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Coda: An Entertainment Coop

There are many advantages to a governmentally administered alternative compensation system of the sort outlined in this chapter. But what if no government were willing, at least initially, to institute such a system? Could it be created without state aid? In other words, could a voluntary analogue to such a regime be constructed in the shadow of current copyright law? Yes. If successful, such an enterprise could serve as a demonstration project--reassuring skeptical legislators of the feasibility of a more comprehensive, compulsory, tax-based regime. Alternatively, if successful enough, it might survive indefinitely without governmental aid. This final section sketches such a system, then considers its strengths and limitations.

The registration process for obtaining a unique identification number for a digital version of an audio or video recording would be virtually identical. The form the copyright owner filled out and the process of filing it would be the same. The registration process would differ in only two respects. First, instead of the Copyright Office, the registrar would be a private organization--which (for reasons to be explored shortly) we will call The Entertainment Coop. Second, the registration form would include one additional line: "By registering this work, I authorize all members of The Entertainment Coop to reproduce it for noncommercial purposes, to distribute it to other members, to modify it, to distribute to other members copies of the modified version, and to perform it publicly to other members via a digital audio or video transmission--so long as I am compensated in accordance with the rules and regulations of the coop." In other words, through a license agreement, the registrant would effect the same suspension of copyright law that, in the compulsory regime, would be achieved through law.

By contrast, the source of the funds necessary to run the system would be different. Instead of taxes, the money would come from subscription fees. In other words, if and only if an individual consumer wished to participate in the system, he or she would pay a flat monthly sum. How much? Initially, it would be quite low. As the array of works available through the system increased, the fee would gradually rise--until the monthly payments roughly matched the levels of taxation discussed earlier in this chapter.

The simplest way to collect such fees would be for the coop to enter into partnerships with Internet Service Providers. The ISPs would, in turn, offer their customers two plans: a regular subscription, and a premium subscription that would carry with it membership in the coop. The difference between the prices charged for the two plans would be the current subscription fee for the coop, plus a small margin to induce the ISP to participate. (An especially important subset of ISPs for this purpose would be college and university networks.) Each premium subscriber would receive a password, which would provide him or her access to the various channels (described below) through which registered entertainment products would be made available. The passwords would be changed frequently to reduce unauthorized access to those channels.

Like the Copyright Office under a compulsory alternative compensation system, the Entertainment Coop would maintain a publicly available directory of all registered recordings and their corresponding registration numbers. But the coop could and should also provide its members several additional services. First, the coop would maintain on its servers--or, more plausibly, on a variety of servers run by other organizations licensed by the coop--copies of all registered recordings (in a variety of formats), which members could download to their own computers upon submitting their passwords. Next, the coop would license Webcasters to stream registered recordings to coop members. Some of those streams would be noninteractive--like the History Channel or the collection of Webcasters currently housed under the umbrella of Live365.com. Some would be interactive, providing streams of audio and video recordings to users on demand. Many of those services would be free. For access to others (especially interactive ones), members would likely have to pay a fee--but a small one, because the services themselves would not be paying the coop for the content they are distributing. Finally, the

coop would provide its members a variety of informational services--discussion boards, reviews of recently registered films and music, devices (like Gigabeat or MusicMatch, discussed in Chapter 1) that would assist members in finding recordings or services likely to match their tastes or needs.

The management of some of these services would be top-down. For example, a “disc jockey” interested in Webcasting progressive jazz would obtain from the coop a license to use any of the recordings in the coop registry. (The “price” of that license, as indicated above, would be merely a commitment to limit access to the Webcast to coop members.) The “disc jockey” would then select the sequence of cuts, perhaps add some commentary and some recorded interviews with musicians, and begin streaming.⁶⁴

But other services could and should be organized on a bottom-up basis. For example, the selection of recordings included in some of the noninteractive Webcasts would be made, collaboratively, by their respective listeners or viewers--in other words, by subsets of the coop members. The best model for the mechanism that would make this possible is the pioneering Website “Slashdot.” Yochai Benkler summarizes as follows the pertinent aspects of the system:

Billed as “News for Nerds,” Slashdot primarily consists of users commenting on initial submissions that cover a variety of technology-related topics. The submissions are typically a link to an off-site story, coupled with some initial commentary from the person who submits the piece. Users follow up the initial submission with comments that often number in the hundreds.

Slashdot implements an automated system to select moderators from the pool of users. Moderators are selected according to several criteria: They must be logged in (not anonymous), they must be regular users (average users, not one-time page loaders or compulsive users), they must have been using the site for a while (this defeats people who try to sign up just to moderate), they must be willing, and they must have positive “karma.” Karma is a number assigned to a user that primarily reflects whether the user has posted good or bad comments (according to ratings from other moderators). If a user meets these criteria, the program assigns the user moderator status and the user gets five “influence points” to review comments. The moderator rates a comment of his choice using a drop-down list with words such as “flamebait” and “informative.” A positive word increases the rating of a comment one point and a negative word decreases the rating one point. Each time a moderator rates a comment, it costs the moderator

one influence point, so the moderator can only rate five comments for each moderating period, which lasts for three days. If the user does not use the influence points within the period, they expire. The moderation setup is designed to give many users a small amount of power--thus decreasing the effect of rogue users or users with poor judgment. The site also implements some automated "troll filters," which prevent users from sabotaging the system. The troll filters prevent users from posting more than once every sixty seconds, prevent identical posts, and will ban a user for twenty-four hours if the user has been moderated down several times within a short time frame.

The system is powerful and popular. Tens of thousands of people serve as volunteer editors. Hundreds of thousands read the posted stories and comments. Its rating and filtering system is widely recognized as a success.⁶⁵

As Todd Larson suggests, a system of this general sort could be adapted for use in the Webcasting context. A group of coop members interested in a particular genre--say, samba or "alternative country"--could form a group dedicated to managing a noninteractive stream of music of that sort. Each member could submit recordings. Using a variant of the Slashdot mechanism and software, other group members would rate submitted recordings--and rate their fellow members' evaluations. Members' rating power would rise or fall depending on the extent to which their judgments found favor with their compatriots. Whether--or how often--recordings were included in the Webcast would then be determined by their weighted ratings. Any coop member, not just the participants in the club, could listen to the stream. Similar techniques might be employed to generate and sort reviews of newly registered recordings and Gigabeat-style guides for members seeking to expand their entertainment horizons.⁶⁶

The mechanisms that the coop would use to measure the relative frequency with which registered recordings were consumed by its members would closely resemble the mechanisms that the Copyright Office would employ in a compulsory system. Suppose, for example, that Joshua Redman submitted his next set of jazz recordings. He would receive a unique registration number for each track. The operators of each of the Websites where the recordings were posted would then periodically report the number of times they had been downloaded. More important, software distributed for free to all coop members would periodically "call the mothership" to report the number of times the downloaded tracks--and all other registered recordings--had been listened to (from

beginning to end). Similarly, Webcasters operated or licensed by the coop would report the number of times each track was streamed and the approximate size of the audience for that stream.

The simplest way of disbursing the funds collected through the system would be to employ exactly the same usage-based approach described earlier as the most attractive mechanism for distributing tax revenues. But the voluntary character of the coop might make more palatable some of the voting mechanisms discussed (and criticized) previously in this chapter. For example, one could imagine organizing the system so that a portion of the funds (how large a portion will be considered shortly) was distributed on the basis of relative consumption data, while the remainder was distributed on some other basis.

It would probably make most sense to organize the system as a nonprofit corporation. Its charter would set forth the design features described above. It would be administered by a traditional board of directors. In practice, however, the organization could and should function as a special kind of cooperative society. To see how and why requires some background.

There are two main kinds of cooperative enterprises. Producer cooperatives consist of firms owned and operated by the people who supply the labor or the raw materials for the products that the firm sells. The profits of such an enterprise are typically shared among its members. The most famous of these consist of the enterprises clustered in Mondragon, Spain, but others (such as traditional law firms) are scattered through modern capitalist economies. Consumer cooperatives consist of clusters of people who regularly buy a particular type of goods (such as groceries or hiking equipment) who band together to buy the goods in bulk (thereby getting better prices) and more generally to “defend and promote consumers’ interests.” Typically, they redistribute to their members (in the form of “dividends”) the amount by which the members’ contributions exceed the costs of the enterprise. Consumer cooperatives come in various shapes and sizes, but the ones that flourished in the United States in the 1960s and 1970s had an additional feature: the coop members, typically working together as volunteers, assumed many of the functions ordinarily performed by employees of retailers--selecting

products, negotiating with suppliers, packaging products, stacking shelves, and serving as cashiers. Crucial to the success of most enterprises of both sorts is spirit of cooperation, of common commitment to an enterprise (and sometimes a cause). In addition, most enterprises of both sorts are to some extent steered by their members--meaning that some of their rules and decisions are determined by their members, voting either directly or through representatives.⁶⁷

Our proposed Entertainment Coop would incorporate some (though not all) features of traditional cooperatives of both types. The suppliers of the registered recordings would not own the enterprise, but, like the contributors to a producer cooperative, they would share its profits. Partly as a result, one could expect them to strive to nourish the enterprise--by encouraging their fans to participate, by exhorting other artists to sign up (thus helping to produce a critical mass of recordings), by providing interviews or other material for the ancillary informational services, and so on. Like the members of (American-style) consumer cooperatives, the members of the Entertainment Coop would help to shape and distribute its products--by participating, as volunteers, in Slashdot-style rating systems that would help determine what recordings were delivered to other members. An increasing percentage of the participants in the enterprise would perform both roles: they would combine material drawn from the stock of registered recordings with their own material to generate derivative works, which they in turn would register. Thus, over time, the distinction between contributors and consumers would blur.

Would the Entertainment Coop, like some traditional cooperatives, be run democratically? In other words, would its contributors or members have any say in its policies? Among the reasons for structuring the organization so as to provide them that opportunity is that it would reinforce its participatory, communitarian ethos--likely one of its main attractions. But there are hazards along this path. For example, contributors might be inclined to exercise their voting power so as to limit expenditures on the kinds of services described above and thus maximize the percentage of the organization's revenues that ended up in their own pockets. (Producer cooperatives are notoriously vulnerable to this particular disease.) Thus, if democratic procedures were incorporated into the organization, checks and balances and "constitutional" constraints analogous to

those that stabilize the American system of representative government should also probably be included. For example, one might embed in the charter of the organization a provision, immune to revision through the votes of the members, that two thirds of the coop's profits must be distributed on the basis of the relative popularity of the registered recordings. One might further specify that, with respect to the distribution of the remaining one third, deviation from the relative-popularity criterion would occur only upon the affirmative consent of majorities both of the contributors and of the consumer members.⁶⁸

A voluntary organization of the sort just sketched would have many of the advantages of a compulsory, tax-based alternative compensation system. In addition, it would be a good deal less controversial--precisely because it would be voluntary. Who could persuasively object to the formation of a new funding and distribution agency, whose success or failure would depend entirely upon whether individual artists and consumers thought it superior to the existing agencies?

Such an organization would, however, be less good than a compulsory regime in two ways. First, it would leak. Sooner or later, despite the password protections on the coop-affiliated Websites and streams, the files made available to coop members would find their way into peer-to-peer systems unaffiliated with the coop and accessible to the world at large. When the files were shared in that environment (illegally), the artists would not receive any compensation. Knowing this, why would artists be willing to participate in the system? In part because they would be no worse off than they are under the present regime--in which "ripped" versions of their recordings are already available on the peer-to-peer networks. In part, because they would gain a new stream of revenue--the volume of which would gradually increase as the number of subscribers rose. And in part, because they would gain thereby the right to make creative use of the digital products submitted to the coop by other artists. Nevertheless, in this respect, a voluntary regime would plainly be worse than a compulsory, tax-based regime, which would not be subject to any "leakage."

Second, it would be both crucial and difficult, as was suggested parenthetically above, to persuade enough musicians and filmmakers to sign up for the system in order to

provide a sufficiently large stock of recordings to attract consumers. After all, the coop would have to compete with the a-la-carte for-profit distribution services, such as the iTunes Music Store and the new Napster, each of which can already offer consumers several hundred thousand recordings. To be sure, the coop would have other advantages. Unburdened by the transaction costs associated with micropayments, its prices would be lower than those of the commercial sites. And many consumers would likely be attracted by the image of an organization that promised to distribute to its contributors all of the amount by which its revenues exceeded its operating costs. But these attractions would only go so far. In the end, the coop could survive only if very large numbers of artists signed on.

How might that be achieved? One strategy would be for a consortium of public and private actors to prime the pump. As it happens, in Brazil, something of that sort is already occurring. A group of scholars and musicians, led by Ronaldo Lemos and Joaquim Falcao, with the crucial support of Gilberto Gil, the Brazilian minister of culture, has begun to build a digital library of Brazilian music, to be called Canto Livre. To date, the organizers have focused most of their attention on gathering recordings sufficiently old that the copyrights in them have expired. (In Brazil, old music enjoys greater respect and popularity than it does in the United States.) With respect to that material, no one needs to be compensated when copies are deposited in the library and made available to the world. Soon, however, they will begin to offer the owners of the copyrights in more recent recordings fees in return for contributing their creations to the pot. Where will the money necessary to provide those incentives and then run the system come from? Initially, from a government agency (Financiadora de Estudos e Projetos, the Brazilian equivalent of the National Science Foundation) and from private and state-owned corporations, whose generosity has been stimulated by commitments from the national government to afford them partially offsetting tax exemptions. But Minister Gil has made clear that, soon, the library must stand on its own feet, financially. How might it do so? Through the formation of a voluntary, subscription-based entertainment coop of the sort outlined in this section. Efforts to launch such a venture have already begun.⁶⁹

We thus end where we began--not in the United States, the jurisdiction that has occupied our attention for most of this journey, but in Brazil. In 2000, the popularity of

the Napster system in that country was an indicator of the character and severity of the crisis about to overwhelm the music and film industries. In 2004, cultural and political conditions there may provide us, fortuitously, an opportunity to test one of the most promising solutions to that crisis. Stay tuned.