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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

The Copyright Hearings

By Griffin Davis
MBJ correspondent in Washington, DC

For more than a year now the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet has been conducting a series of hearings as part of their comprehensive review of the Copyright Act. The hearings, which have covered everything from fair use to DMCA notice and takedown provisions, and preservation of copyrighted works, have allowed copyright experts and stakeholders in copyright driven industries to share with Congress both their evaluation of current law, and their thoughts about what effect changes to the law could have on their industries. The ultimate goal of this process is to inform a full revision of the Copyright Act, which has not happened since the 1970s.

In their three most recent hearings, the subcommittee has turned its attention to issues that are of great importance. These issues, first sale and music licensing practices, are likely to be among the first addressed when this process reaches its legislation stage.

First Sale

The first sale doctrine is a rather interesting element of copyright law. Essentially what it does is affirm the property rights of the owner of a particular copy of a copyrighted work. This means that when you buy a physical copy of a book, album, drawing, or any other copyrighted work you have the right to use, alter, destroy, and, most importantly, resell that copy. There are, however, limitations to the rights imparted by sale. For works of particular cultural value, that value often supersedes the rights of the owner of the physical copy to alter or destroy the work. For example, if I were to purchase Andy Warhol's *Campbell's Soup Cans* I would not be allowed to modify it to display 50 cans of Progresso soup. Additionally, first sale currently does not apply to digital copies of a work.

In the first sale hearing, which was held on June 2, there was little objection from the witnesses to the value of physical first sale. Greg Cram, the Associate Director of Copyright and Information Policy for the New York Public Library discussed the importance of first sale for libraries, many of which receive a large amount of their material through donations made possible under first sale. Others praised its integral role in the dissemination of works to underserved areas where new copies of a work can be prohibitively expensive. Stephen Smith of publishing company John Wiley & Sons did, however, raise an objection to the Supreme Court's ruling in *Kirtsaeng v. John Wiley & Sons, Inc*., in which the court upheld Cornell student Supap Kirtsaeng's right under first sale to purchase inexpensive textbooks in his native Thailand and resell them to students in the United States at a price that was still well below their American list price. Wiley's objection received little support in the hearing, as the primary effect of the ruling has been to force book publishers to create slightly more equitable prices across regions of the globe.

The majority of the hearing was spent discussing the controversial concept of digital first sale. ReDigi founder John Ossenmacher was the primary voice in support of digital first sale, claiming it would have many benefits, including those that physical first

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Editor's Note

Our cover story this summer is on the current public hearings regarding potential revisions to the Copyright Act. Experts and industry pundits, and our own correspondent, are gathering in Washington D.C. to weigh on copyright reform.

House concerts are becoming a widespread phenomenon as artists around the world gather at the homes of fans and play intimate concerts with a limited audience cap. This strategy is starting to become an important tool in the touring artist's arsenal for raising funds and building its 'superfan' base.

With the rise of streaming services, Apple has fallen behind in music. Their recent acquisition of Beats puts them back in the streaming game, and aligns perfectly with their forward-thinking branding and image. Such developments suggest a 'creative destruction' a la Schumpeter. Finance also adjusts, and we cover new funding business models for the business, including crowdfunding, big money for startups, and the securitization of music.

Net neutrality is a hot-button issue in the United States, but one whose consequences for the music industry and society at large are frequently misunderstood by the general public. Knowledge in these issues is more important than ever as the FCC goes public with the topic.

Other offerings include the first of two installment 'lessons' for DIY musicians, a discussion of Amazon's Prime Music service, and, unavoidably every four years, a nod to the World Cup.
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I have served as content editor of the MBJ for more than a year and I take my leave as the current editor. I look forward to reading upcoming issues of the MBJ and wish its talented writers and future editors a bright future. As well, I hope to work again with you all in the near future.

Sincerely,

Christian Florez
Editor-In-Chief

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sale creates for underserved areas. ReDigi is one of the top platforms for digital resale, allowing users to resell audio files, software, and eBooks. In response to some of the main objections to digital first sale, Ossenmacher asserted that ReDigi's software both ensures that the seller obtained the file legally, and that they are not retaining a copy of the work after the sale. Many, however, were skeptical of the efficacy of ReDigi's software, including Rep. Hakeem Jeffries (D-NY). Others were concerned that a digital secondary market would harm the market for originals because unlike secondhand physical copies, which are often blemished in some way, secondhand digital copies are perfect copies and therefore indistinguishable from those obtained though the primary market. Ossenmacher and others will continue to make the case for digital first sale; however, without more data on its effects it is unlikely to be recognized by law.

Music Licensing

When current Register of Copyrights Maria Pallante called for a comprehensive review of the Copyright Act music licensing was one of her top priorities. In her testimony before Congress last March, she stated that "Music licensing is so complicated and broken that if we get that right, we can get the whole [copyright] statute right." Since then, the Copyright Office has been conducting a music licensing study that has included a notice of inquiry on music licensing (to which music industry stakeholders have responded) and a series of roundtable discussions on music licensing held in Los Angeles, Nashville, and New York. Congress has placed similar emphasis on music licensing in its review, allocating to it two separate hearings, one on June 10 and the other on June 25. The hearings featured witnesses representing PROs, terrestrial radio, the recording industry, the publishing industry, digital music services, and independent musicians.

In both hearings quite a bit of time was spent discussing issues surrounding performance rights. There was quite a bit of support amongst the witnesses for the RESPECT Act, which would compel Internet and satellite radio services to pay for the performance of pre-1972 sound recordings. Lee Knife of the Digital Media Association was among the few to oppose the act, claiming that it would only further complicate music licensing, which has frequently been described as a patchwork of fixes, and that pre-1972 recordings should instead receive full federal protection. In the second hearing, RIAA CEO Cary Sherman agreed that the recordings should be fully federalized, but maintained that the bill would give legacy artists access to an important revenue stream during the complicated and long process of federalization. Similar support was shown for the Protecting the Rights of Musicians Act, which would create a performance right for sound recordings on terrestrial radio. The U.S. is currently one of a very few countries without such a right, the absence of which denies sound recording owners a significant amount of income from domestic, and international radio play. Unsurprisingly, terrestrial radio representatives, including Charles Warfield of the National Association of Broadcasters, opposed the passage of this bill. They relied on their old argument that radio provides incredible exposure for artists, and that that exposure should be adequate compensation. While it is true that radio play provides exposure for artists, it is also the case that music purchasing, whether physical or digital, has fallen sharply, and income derived form public performances represents a significant portion of an artist's income.

On the publishing side the discussion was centered on rate setting procedures. Representatives from every publishing related entity supported the Songwriter Equity Act, which would require federal rate courts to attempt to set rates at fair market value. One of the key elements in achieving a fair value is allowing the rate courts to take sound recording rates into consideration during the rate setting process. Digital music services have been highly critical of this approach for a couple of reasons. First, this rate setting process would undoubtedly result in even higher royalty for them. Second, it was the publishers themselves who asked for the sound recording rate not to be a consideration. Publishers did this because they assumed that the initial rates set by the Copyright Royalty Board for sound recordings were going to be extremely low, far lower than those for the composition. The publishers feared that using such a low rate as a benchmark when setting the composition rate would result in a significantly lower royalty for them. Unfortunately for them, the CRB set the rate well above that of the composition, and now that they see an opportunity for increased royalties, they want the restriction on the rate courts' considerations to be lifted.

The consent decrees governing both ASCAP and BMI were a major area of discussion as well. Representatives from the two PROs as well as the publishing industry were highly critical of them, and called for varying degrees of changes. Both ASCAP's Paul Williams, and BMI's Michael O'Neill argued that their members should be able to selectively license their works. This suggestion, however, is rather problematic, as the statutory blanket licenses made possible under the decrees give streaming services easy access to a massive amount of content. Individually negotiated licenses almost always create inefficiencies in the marketplace, and songwriters removing themselves from blanket licenses would force digital music services to either pull a lot of content or open themselves to massive liability. NMPA head David Israelite argued that the decrees prevent free market negotiations. While this may be true, it is worth noting that free market and fair market are not always synonymous. Given the massive consolidation present in the music industry, it is likely that a free market would only be fair for those represented by major labels and publishers. Songwriter Lee Thomas Miller took the most extreme position, calling for the complete elimination of the consent decrees, arguing that they are completely outdated. The decrees are certainly quite outdated. However, Mr. Miller my be ignoring a provision requiring that the songwriter's portion of royalties be paid directly to the songwriter. Without such a requirement, the full royalty would pass through publisher and likely be subject to recoupment, thereby reducing songwriter income. The consent decrees will take center stage in the next few months as the Department of Justice has initiated a full review of them.

The Future of Copyright

Unfortunately it is unlikely that we will see a completely new Copyright Act anytime soon. The process to create the Copyright Act of 1976 began in the mid-1950s, and since then Congress has become increasingly partisan and ineffective: in the past year it has only passed 1% of all the bills introduced. That being said, the review, along with the inclusion and hearing of artists, is a positive step forward. The Copyright Office, with Maria Pallante at the helm, is expected to continue reaching out to Congress promoting reform. MBJ

Business Articles

Superfans and House Concerts

By Dan Servantes

For fans of mainstream pop culture and arena-filling acts, house concerts are an unheard of phenomenon. You won't see Katy Perry or Kings of Leon announcing a summer house concert tour. However, they can be an integral part of an up-and-coming artist's touring strategy. For many, they can be the difference between coming out of a tour in the red or walking away with a profit.

House Concerts are private, intimate concerts of typically 30 people and are held in the home of a host family. This is not the same as hiring a band to play a private party. Attendees pay a $10-20 donation to the band to cover the cost for the artist. Artists also get the opportunity to sell merch and CDs. The host family typically provides lodging for the artist.

These small intimate shows can become an incredibly lucrative tour stop for artists on the rise. Donations alone can reach $500. For one-person acts, such as singer-songwriters (the most common house concert genre), this can go a long way.

Jesse Terry, an experienced house concert performer, says he can make over $500 from the door. House concert guests also buy lots of CDs and merchandise (more than the average club concert goer), leading Terry to regularly walk away with $700-1,000 a night. With the added bonus of free lodging, Terry says "it's a pretty amazing deal for the artist."[1]

A common tactic is to hold house concerts in cities where the artist doesn't have a large following. This guarantees that the artist will make money, make new fans, and get free lodging. Ari Herstand, a Los Angeles based artist and writer of artist self-help blog "Ari's Take", suggests scheduling the shows "on nights where you haven't been able to book a club or in cities where you don't think you'll have a draw".[2]

Playing house concerts in areas that an artist has no fan base does not lead to sold out clubs the next time you're in the city, warns Jesse Terry. About the audience growth from house concerts, Terry says it's a slow build but a lasting one: "House Concert hosts and guests generally love house concerts; so don't assume that your house concert fan-base will all follow you to the local club or venue the next time you're touring through town."[1]

Despite their reluctance to follow an artist to the local club, the intimate setting of a house concert fosters a stronger and more enduring connection between the artist and the fan. This connection creates a much more direct conversion from first time concert-goer to superfan. A superfan is a fan that will buy every album an artist puts out, purchase their merch, religiously follow their facebook page or newsletter, and see the artist perform every time they're passing through the fan's region.

For superfans, a house concert is an entirely different experience than any other performance. It is a chance to see their favorite artist in a small, intimate environment, hear the stories behind the songs, and be able to interact with the artist on a personal level before, after, and during the show.

Matt Lydon, a Senior Campaign Manager at PledgeMusic, works regularly with artists that offer house concerts for their fans. PledgeMusic is a direct-to-fan marketing service that operates as both a pre-order and crowd-funding platform for musical releases, depending on the nature of the act, and is a destination for superfans.[3]

Lydon says that house concerts have become a big part of the singer-songwriter projects on PledgeMusic. House Concerts are typically the highest tier of experiences offered. Artists typically offer full band house concerts and solo acoustic concerts, with solo versions being the more affordable option.

According to Matt Lydon, the house concert is responsible for the largest single pledge made on PledgeMusic at $25,000. This size pledge has been made a few times for top-level artists to perform a house concert. More regularly, emerging singer-songwriters will offer house concert experiences for $1000-$2500.

"The limited amount of house concerts offered by the artist don't last very long, as fans generally pull the trigger on those experiences soon after the project's launch," say Lydon.[4]

House Concerts through PledgeMusic allow superfans to see their favorite artists in an intimate setting, even if the artist doesn't typically do house concerts.

One of the most difficult parts in setting up a house concert show or tour is finding a host. Typically, artists will send out an email to their email list asking if anyone in specific regions would be willing to host them. When that doesn't work, there is a website called Concerts In Your Home that connects artists with potential hosts.

Concerts In Your Home was developed by musician Fran Snyder specifically for this purpose. Artists must pass an application and audition process. Once approved, they pay an annual membership fee and get access to a database of house concert hosts. Sarah Blacker, a New England-based singer-songwriter, told Billboard that she will typically make the membership fee back in one show.[4] Concerts In Your Home has over 300 artist members and 500-600 host members, creating an international community of fans of live music.

Despite the intimate setting and the benevolent nature of house concerts, house concerts can be a risk for the host

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if not done properly. Fran Snyder, founder of Concerts In Your Home outlines some of these risks.[5]

-One risk stems from the possibility of the house concert being viewed as a public event in the eyes of the law. This can especially lead to trouble in the event of accident or injury at the house concert.

-Moreover, homeowner's insurance will not cover a homeowner claim if the insurance company discovers it was a public event. If someone gets hurt on the property, the host would be liable.

-There is also the issue of licensing fees for Performance Rights Organizations. ASCAP, BMI, and SESAC collect licensing fees for all public performances of music. This can lead to getting hit with an expensive bill from the three PROs if they decide you held a public performance in your home.

-Finally, it is important to prevent a house concert being seen as a commercial activity as commercial activities are often forbidden in residential areas. Charging a ticket or cover charge makes the concert a commercial activity but a "suggested donation " of $10-20 keeps the house concert legal in the eyes of the law.[5]

* * *

House concerts are expanding. For the patrons of music, it is a great way to support their favorite musicians. For musicians, house concerts can be a vital method to remaining profitable and developing a loyal, supportive fan base. It is innovative ideas like these that allow more artists to stay on the road and continue to perform music for a living. MBJ

Endnotes

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Apple's Purchase of Beats

By William Kiendl and Aidan McMurry

Apple needs to get a grip again on the music industry. The growth of iTunes has been compromised by the rise in popularity of streaming-services like Pandora and Spotify. For instance, U.S sales of single downloads, where Apple is leader, fell by 6% last year while album downloads were flat . iTunes radio does not seem to matter much or make up the difference either. Its 40 million users fly under the radar and are not as engaged as Pandora's 70 million active consumers; Pandora has at least three times more accounts than iRadio. Meanwhile, Spotify has 10 million paid subscribers worldwide and is a big investment prospect in Wall St. Overall, the tide seems to be shifting away from Apple's gravitas in the business. Fortunately, the company enjoys the highest cash reserves of any and recently even split its stock to appease shareholder unease for poor dividend payments. Late in May it finally puts its cash to work and surprised the markets with its greatest acquisition ever since its buyout of NeXT computers in 1996 for 400m. It put down $3 billion for Beats Electronics ($2.6bn in cash and 400m in shares that will vest over time), and in so doing brought Beats co-founders Jimmy Iovine, a music mogul, and Dr. Dre, a rapper, squarely into Apple's executive cadres.

For the music business layperson, the deal is likely to make sense intuitively, although Apple's high valuation may surprise. Beats' streaming service currently has over 250,00 paying subscribers and makes Apple a stronger player in that market. But it is the creative talent and music foresight of Dr. Dre and Jimmy Iovine that interests this world giant of tech. A deal like this has to make sense for the brand and fit in with its culture. Apple CEO Tim Cook could say that the merger helped Apple bridge the divide between Silicon Valley and Hollywood. Indeed, Cook seems to be staffing the next generation of Apple leaders by continuing to build on Steve Job's famous dictum that, in a post PC era, "technology married with liberal arts, married with the humanities… yields us the result that makes our heart sing".

That Beats is brand-savvy too can be seen from its history in the headphone business. Before Beats, companies like Skullcandy and Bose dominated the market. Bose headphones weren't fashionable, however, and Skullcandy sold cheap and did not cater to high-end audio. Beats headphones changed all that and fused audio, fashion, and music industry glamor in one product. This year, six after launching, Beats controls over 60% of the headphone market. Beats inroads into fashion and new lifestyle trends are noteworthy. Celebrity endorsement came right out of the box with co-founder, Dr. Dre and the headphones were promoted early on in his music videos and productions. Then Oscar De La Renta and Fendi bought into exclusive lines, while Interscope artists received their own custom set of headphones and helped further promote the brand. Professional sports figures were also targeted with free pairs. Soon Beats became a status symbol, and a techy decoration, for a younger generation. Soon, Apple started carrying Beats products in their store as an alternative to their original but now staple ear buds, whose performance was often perceived as sub par.

It may be early to judge the merits of the merger, but there are a number of positive outcomes already for both companies and the industry. Apple gains more traction in the streaming market and a better foothold into higher end audio, perhaps a looming frontier as broader bandwidth becomes inevitable. Beats Electronics surely shares the vision. Both results are good for the music business. But there is a danger of missing another watershed moment here. For the first time ever, Apple has hired marquis talent from a business which it previously left alone. If the tech giant is recognizing that it can no longer move forward with music unless it enlists industry greats into its ranks, the primacy of technology over music can no longer be taken for granted—and this is the best of news. On the other hand, if the event were the beginning of an exodus of music industry greats towards technology businesses it could compromise even more the fragile autonomy of the trade. MBJ

Law Section

Prioritizing the Net

By Griffin Davis

Net neutrality has been making headlines for the past few months, and rightly so. It is an issue in which the wrong outcome will not only have a massive chilling effect on innovation in the technology sector, but a negative impact as well on creators of all types. Unfortunately, net neutrality is among the most misunderstood issues facing the United States right now.

Media commentators, for instance, have led the public to believe that net neutrality is tied to the unethical actions of cable companies even though the scope of this new legislation does not cover that. To add to the confusion, those opposing net neutrality have made the claim that it's about "treating all bits equally", and that the ability of the largest edge providers to build massive content delivery networks poses a new challenge to the internet. Net neutrality only applies to the so called "last mile" of the internet where internet service providers like Comcast and Time Warner connect a service from edge providers like Spotify, YouTube, and basically every other website or app to the end user, you and me. In a truly neutral or open internet, ISPs would not have the ability to discriminate against certain edge providers by making deals to provide better service to other edge providers. So while the larger edge providers do have the ability to enhance their service, this occurs before the "last mile", and is not a violation of net neutrality, but rather a result of the competitive free market that is established by an open internet.

Background

We are currently faced with a situation in which the prioritization that would threaten net neutrality would be permissible under the law. This comes as a direct result of the decision by the D.C. Circuit court of appeals. The issue, however, goes back much farther than that.

It used to be the case that most Americans accessed the internet via dial-up. Because dial-up connected users through phone lines, it, like telephone services, was classified as a common carrier under Title II of the Communications Act of 1934. Soon broadband, which, according to a 2013 study by the Pew Research Group, is now used by 70% of American internet users , became the prevalent, and eventually primary means of internet connection. At this point the Federal Communications Commission was faced with a choice: classify broadband internet access as a common carrier and regulate it under Title II, or name it an information service and put it under the far less stringent regulatory framework of §706 of the Telecommunications Act of 1996.
Following the 2005 decision in *National Cable & Telecommunications Association et al. v. Brand X Internet Services,* which reaffirmed the principal of judicial deference to the relevant government agency first established by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., the FCC's authority was confirmed to decide how internet services were to be regulated (with the provision that the decision had to be well defended). Internet services were officially reclassified as information services and regulated under §706. At the same time a non-binding set of principles was established to help promote net neutrality.

In 2007, Free Press and Public Knowledge filed a complaint claiming that Comcast had been interfering with BitTorrent by slowing their upload speed and blocking content. In response, the FCC placed restrictions on Comcast, which Comcast promptly appealed. In 2010, the D.C. Circuit Court of Appeals found that the FCC had not adequately justified its authority to impose these regulations and lifted them. In response to this ruling, the FCC released its 2010 Open Internet Order, a legally enforceable order based on three rules, a transparency rule applied to both fixed and mobile providers, a no blocking of lawful content rule, and no unreasonable discrimination in the transmission of network traffic, the latter two only being applied to fixed providers. Shortly afterwards Verizon sued, claiming that by imposing these rules the FCC had exceeded its congressionally authorized authority.

Paid Prioritization or Payola

In January of 2014, the D.C. Circuit Court of Appeals made a ruling in *Verizon Communications Inc. v. Federal Communications Commission*, confirming the commission's authority to impose a transparency rule, but vacating both the no blocking and no unreasonable discrimination rule.

The FCC, now under the leadership of Chairman Tom Wheeler, went back to the drawing board and in May issued a notice of proposed rulemaking on net neutrality rules. In the notice the FCC suggested maintaining the rather flimsy transparency rule it had establshed in 2010, instituting a modified no blocking rule, and replacing the no unreasonable discrimination rule with a commerical reasonableness standard.

The element of these proposed rules that presents the greatest threat to internet openness, is found in the commercial reasonableness standard. The proposed standard, which would be judged on a highly innefficient case-by-case basis, allows "broadband providers to serve customers and carry traffic on an individually negotiated basis".

Such negotiations create a system of paid prioritization in which the top edge users receive faster connections from ISPs in exchange for either direct payment to the ISP or an indirect benefit that the ISP receives from the deal. While the large edge providers enjoy the "fast lane" of the internet, smaller edge providers, including just about every app startup, will be relegated to the "slow lane". Paid prioritization essentially creates a system of internet payola.

A prime example of paid prioritization can be seen in T-Mobile's recently announced Music Freedom service, which exempts from data caps those music streaming services that it has made deals with. While this may seems to be a wonderful service from the consumer's point of view, it actually presents a great threat to innovation. Assuming that other mobile and fixed broadband providers institute a similar plan, which, under the proposed rules, is very likely, it will be nearly impossible for any streaming startup to gain traction as few, if any consumers will opt for a service that contributes to their data cap over one that doesn't. Eventually paid prioritization will expand beyond music services, and once the top services in a given area establish themselves with ISPs it will be all but impossible for any startup in that area to succeed

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Business Articles

A Fresh Take On Music Funding

By Ryan Stotland

The famous economist Joseph Schumpeter once coined the term "Creative Destruction" to describe the process whereby we constantly destroy old business models by innovating and creating new ones. With the decline of the traditional record label deal, we have now seen the rise of new ways of financing and profiting from the music business. Indeed, destruction breeds opportunity. The rise of new technologies like Napster starting in 1999 coincided with the peak and eventual decline of the record business. A combination of factors led to this decline including file sharing, the end of the replacement cycle, competing entertainment and physical retail difficulties. With so many challenges, global revenue in the record business was cut in half from $38 billion in 1999 to $16.5 billion (as established by the book-keeping body of the recorded music business, the International Federation of the Phonographic Industry).

There are three main areas being funded by both institutional and private investors that represent these future opportunities in the music business. They include:

- Crowdfunding (funding the creation of music or technologies)
- Investing in new technologies for music consumption(funding new ways of consuming content)
- Securitization of music publishing royalties (monetizing existing catologues)

Crowdfunding

The revitalization of the music industry can begin with the artists, and the companies emerging that empower them. The crowdfunding model has a lot of potential to revitalize the music business. Companies like Kickstarter, Pledgemusic and Indiegogo are empowering artists to fund their own career without the need of a record label to back them.

Kickstarter, which may be the most famous of the crowdfunding sites, reported to have raised 480 million dollars for projects in 2013 from over 3 million backers. Artists have used this to their advantage. One of the most famous campaigns was Amanda Palmer's Kickstarter campaign where she raised 1.2 million dollars for the release of her solo album Theatre is Evil. This allowed her to fund the recording and marketing of the album without needing to sign over her intellectual property to a record label and allowed her to maintain all the profits for herself.

In the US in particular, the recent passing of the JOBS act through the U.S. Congress allows for non-accredited investors to invest equity in crowdfunding projects. For musicians and entrepreneurs, the JOBS Act will have long-term implications. In particular, JOBS makes equity crowdfunding legal and allows for financing in the industry to unravel in new and exciting ways. Of all the changes, the most interesting change of all will be the ability to convert fans into shareholders in an artist's career.

According to a 2013 study commissioned by the World Bank, by 2025 the global crowdfunding market could reach between $90 billion and $96 billion — roughly 1.8 times the size of the global venture capital industry. Musicians are destined to have more opportunities and freedom than they ever did in the past.

Investing in New Technologies

New technologies that transform the way we consume music are another rising destination for private equity financing. Rising ventures in this area, including the likes of Spotify, Rdio, and Pandora, are transforming our music consumption by providing unlimited access to songs without charging directly for the cost of buying music. Instead, these services monetize by both charging subscription fees and bringing in advertising revenue.

What is becoming clear from these ventures is that that people will still pay for music if they have unlimited access and convenience. The success of these new ventures are evident. For example, Spotify, with 10 million paying subscribers, has already received 537.8 million dollars in funding from major Venture Capital firms like technology crossover ventures, AFsquare, Fidelity Ventures and Goldman Sachs, according to Crunchbase. VC's will see a return on their investment as the business is already showing healthy signs of revenue and can start planning for an initial public offering.

Securitization

The potential for securitization of music royalties to help finance an artist was first introduced with the Bowie Bonds. In 1997, David Pullman managed to raise $55 million dollars based on the securitization of future royalties from 25 David Bowie albums. The bonds paid an interest of 7.9% and had an average life of ten years. Unfortunately, the value of the bonds began to decline as online music and file sharing grew in popularity, decreasing album sales. This resulted in a downgrade in credit rating to almost junk status by Moody's in 2004.

More recently, investors have revamped this model - and found more success in the area of securitization - by focusing exclusively on publishing royalties. Investors, such as Round Hill Music, a New York based publishing company, have found that publishing royalties are the most stable area and predictable area of cash flow in the music business. Although record sales have declined precipitously, publishing royalties have remained strong as a result of synchronization licensing and performing rights royalties.
Round Hill Music raised over 50 million dollars for a private equity fund to purchase publishing assets. This fund has many positive characteristics including the stable revenues from the publishing business as well as immediate cash flow to investors. Unlike venture capital, which takes a long time to reach profitability, this type of private equity transaction shows annuity-like cash flows with a reduced J-curve effect. Additionally, music royalty returns are largely uncorrelated to overall public and private equity markets.

In The Future of Music, authors David Kusek and Gerd Leonhard predict that the publishing business will develop into the biggest source of revenue for musicians when intellectual property rights become less restrictive. They write, "Once the mechanisms of performance royalty collection are adapted to address the new modes of song usage, performance royalty collection and publishing will take the lead as the primary source of revenue for musicians." One can already see traces of this when we look at the flourishing ringtone business, music for video games, and synchronization income that stems from digital media products."

Conclusion

In a recent landmark study, Edison Research found that, "America is in a golden age of audio consumption and that Americans spend roughly a fourth of their waking day listening to some sort of audio." Despite the decline of the record industry, we are currently living through one of the most interesting times in the history of music where opportunities are rife to capitalize on our cultures intense passion for music. With innovative new ways of financing - including securitization of music, funding new technologies, and crowdsourcing - an influx of private equity and venture capital dollars are helping to usher us into this new age. MBJ

Business Articles

Lessons for DIY Musicians: I

By Nick Fulleri

Editor's Note: This is the first of two installments dealing with DIY issues in music production, distribution, and promotion. The article will continue next time with a discussion of performance related issues and music licensing.

The internet has disrupted many industries, to put it mildly. Its potential as a communications and business platform is continually enlarging, as people spend an increasing amount of time online and computational capacity accelerates. The music industry is a case study of both the disabling and enabling effects of the web and digital technologies. On the one hand, the business practices of many traditional intermediaries of the music "biz" are becoming unsustainable in the digital age. On the other hand, web-based tools have opened unprecedented doors of opportunity for musicians themselves.

This paper concerns the impacts of the internet and digital age ("digital age") from the musician's perspective; or more specifically, the DIY (do-it-yourself) musician's perspective. The "DIY musician" ("DIY-er") has complete creative control over their craft and business decisions. They write, record, distribute, and promote their music without relenting ownership of it. The structure of the paper flows from the five core zones of responsibility that musicians should attend to if they want to maximize their success in the music market: production, distribution, promotion, performance, and licensing. DIY-ers must be especially attentive to these duties, as they are responsible for themselves. The web and digital tech has fundamentally altered how each of these responsibilities can and should be approached, which will be the focus of this paper. By the end, the reader should have a better understanding of the new opportunities presented to musicians in the digital age, and how DIY musicians can optimize them.

The Musician's Five Responsibilities

Musicians must get their music to the market in order to sustain a career (or the hope of a career) in music. This will involve handling five core responsibilities:
(1) **production**, i.e. recording marketable original songs or self-arranged cover songs;
(2) **distribution**, i.e. making those recordings available to the listening public;
(3) **promotion**, i.e. increasing the likelihood that anyone in the listening public will, first, hear those recordings and, second, like those recordings;
(4) **performance**, i.e. live, direct-to-audience renditions of songs; and
(5) **licensing**, i.e. generating income from others' use of those recordings and their underlying compositions.

DIY musicians should pay special attention to developments in each of these areas, because no one else is going to do that for them. The internet and digital information technology ("IT") has reframed how musicians can execute these duties. Addressing the core responsibilities one by one, the following subsections will illuminate the shifts that have occurred so far using anecdotes, case-studies, and data. Additionally, each subsection will conclude with a lesson for the DIY musician relevant to the topic responsibility.

Production

Prior to the digital age, producing a polished sound recording required the services of two intermediaries: a studio with expert recording technicians and a financial backer (such as a record label or music publisher). For their investment, record labels required musicians to sign away their performance copyright; while music publishers required songwriters to sign away their composition copyright. Musicians agreed to these terms because they could not, by in large, afford to pay expensive studio fees on their own. Musicians were, thus, forced to sacrifice creative control in order to make a record.

Things are different now. Recording technology has become cheaper, more powerful, and more user-friendly over time, particularly since the advent of digital audio workstations ("DAWs"). DIY-ers can now afford to record themselves, displacing the need for outside recording funds from a label or publisher. The increasing affordability and interest in recording technology has spawned a home recording movement, marked by free, impassioned home recording advice published on the internet. This, along with increasingly intuitive and powerful digital equipment, is narrowing the information gap between musicians and recording technicians.

Web services have also opened the doors to previously unavailable modes of creative collaboration. In 2003, The Postal Service released its debut album, *Give Up*, to wide acclaim and intrigue at how the two geographically distant co-creators collaborated via the U.S. Postal Service. Now, there are collaboration-enabling web apps designed with the musician specifically in mind. For example, thehobnob.net introduces musicians to producers, recording engineers, or other musicians, like a Match.com for music production.

Lesson 1 – *Retain Creative Control by Following the 4 Steps of Music Production:* (1) *construct a minimum viability DAW*, (2) *use online resources to gain recording tips*, (3) *begin recording (finding collaborators online as needed), and* (4) *beef up your DAW as needed*. The ease of production nowadays is a double-edged sword. Musicians are empowered to record themselves, but with that capacity comes the expectation of high quality

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recordings. Venue bookers, music licensors, and fans who rely on recordings to evaluate musicians, won't tolerate merely demo-quality work. Thus, DIY musicians worth their salt must master home recording equipment, likely requiring them to spend extensive time researching music production methods online. They should also be mindful of new music consumption patterns. Digital music discovery platforms, with their deep, searchable catalogs, have turned the once album-buying listening public into a mix'n'match, singles- and playlist-focused consumer base. There is zero demand for filler, meaning musicians should strive for quality of production over quantity.

Distribution

The traditional intermediaries of music distribution are record labels and brick and mortar music retailers. Dedicated, physical music retailers are hard to find any more. Meanwhile, the iTunes Music Store, already over a decade old, passed Wal-Mart as the number one music retailer in the U.S. back in 2008. And digital music's popularity continues to rise. Between 2005 and 2012, annual music purchases in the U.S. increased from a record starting point of 1 billion to a new record of 1.65 billion. By sheer volume of transactions, the music marketplace is better than ever and improving.

Additionally, there are practically no barriers to entering the music retail market any-more. Anyone with recordings can sign up with a digital music aggregator who will distribute those recordings to the most popular music discovery platforms: digital download sites (e.g. iTunes Store, Amazon MP3), non-interactive streaming services (e.g. Pandora, Slacker), and on-demand streaming services (e.g. Spotify, Rhapsody). The musician deals with two intermediaries in both physical and digital distribution, (i) record label and retailer, and (ii) aggregator and digital retailer, respectively. The difference is that problems of scale and high overhead make physical market middlemen tightfisted about who they let into their market; whereas friction-less digital transactions allow the new middlemen to welcome and encourage all comers.

Furthermore, particularly in the early stages of a DIY music career, simple exposure can be more important than navigating retail. Social media platforms are free, often ideal forums for independent songwriters to expose their music to potential fans or talent buyers. When listeners come to these sites, they expect music at their fingertips.

However, streaming music directly from your own URL is even better. After being dropped by Reprise Records, Wilco and the album they had just finished, Yankee Hotel Foxtrot, found themselves in a distributional limbo, having always relied on their label to push their records. Here's how they dealt with it in September, 2001:

"The record had started to leak a little bit…and copies were starting to float around . . . . Initially we tried to slow it down, we knew we couldn't stop it, and at some point I think we just decided, you know what, it's out there, let's embrace it and make it available through our website if people wanna hear it."

The band decided to allow anyone to stream their music for free. Though risky, theirs was a rational, long-view decision based on a recognition of the viral, uncontrollable nature of file-sharing and online listening behavior. Unable to control web traffic, Wilco did their best to at least direct it to their site.

The web affords musicians with control of their recordings the freedom to customize their distribution methods. Flexible pricing models got a lot of buzz in 2007 when Radiohead released their album, *In Rainbows*, from their website and allowed downloaders to choose their own purchase price. Perhaps only established artists like Radiohead and Wilco can afford the risk of offering their music for free. However, experimental pricing-schemes make some sense for musicians of all levels. A choose-your-price scheme, for example, initiates an interaction with the purchaser, revealing the musician's vulnerability as the seller and the trust they have in their fans. Such a plan may also gauge the market value of a musician's work. Alternatively, one could alter prices by digital retail outlet, on a sliding time scale, or create a tiered pricing model based on a range of product offerings.

Lesson 2 – *Forget Physical Retail; Cast a Wide, Customized Digital Net*. Music discovery is happening online. Therefore, DIY musicians should seek to reach as many hubs of music consumption as possible. Digital aggregators are a great asset in this regard. DIY-ers should, thus, concentrate their distribution efforts on filling in their web presence in spaces that digital aggregators don't reach: social media (e.g. Facebook, MySpace, and Bandcamp) and musicians' own URL. Once stakes are claimed in as many corners of the internet as possible, DIY musicians should get creative with pricing and products in light of digital distribution's inherent flexibility, and even consider the upside of distributing their music for free. *Yankee Hotel Foxtrot* became Wilco's most successful album by Recording Industry Association of America (RIAA) standards, and their only "Gold" album (500,000 units shipped) to date.

Promotion

As with production and distribution, record labels have long played a critical role in promoting records to drive sales. Labels pay retailers for shelf-space and radio stations for air-time. Labels have armies of staff to hype up their rosters and record releases to the public. However, labels do not treat all their musicians the same. Being signed doesn't mean that an artist gets an equal slice of the money-and-effort resource pie. As Wilco frontman, Jeff Tweedy, observed, "every time we put out a record, the length of time that a record company [was] willing to actually even humor [us] about working on [our] record has gotten shorter." Label artists are at the mercy of corporate decisionmaking, which itself has been checkered by miscalculations. Over 46 years ago Capitol Records begrudgingly released the greatest American pop record of all time - The Beach Boys' *Pet Sounds* - without a proper marketing budget. Wilco was dropped by their label, Reprise Records, 24 hours after delivering what would later be widely regarded as one of the greatest albums of the aughts.

The aftermath of that incident further illustrated how inefficient the label system had become: Wilco got picked up by Nonesuch Records, a subsidiary to Warner Music, the parent company of Reprise, the label that dropped the band in the first place! Meaning, Warner Music effectively paid for Yankee Hotel Foxtrot twice.

"*Yankee Hotel Foxtrot* has come to represent everything that's wrong with the music business: tone-deaf executives, a gross misunderstanding of online music, an institutionalized pandering to the lowest common denominator that obstructed the release of a timeless rock classic."

Ironically, label mishaps became a promotional narrative for the album, likely driving interest and sales. But what is the takeaway from *Yankee Hotel Foxtrot* and the history of label blunders? For DIY musicians it could be: *don't let others dictate how your*

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Lessons for DIY Musicians (cont.)

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music gets promoted.

Prior to the internet age, this advice was difficult to execute. Even after the advent of the web, musicians (along with most people) were slow to realize its value. Ian Rogers, CEO of Beats Music and one-time Beastie Boys webmaster, discussed with Mike D the first time he and the other Beasties saw a video of one of their concerts online.

Ian: "[It was] 1994, you hadn't seen the internet - what did it mean to you at that point?"
Mike: "When [I] saw it, it was kind of like . . . if someone showed you a watch-phone or shoe-phone . . . anything . . . that you couldn't actually believe was a reality in your lifetime."
Ian: "Did you see an application for it?"
Mike: "No . . . at that moment, I didn't so directly apply it. I mean later on, after having to . . . spend a lot of money publishing *Grand Royal Magazine* to ultimately not get paid by people who distributed that magazine to stores [, then, yes, I saw a use for the internet]."

In this exchange, one of the most ground-breaking recording artists of recent memory admits that they didn't initially see the use of the internet, though it amazed them. Eventually, though, they recognized the web's capacity to cut out an under-serving middleman - in this case, a distributor of the band's lyric-sheet fanzine, *Grand Royal*. That perception has repeated time after time since the web was born. A central function of the internet is that it eliminates our dependence on so many traditional intermediaries.

In particular, social media severely diminishes DIY musicians' need for third party promoters. When Macklemore, of Macklemore & Ryan Lewis, was asked whether he saw value in signing with a record label, he replied:

"There's no reason to do it [given] the power of the internet and . . . the real personal relationship that you can have via social media with your fans. . . . It doesn't matter that MTV doesn't play videos. It matters that we have YouTube . . . . [T]hat has been our greatest resource in terms of . . . creating a brand . . . . That has been our label. . . .

[Ryan and I are] good at making music, but we're great at branding. We're great at figuring out [who] our target audience is, how we're going to reach them . . . in a way that's real and true to who we are . . . . And labels don't have that.

[Record labels don't have a] magic button . . . to push [to make people] like who you are. . . . It actually comes from . . . staring at a piece of paper for months or years . . . trying to figure out who you are. . . . [A] label's not going to do that for you."

Macklemore & Ryan Lewis recognize that their DIY flair actually seems to have contributed to their popularity. After all, their biggest hit, "Thrift Shop," reinforces the virtues of creative control in life generally, celebrating self-discovered style and arguing, ultimately, against the usefulness of labels period, whether found in fashion or (it's inferred) music markets.

General qualities of the internet and social media account for their promotional value. First, as Macklemore mentions, social media enables direct-to-fan ("D2F") communications. Alex Day, a bedroom-based, British YouTube star, started YouTube-ing his brand of confessional vlogs and homespun music videos in 2006, when he was 16. By 2008, with the introduction of the YouTube Partner Program he was earning about £300 per month from video streams. Today he earns about £3500 from YouTube and £10,000 in music and merch sales per month. To reiterate: he is accomplishing this *from his bedroom*. In 2013, Alex and Justin Timberlake released albums on the same day. That day, Alex outsold the mass media darling on iTunes. An army of YouTube fans out-purchased whoever it was that RCA Records (Timberlake's label) was trying to attract to the music of, arguably, their biggest star. The takeaway: *be your own hype machine*, or as James Altucher might say, *choose yourself*.

Second - as touched on in the *"Distribution"* subsection above - websites are highly customizable, which allows musicians to present compelling narratives about themselves and their work. When a savvy, engaged DIY-er, like Macklemore or Alex Day, with a fully-fleshed identity, delivers a message straight to a potential fan's electronic doorstep, it is likely to stick. Indeed, how a musician uses D2F communications is now a metric for uniqueness, right alongside the music itself.

Third, online tools deploy increasingly user-friendly features to encourage content producers' engagement. YouTube, in particular, is pushing hard to normalize and universalize socializing through digital video uploading. This is the pitch for OneChannel, YouTube's fairly new design package aimed at maximizing cross-platform viewer experiences:

"You are more than the sum of your uploads. On your new channel, branding works across devices, you can reach out to non-subscribed viewers, and you can show off more of your content so fans will go deeper. [*click here to*] Get the new design.
. . . .
Your content is a unique snowflake - Nobody's channel is like yours. Now you can organize and present your videos and playlists to reflect your one-of-a-kind style."

The idea that everyone deserves (or could even desire) their own brand is symptomatic of the social media ecosystem. Of course, branding has always been used to distinguish musicians from each other. But in the "Choose Yourself Era" brands are not contrived by a label's marketing staff, they are conceived (and contrived) by DIY musicians.

The DIY-er doesn't have a choice to connect or not; the promotional opportunity of new communication outlets spells responsibility. The more a musician can directly communicate with an audience (even just one fan), the better. In fact, actively engaging with people on social media is not only normal - for an important demographic of consumers, it is expected. The Nielsen Company calls this group, "Generation C" (or "Gen C"). Gen C is not defined by age, but rather their web- and digital IT-dependent interactivity. They value four Cs: connection, creation, community, and curation. Gen C is a multi-screening juggernaut, engaging with digital media on all variety of internet-enabled devices. According to the U.S. Chamber of Commerce, Gen C influences $500 billion of spending annually in the U.S. Gen C collectively embodies the "networked self," a person working with and using the connective force of the web in everyday practice. These potential fans churn out more feedback about their preferences and decisionmaking processes than any prior generation.

A DIY-er can go a long way toward reaching Gen C with their own website and

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free social media apps. They can also leverage unique services marketed specifically to musicians. For example, Merge.fm lets fans "subscribe" to a musician to follow projects through uploaded content such as raw tracks, video clips, or drafts of song lyrics. The musician sets the price for each experience, and keeps 85% of the resulting revenue. The subscriber can provide feedback on choices that the musician faces as their project takes shape. Participating in the musician's creative process strengthens the fan-to-artist (D2F) bond - all through a shared experience that cannot be downloaded, replicated, or stored.

With so many promotional options out there, where should the beginner DIY musician start to improve their visibility? Multi-media artist Austin Kleon says that there's "one not-so-secret formula" that works:

"Do good work and share it with people . . . . It's a two-step process. Step one, 'do good work,' is incredibly hard. There are no shortcuts. Make stuff every day . . . . Step two, 'share it with people,' was really hard up until about ten years ago or so. Now, it' very simple: 'Put your stuff on the Internet.'"

Kleon's point, though observant, doesn't offer any guidance. Fortunately, again, musicians will find countless advice-giving resources online, directing them through vast meadows of opportunities in promotion. The very subject of how to make it in today's digital music market has inspired blogs, news articles, video tutorials, and white papers - all freely available on the web - full of helpful hints. These are not perfectly reliable or unanimously valuable, but they are easy to find, peruse, and learn from.

Lesson 3 – *Promote Patiently & Perpetually.* The internet and digital age is so rife with promo opportunities that this rule had to encompass several smaller rules. Lessons from the history of record label missteps teach the DIY-er to take control of their own promotional well-being. Musicians should not view promoting as a blitz event only surrounding milestones in a career. Rather promoting should be an ongoing, unending activity. Social media offers this possibility, and Gen C, with its short attention span, will quickly forget about the musician that drifts into digital dormancy. Though promoting should be constant, it should not resemble marketing in the traditional sense; rather it should reveal an organic identity that increases in richness over time. DIY musicians should stay connected, selecting the bouquet of interactive outlets that they find most rewarding to communicate from. However, all of this should be secondary to doing good work. Patient, perpetual promoting will keep musicians on Gen C's radar, which is where they need to be for their good work to go viral. MBJ

To Continue

Endnotes

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3. *See* Ray Kurzweil, *The Singularity is Near: When Humans Transcend Biology*, Penguin Books (2006), 8, "the list of ways computers can now exceed human capabilities is rapidly growing."
4. See Masnick, *supra* note 1.
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Amazon's Music Hook

By Felipe González

Earlier in June, Amazon officially launched "Prime Music". This is a music-streaming platform for its "prime" users only. Rival Spotify has a catalog of over 20 million tracks, but Amazon has delivered its service with only 1 million songs. In the meantime, while Pandora, iTunes Music, Rhapsody, and even Spotify focus on listener retention, Amazon has one of the highest rankings of paid subscribers. It is, after all, and despite its scant catalog, a commercial free service with a huge customer base to tap on. But TechCrunch has described Amazon's interface as a "check-out maze" standing in the way of easy music consumption. The rankings, then, speak to the power of the retail giant over and above a somewhat subpar experience.

An ongoing advantage for Amazon, of course, is the integration of a one-payment transaction into their multiple services, including the Kindle Store and its own new release, the Fire Phone. Market share for the latter is still disappointing, though, as measured against the longer standing record of Apple or Google Android smartphones. But such integration between the mobile industry and music streaming bodes well long-term, as a long list of new partnerships suggests: Spotify with Sprint, Beats music with AT&T, and T-Mobile's free-of-charge music streaming option offered after Deutsche Telekom closed deals with Spotify, Pandora, Rapsody, iTunes, Rdio, and others. According to Nielsen, music download purchases have again showed a declining pace from early 2013 to mid2014, and this open window for streaming music is one that Amazon, like Spotify, TMobile, Beats, and Apple, seeks to exploit.

Pre-Production

Amazon entered the market immediately with 20 million users, and the negotiations preceding the launch of the service lasted at least half a year and involved all the major labels and some smaller ones. According to the New York Times, Amazon offered a royalty pool of $25 million for major labels and $5 million for small labels on a 1-year licensing basis. It did not, though, come to terms with UMG, whose catalog features at least a third of Billboard's current Hot 100 and artists such as Maroon 5, Mariah Carey, Katy Perry, and Snoop Dogg. UMG bought a 20% stake of Beats in mid June for $520 million as Apple completed payment for its own stake in Beats, which explains why the major label held back in partnering up with Amazon, a rival.

But even without UMG's catalog, Amazon is a force to be reckoned with. On the one hand, the probability of a service turn-down because of this is low as it is a complementary service enhancing a bundle of paid benefits to users. Additionally, Amazon saved a big expense with UMG that the ecommerce great can use, presumably, to shore the bottom line of its music startup.

Strategy

In the meantime, Amazon will try and lure a higher percentage of active users in the US, estimated at 244 million, towards its prime accounts, a $99 per yearly subscription. Much of the early costs of the service, incidentally, are covered by subscriber fees, which increased to $99 a year from $79 in March, two months before the release of Prime Music.

The absence of pop music has not stifled Amazon's music offering so far. This is a case of a high tech business that is already embedded in the lifestyles of the public at large that does not have to have all of its ducks in a row before committing to distributing music. Proof of this too is that the launch of Amazon's service happened sooner than expected by the Music Business Journal last month.

Amazon is striving towards a curated playlist model, one where music compilations and promotions are meant to drive listener retention. Indeed, although more than 20 million tracks can be bought on their website, only 5% of those are used for the streaming service.

Conclusion

It is good to reflect once again that music may not be the driver of Amazon's own music strategy. Music is certainly the hook that can engage customers into upgrading their accounts with Amazon, and for a large sector of Amazon buyers this may be good enough. But dedicated music fans will probably thirst for more content and the lackadaisical approach of the Internet giant is good only in so far as it diverts its existing customer base towards premium accounts. This is an older demographic and if music discovery or projection of new genres does not interest this group, the expansion of the service could run against a natural roadblock. Music consumers are impulse buyers of hits, perhaps, but nothing else. It takes a dedicated music service to attract the larger market of music aficionados. MBJ

Endnotes

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25. Christopher Knab, "Inside Record Labels: Organizing Things," MusicBizAcademy.com, musicbizacademy.com/knab/articles/insidelabels.

26. Jeff Tweedy, quoted in Sam Jones, I Am Trying to Break Your Heart, 01:14:00.

27. "Capitol executives, in fact, wanted to shelve the album and only reluctantly agreed to its release, providing little promotion. When it then rose only to No. 10 on the U.S. album charts, Capitol – despite the success of some of its songs like 'Wouldn't It Be Nice' – produced and released a compilation album in July 1966, Best of the Beach Boys. Brian Wilson viewed Capitol's act as sabotage." Jack Doyle, "Early Beach Boys,1962-1966," PopHistoryDig.com, June 14, 2010, pophistorydig.com/ ?tag=pet-sounds-sgt-peppers.

28. See, e.g. Nick Marino, "The 50 Best Albums of the Decade (2000-2009)," Paste Magazine, ranking YHF #2; "100 Best Albums of the 2000s ," Rolling Stone Magazine, #3; "Top 200 Albums of the 2000s," Pitchfork, #4.

29. But, see Greg Kot, "Wilco's Shot in the Arm," Chicago Tribune (Aug. 15, 2001), articles.chicagotribune.com/2001-08-15/features/0108150038_1_yankee-hotel-foxtrot-wilco-tweedy (explaining that Wilco did have to buy back Yankee Hotel Foxtrot to dissolve their business relationship with Reprise; so, during the brief period when Wilco was unsigned Warner had recouped its initial investment in the album).

30. Marino, supra note 28, pastemagazine.com/blogs/lists/2009/11/the-best-albums-of-the-decade.html?p=5.

21. Ian Rogers, This Week In Music, season 2, episode 2 of 52, at 14:10-15:05, youtube.com/watch?v= umO-vb1OBfk&list=EL-uzaK8S_0-o.

32. Macklemore & Ryan Lewis's song "Thrift Shop" sold 4,178,000 copies in the first quarter of 2013, a record in the digital age. Paul Grein, "Week Ending March 31, 2013. Songs: 'Thrift Shop' Sets First Quarter Record," Yahoo! Chart Watch, Apr. 3, 2013, music.yahoo.com/ blogs/chart-watch/week-ending-march-31-2013-songs-thrift-shop-201312133. But, see Zoe Chace, "The Real Story of How Macklemore Got 'Thrift Shop' To No. 1," NPR Planet Money (Feb. 8, 2013) (explaining that the duo hired the services of Alternative Distribution Alliance, a distribution branch of the Warner Music Group, to both put their album in physical stores and get "Thrift Shop" played on the radio; arguing persuasively that even independent artists require the assistance of major labels to handle mass-scale promotions and produce a hit record; this does not diminish that Macklemore & Ryan Lewis wrote the song themselves, produced the recording themselves, shot the viral music video themselves, and set up their own personalized social media infrastructure the combined effects of which on the record's success are difficult to measure).

33. Macklemore quoted, Chris Hardwick interviewing, "Nerdist Podcast: Macklemore," Nerdist.com, Ep. 334, 00:18:20, nerdist.com/2013/03/nerdist-podcast-macklemore. See also Alex Day, "Record Labels Are Rubbish," youtube.com/watch?v=wjB_dtebaRQ, (label rep unable to explain how a label could help Day's career).

34. "It's what you always hope for in terms of picking the independent path. It's cool to see that [our independence has] been a focal point. It's not just 'Thrift Shop' it's this kind of do-it-yourself attitude behind the music we've made that is also within the midst of this thrift shop song. That these two dudes chose to go independently, to turn down the labels. That the music industry is changing. That it's evolving. And to be at any sort of place where we're at the forefront of that, at the moment, is exciting." Macklemore quoted at id. at 00:16:30.

35. Macklemore & Ryan Lewis, "Thrift Shop," The Heist (2012): "They be like, 'Oh, that Gucci that's hella tight' / I'm like, 'Yo that's $50 for a T-shirt.' / Limited edition, let's do some simple addition / Fifty dollars for a T-shirt that's just some ignorant bitch (shit) / I call that getting swindled and pimped (shit) / I call that getting tricked by a business / That shirt's hella dough / And having the same one as six other people in this club is a hella don't / Peep game, come take a look through my telescope / Tryna get girls from a brand? Man you hella won't"

36. See "YouTube Partner Program," YouTube.com, youtube.com/yt/partners (YouTube's Partner Program helps content creators improve the quality of their uploads and reach a wider audience; it is a dedicated effort by YouTube to extend the success of its community and itself).

37. James Altucher, "How A YouTube Sensation Beat Justin Timberlake And The Music Industry," TechCrunch.com (Mar. 18, 2013), techcrunch.com/2013/03/18/how-a-youtube-sensation-beat-justin-timberlake-and-the-music-industry (Altucher calls the present age, the "Choose Yourself Era").

38. Macklemore quoted in "SXSW Interview Recap: Macklemore & Ryan Lewis," SXSW.com (Apr. 4, 2013), sxsw.com/music/news/sxsw-interview-recap-macklemore-ryan-lewis: "[V]ideos have played an imperative role in . . . how people receive information these days. So, to have a great video, to have an identity really be showcased as a sidekick to the music I think that it's so important now . . . . It's the visual . . . it's the thing that they share in terms of social media . . . it's the way that fans resonate with the material quickly."

39. See, e.g. "YouTube Partner Program," YouTube.com, youtube.com/yt/partners, helping content creators improve the quality of their uploads and reach a wider audience; "Content ID," YouTube, youtube.com/t/ contentid, encouraging original content by discouraging copyright infringing uploads; "Video Ads," Google Ads, google.com/ads/video/ad-formats, pay-if-viewed ads, appealing to DIY promoters of all varieties.

40. See Drew Olanoff, "YouTube Announces That It Has Hit One Billion Monthly Users, Which Is Roughly Ten Super Bowl Audiences," TechCrunch.com, Mar. 20, 2013, techcrunch.com/2013/03/20/youtube-announces-that-it-has-hit-one-billion-monthly-users-which-is-roughly-ten-super-bowl-audiences/.

41. "Introducing Your TouTube One Channel," YouTube, http://www.youtube.com/onechannel, boldness is not added.

Altucher, supra note 37.

42. Id. quoting Alex Day: "Right from my first 30 [YouTube] subscribers, I began talking to the audience that was there and making videos directly for them and replying to comments, but I never saw it as a 'fan base.'"

43. "How does Gen C watch Youtube? On all screens, all the time," Google Agency Blog (Mar. 20, 2013), adwordsagency.blogspot.com/2013/03/how-does-gen-c-watch-youtube-on-all.

44. "The Millenial Generation Research Review," The U.S. Chamber of Commerce Foundation Forum for Innovation, Nov. 14, 2012, forum.uschamber.com/MillennialsReport (calling Gen C, "Millenials").

45. Julie Cohen, Configuring the Networked Self: Law, Code, & the Play of Everyday Practice, Yale University Press (2012), 32-33.

46. See, e.g., inter alia, Twitter, Tumblr, YouTube, Facebook.

47. See Ben Scudder, "Let Fans Subscribe To Your Creative Process With Merge.fm," Hypebot.com, hypebot.com/hypebot/2013/03/let-fans-subscribe-to-your-creative-process-with-mergefm.

48. See, tangentially, Jillian Goodman, "StagIt Founder and CEO Evan Lowenstein Lets Performers Play on Their Own Terms," Fast Company (May 2013), fastcompany.com/3007760/stageit-founder-and-ceo-evan-lowenstein-lets-performers-play-their-own-terms (Evan Lowenstein: "MySpace introduced this notion where fans became artists' friends. The letters went from ' I know you'll never read this' to 'Hopefully you'll read this' to 'Hey! Where the hell are you?' I thought, social media has done an excellent job of bringing fans close, but there has to be a more meaningful way to interact with them.").

49. Austin Kleon, Steal Like An Artist: 10 Things Nobody Told You About Being Creative, Working Publishing Company (2012), 79.

50. See, e.g., inter alia, TuneCore's blog, blog.tunecore.com; CD Baby's DIY Musician, diymusician.cdbaby.com; YouTube's Creator Blog, youtubecreator.blogspot.com; TopSpin Media's Tumblr, topspinmedia.tumblr.com; SoundExchange's blog, soundexchange.com/category/blog; Unified Manufacturing's blog, unifiedmanufacturing.com/blog. MBJ

Futebol

By Eduardo Loret de Mola

Music has become a staple of the World Cup ever since 'El Rock del Mundial', a song by the unknown Chilean group Los Ramblers, was made the official theme song for Chile 1962. But not all songs are created equal for the World Cup, and some do better than others. Moreover, signposting a World Cup with the right music can be tricky.

Rambling On

The official song was by Pitbull, Jennifer Lopez, and Claudia Leitte's 'We Are One (Ole Ola)'. Brazilian critics, in particular, were quick to slam it it. Certainly, the choice of two celebrities, a Cuban-American rapper and a Bronx-born singer with a Puerto Rican heritage, did not help--Brazilian singer Leitte was really a background presence in the tune and a remote presence in the Opening Ceremony. In addition, the song was sung mainly in English and Spanish rather than Portuguese. Even the music video fell under a magnifying glass for Brazilians: cuts to the Christ The Redeemer landmark and Brazilian soccer stars did not make up, in the words of one commentator, for the "smiling [stereotypes of] barefoot children and semi-naked, samba-dancing women."

To be sure, there is an element of covert nationalism in such criticism. But it is true that music in the World Cup tends to be stripped of local color. This also happened in South Africa, and earlier in both Germany and Japan-Korea. Los Ramblers, for that matter, started it all with an alien genre to Chile. Naturally, World Cup organizers always have to balance the local with the universal, for the event is truly international.

The irony is that because "We Are One (Ole Ola)" could be considered a flop Brazilian culture may have emerged unscathed. Damage control was easier without a hit. The song was released in early April and by the end of June it had sold about 105,000 digital downloads in the U.S, according to Nielsen SoundScan. 22,000 of those sales happened on the week after its performance at the World Cup Opening Ceremony, making it its biggest-selling week. But after all that it only spent three weeks on the Billboard Hot 100 chart.

"Waka Waka (This Time For Africa)," the 2010 World Cup song performed by Shakira and Freshlyground, a Southafrican band, did much better. It spent a total of 18 weeks on the Hot 100, Billboar Chart selling 57,000 downloads during its best week. Its numbers never dipped below 31K on any given week of the World Cup. Furthermore, "Waka Waka" went on to sell nearly 2 million downloads just in the U.S, with just 274K of those sold during World Cup weeks. Brazil's 2014 theme song does not even remotely approach such figures. Also, as of June 23, one in five of the 774K people that rated "We Are One" in YouTube gave it a thumbs down.

Music and Advertising

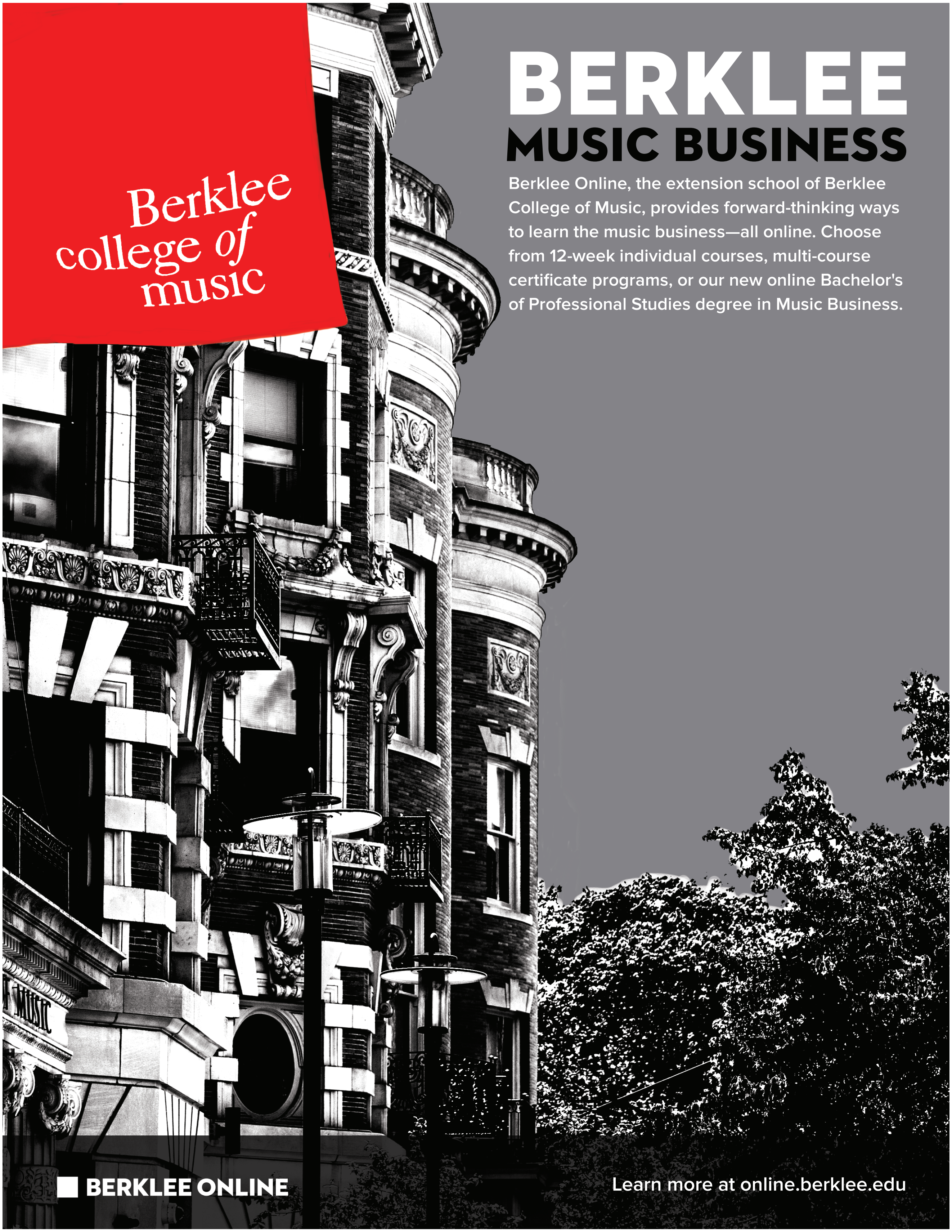
They go hand in hand in the World Cup. Advertisers' goals are, of course, to take advantage of the tournament's enormous viewing audience. According the organizing International Football Federation (FIFA), views for the 2010 World Cup tallied 3 billion people, including 910 million for the final match. The Super Bowl, America's most viewed sporting event, is a pittance by comparison, at 116 million in 2014. The same could be said of all the Olympics.

It is the nature of this international audience that poses so many challenges. Promoting a brand in the World Cup is completely different, for instance, to the Super Bowl. TV ads have to translate across many cultures. Added to this is the fact that soccer matches don't have commercial breaks as two 45-minute halves are played without interruption. Frequent and repeated 30-second commercial spots do not work. Here is where music can come in handy. A memorable jingle, which transcends local culture and language, can quickly establish a rapport with the audience, as the Gatorade ad demonstrates in this version of the Cup.

For sure, brands are taking advantage of music by cleverly promoting their own World Cup songs. And, it seems, such tunes have become more popular than this year's FIFA-approved theme song. Other instances are not hard to find. Danone's Activia yogurt and Shakira joined forces to revise Shakira's 2010 World Cup massive hit song "Waka Waka," with a Brazil-centric video for her new song "Dare (La La La)." The song's video is sponsored by Activia in partnership with the World Food Programme and has amassed an exceptional 206 Million YouTube views since it was uploaded on May 22. In comparison, "We Are One (Ole Ola)" only made 175 million views and it was uploaded a week ahead. It should be mentioned that "Waka Waka," has over 700 million YouTube views, and at one point, it held the record for the most-viewed video.

Coca-Cola, in turn, released the song "The World Is Ours" sung by David Correy, a Brazilian-born American-raised artist that is accompanied by Monobloco, a Brazilian street band. The song was launched in English at first, but then it was adapted and arranged into thirty-two languages, each tailored to a different country and sung by a local artist. It should be noted that Coca Cola tried the same strategy four years ago for the 2010 World Cup. With a $300 million ad campaign budget, it released twenty-four versions of the song "Wavin' Flag" by Somali-born artist K'Naan. Even though that song was a hit, charting in over seventeen countries, it doesn't come near the success of "The World Is Ours", which has already hit the Top Ten charts in forty countries worldwide.

Moreover, Beats by Dre launched a five-minute video "The Game Before the Game". It shows famous soccer stars, such as Brazil's Neymar Jr., Frances's Bacary Sagna, and Uruguay's Luis Suárez, among others, preparing for a match by listening to "Jungle" by Jamie N Commons & The X Ambassadors. The video has already gathered nearly 22 million views after just a month on YouTube. The company, which was recently bought by Apple for $3 billion, took this opportunity to strategically position itself globally for the first time and they did it effectively. MBJ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Internet Neutrality (cont.)

(*From Page 6*)

regardless of any superior features it may possess. Further, paid prioritization will completely remove musicians from the conversation about which service is the best as any musician looking to build a career will essentially be forced to make their content available on the ISP's preferred service. Refusing to do so would almost certainly condemn an artist to obscurity.

It is important to note that all prioritization deals will be subject to commercial reasonableness standards that the FCC plans to establish. If we trust that Wheeler and the rest of the commissioners will in fact do their best to promote an open internet, it is entirely possible that paid prioritization will not have such a significant impact. That being said, the FCC's reliance on §706 opens their rules to interpretation. If a more conservative administration replaces the Obama administration, they could choose to take a much looser regulatory position, thereby allowing full-blown prioritization.

A Way Forward

While the FCC's proposed rules do represent the extent of their authority under §706, the fate of net neutrality is far from sealed. Instead of relying on §706, the FCC should utilize the authority granted to them by the *Brand X* decision and reclassify both fixed and mobile broadband service as common carriers and regulate them under Title II. Doing so would give them much greater regulatory authority, and would allow them to ban paid prioritization outright.

While reclassifying may appear to be a no-brainer, unfortunate political circumstances have put the FCC in a tough spot. If the proposed rules go into effect, it is very likely that House Republicans will introduce a bill to repeal them, but given the rather loose regulations established under these rules, it will almost certainly fail to gain the traction needed to pass. Reclassifying to Title II, however, would receive much stronger opposition, and a bill opposing reclassification would have a greater chance of passing. Additionally, reclassification would turn net neutrality into a significant issue in the upcoming mid-term elections, likely to the detriment of incumbent Democrats. If Republicans controlled both the House and Senate, it is likely that they would possess the supermajority needed to pass a bill repealing the FCC's Title II authority, and ISPs would be left with virtually no regulations.

Fortunately, the fight for reclassification is not yet lost. As part of the notice, the FCC opened a period for public comments on net neutrality. The initial commenting period runs until July 15, and will be followed by another reply period ending September 15. This comment period presents musicians, and creators of all types with the opportunity to tell Congress, and the FCC how vital net neutrality is to their continued success. It is imperative that all creators take full advantage of this for the future of net neutrality may depend on it. MBJ