.pdf)>

recognition and building a following.

FAM also has implications for the world of academia as well as for cultural exchange in general. Ethnomusicologists are engaged in an ongoing discourse surrounding “ownership” of field recordings. Does the researcher own the recording? Does the library in which it’s archived? What of the subjects who are recorded? And what of their communities? With the FAM License, all of these people can benefit from their stake in the music. Libraries can keep and distribute these works as they wish, providing future researchers easier access to relevant materials. Databases could be created dealing with specific genres of music or regions, or according to classifications of instrument type. From these databases any researcher in the world could potentially access a recording at will.

And the people who are recorded would also have the rights to promote and market the products of collaboration with others. FAM alone will not remove the inequities in the marketplace that give some collaborators more power to promote works than their peers from poorer places. But it does give those peers an opportunity to market, promote and potentially profit from the fruits of combined labors; an opportunity which today they all too often do not have. Under FAM, when I as a scholar or an artist come to your community to record your music, I leave you with the benefits of our work, just as I take those benefits with me.

There are a plethora of ways in which the FAM world allows for greater exchange and flow of musical ideas. Our goal here is not to elucidate every possible positive externality of embracing copyleft principles in music. Our goal is to introduce the concept to open minds and let you imagine where our world could go if we reform our understanding of “ownership.”

That said we are not pie-in-the-sky guys. Yes, we want you to imagine a myriad of possibilities, but we also have some particular ends in mind. To be specific, as an artist, I want people to take the music I make and I want them to promote it to the people in their communities. I want to build a network of artists, promoters, DJs and distributors around the globe who all see an interest in promoting FAM Licensed material. I want to plug my work into this network and see what happens. I want some cat in Kingston to listen to my tracks and think to himself, “this is cool...but what if I flip it like this?” I want him to remix my music in a manner he thinks will get his people groovin’ and I want him to profit from doing so. I want a producer in Paris to remix my record and start sending it out to her favorite DJs. I want to take that remix and start sending it out to mine. I want a grassroots distributor in Accra to put my joint on a compilation of his favorite tracks and start selling it. I want a kid in DC and one in Taipei and another in São Paulo doing the same thing.

Why FAM you ask? Where’s the revolution? After all, people are doing this stuff right now. Sure they are. But FAM removes the legal veil that prevents me from communicating with the people who are out on the streets making, mixing and moving music. FAM allows me to build networks that say “hey, who is buying this stuff?” Show

me the numbers today on record sales in Lagos or Nairobi and I'll show you a lie. No one is tracking the venues where this music gets sold. There is no Tower Records in Accra. The mainstream music industry virtually ignores huge chunks of the developing world; a world with tentacles throughout the West that pay in dollars and euros. The fact is there are phenomenal sounds coming out of places far from NY and LA. And because the people making and listening to these sounds are increasingly in motion, I know that if I have a hit in Accra and Lagos, I can pack virtually any venue in London even if only West Africans show up.

So what happens when I start giving a gang of folks on a global scale, rights to remix, redistribute, revisit and revise my sound? What happens when I build bridges to these people and start finding out who is selling what and where? What happens if you tell me you want to break a new talent and I can tell you that there's a particular demographic listening to a similar sound in Port-of-Spain, and that if your stuff works there, there are a bunch of kids in Capetown & Lisbon who will likely eat-it-up. What if I take the bootleggers of the world and turn them into a global street team? A grassroots army bringing my music to the masses...

And why on earth would some random head in Bratislava tell me what she's selling and to whom? Well, maybe some random head won't do it. But someone who is seriously looking to make money in the new World of Music is going to be hussling to find the best ways to stretch every euro, dollar, cedi, real and yen she can get her hands on. So a smart promoter who is moving mad units of my material, in whatever media, is going to want to maximize her returns on investing in the promotion of this product. This means that when she is looking for ways to grow her business she may well want to reach out to me to access my talent or the talent I represent. If kids will buy my CDs, or download my tracks, or read books that come bundled with my music, they will likely buy tickets to my show and T-shirts with my name on them and lord knows what else.

Right now if this enterprising young hustler – a person who knows how to get my music into the hands of the folks who want it – wanted to contact me, she likely couldn't. Because chances are her operation is not wholly "legit" and she is not making regular payments and providing CPA certified accounting to the copyright holders of the material she's selling. Under FAM not only can she get in touch with me, I believe she will, if only in service of her own self-interest. And if I'm right, then I've built in global market research into my system that I don't have to pay for on an incremental basis.

It is in this arena that we see the truly revolutionary potential of FAM Licensing for artists, fans and businesses alike. We believe that we can build an international network that provides faster and more accurate information on market trends than any that has ever existed in the history of music. And we can do so, not by going out and buying up every little label, promoter or distributor we can get a hold of, and then suffering under the massive overhead of a business too big for its marketplace. Rather, we can do so by tapping into resources that already exist, that are adapted to and optimized for their local market conditions and are thus not going anywhere anytime soon. We believe that FAM represents an opportunity to radically alter and expand the means by which music is

produced, marketed and consumed in our world.

Therein lies the revolution.

## Conclusion

At a recent presentation on FAM Licensing an audience member raised the point that under FAM artists could be taken advantage of. What if Sony goes out and sells a half-million copies of my latest record and they are legally not required to pay me a dime, nor even ask my permission to go out and sell my music?<sup>48</sup> I told the audience member, that if the music were FAM licensed, Sony or whomever would be perfectly within their rights to do this. She then asked the question “well, where’s the protection for the artists?” I replied that FAM doesn’t provide any new protection to artists. It rather exposes just how unprotected we are. What FAM does is provide us an option. For an artist the power of FAM is in the choice. If I were signed to Sony today and they could only sell 500,000 copies of my record, not only would I likely not see a dime in royalty payments, but it is further likely that I would soon be out of a job with no prospects of getting a new one (see Chpt 3 to find out why).

The critical point for me as an artist is that in a FAM world, if Sony can sell 500,000 CDs, downloads, subscriptions or whatever of my work, I can take this notoriety and partner with whatever companies can provide the targeted promotion that will help me to tour, to sell merchandise, to obtain endorsements, to market my music to film companies, greeting card makers, video game producers and to find further creative opportunities for me to monetize my creative skills. Rather than find myself a loser for only selling half a million units, I find myself a winner for having the freedom to build upon a significant achievement.

And incidentally in this scenario Sony wins too, because they will have spent less money on developing and promoting me as an artist. Rather, they will have looked at the existing marketplace, seen an opportunity to make a limited investment in music that is already making money, and capitalized upon this opportunity with a speed and focus with which they cannot act today.

If I the artist decide that Sony is a company with whom I would like to explore a more intimate promotional relationship, I still have the right to do so. I am also in an infinitely better bargaining position than your average unsigned talent, because both parties at the table recognize that I represent a saleable product. I may determine that rather than sign my rights away to a major, I’d rather develop material to be exclusively licensed to my own label and sub-license it to a division of Sony among other select promotional partners. The possibilities are boundless. If I’m smart about my business, I will have a world of opportunity available to me.

The question is: what would it take to get half-a-million people interested in and willing to pay for some aspect of my work in the first place? That factor is one that will never change: promotion. FAM presents a departure from outmoded visions of how talent can


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<sup>48</sup> Though they would have to obtain permission to sync my recorded work to any visual image.

be marketed and promoted. We recognize that often you need to give something up, in order to gain something. So we are saying to independent artists: “give up the exclusive rights to distribute your music; these rights are not only useless to you, you’ve been signing them away in exploitative recording contracts for too long.” Instead, put your music out there and work with others to find creative and radical ways to get your work into the hands, ears and hearts of the public. Once a critical mass of people are willing to listen when you speak, you can determine the best ways for you to continue building your business, which is ultimately represented in your voice, your “brand” as an artist.

To those interested in investing in new talent we are saying: “forget the old ways. You have no vested interest in them. Look at the world through new eyes and use every tool available to you to promote the artists you work with. If you play your cards well, FAM can be a powerful instrument in your arsenal.”

To the tech world we are saying: “we feel you. Lets open this music thing up. Lets build an infrastructure for tracking what music is available under the freedom of FAM. Lets make it the primary material promoted by streaming, downloading and P2P services. Lets put it all over iTunes and Kazaa, and lets find innovative ways to find out what people think is worth sharing, and to make it easier for them to do so.”

To the fans we are saying: “your desire to share the music you love with the world around you is not only a good thing, it is just as natural as buying a record once was. When you share this music you help, not harm artists. Help us build a world that won’t punish you for doing what makes sense. When you see a work with the FAM symbol:  grab it, listen to it and if you like it pass it on, and come find out more about who the artist is and what they are about. This revolution is ultimately in your hands.”

To the politicians we’re saying: “wake up.” Cozying up to the Recording Industry may well be the death of you. When we say to the so-called apathetic youth and “soccer-moms” of the world “do you think its ok for a multi-billion dollar corporation to threaten and terrorize you and your loved ones because they don’t know how to adapt to a changing world?” survey says they’ll answer “no”.<sup>49</sup> So why does the law allow them to do so? When the people seek and find the answers to that question it may become all-too-clear how profound the influence of money is on your politics. Just who are you representing anyway?

And to the established players in the Music Industry, we have a message for you too. Our goal is not to simply “give you the finger.” Our goal is to create a world that is

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<sup>49</sup> Diaz, Sam. “Recording Industry In a Bind: Anti-Piracy Suits Make Labels Look Like the Bad Guys.” *The Mercury News*. 15 Sept. 2003. <<http://www.siliconvalley.com/mld/siliconvalley/news/local/6776689.htm>>. Lesnick, Gavin. “Colleges, Students Adapt in Response to RIAA Lawsuits.” *IDSNews.com*. 29 July 2004. <<http://www.idsnews.com/story.php?id=23988>>.

Bridis, Ted. “Slow-moving lawsuits over music downloads producing court twists.” Associated Press. 20 Aug. 2004. <[http://www.boston.com/ae/music/articles/2004/08/20/slow\\_moving\\_lawsuits\\_over\\_music\\_downloads\\_producing\\_court\\_twists/](http://www.boston.com/ae/music/articles/2004/08/20/slow_moving_lawsuits_over_music_downloads_producing_court_twists/)>.

better for all of us. We've seen your approach to solving the problems of an evolving industry and we firmly believe that your approach is not only wrong-headed, but futile and destructive. You will not attract new customers by suing the biggest music lovers. You will neither save your outmoded business through litigation nor copy protection. Take a chance on a new world. Back up off the kids, and make out a big check to the FAM Foundation. We'll not only send you a thank you card, we'll show you how to survive in our world.

And to that world at large we say "Yo! Music is a good thing. It represents life, love, the best and the worst of what we are as human beings. Music is not about property, its about people. It is made by people for people. It is one of the greatest gifts given to humankind because it enables us to communicate thought and emotion like no other medium. And so the beauty, the challenge, the profundity, absurdity, pain and triumph of life are uniquely and powerfully represented through music. Let us stand up for Freedom, for Access and let us make, mix and move Music together. Let us be a musical FAMily. Our world will be all the better for it.

fam

August 2004

But wait there's more!

## **“How Can I Be Down?”**

Wanna' join the revolution? You can:

- FREE THIS CD!!! Listen to, share, copy and buy our music: <http://soulfege.com>
- License your music under FAM: <http://famfoundation.org>
- Distribute FAM Licensed music
- Email, Reprint and Post this Manifesto on your own site
- Check out the work of the Foundation: <http://famfoundation.org>
- Contribute money to the Foundation: <http://famfoundation.org>
- Volunteer for the Foundation: <http://famfoundation.org>
- Contribute ideas to the Manifesto: <http://freethiscd.com>
- Join the mailing list: <http://famfoundation.org>
- Support fellow revolutionaries:
  - o <http://creativecommons.org>
  - o <http://futureofmusic.org/>
  - o <http://downhillbattle.org/>
  - o <http://musicforamerica.org>
  - o <http://www.azoz.com/>
  - o <http://righteousbabe.com/>
  - o <http://www.gnu.org>
  - o <http://www.cdbaby.com>

## Appendix 1: The FAM License v1.0

### FAM LICENSE

Version 1.0 Final, September 28, 2004

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c/o ASAFO Media LLC  
4 Brattle St., Suite 206, Cambridge MA 02138 USA  
<http://famfoundation.org>

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### PREAMBLE

We believe the cornerstones of the Free Music Movement must be: Freedom, Access, and Music. Version 1.0 of the FAM License codifies these values into a license that grants, rather than restricts artists' freedoms, increases access to fans, and puts the focus back onto making music.

This license requires two steps: (1) the music must be copyrighted, and (2) the copyright owner must license the materials under this license by designating the materials in the accompanying MANIFEST. These two steps will secure the right of the creators of the music and all others to copy, and redistribute all materials licensed under the terms of the FAM license either commercially or non-commercially.

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8. The materials licensed under the terms of the FAM License are distributed without warranty to the extent permitted by applicable law.

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In order to apply the terms of this license to a recorded audio performance for which you are the copyright holder, the following information must be included in a file called MANIFEST that is distributed along with each individual recorded audio performance:

Copyright (C) YYMM <name of copyright holder>

Song Title: <name of song>

Writer: <name of songwriter>

Performer: <name of performer>

Arranged by: <name of arranger>

Produced by: <name of producer>

Recorded by: <name of engineer>

Recorded at: <name of studio>

Mixed by: <name of engineer>

Mixed at: <name of studio>

Mastered by: <name of engineer>

Mastered at: <name of studio>

The following notice must also be included along with each individual recorded audio performance:

This recorded audio performance is distributed under the terms of the FAM License as published by the FAM Foundation. This recorded performance is distributed in the hopes that it will be enjoyed, without any warranty. See the FAM License for more details.

The authoritative FAM License may be found at: <http://famlicense.org/fam.html>.

The copyright holder should also include contact information where she or he may be reached by mail or email.

## ACKNOWLEDGEMENTS

The FAM Foundation would like to thank the countless members of the global music community who have pressed for freedom and access to music for artists and fans alike. FAM also thanks members of the Free Software community for breaking ground in the early years of copyleft licenses.

## **Appendix 2: The FAM License in Plain English**

In Plain English, the FAM License guarantees certain freedoms for any person who possesses a FAM Licensed recorded performance. Any person may:

1. Share the recorded performance, commercially or non-commercially.
2. Alter (remix, encode, etc.) the performance, and share the resulting materials under the FAM License.
3. Include the recorded performance in any FAM Licensed compilation.

Conspicuously absent from these freedoms- a person may NOT (without special permission from the copyright owner):

1. Impose any further restrictions.
2. Distribute the recorded performance under a different license (or without a license).
3. Distribute the recorded performance without an accompanying copy of the FAM License and all the materials required by the license.
4. Distribute the recorded performance in sync with visual images.

In short, every person may share the recorded performance with any other person for any cost, as long as all the freedoms of the FAM License are preserved for each new recipient.

## Appendix 3 – The GNU Manifesto by: Richard Stallman

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Modified versions may not be made.

### .The GNU Manifesto

The GNU Manifesto (which appears below) was written by Richard Stallman <<http://www.stallman.org/>> at the beginning of the GNU Project, to ask for participation and support. For the first few years, it was updated in minor ways to account for developments, but now it seems best to leave it unchanged as most people have seen it.

Since that time, we have learned about certain common misunderstandings that different wording could help avoid. Footnotes added in 1993 help clarify these points.

For up-to-date information about the available GNU software, please see the information available on our web server <<http://www.gnu.org/home.html>>, in particular our list of software <<http://www.gnu.org/software/software.html>> .

### .What's GNU? Gnu's Not Unix!

GNU, which stands for Gnu's Not Unix, is the name for the complete Unix-compatible software system which I am writing so that I can give it away free to everyone who can use it. (1) Several other volunteers are helping me. Contributions of time, money, programs and equipment are greatly needed.

So far we have an Emacs text editor with Lisp for writing editor commands, a source level debugger, a yacc-compatible parser generator, a linker, and around 35 utilities. A shell (command interpreter) is nearly completed. A new portable optimizing C compiler has compiled itself and may be released this year. An initial kernel exists but many more features are needed to emulate Unix. When the kernel and compiler are finished, it will be possible to distribute a GNU system suitable for program development. We will use TeX as our text formatter, but an nroff is being worked on. We will use the free, portable X window system as well. After this we will add a portable Common Lisp, an Empire game, a spreadsheet, and hundreds of other things, plus on-line documentation. We hope to supply, eventually, everything useful that normally comes with a Unix system, and more.

GNU will be able to run Unix programs, but will not be identical to Unix. We will make all improvements that are convenient, based on our experience with other operating systems. In particular, we plan to have longer file names, file version numbers, a crashproof file system, file name completion perhaps, terminal-independent display support, and perhaps eventually a Lisp-based window system through which several Lisp programs and ordinary Unix programs can share a screen. Both C and Lisp will be available as system programming languages. We will try to support UUCP, MIT Chaosnet, and Internet protocols for communication.

GNU is aimed initially at machines in the 68000/16000 class with virtual memory, because they are the easiest machines to make it run on. The extra effort to make it run on smaller machines will be left to someone who wants to use it on them.

To avoid horrible confusion, please pronounce the 'G' in the word 'GNU' when it is the name of this project.

### **.Why I Must Write GNU**

I consider that the golden rule requires that if I like a program I must share it with other people who like it. Software sellers want to divide the users and conquer them, making each user agree not to share with others. I refuse to break solidarity with other users in this way. I cannot in good conscience sign a nondisclosure agreement or a software license agreement. For years I worked within the Artificial Intelligence Lab to resist such tendencies and other inhospitalities, but eventually they had gone too far: I could not remain in an institution where such things are done for me against my will.

So that I can continue to use computers without dishonor, I have decided to put together a sufficient body of free software so that I will be able to get along without any software that is not free. I have resigned from the AI lab to deny MIT any legal excuse to prevent me from giving GNU away.

### **.Why GNU Will Be Compatible with Unix**

Unix is not my ideal system, but it is not too bad. The essential features of Unix seem to be good ones, and I think I can fill in what Unix lacks without spoiling them. And a system compatible with Unix would be convenient for many other people to adopt.

### **.How GNU Will Be Available**

GNU is not in the public domain. Everyone will be permitted to modify and redistribute GNU, but no distributor will be allowed to restrict its further redistribution. That is to say, proprietary (18k characters) modifications will not be allowed. I want to make sure that all versions of GNU remain free.

### **.Why Many Other Programmers Want to Help**

I have found many other programmers who are excited about GNU and want to help.

Many programmers are unhappy about the commercialization of system software. It may enable them to make more money, but it requires them to feel in conflict with other programmers in general rather than feel as comrades. The fundamental act of friendship among programmers is the sharing of programs; marketing arrangements now typically used essentially forbid programmers to treat others as friends. The purchaser of software must choose between friendship and obeying the law. Naturally, many decide that friendship is more important. But those who believe in law often do not feel at ease with either choice. They become cynical and think that programming is just a way of making money.

By working on and using GNU rather than proprietary programs, we can be hospitable to everyone and obey the law. In addition, GNU serves as an example to inspire and a banner to rally others to join us in sharing. This can give us a feeling of harmony which is impossible if we use software that is not free. For about half the programmers I talk to, this is an important happiness that money cannot replace.

### **.How You Can Contribute**

I am asking computer manufacturers for donations of machines and money. I'm asking individuals for donations of programs and work.

One consequence you can expect if you donate machines is that GNU will run on them at an early date. The machines should be complete, ready to use systems, approved for use in a residential area, and not in need of sophisticated cooling or power.

I have found very many programmers eager to contribute part-time work for GNU. For most projects, such part-time distributed work would be very hard to coordinate; the independently-written parts would not work together. But for the particular task of replacing Unix, this problem is absent. A complete Unix system contains hundreds of utility programs, each of which is documented separately. Most interface specifications are fixed by Unix compatibility. If each contributor can write a compatible replacement for a single Unix utility, and make it work properly in place of the original on a Unix system, then these utilities will work right when put together. Even allowing for Murphy to create a few unexpected problems, assembling these components will be a feasible task. (The kernel will require closer communication and will be worked on by a small, tight group.)

If I get donations of money, I may be able to hire a few people full or part time. The salary won't be high by programmers' standards, but I'm looking for people for whom building community spirit is as important as making money. I view this as a way of enabling dedicated people to devote their full energies to working on GNU by sparing them the need to make a living in another way.

### **.Why All Computer Users Will Benefit**

Once GNU is written, everyone will be able to obtain good system software free, just like air.(2)

□ This means much more than just saving everyone the price of a Unix license. It means that much wasteful duplication of system programming effort will be avoided. This effort can go instead into advancing the state of the art.

□ Complete system sources will be available to everyone. As a result, a user who needs changes in the system will always be free to make them himself, or hire any available programmer or company to make them for him. Users will no longer be at the mercy of one programmer or company which owns the sources and is in sole position to make changes.

□ Schools will be able to provide a much more educational environment by encouraging all students to study and improve the system code. Harvard's computer lab used to have the policy that no program could be installed on the system if its sources were not on public display, and upheld it by actually refusing to install certain programs. I was very much inspired by this.

□ Finally, the overhead of considering who owns the system software and what one is or is not entitled to do with it will be lifted.

□ Arrangements to make people pay for using a program, including licensing of copies, always incur a tremendous cost to society through the cumbersome mechanisms necessary to figure out how much (that is, which programs) a person must pay for. And only a police state can force everyone to obey them. Consider a space station where air must be manufactured at great cost: charging each breather per liter of air may be fair, but wearing the metered gas mask all day and all night is intolerable even if everyone can afford to pay the air bill. And the TV cameras everywhere to see if you ever take the mask off are outrageous. It's better to support the air plant with a head tax and chuck the masks.

□ Copying all or parts of a program is as natural to a programmer as breathing, and as productive. It ought to be as free.

### **.Some Easily Rebutted Objections to GNU's Goals**

**"Nobody will use it if it is free, because that means they can't rely on any support."**

**"You have to charge for the program to pay for providing the support."**

□ If people would rather pay for GNU plus service than get GNU free without service, a company to provide just service to people who have obtained GNU free ought to be profitable.(3)

□ We must distinguish between support in the form of real programming work and mere

handholding. The former is something one cannot rely on from a software vendor. If your problem is not shared by enough people, the vendor will tell you to get lost.

If your business needs to be able to rely on support, the only way is to have all the necessary sources and tools. Then you can hire any available person to fix your problem; you are not at the mercy of any individual. With Unix, the price of sources puts this out of consideration for most businesses. With GNU this will be easy. It is still possible for there to be no available competent person, but this problem cannot be blamed on distribution arrangements. GNU does not eliminate all the world's problems, only some of them.

Meanwhile, the users who know nothing about computers need handholding: doing things for them which they could easily do themselves but don't know how.

Such services could be provided by companies that sell just hand-holding and repair service. If it is true that users would rather spend money and get a product with service, they will also be willing to buy the service having got the product free. The service companies will compete in quality and price; users will not be tied to any particular one. Meanwhile, those of us who don't need the service should be able to use the program without paying for the service.

**"You cannot reach many people without advertising, and you must charge for the program to support that."**

**"It's no use advertising a program people can get free."**

There are various forms of free or very cheap publicity that can be used to inform numbers of computer users about something like GNU. But it may be true that one can reach more microcomputer users with advertising. If this is really so, a business which advertises the service of copying and mailing GNU for a fee ought to be successful enough to pay for its advertising and more. This way, only the users who benefit from the advertising pay for it.

On the other hand, if many people get GNU from their friends, and such companies don't succeed, this will show that advertising was not really necessary to spread GNU. Why is it that free market advocates don't want to let the free market decide this?(4)

**"My company needs a proprietary operating system to get a competitive edge."**

GNU will remove operating system software from the realm of competition. You will not be able to get an edge in this area, but neither will your competitors be able to get an edge over you. You and they will compete in other areas, while benefiting mutually in this one. If your business is selling an operating system, you will not like GNU, but that's tough on you. If your business is something else, GNU can save you from being pushed into the expensive business of selling operating systems.

□ would like to see GNU development supported by gifts from many manufacturers and users, reducing the cost to each.(5)

**"Don't programmers deserve a reward for their creativity?"**

□ If anything deserves a reward, it is social contribution. Creativity can be a social contribution, but only in so far as society is free to use the results. If programmers deserve to be rewarded for creating innovative programs, by the same token they deserve to be punished if they restrict the use of these programs.

**"Shouldn't a programmer be able to ask for a reward for his creativity?"**

□ There is nothing wrong with wanting pay for work, or seeking to maximize one's income, as long as one does not use means that are destructive. But the means customary in the field of software today are based on destruction.

□ Extracting money from users of a program by restricting their use of it is destructive because the restrictions reduce the amount and the ways that the program can be used. This reduces the amount of wealth that humanity derives from the program. When there is a deliberate choice to restrict, the harmful consequences are deliberate destruction.

□ The reason a good citizen does not use such destructive means to become wealthier is that, if everyone did so, we would all become poorer from the mutual destructiveness. This is Kantian ethics; or, the Golden Rule. Since I do not like the consequences that result if everyone hoards information, I am required to consider it wrong for one to do so. Specifically, the desire to be rewarded for one's creativity does not justify depriving the world in general of all or part of that creativity.

**"Won't programmers starve?"**

□ could answer that nobody is forced to be a programmer. Most of us cannot manage to get any money for standing on the street and making faces. But we are not, as a result, condemned to spend our lives standing on the street making faces, and starving. We do something else.

□ But that is the wrong answer because it accepts the questioner's implicit assumption: that without ownership of software, programmers cannot possibly be paid a cent. Supposedly it is all or nothing.

□ The real reason programmers will not starve is that it will still be possible for them to get paid for programming; just not paid as much as now.

□ Restricting copying is not the only basis for business in software. It is the most common basis because it brings in the most money. If it were prohibited, or rejected by the customer, software business would move to other bases of organization which are now used less often. There are always numerous ways to organize any kind of business.

Probably programming will not be as lucrative on the new basis as it is now. But that is not an argument against the change. It is not considered an injustice that sales clerks make the salaries that they now do. If programmers made the same, that would not be an injustice either. (In practice they would still make considerably more than that.)

**"Don't people have a right to control how their creativity is used?"**

"Control over the use of one's ideas" really constitutes control over other people's lives; and it is usually used to make their lives more difficult.

People who have studied the issue of intellectual property rights carefully (such as lawyers) say that there is no intrinsic right to intellectual property. The kinds of supposed intellectual property rights that the government recognizes were created by specific acts of legislation for specific purposes.

For example, the patent system was established to encourage inventors to disclose the details of their inventions. Its purpose was to help society rather than to help inventors. At the time, the life span of 17 years for a patent was short compared with the rate of advance of the state of the art. Since patents are an issue only among manufacturers, for whom the cost and effort of a license agreement are small compared with setting up production, the patents often do not do much harm. They do not obstruct most individuals who use patented products.

The idea of copyright did not exist in ancient times, when authors frequently copied other authors at length in works of non-fiction. This practice was useful, and is the only way many authors' works have survived even in part. The copyright system was created expressly for the purpose of encouraging authorship. In the domain for which it was invented--books, which could be copied economically only on a printing press--it did little harm, and did not obstruct most of the individuals who read the books.

All intellectual property rights are just licenses granted by society because it was thought, rightly or wrongly, that society as a whole would benefit by granting them. But in any particular situation, we have to ask: are we really better off granting such license? What kind of act are we licensing a person to do?

The case of programs today is very different from that of books a hundred years ago. The fact that the easiest way to copy a program is from one neighbor to another, the fact that a program has both source code and object code which are distinct, and the fact that a program is used rather than read and enjoyed, combine to create a situation in which a person who enforces a copyright is harming society as a whole both materially and spiritually; in which a person should not do so regardless of whether the law enables him to.

**"Competition makes things get done better."**

□The paradigm of competition is a race: by rewarding the winner, we encourage everyone to run faster. When capitalism really works this way, it does a good job; but its defenders are wrong in assuming it always works this way. If the runners forget why the reward is offered and become intent on winning, no matter how, they may find other strategies-- such as, attacking other runners. If the runners get into a fist fight, they will all finish late.

□Proprietary and secret software is the moral equivalent of runners in a fist fight. Sad to say, the only referee we've got does not seem to object to fights; he just regulates them ("For every ten yards you run, you can fire one shot"). He really ought to break them up, and penalize runners for even trying to fight.

**"Won't everyone stop programming without a monetary incentive?"**

□Actually, many people will program with absolutely no monetary incentive. Programming has an irresistible fascination for some people, usually the people who are best at it. There is no shortage of professional musicians who keep at it even though they have no hope of making a living that way.

□But really this question, though commonly asked, is not appropriate to the situation. Pay for programmers will not disappear, only become less. So the right question is, will anyone program with a reduced monetary incentive? My experience shows that they will.

□For more than ten years, many of the world's best programmers worked at the Artificial Intelligence Lab for far less money than they could have had anywhere else. They got many kinds of non-monetary rewards: fame and appreciation, for example. And creativity is also fun, a reward in itself.

□Then most of them left when offered a chance to do the same interesting work for a lot of money.

□What the facts show is that people will program for reasons other than riches; but if given a chance to make a lot of money as well, they will come to expect and demand it. Low-paying organizations do poorly in competition with high-paying ones, but they do not have to do badly if the high-paying ones are banned.

**"We need the programmers desperately. If they demand that we stop helping our neighbors, we have to obey."**

□You're never so desperate that you have to obey this sort of demand. Remember: millions for defense, but not a cent for tribute!

**"Programmers need to make a living somehow."**

□In the short run, this is true. However, there are plenty of ways that programmers could make a living without selling the right to use a program. This way is customary now because it brings programmers and businessmen the most money, not because it is the

only way to make a living. It is easy to find other ways if you want to find them. Here are a number of examples.

□ A manufacturer introducing a new computer will pay for the porting of operating systems onto the new hardware.

□ The sale of teaching, hand-holding and maintenance services could also employ programmers.

□ People with new ideas could distribute programs as freeware, asking for donations from satisfied users, or selling hand-holding services. I have met people who are already working this way successfully.

□ Users with related needs can form users' groups, and pay dues. A group would contract with programming companies to write programs that the group's members would like to use.

□ All sorts of development can be funded with a Software Tax:

□ Suppose everyone who buys a computer has to pay  $x$  percent of the price as a software tax. The government gives this to an agency like the NSF to spend on software development.

□ But if the computer buyer makes a donation to software development himself, he can take a credit against the tax. He can donate to the project of his own choosing--often, chosen because he hopes to use the results when it is done. He can take a credit for any amount of donation up to the total tax he had to pay.

□ The total tax rate could be decided by a vote of the payers of the tax, weighted according to the amount they will be taxed on.

□ The consequences:

- The computer-using community supports software development.
- This community decides what level of support is needed.
- Users who care which projects their share is spent on can choose this for themselves.

In the long run, making programs free is a step toward the post-scarcity world, where nobody will have to work very hard just to make a living. People will be free to devote themselves to activities that are fun, such as programming, after spending the necessary ten hours a week on required tasks such as legislation, family counseling, robot repair and asteroid prospecting. There will be no need to be able to make a living from programming.

□ We have already greatly reduced the amount of work that the whole society must do for

its actual productivity, but only a little of this has translated itself into leisure for workers because much nonproductive activity is required to accompany productive activity. The main causes of this are bureaucracy and isometric struggles against competition. Free software will greatly reduce these drains in the area of software production. We must do this, in order for technical gains in productivity to translate into less work for us.

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### Footnotes

(1) <<http://www.gnu.org/gnu/manifesto.html#r1>> The wording here was careless. The intention was that nobody would have to pay for \*permission\* to use the GNU system. But the words don't make this clear, and people often interpret them as saying that copies of GNU should always be distributed at little or no charge. That was never the intent; later on, the manifesto mentions the possibility of companies providing the service of distribution for a profit. Subsequently I have learned to distinguish carefully between "free" in the sense of freedom and "free" in the sense of price. Free software is software that users have the freedom to distribute and change. Some users may obtain copies at no charge, while others pay to obtain copies--and if the funds help support improving the software, so much the better. The important thing is that everyone who has a copy has the freedom to cooperate with others in using it.

(2) <<http://www.gnu.org/gnu/manifesto.html#r2>> This is another place I failed to distinguish carefully between the two different meanings of "free". The statement as it stands is not false--you can get copies of GNU software at no charge, from your friends or over the net. But it does suggest the wrong idea.

(3) <<http://www.gnu.org/gnu/manifesto.html#r3>> Several such companies now exist.

(4) <<http://www.gnu.org/gnu/manifesto.html#r4>> The Free Software Foundation raises most of its funds from a distribution service, although it is a charity rather than a company. If \*no one\* chooses to obtain copies by ordering <<http://www.gnu.org/order/order.html>> them from the FSF, it will be unable to do its work. But this does not mean that proprietary restrictions are justified to force every user to pay. If a small fraction of all the users order copies from the FSF, that is sufficient to keep the FSF afloat. So we ask users to choose to support us in this way. Have you done your part?

(5) <<http://www.gnu.org/gnu/manifesto.html#r5>> A group of computer companies recently pooled funds to support maintenance of the GNU C Compiler.

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**Other Texts to Read** <<http://www.gnu.org/philosophy/philosophy.html>>

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