



OPEN RIGHTS GROUP

Creative Business in the Digital Era

Case Study 2: John Buckman and Magnatune

March 2008

Prepared by Michael Holloway

For more information, contact:

+44 (0) 20 7096 1079

7th floor, 100 Grays Inn Road, London WC1X 8AL

info@openrightsgroup.org

www.openrightsgroup.org

Executive Summary

Magnatune, a record label founded in 2003, is a pioneer of open music, the most successful attempt to embed Creative Commons (CC) licences in a sustainable commercial venture, and an early adopter of variable pricing. Initially conceived as part online radio station, part retailer and part licensing-suite, the business model continues to evolve in response to consumer and technology trends.

Founded by John Buckman, Magnatune is focused on supporting musicians in musical genres marginalised by the record industry. To this end, Magnatune offers 50/50 deals, splitting gross profits (i.e. total income received from sales) between the musician and the label.

Magnatune's website serves around 45,000 listeners every day, from a catalogue comprising 264 artists and 582 albums. Most visitors and sales are from the US, Europe and Asia.

Magnatune's most popular genre by far — with 30% of sales — is classical, followed by new age, electronica and rock, which represent around 10% of sales each. The classical market is in serious decline: In 1980, classical recordings comprised 20% of the industry's revenue, which dropped to 2% by 2000, and to 0.75% in 2006. Yet Magnatune has seen 20% growth annually since autumn 2003.

John recognises that obscurity is a musician's biggest hurdle, and his innovative approach to overcoming it is to provide 'open music', which is "shareable, available in 'source code' form, allows derivative works and is free of cost for non-commercial use."

Shareable: Users are invited to share their purchased tracks with up to three friends, can listen to the entire catalogue for free via the website's 128kbps streams, and can download any song as a 128kbps MP3 file.

Available as 'source code': Ten per cent of the catalogue is also available in its component parts, e.g. scores, lyrics, MIDI files, samples or track-by-track audio files.

Derivative works: The CC licence used by Magnatune explicitly permits users to make derivative works - such as remixes, cover songs and sampling - for non-commercial purposes, which is further facilitated by the provision of the 'source code'.

Free for non-commercial use: Users can download songs for non-commercial projects, such as a home video soundtrack or compilation album intended for family or friends.

Magnatune is also very supportive of podcasters, and allow them to use 128kbps MP3s for free, with higher quality WAV files available for a small fee.

Regardless of format, podcasters are given a royalty-free license to play and promote Magnatune's music.

Fan purchases make up about half a musician's income, with the remainder coming from commercial licensing fees. John sees bulk discounts and wholesale as an important feature of the current digital ecology, and that the ability to compete in this area depends on the cost-savings offered by the internet and the use of standard licences, (which remove the need for expensive lawyers).

Magnatune are also willing to "license rights that no one else will". For example, Renault wanted a pre-loaded, DRM-free 30 gigabyte hard drive — amounting to hundreds of albums — for their cars at a price of less than \$200 / £100 per unit, meaning a cost price well below \$2 / £1 per album. John was happy to make a deal traditional labels wouldn't.

Since the beginning, Magnatune has offered a free music stream as a version of 'try before you buy'. In practice, the conversion rate from listener to buyer has dropped from 1:20 to 1:42. John attributes this to the growth in competing offerings, and downloads becoming less compelling because listeners are rarely offline. This drop has been managed by dramatically reducing costs and the service will remain profitable until the ratio drops below 1:200.

Magnatune uses a variable pricing model as standard, inviting customers to pay whatever they consider fair within the range \$5-\$18 / £2.50-£9. Fifty per cent of customers spend between \$8-\$9 / £4-£8, well above the minimum.

Magnatune's community has played an important role in the label's success, with a Founder's Blog, forums, email lists, and a MySpace page, but the majority of the community is distributed across blogs, forums and email discussion groups elsewhere on the internet. This has resulted in a "brand presence" several orders of magnitude larger than their market size would suggest.

But there are two potential drawbacks to the Magnatune business model, and open music more generally:

First, making the catalogue available for free risks devaluing the works, because some people will only use the free versions. John feels this is not a significant risk because those people can easily find what they want on P2P networks and torrents, regardless of Magnatune's free offerings.

Second, their free model, along with the lack of an advance against royalties, could turn off some musicians. This has not been a significant hindrance in practice, because many musicians are attracted to Magnatune specifically by the concept of open music.

Magnatune appears to be a solid success in terms of John's modest ambition to do "something neat that might get noticed". Financially, the target of becoming self-sustaining has been achieved. The hard target – providing an

income of \$10,000 / £5,000 per year to a third of the artists signed to the label – has not yet been reached, although three of its artists at this level and a further 30 receive \$3,000 / £1,500 per year.

The technical barriers to establishing an open music label are “pretty light”. The website, which serves streams and downloads to customers and takes their payments, is relatively simple to produce using widely-available software tools. In John’s view, the main barriers are social, with the biggest challenge being to locate and engage with an audience.

But this model is not immune from social and technological developments. John predicts that the “mobile, always-on internet good enough to stream audio everywhere” is only a few years away, and once everyone has 24/7 connectivity they are unlikely to pay for — or even want — downloadable music. When this point is reached, the label must move to a new business model, be it subscriptions, live music, t-shirts or something else. There may also be problems if musicians’ unions or other regulatory authorities mandate the use of DRM, or if legal reform mandated a pay-per-stream model, which would increase Magnatune’s costs to an unbearable level.

Full Case Study

Background

Open Music is music that is shareable, available in 'source code' form, allows derivative works and is free of cost for non-commercial use. It is the concept of 'open source' computer software applied to music.¹

Magnatune, a record label founded in spring 2003, is the pioneer of open music. It is the most successful attempt to embed Creative Commons² (CC) licences in a sustainable commercial venture. The label was also an early adopter of variable pricing, recently made famous with Radiohead's *In Rainbows* release. Initially conceived as part online radio station, part retailer and part licensing-suite, the business model continues to evolve in response to consumer and technology trends.

John Buckman is Magnatune's founder and driving force. He is a software engineer and serial entrepreneur with a range of creative interests, who spends half his time in London and half in Berkeley, California. Besides Magnatune, he runs Bookmooch³ and is a key figure in the CC and iCommons⁴ movements. John plays a number of stringed instruments including the lute and is also an accomplished studio engineer. His wife, Jan, is a classically trained pianist and electronica musician.

Magnatune is essentially geared to finding a business model that will serve the growing numbers of musicians and genres that are marginalised by the record industry. John wants to support the production of the broadest possible range of genres by helping career musicians achieve a reasonable standard of living; he's neither directly concerned with nor motivated by platinum records and millionaire pop stars.

Setting out to establish a record label for the digital era that respected both artists and fans, John has kept some of the best traditions of the independent record sector but also introduced significant innovations. Magnatune offers 50/50 deals, meaning the gross profits (i.e. total income received from sales) from recordings are split between the musician and the label, which avoids the complicated and contentious "recouping of costs" agreements labels generally use. Less typical but at the core of this business model are open licences, specifically CC licences, which explicitly encourage sharing of recordings amongst peers and wider communities. In fact the website explicitly encourages fans to share tracks, both the free versions which contain a spoken attribution at the end as well as purchased music, which can be shared with three friends.

¹ <http://magnatune.com/info/openmusic>

² <http://creativecommons.org/>

³ <http://bookmooch.com/>

⁴ <http://icommons.org/>

Magnatune has a global audience, serving around 45,000 listeners every day. Roughly 55% are in the US, 35% are in Europe and most of the remaining 10% are in Asia. The catalogue comprises 264 artists and 582 albums. Most sales are from the US, followed by the UK, the Netherlands and other Northern European nations. The company has seen 20% annual increase in turnover since its growth peak in autumn 2003 and agrees roughly 3—5 commercial uses of catalogue material each day. Magnatune's most popular genre by far — with 30% of sales — is classical, followed by new age, electronica and rock, which represent around 10% of sales each. The remainder of sales is a mix of rock, ambient, baroque jazz, metal and — last of all — pop.

The motivation for Magnatune

John identifies two motivations that drove him to found Magnatune. The first is to nurture secondary genres, meaning the styles of music that do not typically reach best-seller charts, and second, to locate and create new music fans.

Being a classical music fan himself, he recognised the record industry's neglect of his favourite genre. In 1980, classical recordings comprised 20% of the industry's revenue, which dropped to 2% by 2000 and then dropped further in 2006 to 0.75%. It seemed a fresh approach to making and selling records was needed if the classical genre — and all the other secondary genres — was to survive in a meaningful way. This fresh approach, detailed in full below, emerged from John's background in and understanding of software and internet development.

Free music is established practice

The Magnatune approach is that we don't have the major record label budget, so we let people listen as much as they like. We're grateful that they're here at all so let them listen and then convert them into buyers.

Although contrary to typical record label publicity, and perhaps counter-intuitively, there is an established tradition in the music industry that, in a strictly limited context, makes tracks available for free. Free tracks are used to convert listeners into buyers. For example, pretty much every label gives promotional copies to tastemakers — DJs and other influential figures — to play the tracks to their communities: in clubs and, most importantly, on the radio and video-television like VH1 and MTV. Tastemakers fuel demand. And, although in the UK radio stations must pay various licence fees, music is free to listeners over the radio.

However, the traditional methods of free promotion are not open to everyone:

Since radio has become very centralised and extremely expensive and non-economical to break new artists, new means had to be sought out, and the Magnatune means is simply for people to hear the music on the Internet.

So while the major record labels spent the past decade fighting the internet and digital distribution, seeing it as rising tide of illegal file sharing and lost sales, Magnatune embraced the open ecology to develop strategies for turning listeners into buyers. The foundation of this attitude is a warm welcome for every audience member, paid or otherwise, who can listen for free. John believes that artists and their agents should be delighted that someone out there is paying attention because obscurity — rather than copyright infringement — is the biggest hurdle for most working musicians. It is commonly believed in the music industry that once a musician achieves a minimum level of fame (i.e. a “fan-base”) that there are a large number of ways to monetise that fame. Magnatune uses unconventional means to create the fan base, and then monetises it via the traditional — though updated — methods of selling downloads and commercial licensing rights.

Open music

The most distinctive of Magnatune’s many unusual features is the policy of ‘open music’, which is defined as having a catalogue that is “shareable, available in ‘source code’ form, allows derivative works and is free of cost for non-commercial use.”⁵

Shareable music, the first of the open elements, means — as the name suggests — the artist expressly wants his track to be shared amongst peers: Magnatune’s users are invited to share their purchased tracks with up to three friends. Shareable music is distinct from the standard, ‘all rights reserved’ approach, because users are permitted to — rather than prohibited from — distribute further copies of the track. If a purchaser has been humming a track to their friends all day long, they can just give them a copy. These permissions are signalled to users by the CC ‘Attribution Non-Commercial Share-Alike’ licence⁶. In this case, permission to share also allows users to listen to the entire catalogue for free via the website’s 128kbps streams, as well as to download the 128kbps MP3 files themselves by clicking the “license” and then “non-commercial (Creative Commons)” button.

The purpose of making music available in source code is to encourage derivative works, such as remixes, cover songs and sampling. Source code also helps users understand the make-up and composition of a work. Magnatune encourages all its musicians to make their tracks available in ‘source code’, a concept imported from software production that means the software programme in its original language⁷. In the context of open music, the source code could be the scores, lyrics, MIDI files, samples or track-by-track audio files that comprise a recording. Again, the CC licence used by Magnatune explicitly permits users to make derivative works for non-commercial purposes. In practice, however, only a small proportion of the catalogue is available in source code:

⁵ <http://magnatune.com/info/openmusic>

⁶ <http://creativecommons.org/licenses/by-nc-sa/1.0/legalcode>

⁷ http://en.wikipedia.org/wiki/Source_code

Most often because the musicians don't have the source code, the studio engineer does, and also there are no good standard file formats. However, about 10% of the music on Magnatune has individual source tracks available on ccMixer.org⁸.

The fourth open music freedom — that the music is free for non-commercial use — is an invitation for users to download the catalogue for use in podcasts⁹ and other non-commercial projects. In practice this may be as the soundtrack to a video for a school or college class. Or maybe it's a compilation album that's just intended for family or friends.

Although non-commercial use of the Magnatune catalogue and its source code are free, users are restrained by the terms of the licence from using the work for commercial purposes. Users are not permitted to exploit the catalogue to make a profit. Unless, that is, the user strikes a deal with John and his artists to "share the wealth". If any track in the catalogue is used with a commercial purpose, for example in a compilation or as a sample in a new track that will be for sale, then the user is required to negotiate commercial terms. Income from this deal will then be split evenly between John and the artist as per Magnatune's 50/50 deal¹⁰.

John also commented that excluding commercial reuse is the main difference between open source (software) and open music, in that there is "no discrimination against fields of endeavour" in the software context¹¹. The validity of this distinction between commercial and non-commercial reuse has been subject to much discussion, in part because it is a feature of some CC licences. John agrees with Lawrence Lessig, the founder of CC, who argues that a prohibition against commercial reuse is sometimes necessary to prevent businesses profiting from another's work.

"Openness"

The rationale for openness is, according to John, pretty simple:

If I retain all rights to everything, then I'm not necessarily going to further my own goals, whatever they might be, so I'm going to open up and let some of my rights be available for free under certain conditions because I find it furthers my goals overall.

This view is grounded in a firm grasp of the mechanics of copyright. In particular, that copyright is a collection of different rights that provide artists

⁸ <http://ccmixter.org/>

⁹ "A podcast is a collection of digital media files which is distributed over the Internet, often using syndication feeds, for playback on portable media players and personal computers." <http://en.wikipedia.org/wiki/Podcasts>

¹⁰ The terms of Magnatune's deal are available for public view here: <http://magnatune.com/info/terms>

¹¹ The Open Source Initiative's definition of an open licence explicitly prohibits restrictions against reuse in the business context <http://www.opensource.org/docs/osd>

with exclusive control over the different uses of creative works¹². The original copyright, which, as the name suggests, controlled only reproductions (copying) of a work, has gradually been added to “as new uses for goods come about and the law came up with new rights.” Today, copyright offers rights to creators (and their agents / publishers) that provide exclusive control of distribution, adaptation and making a work available online, as well as other rights that cover many other uses. Note that these rights — which protect particular uses — are not mandatory, meaning an artist is free to choose which to enforce and which he does not need to control. Openness depends on this optional flexibility in the law, which enables artists to pick and mix a blend of exclusive rights.

For John, taking a more-permissive and less-controlling attitude to copyright can help achieve a range of goals, whether they are cultural or financial. Using the example of audio books, he explained how open copyright works in practice:

If you're an author or publisher, you know there's only a little money to be made by selling audio versions of books, because it's a small market. But freely distributed audio versions — which need not cost anything using an internet platform — may reach a wider audience and then drive sales of the paper versions. Also, these free versions could seed other deals, such as translations. Similarly, musicians know there's more money in live gigs, merchandising and soundtracks than consumer sales.

By permitting copying and sharing of works, rights holders can create opportunities to reach a new audience, which may lead to consumer sales or re-use of the work, non-commercial or otherwise. Or, through permitting others to make derivative works, the repurposing and recreating of a work may generate additional income, for example in sample licensing fees.

Open is the balanced approach to copyright policy, representing a moderate position in the hotly contested ground of intellectual property. It is less extreme than the industry-standard, ‘all rights reserved’ approach, at one end of the scale, and, at the other, information anarchism. Advocates of ‘all rights reserved’ opt for restricting and enforcing the entire bundle of rights, arguing in favour of strict control of creative works. Information anarchists, the other extreme, argue that copyright’s controls are a barrier to creative expression and the free flow of information so should be scrapped entirely. Open is often confused with information anarchy because its adherents are happy to question the traditional, total-enforcement attitude. However, open, which prefers to assess case-by-case the particular value and role of each strand in the bundle of rights, offers a more nuanced and flexible attitude to licensing as a means for creative distribution, promotion and reuse.

The Magnatune model

¹² http://fon.gs/cbde_ip/

As with most record labels, the business model is part business (B2B) and part consumer (B2C) sales, with income divided roughly equally across the two revenue sources. This means that for John and his artists, half their income is from the fans that love the records and the other half is from licences for commercial use, such as in film, TV or advertising.

Within this fairly typical business model, Magnatune introduced innovative practices to optimise its online business. For example, clients — whether corporate or individual — are invited to 'try before they buy'. Consumers are also invited to choose their price, within a predetermined range. And there's innovation in its approach to business-to-business sales, where tracks are offered below the market rates and bundled “wholesale”.

Flexible and cheap licences for third parties

John sees bulk discounts and wholesales as a feature of the current digital ecology and a response to the falling price of recordings. He says that the main driver reducing the price people are prepared to pay for sound recordings is the (ever-expanding) capacity of consumer music devices. At current market prices, it costs around \$16,000 / £8,000 to fill an 8 gigabyte iPod, which is comparable to the price of a small car. This price is far too high for the average music consumer, especially given another factor forcing down the market value of records — free alternatives. For example, there is no cost to copy an entire music collection from a friend's iPod or simply download direct from peer-to-peer networks or torrents¹³. Given the near-limitless ability to compile sound recordings and the availability of free recordings, he argues the record label must offer heavy discounts in order to compete with the free, but illegal, options.

Magnatune are happy to consider even the smallest projects and always offer a reasonable price:

Where we make our money in licensing is generally small-scale things, like 'hold music', or music for weddings, or lots and lots of music for independent films, which will be shown at festivals and never again. We've licensed music to about 1,500 films and, of those, only a few have made it into widespread release, which is when we actually make some money. Until then, we only make \$42 / £21 for a licence at the festival stage, as they have no money either, so we can't ask them for much money.

This amenable approach to third party licences depends in part on the cost-savings offered by the Internet. Conducting a licensing business online will reduce the time commitment for the label in supplying sample material, because the tracks can instantly be made accessible to interested parties. There is also far more time and cost involved in transferring a master by post than over digital networks. John also argues that typical prices agreed

¹³ “BitTorrent is a method of distributing large amounts of data widely without the original distributor incurring the entire costs of hardware, hosting and bandwidth resources.”
<http://en.wikipedia.org/wiki/.torrent>

between traditional record labels and 'Hollywood' studios are vastly inflating the average market price, which he's happy to undercut.

Another factor pushing up the price of a typical music industry licence to around \$10,000 / £5,000 is the price of legal advice, which "soaks up much of the profit for labels." Magnatune do not use lawyers to cut individual deals, which saves money for all parties: the label, the project taking the licence and the musician whose track is used.

A further aspect of the Magnatune licensing strategy is special licences or, as John puts it, "we'll license rights that no one else will". For example, Renault (the car manufacturer) wanted to negotiate a deal to sell cars with a pre-loaded, 30 gigabyte hard drive – amounting to hundreds of albums. Renault wanted a price of less than \$200 / £100 per unit, meaning a cost price well below \$2 / £1 per album. The car manufacturer also wanted the vehicle owner to be able to copy music from the vehicle onto a USB memory stick, thus allowing both copying and requiring a lack of DRM. Unlike the traditional record companies, John was happy to make a deal. Other examples of special licensing include a TV advert that offered a free download when viewers visited their website; or Bang and Olufsen pre-loading audio hardware with both recordings and artwork.

Try Before You Buy

Since its 2003 inception, Magnatune has offered a radio-like (i.e. free for listeners) experience by streaming the entire catalogue as full-tracks. This is a version of 'try before you buy', the idea that listeners will appreciate the tracks enough to make a purchase. Experience in practice has shown that although some listeners take the positive step to become purchasers, the conversion rate is dropping over time. The ratio of listeners to purchasers has slipped from 1:20 down to 1:42 and continues to fall.

John attributes the falling conversion ratio in part to the growth in 'free' music services, such as Last.fm¹⁴ and Yahoo¹⁵ as well as the more passive nature of the experience, compared to presenting a web interface so that users actively select (by clicking on) particular albums. Also, downloads became less compelling because listeners are now rarely disconnected from the internet, which is always available in many homes and almost every workplace. John also predicts that in five years' time vehicles and mobile devices will complete this web of permanent connectivity.

Magnatune have managed the drop in conversion rates by dramatically reducing their costs in supplying this service. Down from a cost of 75p / \$1.50 per listener per month, the service now costs only 3p / 6¢ per listener per month. The service will remain profitable until the ratio drops below 1:200 but is unclear whether this will be sustainable in the long term because, although the website is attracting more and more listeners, the marketing costs for attracting this new audience are also increasing. At the time of writing, John is

¹⁴ <http://www.last.fm/> "The social music revolution"

¹⁵ <http://new.music.yahoo.com/>

considering adopting a subscription model similar to Napster, although one that will continue the open music ethic by avoiding restrictions on his users both in terms of compatible devices and uses.

Variable pricing

Another innovative feature of the business is its variable pricing model. Rather than dictate a set price for albums, customers are invited to pay a price they think fair within the range \$5–\$18 / £2.50–£9. Surprisingly, people are happy to pay above the minimum. Around 20% opt for the bottom end of the scale but a similar proportion pay above \$12 / £6 and roughly 50% of customers purchase in the middle of the range (between \$8–\$9 / £4–£8). Most surprising of all is that 3% select the most generous price of \$18 / £9. Academic economists from Imperial College, London and the University of Jena (Germany) have also favourably analysed John's data, concluding that:

Open contracts design can encourage people to make voluntary payments. The results of our empirical analysis validate this, as the average payment is \$8.20, far more than the minimum of \$5 and just above the recommended price of \$8.¹⁶

One insight that convinced John to experiment with variable pricing is that consumers no longer have to pay for music: “anyone can be a ‘pirate’ today and if they don't like breaking the law then they can use free services, either online or radio”. Also, given the ongoing deflation in record prices, it is no longer clear just what the natural price of a recording should be for users that make the positive choice to purchase, although retailers and record labels continue to price albums at around £15. John says that,

We are not trying to hold the line against a physical CD distribution system. In fact, every sale, whether at \$5 / £2.50 or \$18 / \$9, is 100% profit — there is no actual incremental cost associated with a sale. I don't have to pay PRS fees¹⁷ on it. I just deduct the bank's fee and then it's free money. So I don't really care if you're a \$5 / £2.50 or an \$18 / £9 purchaser, as much as the fact that you're a purchaser. And I don't know what the natural price should be.

Another factor in favour of variable pricing is challenging the idea that music should be valued according to its chart position. A musician's position on the hit parade is actually a narrow, one-dimensional indicator. Sales are an important point of reference, but the fan-base's passion for the artist is just as important at Magnatune. And the passion of the fan-base may be more important than the sales figures because it is the passionate fans that buy

¹⁶ Regner, Tobias and Barria, Javier A., "Magnatune - Variable Pricing for Music" (March 2005) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=721596

¹⁷ “If you play music in your business or want to include it in your product you need clearance to do so from the owners of that music. PRS and MCPS represent the owners and can get you the clearances you need. We are a not-for-profit organisation, enabling you access to the world's music in the most efficient way.”
http://www.mcps-prs-alliance.co.uk/about_us/whyneedpayformusic/Pages/whyneedpayformusic.aspx

tickets when a musician goes out on tour. Using variable pricing as a measure for the commitment of a fan-base can be rewarding for both the artist and the record label:

To get a \$12 purchase is an incredible honour. Most people would rather get one \$12 purchase, than three \$8 purchases, because it's emotionally impactful to the musician — it's a gift for why they'd do that. It's also very impactful for me at Magnatune because half of that's going to me, so they're endorsing the Magnatune process. Plus, asking a potential buyer 'how much do you want to pay' is so contrary to the usual ways of the music industry, that it usually puts a smile on the buyer's face, and helps them feel passionate about Magnatune. It's the clearest demonstration that Magnatune is not 'business as usual'. In the music business, the customer is absolutely distrusted and treated as a potential thief, a position made clear through pervasive DRM that only paying customers have to put up with.

Open encourages grassroots and discourages monoculture

If open music and free offerings became part of wider practice in the music industry and more artists took the plunge, John believes a range of benefits would result. One outcome would be the development of a much deeper, broader musical culture as opposed to the monoculture associated with major record labels and FM radio stations. An associated benefit would be that the "stars" of this culture would be generated from the grassroots instead of the marketing departments of multinational record labels.

Community service

Magnatune's sense of community has also played an important role in the label's success. The website gives users various options to engage with both the staff and their fellow fans through a Founder's Blog¹⁸, discussion forums¹⁹, various email lists and a MySpace page²⁰. Magnatune also experiments with its own island in Second Life²¹, where users can listen to the music, receive free Second Life objects — such as dance moves and t-shirts — and chat with other fans of the label.

However, the community that has grown around Magnatune is not centred on the forums and other technologies set up by John and his staff:

Our fans feel themselves a part of a music revolution, fighting evil and actively proselytize on blogs, forums and email discussion groups around the Internet. Magnatune's brand presence is several orders of magnitude larger than our market size should dictate. Much of the

¹⁸ <http://blogs.magnatune.com/>

¹⁹ <http://magnatune.com/forums/>

²⁰ <http://www.myspace.com/magnatune>

²¹ "Second Life is a 3-D virtual world entirely created by its Residents. Since opening to the public in 2003, it has grown explosively and today is inhabited by millions of Residents from around the globe." <http://secondlife.com/whatis/>

major press attention results from freelance journalists — who are fans — pitching to their editors with a Magnatune related story.

It has generally been the case that whenever a “reinventing the music industry” conversation occurs on sites like Slashdot²², digg²³ and other Internet-hangouts, participants actively promote Magnatune. John feels this is significantly more valuable than the insular fan communities that most websites have — this more active fan-base operates as an effective promotional mechanism.

Podcasting

Magnatune’s aggressively pro-podcaster policies have also spread the message. For several years, podcasters had a special email contact and were offered a “free credit card” to order any albums they wanted. “Commercial but poor” podcasters were similarly offered no-cost use of Magnatune’s music. As the service grew, it became too expensive to maintain so Magnatune switched to a policy where podcasters can use the 128k mp3s from the website for free, but the perfect quality WAV files required a small fee. Regardless of format, podcasters are given a royalty-free licence to play and promote Magnatune’s music.

ccMixer

Magnatune has a close partnership with the web site ccMixer²⁴, which creates a specific Magnatune fan-community among DJs and remixers. John observed that DJs and podcasters preferred to “add value” and not play the standard tracks from Magnatune’s website, instead digging through CC Mixer for the best alternate versions of Magnatune songs. This mirrors the exclusivity of short run vinyl releases that are popular in DJ culture.

Magnatune has run a number of remix contests on ccMixer, which have gathered more submissions than the contests run with major label artists. Victor Stone, ccMixer’s CTO, believes this is because the remixers on his site identify with the Magnatune philosophy, and also see Magnatune as a gateway to a possible music career, not believing that the major labels and their contests are any sort of career path. Some artists, such as Magnatune’s Lisa DeBenedictis, have staged their own remix contests, and multiple “best of the remix contest” albums have been released on Magnatune. DeBenedictis is now one of the top artists played on podcasts. Interestingly, the podcasters continue to mine the contest winners and play songs that did not appear on the “best of” Magnatune-released compilations.

²² <http://slashdot.org/>

²³ <http://digg.com/>

²⁴ The site describes itself as a “community music site featuring remixes licensed under Creative Commons, where you can listen to, sample, mash-up, or interact with music in whatever way you want.”

Open deals

Rather than operating with the usual practice of commercial confidentiality, Magnatune also ignores industry trends by freely publishing their non-exclusive distribution contract. The agreement that binds artists and label is available for anyone to download from the website²⁵. The site also features a version of the contract annotated with simplified, plain English explanations of the revisions. There is even a plain English deal sheet that breaks down the essential obligations imposed on both the artist and the label. To John's knowledge, Magnatune is the only record label that chooses to offer its terms with its artists to the general public in this user-friendly manner. The benefits to Magnatune of openly publishing their distribution terms include reduced negotiation costs and gaining the trust of potential artists and fans.

Free's potential downsides

John commented that, "we don't have much to lose; we're trying to build a market out of nothing, classical music is already destroyed. We're not doing this in 1980 when the industry was healthy." He also noted two potential downsides to the Magnatune business model and open music more generally.

First, making a catalogue available for free risks devaluing the works because some of the potential market will opt not to pay and simply use the free versions. However, for John, this risk will not in practice reduce the market for his recordings because those who prefer not to pay will find the recordings they want available via P2P networks and torrents regardless of free offerings.

The second, more potent risk is that using "free" will associate a label with a "lunatic fringe" and so turn off some musicians. Some established artists will expect an advance in return for signing over their legal rights, but Magnatune do not offer any up-front payments against future royalties. This has not been a significant hindrance in practice, because many musicians are happy to waive their advance or signing-on fee, in part because they are specifically attracted by the promise of open music.

More open is not always better

Cory Doctorow — perhaps the best-known user of CC licences — argues that the more permissive attitude a rights holder adopts, the more sales will increase and so will the circulation of that creative expression. John disagrees, commenting that a less restrictive attitude to licensing — or even waiving his artists' rights altogether — would not bring more benefits to Magnatune. He explained this through a series of examples:

We could drop the share-alike restriction and keep the non-commercial restriction, but that won't bring in more income or encourage more

²⁵ <http://www.magnatune.com/info/agreement>

reuse. Or we could drop the non-commercial restriction and keep the share-alike clause but no commercial party would reuse under those conditions. Again, we could use only an attribution licence but firms — who are risk averse — won't use under those terms and would instead ask for a commercial licence if they want to use.

Measuring Magnatune's success

Evaluating Magnatune's success depends on the choice of metric. It appears as a solid success in terms of the initial, modest ambition to do “something neat that might get noticed”. And it is also successful according to the ongoing, primary concern to make its staff, musicians and audiences happy.

In terms of financial results, for which John has developed both hard and soft targets, the picture is also bright. The soft target of becoming self-sustaining (i.e. make enough money to pay its workers and some musicians) has been achieved. The hard target — providing \$10,000 / £5,000 per year to a third of the artists signed to the label — has not been achieved. However, Magnatune does provide for three of its artists at this level and a further 30 are funded to a lower threshold of \$3,000 / £1,500 per year. It is worth pointing out that these are not just arbitrary targets but represent pragmatic income levels for career musicians. The higher band is approximately half an annual rent bill and the lower is the rough cost of recording in a studio with a professional engineer.

This moderate level of success is explained by doing something that people wanted to support. The firm wore its heart on its sleeve with its “we are not evil” slogan, 50/50 (i.e. fair) deals and use of CC licences. Magnatune always opts for the most ethical, most pro-musician approach:

By trying to avoid the faults of the music business, Magnatune was seen by the media as the clear alternative when the RIAA started its war on file sharing.

Although these figures will not excite venture capitalists or private equity firms, they should excite musicians. John answers the calls of musicians who reject the 'music industry' for its emphasis on shoe horning artists into particular genres and specifying a certain number of hits per album. The label offers a stable home that allows artists to record and release just what they like.

DIY

John's background is as a software engineer. He believes that the technical barriers to establishing an open music label are “pretty light”. The website, which serves streams and downloads to customers, as well as taking their payments, is relatively simple to produce using widely-available software tools. Also, the process of applying CC licences to works — even an entire catalogue — involves only a few clicks to produce the HTML code. The licences are available at no cost.

Instead, in John's view, the main barrier to someone who decides to follow Magnatune's example are not technical but social. The hard part is locating an audience in the first place and convincing them to pay attention to what an act or label is doing: "Achieving the initial level of interest has always been the hardest job, which is why the marketing discipline of differentiating product is still key."

However, using open techniques can help break down these social barriers. For example, by permitting users to share and podcast tracks increases the chances of exposure to a wider audience. It is in that wider audience that emerging artists may potentially reach the dedicated fans that will buy records and tickets to live shows.

John also offered a technical tip to reduce the workload of recording artists keen to handle their own affairs, which was to "use an aggregator like Jamendo²⁶ or Internet Archive²⁷ to host and distribute content." Using an aggregator avoids some of the trickier aspects of coding a web site.

Open is not future-proof

If a rights holder is convinced to try out the open approach, they should be aware that these methods are not immune from social and technological developments, which John recognises will cause problems for Magnatune in future. One technical issue of this nature has already been mentioned above and is already harming the business but is expected to become more important. John predicts that we're only a few years away from "mobile, always-on internet good enough to stream audio everywhere" and once everyone has 24 x 7 connectivity they are unlikely to pay for — or even want — downloadable versions. Once this point is reached, the label must move to a new business model, be it subscriptions, live music, t-shirts or something else.

In terms of social developments, there may be issues if musicians' unions or other regulatory authorities mandate the use of DRM (for example, the US Musicians' Union mandates DRM although allows local unions to override the directive), which would shackle the sharing culture to a more restrictive model and inhibit its further development. Similarly, regulatory intervention, driven by the traditional content industries or litigation could also alienate consumers from the music industry and further dissuade uptake of legitimate music services. Finally, legal reform could mandate a pay-per-stream model, which would increase Magnatune's costs to an unbearable level.

The future of free

Free and open practices are taking root in the wider music industry. In the last year, all four of the major record labels have signalled their intention to drop DRM from their online catalogues. The independent sector has always been

²⁶ <http://www.jamendo.com/>

²⁷ <http://www.archive.org/index.php>

more comfortable with open practices. Also, Prince has given an entire record away for free (to drive sales of live tickets). The Arctic Monkeys — the hottest band in the land in 2006 — built their reputation on a free EP, as did Pete Doherty's band The Libertines. The most successful experimenters to date are Radiohead, with their *In Rainbows* release. Although the band and their management have kept their cards close to their chest, and the act was already one of the biggest on the planet, rumours abound that the experiment has worked out very well for all concerned parties.