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Songwriters vs. the DOJ

By Lydia George

Federal law governs the licensing of music and songwriter collections. In particular, sound compositions that are broadcasted over the public airways or performed in commercial venues have to be licensed to compensate creators and their publishers. This is the law, and the right of 'public performance' is a key revenue source for music makers.

The bulk of performance income from song copyrights is collected in the US by two PROs (Performance Rights Organizations): ASCAP and BMI. Together, they generate about $2 billion dollars annually. Roughly half of that tends to go to songwriters and the other half to their assigned publishers. Other PROs, like SESAC and the newer Global Music Rights (GMR), capture a smaller market.

Broadcast networks, in radio and TV, prefer to buy music catalogs in bulk, rather than piecemeal. This allows them flexibility in their programming and avoids one-on-one negotiations for single compositions, which could be costly and time consuming. That is why the PROs exist: to negotiate collectively on behalf of musicians and their publishers for an entire catalog. For the longest time, the belief in the industry was that returns to creators were maximized with this arrangement for holding an entire catalog ensured a stronger bargaining power by the PROs and higher returns for everyone.

The principle has come into question recently, for some songwriters believe they are not getting market value for their compositions, especially when they are streamed. The rates paid to songwriters on a per stream basis are much lower than they used to be in the world of physical sales or downloads. Writers, and their publishers, which are affiliated with either ASCAP or BMI, are in a special bind. Writers and publishers are governed by anti-trust Consent Decrees that go back to the 1940s: they simply must accept that they operate under the umbrella of ASCAP and BMI and cannot pull out their music at will. This does not apply to the smaller PROSs, SESAC and GMR, for they are run for profit and do not fall under any such Consent provision.

Fractional Licensing

A year or so ago, some songwriters and their publishers approached the Department of Justice (DOJ) to petition a change in the law: they wanted to have fuller control of their compositions, pulling them out of the PROS here and there, so that they could license them on demand at a higher price. The DOJ rejected their request and instead insisted on a new way of licensing music.

In the past permissions to use a song had to be sought from every rights owner, so that if two writers of a song were affiliated with different PROS that didn't stop ASCAP and BMI transacting the song with a network. As everyone dealt with ASCAP and BMI, working with the two PROS pretty much cleared the market. This so-called fractional licensing system of doing business was OK and accepted.

Now the DOJ asked for a new business *modus operandi*: the norm for transactions moving forward was declared to be a new full work, 100%, licensing system. If enforced, the new ruling would imply that the next time blanket licenses are routinely negotiated with the TV and radio networks by ASCAP and BMI representatives, they would only be able to vouch for those compositions that each PRO controlled fully.

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Mission Statement

The Music Business Journal, published at Berklee College of Music, is a student publication that serves as a forum for intellectual discussion and research into the various aspects of the music business. The goal is to inform and educate aspiring music professionals, connect them with the industry, and raise the academic level and interest inside and outside the Berklee Community.

Inside This Issue

Editor's Note

We are pleased to produce this new issue of the Journal. It comes at the end of the best ever year for streaming platforms, but is marked as well by less positive developments.

Our leading article deals with the Department of Justice's decision to mandate a '100% licensing' policy: songwriters are against it, and so are the PROS and their member publishers, as well as the Copyright Office. The promise of a new music economy, it seems, needs to be negotiated better with content providers than the DOJ imagined. Another instance of conflict is over exclusive releases, mainly through Apple Music, which pits labels and online services against each other.

The rise of music sponsorships, feeding live music revenue, is welcome news for the business. Festivals and concerts are benefitting from a coolness factor in music; it can energize many a consumer brand.

The parallel market for concert tickets has been in the news recently, for there is much profit in it and it is not shared with performers. Yet the so-called secondary ticketing market serves a purpose and its complete elimination may be impractical. Overall it is still a bane for concert promoters and the acts they sign, but its disadvantages are unevenly distributed.

We also pay homage to Blockchain, which has seen increased attention for quicker and better artist payments. Although still in a developmental phase, the technology of decentralized ledgers would seem to facilitate a movement towards more transparent practices in a supposedly dystopian business. Blockchain could usher in other problems too, which we address.

YouTube, buttressed under international safe harbor-type legislation, has avoided sharing ad revenue with musicians and, especially, their labels. Music creators, labels, and publishers are united in seeking retribution. Both in Europe and the US the hope is growing that more compensation will be forthcoming.

We end with the curious story of iTunes 69¢ song playlist, now available to any artist on demand – and for a fee. Here we use price elasticity of demand analysis to shed light on what appears to be, more than anything else, a pay-for-play scheme.

We hope you enjoy reading us. Our vey best wishes for 2017!

Sincerely,
Michael Kostaras
Editor-In-Chief

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Songwriters vs. the DOJ (cont.)

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The irony is that the DOJ is trying to facilitate music trading over the Internet, by spearheading a movement towards full rights ownership per song in one PRO. Digital companies and broadcasters like this, for it allows them to purchase rights on the fly at one stop. The problem for songwriters and their publishers is that the blanket licensing system, where the bulk of the PRO income is still made, was working very well anyway for most writers.

Even the select group of writers that wanted better terms for their streams and asked for a review of the Consent Decrees are completely opposed to the new ruling of the DOJ, because in their view it introduces far too many practical and bureaucratic complications and does not respect the collaborative nature of songwriting, where you cannot force a BMI songwriter to join ASCAP for a particular song. And what if the next collaboration is with another BMI writer?

SONA

This suggests that the ruling of the DOJ, well intended as it was, needs more reflection. A new interest group has arisen in the last year that is challenging the DOJ in court as of September. It is based in Los Angeles and its membership of over two hundred songwriters is growing rapidly. It goes under the name of SONA, which stands for Songwriters of North America. For SONA, the 100% licensing obligation both diminishes and encumbers the private contractual rights and copyright interests of songwriters and composers.

In particular, SONA has sued the U.S. Department of Justice for a denial of the Fifth Amendment right, which requires that the "due process of law" be part of any proceeding that denies a citizen "life, liberty, or property" -- in this case the self determination of copyright property. This is because 100% licensing that it opposes allows a co-owner of an undivided interest in copyright property to grant a nonexclusive license to a third party for use of the whole parcel without the consent and potentially over the objection of other co-owners. A co-owner relying on this rule also assumes the obligation of not licensing copyrights at a rate that constitutes an 'economic waste' of the intellectual property.

Another aspect of SONA's lawsuit turns on presumed violations of administrative law. Indeed, the Administrative Procedure Act of 1946 (APA) states that federal agencies should not make rules or policies that are in excess of their power to enforce them, that are arbitrary and capricious, and, finally, that are adopted without appropriate procedural safeguards. Given the quick backlash from the songwriting and publishing community, and the lack of DOJ guidelines for implementing what seems to be earth changing prescriptions for clearing performance music rights, SONA's challenge resonates.

There are more details to SONA's case. SONA calls attention to the 100% obligation because they believe it will have a lasting and detrimental impact on the business and networks of songwriters. While it denies songwriters their right to divide and separately own and exploit the works they create with others -- for SONA, this is a clear violation of the Copyright Act -- it also deprives writers and composers of the ability to select the PRO they prefer to be represented by in their song shares.

Moreover, SONA believes that 100% licensing will also affect composers and songwriters who choose not to be affiliated with ASCAP or BMI.

For example, the affiliates of SESAC and GMR, the two PROS not governed by consent decrees, could become subjects for ASCAP and BMI licensing depending on how song credits stack up. Additionally, under the 100% licensing model, a licensor could potentially bypass the co-owners and contact the administrator/hosting PRO to obtain a license for the entirety of a song without the consent of other co-writers.

In addition, the 100% mandate may also discourage future songwriters from becoming members of ASCAP or BMI and migrate to SESAC and GMR, who are not bound by consent decrees and whose writers have more freedom, perhaps, to negotiate separately for themselves.

Finally, for SONA, full work licensing will not sit well with the practices of the reciprocal collection societies of ASCAP and BMI in Europe and elsewhere, where fractional licensing is the norm. If a considerable number of ASCAP and BMI repertoire would have to be excluded due to non-compliance with the existing standard, global collections for US songwriters abroad will suffer.

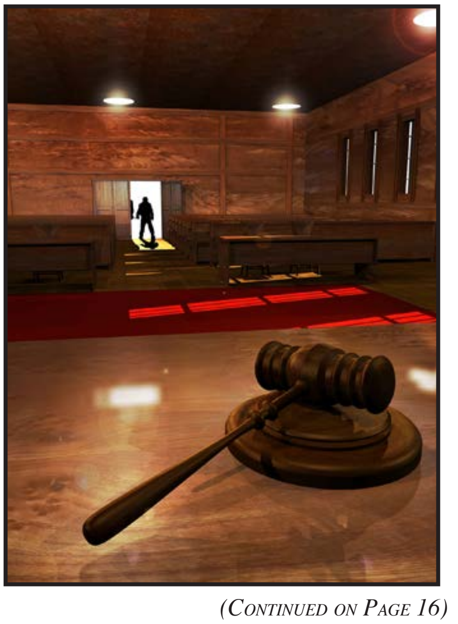
Moving forward

The DOJ has appealed SONA's lawsuit, and it is likely that the music business will be paying attention to the state of this litigation, more than any action by ASCAP, BMI, or the Copyright Office. This is because both PROs are moving slowly in the courts, and the Copyright Office is, for the moment, standing on the wings.

The Copyright Office is on record for writing that 100% licensing is fraught with legal and logistical problems, not least those that could lead to the removal of a work from ASCAP and BMI and easily result in a dramatic decrease in repertoire available through these PROs' blanket licenses. As for ASCAP and BMI, they are still contemplating their next move.

Upon hearing the DOJ decision on 100% licensing, ASCAP announced that they would pursue, in time, a "legislative solution to ensure the continued availability of fractional licensing as well as other remedies to the outdated consent decree regulations that disadvantage songwriters and composers in the digital age." BMI has indicated it will engage the DOJ after complying with various legislative and judicial procedures it has in motion at rate court.

The vehicle that the DOJ has used to attempt to license music performance rights more conveniently and expeditiously



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Business Articles

The Hint of Blockchain

By Alexander Stewart

One of the biggest problems the music industry faces today is knowing which labels and publishers, performers, songwriters and producers own the rights to songs and recordings, and what their split of the royalties might be. Many believe that record keeping with Blockchain technology can help. Advocates of Blockchain foresee a music industry where every time a song is sold or streamed, payments on royalty splits would be clearer and quicker.

A Blockchain is ultimately a database that maintains a continuously growing list of records secure from revision or tampering, and one that enables trading with a cryptocurrency, such as Bitcoin. Participants would engage in a new and efficient protocol that promises more transparency in transactions and a tamper proof medium of exchange. Less middlemen would be involved all around, which is reassuring for an industry riddled with issues of trust over intermediation.

In a perfect world, the Blockchain would also become the single stop to publish all information about the making of a song. The suggestion too is that Blockchain would devolve control to the original parties in the exchange. For instance, notaries could be replaced, as every transaction would be time stamped automatically and given a unique ID. A cryptocurrency would also facilitate international settlements between collections societies by eliminating the exchange rate risk.

Constraints

Building the technology is a logical first step, but shopping for its acceptance is not far behind. The data transparency issue is thorny. Blockchain needs multiple participants sharing data in a single space avoiding third-party checks on the accuracy of the terms of trade therein. The Global Repertoire Database, supported by the EU countries, failed to materialize two years go because it could not overcome the skepticism of publishers, songwriters, and many national collection societies, including USA's ASCAP and BMI. If successful, Blockchain would supersede the need for a GRD type solution, but the historical record so far is not encouraging.

Even if it were possible to reach a trusted consensus in the Blockchain without the need of a third-party organization or authority, the technology appears to have technical limitations as well. There is, in effect, a real trade-off between the performance of the system and the amount of data it can process in real time.

Currently, if Blockchain were powered with Bitcoin, Bitcoin transactions could not keep pace even with credit card clearances. A 2015 Lloyd's report makes the point that in its current configuration Bitcoin is far from Visa's peak volume of 47,000 clearances a second (the report puts Bitcoin at seven transactions per second). In fact, the computing power needed for the Blockchain with Bitcoin would delay transaction processing. In part this is because every participant must replicate all contents of the chain as it adds on the next link.

With music, a commodity bundled with many rights and so many potential licensing outcomes, the size of the metadata needed for a transaction would be large. In fact, a Bitcoin powered database would be useless if there was a time lag in a transaction display because it could lead to double spending. This would clearly be a disincentive for a trade that deals in a low value product of mass consumption.

A Blockchain could move forward perhaps with another cryptocurrency, a development that would be welcome. In the meantime, Blockchain could serve as a repository of the chronology of all metadata, i.e. a decentralized data store, with the ability to operate at low cost, something like the GRD but with a special new codec.

Nevertheless, for an industry increasingly preoccupied with the right input format of its metadata, the question arises as to when and where will the input of the data happen. A DIY band that is self-published might be disciplined enough to pay attention as they record what contribution is apportioned to this or that member of the group. But most musicians separate the act of creation from the record keeping of the business data, so it is unlikely that the messiness of the original data is going to magically disappear with Blockchain, (even with unique personal identifiers and an established cryptography).

Developments

There are several music business startups that have set out to build a Blockchain and capitalize on it. One of them is PeerTracks. It plans to use the technology to craft a type of artist equity trading system within a streaming and music retail platform that will generate fan engagement and peer-to-peer talent discovery too. It would pay streaming revenue directly to the artists on a per-user-share basis using so-called 'artist tokens'. Every artist would have their own name and likeness circulating in tokens and each artist would decide on the number of tokens in circulation, thus creating a cryptocurrency of artist tokens to replace ordinary money. Valuations would be commensurate with the popularity of the artist in a closed echosystem. The question as to how this echosystem would interface with the rest of the monetary transactions in the economy is still unclear.

Another startup, Ujo, is building a system designed to address two major problems in global royalty distribution and licensing. Ujo proposed a new, shared infrastructure for the creative industries that aims to return more value to content creators and their customers. Built in collaboration with artist Imogen Heap, Ujo's model is different as it focuses on creating an open-source rights database and payment infrastructure. Like Peertracks, Ujo wants to revolutionize how money is distributed to artists and rights holders, but does not seek to create an alternative medium of exchange such as the 'artists tokens' of PeerTracks. Presumably, it awaits establishment of new and more efficient cryptocurrency than Bitcoin.

Another talked about projects is the Dot Blockchain Music Project, or Dot BC project, founded by PledgeMusic founder Benji Rogers. According to Rogers, this project aims to "create a new music codec (.bc) containing a minimum viable data set that would create a globally distributed database of music rights to an open source architecture and user inter-

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Blockchain (cont.)

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face." Once a .bc file is delivered to a digital service or player, it would be decoded in compliance to the .bc rules, authorizing or rejecting the playback of the content. A payment would then be made to the owner or rights holder for the usage of that music. The key is the act of creating the .bc files that would build and then add to a global decentralized database of rights.

Politics

Delays and non-payment of artist and songwriter royalties are a common refrain of artists and songwriters. Whether it is by design or not, is immaterial. The Dot BC project needs the cooperation of major corporations and collecting societies, for without that innovators would arguably stop in their tracks. The demand for music data is evident, but the incentive to supply it is less clear. A number of incumbents benefit from the status quo, but can we look to certain innovative music services as facilitators of change?

Companies like Kobalt, Stem, and Songtrust offer great tools to help musicians, managers, labels and publishers better manage their dataflow. They could take advantage of a shared metadata network by offering users the best in class tools to work with. Also, platforms like Spotify and Soundcloud have motivation to find a reliable and long-term solution to the transparency problem in order to avoid future lawsuits. Spotify seems to be leading the charge, having recently committed to "fix the global problem of bad publishing data once and for all". They also have the scale and technical resources to ensure the availability and operation of the network.

Because the Blockchain does not possess cognitive empathy and does not understand nuance, it is unlikely that conflict resolution will obviate person-to-person dialogue. There will be need for trusted arbiters. Today this function is performed by PROs and other services that administer copyrights. It is likely that such organizations will continue doing data auditing and conflict resolution for their clients, rather than be superseded by new technologies.

Potential

Widespread adoption of Blockchain platforms within the music industry could prompt a new wave of change, yet remain compatible with contemporary models of digital music consumption and distribution. From the consumers' perspective, very little would change except that a Blockchain would ensure that copyright theft and piracy would become almost impossible. However, the main advantage occurs in the way that artists are able to manage their intellectual property, ensuring that the way their content is used and paid for is controlled.

For music labels and licensing bodies, there is an opportunity to be on the leading edge of change by working with artists and distributors to establish new standards and ways of working that reach right across the industry. A Blockchain platform employing identity management and smart contracts could lock in rules for how revenue flows from consumer to artist every time a piece of content is played or streamed, thus reducing the costs associated with collecting and managing statistics, maintaining copyright databases and distributing royalty payments. It could also enable new business over micropayments being considered elsewhere in the media industry.

Also, the adoption of unique ID resolution could enable two or more parties to discover and share a common identifier for a song. The identifier can be random so long as it can also be discovered by alternate IDs such as ISRC or other internal fields or keywords. This stores songs in the Blockchain forever via a unique ID. So if even one note of a song were to be changed, a new ID would be created so remixes, dub plates, and flips would be instantly recognizable. Money won't land in one big pot as a flat-charge to be paid out pro-rata, but distributed instantly and proportionately to each rights holder.

More Considerations

One of the key features inherent in Blockchain is the ability to put data into a public ledger that has a level of privacy. However, there are limits to the information that artists and businesses want to enter into any Blockchain. Some things best remain private and many transactions should never be made public. In some cases, there could be private sales of valuable assets where certain parties would not want that information entered into any public ledger.

Another concern that is often voiced is the uploading of incorrect and/or incomplete data especially as it pertains to publishing rights. According to some experts Shazam or Gracenote technology might help detect errors at the input stage, but it is difficult to imagine automatic correctives only.

Finally, Blockchain is not an authority unless given that recognition by humans. Yet Blockchain belongs to no one, and is only a public ledger or record of information pertaining to a transaction or asset. It can be polluted. It cannot be held accountable because it has no one to be accountable to, and no one is truly responsible for it. Since it is designed to exist in a decentralized format, the perceived value is that anyone can enter information into a Blockchain and by making it public, almost anyone can use it to validate a transaction.

Projection

Still, Blockchain technology is slowly making its mark in general business. Examples include a payment system and digital currency, facilitating crowdsales, or implementing prediction markets and governance tools. It offers many captivating possibilities of eliminating the middleman in order to increase efficiency and transparency.

Worldwide, the financial services market is the largest sector of industry by market capitalization. If Blockchain technology could replace just a fraction of that by enabling these peer-to-peer transactions in other sectors then it clearly has the potential to create huge efficiencies. Many banks across the world are conducting research on how this technology could benefit them. These types of transactions are also very relevant to companies like Airbnb or Uber. One of the more popular ideas is the idea that the Blockchain could offer a decentralized Uber service, a way to have riders order and pay a driver over the Blockchain, all without using a middleman like Uber that takes a cut to connect rider and driver.

The music trade, like other industries, will likely make more use of the technology in time. An early adopter is Imogen Heap, who released her song *Tiny Human* on Ujo Music in October last year. Imogen Heap attached a smart contract to the song, a programmable agreement that a computer can read to facilitate, verify, and enforce terms, simplifying a trade. Heap also used Blockchain architecture to manage intellectual property rights and arrange payment splits. Although still in its foundational stage, her so-called *Mycelia* project is spearheading new

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Business Articles

Secondary Ticketing: The Bane of Live Music

By Juan Carlos Cardenas

Music Business Worldwide (MBW), a fellow publication, estimates that Mumford & Sons, the acclaimed British alternative-rock band, lost a minimum of three million dollars to the hands of scalpers and secondary ticketing sites in 2016. The figure could be half of that and still give pause for thought. As *MBW* suggests, moreover, it may well be that other prominent artists including Adele, Chance the Rapper, Radiohead, Iron Maiden, and The Pixies, are suffering a similar fate.

Mumford & Sons are a casualty of the pre-purchase of concerts tickets for price gouging. But fans and music intermediaries are hurt too. As Adam Tudhope, founder the group's management company, says: " [this] 'value gap' [is] extracted from our fans [against our will], and we get nothing." Tudhope might as well be speaking for all managers, booking agents, and many concert promoters and venue owners (as will be shown later, venue owner Live Nation, the live music entertainment giant, plays in the secondary ticketing market and is less affected). In the first sale of tickets, of course, money paid goes towards the artist and the promoter, and includes only a reasonable ticketing fee.

One might add that record labels and music publishers are also victims of secondary ticketing. If recording contracts include ancillary royalties from merchandise sales, for instance, the opportunity cost of the $3 million could be high both for Mumford & Sons and its label. Moreover, had fans spent that money on physical or digital music sales, or tickets for other shows, the value of performance collections from other concert venues, as well as the mechanicals paid to publishers, could help songwriters. In fact, the short-term exploitation of fans in the secondary ticketing market adversely affects the bulk of the music industry.

Ticket multipliers

Growth in the secondary ticket market is fuelled by quick changes in technology that allow bots to raid online sales in an instant. The size of the market is of the first order. Conservative estimates put it at $2.3 billion globally for 2015 and growing, roughly the same size of paid subscriptions as reported by the IFPI (International Federation of the Phonographic Industry). Many, like MBW, suggest the number may be much higher.

Market size has to do with ticket multipliers. Secondary sites often resell tickets at up to forty times their original value. Demand outstrips supply for marquis events, and fans still spend on such markups: there is an asymmetry of information that plays into the reselling business, for the true market value of a ticket cannot be known for sure by a fan after the first sale.

The result is that big and small money rushes in to take advantage of this arbitrage. The main players today, for example, are eBay and Live Nation/Ticketmaster (the latter two companies merged in 2010). eBay owns *StubHub*, the biggest ticket reseller. Ticketmaster is second, with *Seatwave* and *GetMeIn*. Both companies are in stiff competition with each other, and neck and neck over live music. Coming behind them is a host of smaller scalping platforms that seem to be growing by the minute.

Profit

The bulk profit of secondary ticket sales go to the corporate and rogue resellers and the platforms through which they trade. The platforms that purchase and resell tickets usually charge a commission of 30-35%. Indeed, Mumford & Sons claimed that about a third of the $3 million allegedly lost went directly to such platforms. Ticket resellers themselves pocketed the remainder. These were not music fans but professionals trying to extort the highest rent on the back of a hit music act. Only one out of every ten resellers is reportedly a fan, so ticket resells generate much money outside the trade. They ultimately feed an alternative echo system that is greedy for profit and which does not crossover into music.

Ironically, the hope for change lies in the big players, for they can engage new paperless ticketing technology that would make secondary ticketing irrelevant. Take the case of Live Nation/Ticketmaster. Though it benefits from the secondary ticketing market, being a player there creates short-term friction with the talent it needs to fill its arenas. Moreover, secondary ticketing tends to push concert prices up, for artists are afraid to settle for a lower ticket sale value when high prices are obviously paid in the secondary market. And because Ticketmaster deals directly with ticket sales, consumer backlash over expensive tickets is bad for business long term. Therefore, Ticketmaster supports the move to paperless ticketing even when this would mean banishing the secondary ticketing market where it is a key and profitable player. Indeed, the company has called to eradicate 'legalized scalping platforms' (including those where it has an interest) through paperless ticketing.

Skeptics might argue that Live Nation/Ticketmaster is too heavily invested already to engage change earnestly and fight for paperless ticketing. The official company line has been that it will both seek to actively integrate its secondary and primary ticketing functions for the benefit of fans and that it will add more dynamic pricing to first sales to help artists (by issuing more VIP, Platinum, and P1 tickets). But the conflict of interest is a matter of record, so critics can say that it is still legitimizing the market's secondary inflated prices. Indeed, according to the latest Live Nation report, the company makes about $1 billion from secondary sales, from total revenue of $19 billion in 2016. Live Nation's music revenue, a part of the $19 billion total, is more like $3bn to $4bn, and if so this suggest secondary ticketing music sales of about $200 million in the US: nearly one out of every five dollars is coming from its parallel resale market. And every one of those secondary ticketing dollars is projected to grow over and above any dollar in the primary sale market. Ticketmaster puts the figure at 33% annually, more than double the 14% sales' growth of its first sale business.

Paperless Ticketing

If a paperless ticketing system were to go through it would enable ticketing companies to link each ticket to a specific person, which would make the tickets non-transferable. This would hinder scalpers from buying large quantities of tickets in order to resell them at a mark-up, but it also denies legitimate fans the chance to sell or transfer their ticket in case they are unable to attend the show. Secondary markets in finance, say for stocks and bonds, reduce the

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Secondary Ticketing (cont.)

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risk of a purchase not having the requisite liquidity in the event of a desired sell-off. Where there is an active secondary market, investors will be more active for they can sleep well at night knowing that they can liquidate their holdings at short notice. The same happens with live music tickets. If a fan knows that a resale is possible, the risk of purchasing that ticket and losing the money in the event of a change of heart or personal emergency is diminished. With a secondary market, the primary sale business is generally stronger. Largely because paperless ticketing could lead to the strangulation of the secondary business (except for face value reselling at Ticketmaster's own site), paperless ticketing has had a checkered history.

Miley Cyrus's *2009 World Tour*, in conjunction with Ticketmaster, was the first ever to implement an exclusively paperless ticket strategy for a major artist. In the event, the tour did not sell as well as expected. The absence of paper tickets and secondary market vendors, it seems, was one of the reasons that fans stopped short of making a purchase commitment, for without the secondary market they risked losing the face value of the ticket if they were unable to attend the concert.

Ticketmaster kept on pushing for a paperless ticketing strategy anyway, later making it possible to resell paperless tickets within their authorized website, then verifying that the resold tickets were not overpriced. But Ticketmaster could not corner the market on its own, and if the parallel secondary market was going to survive anyway, a two-pronged strategy was inevitable. So Ticketmaster worked for paperless ticketing while keeping its options in the secondary market alive.

And even if one were to discard the idea of a vendor playing a two sided game, double dipping in the competitive parallel market and, therefore, enabling it (in this paperless ticketing is quite different from airline ticket sales to which it is often compared), there is some friction in the process that does not sit well with artists and concerts promoters. The paperless process, with ID check and credit card confirmation, takes much more time at the doors. Extra staffing is needed at the venue and ticket holders spend more time getting into the venue – while they could be instead spending on merchandise, food, and drinks.

Artists Unite

Nevertheless, secondary ticketing detractors are becoming more vocal. Mumford & Sons, as well as Adele and the other artists listed at the top the article, are drawing public attention, reaching out to their fans in the hope of educating them and making them advocates for more comprehensive legislative change.

Mumford & Sons, for example, has partnered up with platforms, *Music Glue* and *Twickets*, both of whom are trying to reinstate the fan-to-fan market approach rather the tout-to-fan sell. The two companies intend transparency in ticket transactions to deter scalpers. The band also promotes the Fan Fair Alliance that lobbies for legislative change and the enlightenment of consumers in the UK. Their efforts to suppress secondary players seems to work, as only *Stubhub* is currently listing tickets for the band.

Adele is on board too. Her website has displayed the message "The resale of tickets [for the current tour] will not be tolerated." Adele has focused on controlling the first wave of ticket sales. She has implemented a pre-sale registration process, kept the pre-sale date vague, and approached fan clubs privately with ticket offers before any public announcement. The practice has yielded remarkable results. According to Jonathan Dickins, her manager, "approximately 1.9% of the 'first wave' of Adele tickets ended up on secondary ticketing sites – with some today being sold for prices in excess of $1800; 1.9% is a much lower percentage than the touts would have liked to achieve, with experts telling us the average arena gig sees closer to 20%."

Chance the Rapper recently joined the fight, if somewhat unconventionally -- by buying over two thousand tickets from secondary vendors and scalpers, and selling them to his fans at face value. Such a heroic solution is unlikely to be adopted by other artists, but in a world where artist-fan relations are more closely mediated than ever, Chance the Rapper sent an unequivocal message that he stands behind his fans even at a cost.

Conclusion

It has been argued that secondary ticketing is syphoning an important amount of revenue away from artists and others in the music supply chain. The point has been made too that secondary ticketing has a place. In particular, the knowledge that a buyer can exchange a ticket in the secondary market if something changes between the time of the ticket purchase and the day of the concert drives more primary sales at live music venues. Cash is tendered with the expectation that it can be recovered, and the alternative to no secondary ticketing is a primary market with no guarantee of ticket refunds. This would hurt the live music business.

But it is about time to ask if things have gone too far in aiding and abetting secondary sales. Technology has produced bots that can raid the market and manipulate it to their advantage. The result is bad for up and coming new artists who tend to target younger age groups that cannot afford the steep ticket prices of the secondary sale. Well known acts also wish to engage younger audiences to energize their fan base, and the high value of resold tickets puts them out of range for them too.

Engaging everyone in the music supply chain against overpriced tickets, including artist managers, booking agents, and not least Live Nation/Ticketmaster and eBay, is better for the business. Live Nation/Ticketmaster is aware of this and, as mentioned, is looking for a compromise. So there is much political capital that can be made by a joint industry approach against the excesses of the market. Overall, if the music marketplace is denying access to live music events to many people and benefiting above all, a special class of outside players, there should be consequences. MBJ

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Law Section

YouTube's Safe Harbor

By Michael Kostaras

Music industry pressure is mounting on YouTube. In June, a diverse group of 180+ major artists, including Paul McCartney and Taylor Swift, released a petition calling for a reform of the Digital Millennium Copyright Act of 1998, which grants safe harbor provisions to the video service. The open letter ran as a three-day ad in the *Politico*, *Roll Call*, and *The Hill*.[1] Behind it, stood key trade players, notably the three major labels and the PROs, i.e. ASCAP, BMI, and SESAC. Industry heavy weights chipped in too. Trent Reznor, Music Chief Creative Officer for Apple Music and ex Nine Inch Nails, argued that You Tube's business model, owned by Google, was served on a gratis platter "built on the backs of free, stolen content".[2] Industry mogul and manager Irving Azoff, a *Billboard* most powerful personality of 2012, remarked on YouTube's "unfair [legal] advantage".[3]

Context

With an average of over 1 billion users per month, YouTube is the most-used streaming service in the world. According to the IFPI's Music Consumer Insight Report, 82% of those 1 billion users are listening to music.[4] Now that streaming, and YouTube in particular, have become such strong market drivers, their role in compensating artists is more important than ever; hence the increasing dissatisfaction from the industry. According to *Forbes*, research conducted by MIDiA indicated that between 2014 and 2015, total views increased 132%, whereas rights payments only increased 11%. This would actually mean YouTube/Vevo's pay per-stream rate decreased from $0.0020 to $0.0010 for that year.[5] In that same time, Spotify (which has a higher number of paid subscribers) reported paying between $0.006 to $0.0084 per-stream.[6] In the past, ad-based revenue was more feasible than a flat rate per stream. However, as the number of paying subscribers grows, along with streaming revenue, the ad-based remuneration is proving to be insufficient for the industry at large.

The DMCA, (section 512 of the U.S. Copyright Law) is important to YouTube's current model, because it grants "safe harbor" to digital service providers under specific circumstances. Essentially, safe harbor provisions state that these services are not legally responsible for the uploading of unlicensed content by their users provided they either compensate the rightsholders or remove content when it is found to be infringing.

However, YouTube's especially high user rate gives it a unique position as a marketing platform, to the point where even established artists can't afford not to leave their music up. The result of this bargaining power means YouTube is often able to host copyright protected web content on its free tier, without necessarily acquiring the proper license. Or if it does, it may not always offer fair compensation.

The CO and the EU

The June petition is notable in that it may be the most assertive call to arms made by the music industry. Moreover, it is clear that the U.S. Copyright Office is listening, for it is currently conducting a public study of the DMCA to "evaluate the impact and effectiveness of the safe harbor provisions contained in section 512 of title 17, United States Code".[7]

As of the April 1 deadline, the Copyright Office reportedly received over 92,000 written submissions of public commentary on the matter. In May, roundtable discussions were held in San Francisco and New York. When released, the much anticipated report should shed some light on "the costs and burdens of the notice-and-takedown process on large- and small-scale copyright owners, online service providers, and the general public", and "how successfully section 512 addresses online infringement and protects against improper takedown notices". The end result may be critical in deciding whether or not YouTube is overstepping its bounds as a neutral party, and in what capacity it will be allowed to proceed with its current business and compensation practices.

At the same time, the European Commission is also taking some important first steps with its own safe harbor provisions to ensure artists see better compensation for their work. On September 14, the EC published its new proposals to update copyright in the EU. Articles 13 and 14 are pertinent to YouTube.

These articles discuss the storage, use, and access of protected works by information service providers. Service providers, it is argued, must take proper measures to allow rights' holders to manage the use and access of their protected works. The EU advocates the adoption of recognition technologies to take down a protected work if a rights' holder wants it. And because Europe has a history of being more bullish in the defense of copyright, the estimation is that the use of new recognition technologies may serve creators better there than, for example, YouTube's Content ID system does in the US (more on this later).

Service providers in Europe must also keep rights' holders informed as to the carrying out of those measures, and report on any recognition or removal of said works. They must also offer a way for users to notify them of any disputes or errors regarding the removal of content.

In particular, Article 14 is intended to create more transparency surrounding fair compensation for any protected work. It states that, authors and performers must receive "timely, adequate and sufficient" information regarding the exploitation of their works, along with "revenue generated and remuneration due".[8]

Economics

YouTube says that it is good for the industry. It claims that fan-uploaded content accounts for 50% of the $3 billion revenue it pays the business, making it a highly effective

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YouTube (cont.)

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promotional tool for musicians. It points out that it debuted YouTube Red, a monthly-paid subscription service exclusively for users in the United States which provides advertising-free streaming of videos hosted by the service, offline and background playback of videos on mobile devices, and access to advertising-free music streaming. This should provide more receipts to musicians. In addition, it has developed it own app, YouTube Music to better catalogue, as it puts it, its sprawling catalogue of song videos.[9]

This may be so, but given the vast number of YouTube users, the question is whether its ad-supported revenue service can ever match, as perhaps it should, subscription services like Spotify. The IFPI, the international trade body of the record labels, has repeatedly made the point that, in 2015, the 68 million global users of subscription based services paid the record companies $2 billion; those same companies received only $634 million from YouTube with nearly fifteen times more users.[10]

Therefore, out of the $3 billion YouTube claims it redistributes back to the music business, only a fifth seems to go back to the recording business. In effect, YouTube seems to be paying publishers more money for the song composition than it pays for the master recording – an unusual occurrence in the music business. The problem for YouTube is that the labels have more clout and deeper pockets than the publishers and the PRO's that collect for them. But the music publishers, which collect on the sound composition, are not happy either, so the industry conflict with YouTube will likely escalate.

Another factor is the dispute over the recognition of infringing material. YouTube maintains that its Content ID technology is highly successful in recognizing and managing 99.5% of infringement claims, and that it has an overall 99.7% accuracy rate.[11] The IFPI disagrees, saying that YouTube failed to identify as many as two of every five infringing works.[12] There has been some progress, with the U.K.'s Intellectual Property Office reporting last year a drop from 63% to 58% in the use of YouTube by infringers, but the music industry clearly sees a greater schism there than YouTube does.[13]

It must be said too that the conflict with YouTube is happening against a changing backdrop in the business. In 2015, the recording industry had its first year of growth since Napster. Reports are also encouraging about the future of recorded music. In the US, the Recording Industry Association of America's mid-year report for 2016 puts labels' revenue growth at 8.1%, with streaming retail income accounting for one of every five dollars made and offsetting declines in both physical and digital sales.[14] Thus, the marginal value of YouTube in label income stands in relative contrast, and the video giant is perceived ever more as devaluing recording product when at last it is becoming better monetized.

YouTube's Case

Naturally, there are arguments to be made on YouTube's behalf. Take Google, its parent company, commenting on the new EU measures: "There are things to like in the proposal [and] we're pleased to see the Commission mandating more transparency and data sharing for artists and rights' holders." However, Goggle continues, "[excessive filtering by online services] would effectively turn the internet into a place where everything uploaded to the web must be cleared by lawyers before it can find an audience".[15]

Indeed, many industry players – among them the IFPI but also the Independent Music Publishers Forum (IMPF) and the UK Performing Rights Society (PRS) – are concerned that if the new EU legislation doesn't empower member States with the necessary authority to carry out the new mandate, the results could be counterproductive and hurt the livelihood of European songwriters, for it will provide a cover to the status quo. Clear regulatory guidance may be needed on both sides of the Atlantic for YouTube to be reigned in, but the dilemma is that this could stifle originality.

From Google's and YouTube's perspective, moreover, account should be taken of the fact that YouTube music videos are per se a small part of YouTube's entire video catalog, which of course means that music related ad revenues cannot be relative to the total number of YouTube users as the IFPI, among others, would wish. If the new measures are to be fair, in short, the principle of proportionality should apply.

Perhaps the strongest argument pro-YouTube is its function as a marketing trampoline for indie and breaking artists. Rising stars like Bieber, the Weeknd, Karmin, and Shawn Mendes, among others, have seen their careers skyrocket thanks to the video giant. Indeed, *Digital Music News* writes that "Silicon Valley has built the recording industry a vast and powerful new global platform for content distribution and monetization — all for free",[16] and *Music Ally* seems to agree that "user-upload platforms have generated huge new value for unsigned and independent creators by affording them tools to reach a worldwide audience".[17] Both dailies are inclined to praise YouTube's long-term role in the music business.

Conclusion

Moving forward, the problem for YouTube is one of size. Its page views and unique users make it the second highest ranked website in the world after Google. It surpasses Facebook. In this context, the music recording and publishing industries are no longer prepared to stay on the sidelines and just gratefully acknowledge YouTube's role in promoting music and, often, new talent.

As YouTube's ad earnings grow in tandem with its popularity it is being perceived as a beneficiary of proprietary sound recording and musical compositions that demand more consideration at a time when consumers of music are demonstrably paying more for it and are expected to continue doing so in the future.

The reform of longstanding safe harbor provisions, and their relationship to music making, are in the end a discussion about how the shares of recorded music product should be distributed over the Internet. So far the spoils have gone to the colonists, i.e. the technology companies and, particularly, YouTube.

But the trend has been for sites that trade in user-uploaded content to go legal and move away from free music. SoundCloud is the best example (see *MBJ*, Apr 2016). YouTube, therefore, would do well to be perceived as a neutral and passive host of music, not just for its own long-term engagement with the industry but to stay within the confines of the newer, and likely more binding, safe harbor provisions. MBJ

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Business Articles

Exclusivity and Its Limits

By Ashley Cook

Major labels are pushing for the end of exclusive deals with streaming services as they are quickly realizing such a practice hinders the potential profit of their artists' biggest albums and creates incentive for brand name artists to no longer renew their contracts.

A New Economy

Since their launch last year, streaming services Tidal and Apple Music have been paying record labels for the exclusive rights of their music to entice new subscribers. Apple Music pays artists such as Drake, Pharrell Williams, and Future large amounts of upfront money while Tidal gives an ownership cut to artists like Kanye West, Beyonce, and Rihanna -- all in exchange for promotion of their platform to compete in a Spotify-dominanted industry. It has proven to be a successful marketing strategy for both companies, with Apple Music and Tidal generating a combined total of about 20 million new subscribers just in the past year.

Artists always utilized their labels for distribution and, indeed, were bound by an exclusivity clause in their recording contract. As streaming services have taken over the distribution of music, they have reached out to big name artists. Such artists have enough power to sway their labels and cut their own deals. It is leading to a shift in power in the industry, determining a turf war on how music will be released and heard and leading to more cavalier attitude by top artists towards the labels.

Label Distribution

2016's biggest three albums illustrate the waning influence of the labels in distribution. Earlier this year, Drake signed a $19 million dollar deal with Apple Music to promote their streaming service by offering his new album *Views* exclusively on their site for a one week period. During this week, *Views* was streamed more than 250 million times by users and sold over 1 million copies on iTunes. The album then continued to grow as it became available on multiple platforms such as Spotify and Tidal.

In August, Frank Ocean released his album *Blonde* exclusively on Apple Music and iTunes and grossed 276,000 equivalent sales while debuting at No.1 on Billboard's 200 chart. It was later expanded to multiple streaming platforms as well. In April, Beyonce released *Lemonade*, which grossed 653,000 album sales while also earning a No.1 spot on Billboard's 200 chart. The album was later available via Apple Music as paid digital download only.

While major labels benefit from the sales of these albums, they don't partake in the artists' initial upfront fee from the streaming platform. This is true even when they are listed as the distributors, like Drake's *Views* (distributed by Cash Money Records, owned by the Universal Music Group) and Beyonce's *Lemonade* (distributed by Sony's Columbia Records). But Frank Ocean's *Blonde* was distributed through his own independent label, much to the chagrin of Universal Music: immediately after this exclusive release Lucian Grainge, Universal's CEO, sent out an email to all branch executives of the company demanding the end of exclusive deals with streaming services. UMG,

the world's biggest music company, is the first major label to ban such deals, viewing the practice of restricting an album's accessibility during its launch as detrimental to its bottom line. Drake, Taylor Swift, Kanye West, Coldplay are UMG artists as well.

Artists

It is easy to see that the conflict over first releases has the potential to unravel decades of standard music industry practice. UMG's top artists, for instance, will have to decide what to do, and this is not an obvious choice. If they abide by the label they may be preempting the distribution of streamed music, the top dollar value in recorded music today. If they flock to the streaming services, they may have to jettison their relationship with the label and hurt the industry, for labels are in business of signing new acts from the proceeds they make from megastar releases.

The issue is also complicated for other reasons. Conceivably, breakaway artists could benefit substantially from upfront fees and higher royalty rates; however, such exclusivity deals could upset and turn away fans that do not have access to multiple platforms. The proposition could be a losing one for artists long-term.

Streaming distribution worldwide could be a concern too. Not every country has streaming services. In Japan, Germany, and France, three of the top five markets, the predominant format is still the CD. Labels have done well moving product across borders, and the Rest of World accounts for three-quarters of all the recorded music business. An online focus that ruins a label-artist relationship is not in the interest of the artist.

Competition for Exclusives

Another factor is intra streaming service competition for exclusives. Spotify has recently failed to promote music that was previously released exclusively through Apple Music and Tidal. When Spotify is the secondary release platform, the music is not likely to make its promotional playlists, top searches, or be featured content in the the site.

Two examples make the point, one by Katy Perry and the other by Frank Ocean. Perry's single Rise released in July, hit number 11 on *Billboard's Hot 100* after being released exclusively on iTunes and Apple Music for one week and featured in NBC'S US Olympic coverage, then fell dramatically in rankings. It failed to appear on Spotify's playlist, "Today's Top Hits" as well as "New Music Friday" which are the service's two biggest playlists with collectively ten plus million followers. The song didn't appear on any Spotify-managed playlists until early August when it charted at No. 176 on Spotify's "Global 200" playlist. Frank Ocean had a similar experience. After debuting *Blonde* exclusively on iTunes and Apple Music, it was then released on Spotify one week later, but it was nowhere to be found on featured playlists or advertisements.

For the labels, Apple Music is the lesser of two evils, because it places fewer restrictions on the terms of its exclusive deals than Spotify does. Spotify may have more subscribers but Apple is better because it does not do free music and uses ad supported services that can bring in more revenue to both the artist and the label. Drake and Frank Ocean, and

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their labels, were paid for the exclusivity deal. Beyonce and Adele went exclusive only with paid downloads, not streamed albums. Spotify involves its free service, not just its premium subscription service, in its exclusive deals.

Piracy

Exclusives also encourage piracy, depriving potential monies to the original creators. This year, the IFPI (International Federation of the Phonographic Industry), reported that a third of Internet users rip streams, a 10% increase from 2015. In July, nearly a billion Internet users visited the top thirty stream-ripping sites. Earlier, a U.S. federal judge ordered Mp3skull.com pay $22 million in restitution to the RIAA (Recording Industry Association of America). The problem is becoming endemic, and mobile apps such as "TubePlayer" now target YouTube likely the most important music discovery site of them all. Even if action can be taken by YouTube if notified, this is cumbersome to do and likely a little and too late.

Conclusion

Overall, the exclusive rights crisis is reshaping an already fragmented industry. Label contracts are being rewritten. Top artists break with employers to suit themselves. Streaming services gain a promotional upper hand in the distribution of music. All of this is happening while consumers have more access than ever to tools that allow them to seize streamed product without paying for it.

If sense is to prevail, it must start at the top, with artists understanding the full implications of their actions. For them, as discussed in the article, what is good here and now may not last. Moreover, the old record label system helped independent artists, by taking from the rich, so to speak, and giving to the poor. Perhaps the day will come when the streaming services will invest in indie artists, but in the meantime their focus on exclusive celebrity releases hurts the labels and acts as a disincentive to the signing of new and untested talent. MBJ

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Business Articles

Sponsorship Lift Off

By Karin Harvey

Not too long ago, recorded music sales were a dependable source of income for labels and their artists. Earnings from live music shows added substantially to physical sale of product, so in the recording and live music businesses, a livelihood in music was less tied to sponsorships than it is today (the products industry was always special, for there; going back to the XIXth century, well known artists were engaged by the likes of Steinway & Sons to promote music instruments sales). Pop culture too was different before the 1980s, and performers and recording talent tended to avoid open commercial ties with brands. This has all changed. Artist and live venue sponsorships are part and parcel of the music business, and the value of music sponsorships has become its own quant in the U.S., with an all time high spending in 2015, the latest date for which data is available, of $1.4 billion.[1] This is a remarkable figure equivalent to about one-fifth of the current value of recorded music sales and a third of all concert ticket gross revenue.

A big target of the sponsors, of course, is the millennial generation, i.e., those born between 1980- 2000. About a third of all music sponsorships are to this cohort. Generally speaking, brands find them difficult to market to, for they are not a homogeneous group. But it is known that they share a fascination for innovation and technology, are constantly connected to mobile and other devices, and crave to experience unique events. As music artists set trends, have active social media accounts which sometimes reach across the globe, and can drive thousand and even millions of fans to a brand with a simple hashtag at festivals or concerts, the match is obvious.[2]

Music sponsorships are a thus a winning proposition, especially when the effectiveness of traditional marketing strategies is in question. It explains why brands are choosing to spend more on music than many other trades. Music sponsorships have grown from $1.2 billion in 2010 to $1.4 billion in 2015 and are expected to reach $1.5 billion in 2016. Last year, the percentage change in music spending, at 5.6 percent, outpaced the growth in general sponsorship by more than one percentage point—a big margin.[3]

Alcohol or Not

Non-alcoholic drinks top the list of music sponsorships. These are beverage companies like Coca-Cola, Pepsi-Co, Mountain Dew, and Red Bull. Anheuser-Busch tops the list of alcoholic beverage; the beer manufacture still comes up as the top overall sponsor, with 29% of all spending.[4]

But it remains that music at festivals and concerts is most interesting for the promotion it can give to traditional and 'safe' drinks. Given the raucous nature of its audience, a vodka manufacturer might prefer an EDM festival that a soda company will ignore. A mainstream festival like Lollapalooza tends to attract instead a more diverse audience, and is therefor preferred by soda makers. In 2014, music festivals in the U.S. were said to exhibit, for example, the following distribution of ages: the 18-24 group represented 24% of all attendance; 25-34, 22%, 35-49, 28%; and the 50+ group, 15%.

In short, the interest shown by soft drinks sponsors over and above that shown by alcoholic beverages speaks to the universal appeal of music gatherings. Indeed, music communities have become a target for business, rather than individual consumers. A good example is Red Bull. The company has created its own Music Academy, an Institute that educates and supports artists of all kinds. It does this without making direct references to the drink itself. Marketing here is all about becoming a part of the community rather than pushing a product overtly.[5]

Festival Fun

It is easy to see as well that the explosion in music sponsorships feeds on the summer festival industry. As classic festivals experience rapid growth in attendance and ticket sales, new ones rush in. According to Nielsen Music, 32 million people attend at least one music festival each year and about 10 million will go to two or more.[6] Festivals, Nielsen concludes, offer the best opportunity to engage teens and millennials. And not just them: over 50 % of attendees view a brand more favorably after the festival, and the figure rises to 70% if there is a product giveaway.[7]

It is good to point out too that for brands, festivalgoers can become loyal consumers. Attendees of festivals are already invested in the event and that rubs off on the brand. To appreciate this, one need just examine travel habits: festivalgoers cover an average of 900 miles a year for ticket prices that have escalated by as much as a third.

Celebrities

It is not unusual either now for brands to work in conjunction with a top-level artist to sell out a concert venue and drive business for its partner. In a deal worked out by MAC Presents, Citibank sponsored Billy Joel in an agreement with Madison Square Garden, hosting one concert per month in 2014. Selling out Madison Garden on consecutive dates was one of Joel's long time dreams. Citibank helped Joel achieve his goal while providing their cardholders with pre-sales, backstage passes, soundcheck access, and meet-and-greets. The deal has now been renewed in 2015 and 2016.[8]

But the marriage between a brand and a music celebrity is not always smooth, as Rihanna recently found out. Samsung' signed a $25 million dollar contract with Rihanna in October 2015 to cover the tour and promotion of her new album *ANTI*. But things went wrong from the start. Rihanna was a co-founder of the streaming service Tidal, Jay Z's baby, and the album was leaked onto

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Sponsorships (cont.)

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Tidal a week early, much to Rihanna's annoyance and Samsung's despair. Contractually, Rihanna may have made commitments to Tidal that were not clear to her sponsors or even her. Samsung, who paid for the first million downloads of the album that Rihanna's fans got for free, barely got a mention because it could not tie its name, as it wished, to the leaked release. Only a twitter post alerted fans that the album was out and that Samsung was involved. The untidiness of the operation hurt Samsung and in the event Samsung's ties with Rihanna went largely unnoticed.[9]

Here is an example too of brand pushing up a record in the charts. Samsung's investment helped Rihanna achieve platinum status in just 14 hours. The danger here is real. If a charted position of an album is affected by a prior investment to purchase the release, like Samsung did for Rihanna, artist rankings could begin to reflect the patronage of the sponsor rather than the true market value of the record. This type of sponsorships deal may not be in the best interest of the recorded music market, for labels and the buying public constantly take cues from the charts. If the charts are misleading, the very notion of a hit becomes blurred. It appears the Billboard organization may have to work much harder to maintain the integrity of its music charts.

At the other end, of course, is the relationship between brands and indie artists. There is an incipient market there too. A company such as Music Dealers receives submissions from independent musicians and finds companies such as Coca-Cola, McDonalds and AirBnb to license their songs for advertisement.[10] CD Baby, among others, offers its own platform. On the other hand, less intermediation can work too: Cordelia Vizcaino of the band Cordelia and the Buffalo recently told this writer about her experience licensing her song *7th Sea* directly to BeIN Sports for the Copa America, a big soccer event in Latin America. A few contacts in Boston made the difference. The song became the theme of the event and was broadcast to thousands around the world. Vizcaino received public performance royalties through her PRO as well as a license fee from the television network.[11]

Overview

As this article showed, music sponsorships are growing in importance for practical reasons. Sellers of sponsorships value music as a commodity that both cuts across many demographics and has an inherent 'coolness' factor that is good for consumer brands. On the other hand, buyers of music sponsorship, including artists, are more dependent on alternative revenues to supplement their incomes. Festival promoters and operators, in particular, need big money contributions to pay for the headliner act on which the festival may stand or fall. Finally, recording artists, in what may be a troubling development for the signals that the business sends as to what constitutes a hit or not, are starting to engage sponsors to promote the free distribution of music early on in a release.

All of this, most of it good but not all, will likely continue. In the meantime, major labels are using their Business Development department in ever more proactive ways to seek the opportunities discussed in this piece. Absolut's Vodka partnership with emerging electronic duo Bob Moses to stream, using virtual reality, a forthcoming private concert is but the latest example. MBJ

Endnotes

1.http://www.sponsorship.com/Latest-Thinking/Sponsorship-Infographics/Sponsorship-Spending-On-Music-To-Total-$1-47-Billi.aspx

2.http://www.nielsen.com/us/en/insights/news/2014/meet-the-millennial-multicultural-music-listener.html

3.http://blog.midem.com/2016/05/5-ways-brands-flipping-music-endorsement-deal-ear/

4.http://www.sponsorship.com/iegsr/2015/09/21/Inside-Anheuser-Busch-s-Evolving-Sponsorship-Strat.aspx

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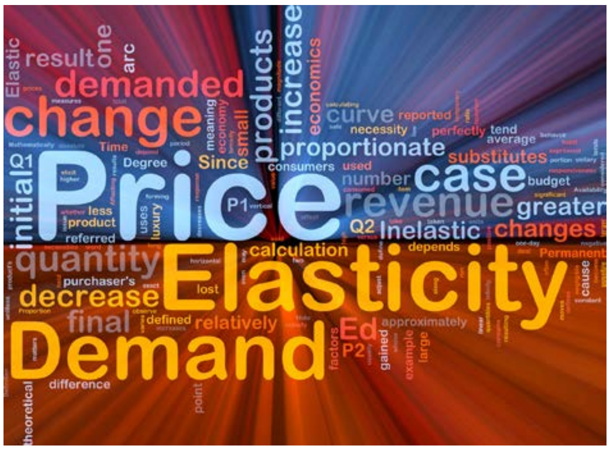
10.http://www.thembj.org/2012/03/music%E2%80%99s-fizzy-logic/

11.Cordelia Vizcaino, phone interview. October 3, 2016

Business Articles

The Tale of Apple's 69¢ Songs

By Peter Alhadeff and Laura Green



iTunes has recently given independent artists and others the choice of selling singles for 69¢. Prior to this, and since variable pricing was introduced close to 2009, the labels, not the artists, would tell Apple at which price tier they preferred to sell recorded product – either at 69¢, 99¢, or $1.29. Prior to 2009, all downloads at iTunes sold for 99¢, a policy that Apple chief Steve Jobs enforced to drive purchases of the iPod.

Variable pricing maximized label revenue because iTunes was the port of call for most purchases and megastar releases could be priced higher than lower selling recordings. A price elasticity of demand analysis shows that moving a song to the higher price tier of $1.29 would work for the labels, earning them more revenue, as long as the purchases of that download, because of the higher price, did not fall below 23%. Conversely, a song discounted to 69¢ from 99¢ would have to increase the number of downloads by over 44% to justify the discount.[1] That is why, prior to this policy, there were so few takers of the 69¢ option. Labels, in short, chose to price most of their music at 99¢ or $1.29.

Apple's new policy creates a "Great 69¢ Song" list, where the recording stays, typically, for two weeks. Once a single is taken off the list it returns to its original price. As shown above, in most instances the surge in demand that is required to justify a 69¢ discount is unlikely to materialize, so the reason for Apple granting the discount may not be obvious –- either for the independent artists that exercise this choice or for Apple, which makes approximately 30 cents to the dollar on every download.

In the end, whether deliberately intended or not, we argue that what may be at stake is a pay-for play offer for better chart positioning.

Charts are effective as indicators of consumer tastes as long as the only differentiating factor between two pieces of recorded music is the music itself. If a song sells at a much lower value than another, it is difficult to say if the chart is indicating a preference for a good song or a bargain. A good example is Shawn Mendes' single "Treat You Better", released on June 3rd, 2016. For weeks it languished, reaching No. 14 on the *Billboard Hot 100*. Then it became part of the "Great 69¢ Song" list, which meant it went straight to the iTunes home page for promotion and exposure. The song then peaked at No. 8 on the Hot 100, and, apparently, well justified its discount.[2] This, of course, may not be the case with every song, and "Treat You Better" had some traction behind it before the discount.

Moreover, promotion in the "Great 69¢ Song" does not come cheap. *Billboard* itself reports that "the promotion can cost between $2,000-$10,000 a week."[3] Obviously, this is a sum that is not easily tendered by smaller artists, who could in any case lose money with the discount. Therefore, the inference must be that buying into the 69¢ play is a transaction meant to influence the music charts.

The 69¢ discount is not new and in its latest iteration reflects the increasing role of Internet Service Providers (ISPs) in the fortunes of music. Apple, for instance, has decided on selling price points for music for a long time, first objecting to the labels' request for variable pricing when iTunes was born in 2002, and then agreeing at the end of the decade to three price points for downloads

The recording industry has always wished for more flexible pricing, and it is not clear that the three-tier system completely satisfied it. Before iTunes the trappings of the music marketplace were such that megastar releases were sold in every record store and perfect competition at retail prevented hits from selling more expensively. This was contrary to demand theory that suggested that sellers maximized revenue by raising prices in products that had a firm demand. Moreover, deeper catalog that didn't sell as well took retail space and was sold more expensively in the 1990s than hits, again contradicting a long-standing economic principle that suggested that sellers who sold product with a soft demand should lower prices to maximize earnings. The labels, in short, had little power to control the price of the product they sold in the 1990s even without the ISPs. When Apple took over the distribution of recorded music, the potential for variable pricing became very real again because Apple iTunes became the single point of sale, and record stores were no longer in competition for the ubiquitous hits.[4]

Therefore, the best pricing system for the industry, in an era that has largely superseded the challenges of free file sharing music, is the most flexible. In fact, it could be argued that the current 69¢ discount really does not add much to the marketplace. It has been tried before, and in its latest version, as was suggested above, seems to discourage independent music makers from applying to Apple. A smaller discount would have been in everyone's best interest.

Further, for many that are preoccupied with the devaluation of music, including top-level artists, this latest policy by Apple appears to do little good. If there is an element of artist discovery and exposure in the new measure, it does not seem to come free and the medium for this new pay-for-play is really not where listeners are flocking. MBJ

Endnotes

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2. Christman, Ed. "ITunes' 69-Cent Discount Songs Drive Chart Positions and Radio Plays -- For a Price." *Billboard*. N.p., 08 Sept. 2016. Web. 26 Sept. 2016.
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Songwriters vs. the DOJ (cont.)

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is imperfect. However, the discussion over 100% licensing really has an air of inevitability about it, especially in an age where the transaction of a small value item of mass consumption like music is shackled by a culture of permissions that is preventing its unfettered trade. The DOJ has not shied away from its responsibility towards creating a more open market, so songwriters and their publishers are falling foul today of anti-trust legislation.

Still, one can excuse SONA for arguing that the songwriting business is now being regulated more than the pharmaceutical industry, as was argued in a Billboard op-ed by SONA's founder Michelle Lewis. The difference between the two, of course, is that there are many more suppliers of product in the music business and that the public is not at risk from consuming music. Legislating on the minutiae of contracts and private arrangements that define creativity in music can be construed as undue government interference there. The State can certainly attempt to open up the market for buyers but it should not be able to force its creative class of sellers to operate by decree, especially when the public is not at risk. MBJ

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Blockchain (cont.)

(From Page 5)

ways of doing business. The Dot BC project, which released its Blockchain alpha test this August, may not be far behind. MBJ

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