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The Power of Playlisting

By Ashley Cook

Before the era of streaming services, Internet radio, and digital downloads, it was essential for artists to utilize a label's resources in order to mass distribute music. Because major labels exclusively possessed the funds to administer physical copies of music on a global scale, they held the power to control what music was heard in brick-in-mortar stores across the country and furthermore, controlled what music the average consumer listened to on a daily basis. Now in the digital age, this function is no longer essential. With today's technology artists can upload their own music to multiple platforms to reach millions of consumers at once and record original music in a home studio. Both events qualify a labels' *raison d'être*. In fact, the revelation of the new digital age is, arguably, the DIY musician -- an artist who both owns his or her publishing and sound recording rights and controls when and where the music will be heard around the world.

Digital media libraries and streaming services such as iTunes, Spotify, Apple Music, and Pandora enabled this transformation. Uploading music at little cost never seemed so feasible, and for the first time indie artists could be heard around the globe without the financial backing of major labels.

Alas, the prospective downfalls were not anticipated. While we have moved far from the dark ages of the industry's Napster era and have ventured at last into positive revenue with music streams, non-major label affiliated artists don't seem to be exactly standouts.

Spotify

In part this is because the industry's leading platform, Spotify, has been allowing major labels to "pay-to-playlist," a practice that showcases major label artists on Spotify's biggest playlists and advertisements.[1] "Pay-to-playlist" is an exercise that is unique to Spotify. While in the past Tidal and Apple Music have paid brand-name artists large advances in exchange for exclusive releases, playlists are one of Spotify's leading competitive assets. They allow listeners to navigate through the platform's 30+ million tracks, to be introduced to new artists, and to have a custom made selection for any occasion.[2]

Though the idea of playlists is nothing new, the concept of branding playlists has been on the rise since the dawn of streaming. The top non-Spotify curated playlists are made by companies that have expertise in building a lifestyle brand around each playlist. This includes formatting fonts, colors, cover art, analyzing skip rates, etc. to create the perfect brand of music.

For Spotify, the world's top major labels coincidentally own the three companies that construct the some of platform's most streamed non-Spotify made playlists. Topsify, Filtr, and Digster are owned by Warner, Sony, and Universal, and curate playlists such as "Topsify UK Top 50," "Top of the Charts," and "Country Hits."[3]

Though these ownerships are disguised by pen names, the music selections in each playlist belong exclusively to the catalogs of the major labels, thus creating a roadblock for any indie or DIY artist seeking to land a spot on a popular playlist. These branded playlists also have more visibility on the Spotify Browse page than playlists made by non-affiliated labels, individuals, or playlist brands, enabling the majors to now dominate the thoroughfare of new mu-

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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.

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Editor's Note

Welcome to the Summer 2017 issue of The Music Business Journal. Our lead story pitches creators vs. curators of music, an uneasy tension that is playing out in streaming services, now the main form of music acquisition in the US. As algorithmic and human made playlists fuse, we ask who is in charge and who benefits. Another article on the topic addresses new societal attitudes towards music.

The business of music royalty securitization is attracting newcomers and we offer a primer on the market makers that may revolutionize artist revenue streams. Another subject is Paul McCartney, who recently went to Court to contest Sony-ATV's ownership of his music rights. The coverage here is detailed and nuanced, as you would expect from us.

We also pay homage to public radio's global influence on the music industry, and include US's particular perspective. Radio looms large in this issue, for we also write about Pandora's turning point in the market on account of the launch of its new interactive streaming service, Pandora Premium, and the departure of founder Tim Westergren.

We close with two considerations: security at live events (following the recent terrorist bombing in Manchester) and the growing presence of brands in the music-making supply chain.

Thank you for reading!

Sincerely,
Alexander Stewart
Editor-In-Chief

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sic discovery on the world's biggest streaming platform. While consumers often believe playlists are custom made via new artist discovery and personal taste, the music Spotify debuts is fundamentally influenced by fruitful marketing campaigns and commercial power.

The majors were predisposed to access early on due to licensing. When Spotify was first founded, it was essential for it to license the catalogs of all three majors in order to acquire as much popular music and subscribers as possible. Knowing this, the majors used their leverage to gain exclusive admission to advertising space.[4]

Accompanying controlled playlists, Spotify had a previous advertising requirement of $25,000 per artist ad, a campaign out of budget for most indie labels and DIY artists. These ads are promoted to consumers that use Spotify Free, broadcasting major-affiliated artist album and song campaigns between streams.[5]

Sponsored songs also appear on Spotify Free. These selections are generated to match a consumer's music tastes and are instantly playable without an ad requirement.[6] Such dictated advertisements and playlists contradict the idea of free rein for indie and DIY artists. While it is widely believed that streaming permits any artist to have their music heard around the globe, the chief gateway of music discovery is still coordinated by the companies that have monopolized the music industry since it's beginning. This is proven by the four million plus songs on Spotify that have never even been played once.[7]

Discovery

So why do indie artists put their songs on Spotify if there is little chance of discovery through playlist placements? They can't afford not to.[8] The platform has the leading number of clients, accumulating approximately 140 million active users to date compared to Apple Music's 20 million paying subscribers, and Tidal's 1.2 million. Because most consumers only pay for the services of a single platform, the probability of fans using Spotify is much greater than the probability that fans use the alternatives, and even though substantial playlist placements for indie or DIY artists can be slim-to-none, smaller artists cannot afford to miss out on fan-to-artist relation of any kind.

Broadening their power, playlists are also breaking into the live music scene. Spotify-curated playlist "RapCaviar" is headed out on tour.[9] While still experimental, if popular playlists start touring mega festival style, it will likely push DIY artists to the backburner once again.

Live music, accounting for 53% of the music industry's total income, is the leading revenue stream for the global music market. It has grown 10% since 2000, making up for the drastic 15% decline in recorded music sales.[10] While this appears to be a lucrative business for all musicians, the distribution is skewed to the top 1% of live artists who account for 68% of all live revenue. Additionally, only 29% of live music revenue makes it back to the artist on average.

With modern music festivals on the rise, concertgoers are more likely to attend a mega festival with multiple artists rather than a singular concert for a smaller artist. Now that major-affiliated playlists dictate what artists are on the front of the live scene as well, it makes it increasingly difficult for DIY artists to land a gig as an opener or indie act, furthering the struggle for discovery.

On the bright side, there are a few DIY artists that have risen above the restrictions of the monopolized industry. Chance the Rapper, Snarky Puppy, and KING are all non-label affiliated Grammy award winning/nominee artists.[11] They each own the full rights to their sound recordings and publishing, and have popular artist pages on all online platforms. So while it may seem impossible for new artists to get their material out in the world, the power of music still overcomes the boundaries of the marketplace, and makes way for freedom of ingenuity.

Conclusion

The domination the major labels have on the industry is seeping into the modern music consumption model, originally designed to service those who are unfinanced by corporate backing. The unethical nature of "pay-to-playlisting" is harming to both indie labels and DIY artists on all fronts, and turning the retro, heartfelt tradition of a mix tape into a computed formula. By creating a model that services only the top 1% of musicians, the potential of the new digital economy for open access is being thwarted as the majority of artists on Spotify are not being heard. The more things change, it appears, the more they stay the same.

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Business Articles

Royalties, Investors, and the New Music Economy

By Antony Bruno

Record labels and publishers for decades served as the music industry's "bank." They provided the advances artists lived on while making new music, and also paid for services like recording, shipping, marketing and more. No longer. Just as there are alternative sources for digital distribution, social promotion, and recording, so are there new sources of funding that give artists new options.

Crowdfunding (or fan-funding) platforms like Kickstarter, Artist Share, Patreon, and so on represented the first round of this. Private investors represent the second.
Private ~~investors have~~ far deeper pockets than the average fan. So while fewer in number, they can be far more impactful to artists looking to raise money. Their motivations for getting involved with artists also differ from both fans and traditional labels/publishers.

Royalties: An Asset Class

For both institutional companies and private individuals, music royalties represent an attractive new investment opportunity. Royalties can offer stable earnings, predictable payment dates, and decent yields.

First, royalty income may rise and fall, but it does so slowly, gradually, and predictably. Newly released music typically has a prime retail "shelf life" of just a few months. That's the window of time after new music is released where it will likely enjoy its most activity in terms of streaming, sales, radio airplay, and more. (For new and emerging acts, their first single is typically "worked" for months, even years, by labels/managers until it catches hold, after which the retail cycle begins). Incoming royalties usually fall to lower levels once this window closes. But that lower plateau remains fairly stable thereafter.

Second, royalty checks come in a predictable timeline, typically quarterly. A consistency of payments is desirable for investors, who generally don't witness regular returns outside of real estate. Stock dividends are at the whim of the company. Bonds take years to mature. Although interest earnings on the amount loaned accrue, typically, every six months, the principal will take time to recover if the bond is held to maturity (depending on the state of interest rates, selling the bond before maturity can lead to gains or losses). Moreover, royalties are a cut off the top. Royalty owners get paid first, before stockholders or employees. So, for instance, if you own royalties to a song distributed by Universal Music Group (a subsidiary of Vivendi, a public company), you'll get paid before Vivendi stockholders do.

Third, even at declining rates, an investment in music royalties deliver returns that far exceed the paltry interest rates of savings accounts or investment grade bonds. Artists with dwindling royalty payments often express surprise that investors would be interested in owning a share of what they consider to be a small revenue stream. But it's all about context. While $5K a year may seem low to artists who rely on it as their sole source of income, investors can aggregate that sum to other incomes and leverage the bundle at competitive yields.

Finding stability, consistency, and yield in an investment is in fact extremely rare. Moreover, royalties are less affected by the ebbs and flows of the stock market -- an added benefit. The stock market is volatile, and when stocks fall, it affects interest rates, housing prices, and much more. People are likely to still play music if the stock market crashes.

Modus Operandi

There are three ways investors participate in music royalty streams: (i) they can buy an existing royalty stream; (ii) invest in an artist's future royalty streams; and (iii) provide general financing; i.e. loans and advances.

(i) Buying Into Music Royalties

There are many examples of institutional money flowing into the music industry, driven by an interest in participating in music royalties. Imagem Music Group was formed in 2008 by the Dutch state pension fund ABP, specifically to acquire and generate returns from music publishing catalogs worldwide. Ole is another publishing company aggressively acquiring catalog, funded by a Canadian teacher's union pension fund. Sheryl Crow sold her publishing catalog to a fund affiliated with an Australian bank. In the U.S., Round Hill Music is actually a private equity firm created exclusively to acquire music assets. And Blackstone Core Equity Partners acquired the majority stake in PRO SESAC, precisely because the latter generates performance royalty collections and is now aggressively moving into mechanical collections after having bought Harry Fox.

And where institutional money goes, private investment is sure to follow. Royalty Exchange, for instance, is an online marketplace where private investors can buy into music royalties on a more accessible scale. The service is open to anyone interested in buying into royalties, not just accredited investors. Artists with a history of earning royalties can sell a portion of their incoming earnings to investors, much like how a company goes public by offering shares to investors –which is interesting, to say the least.

To begin with, it means artists earning less than the elite superstar tier can find an investor at their price level. For years, superstar artists generating massive royalty returns could attract the interest of private investors in deals usually brokered by their business managers or attorneys. But the "working class" artist earning a more modest living didn't have that kind of access to investor interest. Deals on Royalty Exchange, meanwhile, range from $5K to $90K.

It also allows for more flexible terms. When music companies look to buy into royalties, they tend to prefer all-or-nothing deals. They want to buy an entire catalog, rights and all, rather than just a portion. But private investors are more interested in passive income, and therefore are content to buy into only a share of a royalty stream without acquiring an entire catalog. This gives rights holders the option to raise money and retain control of their copyright and income.

Finally, it brings transparency to royalty valuations. Most royalty transactions are conducted in private. Outside of a few big-name catalog acquisitions, it's rarely known how much a buyer paid for royalties. Royalty Exchange, again, is an open marketplace, and the details of every sale that takes place on the platform are made public: past

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12 months earnings, starting price, closing price, and more.

(ii) Investing In Artists

While Royalty Exchange focuses its efforts on artists with a history of earning royalties, other services allow private investors to make more speculative bets on future royalties.

One such company is LIVAMP. Its platform allows artists to raise money by promising a percentage of any earnings gained in the future in return for cash today. Often, the artists using the platform seek money for touring or album costs. But the percentage of revenue paid back to the investor does not necessarily have to come from the project the investor funded. For instance, an artist can raise money to fund a tour, but promise the investor 10% of any album sales/streams in return. LIVAMP also offers a layer of management-type assistance as well, such as booking support and marketing expertise.

Another company investing directly in artists is Alignment Artist Capital, formed in part by Blackrock, the same entity that recently acquired a majority stake in SESAC. Alignment Artist seeks to make "structured investments" in artists. These investments go far beyond the standard album or tour financing, but into things like branding, celebrity endorsements, and more. This differs from LIVAMP in two ways. First, the company puts its own money into play rather than connecting artists to individual investors. Second, and as a result of the first, it focuses on more established artists.

(iii) New 'Capital'

Advances on future royalties are a familiar theme in the music industry. It's how labels and publishers have paid and attracted artists for years. These advances are generally interest-free loans that the artist or songwriter takes to pay for current expenses, to be paid off by "recouping" the loan against future earnings. But labels and publishers are far less open with their pocketbooks today. Advances are fewer, and for lower amounts. From this void, a host of "private advance" companies have emerged, offering new variations on the theme.

While the structure of the advance they offer seems familiar, the terms behind them are not. These are not traditional loans, with clearly stated interest rates and adherence to truth in lending regulations. Nor are they the "interest free" model employed by the label/publisher ecosystem. Most advance companies employ a model called *factoring* – where the lender expects to earn a multiple on the amount tendered. It works like this: in return for a lump sum payment, the artist agrees to pay back another larger sum over a set period of time; for instance an artist takes a $5K advance and agrees to pay back $6K over the next five years, a multiple of 1.2, after which the royalties revert back to the artist.

In such deals there is no mention of an interest rate. That's because the effective interest rate to pay is far greater than carried by traditional loans. It can range from the low 20% to over 30%, likely violating usury laws in every state in the country. But such contracts avoid complying with lending regulations because they are not structured as typical loans. They conform to a sale of money and a consideration by the artist of the cash to return. Of course, if the artist's royalty earnings fall below the agreed-upon payback schedule, the length of the payback term will extend and more fees and fees/penalties will accrue.

Artists and Securitization

As the current juncture is more open than ever to private investment in music royalties, it begs a question. How and why should artists exploit this incipient interest in music rights by investors?

The first thing to know is that selling royalties is not an act of desperation, contrary to popular belief. Most of the artists who work with Royalty Exchange, for example, have a financial plan and specific goals in mind, including (i) raising money to finance a new project (tour/album) or a major purchase (house/studio); (ii) getting out of one-sided record/publishing deals or bad advances; (iii) seeking financial security to make room for artistic freedom; and (iv) relying less on managers, lawyers, and others that control their career

One of the biggest advantages of working with private investors is that it reduces risk. The fact is that any royalty stream will almost certainly decline as time goes by. A U.S. Bureau of Economic Analysis study found that music royalties decline at a 28% annual rate on average, compared to 9% for movies. That's an average that takes into account the total flop to the one-hit-wonder. Many catalogs are far more stable. Clearly it's impossible to predict future earnings, but inviting an investor to buy a share of a royalty stream allows artists to spread that risk around. They can raise a lump sum of money in the present to protect against potential future downfalls.

Using that lump sum to diversify income is another way to protect against risk. Rather than relying on the royalties from one song or catalog to live on, the money earned from selling a share of those royalties can be applied to new revenue streams. These might come from a new album that will generate new royalties without any claim from others on those future earnings, from investing in revenue opportunities not contingent on music royalties, such as in a side business, and from paying off liabilities like a mortgage or other loan.

The Deal

Timing is of the essence. For those with a history of earning royalties, a good time to seek investors is well after the initial retail spike, after a new release. The longer a history of earnings takes to review, the safer investors feel. Remember investors are looking for stability and consistency.

Investors value any asset using a formula called price-to-earnings ratio, often called a 'P/E', to compare one investment with others. It works like this:

If a song generated $10K in the last year and those royalties are offered to investors for $30K, the price to earnings ratio, or multiple, would be three. On average, in this author's experience, commercial music is selling for a multiple of six, but it can go well over ten for music with a long history of earnings. The trick is not to wait too long before selling. While a multi-year analysis is best, it's better to sell while the royalty value is still relatively high, because it allows this multiple to be applied to a higher amount.

For artists offering more speculative earnings, such as on services like LIVAMP, the best time to sell is as early as possible. Inves-

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Business Articles

Brands and the Future of Music

By Peter Alhadeff and Shereen Cheong

Most brands need to rejuvenate themselves periodically, and this is especially true when their commerce is directed to a younger demographic. Music is a catalyst that brings youth aboard, so its value in product marketing is paramount. The marriage between the brand and the music must make sense of course because music is tied to lifestyle considerations and so is any product that is promoted with music.

However, in some instances, and as will be shown below in the case of Converse Inc., and American shoe and sneakers' business, the brand can move beyond the idea that a suitable pairing of song and product is quintessential. Just aiding and abetting the production of new music itself may be enough to draw younger generations in. This can be done by offering musicians a unique creative space of their own, separate from the existing music business and without many of the legal caveats that pertain to music's ownership rights. The arrangement might cost startup money, but entering the supply chain of music under a unique set of circumstances may be the ultimate reward for the brand, which can now be perceived as a facilitator of sorts for young music makers who hope to carry their fans with them along the way.

Converse

In July 2011, Converse officially launched the opening of its first recording studio, Converse Rubber Tracks in Williamsburg, Brooklyn, New York. Converse, part of the cash rich Nike group, quickly made it the centerpiece of its marketing strategy. Free recording time was given to indie bands that were not able to afford studio time, let alone use the services of well-known engineers and producers. Following the opening of Converse Rubber Tracks, the company quickly moved to host a large number of popup studios across the globe. At South by Southwest (SXSW) in Austin, Texas, local bands that did not make the festival were even given the opportunity to record without any expectation of promotional work for the company.

The application process for free studio time is revealing because it shows that Converse is after the working musician only, not the general public – a history of music making, preferably in professional settings is required. Online applications are reviewed thoroughly in three-month windows. Each artist or band is given at least a day or two of studio time, depending on what needs to be accomplished, and can use top of the line equipment and the staff of in-house engineers. The company also positioned itself in the music product market, looking for alliances. At the Converse Rubber Tracks original recording venue, Guitar Center supplied equipment and instruments, including gear from Fender, Gibson, Ernie Ball, BlackStar, Marshall, and Schecter, and, reportedly, "an Ocean Way HR2 large-format monitor system designed by Grammy award-winning producer/engineer Allen Sides."

While disputes over ownership splits are typical in the course of doing business, Converse does not behave like a label and makes no legal claims on the recording masters. Artists and musicians who record in Rubber Tracks' studios retain all rights to their music, although they are given the option of granting the company limited rights to publish the recorded tracks online and across social media platforms. Converse can also use Rubber Tracks-recorded songs as its own digital content, always with artists' permission.

But this is not an investment model where the appropriation of the product is the right of the financier like it is in the regular marketplace. Here, Converse is performing a service and measures its return not in kind, but against a future brand loyalty coming from the creative community, with which it wants to be associated, and, naturally, its fans. There must be a return for the company that compares well with the expenditure of a traditional advertising campaign.

Indeed, Converse CMO Geoff Cottrill believes strongly in artists' word of mouth as the biggest and most effective media, given artists' attachment to fans. The strategy seems to fuel an explosive global growth, which Converse manages with headquarters in Boston, US, and Sao Paulo, Brazil. To date, over 1,400 musical acts have gone through the studio, for a combined total of 11.2K recording hours. Converse Rubber Tracks is now global, with popup studios in 25 cities, including Austin and Amsterdam, among the others. Converse has given access to twelve landmark studios worldwide, covering eight different countries in four continents: the list of associations with famous studios includes Abbey Road Studios in London, Sunset Studios in Los Angeles, The Warehouse Studio in Vancouver, Canada and Tuff Gong in Kingston, Jamaica.

Converse is also able to secure agreements with their recording artists to offer free sampling of their music. To date it has a library of 21K Rubber tracks, and it can offer this catalog free to rappers and DJs – a valuable gift when even a few seconds of a well-known song is out of reach for most indie artists.

Finally, Converse also holds its very own live music festival called Rubber Tracks Live, where its growing roster of recording artists headlines free concerts.

More Brands

Converse might break the mold of artist-sponsor relations. It is more typical for other mass consumer brands that need to revitalize themselves among the younger generations as well to offer sponsorships or licensing deals to their emerging talent. Such is the case of Coke, Pepsi, Red Bull, and Urban Outfitters, among others. More often than not, these deals are with record labels, distributors and booking agencies in the room, as well as the artist. Some examples follow.

Early this year, veteran Austin Indie rock outfit Spoon announced that a limited hot pink vinyl pressing of their impending ninth album *Hot Thoughts* would be available for purchase exclusively via Urban Outfitters. The brand of Urban Outfitters is often seen as vibrant and cheerful amongst the younger generations. Although many artists have signed exclusive deals with Urban Outfitters, the brand seems to be appealing also to a certain section of young music lovers for which Spoon's image is desirable. In such a case, an ad hoc short-term arrangement works best for both parties.

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In addition, Urban Outfitter also provides a venue at their outlets for artists and musicians to perform their music (artists and musicians who perform usually sport their products). Live music has been a revenue anchor for the business, especially after the single song economy that appeared following the World Wide Web and iTunes ushered the end of the album era. Urban Outfitters' performances do not involve an exchange of money for a concert ticket, and therefore would not be tallied in the annual totals. Yet, for musicians, such events clearly are of consequence.

Much could be said about Pepsi's positive interplay with music. Its notable figureheads include Beyonce, Madonna, One Direction, and Faith Hill. Like Converse, but clearly in the league of open artist advocacy for their product, Pepsi's history of involvement with popular music goes back at least to the 1960s.

Coca-Cola launched a partnership with music licensing agency Music Dealers in 2012 to allow artists to license their material beyond the Music Dealers' catalog and obtain equal split placement fees and publishing royalties. As reported in this publication, Music Dealers became in effect Coca Cola's international record label, recruiting talent for one-off song deals with global reach until the demise of Music Dealers last year (see "Music's Fizzy Logic" and "Coca-Cola and Music: A Case Study", March 2102 and May 2017, respectively). Coca Cola has financed *Idol*-type shows in developing countries, where the pyramid of population is skewed to the young.

Red Bull Records, for the Red Bull drink company, which sells its popular beverage as a youthful tonic, was created as an independent label that strongly emphasizes long-term artist development with a global perspective. In January 2015, Red Bull Records teamed with Sony Music for a world distribution deal. Red Bull Publishing, however, seeks to distribute works as fully licensable material to external clients and Red Bull partners, for which it must own all the rights beforehand.

Conclusion

Often times, the impact of mass consumer brands in the music market is undervalued. They expend resources to harness music onto their brand names in ways that are difficult to measure in standard industry metrics, as seen in the case of Converse. But this also largely applies to Pepsi, Coke, Red Bull, and Urban Outfitters. Musicians should be glad and recognize that valuations of the standard market are, from their point of view, incomplete. If music is made and sold outside the confine of the majors, and is promoted by many an iconic company, it is affecting them positively -- even if no dollar sale is registered either through the Recording Industry Association of America (the exception is Red Bull Records, whose sales would be reported to the RIAA and counted in its annual totals), or by Pollstar's and Billboard's Boxscore when live music concert tickets are at stake.

This is likely to continue, for, compared with the 1950s-1970s, there is now little stigma shown by talent when projecting their image into a commodity. Tying their own brand name to a product of mass consumption, with all its lifestyle implications – good and bad — is less of an issue now than it has ever been. Fans do not seem to mind and the younger generations may not know better. Moreover, as was the case with Converse, it is advantageous for talent to look for exposure outside the old music echo system when not much needs to be traded in exchange for free production facilities and a favorable press from a big-ticket consumer giant.

All of which suggests that there will be a broadening of the music marketplace in time, as the monopoly over talent exerted by the majors abates. The danger here is that the music trade is evolving to become a complementary trade for other products of mass consumption that ultimately sell for reasons other than the music itself. The irony is that the sovereignty of the music market will be at stake as the existing music echo system expands. MBJ

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tors seeking speculative gains will want to participate in the royalty spike that occurs immediately after a new release (that prime "retail window" mentioned earlier). Now of course not every new release enjoys such a spike, hence the speculative nature of the investment. But the opportunity to participate in that spike is a selling point with investors.

In addition to timing, presentation is an important consideration when seeking private investment.

First among equals in any pitch to investors is the pricing of the royalty asset. In an auction setting like Royalty Exchange, setting an attractive price to attract the most participation and engagement among potential bidders is essential. That's because the value of an auction is based on the number of participating bidders. Higher prices take longer to attract opening bids, and the longer a listing sits with no bids, the lower its perceived value becomes among investors. Also, higher prices bring in fewer interested bidders, meaning less competition and "action" during the course of the auction.

Second in importance is the description of what it is being sold. Just as every song tells a unique story, so does the royalty snapshot it provides. Potential investors want to know things like the details of notable artists who have recorded or performed the song or the bundle of songs in question. The also appreciate the information about its charting history, award nominations/wins, and other notable achievements, as well as any personal awards or achievements relevant to songwriting or performing such songs. Although income is the overarching draw, investors seeking music royalties want to own compelling assets they can talk about at cocktail parties too.

Finally there's the issue of getting out there and actually promoting the sale of the royalty assets. The more potential investors that are aware of the opportunity to acquire a royalty stream, the better chance it has of selling. That is how platforms like Royalty Exchange and LIVAMP, that aggregate investors, help. Such platforms host the offer and market it to an audience of interested investors who have already signed up to discover royalty-purchasing opportunities. MBJ

Antony Bruno works with Royalty Exchange, a company mentioned in the piece.

Music and Society

Music and Public Sector Radio

By Alexander Stewart

Broadcasting, especially radio, is a premier medium for the communication of music in society. Broadcasting and music, of course, have been closely related since radio became a household item in the late 1920s. In particular, music has always been a major part of radio programming, where considerable airtime is spent not only on the music itself but also on reports about music and musical events (this is one reason why terrestrial radio is still a significantly popular method of music consumption). Public broadcasting gives the added pleasure of not having to listen to advertisements and also allows for a much more diverse selection of musical styles.

All over the world, governments invest money into making the airways public and provide universal access where geography, for instance, stands in the way. The push is harder when a nation's identity is at stake -- or when a politician wishes to consolidate his or her power base, like Adolf Hitler did in the Third Reich or Juan Domingo Peron did in Argentina during the mid 1940s. More often than not, though, public radio struggles to gain sufficient funding for its broadcasts. Without taxpayer money, the well dries up. Regardless, public radio continues to play a major role in the modern world's development and has certainly contributed to the progress of music.

Market Makers

BBC disc jockey, radio presenter and journalist, John Peel, shaped the tastes of several generations of music fanatics in the UK. Since his debut in Radio 1 in 1967, where he co-presented *Top Gear*, he became a hit, playing music that was well ahead of his time, including psychedelic and progressive rock records, as well as reggae. He is widely acknowledged for promoting artists working in various genres, including pop, indie rock, alternative rock, punk, death metal, British hip hop, and electronic music.

Without the need to cater to a mainstream audience and advertisers, John Peel actively played artists such as Pink Floyd, David Bowie, and Led Zeppelin, who went on to become some of the most influential British acts of all time. By the early 1970s, Peel, along with his producers Bernie Andrews and John Walters, were recording and broadcasting sessions by Roxy Music, Queen, and The Wailers, simultaneously managing to placate the Musicians' Union by giving its members extra work and creating a valuable archive for future generations to enjoy. In the spring of 1976, Peel acquired an import copy of The Ramones' eponymous debut album and helped to accelerate the punk revolution. A few years later, as Bob Marley became famous, he pushed reggae and ultimately helped usher in The Police.

A current example of the influence of public radio in changing contemporary pop mores comes from another Anglo-Saxon country, Australia. The Australian Broadcasting Corporation is Australia's national public broadcaster, again funded from taxes. In 1975, the ABC launched a new radio station with the intention to engage people aged between 18 and 35. Originally named *Double J* but later changed to what it is known as today, *Triple J*, is Australia's national youth radio network that broadcasts contemporary alternative and independent music. While the network plays soundtracks from around the world, it has a strong focus on Australian artists. *Triple J* frequently features new and alternative music and local Australian performers, and program-

ming often shows a bias against Top 40 hits. It covers specialist programs in different musical genres, news, and other current affairs from a youth-oriented perspective. The station quickly gained popularity and is now one of the most listened to stations in Australia. *Triple J* is especially good at breaking new local acts. Midnight Oil, the prime example of this, would almost certainly not have had anything like the success they enjoyed without it. Other acts such as Missy Higgins, Gotye, and Powderfinger, as well as Aussie hip hop acts like the Hilltop Hoods are in their debt too. The station also broke countless overseas acts that were unknown in their home countries such as Good Charlotte. But overall, the station is a central reason as to why Australian musicians are able to compete with dominant exports from the Unites States and the U.K.

In the US, however, music serves a different purpose on public radio stations. Because of the size and dominance of the commercial American music industry globally, there is no real need to preserve a local voice musically -- the market does well without the need for public radio's endorsement. So, public broadcasters like NPR have had less of an influence on the industry. Yet NPR and other similar stations still provide an alternative to Top 40 music. Many play jazz, classical, and world music styles that are distinguished on various segments throughout public broadcasts in the US. American public broadcasting serves more than half the nation each month and, like elsewhere, prides itself on putting out high quality news, award-winning cultural and educational programs that no one else would touch, and an independent and balanced political fare.

Music and the State

Public radio is an example of the public sector's influence on the music ecosystem. But publicly funded radio is not the only way the state becomes involved in the radio industry. In countries where there is an interest in preserving local culture, radio quotas tend to be enforced for both public and commercial radio. A given percentage of all song airplay has to be in the mother tongue. In such countries, music is weighed more heavily as a cultural good rather than an entertainment commodity, and there is a desire to compete with Anglo-Saxon pop imports. Regardless, local commercial radio owners tend to unite against the practice of radio quotas because they lose advertising revenue as programming reflects other considerations than just the music.

France is one such country. Radio quotas were imposed in 1994 to protect France from what the government saw as the "Anglo-Saxon cultural invasion." The law required that 40% of all song airplay had to be in the French language. This has proved to be a boon for French songwriters and French artists in general: by virtue of their language choice, they have a much greater chance of being broadcasted and thus can propel their musical careers more easily than outside talent. But not all is smooth. For French radio programmers, who already object to lesser ad money coming in from local music broadcasts versus foreign ones, problems are compounding. When a proportion of young French artists, including the electronic duo Daft Punk, began writing songs in English to attract a more international audience, they lost more listeners. The result has been an acknowledgement

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Music and Society

Public Radio (cont.)

(From Page 8)

that stiff quotas carry some unexpected costs. Last year, acknowledging new circumstances, the French Government reduced the quota to 35%.

Other examples of radio quotas abound. In Ecuador, where less than 10% of the airtime on major radio stations was afforded to local artists before 2013, a 50% quota was imposed. A long list of countries has moved or is now moving in that direction, including the Philippines, Mexico, Nigeria, Israel, South Africa, Jamaica, Venezuela, Russia, and New Zealand. In Canada, where English and French coexist as the official languages since 1969, at least half of the Popular Music selections of CBC Radio Canada stations have to be of Canadian origin. In many parts of the world, therefore, the public airways are not devoid of legislative intervention. There, the State becomes a market maker by choosing the music airplay it deems appropriate.

Public Radio's Focus

As has been suggested above, public radio corporations seek to preserve language and culture. The BBC is also dedicated to supporting multiculturalism and diversity, in part by using on-screen commentators and hosts of different ethnic origins. There are also Welsh, Irish, and Scottish Gaelic language programmes for the home nations, an Asian Network broadcasting in English and five major languages of South Asia, and the BBC World Service which broadcasts in thirty-one international languages. The Canadian government, naturally, promotes Canada's official bilingualism. In New Zealand, the public broadcasting system provides support to Māori broadcasting, with the stated intention of improving Māori opportunities and maintaining the cultural heritage and language. In Australia, the ABC is legally required to encourage and promote the musical, dramatic, and other performing arts, and to broadcast programs that contribute to a sense of national self with specific emphasis on regional and rural areas.

It should be remembered as well that public radio's general function is in keeping with a public service, both speaking to and engaging national audiences in as high a level of discourse as possible and over different points of views. The standard set by the BBC has been widely accepted, with its concurrent goals of geographical outreach, its coverage of issues affecting minorities and marginalized communities – all while distancing itself from any vested commercial interest.

Britain: Sample History

The history of the BBC, the oldest national broadcasting institution in the world, is instructive and gives perspective to the interplay between music and public radio. The broadcast of music was never the reason for public radio. As implied above, more was at stake.

Ironically, the BBC, which was born in 1922, was created with a commercial interest in mind. It was set up to sell radios and was owned by a major wireless radio manufacturer. It proved to be a disappointing business venture. But a Royal Charter encouraged the new medium of magical boom boxes in households across the country. A license fee was decided upon, paid by taxpayers, and the financial future of public radio was assured. Today, the BBC serves under the Secretary of State for Culture, Media and Sport; it is now funded principally by an annual television license fee that is charged to all British households, companies, and organizations using any type of equipment that receives or records live television broadcasts. Naturally, the value of the BBC to Britain and the UK's sense of national identity have grown with the times, especially during WWII, when the public airways had to come under much closer government supervision -- and with good results.

It is unarguable too that the BBC played a critical role in the British musical resurgence of the 1960s, and, through its World Service, the diffusion of pop around the world: John Peel was the charming and jovial interviewer of The Beatles series "Live at the BBC" from 1963-1965. This was important for musicians and their fans, but clearly it also advanced the UK's soft international power.

The US: Sample History

Unlike the BBC, the US Corporation for Public Broadcasting (CPB) was created under President Lyndon Johnson's administration (1963-1969) with only modest support from the federal government. It came much later than the BBC, but with nation building and the integration Civil Rights, it must have played a significant role. Given the existing spread of private radio stations across the US, the CPB aggregated unrelated radio and TV stations, many of them owned by large universities, as well as other nonprofit advocacy organizations and community corporations who frequently struggled financially. Today, NPR (National Public Radio) is a non-profit media organization that encompasses nearly 900 radio stations in the United States.

The funding of NPR is complicated, for it has to reach out and ask listeners for piecemeal contributions every few months, and, unlike the BBC, interrupting regular programming to do so. The support for a licensing fee arrangement from all taxpayers is not required in the US. As a result, NPR could never have the universal reach that the BBC had and still has in Britain. That is why, in part, NPR is never thought of as a top-tier music promoter. The US music marketplace, moreover, is entirely self-sufficient commercially, and there is no basis for arguing that public sector radio should be used to support the average musician. It might help in niche and off beat genres, but that is the extent of it. It must be remembered that, say, unlike France or Sweden, two countries that have a public sector ready to step in and help the development of commercially minded musicians, the US public sector regards the music marketplace as mostly serving an entertainment diet that does not need its encouragement (France, as mentioned, uses radio quotas a lot, whereas Sweden has a music export office that helps its talent compete in Europe and America).

Today, NPR's financial struggles are indicative of its poor country cousin status in the priorities of the US federal government. During the 1970s and early 1980s, the majority of NPR's funding came from federal taxpayers. Now, likely less than one out of every ten dollars does. Moreover, its editorial independence has brought it into conflict with President Donald Trump. Federal money seems likely to become a dwindling source in the future, given the Republican-controlled Congress and NPR's relentless criticism of the President. Individual on-air pledges and corporate underwritings are strong, but they will have to make up for the inevitable near term drop in taxpayer contributions. The long-term drama of US public radio is that as its purse strings are taken over by private donors and commercial interests, commercial considerations may dictate its programming. Moreover, because it is perceived as partisan to liberal causes, it does not seem to make sense to empower NPR as a universal nation-building tool. This is a pity, for the State could still give and expect to exercise some influence over it for the general good. Either way, commercial music will still be an afterthought in any discussion about the future of NPR.

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Music and Society

Securing the Future of Live Music

By Tess Anketell & Olivia Woodland

The recent terrorist attack at Ariana Grande's concert in Manchester, England, was one too many. It felled 22. A year and a half earlier, 89 were killed at the Eagles of Death Metal show inside the Batacian Theatre in Paris, France. The live music sector is understandably rattled. Large congregations of adulating and casual music fans have become the ideal soft target for criminal minds. They afford perpetrators the possibility of extracting maximum casualties with least amount of effort. This is frightening.

Not too long ago, the main safety concerns at festivals and concerts were issues related to stage construction, overcrowding, and, possibly, a fire. Criminal and murderous intent by a single individual or a group at a show was not something that was thought of as the first priority in security planning. Now, the intent and premeditation of terrorists has become a game changer, and the global reach of terror makes this a worldwide security problem in the West. The paradigm that deals with safety issues at concerts is being rewritten.

Security

Traditional security measures help. Bag checks, bag size restrictions, metal detectors, pat-downs, and frequent patrol by security guards have to continue. But terrorists prepare their intelligence ahead, so thinking outside the box is key. At the Ariana Grande concert the attack occurred as large crowds left the main venue, in a place where security was largely absent. Besides, the same types of security procedures cannot realistically be applied at all venues: dealing with a hundred music fans is different to a thousand. This also begs the question of the degree of effort involved in one and the other case. Will security in smaller sites be sacrificed for the greater good of protecting mid to large size venues?

While artists and most stadium/arena venues profit greatly from live shows, many small venues struggle staying afloat. London alone has closed more than one third of its "grassroots" venues since 2007. Big security spending there is likely an afterthought. Taking care of rising rents, urban developments' 'gentrification' costs, and stopping self-made noise pollution are prime concerns. Lobbying for government funding, even it were available, is likely a lengthy process of uncertain results, and only possible where local authorities are strong financially – not a way out for off-beat locations. Small venues do not generate the revenue to attract top talent, which makes it harder to justify raising ticket prices to finance potential security threats. Another issue is that there is bad press already about high-ticket prices. For instance, a nine per cent rise of live music receipts in the UK last years was blamed on more expensive tickets.[1]

Besides, there are a host of measures being practiced in larger venues (those that, say, take over 2,000 people) that could not make smaller ones safer. Police and federal agencies often provide canine explosive detection teams on big locations and afford a measure of protection that no small venue could realistically get. Dogs can sniff out explosives in backpacks, purses, or construction materials; so-called Vapor Wake dogs can even detect body worn explosives on moving targets, following scent particles left behind. If there is an exchange of payment for such a service by the concert promoter, the small venue owner would likely not afford it even if the service were available.

For mid-size and larger venues, the stricture of economics also applies. The random nature of terror attacks makes it a rare event -- which makes it harder to justify entertaining higher fixed costs to contain the problem. In any case, those costs would bring profits down. This would shift the supply curve of live music by concert promoters to the left, meeting its new equilibrium point with the demand curve for live music at a higher ticket price and a reduced attendance.

So the threat of terrorism is not an easy fix. Much is at stake for the business, especially as the significance of the live music sector grows for musicians.

Another factor to consider is that better prevention is likely to lead, generally, to trade-offs with privacy, and, more particularly, a different experience at the concert.

Regarding the first point, fans may ultimately have to accept open intelligence about them being shared across different law enforcement agencies, as such agencies cooperate more against terrorism. Ticketing databases could come up under scrutiny by the authorities and musical tastes might be scrutinized. This Orwellian projection may seem far off. Yet the biggest potential threat to concert attendances is the fear that these attacks will continue. Days after the Manchester bombing, a Dead and Company show was stopped mid song due to an "unfounded" bomb threat.[2] A week or so later, 80,000 people were evacuated at Germany's Rock am Ring festival in response to another terror warning.[3] Data shows that immediately after the Bataclan attacks there was an 80% drop in concert attendance, although audiences later picked up.

Regarding the second point, it is obvious that increasing security protocols in a live music setting runs the risk of detracting from the integrity of the event. Chris Robinette, CEO of Prevent Advisors, a security-consulting firm for live music, wishes "to harden these venues without ruining the fan experience."[4] This could be easier said than done, especially if there is recidivism. Long lines at airport security are acceptable because the act of flying is relatively safe. Moreover, flying is tied to business needs, where we may have no choice but to go, or to pleasure, where the payback is not the flight itself but the final destination. A live music event is contained in time and space and may not be perceived as safe as plane travel. Moreover, the security arrangements there cannot be disproportionate relative to the time spent at the concert.

Overview

Taking no security precautions at concerts is not an option. It would be counterproductive and drive audiences away. There would also be huge liability issues for concert promotes. Security is necessary. On the other hand, it is also costly, may affect the listener's experience, and bring up privacy concerns (for instance, with the proliferation of video monitors). Ticket prices are bound to become more expensive. But so are those of other mass gatherings, including most forms of spectator sports, for they face the same threat. It is true that no one can insure against brazen attacks

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Business Articles

Pandora's Inflexion Point

By Lysa Hetrick

Pandora Radio, the pioneering Internet service that creates customized radio stations for listeners, is facing perhaps its greatest challenge to date since its IPO in 2011. The announcement on June 27th that storied founder and CEO Tim Westergren was stepping down from both the company and its board of directors is momentous. In quick succession other key leaders left, including President Brian Herring and Chief Marketing Officer Nick Bartle. Naveen Chopra's appointment as Interim CEO suggests some continuity, for Chopra was Chief Financial Officer before the shakeup. Yet investors and shareholders, as well as music industry analysts, are surely looking at a watershed moment in the company's history.

Pandora Premium

Underlying it all is the launch of Pandora Premium earlier in the year, a service that enables users to have a similar experience to Spotify, but with mobile-only access. Pandora Premium has so far done little to make Pandora a player in the interactive streaming market – always a stretch for a company used to dealing with only non-interactive Internet radio streams (interactive streams are associated with music purchases, while non-interactive streams are associated with passive listening to a pre-programmed diet of music). The executive turnover at Pandora is therefore likely a belated recognition of the failure of Pandora's new project and the restlessness it generated among its management structure. Apple Music, moreover, is all over the streaming space and has abundant financial resources; all things being equal, it enjoys an overall market advantage above Pandora and is a factor of unease.

In March of this year, the tone at Pandora was cautiously optimistic. Tim Westergren had returned to the company as CEO after a long hiatus. The company was preparing to roll out its new paid Pandora Premium tier, and was getting a fresh start with record labels and content creators after the payment of record label and featured artist fees to SoundExchange was resolved in a judgment that favored neither side. Nevertheless, there was little to differentiate Pandora Premium from other services and turning Pandora users into paying subscribers proved challenging.

Sirius XM and Liberty Media

Just prior to Westergren's resignation, news broke that satellite radio giant Sirius XM -- the other large non-interactive borderless radio service -- had made a considerable investment into Pandora Radio. Rumors of a Sirius XM buyout had been circulating the industry for the past year. However, Pandora rejected Sirius XM's offer for a total acquisition and opted for a cash injection instead, leaving Sirius XM with a 19% stake in Pandora and three seats on the board (including the chair) in exchange for a $480 million investment.

Although Pandora can undoubtedly use the capital, the reported deal terms seem to favor Sirius XM disproportionately. As a result, the deal additionally prevents Sirius from buying any more Pandora shares for the next 18 months. It also prevents Sirius from acquiring more than 31.5 percent of the company without Pandora board approval. But with an important seat at the board, more capital, resources, and flexibility, Sirius seems to have a significant upper hand over Pandora. It is no coincidence that the announcement of Sirius XM's investment came just before Pandora changed management.

This isn't the first time Pandora has turned down a deal like this. A year ago, Pandora's Board rejected a $15 per share offer from John Malone's Liberty Media that would have valued Pandora at $3.4 billion. In June, Pandora stocks hit a brief all time low. Stocks have since recovered slightly and currently sit somewhere around $8, almost a 50% decrease from the price Liberty offered a year ago. Pandora left much money on the table by not accepting the original deal, and this surely become a source of wrath against Tim Westergren.

Income Sheet

Financially, Pandora has not performed well. Despite having 75 million active users and over 4 million paying subscribers, it has continued to operate at a loss in every one of its seventeen years in existence. This is in spite of data that suggests Pandora is the most streamed music service, with a 28% share of music listening against YouTube's 27% in 2016. Ad revenue, the main source of Pandora's receipts, has never been enough to turn the company around (which partly explains the quest for Pandora Premium), even though results improved. For instance, annual revenue for 2016 increased by 19% to $1.39 billion, but such income was dwarfed by the fact that the company's net losses increased by 102% to account for a hearty total of $343m.

By 2017, Pandora was accepting Sirius XM's investment and selling its TicketFly business to Eventbrite for a combined money-in total of $680 million ($480 million from Sirius XM plus the $200 million dollar sale of Ticketfly). Another sign of retrenchment came the day after Tim Westergren's resignation, when Pandora announced it would be eliminating its stand-alone international service in Australia and New Zealand in order to have a single-market focus on the United States. Local staff reportedly did not expect the decision, as business in Australia and New Zealand had been growing steadily in recent months.

Conclusion

When the company first began, it provided a passive listening experience for consumers, and it's early success was attributable to its ease of use. It's online platform, based on Westergren's original and innovative Music Genome project, aimed to predict user habits in order to custom-create a unique listening experience, not to service the kind of user who creates an exclusive experience for themselves through the use of playlists. In its earliest days, Pandora was designed to provide distraction-free music listening and discovery for the average listener. This implied being the background music at family pool parties and the soundtrack to car rides with friends; it was the digital answer to traditional radio. Now, alas, if the proliferation of playlists means that the consumer market no longer values such a passive musical experience, and, as well, Pandora cannot gain traction on the on demand streaming, then the company's road ahead will be particularly rough.

If Pandora can find a way to return to its roots, i.e. to place emphasis back on pas-

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Law Section

A Paul McCartney / Sony-ATV Brief

By Don Gorder

On January 18, 2017, Paul McCartney filed a lawsuit in the United States District Court, Southern District of New York, against Sony/ATV Music Publishing (SATV). The action, pursuant to section 304 (c) of the Copyright Act of 1976, centered on ownership rights in a large and valuable catalogue of songs which McCartney authored or co-authored with other members of the Beatles, and which are now under the ownership of SATV. In this lawsuit, McCartney sought a declaration from the court that the termination notices he began serving on SATV in 2008 are valid and will re-vest his ownership of these songs in him on their effective termination dates. In addition, he asked the court to declare that the termination notices do not give rise to any valid contract claim against him.

On June 30, 2017, it was announced that McCartney and SATV had entered into a confidential settlement agreement and jointly requested that the action be dismissed. It's unlikely that the terms of the settlement will be made public, and we will not have the benefit of a court decision to serve as precedent in future disputes in this area of law. Nevertheless, an analysis of the McCartney-SATV dispute is still appropriate, given the likelihood of other bands/artists finding themselves in a position similar to McCartney's, prior to the settlement.

These questions arise:
1. What rights was McCartney attempting to recapture?
2. How did SATV gain ownership of these rights?
3. Did McCartney follow the process specified in the statute for termination?
4. Why did McCartney ask the court to validate his termination notices?

The Rights in Question

McCartney was availing himself of the termination rights prescribed in the Copyright Act, in an attempt to recapture his share of publishing rights (© ownership) in songs he authored or co-authored, primarily with John Lennon, between September 1962 and June 1971, which was the heyday of the Beatles. As was, and still is, common practice with songwriters in the early stage of their careers with songs that have not yet attained value, Lennon and McCartney assigned their co-ownership of these songs to publishers in exchange for a share of the royalties the publishers would collect for securing licensed uses of the songs. The catalogue includes 267 songs, many of which have become classics, generating massive amounts of royalties through licensed uses in recordings (sold, downloaded, and streamed), film soundtracks, television programming, and all forms of live, broadcast, and streamed performances. While McCartney has received his writer's share of these royalties throughout the commercial life of the songs, the publisher's share (normally half) has gone elsewhere. He sought to recapture these rights, to which, under copyright law, he felt entitled.

The Chain of Ownership

In 1962, the Beatles' first single, *Love Me Do,* was released. Lennon and McCartney had assigned the song to the U.K. publisher Ardmore & Beechwood Ltd. Beginning with the first Beatles album, *Please Please Me*, released in 1963, all Lennon/McCartney songs thereafter were assigned to Northern Songs (NS), a new company in which the duo held a minority ownership interest. In 1969, the majority owners of NS voted to sell the company to ATV Music, and Lennon and McCartney included their shares in the sale. ATV became the owner of the Beatles catalogue. In 1985, Michael Jackson, acting on a tip fr Paul McCartney related to the value of a catalogue of copyrights, bought ATV for $47.5M, outbidding McCartney.The catalogue included 4000 songs, 250 of which were Beatles songs and, reportedly, McCartney never forgave Jackson for it. In 1995, Jackson sold half of ATV to Sony Music for $100M, creating what we now know as Sony ATV Music. By 2006, the SATV catalogue was valued at $1B. In 2009, upon Jackson's death, his half interest went to his estate, and in 2016 the estate sold the interest to Sony for $750M, leaving SATV as the sole owner of the Beatles catalogue.

Statutory Termination

Prior to the enactment of the Copyright Act of 1976 (Title 17 U.S. Code), copyright protection ran for a period of 28 years and was renewable for another 28. The 1976 act, which became effective on January 1, 1978, extended the period of protection of pre-78 copyrights for another 19 years. In addition, it provided that assignments of copyrights executed prior to this date, for copyrights subsisting in either their first or renewal term as of this date, could be terminated by the author (or author's estate, if the author was deceased). Effectively, it gave composers of pre-78 copyrights the right to recapture their ownership of their songs 56 years from the date that copyright was originally secured, that being the date of first publication. The statute provided that termination could be effected during a 5-year period beginning at the end of the 56 years, by serving notice in writing upon the grantee or grantee's successor in title, stating the effective date of termination. It further provided that the notice had to be served not more than ten nor less than two years before that date. If the process was followed, the composer would recapture the rights for the remaining 19 years of protection. It should be noted that the Sonny Bono Copyright Extension Act of 1998 added another 20 years of protection for these pre-78 works, giving composers who successfully terminated their assignments a total of 39 years to control the rights in their compositions.

All Lennon & McCartney songs are within this category—pre-78 assignments of copyrights that were in their first term as of January 1, 1978—and therefore eligible for termination 56 years after copyright was secured. *Love Me Do* was copyrighted on Oct. 5, 1962. McCartney served his first termination notice on Beechwood Music for this song with an effective date of termination of October 5, 2018, exactly 56 years after copyright was secured, and the notice was recorded in the Copyright Office on October 15, 2008, which is within the prescribed time frame for serving notice—not more than ten nor less than two years prior to the effective date of termination—and the date of termination is within the 5-year period that begins 56 years after copyright was secured. In short, he followed the process to the letter of the

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Law Section

McCartney (cont.)

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law. He continued to serve termination notices on SATV for all McCartney and Lennon & McCartney songs composed through 1970, with the last notices recorded on October 28, 2016. Throughout this 8-year period of serving notices for the entire Beatles catalogue, he received no indications of resistance from SATV. SATV, however, was surely aware of the termination notices, as it faced the prospect of losing some highly valuable copyrights from its catalogue, beginning in less than two years.

The Conflict

On December 12, 2016, a British court issued an opinion in the case of Gloucester Place Music Ltd. vs. LeBon that surely caught the attention of McCartney, and of which SATV was well aware. The members of the band Duran Duran had attempted to exercise their rights to terminate assignments of songs from the early 1980's to Gloucester Place, which is a subsidiary of SATV. They were claiming these rights under U.S. copyright law, specifically Section 203, which applies to assignments made after January 1, 1978. Gloucester Place sued them for breach of contract under English law, making no reference to U.S. copyright law and claiming that the original agreement the band had signed with Gloucester precluded the band from exercising its termination rights. The termination notices, in their view, constituted a breach of contract, and the British court agreed. The band argued, correctly, that under U.S. copyright law, termination rights supersede contractual rights, thus a claim for damages for breach of contract would not be sustained in the U.S. Nevertheless the British court allowed the claim and invalidated the termination notices. The case has been appealed.

On Dec. 21, McCartney began communicating with SATV, initially asking SATV CEO Martin Bandier to "clarify that Sony/ATV not only regards the termination notices to be effective under Section 304 (c) of the Copyright Act, but also that the termination notices give rise to no valid claim, in contract or otherwise". On January 5, 2017, he was notified by SATV that they had retained counsel, Donald Zakarin, the attorney who represented Capitol Records in its successful suit against Grooveshark. In the ensuing communication between Zakarin and McCartney's legal team, Zakarin provided no assurance that SATV would not attempt to follow the Gloucester decision (should it be upheld by the appellate court), and adding that it is premature to discuss theoretical future events (i.e. challenging McCartney's termination rights on contractual grounds) until the case concludes.

On January 18, McCartney filed his complaint for Declaratory Judgment, seeking in part a determination by a U.S. court, applying U.S. copyright law, that the statutory termination right supersedes any contractual right. On March 13th, SATV informed the judge of its intent to file a motion to dismiss, saying that McCartney's action is "unripe" for judicial determination, pending the outcome of Gloucester. McCartney responded, saying that delaying the decision would prejudice him; as long as SATV refuses to disavow any right to sue him for breach of contract, he has a cloud over the title to his songs, such that he can't license them as the terminations become effective. Zakarin, taking the position that U.K. law applies in this case, stated that Plaintiff (McCartney) is a U.K. citizen, the assignments were negotiated and entered into in the U.K. with U.K. companies, with respect to songs presumably written in the U.K., in return for payment (of royalties) in the U.K. McCartney held fast to his assertion that the U.S. federal judge should exercise jurisdiction and resolve the matter under U.S. copyright law.

Conclusion

Although the McCartney-SATV dispute has been resolved out of court, there is still much hanging on the decision of the British appellate court in Gloucester. If the lower court's decision is overturned, other British bands who signed publishing agreements in the U.K. will likely not be sued for breach of contract if they attempt to terminate the publisher's rights. However, if it is upheld, and publishers attempt to invalidate their termination notices via a breach of contract dispute, the bands would have to either take on the expense of the legal system or hope to achieve a settlement under equitable terms. And if the matter were to end up in court, it could require a conflict of laws analysis to determine whose laws should be applied.

Finally, it's important to note that if McCartney had ultimately prevailed in his quest to recapture his publishing rights, U.S. copyright law provides for the recapture of only U.S. rights. SATV would retain the publishing rights for the remainder of the world. MBJ

Pandora (cont.)

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sive listening in the US market and win back the casual music listener as a viable source of music consumption, it could turn things around. Spotify and Apple Music offer a place to get lost in hours of playlists and curated content but don't do what Pandora does well (admittedly with an income sheet loss). By emphasizing deals with retail chains, automotive services, and mobile companies, Pandora has the potential to become the ultimate background-music experience. Stand-in CEO Naveen Chopra seems to recognize this when he alludes to the company's desire to return to the passive listening experience that launched its start.

Tim Westergren, the Music Genome Project, and Pandora Internet Radio enabled the future of music listening and discovery for today's artists and tech companies. It would be a pity if history did a bad turn to an industry great. MBJ

Music and Society

The Rise of Curated Playlists

By Brian Reitz

Artists have traditionally commanded attention, serving as the primary inspirations and icons for diverse communities of fan bases around the world. However, with the unrelenting rise of on-demand music streaming,[1] playlists are overtaking albums and artist discographies as the primary form of music consumption. Considering this trend, artists now compete not only with other artists for the attention of music fans, but also with playlists. Music was once a business where creators competed solely with other creators, and has now evolved to one where creators compete with curators and other creators.

In March 2017, Apple Music's Zane Lowe told an audience at South By Southwest that he believes fans want stories that playlists cannot tell, citing that "there are no stories to be told on a playlist alone." Essentially, he seemed to posit that, from a binary perspective, the deep connection that music fans have with their favorite artists would eventually outweigh what a playlist represents, i.e. a collection of similar but ultimately unconnected music.[2]

Yet in June 2017, Apple Music released its first personalized playlist for music fans, with its contents pulled from "editorial curation and algorithmic interpretation of (sic) your musical tastes."[3] Apple Music's foray into playlists coincided with a report announcing its competitor Spotify, seeks to turn one of the streaming service's most popular playlists into a concert series.[4]

Specifically, Spotify is turning "RapCaviar", a hip-hop and rap playlist curated by Spotify's Global Head of Programming, into a six-city tour. In doing so, they are hoping to convert the playlist's more than seven million plus followers from digital listeners into paying live event attendees. The announcement listed Gucci Mane, Mike WiLL, and other special guests as performers.[5]

The lack of full programming at announcement suggests that Spotify is banking on fan affinity toward the playlist to attract audiences rather than fan affinity for the artists featured most heavily on the RapCaviar playlist. The success of the RapCaviar's concert series will likely inform how Spotify markets and expands its offering of other popular genre-specific playlists such "electroNOW" (4.3M followers), "Hot Country" (3.8M Followers), "Rock This" (3.7M followers), and "Are & Be" (3.4M followers).

Curator V. Creator

This concept, the idea of a curatorial brand outweighing an artist in terms of promotional appeal, mirrors the rise of music festivals, which often similarly announce dates and sell tickets prior to sharing a lineup. Lollapalooza, for example, generates significant fan interest far before releasing a schedule of performers. Over the course of its 25 years in existence, the festival's

curators have built trust with loyal audiences who are less concerned about specific artists than the overall experience itself.

For a music festival attendee, the value of watching six different artists perform hit singles can supersede watching a favorite artist perform six songs, and many festivals have sought to appease their customers. Unsurprisingly, the artist community has recently reacted strongly against the increasingly shorter sets available at music festivals. As an anonymous artist tells Tess Reidy of *The Guardian*, "bands need to have a kaleidoscope of sound, lights and color in order to satisfy the audience; they have to bring so much to their shows and make sure people are blown away."[6]

Emerging Artists

While many established artists can and do retain audiences through the full duration of their festival performances, emerging artists must find new ways to attract fans to their sets and keep them engaged. Ultimately, this innovation improves the fan experience, but it is also true that attention-grabs can compromise the integrity of the artist, thus deflect creativity away from the initial muse. This is the balance that talent will have to contend with.

The problem is that the economics of the entertainment business is getting flashier as the digital experience grows. Moreover, those most capable of capturing and keeping the attention of the masses tend to silence other voices in the arena. Spotify has millions of unheard songs,[7] yet Taylor Swift made $400k in her first week back on the streaming service.[8] For emerging artists, competing with Taylor Swift is hard enough. Add to that Lollapalooza and a proliferation of music festivals, as well as the next manifestation of curated creations like Rap Caviar. Standing out from the crowd becomes exponentially more difficult.

Conclusion

As the lines blur between playlists and festivals, and more specifically, between how fans listen to music online and offline, curators will grow increasingly successful at commanding attention. For instance, new reports indicate that Spotify is starting to allow 'Sponsored Songs' on its playlists.[9] Therefore, it is not a stretch to imagine Sponsored Artists at music festivals, especially as the length of festival sets continues to decrease.

Streaming services and festivals track listening trends and buying habits for music, and their curators use that consumer data to attract new fans. Megastars will continue commanding attention and being compensated for their works, in part because they have a holistic understanding of their fanbase. Unfortunately, creators who cannot understand the value of their fanbases may be at the whim of curators that do. MBJ

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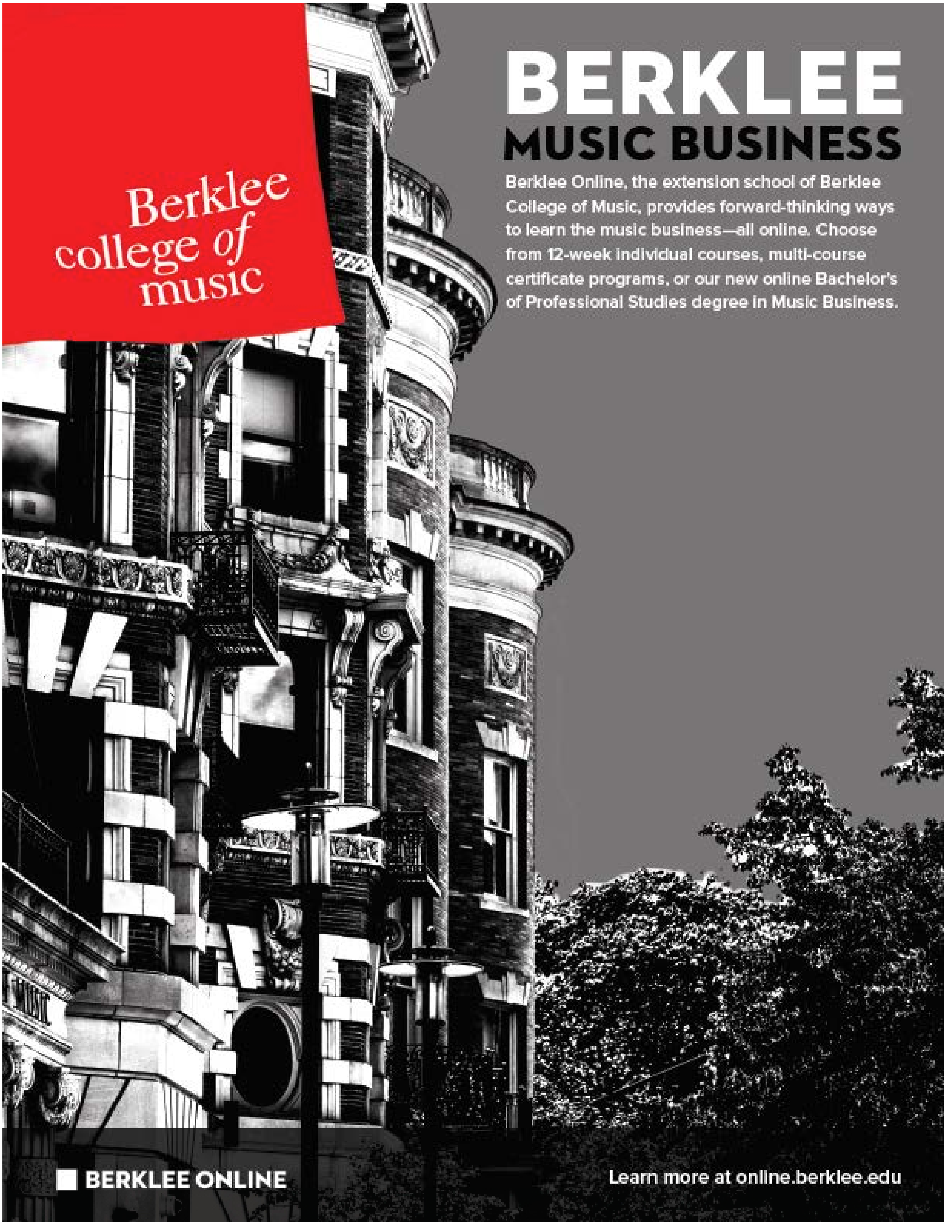
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Radio (cont.)

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Conclusion

The music industry owes a huge debt of gratitude to taxpayer collections. This was made clear by looking at selected examples from Britain and Australia, two countries where pop music made an international splash on the back of public radio. The BBC was far from being neutral to the British Invasion of the 1960s, and Australia's public radio was key in eruption of Australian groups in the world scene after the 1970s.

As was shown too, the State can also become a market maker by imposing radio airplay quotas for songs to be sung in the national tongue. Like public radio in general, here the consideration is the promotion of local culture and artists. Local radio programmers might disagree and sell fewer advertisements, but at least they can understand the virtue of the policy.

Public radio has many functions, not least forging a civil society's common identity. Music may not be the main wind behind it, although in some important instances public radio has paid it an important service. Now, the danger is that as the world moves away from free trade and open borders, the struggle to finance public radio may detract from its projection at a time when it is most needed. MBJ

Security and Live Music (cont.)

(From Page 10)

of the Manchester or Bataclan type in the future. But this would be saying that inaction is as good as the alternative – and this would clearly be wrong. MBJ

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