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straightforwardly to Gnutella leads to the suggestion that the music industry ask Congress to ban music-swapping or even add stringent legal controls on decentralized file-sharing applications.Could the government really clamp down? According to Dan Farmer, the computer-security researcher, it will always be possible to disguise the use of such services by encryption. Such arguments have repeatedly proved true in the past, but they do not take into account the possibility that law enforcement, spurred by industry, might go after infringers much harder than it has before. "Silicon Valley is constantly saying that the government is irrelevant and powerless," Lessig says. "But that's because most people there have never seen it get serious."Today Internet service providers are shielded from responsibility for the traffic they bear. Just as my telephone company is not legally liable if I make criminal plans on the phone, my Internet service provider is not implicated if I trade unauthorized music on the Net. But if providers were required by law to monitor actively for the use of Gnutella, people would be less likely to use it. "If the police started arresting people and seizing their computers," says Robert Kohn, a co-founder of EMusic.com, "music on the Internet would not seem quite so free." Worried about the future of free speech, a computer activist in London named Ian Clarke is leading an effort to create a network called FreeNet that would guarantee anonymity, no matter what. But it, too, could conceivably be prohibited, and if it comes to anything, surely we will see attempts to do so. The Net, Bronfman promised in July, "will not be able to survive if it becomes a haven for illegal activity. Copyrights must be protected online."The trouble is that the legal charge is being led by the recording industry, which—in addition to having the most to lose—has a tradition of tight copyright control and rough dealings that is not shared by other media. Given the special circumstances of the industry, this tradition is comprehensible. But it doesn't qualify the labels to set the rules for the global forum. To music companies, prohibiting online anonymity, something Bronfman has suggested, may make sense. But print publishers should feel differently about letting people read and write without revealing their identities. Too many editors know how important anonymity was to Soviet protest literature, and how profitable some of that writing was in the West. Similarly, the movie industry should be careful of the legal precedents set in music. If Napster wins its lawsuits, DivX movies may slip into legality. Equally important, other culture industries potentially have less to fear from unbridled distribution than the music industry. The Secure Digital Music Initiative will be broken, argues Martin Eberhard, the e-book manufacturer, not so much because of the Internet but because of the combination of the Internet and personal computers. Computers can simultaneously play and re-record music for future distribution, whether or not the music was initially encrypted. Single-purpose machines like CD players and electronic-book readers cannot do this without retrofitting that is beyond the capability of the vast majority of computer users—it involves tinkering with hardware components. If electronic books, magazines, and newspapers are distributed through the Internet not to computers but only to specialized reading devices, they will be much less vulnerable to copying. If Hollywood stops licensing DVD technology to computer manufacturers, the studios will gain some of the same protections; and they will also continue to be able to count on money from ticket sales. For the record labels it's too late. They can't take back compact discs and the millions of CD machines that can play them. Musicians, who share so little of the wealth from music copyright, might even do better in a world of unrestricted copying, by performing, selling merchandise, offering subscriptions, and the like. Writers, filmmakers, and other content providers who have fewer ways to recoup may well be more vulnerable to the Net. These losses, though, lie only in the future. The potential lack of economic harm is especially significant in light of the importance of copyright to democracy. According to most legal scholars, the writers of the Constitution viewed copyright in utilitarian terms. By granting a temporary monopoly on distribution to creators, the Founders hoped to stimulate the creation of new ideas. "The creator was rewarded for a little while, but then the idea passed into the commons, where people could do what they liked with it," Lessig says. Now, he says, the campaign against piracy is pushing toward "a massive increase in regulation over the distribution of culture, which is inconsistent with the conception of the commons that lies at the root of democracy." In the American tradition artists, writers, musicians, and audiences work together, creating the intellectual ferment that has helped this country adapt to change for more than two centuries. "People hear the cries of the industry about piracy, which are real and justifiable," Lessig says. "But they don't realize that simply giving the industry what it wants will have an impact on the entire public sphere." Except for the music industry, the campaigners against Internet piracy are working well in advance of the problem. Many of the music-industry lawsuits have been decided rapidly, without extensive fact-finding; many did not even require the companies to show that they had been harmed. The Digital Millennium Copyright Act, which is being used to sue Napster, contains elaborate provisions governing the Secure Digital Music Initiative, even though music files that are fully SDMI-compliant don't yet exist. "People are always scoffing that the technology moves so much faster than the law," P. Bernt Hugenholtz, of the University of Amsterdam, told me, "but that's ridiculous. In fact the law is moving faster than the technology, which is both ironic and a very bad sign. I'll tell you one thing. All academics I've ever met—no matter what their political stance—agree on one thing: all this Internet-related legislation is very, very premature." He sighed. "You'd think they'd at least see what the car looked like before trying to drive it."

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