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For the Mix Tape, a Digital Upgrade and Notoriety

By DAVID F. GALLAGHER

THREE or four times a week, Joshua Bernard opens his mailbox and finds a package sent to him by someone he has never met. Inside are homemade CD compilations of music that he often knows little about. The discs have featured big bands, death metal and even some Hawaiian music. The ukuleles did not scare him off.

"You know, it was great," said Mr. Bernard, a Web designer who lives near Boston. "I'm not going out to get the entire Don Ho box set or anything, but it was a refreshing exposure to music that I wouldn't necessarily go out and look for."

That kind of personal introduction to new sounds is a big part of the appeal of mix-CD swapping, an increasingly popular hobby that has spawned an online subculture. Mr. Bernard is the organizer of a typical group of swappers. It has 13 active members who are each assigned a month in which they are to send a mix to the rest of the group. The result is something like file sharing meets pirate radio, transmitted by the Postal Service.

Homemade mixes have long been a part of pop music culture. For many music fans past their college years, the mere sight of a mix on cassette tape can be enough to bring back memories of old crushes and road trips. But now the cassette is on its deathbed, CD burners are standard equipment on many PC's and hard drives are loaded with digital music files ready for burning. This may be the golden age of the mix CD.

Of course, this is also the golden age of copyright infringement, and the music industry is using technological and legal measures to crack down on piracy. The industry views most forms of copying as theft, and it sees little difference between making a mix CD for a friend and copying an entire album to sell on the street.

Frank Creighton, who directs antipiracy efforts for the Recording Industry Association of America, said that money did not have to be involved for copying to be illegal. While mixes on cassette tapes may not have inspired the wrath of the record industry in the past, Mr. Creighton said, digital mixes have better sound quality. And given the proliferation of CD burning for friends and relatives, "it would be naïve of us to say that we should allow that type of activity," he said.

Mix makers counter that they are not hurting the music industry and are perhaps even doing it a favor by helping lesser-known artists get heard. Some fear that in its zeal to stop piracy, the industry could take away freedoms that music buyers have enjoyed for years, possibly hurting itself in the process.

"The mix CD is really a great promotional opportunity for bands that aren't going to be on the radio," said Fred von Lohmann, a staff lawyer at the Electronic Frontier Foundation in San Francisco, which campaigns against limits on digital technologies. Mr. von Lohmann, who is a member of two mix-swapping groups, said he recently bought a CD by a band called the Donnias and found that the disc's copy protection prevented him from playing it on his computer. That meant he was unable to put the band's music on a mix.

But most CD's are not copy-protected, so it is easy to "rip" songs from them and turn them into digital files. Online file-sharing services like KaZaA make millions of legal and illegal copies of songs available, but mix makers say they generally stick to music they have purchased or downloaded legally.

Burning a mix CD involves arranging a playlist of songs in a program like [Apple's](#) iTunes, loading a blank disc and clicking on a button, a process that is far easier and faster than making a mix tape.

One member of Mr. Bernard's group, George Perry of Toronto, went the extra mile on a recent mix and digitized two songs from bands that he only had on vinyl. In the middle he threw in an odd message someone left on his answering machine.

"The people on the CD trading group are technically strangers, in that I have never met them," Mr. Perry said. "But after sharing mixed CD's with them, I kind of feel that I know them."

Mr. Bernard's latest mix kicks off with a few tracks of "good aggressive driving music" from bands like Candlebox, segues into some electronic tracks and wraps up with "the Toadies' last song off of their breakup album, a perfect farewell."

Mr. Bernard acknowledged that there was something odd about transferring digital music files to a physical format, then using one of the world's oldest and slowest communications systems to send it out. He said that one member of his group had proposed the creation of a central server where people could just upload and download MP3 files. The group rejected this idea, partly because people would tend to download only the music they were familiar with. Besides, Mr. Bernard said, "there's nothing quite like the feeling of getting a package and knowing that someone out there took the time to make this."

There are perhaps thousands of other mix makers who burn CD's for a circle of friends or online acquaintances. They are part of a thriving culture of mix swaps, or "burning circles," as Mr. von Lohmann and his friends call them. Some of these can be quite big. One swap involving members of a group Weblog called MetaFilter attracted about 260 participants, each of whom was required to send a mix to five others.

Joshua Benton, an education reporter for The Dallas Morning News, is a one-man mix factory. Members of Mr. Benton's CD Mix of the Month Club (crabwalk.com/cdmom) get a copy of his latest mix if they mail him one of their own. Those who send two copies of their mix get his mix and someone else's. In October, his busiest month since he started the club in December 2001, 150 people took part, sending Mr. Benton more music than he could process. Tastes are so idiosyncratic, he said, that each mix is "a carefully crafted window into a person."

Many mix makers simply enjoy the process of selecting and sequencing a group of songs to create a particular atmosphere or explore a theme. Some show off their skills at a Web site called Art of the Mix (www.artofthemix.org). The site has no music to download, just track listings for mixes and related homemade cover art, but it is surprisingly popular. Visitors have submitted more than 37,000 mixes since the site was founded in 1997.

Jim Januszewski, a software engineer in Seattle who created the site, said that fans of mix-making relished the opportunity to pore over their music collections and come up with a new creative work. "Fundamentally it takes what is usually a passive experience, listening to music, and it makes it an active experience for people," he said.

Making a mix for a stranger is also an act of faith, Mr. Januszewski said. "You make the e-mail connection, you make a mix, and you make a really cool cover for it," he said. "Then you send it off in the mail and you don't know if you're going to be getting anything back. It's a nice trusting moment."

While they have plenty of ways to justify their activities, including the high cost of some CD's, most mix makers acknowledge that their hobby technically involves violations of copyright law.

Mr. von Lohmann of the Electronic Frontier Foundation asserted that making a noncommercial mix CD was probably legal under the "fair use" provision of copyright law, but that notion has not been tested in court. He said that because of the 1992 Audio Home Recording Act, people who use blank audio CD-R's were probably in the clear legally because a portion of the price of those discs goes to the music industry.

In any case, he said, the industry does not like to go after individuals, so it is unlikely that it will take action against anyone for making mixes.

Mr. Creighton of the recording industry association disputed that. Someone who is openly swapping CD's might get a cease-and-desist letter that could be followed by "more aggressive deterrence" if the activity does not stop, he said. "If there isn't any fear of repercussions, it's just going to continue to expand," he said, "while we try to give consumers legitimate alternatives." Copyright holders, not consumers, should decide whether certain kinds of copying are promotional or not, he added.

Mr. Creighton said that industry officials knew that current CD copy-protection techniques may be too restrictive because they prevent even copying for personal use. This month, the music industry and computer and software makers signaled that they would work together to find better technical means of stamping out illegal copying. This could lead to building antipiracy mechanisms into devices like CD burners, which would put a chill on the musical playground now enjoyed by mix fans.

"To take that away from people would be really sad," Mr. Januszewski said. "It's just such a pleasurable way to kill a Saturday afternoon."