



## Domain Name Lessons from Napster

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September 4, 2008

### Abstract

I first outline a brief history of free file-sharing technology, then draw some general and domain name lessons, then outline the what, how, and why that make your activism effective and necessary.

### Music Download Background

Napster was the first online music [file-sharing](#) service and was created by [Shawn Fanning](#) in 1999 while he was attending Northeastern University in Boston. The service, operating under the domain name [napster.com](#), allowed people to easily share [MP3](#) format music files with each other, thus leading to the music industry's accusations of massive [copyright violations](#). [Grokster](#), a similar technology, was created in 2001. However, the original Napster service and Grokster were shut down in 2002 and 2005, respectively, by court orders resulting from music industry lawsuits.

Sensing the vulnerability of Napster's centralized technology, [Niklas Zennström](#), [Janus Friis](#), and [Priit Kasesalu](#) (the team that later created [Skype](#) and [Joost](#)) launched [Kazaa](#) in March 2001. With Kazaa, there is no central server: Tom in Berkeley directly accesses Jose's computer in Mexico for a Bob Marley song. Within twelve months, more than 250 million copies of Kazaa had been downloaded. Kazaa's revenue, however, came from centralized selling of ad space on its downloaded software. Thus, although there were no centralized computers to host the songs, the ad revenue was centralized.

With legal pressure from the music industry, Kazaa, based in the Netherlands, was sold to a company based on the South Pacific island of Vanatu—beyond the reach of the U.S. and European legal systems. After Kazaa was chased out of Vanatu, an unknown hacker erased the parts that served ads and distributed the new software version online as [Kazaa Lite](#) (also known as K+), thus developing an even more decentralized technology. Now millions began downloading K+. A similar free music-sharing software is [eMule](#), a descendant of eDonkey that is more decentralized and open source than anything anyone in the music industry had seen.

Reflecting the general hunger for privacy and secrecy, [Share](#) is the name for a [closed-source P2P](#) application being developed in Japan by an anonymous author.

### **General Lessons**

1. Because Napster and Grokster were centralized, legal action against them could succeed. A decentralized system is far less vulnerable.
2. Fighting Napster only benefited lawyers, as free download continues.
3. Becoming decentralized and going underground diminish return to software developers but increase the benefits to users/violators.

### **Domain Name Industry**

The domain name industry is decentralized and atomic in that anyone from anywhere in the world can register a domain name, keep the ownership name and address private, and host it from a country where the U.S. and European legal systems don't apply. Thus, legal action will only drive domain owners further underground.

By shifting underground, domain name owners would:

1. Become hard to track. A [cooperative IP regime](#), on the other hand, reduces incentives to go underground and thereby makes content and brand violations easier to control. Domain owners are more likely to cooperate with a trusted third-party monetization entity than with brand owners.
2. Increase [domain tasting](#) of brand names to cover any additional cost from moving further underground. On the other hand, under a cooperative IP regime a cutoff date can be assigned to eligible domain names, reducing any incentive to register brand domain names under the umbrella of a cooperative regime.

### **What can be done?**

The domain name industry should get the message out to Internet users and brand owners that:

1. Indiscriminate legal action exasperates the problems associated with the use of brands in domain names.
2. A solution cannot come only from the side of the domain name industry; a cooperative solution is imperative.

The domain name industry is serious about fighting illegal use of brands in domain names.

### **How should our industry react?**

1. Initiate media campaigns.
2. Openly discuss solutions in domain name conferences, as they are also attended by the media and brand owners.

3. Lobby Congress through the Internet Commerce Association ([ICA](#)) and domainer activism.
4. Discuss the problem and possible solutions in domain name forums and other relevant forums.
5. Take action against current monetizers that continue sponsoring obvious domain name violations.

### **Why Take Action?**

Without action:

1. Industry can face tough unwarranted legal restrictions such as the [Anti-Phishing Consumer Protection Act of 2008 \(APCPA\)](#).
2. Domain name values would drop.
3. Internet user experience is deiminished for which our industry is blamed.

Nevertheless, action will send a clear signal to registrants under future TLDs that the industry will not tolerate such bad behavior.

### **Concluding Remarks**

Indiscriminate legal action by brand owners against those who register domain names that incorporate their brands can backfire by driving further underground domain name registration and Web site–hosting.

Our industry can and should take proactive measures to limit or prevent such consequences. A cooperative IP regime between brand and domain owners is a viable solution. ■