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MUSIC LIKE WATER

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To: Gerd Leonhard <gerd@gerdleonhard.com>

anuary 15, 2006**"Flat Fee Music" & The MUSIC LIKE WATER MANIFESTO***MIDEM 2006, Cannes, France, January 23, 2006 Vs 1.3**Non-commercial reprinting and public reuse of this essay is permitted if proper attribution is given at all times ([Gerd Leonhard](#), [MusicFuturist](#), www.gerdleonhard.net).*

Update: Jan 27, 2006 ** Check back frequently - this is work in progress **

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[Gerd Leonhard](#), [Author](#) of "[The Future of Music](#)", [Music](#) & Media [Futurist](#). The [Music Like Water Manifesto](#) - a preview of some of the [concepts covered](#) in my next book "Music Like Water - the next REAL music revolution"

It's the 40th [MIDEM](#) (the [music industry's](#) annual gathering [in](#) Cannes, France) and the first few days of 2006, and so I figured it's a good time to throw these ideas into the mix, and present this paper for public discussion. Btw: I already published [another paper](#) on this, pretty much exactly one year ago, and there are various [online slideshows](#) available on this subject, as well. And, you can [Search Inside My 2005 book "The Future of Music"](#), using that fantastic tool Amazon offers.

The debate over the [licensing of digital music](#) is raging and growing exponentially every day. Around the world, calls for [flat-fee](#), open and 'public' music access systems have been getting louder and louder (see the [French Parliament](#), the [German Indie Label Organization VUT](#), the Swedish so-called 'Pirat'-Party, Martin Mills / Chairman of the Beggars Group in a [recent Music Tank essay](#), [Gilberto Gil](#) in [Brazil](#) etc). And, despite the huge - and indeed very respectable [growth of online music sales](#) - 'legal' / paid digital music services are FAR from [beating the ever-popular file sharing](#) networks, darknets, and countless other [digital music-trading](#) methods. Will it be a [cold day in hell](#) before the legitimate offers are good enough to at least have a real chance of beating the shoddy experiences of the unlicensed p2p services?

In fact, rather than the universally desirable and much discussed '[monetization of conduct](#)' and the '[flat fee](#) licensing' of P2P networks (yep, this could have been done back in 1999!), the biggest thing to really happen in music, in 2005, was [Podcasting](#) - for which most music is, *once again*, not made available or licensed at this time, with the exception of some recent and very laudable first steps by [AIM in the UK](#)). What does that tell you? [Imho](#), it confirms that indeed very few [initiatives](#) for significant change are coming from within the industry; almost every major change seems to be coming from the outside.

Now, [despite](#) the overall quite impressive number of approx. 830 Million [downloads](#) that [Steve Jobs just announced at Mac World](#), I think [iTunes](#) (but not iPod!) sales will be flattening severely as everyone that has any economically realistic view of life is now realizing that they cannot continue to spend \$ / Euro / GBP 1 per track, for yet another version of the same track, *again*. On the other side of the digital music sphere the Janus-[DRM'ed](#) windows media-powered music services such as [Napster](#) and Real's Rhapsody are struggling with the heavy handicaps that their technology neither really [protects anything](#) nor is it [really easy to use for anyone](#). In fact, all the ones I have tried have plenty of 'most likely does not play when you really need it' problems - [no such troubles with EMusic](#) which I like a lot; but... very little, if any, music from the major labels here.

The bottom line is that the SYSTEM, the OPERATING PARADIGM, is broken, at the core, and that truckloads of band-aids will not make it well again - these attempts at reviving an [almost comatose record \(but NOT music-\) industry](#) will just keep us going until we can get a full set of organ (and brain) transplants. But of course, usually, big changes must simply play themselves out, and so for 2006, I [predict](#) that the PAIN of selling music the good old way (i.e. by the 'unit', whether online or offline) will become so severe that most [incumbents](#) will simply waive most currently mandatory must have's and finally throw their holy cows (such as not licensing anything in MP3 format, or maintaining territorial restrictions) into the digital [meat-grinder](#), and will start heading for greener pastures, in droves. Good.

Along with this, in 2006, we will see various embodiments of "MLW" and the Flat Fee Music Fee - [and I](#) certainly hope to be able to contribute.

'Music like water' (*MLW) - everybody uses, everybody pays

Simply put - as already touched on in my 2005 book ["The Future of Music"](#), co-written with Dave Kusek - it is the concept of music that is as ['freely'](#) (but NOT for free!) available and as omni-present as water or electricity, with everyone paying and everyone using, and with ubiquitous coverage, accessed via a large number of entry-points (Net, Cable, Wireless, Satellite...), using many different devices, and in many different shapes and incarnations. It is a system where all users, and / or their service providers (!), happily make small, ['feels-like free'](#) payments to be able to access a large pool of music, without restraints, all-you-can-eat, anytime, anywhere. A system where the works of any creator and rights holder can easily be found and discovered, used and compensated for, simply by virtue of [BEING IN THE POOL](#), and in the essence, proportionally to the actual use of their works. Sounds an awful lot like Cable TV or Radio... right?

Why do we need MLW and Flat Fee Music?

There are many good reasons - here are just a few.

- 1) Because MUSIC (and of course, Art in general) is as essential to our lives as water and as electricity -almost as much as air- and in a digital / networked society it shouldn't be, and needn't be, locked up and forcibly [pellegrino-ed](#) only because doing so used to create outrageous 'benefits of friction' for 4% of the players in this system, while the end-user must sacrifice at every turn, rather than [getting to participate](#) and - holy cow! - even be an [active part](#) of the music experience. The current situation - the Orwellian law-suits, the hideously unclear and convoluted licensing situation, the [DRM-booby trapped CDs](#) and online services, the raging tides of incompatibility, and the never-ending [user frustration](#) - is simply unsustainable and is strangling the market. Instead of technology giving us MUSIC2.0 it appears that the music rights situation is pushing us back to a pre-jurassic Music 0.5 .
- 2) Because everyone should, and will (or [does already](#) ;), have access to music, in the connected, digital-natives-ruled world that is quickly coming upon us. Don't believe it? Well, what about Yahoo Music Unlimited, Napster to Go, Motorola's [iRadio](#), XM-to-Go and the new iMesh? Call it a flat-fee based ['music renting'](#) model but really it's the first precursors of FLAT FEE MUSIC - and if some of this reminds of the pontifications of the ill-faded [John Marie Messier](#), ex-CEO of Vivendi-Universal (the former [utility company!](#)), I guess that would be no accident...
- 3) Because the user has won, hands down, in the 10-year old battle of "Us (the record industry) versus Them"; the system as we know it is bursting, the [dam is broken](#), and everyone is looking elsewhere. Brazil is turning [creative-commons](#), Asia and African nations are pondering [alternative compensation](#) systems for music, [France's parliament wants a flat-fee P2P license](#), and meanwhile Apple is quietly (or rather... loudly) basically taking over the digital music business!
- 4) Because it's TIME and we've all been waiting long enough. 12+ years since MP3, 10 years since IUMA, 6 years since Napster 1.0... and 1.4 Million [frequent flyer miles](#) on my account :) - isn't it time to FINALLY give the user what they actually want, when and how they want it, rather than trying to TELL THEM what they *should* want? Time to take a page from Southwest Airlines, EasyJet, eBay, Google and Apple. [How much pain](#) does it take before you make serious changes?
- 5) Because it is technically and socially efficient, *and* effective. Even though it is likely that most music would initially come off central server banks in each territory, almost ubiquitous user acceptance would quickly create the perfect user case for authenticated and monitored p2p content delivery systems such as BitTorrent, or something like [RawFlow](#); allowing large numbers of

large music files to be send around for a fraction of the bandwidth - this will eventually be a boon for broadcasters, of course - first music, then films...!

6) Because convergence is now FOR REAL, and [convergence demands](#) that we solve this problem NOW. Yes, sue, talk of convergence in media is 15 years old but THIS time it's real, and if we don't offer a real solution - not a fig-leaf, a token, or a band-aid - to how music will FLOW in convergent and bundled media networks, it simply won't have music, or at least... not *our* music. See podcasting, see social media, see P2P networks...

7) Because every music fan is now [time-shifting](#), space-shifting, and devise shifting, anyway, AND looking for a better deal for his \$. The record industry wants more money per track, while the users keep exploring the cheaper, or free, options. But this time, [just playing hardball is not](#) going to bring in the bacon!

8) Because MLW and Flat Fee Music gives everyone the immediate and substantial benefit of having constant and more or less limitless access to music, anywhere, anytime, while at the same time it will gently and elegantly manage to get the necessary payments from [each and every user](#).

The **bottom line** is that MLW and Flat Fee Music seems like the only approach that will really work, going forward. Just imagine a world where you need to insert your credit card into a reader to be able to [flush the toilet](#) at a restaurant, where a userID and password is required to fill your bathtub, and where you secretly trade water jugs of rainwater with your neighbors. This is basically what we have in the music business, now! Almost all of us indeed would be (or are?) [bona-fide criminals](#) in such a scenario because it would be next to impossible *not to be*. Unfortunately the fact is that almost all of us ALREADY are criminals: we have engaged in downloading 'unauthorized' content one way or the other (well.... yes, for [research purposes only](#) ;), and if it's not YOU, it's your KIDS! MLW is the only way to provide [digital music amnesty](#), to offer INSURANCE, to afford compliance, to building a safe and stable system of music consumption and creation.

So how would it work?

The MLW idea would, of course require a large [pool of music](#) that will be made available, to everyone, on any and all digital networks, in return for making universally accepted payments that -imho- will very likely be bundled into other services such as general online access, wireless communications, club memberships, all kinds of online services, cable and radio, or other content subscription services, and that may well be included in some existing or new levies for hardware and devices. This ['Pool of Music'](#) is likely to cover the basic music needs of most music users in most countries, and will of course need to reflect the strong local preferences in terms of language, genres and the like; imho, somewhere in the neighborhood of 1.5 to 2 Million songs should be sufficient for most territories. This [Pool of Music](#) must be available in a format that will be universally supported, without exception (ok, I do have a hunch what that would be;), and that will *always* play on 100% of devices, without fail, and in practical terms, we will ultimately [no longer really distinguish between performance](#) / listen or 'digital download' since the actual use of each piece of music will be measured each and every time, and as it happens. Every single track will have a unique ID, a unique fingerprint, watermark, DNA, with a [central registry](#) maintaining the data (is *that* Snocap's mega-plan...?). Every use of every track on any and all digital network is therefore likely be tracked and documented, and - much like the stockmarket - rights holders and creators will be able to track these *actual* usage details pretty much as it happens; and payments for each use will be instantly trackable, transparent and more or less instantaneously transmitted, handled by software solutions have already been available for quite some time now.

So-called [copy protection](#) and [DRM](#) (as we currently define it) will simply not be needed, since there is no real reason to snag content from somebody else that is also tapping into the very same pool of content that I have access to - but user authentication, tracking, monitoring, scanning, playlisting, programming and [recommendation](#) will be.

A quick side-note to VCs: consider investing in [companies](#) that aggregate content and rights, and put your \$\$\$ in media searching / playlisting / recommendation, advertising insertion technologies, and digital marketing tools - that is where the action is. DRM will become CRM, aka *Customer Rights Management*, and rootkits will become marketing kits ;). In a ubiquitous system of MLW nobody would bother to 'steal' music from anyone, since everyone already has their own access. And even if you could not afford to pay for that [access](#) (as little as it would actually cost you), somebody else would be very likely to pay it for you; either to be able to market to you in return, or to simply make sure your are taken care of, much like the social service agencies in many countries

make sure that everyone has power and water - simply because it would create too much friction in the system if you did not have it. The real danger of stealing, in a MLW world, is people stealing your DATA, and infringing on your privacy! Indeed, the MLW system really means that the *users, themselves, are the content* and create the real value for companies that offer services in this turf.

How would music be licensed in this system?

The flat fee, 'music utility' license needs to be as [compulsory](#) as the radio license and the good old 'public performance' license - following the release of your musical work, you simply can't refuse to make your music publicly available, at least to some minimal degree; it's all part of, quite literally, 'releasing' it. I picture this compulsory license as the result of ongoing negotiations over tariffs (and yes, let's be real - this will probably require government 'participation' in some form or the other), but ideally this license would mean that all new releases are automatically included in the 'Music Pool', and a certain amount of catalog repertoire (say, the last 2-3 years) would be, as well. Everything else could be handled on an opt-in scenario; but of course, ultimately, who would not want to have their entire catalogs on this system, since 'being part of it' would pretty much be the starting point and prerequisite for everything else, and it therefore would be foolish not to opt-in with all of one's assets. Tariffs would initially be set by country, or better yet, by regions (such as EU-wide), and maybe the current rights societies (PROs and MROs) could *possibly* administer the flow of the payments (but of course, for a fraction of their current rates :(.)

Why would Music Like Water benefit the creators, and their agents and representatives?

The answer is obvious: a bigger pizza makes for more slices. More money to spread around, a much fairer way of splitting it up, and a more leveled playing field of distribution that would create very powerful 'smarter-marketing-wins' opportunities. In its essence, this system would imply that Artists and rights-holders would have nobody to blame but themselves and their service providers, if they could not attract the attention of consumers - transparency and accountability would be 'king'. Having said that, this may also create some possibly very extreme forms of what I like to call **digital darwinism**, in that the effects of 'only-a-mouse-click away' - competition would be extremely palpable: millions of tracks in a flat-fee, open format-, ubiquitous and universal access system would create huge competitive pressures as far as the consumer's SELECTION process is concerned, i.e. on what the users would actually pay attention to, given that all of them will have less time but exponentially more media and entertainment options than ever before. But... I suspect that there are clever entrepreneurs out there that are already working to alleviate this very problem (time for a de-darwiniser...)

Who would get what?

The MLW payment logic could encompass something like this: non-interactive radio would be free or almost free; interactive / on-demand radio would be subject to a small license fee; tethered downloads (i.e. downloads that could not be moved from a given system that receives them, but that would play 'offline') would cost a bit more; and *free/play-for-absolutely-sure* downloads that can be moved anywhere anytime would cost the most. And of course, physical media orders would all be extra (CDs, DVDs, pre-loaded storage mediums, and other yet-to-be-invented fixed media formats - and there will be quite a few!). The most important thing would be, of course, the user / fan / consumer would not even know the difference, since any form of consumption of any song in the system would be covered with his / her music flat fee, anyway - the difference in mode of consumption would only matter for splitting up the pool of money (to quote my fellow visionary Jim Griffin's favorite term), and making the payments to the rights holders.

Doing the math

Assuming that almost all users in most countries would 'pay' this MLW 'music fee' - or, more correctly, that someone would pay it for them, or bundle it into another product so they wouldn't even know they are paying for it - , this is a first take of how I would envision these fees to be split up. After deducting the 'operating costs' such as the registry operation, file analysis / fingerprinting and / or watermarking, hosting, bandwidth, accounting, and general administration (all of these could indeed be minimized drastically, so in my view they should not make up more than 8-10% of the total), the remaining income from the total pool of 'Music Fees' in each country or territory would be considered *Distributable Music License Fees* that would be paid to the content creators and / or their representatives. What's more - and this is where it gets really interesting - I think that other revenue streams that would be derived by any of the music services that would tap into this 'Music Pool', such as income from advertising, should also be subject to paying a small commission fee to the content owners. From the 100% of the remaining license fees, my first thoughts are that something like 60% could be paid for all downloads (in the aggregate), 25% could be paid for all so-called tethered downloads (if that will even continue to be a viable offering, given the nature of

the MLW system...), 12% could be paid for interactive / on-demand radio, and 3% for regular, non-interactive, digital radio. I am aware that this is a very contentious issue but a 50-50 split between the artist / performer (master recording rights holder) and the songwriter (composition rights holder) seems like a good approach, in principle. Beyond this, every track used on the system would simply be tracked according to its actual use (beyond a 30 second trial or preview, maybe), and would receive the exact amount of royalties on a pro-rate basis to all actually used tracks on the network, e.g. if during a single day of accounting, a single track accounted for 5% of all downloads in a given territory, it would receive the 5% of the 60% allotted for download-license fees for that day (i.e. pro-rata from the per-month or per year 'music fees' paid into the system. More on this in my upcoming book ;)

MLW / Flat Fee Music is only the Tip of the Iceberg!

It is very important to realize that the Flat Fee Music concept described here would only be the very tip of the iceberg of what would happen in digital music commerce if we truly embraced [this new ecosystem](#); in fact, I would venture to say that while MLW-derived fees would be quite substantial (and of course, recurring!!) they would still represent less than 30-40% of the total revenue potential that this new approach would unlock. Some of the other revenue streams could be things such as on-demand live show recordings, interactive webcasts, exclusive pre-releases, catalog re-issues, special products and many different kinds of new audio-visual products - the [list of options](#) is getting longer every day.

How much would this cost the consumer?

The answer is that it would of course vary widely depending on territory and size of population, but overall the price to the endusers is very likely to fall quickly (no, NOT the resulting license fees!!) once the system is truly 'liquid', and once it starts generating huge amounts of potential opt-in, targeted and customized [advertising opportunities](#) which imho will be the major source of entertainment monetization going forward. Personally, for the 'rich' nations, I am thinking that a 3-5 EURO / \$ / GBP price range for the end user would be a good range, since I believe that kind of figure would result in almost ubiquitous buy-in from the consumers. I will get into detailed examples on the math behind this, in my book, but do consider this quick preview: if 85 Million Germans paid a monthly 'music fee' of 4 Euros, we would yield a whopping 340 Million Euros / months, or 4.08 Billion Euro per year - not bad for monetizing what people already do (:), and as a starting point, I would think, since there would *still be* CD sales and all the new revenue opportunities listed above. At this rate, I think that we would very quickly have ISPs, telco's and mobile operators absorbing the user's fees for the privilege of selling other services to him / her. The result: the [price goes down](#), AND the service level goes up - the *digital content paradox*. And then: enter UP-SELLING, and enter [ADVERTISING 2.0](#) which I think will yield a multiple of the Music Fees described above. Keep in mind that, as evidenced by Google's latest move, targeted, customized advertising-in-media is an explosive growth market that some analysts have described as 100x as powerful as the current advertising market - this would dwarf any money that we could make just selling 'copies' of songs.

The role of government

Unless the rights holders and the music services (i.e. retailers) can agree on a flat-fee music rate that also makes sense to the user, SOON, and start to provide a level of service that actually works for anyone without an engineering degree, it looks like the government and other public policy organizations will need to step in and catalyze (or... force?) a deal. Right now, I think it looks like that is likely to happen within the next 12-18 months, starting in Europe (your guess where *exactly*). I don't think the government should RUN or even regulate a Flat Fee / MLW system, and I don't think it should be a tax or a levy, but still, this of course is nothing new to Europeans, who [already pay](#) approx. \$150 per year per resident to have the *right to use* their TVs and radios, so let's see how things do play out in that context. Rather, I think the government (in particular, the European Commission) should be involved with setting the rates, and then get out of the way and let commercial services blossom that are based on that rate (see Radio, and Cable TV).

Anyway, that's it for now.

Over to you -[talk to me!](#)

Gerd Leonhard

Basel, Switzerland, January 23 2005

Usage Notes:

*** I am neither the 'proprietor' or sole originator of these concepts and ideas; I have simply been*

very busy learning from many others (see below), collecting, incubating on and remixing ideas, collating thoughts from 1000s of web-pages, RSS-feeds, books and conversations. All those before me and next to me deserve the credit - I am just the remixer. Please note my list of influencers, below (this is NOT a complete list)

***This is only a preview and very basic overview of the "MUSIC LIKE WATER" concepts; many examples and more detailed arguments that will be covered in my book have been omitted. If you need more... ask me.

Credits (more to follow)

Among many others, my work is influenced by
All the smart people on The Pho List, in particular [Jim Griffin](#), John Parres, and Josh Wattles
[Larry Lessig](#)
Chris Anderson and his [Long Tail Blog](#)
[Stephen Hill](#) (Hearts of Space)
My Future of Music book co-writer Dave Kusek

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