

**UPGRADE** is the European Journal for the Informatics Professional, published bimonthly at <http://www.upgrade-cepis.org/>

#### Publisher

UPGRADE is published on behalf of CEPIS (Council of European Professional Informatics Societies, <http://www.cepis.org/>) by NOVÁTICA <http://www.ati.es/novatica/>, journal of the Spanish CEPIS society ATI (Asociación de Técnicos de Informática <http://www.ati.es/>).

UPGRADE is also published in Spanish (full issue printed, some articles online) by NOVÁTICA, and in Italian (abstracts and some articles online) by the Italian CEPIS society ALSI <http://www.alsi.it> and the Italian IT portal Tecnoteca <http://www.tecnoteca.it/>.

UPGRADE was created in October 2000 by CEPIS and was first published by NOVÁTICA and INFORMATIK/INFORMATIQUE, bimonthly journal of SVI/FSI (Swiss Federation of Professional Informatics Societies, <http://www.svifsi.ch/>).

#### Editorial Team

Chief Editor: Rafael Fernández Calvo, Spain [rfoalvo@ati.es](mailto:rfoalvo@ati.es)  
Assistant Editors:

- François Louis Nicolet, Switzerland, [nicolet@acm.org](mailto:nicolet@acm.org)
- Roberto Carniel, Italy, [carniel@dgf.uniud.it](mailto:carniel@dgf.uniud.it)

#### Editorial Board

Prof. Wolfried Stucky, CEPIS President  
Fernando Piera Gómez and  
Rafael Fernández Calvo, ATI (Spain)  
François Louis Nicolet, SI (Switzerland)  
Roberto Carniel, ALSI – Tecnoteca (Italy)

**English Editors:** Mike Andersson, Richard Butchart, David Cash, Arthur Cook, Tracey Darch, Laura Davies, Nick Dunn, Rodney Fennemore, Hilary Green, Roger Harris, Michael Hird, Jim Holder, Alasdair MacLeod, Pat Moody, Adam David Moss, Phil Parkin, Brian Robson.

**Cover page and illustrations** designed by  
Antonio Crespo Foix, © ATI 2003

**Layout:** Pascale Schürmann

E-mail addresses for editorial correspondence:  
[nicolet@acm.org](mailto:nicolet@acm.org) and [rfoalvo@ati.es](mailto:rfoalvo@ati.es)

E-mail address for advertising correspondence:  
[novatica@ati.es](mailto:novatica@ati.es)

**Upgrade Newslist** available at  
<http://www.upgrade-cepis.org/pages/editinfo.html#newslis>

#### Copyright

© NOVÁTICA 2003. All rights reserved. Abstracting is permitted with credit to the source. For copying, reprint, or republication permission, write to the editors.

The opinions expressed by the authors are their exclusive responsibility.

ISSN 1684-5285

Coming issue:  
**“Software Engineering:  
The State of an Art”**

- 2 Editorial. Reassignment of Editorial Functions in Upgrade  
– Prof. Wolfried Stucky (President of CEPIS)

## Open Knowledge

Guest Editors: Philippe Aigrain and Jesús M. González-Barahona

### Joint issue with NOVÁTICA

- 3 Presentation. Ownership and Terms of Use for Intangibles. Land Grab or Commons? – Philippe Aigrain and Jesús M. González-Barahona

*The guest editors present the issue, where they have offered the floor to a very diverse set of contributors, united by the effort to understand and promote information-based commons and convinced that a prosperous and more human economy can develop on its basis. They also provide a list of useful references for those interested in knowing more about this subject.*

- 6 The Political Economy of Commons – Yochai Benkler

*In this article the author defines the structure of the information commons, its sustainability, and its importance for democracy and for individual freedom.*

- 10 The Rediscovery of the Commons – David Bollier

*The author explains how a large part of the current information society is already a commons, which plays a vital role in the economical and cultural production.*

- 13 Language in the Digital Media: A Political Challenge – José-Antonio Millán

*The author analyses the situation of most languages in the digital domain, and how the promotion of a publicly available infrastructure of language-related software would serve to the societies using those languages.*

- 16 A Note on Software Patents – Pierre Haren

*A set of brief notes with his opinions on software patents is offered by the author.*

- 17 On the Patentability of Inventions Involving Computer Programmes – Alberto Bercovitz Rodríguez-Cano

*This article reproduces in substance the author's address to the European Parliament during the hearing held on November 2002 on the Proposal for a European Directive on the Patentability of Computer Implemented Inventions.*

- 21 Legal Tools to Protect Software: Choosing the Right One – Roberto Di Cosmo

*This is an article in which the author analyses the different legal tools aimed at dealing with software protection.*

- 24 Petition to the European Parliament on the Proposal for a Directive on the Patentability of Computer-implemented Inventions – Several European computer scientists and engineers

*Petition written by several prestigious European computer scientists and engineers, related to the proposed Directive on software patents currently being discussed at the European Parliament.*

- 26 The Right to Read – Richard Stallman

*This is a short fiction story, 45 years ahead, in which the author, by extrapolating from some current trends, shows a future where access to information is tightly controlled, and the so called “trusted computing” is fully deployed.*

- 29 Please, Pirate My Songs! – Ignacio Escolar

*A musician describes the current situation of the music industry from his specific point of view.*

- 31 The EUCD and the DMCA in 2003: How Legal Protection for Technological Measures is shaping Consumers' and Copyright Owners' Digital Rights – Gwen Hinze

*This paper reviews the United States' experience under the Digital Millennium Copyright Act and contends that Member States' implementation legislation should include exceptions permitting circumvention for lawful uses and socially valuable activities. It also analyses a new technological protection regime contemplated by the 2003 draft of the European Union.*

- 35 ‘Trusted Computing’ and Competition Policy – Issues for Computing Professionals – Ross Anderson

*In this paper, the author gives an outline of Trusted Computing and sketches some of the possible effects on the computing business and the people who work in it.*

- 42 Software Patentability and CEPIS – Upgrade Editor's Contribution

*The Editor of Upgrade introduces and publishes the positions on software patents put forward by two CEPIS member societies – GI, Germany, and ATI, Spain.*

# Please, Pirate My Songs!

*Ignacio Escolar*

The full or partial reproduction of this article is permitted provided that a link is provided to the source, <<http://www.escolar.net/>>, and the author is credited.

*A musician explains how he'd rather wish his group's songs were heard by as many people as possible, in whatever way, than for there to be a strict control to stop people making illegal copies of them.*

**Keywords:** Internet, music, piracy, songs.

I'm a lucky musician. My group has just scraped sales of 15,000 copies of our first album. In a world where Enrique Iglesias can sell six million CDs singing as he does<sup>1</sup>, this modest sum isn't too much to write home about. If I put as much effort into football I'd be playing in the premiership, and if I dedicated myself to medicine with the same amount of success I'd be a neurosurgeon. For a couple of weeks during April 2000, one of our singles squeezed in at number seventeen in the Spanish charts; number three if you only count the Spanish artists. Every year 32,000 new records come out worldwide and only 250 convince more than 10,000 people to buy them. Scarcely 0.7% of the musicians who brought out a record last year (most don't even get into a recording studio) are luckier than me.<sup>2</sup>

People must think I have money coming out of my ears. Or that I at least make a decent living from my musical talents. How much does the lucky top 0.7% earn in their profession? I won't bore you with figures but, after three years of hard work to get my album into the shops, I've earned just a little over 3,000 euros from record sales and copyright fees. Barely 85 euros a month is what my successful musical career has netted me. My share of the rent of a place to rehearse – what stops my neighbours having me turned out as a noisy tenant – comes out at 40 euros a month. Last Christmas I blew half my profits on a new keyboard<sup>3</sup>, a total whim. If I had a manager with the power

*Ignacio Escolar* is a journalist. He is the editor of Spanish-pop.net <<http://www.spanishpop.net/>>, collaborates with <<http://www.gsmbbox.es/>> and with the monthly magazine GEO, and is responsible for "El Navegante", the section of Informativos Telecinco 1:30 (TV5's News Programme) devoted to the Internet. His paid work allowed <[iescolar@informativost5.com](mailto:iescolar@informativost5.com)> to pay for the keyboards and bass which he played in the five piece band Meteosat, a Universal Music group. <<http://www.universal-music.es/>>, the same company as Metallica. The two e-mail addresses mentioned in this short bio are answered by the same person and their Napster nick was redskai. <[nacho@meteosat.org](mailto:nacho@meteosat.org)>

to veto my budgets I'd still be playing with the *casiotone*<sup>4</sup> I got for Christmas in 1986.

I don't blame piracy for my state of bankruptcy. Nor do I blame the "sex, drugs and rock and roll" of the advert – in really bad taste – with which the SGAE (General Society of Authors and Editors)<sup>5</sup> tried to make music lovers aware of the need to pay them their dues. Like most of the other crackpots who waste their time in rehearsal places and their money on instruments and amps, I prefer the personal satisfaction of knowing that someone out there is taking the trouble to listen to my music so I can collect the thirty pesetas which is my share of each copy sold (a quarter of that if the record is on offer or is bought during a TV campaign).

If my manager, that make-believe guy I mentioned earlier, had any sense he would agree with me. For each gig I play, depending on the size of the house and the generosity of the promoter, I clear between 100 and 400 euros. I promise you that if you come to one of them I won't ask you for a photocopy of my CD's barcode to get in. Like all musicians who have done their sums, I know that 100,000 pirate fans coming to my shows are more profitable than 10,000 original ones.

So MP3, Kazaa<sup>6</sup> or Gnutella<sup>7</sup> aren't about to kill off music. Not mine or anybody's. I can assure you that, fortunately, I can do without the 85 euros a month from my copyright fees and

**Note from the author:** This article was first published on January 17 2001 in Baquía <<http://www.baquia.com/>> and was awarded the 1st José Manuel Porquet Prize for Digital Journalism <<http://www.congresoperiodismo.com/premio.htm>>. Meteosat no longer exists and some links and data have been updated from the original text version, available at <<http://www.baquia.com/com/20010118/art00001.html>> .

1. <<http://www.angelfire.com/fm/calimonche/enrique.ram>>.
2. The percentages mentioned about record sales, as well as a lot of other stuff in this article, are from Courtney Love's controversial article about the abusive practices of the recording industry, available at <<http://www.salon.com/tech/feature/2000/06/14/love/index.html>>.
3. <<http://www.audiomusica.com/imgs/analisis/ms2000.htm>>.

4. <[http://www.sonicstate.com/synth/\\_inc/picview.cfm?synthid=234](http://www.sonicstate.com/synth/_inc/picview.cfm?synthid=234)>..
5. <<http://www.sgae.es/>>.
6. <<http://www.kazaa.com/>>.
7. <<http://www.gnutella.co.uk/>>.

royalties. For Metallica, and any other best selling bands, the same rule applies though the figures are higher. Concerts, T-shirt sales and the adverts a well known band may record all bring in more money than the royalties (between 8 and 15% of the wholesale price) which multinationals pay per record sold. It's true that the record companies pay the musicians' recording and promotion costs, but do you know any other business in which the share-out between those providing the idea and the labour and those putting up the money is so lopsided? I have to confess that I don't know what prompted Metallica to side with their recording company and sue Napster. But the upshot was that their fans turned against them<sup>8</sup>, God struck a deal with the Devil and Napster turned from pirate into privateer<sup>9</sup>. It would have embarrassed the hell out of me.

Free distribution of songs over the Internet will not put an end to musical creation, but I hope it will put an end to the abu-



sive practices of the recording industry. And we 'notesmiths' have been getting a better deal over the years. If the poor bluesmen<sup>10</sup> of the forties – those who the RCA record label (now owned by Bertelsmann, Napster's partner) used to pay six dollars and a bottle of bourbon for them to record their songs – could hear how Metallica's drummer, Jan Ulrich, moans<sup>11</sup> ...

I'd be lying if I said I didn't know what I was getting myself into when I signed a contract with Universal Music<sup>12</sup> a year and a half ago. In that meeting a top executive of the company summed up the nine pages of the agreement in one sentence: "We record companies are a necessary evil". I won't argue with that. Without them my band would never have sold 15,000 records. Though I bet we could have given them away.

*Translation by Steve Turpin*

8. <<http://www.metallicasucks.com/>> .

9. <<http://www.baquia.com/com/20001108/art00001.html>>.

10. <<http://www.thebluehighway.com/>>.

11. <[http://www.metallica.com/napsterforum/lars\\_statement.html](http://www.metallica.com/napsterforum/lars_statement.html)>.

12. <<http://www.universalmusic.es/>>.