

## YouTube's Music Pangs

By Griffin Davis



It's been rumored for quite some time that Google is working on an on-demand music streaming service to be run through their video streaming service YouTube. With Spotify, Apple, and Deezer all growing their streaming services, and YouTube's significant foothold in the industry, a streaming service seemed almost inevitable. In mid-July 2014, Google began reserving a whole slew of urls related to the name YouTube Music Key<sup>1</sup>, but a little over a month later screenshots of the Music Key Android app were leaked, and it was confirmed that YouTube's new service would be a subscription-based, on-demand service.<sup>2</sup> As with many subscription services, Music Key will be free of advertisements, and will offer an offline listening mode. Additionally, because of YouTube's prominence in video streaming, users will be able to either watch the music video associated with a song, or just listen with the services "audio-only" mode.

With Music Key, Google will now have a rather impressive line of streaming services. Of course YouTube's video streaming service will remain the centerpiece of their offerings, and will remain unchanged with the exception of the recently added music page, which functions more as an aggregator for music videos from YouTube and Vevo than as a new service. Where things get a bit murky is in distinguishing between Music Key and Google's existing music service, Google Play Music. While there are some differences be-

tween the two services, such as Google Play Music's function as a music locker, users need not worry about which service is best for them, as a subscription to either will include access to the other.<sup>3</sup>

### Indie Pains

While the name and exact nature of YouTube's new streaming service weren't announced until the middle of the summer, the buzz around it started in late spring, though not in the way YouTube likely hoped. The conversation began when news broke that independent record labels were very unhappy with the deal offered to them by YouTube for their upcoming streaming service. The deal was offered to the indies after YouTube had spent time negotiating and ultimately signing deals with all three major labels. It was not an invitation to begin negotiations, but rather a "take it or leave it" contract, with the penalty for leaving it being exclusion from the new service.

While exclusion may sound somewhat harsh, it is in fact the only option for YouTube, as including indie label controlled recordings without a license would be a rather glaring case of copyright infringement. It is also important to note that this is not the first time indie labels have been offered a "take it or leave it" contract. Apple, for example, famously proposed such a deal with iTunes Radio. While indie labels agreed to the Apple

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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

It seems 2015 is going to be a big year for streaming services. In our cover piece we take a look at YouTube's Music Key, which is poised to be Spotify's greatest challenger to date. Additionally, French global streaming giant Deezer seems positioned to make a move into the U.S. market and introduce high quality streaming. Indeed, Jay-Z's own companies are also pushing Hi-Fi streams.

2013 marked the first year that the 35 year copyright reversion rule could be put into effect, and while many songwriters have been able to reclaim ownership of their works, recording artists have faced an uphill battle with the labels. We report on this and also on the new recommendations by the Copyright Office that could dramatically change the way covers are licensed. A practical guide to fair use applications completes our Law Section.

Other articles in this issue include a discussion of the present state of employer-intern relations in the music business, the adaptation of A&R to the digital age, and the billion-dollar valuation of music discovery app Shazam.

We close with a look at the rear mirror. Recorded and live music coverage is a staple in the trade, with well-known publications like Billboard, Pollstar, or Rolling Stone doing the honors for 2014. But the music product industry, which is huge, is the Cinderella in the story, and here we rectify this.

As always, thank you for reading the MBJ.

Sincerely,



Griffin Davis  
Editor-In-Chief

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## BUSINESS ARTICLES

## YouTube's Music Pangs (cont.)

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deal, they found the terms of the contract, which included a variant on a most favored nations clause allowing YouTube to lower royalty rates for the indies should the major labels agree to a lower rate, to be far too unfavorable to agree to. Instead, the labels united behind trade groups Merlin and the Worldwide Independent Network (WIN), releasing several official statements protesting the non-negotiable contracts, and even sought help from the U.S. Federal Trade Commission and the U.K. Secretary of State for Business.

As the conflict became more and more publicized, it was widely reported that YouTube would be taking down the videos of artists signed to labels that refused to accept the deal, sending those sympathetic to the indies labels' position into a frenzy. The threat of takedowns never came to fruition, though, and after several months of very public conflict, YouTube was able to privately make a deal with the vast majority of independent labels and Merlin. The terms of that deal have not been released.<sup>4</sup>

While YouTube was able to strike a deal with independent labels, its conflicts with the independent sector of the music industry were by no means over. On January 22, cellist, composer, and advocate for independent musicians, Zoë Keating released a post on her Tumblr account detailing her concerns about the Music Key deal she was offered and her confusing interactions with her YouTube representative. Among other things, her post claimed the contract required that "All of [her] catalog must be included in both the free and premium music service," and that her music must be released on YouTube on the same date it is released anywhere else, preventing her from engaging in the fairly common practice, known as windowing, of staggering releases in the hope of bolstering sales.<sup>5</sup>

In an exchange between YouTube employee Matt McLernon and Digital Music News founder Paul Resnikoff, McLernon called Keating's claims "patently false," though a transcript posted by Keating of her conversation with her YouTube representative appeared to confirm that the concerns discussed in her blog post were well founded. In the transcript, in response to Keating asking whether she would be allowed to remain in the Content ID program even if she did not license her music for use in Music Key, the YouTube rep's response was "[that is] unfortunately not an option."<sup>6</sup>

**Money and Rank**

Though the furor ultimately died down in both of YouTube's conflicts with the independent sector, these problems are indicative of issues with both YouTube and the way licensing is done for on-demand streaming services. For YouTube, part of the reason these conflicts became so inflated was because of the lack of a clear explanation of their different payment mechanisms.

In fact, with the introduction of Music Key, YouTube now has three different monetization mechanisms: (i) The partner program allows content creators to take a cut of the revenue generated by advertisements on their videos; (ii) The Content ID program gives members a share of advertising revenue from third party videos containing material that they control the rights to—rights owners can also choose to have the infringing video taken down, or leave it alone completely; and: (iii) Music Key functions like most other on-demand streaming services, with royalty payments being made according to song usage.

A simple clarification would likely have helped clear the tension. The real issue, however, is that the way services negotiate with indie labels is inherently disadvantageous for the labels. When a company is looking to license recordings for a service like Music Key, they always start by negotiating with the major labels who control not only a significant portion of the recordings they need, but also an overwhelming majority of the recordings that receive massive amounts of play, making them significant gatekeepers to having a successful streaming service. Once a service has these three big deals in place, they now have a viable catalog of offerings, leaving indie labels as a sort of nice extra, but not a group that has clout or can bring key value to the table.

**Music Key's Promise**

Though Music Key is only in beta testing mode, Google has already endured much negative publicity and not just from the indie label sector. Irving Azoff's Global Music Rights, a new boutique PRO, controls the performance rights of, among others, Pharell Williams, The Eagles, and John Lennon. Azoff has claimed that YouTube does not in fact have licenses for the roughly 20,000 songs in GMR's catalog, and is threatening a billion dollar lawsuit if they are not removed. While there has been some debate over the legal merit of Azoff's claim, making a powerful enemy of

him does not help Music Key's launch.

Still, bad P.R. is unlikely to be a deterrent to Google's Music Key. Though YouTube is a bit late to the game and faces fierce competition from well established services like Spotify and Deezer, Music Key rides the back of a massively popular video streaming service that is used by more than sixty percent of music listeners age 13-25.<sup>7</sup> Music Key is also one of the few entrants to the on-demand streaming market to bring something new, the ability to switch easily between music video and audio-only modes.

Jeff Price, founder of Tunecore and Audiam, believes that the audio-only mode will help YouTube make inroads with older listeners, many of whom are not interested in watching the video that accompanies a music selection.<sup>8</sup> There has also been some good news from beta testing, with the Music Key royalty statement of an independent artist with a major distributor listing a per stream rate of 5.38 cents.<sup>9</sup> Given that Music Key pays royalties based on a percentage of total streams, the royalty rate is likely to go down once the service is open to the public. But it certainly helps to be the only streaming service that does not need to apologize for the rates it pays artists. **MBJ**

## Endnotes

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## BUSINESS ARTICLES

### Jay-Z's Listening Pleasure

By John Lahr

Jay-Z has just launched a successful bid of \$56 million to acquire Aspiro, a Swedish streaming company belonging to the larger Norwegian media conglomerate Schibsted. Its shareholders have voted and given their unanimous approval, so the operation is all but final. The transaction gives ownership to Jay-Z of two big and important streaming businesses, Tidal and WiMP.

Jay-Z strong interest in high fidelity audio and streaming is apparent from the purchase of Tidal, the new service that is built on WiMP's platform and offers high definition FLAC files. WiMP offers a catalog of roughly 25 million songs and more than 75,000 music videos to its 580,000 paying subscribers in Norway, Sweden, Denmark, Germany and Poland.

FLAC stands for Free Lossless Audio Codec, and is a better resolution format for audio than the mp3 files that Spotify uses and which move only 320Kbps. FLAC offers more than five times that and trumps every other streaming service out there. FLAC's "lossless" quality eliminates data removal and compression, but files are larger. Tidal says that users will be able to stream CD quality audio "the way it was intended by the artists".

This is significant because there is a large listening audience that is already invested in superior quality audio systems capable of reproducing FLAC files. That audience will have either high-end speakers and high-end headphones, or both. Spending on high-end headphones is up 65%, while home audio systems that stream audio have grown four times since 2012. CD quality streaming is currently being denied to this ever-growing audiophile group. Streaming itself has been steadily rising in popularity over the last few years, and by as much as 55% in 2013. As streaming replaces declining physical sales, the listening community at large may be the larger market for the new codec.

Still, music streaming is becoming a crowded market. Spotify is on top, but there is also Rdio, Beats Music, YouTube's Music Key, Pandora, and PlayStation Music too. Moreover, Tidal is not the only player in the high fidelity lossless arena. Deezer recently brought its Elite service to the US. Like Tidal, Deezer Elite offers 16-bit FLAC streaming. Though for now Deezer Elite is only compatible with Sonos speakers, it will likely become more widely available soon.

Tidal will also face competition from Neil Young's PonoPlayer. The small, iPod-like device offers "better than CD quality" audio files in the form of 24-bit FLAC files. But PonoPlayer only supports music from its PonoMusic Web store, which functions similarly to the iTunes store, so no streaming of any kind will be available through it. Even then, Pono's remarkable startup success with a Kickstarter crowdfunding campaign should provide food for thought among streaming services. Pono was funded to the tune of \$6.2 million, even though the initial goal was \$800K. It involved a total of eighteen thousand backers—a clear proof of concept for interest in higher quality audio. Moreover,



while Jay-Z enjoys the support of a younger demographic, and Tidal streams users are likely to be first adopters among the consumer digerati, Neil Young is likely to appeal to older age groups with more discretionary income to spend on high fidelity systems. Either way, the dye is being cast already for a higher end listening experience.

Currently, Deezer Elite and Tidal are the only major players in the high quality streaming market, but they have a long way to make an impression in the general market.

Spotify has 3 million US subscribers, and Deezer and Tidal still pale by comparison. Deezer has recently signed up 200K subscribers in the US and the service is only available on Sonos speakers. The company has no plans to roll out Elite on mobile any time in the near future. Tidal has even less users (only 35K globally), but with Jay-Z's clout and cash, down the line the possibility exists of giving Deezer, a run for its money. Tidal intends expansion in twenty-two countries and in all likelihood will consider a mobile quickstart.

A subscription with Tidal currently costs \$20/month and Deezer's is only \$9.99/month if paid in full for a year, or \$14.99 if billed monthly. Neither service currently offers any sort of free tier, but Tidal offers a seven-day trial to allow potential customers to test drive the service. This is necessary to build product awareness.

High fidelity streaming will undoubtedly have a future in the music marketplace. With the upward trend in spending on high-end audio equipment, consumers beyond the audiophile community may make the conversion to high quality audio. There is a precedent. The warmth of old LPs and their better dynamic range was reappraised after the CD revolution took over, generating a specialized demand for vinyl and high-end turntables.

Streaming may be going the same way. There are some technical problems that need to be addressed by streaming companies before the technology can be widely adopted. The large files take time to buffer before the song can begin to play, and, if sideloaded to a device, they require a large block of memory, and can quickly drain a battery. Streaming these large files will also consume large amounts of data on a cellular plan, so users of a mobile service would likely only listen when they have a Wi-Fi connection.

Additionally, the high cost of the infrastructure required to stream large numbers of FLAC files contributes to a premium price for the service, which, in a market where many streaming services have free options and low-cost premium services, can be a turn off for many consumers.

Lastly, the design of Tidal is a bit clunky and difficult to use, particularly when compared to Spotify, Beats Music, and Rdio. In the end, the boost to the high fidelity streaming industry could come from well-established services like Spotify rolling out a high fidelity option, perhaps as a new subscription tier. Given a substantial user base, economies of scale could make the service cheaper. Until then, these services are worth looking into. If you have lamented the decline of audio quality, or have yet to experience high quality audio on streams, you may be surprised. **MBJ**

## LAW SECTION

## Covers and the Monopolization of Copyright

By Dan Servantes

On February 5, 2015, the US Copyright Office released a comprehensive set of recommendations on how to revise copyright law called “Copyright and the Music Marketplace”. These revisions, if they were to become law, could affect every corner of the music industry. One of the most significant changes could come from the short three-paragraph section in the 245-page report that addresses the licensing of cover recordings.

In the report, a recommendation is made to require a voluntary license from publishers in order to post a cover recording on an interactive streaming or download site. As the report states: “...the dissemination of [cover] recordings for interactive new media uses, as well as in the form of downloads, would be subject to the publisher’s ability to opt out of the compulsory regime. Thus, a publisher’s choice to negotiate interactive streaming and Digital Phono-record Delivery (DPD) rights for its catalog of songs would include the ability to authorize the dissemination of cover recordings by those means.” (*Copyright and the Music Marketplace - Executive Summary*, US Copyright Office, Feb 5, 2015).

This means that if a musician covers Ed Sheeran and posts it on Spotify or even iTunes, Sheeran, or more likely his publisher, could decide to take it down. This poses a problem for the multitude of musicians that develop fanbases and in some cases make a living from cover recordings.

Though under-documented and rarely analyzed, the covers industry has grown into a significant segment of the music business. Artists like Boyce Avenue, Lindsey Stirling, and Karmin have developed legions of loyal fans after posting their covers of songs on platforms such as YouTube, Spotify, iTunes, and SoundCloud. In the past, there has been a varied response to cover songs on these platforms. In the early days of YouTube, covers would be taken down, as they were technically violating copyright law. Later, the use of content ID systems and better advertising revenues led publishers to monetize cover videos on YouTube instead of taking them down. Still, like Prince, some writers prefer to take down any covers of their songs.

Spotify and iTunes, however, have a much different and more legitimate way of handling cover music. Songs cannot be posted on these sites without obtaining a mechanical license for the cover recording. Unlike the ne-

gotiated licenses that are used for sync and sample licensing, the mechanical license is compulsory, meaning that as long as the composition has been previously recorded and released, anyone else may also do so as long as they pay mechanical royalties. The original artist or songwriter may not stop another artist from covering their song.

The ability to freely sell cover recordings has been widely taken advantage of on Spotify and iTunes. On Spotify there are currently 137 different recordings of “Little Red Corvette” by Prince. Of those recordings, only 9 are by Prince. On YouTube, instead, one would be hard-pressed to find a Prince cover as his publishing company is very quick to take them down immediately.

With 128 covers of “Little Red Corvette”, there is clearly high saturation and competition in the cover marketplace. That being said, for those that do it well, covers can be the launchpad for a very lucrative career. Boyce Avenue, one of the earliest and most successful cover artists to come out of YouTube, has racked up an amount of plays on their Spotify page that is comparable to an up-and-coming pop artist. Their cover of Adele’s “Someone Like You” boasts 11,478,137 plays. By Spotify’s own calculations, rates are as high as \$0.0084 per stream<sup>2</sup>, which would mean a payment of \$96,416.35 going to the copyright owners. Most of that goes to the owners of the sound recording, Boyce Avenue, while a portion of it goes to the songwriters.

For Boyce Avenue, this song is only one of over 100 covers on their Spotify page. Most, if not all, of these covers are also available for purchase on iTunes and Amazon. With all of those covers bringing in revenue, it is easy to see how \$100,000 from a single recording can turn into a multi-million dollar business. (For an artist like Prince, with over 100 covers of just one song, the mechanical royalty payments for those streams and sales will certainly add up, especially when one includes touring revenue and more sales of the original song.)

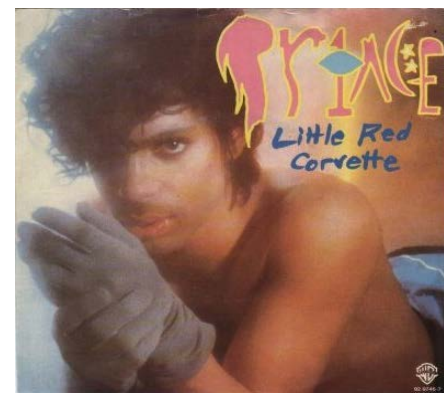
It should be obvious, then, that this new amendment in copyright law will create a dramatic ripple effect for musicians whose entire career is based on cover songs. Should songwriters and publishers decide that they do not want covers of their songs appearing on Spotify, iTunes, and the like, they could decimate the careers of thousands of other musi-

cians.

With the revenue streams shown above, one might wonder why a songwriter or publisher would wish to take their compositions off of these services. After all, why would one want to deny oneself a passive income stream that is bringing in thousands of dollars? For some, like Prince, it is not a financial decision, but a matter of principle. Prince has always been very private and controlling of his material, not wanting others to alter the songs that he worked so hard to perfect.

Others feel like revolting against the perceived low payout rates of streaming sites such as Spotify. Instead of pulling down just her catalog, Taylor Swift could ask to pull down her catalogue plus any covers of those songs that are available on the service—a powerful stand, but one that would invariably affect the income of dozens of cover musicians. There is also the looming threat of a mass boycott of streaming services by groups of songwriters, an instance of which was given on February 16, 2015, when more than one hundred Swedish songwriters published an open letter calling for transparency and reform in Spotify’s payment methods.<sup>4</sup> If collective actions by songwriters curtailed the supply of songs to new services, a poverty of musical offerings would further hinder the business of covers.

In short, this potential amendment to copyright law will hurt an ebullient business. It will give more control to songwriters and their compositions at the expense of new creative talent and its livelihood. The monopolization of copyright that it implies surely has to be addressed. **MBJ**



# MUSIC AND SOCIETY

## Internship Woes

By Justin Berezin



As employers increasingly weigh value in real-world experience, internships have proven to be a major way for students to leverage job opportunities in their respective fields. Many universities have moved internship programs to the core of their academic offerings, highlighting the importance of connecting studies to work. Nonetheless, there are still many challenges companies face with internship programs today. At the core of those challenges is the legality of unpaid internships and how internship-heavy industries must create an educational environment for student workers.

### Lawsuits

In 2011, a lawsuit against Fox Searchlight Pictures, filed by two former unpaid interns who worked on set of *Black Swan*, directly challenged the internship system. The class-action lawsuit claimed the interns should have received at least minimum wage compensation for their work. Similar to many other unpaid interns today, their work largely consisted of menial tasks such as fetching coffee or retrieving lunch orders. The lawsuit against Fox has opened the floodgates to a number of other recent legal actions, filed by unpaid interns against their previous employer on account of wage violations.<sup>1</sup> Since Fox Searchlight Pictures was filed, former unpaid interns have filed suit against Warner Music Group, Bad Boy Entertainment, MTV, and Lionsgate alleging that they legally qualified as employees rather than trainee.<sup>2</sup>

In each case, the former unpaid interns are attempting to show that their duties did not meet the required criteria qualifying them as unpaid interns. The United States Department of Labor's six-prong test outlines factors to consider when making a determination as to whether an internship at a "for-prof-

it" company may be unpaid. The six factors include: (i) The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment; (ii) The internship experience is for the benefit of the intern; (iii) The intern does not displace regular employees, but works under close supervision of existing staff; (iv) The employer that provides the training derives no immediate advantage from the activities of the interns; and on occasion its operations may actually be impeded; (v) The intern is not necessarily entitled to a job at the conclusion of the internship; and (vi) The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.<sup>3</sup> If each of the six factors is met, there is no employment relationship pursuant to the Fair Labor Standards Act and the Act's minimum wage and overtime provisions do not apply to the intern.

### Kyle Grant

While the basic facts and themes of the unpaid intern cases are relatively similar, the specific details about the case against Warner Music offers an example highlighting some of the prevailing and troubling issues with these positions.

In 2012, Kyle Grant moved out of his girlfriend's mother's house and into a homeless shelter because he did not have sufficient funds to live on his own. Despite his situation, Grant took an unpaid internship position in Warner's Music Promotions Department, as he had high dreams of launching his own label one day. Instead of hands-on learning experience with WMG, Grant spent well over forty hours per week making coffee, doing dry cleaning, and repairing employee's personal items. The internship often required Grant to be at work until 8:00 or 9:00 PM. However, the shelter where Grant was staying had a curfew of 8:00 PM, and, many times, Grant was forced to face losing his job or losing his spot at the shelter. During Grant's tenure at Warner, he was concurrently taking classes, but his work schedule caused his grades to suffer. Other instances cited by Grant show that, at least in one instance, he was forced to choose between attending a mandatory meeting to continue receiving food stamps or losing his

internship. Grant also mentioned that during his eight months at Warner, he encountered a number of interns who had been there for three or four years.

The facts in the case against Warner illustrate the imbalance of power in the intern-employer relation. What makes these particular suits unique is that they tend to involve an oversupply of labor. Those who do receive unpaid internships, especially with industry leaders, are constantly aware that if they do not do everything expected of them, and to the best of their abilities, others will. A former intern who joined in one of the class action suits explained a common practice of deceptive advertising, where companies "sell the internship experience as getting a foothold into employment... and it's kind of a smoke-screen."<sup>4</sup>

The large number of people vying for spots in the entertainment field may also explain why the industry has for so long been able to reclassify unpaid interns as apprentices and trainees. However, a quick look at what the unpaid interns from most of the suits actually did while on-the-job shows that the majority of their tasks were menial in nature and for the benefit of the employer, not the intern. Moreover, almost none of the menial tasks would cause the intern to be classified as an apprentice or trainee since they were not preparing the intern for any particular job or task.

Another obvious issue that Grant's experience with Warner demonstrates is that, for the average person there is a relatively large opportunity cost associated with taking these positions. Many who work unpaid internships are forced to compromise living situations, schooling, and personal expenses. This is not the case for interns that happen to have means. Inevitably, this skews the applicant pool towards the better off.

### Fox Searchlight

In deciding for the plaintiffs in Fox Searchlight, Judge Pauley of the Southern District of New York held that the "production interns were entitled to minimum wage because they did the same work as regular employees, provided value to the company, and performed tasks that didn't require specialized training." While this holding meant a victory for those

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## BUSINESS ARTICLES

### 2014: The Music Year in Review

By Andre Corea and Harrison Price

Records and live performances define the state of the music market. 2014 was special for two things: a consumer preference for accessing a recording with a subscription or a free stream and the surge of live ticket sales and music festivals. The reader is encouraged to check the sources at the end for more information.

#### Recorded Music

The decline of the album, now a long time feature of the recorded music market, seemed to reach new lows in 2014. It had been customary for Nielsen to pad album sale numbers by adding one album for every ten digital tracks sold. Last year, the concept was extended to streams, making an album the equivalent of 1,500 streams (a \$12 value for a Spotify payment to artist of \$0.008 per stream).

Even then, album sales dropped 32 million units, from 289 million to 257 million, or 11% between 2013-2014. Nielsen, of course, cannot be faulted for its accounting, for the business it serves still yearns for the golden years when albums reigned supreme before iTunes made tracks the norm. It must be realized too that 2014 only saw four albums receive a platinum certification, compared to thirteen last year.

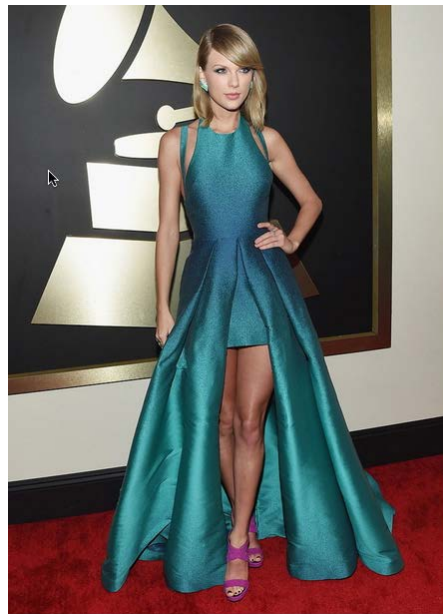
Better perhaps to recognize that albums are a passé concept for a market largely focused on cultivating personal playlists. No longer is a single song the gateway to discovering an album, eventually introducing the listener to an artist's discography. Instead, a single song opens the door to many other songs like it, likely by a multitude of different artists, allowing consumers to construct perfectly curated playlists that cater to their exact tastes.

This, of course, is largely why on-demand streaming is the most promising growth area for recorded music. It has become the dominant consumption platform, up 54% to 164 billion streams in 2014. Spotify's \$5 billion valuation is testimony to the power of these numbers.

2014 was special too for more idiosyncratic album placements. With the proliferation of alternative music services in the marketplace, some of them free, major artists began to experiment with alternative release models, freedom from the shackles of the old ways of doing business.

Beyoncé broke her self-titled surprise album in December 2013 without any promotion, and that became the storyline. As a result, the album became the fastest-selling release iTunes had ever had. Then, in September 2014, with little warning, U2 released *Songs of Innocence*, as Apple paraded its iPhone 6 to the world (the free album immediately showed up on any Apple device with a cloud connection). Later, Thom Yorke of Radiohead released *Tomorrow's Modern Boxes* as a free download on BitTorrent.

Taylor Swift's 1989 was, instead, old fashioned in its success, selling more than 3 million units in a much shorter span of time than Disney's *Frozen*. 1989 sold 3.7 million copies, and was the highest selling U.S. album



in 2014 after *Frozen*, with 3.5 million. *Frozen* received some Grammy awards this year, including Best Compilation Soundtrack for Visual Media, and Best Song Written for Visual Media for the hit "Let It Go". The Disney Company has always been a powerful music industry protagonist, and it added to its laurels again in 2014.

The top artists, as listed in Billboard's year-end charts, were One Direction (Top Artist), Katy Perry (Top Female Artist), Justin Timberlake (Top Male Artist), Luke Bryan (Top Country Artist), Lorde (Top Rock Artist), Beyoncé (Top R&B/Hip Hop Artist), and Romeo Santos (Top Latin Artist). And at the 57th Grammy Awards, Taylor Swift, Iggy

Azalea, Beyoncé, Sia, and Meghan Trainor were all nominated for some of the night's big awards.

Yet it was Sam Smith, a British soul singer signed to Capitol Records, who conquered the Grammys this year, taking home four Grammys, including Best New Artist, Song of the Year, and Record of the Year for his debut album, *In The Lonely Hour*, and the hit single, "Stay With Me". The major hit song of 2014 was Pharrell William's "Happy", which topped Billboard's Top 100 for 10 weeks straight, and sold 6.45 million digital copies. It was originally written for the soundtrack album of *Despicable Me 2*, and was included in Pharrell's album *Girl*. "Happy" earned Pharrell the Grammy awards for Best Pop Solo Performance and Best Music Video for its international projection.

One of the year's biggest comebacks has to be the Rock and Roll genre. Even with a market dominated by Pop, R&B, Hip Hop, and EDM music, Nielsen's 2014 industry report puts Rock at the top, accounting for 29% of all U.S. music consumption; R&B/hip-hop is second with 17% and Pop third with 15%. Rock also leads in U.S. album shipments with a 33% share. Three-fourths of all vinyl sales come from rock, and for Billboard, Lorde, Imagine Dragons, Bastille, Coldplay, and Album of the Year Grammy winner Beck, are the leaders of this pack.

#### Live Music

With its increase in revenue to 6.2 billion in 2014 from 5.1 billion in 2013, live music now accounts for 35% of total music spending. This is the fourth consecutive year of growth in ticket sales for live shows. According to Live Nation, the number of shows is also increasing from 11,200 in 2013 to 11,400 in 2014.

Music festivals are quickly becoming a major portal for music discovery. More than 30 million U.S. consumers attended at least one festival last year, which is a 34% increase in attendance from the last festival season. Some of the top festivals in the US include South by Southwest, iHeartRadio, Lollapalooza, Coachella, Bonnaroo, and Mysteryland. South by Southwest, in 2014, had nearly 2,400 music showcasing acts and 600 international acts from 57 countries all within

(CONTINUED ON PAGE 16)

## LAW SECTION

## Post-1978 Copyright Reversions

By Cheniece Webster-Jones



2013 marked the first year that sound recording and musical composition copyrights could revert from labels and publishers, respectively, to artists and songwriters. The Copyright Act of 1976<sup>1</sup>, which became effective in 1978, states that the termination of the grant of copyright may be effected at any time “during a period of five years beginning at the end of thirty-five years from the date of execution of the grant.”<sup>2</sup> A copy of the notice must be recorded in the Copyright Office before the effective date of termination, and termination of the grant may be effected regardless of any agreement to the contrary, including an agreement to make a will or to make any future grant.<sup>3</sup> While the procedures for initiating a reversion are fairly clear, the path to reversion had been riddled with ambiguity and uncertainty as to whether reclaiming copyrights is actually a viable option for artists and songwriters.

#### Roadblocks to Reversion

Many acts, including Billy Joel, Kool & the Gang, and Roberta Flack have filed with the United States Copyright Office for termination of the transfer of their master rights to their labels.<sup>4</sup> Unfortunately, according to their managers and lawyers, instead of having their rights reverted to them, they have been ignored by the labels.<sup>5</sup> This is because the main roadblock to copyright reversion has been determining whether or not sound recordings qualify as works made for hire.

The 1976 Act stipulated that works made for hire are exceptions to reversion, as the work is owned by the creator’s employer from the very beginning, rather than being a rights transfer.<sup>6</sup> In addition to works prepared by employees within the scope of their employment, nine categories of works that qualify as works made for hire are listed, but sound recordings

are not among these.<sup>7</sup> However, in 1999, at the request of the RIAA, Congress added sound recordings to the list.<sup>8</sup> This designation meant that musicians were employed by the label and therefore, they were not entitled to reclaim ownership of their work.<sup>9</sup>

After experiencing backlash from the artist community, several hearings were held before the U.S. House of Representatives Subcommittee on Courts and Intellectual Property, in which artists like Sheryl Crow testified.<sup>10</sup> Ultimately Congress approved legislation that repealed the law designating sound recordings as works for hire,<sup>11</sup> and President Clinton signed the bill into law in 2000. In music publishing, there is not generally a work for hire provision, so once the appropriate paperwork is filed, the songwriter often gets his ownership back unless the publisher manages to retain the work at a reduced-profit rate.<sup>12</sup>

#### The Label Argument

The label argument is really quite a simple one, and relies largely on contractual terms as well as the labels’s position of leverage. Most contracts say that the sound recording is a work for hire and the parties generally intend from the beginning that the sound recording will be considered a work for hire, this according to Eric German, an entertainment litigation and intellectual property and technology attorney at Mitchell Silverberg & Knupp.<sup>13</sup> While the validity of these provisions could be debated in court, the fact of the matter is that not many recordings produce significant revenue after 35 years, so even in victory, the artist stands little to no chance of making back their legal expenses.<sup>14</sup>

#### The Artist Argument

As stated earlier, an employee’s work, done within the scope of employment, qualifies as work made for hire. Generally speaking, employees receive a specified salary, which most recording artists do not.<sup>15</sup> Instead, artists receive cash advances that are recoupable against future royalties. This, added to the fact that Congress deliberately removed sound recordings from the list of works eligible to be works made for hire supports artists’ view that they are not employees and thus their sound recordings are not works made for hire. Therefore, the artists should have the right to recapture their sound recording copyrights.<sup>16</sup>

Others have argued that sound recordings are analogous to films, which are exempted

from reversion because they qualify as collective works.<sup>17</sup> Similar to films, which can have several creators, songs can have several authors including writers, producers, and musicians. However, according to prevailing views in the current industry, that may be a bit of a stretch.<sup>18</sup>

#### Renegotiating Royalties

Labels and artists should renegotiate royalty percentages on expiring masters and those that have past the 35-year point. This would be far more cost-efficient than litigation. Both parties would save money and artist’s works would be protected by an entity that can effectively deter infringers. This is important as artists may not have the resources to do so on their own. The recent extension of copyright protection for masters in the E.U. could serve as a model for resolving this issue.

The E.U. recently extended its copyright duration from 50 years to 70 years and includes various clauses that could be beneficial to artists.<sup>19</sup> For example, there is a requirement that labels ensure all recordings are commercially available, and if not, the artist can release the recordings themselves.<sup>20</sup>

#### Case Law/ Practical Applications

Victor Willis, the original lead singer of the Village People<sup>21</sup> appears to be the first artist associated with a hit song from the disco era to publicly announce that he has used his termination rights to regain control of his work.<sup>22</sup> Scorpio Music S.A., a French publisher, and Can’t Stop Productions, Inc., its United States sub-publisher allege that between 1977 and 1979, they hired Willis to translate the lyrics of and/or create new lyrics for certain musical compositions which were owned and published in France by Scorpio.<sup>23</sup> Copyright registrations for the 33 musical compositions at issue, including the hit song “Y.M.C.A.,” credit Willis as being one of several writers. By way of Adaptation Agreements, Willis transferred his copyright interests in the compositions to Can’t Stop, which then assigned to Scorpio its rights in the lyrics.<sup>24</sup>

In January 2011, Willis presented to Scorpio and Can’t Stop a notice of termination of his grants of copyright with respect to the compositions, to which they



## BUSINESS ARTICLES

## Music Products, 2015

By Jessica Prouty

responded by filing suit and challenging the validity of his claim.<sup>25</sup> The Southern District Court of California held that Willis could unilaterally terminate his grants under 17 U.S.C. § 203, because Willis granted his copyright interests in the Compositions separately from the other co-authors.<sup>26</sup>

Though Willis's case dealt with compositions, which have not faced the obstacles that sound recordings have, this case still set an important precedent, and will hopefully expedite the reversion process for other songwriters, and perhaps sometime soon for recording artists as well. **MBJ**

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- 2.17 U.S.C.A. § 203 (West) 203(a)(3)
- 3.Id at (a)(4-5)
- 4.<http://www.billboard.com/biz/articles/news/1483926/reversion-rights-will-2013-be-a-game-changer>
- 5.Id.
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- 9.<http://www.billboard.com/biz/articles/news/1483926/reversion-rights-will-2013-be-a-game-changer>
- 10.<http://abcnews.go.com/Entertainment/story?id=114464>
- 11.Id.
- 12.<http://www.billboard.com/biz/articles/news/1483926/reversion-rights-will-2013-be-a-game-changer>
- 13.<http://www.billboard.com/biz/articles/news/1483926/reversion-rights-will-2013-be-a-game-changer> (German explains the rationale fro drafting contractual language that includes sound recordings characterized as works made for hire.)
- 14.Id.
- 15.<http://www.thembj.org/2011/10/artists-and-their-masters-conflict-looming-in-2013/>
- 16.<http://www.artistshousemusic.org/videos/35+year+copyright+reversion+clause+works+for+hire+and+the+future+of+the+music+business> (Jay Cooper, a music lawyer based in Los Angeles, explains what the 35-year reversion clause of the Copyright Act of 1978 is, and how it's likely to play out when that clause falls due in 2013.)
- 17.<http://www.billboard.com/biz/articles/news/1483926/reversion-rights-will-2013-be-a-game-changer>
- 18.Id. (Bob Donnelly, a lawyer with Lommen Abdo who was heavily involved in the 1999-2000 work-for-hire dispute claims collective works were created to cover things like encyclopedias, not sound recordings.)
- 19.<http://www.billboard.com/biz/articles/news/publishing/1170187/eu-extends-copyright-term-to-70-years#sthash.GJpEQI2Y.dpuf>
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- 22.[http://www.nytimes.com/2013/09/11/arts/music/a-copy-right-victory-35-years-later.html?\\_r=0](http://www.nytimes.com/2013/09/11/arts/music/a-copy-right-victory-35-years-later.html?_r=0)
- 23.Id. at \*1
- 24.Id.
- 25.Id.
- 26.Id.

Americans spend \$21 per capita on music products, about as much as they spend today on recorded music. The figure exceeds concert grosses per head and also the total per capita music royalty collections by ASCAP, BMI, SESAC, and the Harry Fox Agency.

Yet the only glimpse most musicians see of the world of products is at their local Guitar Center. A better vantage point is at Anaheim, California, in January. There, myriad manufacturers of music gear of all kinds, including instruments, music software, audio pro gear, and educational and promotional magazines like *Guitar Player* and *Keyboard*, meet in the greatest music products show on earth. If the NAMM Show were open to the general public instead of being a trade-member-only event, it would host the largest crowd of any music trade show in the planet. (that distinction goes to the open access Musikmesse in Frankfurt, Germany)

## NAMM

NAMM stands for the National Association of Music Merchants and their 2015 show of January 22-25 brought together more than 99,000 registrants and 1,600 exhibiting companies, of which more than 300 were new. This was the largest show to date, demonstrating that a gentle world recovery combined with fast U.S. economic growth is driving higher purchases and updates of all kinds of music gear and accessories.

The music products industry in the U.S. has grown by an annual 2.8% rate over the last decade while recorded music sales have declined by nearly 5% every year. Overall, business grew by 32% while recorded music fell by 40%. As a result, the product business has been far more dependable as a source of employment than the record business, a fact that many musicians today ignore at their peril.

Yamaha, Roland, Sennheiser, Gibson, and Fender continue to be the top five global products companies, collectively grossing over \$6 billion dollars. These companies not only help set standards for the smaller businesses; they are key to the health and stability of market.

Instrument makers are at the core of the NAMM Show. Roland put forward its JD-XI and JD-XA hybrid synthesizers, a combination of analog and digital synthesis. EDM

musicians have driven up sales of these synthesizers by as much as 20% this year, and this exhibit was twice as large as the year before. Yamaha debuted their new Transacoustic GC1TA and UT1A pianos, fully acoustic instruments with preset sounds and play-along capabilities. Gibson and Fender offered new versions of their vintage guitar models, including a hollow-body Les Paul (Gibson) and custom designed Strats (Fender).

Manufactures are addressing the needs of musicians on stage and on the go, relying more than ever on their day-to-day general use devices. Sennheiser, the wireless microphone and headphone pioneer, announced a partnership with Apogee Electronics, a maker of audio interfaces for iPad and iPhone.

Online collaboration tools were also popular. Avid announced ProTools 12 with Cloud Collaboration, and released a free promotional version. Cloud technology seems to have captured the imagination of smaller companies as well. JamHub displayed their M16 multi-track recorder, allowing the upload of a live recording directly to its BandLab cloud for sharing and editing.

## Metadata

NAMM's annual report provides a different, more streamlined, view of the trends in the music products industry. It makes clear that these are good times for the acoustic guitar. Shipments increased by nearly 3% in 2012-2013 but sale value rose by a staggering 13%, for a total of \$603.2 million. The trend still carries over to 2014 for a number of reasons, among them a folk/acoustic music revival and the prevalence of EDM music (possibly diminishing the role of electric guitar sounds, just like disco music did in the 1980s).



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## LAW SECTION

## Decoding Fair Use

By Eduardo Loret de Mola



Fair use has always been a contentious concept. A great number of musicians, as well as artists of other varieties, include copyrighted material in their own works through techniques such as sampling and parodying. However, many of these works do not fall under the scope of fair use. In fact, there is a lot of uncertainty regarding what constitutes fair use and what doesn't. A recent study by the College Art Association (CAA) found that "37 percent of artists use third-party material and that one in five avoids or abandons a project over concerns that they're not doing it right and that number is much higher for editors and academics."<sup>1</sup>

The principle of fair use was incorporated into the law to allow people to use portions of copyrighted materials without infringing upon the rights of the owner. According to section 107 of the U.S. Copyright Act, anyone can use part of a copyrighted work as long as its use falls under one of the categories specified in the law: criticism, comment, news reporting, teaching (which includes multiple copies for classroom use), scholarship or research. The expectation of this principle is that the copying of protected works has to have a transformative dimension, as indicated above, and for only a limited amount of time.

In theory, a person would not need permission from the rights owner to use the copyrighted material under the specifications of the law. However, if the copyright owner disagrees with the way a person is copying his or her work and argues that it is not fair use, then the matter would have to be settled in court or by arbitration. Still, fair use is a legitimate defense against a copyright infringement claim. In order to prove if the work made out of a copyrighted material is protected under the fair use provisions or not, the law enumerates several factors that must be taken into consid-

eration, which are:

1. "The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."<sup>2</sup>

Evidently, if, after the evaluation, the work qualifies as a fair use, it will not be considered as an illegal infringement, nor will the author need to pay royalties to the owner of the copied work. However, if it's not considered a fair use, then there would be an infringement, which would likely translate into liability for damages. It is true that these assessments, which are done on a case-by-case basis, can end up being very subjective, stressing the necessity of having a clearer picture of how to proceed when the lines are blurred. A lot of money, in the form of legal fees, has been "invested" in an attempt to determine what constitutes a fair use. "There are no hard-and-fast rules, only general rules and varied court decisions, because the judges and lawmakers who created the fair use exception did not want to limit its definition. Like free speech, they wanted it to have an expansive meaning that could be open to interpretation."<sup>3</sup>

For example, in *GoldieBlox vs. The Beastie Boys*, the former used the band's song "Girls" in one of their video commercials for "Princess Machine", a construction toy for girls. After becoming widely popular and gathering millions of views, the Beastie Boys responded by alleging copyright infringement. The company argued that the ad was a parody because they were trying to empower young girls, and break stereotypes by making fun of the song, and was therefore qualified for protection under the fair use doctrine. The band's argument was that the ad was clearly a tactic to sell a product, and not to simply to show a message of empowerment for girls. It was alleged that the reason it's not fair use was due to the fact that the company's logo appears on screen in the last seconds of the ad. This is known to be an advertising strategy to sell

products through emotional manipulation, because the consumer may think he or she is investing in a cause as much as a product. At the end, the matter was settled because the company did not want to engage in a legal battle with the band, not because the legal provisions were sufficiently clear to attribute GoldieBlox's actions as copyright infringement.

To help solve the problems with fair use, Peter Jaszi and Patricia Aufderheide, two professors at American University in Washington, D.C., created "The Code of Best Practices in Fair Use for the Visual Arts", sponsored by the College Art Association, which was published on February 2015. This is the 10th code that both professors have created in order to make the fair use landscape more comprehensible for artists and other creators, so the risk of working with copyrighted materials is minimized to as great an extent as possible.

To develop this set of rules, the professors met with thousands of artists who were interviewed about what would be the reasons for them to use or not use copyrighted material in their own work and what would the legal implications be in the event that they decided to use it. They were also surveyed about it, which allowed the professors to develop an initial draft of the code based on the "areas of consensus" between the groups. This ended up being divided into five different sections: analytic writing, museum work, teaching about art, art making and online archives and special collections.

The "Making Art" category is the one applicable to musicians, which has as a fundamental principle that artists, in general, can allege fair use to include copyrighted material into their new creations but they have to be subject to the following limitations:

- "Artists should avoid uses of existing copyrighted material that do not generate new artistic meaning, being aware that a change of medium, without more, may not meet this standard.
- The use of a pre-existing work, whether in part or in whole, should be justified by the artistic objective, and artists who deliberately repurpose copyrighted works should be prepared to explain their rationales both for doing so and for the extent of their uses.

## BUSINESS ARTICLES

## Products (cont.)

(FROM PAGE 9)

- Artists should avoid suggesting that incorporated elements are original to them, unless that suggestion is integral to the meaning of the new work.

- When copying another's work, an artist should cite the source, whether in the new work or elsewhere (by means such as labeling or embedding), unless there is an articulable aesthetic basis for not doing so."<sup>4</sup>

Patricia Aufderheide believes that codes give creators and their lawyers a more complete set of tools that they can utilize to better evaluate the risk of using portions of copyrighted work. "They allow individuals to make judgments knowing where they fall in relation to the thinking of their peers -- and that lowers risk."<sup>5</sup> Similarly, it has been proven that "best practices codes" have been extremely successful in facilitating artists and other creators to correctly do their work, increasing the levels of legal efficiency.

As shown, fair use has presented its own share of problems throughout the doctrine's history. It is still part of the creative process and will always be relevant as long as there are musicians and other artists that want to keep creating new works of art, and that is why it is important for codes like this one to exist, particularly when said tools successfully keep up with reality. Most of the time, the problem with the law is that it is not updated as fast as society evolves. These codes allow proper clarification and work as an instruction manual for people who don't necessarily have a background in law. **[MB]**

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Music products rely on electronic components and are ever more sophisticated, allowing vendors to fetch higher prices. However, this seems to hurt students and the debt-ridden under-30 demographic, tilting the purchasing balance of high-end products towards older age groups with more discretionary income. Still, the industry seems to have done well overall over the last decade, especially considering the record of other trades during the Great Recession.

A concern of NAMM officials, and the many sellers there, is the growth of used music gear. Online platforms like Craigslist, Ebay, and Facebook groups are creating an effective parallel market in secondhand products. A number of industry panels discussed new ways for retailers to turn the traction from these online services back to their storefronts.

An online used music market started in earnest with Netscape and the World Wide Web in the late 1990s and will continue, in all likelihood, to be a threat to gear retailers. Product innovation would of course stifle the used market in good times. It may be a sign of the times that there is nothing revolutionary new in NAMM, at least like there was one time with MIDI, console automation, sequencing software, music editing software for the studio and the laptop, and digital turntables. The exception today could be the development of new music interfaces like the iPad or iPhone and, more distantly, the production and widespread usage of tools for musical collaborations online.

## Education

Education, and the preparation of students for a career in the music products industry, has always been a concern of the NAMM organization. Supplying schools and colleges with instruments is a driver of the trade. NAMM was the first trade organization to offer help and scholarships for young professionals entering the business, a practice that until recently was largely unknown in the recorded music trade, music publishing, and the live music sector (there is still little in live music and publishing, but Grammy in the Schools, and other initiatives by the Recording Academy, have begun to redress the balance in recorded music).

Today, NAMM and the College Music Society's Generation Next program allow college students to experience the mu-

sic products industry firsthand on the show floor. This year, the program brought in 2,000 music students and 73 received the President's Innovation Award (your correspondent included).

Generation Next 2015 keynote was given by Music For Life awardee Moby, who made the case for the intensity and music passion subjacent in every corner of the products trade—an argument that needs to be made often with students that are typically seduced by the glamour of the recorded and live music trades and neglect to see the potential and affinities of a career within the music products industry. The CEO of NAMM, Joe Lammond, also hosted a panel of experts for students to provide mentoring and advice.

## Conclusion

The business of music products trades in accessories. Accessories tend to do well regardless of economic circumstances. Musicians will need to buy strings, reeds, or mallets, let alone a new instrument or device, or instructional magazines. Moreover, schools need to buy music gear on a regular basis. All of this bodes well for the trade.

Moreover, a glimpse of the future of music is likely best observed in the products displayed at the NAMM floor. It helps too that meeting the people behind the products is quite easy and that individual conversation is welcome and encouraged throughout the exhibits in the Show. Doors seem to open easily for every attendee anywhere and everywhere, and there is much to do and learn in after hour gatherings. No red carpets here, but it is just as well. **[MB]**

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## BUSINESS ARTICLES

### A&R In a Digital Age

By Alex Aguilar



A&R executives are being forced to change their game. This is in part because streaming services such as Spotify and YouTube are fragmenting the music market and leaving their own digital trace, which is then used to identify suitable talent. As well, the focus of modern music marketing is not just paying consumers but consumer brands that are looking to match music to suit their own ends. Taken together, both factors explain why the search for talent is more reactive to market conditions than it has ever been.

It is also more data driven. On the supply side artistry, or rather musical work, is likely at an all time high, which leads as well to more dependence on computing solutions in A&R. For instance, in the past the A&R executive would help develop a musician and serve as a de-facto producer.<sup>1</sup> Now, Next Big Sound and Crimson Hexagon are quickly becoming essential tools for music discovery and a comfort with social media metrics from YouTube, Spotify, and SoundCloud is critical too. Identifying the right talent has always been arduous and time consuming, so outsourcing information to self-developed spreadsheets or software speeds up the decision-making process and validates the A&R executive of the major label.

#### Matching a Brand

The traditional music business model was based on selling physical copies of recordings. With the advent of digital technology and a sharp decline in recorded music sales, the focus is shifting slowly but surely into turning artists into brands.<sup>2</sup> From an A&R perspective, the goal has become finding artists that have a great following—not artists that just have talent.

In particular, the last ten years have seen brands move from sideline sponsorships to center stage.<sup>3</sup> Hip Hop mogul Jay-Z and Latin Bachata superstar Prince Royce are good examples. Jay-Z partnered with Samsung in 2013 for the release of his album, *Magna Carta Holy Grail*, which was exclusively released through a mobile app.<sup>4</sup> Prince Royce chose Pepsi as the official sponsor of his tour in 2014, which included several commercials targeted at the Hispanic community.<sup>5</sup> It is important to realize that both partnerships added their own twist to the existing modus operandi of the business. Jay-Z's approach was more radical, and he let Samsung, not his record label, promote his name. Jay-Z went platinum with social media chatter without an official release, as traffic in Twitter and Wikipedia pushed Samsung's video views up to 40 million, 250 times more video views than the month before the campaign started.<sup>6</sup> In turn, Royce could point out that Pepsi's partnerships with the Billboard Latin Music Awards, the Grammys, and the Super Bowl, all major brands, helped him reach the U.S. and Latin American Latin Music market in a way that few things could. The implication is that Pepsi could support his exposure just as well as any label.<sup>7</sup>

Brands, of course, strive to make long-lasting connections with artists and customers, expecting to match talent and product to cement a new legion of loyal customers.<sup>8</sup> But in the end actual talent may have little to do with it, as brands still are likely to privilege social media standing over creativity. If in today's music business music has been reduced largely to a marketing tool, A&R executives must constantly look out for music that has more commercial appeal to entice new brands to partner with them.<sup>9</sup> The job of an A&R executive has always been "to acquire masters for the label to market"<sup>10</sup>, but this is now taken at more face value than ever.

#### Going at it Alone

So far we have discussed the new A&R positioning of major labels. There are also services specifically geared to helping independent artists get the attention of major labels, including Reverbnation, CDBaby, and TuneGO (the latter is a new portal where musicians can play their music for member producers and executives and get a point rating).<sup>11</sup>

This, again, suggests that major label executives are taking a backseat approach when it comes to discovering talent, and are now involving the general public in their decisions.<sup>12</sup> Picking an artist from obscurity and making them into a household name is, in short, beginning to seem like an old-fashioned way of doing A&R. **MBJ**

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## BUSINESS ARTICLES

# Shazam!

By William Kiendl

Music identification technology has changed the way consumers and brands interact, both by creating new ways to consume and discover content and by influencing how companies deliver new products. Investors are taking notice, and the digital tech industry's appetite for more financing rounds is underwritten by the media and advertising conglomerates' thirst for data driven campaigns where audio analytics are beginning to play a significant role.

Shazam, an entertainment application that uses audio-recognition software to identify songs playing on radio, TV, or clubs, has dominated the market since 2002. Users simply hold up their smartphones, wait a matter of seconds, and are instantly connected to a 35 million-song database that returns an exact match of the sound byte they just heard. Shazam reports the app has been downloaded over 500 million times and that it has over 100 million monthly mobile users. One in every ten digital songs sold, it claims, have to do with it.

### Music Commercials and Funding

The London-based company began adding TV commercials to their database back in 2010. The app listens to the commercial and then provides users with additional information about the product—a marketing coup. In fact, Shazam has now turned its focus to retail and new media partnerships and is benefitting from competition between Google, Yahoo, and Amazon, each foreseeing a rising

opportunity in audio detection services.

Shazam Entertainment Ltd recently announced it had received an additional \$30m from investors for a post money valuation of \$1bn. This makes it the fifth richest technology startup in the UK. Investors in Shazam are some of the most storied venture capital firms around. They include Institutional Venture Partners (IVP), DN Capital, Kleiner Perkins Caufield & Byers, and Mexican billionaire Carlos Sim, who poured \$40m in July of 2013. Sony Music Entertainment has also bought an equity stake. Executive Chairman Andrew Fisher suggests that Shazam is about audio but not for the exclusive pleasure of music fans: “[t]his funding reflects the substantial progress we have made in delivering a new paradigm for brands and content owners to increase engagement with their audiences whilst magically connecting people to the world around them.”

Initially, the app earned revenue by charging for each song match. It then switched to a cut out of digital-music downloads from services such as Apple's iTunes. Shazam, which estimates that it contributes to a total of \$300m in digital music sales every year, has taken a hit as Spotify, Pandora, Deezer and others push subscriptions models and hurt song downloads. Not that this seems to trouble the holders of Shazam's purse strings. CEO Rich Riley can claim that the company is “intentionally not profitable” and can focus instead on technology development and staff expansion, none of them short-term

revenue generators. Clearly, the strategy is to add value hoping for a later liquidation event, like an IPO. In any case, the trend for revenues is up while losses are down.

### Expanding Horizontally

The latest investment round will go to expand new markets, as well as further develop the software. Shazam has recently moved beyond music recognition and into the world of retail, cinema advertising, radio advertising, and second screen-based services. The rise of “second screen” engagement – smartphone and tablet use while watching TV – has created a unique opportunity for the platform to connect with a lucrative part of the ad industry.

The tech company recently launched a sales platform and digital engagement solution called Resonate, which aims to help TV networks better monetize and engage viewers who use mobile devices while watching a program. The service, which was beta tested during the Billboard Music Awards to drive real time fan voting, provides television network partners with more control over messaging and content delivery, through granting access to Shazam's technology and deep user base. The platform has already established partnerships with AMC, A+E, Dick Clark productions, and FUSE TV.

Shazam has a high hope of tapping into the £200bn worldwide TV advertising market. During the Super Bowl this year, the company helped approximately half of the advertisers there link their ads to exclusive songs by Interscope artists who performed during the halftime show. This tie in with music is unheard of.

Shazam has created a new avenue for brands to connect with wider audiences, possibly making the value of music rise, not fall, in proportion to the value of spectator sports and mass media. And while technology has become a means for artists and fans to get closer, it has devalued recorded music. Fortunately, the promise of music subscriptions is growing at a time when marketers are finding new ways of bringing commercial brands to the attention of the end listener. Here, Shazam may be in a class of its own. And its repercussions for the future of the music industry can hardly be doubted while its infusions of cash continue to grow. <sup>[MB]</sup>



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## BUSINESS ARTICLES

### A Note on Deezer

By Felipe Gonzalez and Peter Alhadeff

French, web-based streaming service Deezer, which has yet to officially launch in the U.S., has been vamping up its efforts here for the past couple years, amidst a rapidly growing international user-base. Currently, Deezer is available in more than 180 countries, with approximately 16M monthly active users and 6M paying subscribers. This is half of Spotify's premium user base, quite a showing.

In September, Deezer launched its high-resolution audio service Deezer Elite in partnership with U.S. audio equipment company Sonos, which offers an on-demand music library of over 35 million songs<sup>1</sup>. The move comes at a time when streaming companies are increasingly turning to niche opportunities within the high definition marketplace.

#### Deezer in France

Deezer was initially launched in France in 2008. CD sales still rule in France and physical product predominates over digital. But streaming, along with other digital music platforms, is quickly closing the gap mainly because of Deezer and Spotify. In 2014, revenues from digital music grew by 6%, and streaming, both ad-supported and subscription-based, increased by more than 30%. Physical revenue fell by 11.5%<sup>2</sup>.

Deezer has had the advantage because French content has seen an increase in general sales in 2013 and the beginning of 2014 and part of this boost has carried on into streaming. Deezer has benefitted both on the demand and the supply side, growing the market more than Spotify.

On the demand side, the French spend significantly more on domestically produced creative works than on foreign works. Broadcast musical works are subject to quota rules whereby a minimum percentage of the songs on radio and television must be in the French language (France has its own Ministry of Culture). Deezer has also relied heavily on partnerships and acquisitions to enable a higher degree of local market penetration: it signed with TV talent show *Nouvelle Star* and offered discounted 1-month subscriptions to the young audience of the show, the perfect demographic for streaming (Deezer also obtained participation in the show's social media voting system, allowing quick access to viewers).

On the supply side, the French music industry has been subsidized by a change

in the tax code made by President François Hollande: a 1% levy on smartphone and tablet sales that hurts Apple, Google, and Amazon. €86M euros (\$97M) have been raised so far.<sup>3</sup> Tech companies have been asked to support local musicians, writers, film directors, photographers, and painters, which increases Deezer's engagement in music.

#### Deezer in the U.S.

For the U.S., it acquired Muve Music, the music division of Cricket, a mobile operator and subsidiary of AT&T. Muve offers a wide range of audio services, including radio, podcasts, and music downloads, and functions as a subscription based download store like Google Play. Deezer has now shut down Muve and migrated its libraries and playlists to its servers.

Deezer is expected to offer its mobile-targeted service for \$6.99 per month, a better price point than Spotify's \$9.99. Billboard's Andrew Flanagan writes that the intention is to segment the U.S. streaming market: Deezer Elite for high-end listeners and Deezer for Cricket for lower income listeners. Just adding Muve's 2 million users to the as yet unaccounted subscribers of Deezer Elite would put the French service in second place in the U.S. after Spotify, currently with three times as many listeners.<sup>4</sup>

#### Deezer and Spotify

A Swedish and a French company are now at the forefront of music streaming in the U.S. They both offer access to music rather than ownership. Moreover, the new distribution model they represent is subscription based, as if music were a utility to be paid in monthly installments. We are witnessing, in effect, a new European invasion, but this time it is an invasion of the means of music consumption.

This begs the question as to why the U.S. could not adjust earlier than Europe. Part of it has to do with an inherent egalitarianism in European culture, ultimately the legacy of two world wars in European soil and the devastation that led to welfare plans and more tax appropriation for the public good. Access to music was likely seen by Swedish and French entrepreneurs as a concept that was on a par with ownership, and it may have taken the U.S. labels and even Apple a while to appreciate this. In any case, they were already highly

invested in selling music piecemeal and by the time they realized that circumstances had changed, it was too late. Finally, in a continent where taxpayer money is used to pay for broadcast media to a much greater extent than it is in the U.S., the bulk financing of music purchases with subscriptions may not have been perceived as daunting.

The U.S. labels, of course, are not powerless. Initially, they reacted to music streaming by buying approximately a 10% share in Spotify, which could now serve them well. They own the music masters that Deezer will play, and could hold the French service hostage to expensive licenses. Deezer's final 'establishment cost' in the U.S. might not come cheap. **[MB]**

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## Internship Woes (cont.)

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particular interns, it has made breaking into the industry even more difficult. Some companies, like Condé Nast have discontinued all intern programs, while others, like the New York Times, are now paying all interns minimum wage.

The recent influx of intern cases has deterred many leading companies from using unpaid interns for fear of litigation. Some companies that can afford to pay what were initially unpaid internship positions now do so, but because many companies completely stopped their internship programs, students and those looking to break into the industry are facing new obstacles.

### Conclusion

The importance of an internship in gaining valuable experience and connections in the industry is not in doubt. Underemployment amongst recent graduates was reported at 40% in the aftermath of the recession,<sup>5</sup> so a healthy internship system is crucial for both the employer gaining new staff, as well as those looking for job oppor-

tunities.

In fairness, the problem is a complicated one. Colleges are taking on more students and marketing their industry connections as a source of employment. Experiential learning, including out of campus offerings in business settings, are also a growing segment of the curriculum. Both play into the hands of business, and business plays its hand as it can. With surplus labor around and the fear of litigation, retrenchment by business is natural. Finally, when the Courts are asked to intervene, they will likely err on the side of providing protective safeguards for labor—which makes experiential learning harder to get. **MBJ**

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## 2014 (cont.)

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111 festival stages. Roughly 75% of people attending these events, and blogging about them, are between the ages of 17 to 34.

### 2015

2014 may be quickly fading in the rear view mirror. In 2015, music consumption will continue to move from sales to streaming, and a higher role for the album in the future of streaming may be less important to the business if music subscriptions continue to pick up. Deezer is finally making its way to the U.S., while YouTube will be releasing their Music Key streaming service. All of this will make for a crowded streaming space and will challenge the dominance of Spotify. Further, in the wake of the Copyright Office's report on the current state of music licensing, called "Copyright and the Music Marketplace", it seems possible that 2015 could be a watershed year for American copyright law, with far reaching implications for the business. **MBJ**