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Apple Music's Debut

By John Lahr

Apple revolutionized the music industry with the launch of the iPod and iTunes in 2003, when it became the first company to monetize music successfully for the labels after Napster's underhanded challenge in 2001. Since then the landscape has shifted away from downloads and given rise to interactive streaming services such as Spotify, Deezer, and Rdio. Apple's response, since June 30th, is Apple Music, a new and integrated package of music offerings developed with Jimmy Iovine, Dr. Dre, and Trent Reznor of Beats Music, which Apple acquired recently.

Features and functionality

A short description of the service follows, and we note some differences with existing music delivery platforms.

The first is integration with Siri, Apple's voice search assistance system. Siri can play a song by name or find a fit for a song given some criteria. Eddie Cue, Apple's Senior VP of Software Development, demonstrated this last week by (i) calling for a playlist of the top ten hits in the genre Alternative, (ii) asking for a song from the "Selma" soundtrack, and (iii) requesting the top hit in May 1982 (Joan Jett & the Blackheart's I Love Rock 'n' Roll) . The user can play music hands-free, which is good, and likely safer, for workouts and driving. Voice activated music playing is not yet a part of Spotify's platform.

Apple is offering standard Internet radio, but unlike Pandora, humans will curate its playlists, not algorithms. And it seems that Apple's catalog of songs will be much larger than Pandora's. It also appears that Apple is not facing the same restrictions that Pandora did in Europe, where Pandora is not yet licensed for webcasts. This could be because the package of music purchased from the labels was for the more expensive interactive streams and Apple could negotiate better terms for non-interactive streams everywhere. It could be a death knell for Pandora's global ambitions. Europe is anyway a big target market for Apple, not least because it is the home base of streaming rivals Spotify (a Swedish company) and Deezer (a French company). Apple's efforts in Europe led to the Cupertino giant recruiting former BBC celebrity DJ Zane Lowe for a leadership position. Apple Music will be broadcasting as terrestrial radio station too in a regular and personable 24-hour format without ads. The radio station, Beats 1, will be hosted by a variety of DJ's in Los Angeles, New York, and London.

Apple Music also comes with a sophisticated recommendation engine developed with Beats Music, and bolstered by human curators. According to Iovine, "[the curators]

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Mission Statement

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

Inside This Issue

Editor's Note

Roughly a month ago Apple launched their highly anticipated streaming service, Apple Music, and in this, our summer edition, the cover piece explores the tech giant's dealings with the indies and Taylor Swift, competition in the streaming market, and more. While Apple Music appears to have had a successful launch, it is unlikely that their subscriber base rivals that of incumbent streaming leader Spotify. The Swedish company holds a significant lead over its numerous competitors, but without continued innovation they could very well see their advantage fade.

In the digital era, the music industry has become increasingly broad, and often rather convoluted. In such an industry the need for a high degree of transparency is obvious, but despite the need opacity has by and large remained the norm. Among the proposed ways to begin creating the necessary transparency is a database of music rights ownership information, but numerous failed attempts to create one, including the Global Repertoire Database initiative, have left many skeptical.

In the music realm the warmer months of the year have become known as festival season due to the proliferation of the multi-day, generally outdoor events. Festivals provide incredible opportunities for artists, fans, promoters, and a whole slew of brands, and will be seeing record attendance and profits this year. While it isn't quite as exciting as a festival, with its location on the French Riviera, it can hardly be said that attendees of music business conference MIDEM are suffering. However, despite the picturesque location, the one time leader in music industry conferences has seen a declining trend in attendance.

Neil Young made waves last year with the massively successful crowdfunding campaign for his high fidelity music device Pono, but since then there have been many questions raised about the necessity and viability of the product. Finally, this issue contains the second and final installment in the performance rights exposé by attorney Todd Brabec, this time looking at the limited performance right in sound recordings.

This marks my final issue as the Music Business Journal's editor, and I'd like to thank the entire team for their hard work over the last year. It has helped make my experience with the MBJ truly tremendous, and I wish them the very best of luck with future editions. To our readers, thank you as always for your continued support.

Sincerely,

Griffin Davis
Editor-In-Chief

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are going to help you with the most difficult question in music: what song comes next?" It is not clear, though, how much effort is involved here, for it would seem a herculean task to work one-on-one with users. Tidal, the new online streaming service that debuted a few months ago is also in the business of personable advice, but not Spotify, Deezer, or Pandora.

Apple Music intends to build upon the direct user-to-artist connection in a way that few other services do. PledgeMusic, Kickstarter, or Indiegogo music fans are becoming more involved with artists already, and voting with their money pledges. Apple Music is offering more communication, rather than creating a microfunding service. It is still very much in its infancy, but it would allows artists to release content direct to fans who can only access it after they have subscribed to the artist via Apple Connect. Such special releases may include lyrics to new songs, exclusive performance videos, behind the scenes content, and even original recorded material. Spotify, incidentally, is already using social media to connect fans successfully with each other and their artists, relying on a better proven user-to-user model (see the article "Spotify's Clout" in this issue of The MBJ).

Regarding the backwards compatibility of Apple Music, all of the songs a user has purchased on iTunes will still be saved onto their device or can be stored in iCloud. Music that is available for download but has not been licensed for streaming, such as The Beatles catalog, can be incorporated into playlists once purchased. Songs and playlists from the streaming service can also be downloaded from mobile devices for offline listening. The approximately 300,000 subscribers of Beats Music that Apple acquired last year will have the opportunity to transfer their existing playlists over to Apple Music, at which point their subscription to Beats will be canceled.

Finally, Apple Music will be available on the Android marketplace starting in the fall. However, there will be an additional charge for access to the Beats 1 radio, as well as for some features of Connect that iPhone users will receive for free. Quality wireless playback is also featured, and will be perfected at the year's end, through an arrangement with Sonos, a Santa Barbara audio company. Tidal, but not Spotify or Pandora, is also vying for the hi-fi streaming market.

Lowering the Apple Tax

One of the most widely touted features of Apple Music is the larger share of revenue the service will pay out to artists. Apple and iTunes set the standard for digital licensing with the licensing agreement between Apple and the record labels in the early millennium. The so called "Apple Tax" gave the technology giant a 30% share of each 99 cent download with the rest of the revenue going to the record label (who then paid the artist a royalty of between 10 and 20 percent of the remainder, provided the artist broke even).

However, and contrary to what is now generally asserted, this was not an original deal structure pioneered by Steve Jobs. Rather, the original agreement between the labels and iTunes was the extension of the existing revenue model in the physical world, where distribution costs were worth 30% of the value of an album or single. As each major owned its distribution company, in the world of physical

sales that 30% was paid in-house; i.e. back to the label itself minus costs. When the labels capitulated all distribution in the digital space to Apple, Apple was paid in the same proportion that the labels had paid themselves. To the labels, it was a business model they understood and it made sense, for they could not possibly be expected to know how to sell effectively recorded music online (earlier, they had tried with MusicNet and PressPlay and failed).

Apple is now improving on this 70-30 deal, and, according to iTunes Content Vice President Robert Kondrk, it is agreeing to pay 71.5% of gross revenues in the United States, and an average of 73% in foreign markets.[2] Originally, Apple was not going to pay any monies to the record labels for the three-month trial period it was offering to entice users to try the service. This would have meant no artist royalty earnings, and megastar Taylor Swift openly criticized Apple in a well-publicized letter. It set the right tone for artists, their labels, and also for Apple. Eddie Cue, Apple's Senior VP, then reversed course. This concession to Swift, and the increase in the share paid out to the labels, suggests that Apple Music has inaugurated a friendlier environment between artists and the technology companies that use their business.

The advent of Apple Music, therefore, could put pressure on competitors such as Spotify and Deezer to raise the percentages they pay out too. Yet it must be remembered that, even with these changes, Apple's new streaming distribution deal is almost identical to the one that pervaded the traditional music business model before the Internet era. In a sense, not much has changed in distribution, so it is worth asking if artists are barking at the wrong tree when they complain about the paltry revenues they collect from streaming sites.

If labels no longer bear the cost of manufacturing and distributing a physical product, nor does breakage during transportation affect profit margins, why not shift the burden of complaint to the labels? Moreover, as reported by London's Financial Times, the decreasing barriers to entry into the market through channels such as YouTube have lowered Artist and Repertoire costs by a fifth.[3] Therefore the best chance at seeing a significant rise in the amount of money talent pockets from streaming would be for the artists to stop pressuring streaming services, and instead seek more fairness and transparency from the labels themselves.

The Apple Music Threat

The success of Apple Music is ultimately dependent on whether or not it can generate a large base of users to support it. Although it is a late entrant into the market, and lags behind Spotify, with its twenty million paid users and forty-five million free users, it does have competitive advantages. Its treasure chest of free cash is worth $200 billion and must be a concern to potential rivals. While Spotify is well capitalized and recently raised $500 million in response largely to the Apple threat, it is still absorbing substantial losses. In 2014 these amounted to under $200 million.[4] Apple's decision to increase the percentage of revenue it pays to artists, while only marginally beneficial to the artists, could cause the labels who control the rights to force Spotify to match Apple's rate or risk losing key artists from their catalog. That would make the cost of doing business harder for Spotify, who unlike Apple is

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Spotify's Clout

By Spencer Ritchie

In the last four months three new streaming platforms were launched: Apple Music, Tidal, and Google Play Music. Others, among them YouTube, Deezer, and Rdio, still compete for market share. The Freemium camp, with Spotify, Google Play Music, and Pandora, collects revenue from advertising & subscriptions. The Premium camp, with Apple Music and Tidal, produces receipts exclusively from paid memberships. Spotify is the very embodiment of Freemium, and the release of Apple Music will undoubtedly be a big challenge—coming, as it does, from the largest company in the world, with a remarkable market cap of more than $700 billion.

Thus, if Spotify is to remain an industry leader, it must continue to innovate, excite and connect with users better. Its strength lies in free streaming, content based marketing, sponsored sessions, and video takeovers. Social media integration will have to be at least as good as Apple Music and iTunes, while its discovery and recommendation feature must grow to the level of their own outstanding user-to-user curated content. But Spotify will also need to more authentically replicate the experience of owning a physical music collection rather than merely treating its music as accompaniment to its users' daily activities.

Finances and Potential

The bar has become higher. Having recently raised over $500 million in venture funding, Spotify is currently worth $8.5 billion and is one of the most valuable European startups. There seems to be no trepidation among its investors, who are voting with their pockets, presumably on the belief that the company will continue to expand its subscriber base. It already boasts fifty five million free users and twenty million paid users and, in anticipation of Apple Music's launch, it has introduced new features, including video, more playlist curation, and better user-targeted ads. 10 per cent of Spotify's revenues come from ads and 90 per cent is from subscriptions, and the majority of its users do not pay for the service. This should differentiate it from Apple because, except for the free trial period of three months, Apple will eschew Freemium altogether. Spotify investors feel they can chip away too at the much larger terrestrial radio market. Terrestrial radio's business model has depended on advertisements to sponsor music, news, and talk since its inception, almost a century ago. It may now afford Spotify a tremendous opportunity, i.e. a slice of the pie of the $46 billion it generates in revenue per year, which is substantially more than the current $3.3 billion that music streaming brings.

There have been other developments too. In May, Spotify released its Running App. The app monitors a user's running pace and musical tastes, and provides a personalized soundtrack that matches the beats per minute of the exercise to a song. This application is only one of Spotify's latest moves to target music and brand communication to consumers based on activities other than just listening to music. The service claims that reaching out to users as they commute, workout, work, and relax over the weekend,

keeps their base engaged over more than 148 minutes a day across all desktop and mobile interfaces. If confirmed, this statistic would more than double user time spent on music in the pre-web era of the early to late 'nineties.

Spotify also appears to do well with advertising. It segments markets, identifies users as birds of the same feather, and its ads are less intrusive than similar online radio ads and Pandora. Video takeovers, sponsored sessions and market to user interactions are also gentler on the user experience, while the recent introduction of playlist targeting has given brands the opportunity to pinpoint and design their messages based on the moods and activities self-identified by its users in more than a billion and a half playlists. In fact, Spotify founder and CEO Daniel Ek has emphasized that the future of Spotify lies in content based marketing.

Apple Music

For Spotify, Apple Music will now be the big elephant in the room. Upon installation of IOS 8.4 and/or the latest version of iTunes, Apple users automatically shift to Apple Music. A library of over thirty million tracks is seamlessly integrated into their iTunes library with a comprehensive music interface that enables curated playlists and access to Beats One radio. Yet, as mentioned above, Spotify investors have not been cowed by this event, and may even believe that Apple's only truly competitive advantages is coming pre-installed on mobile and desktop devices of their making.

An area of concern may be the increased payment of Apple to content holders that Spotify may not currently match. Out of every subscription dollar made, come September Apple will pay on average 73 cents to record labels and their publishers (for use of their master recordings and the requisite mechanicals and sound recording performance rights in Europe). This is 3 cents more than Spotify and will no doubt please everyone down the supply line of recorded music, especially talent. In the PR war with artists, Apple is right now doing better than Spotify who is unlikely to relax its payment terms when it is in the red: last year, it again failed to break even and sustained losses of about $200 million. Apple, of course, is less exposed to recorded music than Spotify. According to analysts, Apple Music's revenue has been estimated to amount to less than one percent of Apple's gross revenue in 2016, so recorded music might well become Apple's loss leader for its iPhone sales and other devices.

Still, economics aside, Apple will have to prove itself with Apple Music. Right now, Spotify has the advantage in user created content. As mentioned, it runs over 1.5 billion playlists, some of them professionally curated. And marketers, for instance, salivate at the knowledge that there are currently nearly half a million playlists containing the word 'barbeque'.

However, to remain atop the streaming world, Spotify will have to leverage this user created content into a stronger recommendation engine. Early downloads of Apple Music suggest Apple is doing well here. Still, cannibalizing Spotify users by Apple cannot be seamless for, upon switching away from Spotify, those users will automatically lose their playlists (speaking well for Apple, though, is the fact that the large number of Apple users with playlists on iTunes account can add tracks from the streaming platform to their already existent playlists as if they were paid iTunes downloads).

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Spotify's Clout (cont.)

Dreaming On

An element currently lacking in the world of music streaming that Spotify could capitalize on is providing a more comprehensive streaming platform for the music lover, not just the casual fan. The music itself could be put on a higher pedestal without detracting from Spotify's focus on lifestyle. Ideally, this would also encompass the supply of audio accessories such as the album artwork, track credits, lyrics, album booklets, behind the scenes access, and other illustrations of the process of creation. Companies like PledgeMusic, with a specialized focus on artists' so-called 'megafans' are making their mark already. Apple Music itself seems to acknowledge that the connection between the user and the artist is paramount; its new service, Connect, seems intent on paving a better user-artist highway. Spotify, on the other hand, continues to improve the user-to-user platform.

But it would be hard to downplay Spotify's current focus. The intersection between music and social media, for instance, is critical in business today. Spotify currently offers a far more social way to stream music than Apple does. Users have the ability to collaborate on playlists across Spotify's interface, but not in Apple Music. Additionally, following friends, musicians and tastemakers on Spotify is far easier. Spotify users can easily see what one another listen to, either through Spotify itself or Facebook and other social media websites. The only truly social aspect of Apple Music is its Connect feature, which (currently) weakly connects artists to fans. Following one's favorite artists on Facebook and Twitter is still more productive. There is no user-to-user social network in Apple Music.

So, in spite of all the noise about Apple Music, it is not unreasonable to expect an uptake in Spotify usage at the end of Apple's free trial period. Apple may not care much for the economic success of music subscriptions per se, but its presence, as a reliable seller, will surely consolidate the market for the bulk buying of recorded music. It may inadvertently stoke demand as well for Spotify, its famous Freemium rival. This would definitely move purchases away from the single song system born with iTunes. Spotify, of course, will need to convert free users into paying subscribers at a higher rate than it is doing now. But for artists and their labels, big and small, these should be welcome developments. MBJ

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entirely dependent on streaming revenues.

Apple's second advantage is that Apple Music will come installed on all 63 million iPhones worldwide. The number is also more than likely going to increase in the fall when the iPhone 6S is released. Apple has reportedly bet big on the 6S and is ramping up production to 90 million units.[5] While only a fraction of iPhone users will likely become paid subscribers, the ease of signing up through an already installed app that takes its payment through a user's Apple account is undeniable.

Recapturing the iPod?

Where Apple Music fits into the Apple ecosystem is much different from the space the iPod occupied when it launched with the iTunes in 2003. Music is a much less integral part of Apple's business model, which is now based on the sale of smartphones as well as computer hardware and accessories. But the coolness factor of Apple's rebirth in the new millennium has forever been tied with music, and the Apple brand is now making itself even more accountable for the success of its music strategy. Part of it is survival: the music trade is the bearer of things to come in digital markets, the canary of a modern coalmine where intellectual property's value is constantly reappraised. Apple does not apparently believe in using free music to promote sales beyond the trial period that ends in September and the model will convert to a paid-only system.

Apple, in short, is becoming a key chaperone of the music subscription economy, and in so doing is keeping alive the promise of much higher overall global returns for recorded music. It will also have helped right the wrong of single song sales that iTunes had per force promoted in order to sell iPods. Musicians everywhere should rejoice. MBJ

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Transparency in the Music Industry

By Griffin Davis

Of the issues that have bedeviled the music industry, perhaps the most insidious has been that of transparency, or, more accurately, a lack thereof. In fact there really has not ever been a time when the modern music industry, meaning the industry that developed around the distribution and use of sound recordings, has been truly transparent. Stories abound of artists receiving Cadillacs and other non-monetary payments in lieu of regular royalty checks, and there is often talk of the "mailbox money" that songwriters received without much of an explanation about the exact amount. The music industry could have done better during much of the twentieth century, and there have been plenty of cases documenting the exploitation of talent. Success did come, nevertheless, for there was a good proportion of artists and songwriters whose works commanded commercial value. Even when payments felt short of what was owed, earnings beyond a livable wage were possible.

Today, for better or worse, the music industry is at a different place. The record and publishing industries are not the gold mines they once were, and digital technologies have made it possible for any musician with an internet connection to reach a global audience, dramatically increasing the level of competition for listeners' time. This digital music industry demands a higher level of transparency because exposure is key and royalties are the result of the accrual of micropayments. If only it were so. In a recent report, *Fair Music: Transparency and Payment Flows in the Music Industry*, the Rethink Music project at Berklee College of Music has examined the topic and laid out a series of steps to address these issues. (Publisher's Note: The report was published as we went to press, and the MBJ's Editor was involved; we will cover the report in full in our next edition).

There are three categories of transparency in the music industry: structural transparency, repertoire transparency, and rate and revenue transparency.

Structural Transparency

The first major category of transparency is structural transparency, which has been defined as "how different services function and how they compensate artists."[1] To better illustrate what structural transparency is we can look at digital aggregator services like CDBaby and TuneCore. While the exact offerings of aggregators differ somewhat between companies, and sometimes between different membership levels within a given aggregator, these services basically function as an intermediary between independent artists, or those whose record labels do not offer distribution services, and digital music distribution platforms, including streaming services like Spotify and Google Play, and digital sales hubs like the iTunes Store, that would not otherwise be accessible to those artists.

The services, in exchange for compensation through either a flat fee or a share of revenue, use their existing relationships with the services to get artists' music on the service and then distribute any revenue earned on a given platform to the artist. Of course the degree of structural transparency varies amongst aggregators. However, this fairly straightforward business model is in theory, and often in practice, structurally transparent.

Another class of services that has been cited as an example of structural transparency are the performing rights organizations that function under government control, either through statute or Department of Justice antitrust consent decree, which currently includes every PRO in the United States other than SESAC and Irving Azoff's Global Music Rights. These PROs are limited in terms of what services they can provide to members and in how money flows through them, making them inherently structurally transparent. Though the transparency is the result of mandate, the effect is nonetheless significant.

While deficiency in structural transparency does not pose nearly the same level of threat as lacking in the other two areas of transparency, it does still create some confusion, particularly for independent artists and songwriters. Of particular concern is the array of services dedicated to providing independent music creators with tools to assist with a wide range of promotional activities, such as brand partnerships and social media engagement, among others, which often fail to convey comprehensible what exactly the service they offer is.

In fact aggregator startups that seek to expand their offerings beyond the basic model outlined above often poorly define what their additional services do, and what value they could provide to artists. Of course the seemingly endless repackaging of services to find the ideal combination is part and parcel of a developing market, particularly a digital one, but individual companies could certainly do a better job of defining the substance of their offerings, rather than relying on flash.

Rate and Revenue Transparency

Rate and revenue transparency is defined as "how the money is split, who gets paid what and why."[2] In the era of micropayments that can come from up to 700,000 different revenue sources,[3] it is critical. There are quite a few issues that can crop up within the realm of revenue transparency, but the most significant are those regarding royalty rate setting, and how money flows back to artists and songwriters.

Royalty rate setting is always accomplished through either direct negotiation between the rights holder (label, publisher, PRO) and the distribution service (Spotify, iTunes, Pandora, etc.), or, in the cases where such a framework exists, through a government rate setting procedure, both of which present transparency issues.

Government rate setting procedures exist to assist licensing of performance rights, and to a lesser extent mechanical rights, and are non-transparent primarily due to the fact that they are highly convoluted. For performance rights alone there exist three separate legal entities charged with setting rates for a given PRO, namely ASCAP and BMI rate courts, and the Copyright Royalty Board for SoundExchange, each of which follows its own unique rate setting procedures, and often must do so for each service looking to license the catalog represented by its assigned PRO.

Additionally, once the rates are set, they are generally not put forth in a way that

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can be understood by most artists, and little is done to make them more comprehensible. While the lack of clarity for the layman is somewhat inherent to the complicated process of assigning a rate, the overcomplicated system by which they are set can certainly be addressed. In Copyright and the Music Marketplace, the culminating report of its comprehensive study on music licensing, the Copyright Office suggested a streamlined process in which all performance licensing be done through the CRB and be based on a single standard that relies heavily upon the perceived fair market value of a work. While the Copyright Office itself does not have the authority to make such a change, its recommendation will certainly carry great weight as Congress moves through the process of overhauling the Copyright Act.

Transparency issues in directly negotiated deals come not from an overly complex rate setting structure, but from true opacity in the process. The deals that best highlight this are those between record labels, particularly the three majors, and on-demand streaming services like Spotify and Deezer.

To begin with, these deals are almost always protected by nondisclosure agreements, making it impossible to discover their exact terms without the contract being leaked. Recently such a leak occurred, with the full contents of the contract between Sony Music and Spotify appearing on The Verge.[4] Among other things, the contract confirmed the prevalence of compensation given to the labels that is outside the royalties derived from plays of songs in the labels' catalog, which include discounted advertising space, some of which can be resold at a profit, and large up front advances. While the advertising space is difficult to address, and is presumably used to promote Sony artists (and then, in all likelihood, only their very top tier), the money earned from the sale of unused advertising space, along with the advances, and potential future profit from the equity stakes is a much more dicey area. Because this money is not directly tied to the playing of an artist's song, the provisions of most record deals do not stipulate that it must be paid back to the artist. Of course in the wake of this leak all of the majors insisted that they have paid out money from advances to artists, but the subject remains clouded, as does the split of potential future income from equity stakes in Spotify and other services.

Repertoire Transparency

Repertoire transparency deals with the accuracy and availability of information regarding who owns the rights to works in the music industry. One would assume that in an age in which classified government documents can be accessed with great ease on the internet that finding out who owns a musical work or sound recording should be easy. In this case, however, one would fall victim to the old adage about assumptions, as in many cases finding this information is difficult or even impossible.

There are a number of reasons for the inaccessibility of this information, one of which is the frequent sale of individual works and entire catalogs and the infrequent recordation of these sales. Further, in recent years there has been a proliferation, particularly in pop music, of songs with many writers, each of whom generally owns a share of the work, making it difficult for potential licensees without great knowledge of music licensing to determine whose permission they need for a certain use. The Future of Music Coalition illustrated this point using a hit song by Flo Rida that had 13 writers who were represented by a total of 17 publishers. Depending on the nationality of the 13 writers, there could have also been as many as 13 different PROs for a single work.[5]

While the two issues mentioned above have certainly exacerbated problems with repertoire transparency, the main issue is the absence of a single comprehensive and accurate database of music rights ownership information. Such a database would at the very least state what entity or entities own a given work and provide their contact information for licensing purposes. The database could however be much more, potentially serving as a licensing clearinghouse itself and perhaps as a royalty payment terminal, which could help address some of the issues with revenue transparency. There have been a number of attempts to create a global database of music rights, most recently the massive Global Repertoire Database effort, but all have ended in failure. This has left us with a series of independent databases controlled by PROs, labels, publishers, and governments. The information there is not always up to date, it is organized *sui generis* manner, and at best covers a small fraction of the global music market. This creates a terribly inefficient music-licensing regime, particularly when it comes to works that are not hits.

Moving Forward

Transparency is by no means the only challenge the music industry faces in the 21st century. In the digital age traditional distribution models have taken major hits, new distribution models are a long way from being fully developed, and proliferation of artists has made it all the more challenging to be heard. That being said, creating transparency is the first task the industry should face. Addressing other problems and ultimately building a healthy sustainable industry requires a solid platform, the development of which demands tremendous clarity within the industry. While the music business remains at its current level of opacity, building such a platform will be nearly impossible. MBJ

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Law Section

The Performance Right Juncture: II

By Todd Brabec

Todd Brabec is author with Jeff Brabec of the bestseller Music, Money, and Success (New York, 7th Edition). The piece was originally published in Entertainment and Sports Lawyer, a publication of the American Bar Association, Vol.31, No.4, Winter 2015, pp.1 and pp. 37-42. The first part of this article, published by the MBJ in May 2015, dealt with the performance right in sound compositions; http://www.thembj.org/2015/04/the-performance-right-juncture-i/

In Sound Recordings

Prior to 1972, no federal copyright protection existed for sound recordings. Congress rectified that situation by extending copyright to any recordings that were fixed on or after February 15, 1972. The owners of the copyright therefore had the exclusive right to reproduce and distribute phonorecords embodying the sound recording, including by means of digital transmission, and to authorize others to do the same. Pre-1972 recordings remained subject to the protection afforded by state laws.

As to the performance right aspect of sound recordings, the right that was enjoyed by musical compositions was non-existent for records. No performance royalty existed in any medium for sound recordings. That changed in 1995 with the passage of the Digital Performance Right in Sound Recording Act (DPRSRA), which provided for a limited right when sound recordings are publicly performed "by means of a digital audio transmission."[1] The 1998 Digital Millennium Copyright Act (DMCA) included webcasting as a category of performance applicable to this limited performance right.[2] This new right applied specifically to satellite radio (e.g., SiriusXM), Internet radio (e.g., Pandora), and cable television music channels (e.g., Music Choice).[3] Broadcast radio continued to be exempt.

It is important to note that the statutory license applies only to non interactive services. The right to perform copyrighted sound recordings for on-demand services, i.e., interactive services, remains with the copyright owner, normally the label, and is a negotiated agreement between the label and the music user. These deals have taken many forms, including percentage of gross or net revenue formulas, per performance rates, an equity stake in the business, or a combination of these and other elements.

The rates and terms of the sound recording statutory license are set by the Copyright Royalty Board (CRB), an administrative body created by Congress. SoundExchange, a nonprofit organization, has been designated by the Librarian of Congress and the CRB to be the sole entity to collect, administer, and distribute the royalties from non interactive webcasting, digital cable, and satellite transmissions and satellite audio services. Congress also gave SoundExchange the right to negotiate agreements separate from those set by the CRB through the Webcaster Settlement Acts of 2008 and 2009.[4] Services therefore can choose whether to be licensed under the CRB rates or the SoundExchange negotiated rates.

There are five major sound recording licensing categories, each of which is subject to a separate rate proceeding. The categories are webcasting, satellite radio, preexisting music services, other cable and satellite music providers, and business establishments. An example of one of these proceedings involved SiriusXM satellite radio, which concluded in 2012 and set rates for a five-year period at 9 percent of gross revenue for 2013 increasing to 11 percent in 2017.[5]

Webcasting IV—the proceeding regarding future webcasting rates—commenced in early 2014 and will conclude at the end of 2015 and will set rates for the period 2016-2020.[6] The most recent five-year CRB per-performance statutory webcasting rates were $0.0019 for 2011, $0.0021 for 2012 and 2013, and $0.0023 for 2014 and 2015.[7]

The Webcaster Settlement Acts of 2008 and 2009 allowed SoundExchange to negotiate alternative royalty rates ("pureplay" rates) with certain webcasters. For non subscription services and broadcasters streaming their content on the Internet, the "pureplay" per-performance rate started as $0.00102 for 2011 and increased to $0.0013 in 2014 and $0.0014 in 2015. The rate applicable is the greater of the per-performance rate or 25 percent of U.S. gross revenue. The "pureplay" per-performance rate for subscription services started at $0.0017 in 2011 and increased to $0.0023 and $0.0025, respectively, for 2014 and 2015.[8] No percentage of revenue figures applied to the subscription rate. Under those agreements, webcasters therefore had a choice to be licensed through 2015 either with the CRB rates or the SoundExchange "pureplay" rates.

As to the current Webcasting IV-CRB proceeding, SoundExchange's initial rate proposal for the 2016-2020 period was a "greater of" formula taking into account a per-performance rate and a percentage of the service's revenue. Specifically, the per-performance rate for commercial webcasters would commence at $0.0025 in 2016 with escalations to $0.0029 in 2020. The percentage of revenue would be 55 percent for all five years. Its proposal was based on the fact that webcasting is a vibrant and growing industry, that it has widespread adoption by consumers, and that direct licensing deals between record companies and on-demand services (interactive streaming) were the most similar appropriate benchmarks to use. A review of these deals confirmed that the record companies received a minimum share of 50-60 percent of a service's revenue, with allocations based on each record company's share of total streams.

Music services, on the other hand, argued in their direct case that the industry is not profitable even considering payments under the reduced Webcaster Settlement Act agreements. Pandora, SiriusXM (streaming component), and the broadcasters, through NAB among others, came up with proposals ranging from a royalty of $0.0005 per performance for all five years, to $0.0016 pending study of the direct deals, to a $0.000125 rate similar to the Canadian rate. Pandora supported a "greater of" rate of $0.0010 per performance or 25 percent of revenue.

SoundExchange and Direct Licensing

SoundExchange collected $650 million in 2013 pursuant to the statutory license and distributed $590.4 million to artists and sound recording copyright owners.[9] Collections and distributions for 2014 are projected significantly higher than 2013. Royalty distributions are allocated 50 percent to sound recording copyright owners (many times the label), 45 percent to featured artists, and 2.5 percent each to non featured musicians and non featured vocalists via the Intellectual Property Rights Distribution Fund administered by the American Federation of Musicians and SAG-AFTRA. An additional $6 million was collected from foreign country collection societies that handle the performance right in sound recordings. As to this latter collection, it is limited based on the reciprocal right being administered in each country. As the U.S. sound recording performance right is a very limited one (non interactive streaming primarily), it substantially reduces the amount of royalties coming into the United States for overseas sound recording performances.

Finally, in the case of rights owners wishing to directly license their works to non interactive services and not rely on the statutory license or SoundExchange separately negotiated deals, SoundExchange does offer administration services to both labels as well as artists for those works.

Pre-1972 Sound Recordings

As previously mentioned, sound recordings fixed prior to February 15, 1972, are not subject to copyright, and any rights they do have depend solely on whatever rights are afforded to sound recording owners under state law.

In September 2014, in Flo & Eddie Inc. v. Sirius XM Radio Inc., the U.S. District Court for the Central District of California ruled in a motion for summary judgment that copyright ownership of a sound recording under the California statute includes the right to publicly perform the recording, and that Sirius XM's streaming of the 1960s band the Turtles' pre-1972 recordings without authorization and without paying royalties constituted copyright infringement.[10] In November 2014, the U.S. District Court for the Southern District of New York in Flo & Eddie, Inc. v. Sirius XM Radio, Inc., ruled that Sirius XM had committed copyright infringement and engaged in unfair competition by publicly performing sound recordings owned by Flo & Eddie.[11] These cases and their appeals as well as similar pending cases regarding the same or similar issues need to be watched, as they could have a very significant impact on future sound recording license fees and royalties to labels and artists.

The Performance Right: An Overview

Of the two performance areas under discussion, musical composition rights and sound recording rights, the sound recording side seems much clearer than the composition side. The sound recording performance right, at least for now, is a very limited right (traditional radio, for example, is not included) and has a statutory scheme in place with rates set by either the CRB, by SoundExchange with users, or by direct negotiations between copyright owners and users. Over the past 10 years, this has been, percentage wise, by far the biggest growth area for sound recording copyright owners.

The musical composition performance right, on the other hand, has more questions and unresolved issues in the licensing process than ever before. Not only do you have unresolved rate court cases and issues affecting every aspect of the licensing of music in the "new media" world (not to mention the effect on traditional media licensing) but also the entrance into the field of new types of PRO models (music publishers, business entities, administration services, foreign territory rights management organizations, etc.). This could, depending on your point of view, significantly complicate the existing licensing structure for music users, achieve "willing buyer, willing seller" market rates for the creative community and their representatives, strengthen the arguments for licensing through the traditional PRO model, weaken the current traditional PRO structures, increase license fees and royalties in some areas with reductions in others, initiate an era of PRO selective administration services only, create new writer and music publisher royalty payment formulas, values, compensation plans, guarantee arrangements, royalty advance deals, bonus and "rewards for success" policies, and other financial incentive plans.

In addition, the direct licensing of works by copyright owners, never a major factor in the past, has taken on new significance in not only the online "new media" world of music licensing but also traditional media music licensing practices. Finally, the DO] review of the ASCAP and BMI consent decrees, in effect since 1941, could have a significant effect on the future of music performance licensing, assuming that any changes encompass more than just minor modifications.

The foreign marketplace, responsible for the collection of over $1.5 billion in annual U.S. writer and publisher performance fees, represents an additional area of concern regarding the stability, continuation, and accuracy of "overseas" royalty payments. The issues in this area are more significant for songwriters and composers than music publishers, as many publishers collect their monies directly from foreign societies as members or via subpublishers. For successful songwriters, film and television composers, and writer estates, foreign royalties—for many, easily in excess of 50 percent of their short-term and long-term royalty income—have always flowed through the societies through reciprocal agreements, and any change in those relationships could have a major impact on the ability to license, track, audit, collect, and receive foreign country songwriter and composer royalties. The best advice for the future in all of your deals, negotiations, and contracts is to "prepare for every contingency and possibility"—as they may very well come true. Welcome to the "new world of performance licensing." MBJ

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Business Articles

GRD's Failure

By Klementina Milosic

In the era of the Internet, it is still difficult to obtain information about the ownership and control of musical rights and works. This can make the licensing process of such works time consuming for the licensee, and expensive. It would seem that the availability of a multinational music rights database would reduce transactional costs and generate much more business for the industry. But the challenge remains and delays bringing the music trade fully into the modern digital age.

Several music rights databases exist on a national level, such as the databases maintained by the U.S. Copyright Office and the PROs. Yet, at the very best, they provide information about a small fragment of the works that exist in the music industry, and can suffer from a number of other issues, including inaccuracy and inaccessibility. Creating an alternative and more comprehensive database was the goal of a group of music industry entities, including a number of PROs, which coalesced around the Global Repertoire Database (GRD) effort.

Earlier attempts were certainly made. Among these was the International Music Joint Venture, which was formed in 2000 by a group of collection societies. The push was started by Dutch PRO Buma/Stemra, which was joined by American society ASCAP, PRS for music (formerly MCPS-PRS Alliance) in the UK, and Canadian SOCAN. According to the IMJV chairman, who also served as CEO of Burma/Stemra, the intent was to use the database to create an efficient and lower cost music copyright administration organization for the digital age. Unfortunately the IMJV initiative ended in failure. Even the World Intellectual Property Organization, recognizing the tremendous value of a rights database, took a stab at creating one with their International Music Registry (IMR) project. The IMR effort, which was launched in 2011, began with great promise, but ultimately the enthusiasm petered and little has been heard of the IMR in the last couple years.

GRD

In that context, EU Commissioner Neelie Kroes started the Global Database Repertoire Working Group (GRD WG) in September of 2008. Kroes hosted several roundtable discussions in which he assembled a group of cross-sector entities to discuss legal, administrative, and technological barriers for the more efficient licensing and distribution of music online. The main objective of the group that resulted from these roundtables was to create a singular, comprehensive, and authoritative ledger of the ownership and control of musical works around the world. A couple of years later, in April 2010, the group issued a request for information to more than eighty organizations to solicit their engagement in the project. The group subsequently issued a request for proposals from the entities involved in July 2010, and, in December of 2010, it issued a set of recommendations. In its recommendations, the group suggested that the GRD should provide access to authoritative, comprehensive, multi-territory information about the ownership and control of the global repertoire of musical works, and that it should be openly available to songwriters, publishers, Collective Rights Management (CRM) organizations, and other potential users.[1]

The GRD WG was initially comprised of a diverse set of organizations that included Universal and EMI Music Publishing, tech companies like Apple, Nokia, and Amazon, and collections societies like PRS for Music, STIM (Sweden) and SACEM (France). Later they were joined by the International Confederation of Societies of Composers and Authors (CISAC), the European Composer and Songwriter Alliance (ECSA), the International Confederation of Music Publishers (ICMP), Omnifone, and Google. The GRD WG recommended the International Copyright Enterprise ("ICE") as a solution provider, and business-consulting firm Deloitte to manage the effort to build the GRD. Over 80 organizations and more than 450 individuals across 6 continents participated in the Deloitte study, all representing publishers, authors, societies, music service providers, consumers, recording artists, managers, record companies, legislative bodies, and information management companies.[2]

Potential Benefits of the GRD

Transparency within the music industry in terms of royalty collection and distribution, as well as lowering the administrative costs associated with that business, are two of the most important reasons for the creation of the GRD WG. Successful creation of the GRD would have enabled the tracking of royalties and guarantee that they are paid to the appropriate parties promptly and fairly. An authoritative, comprehensive, and open multi-territory database would benefit the entire music industry, particularly societies, publishers, authors, and licensees. Societies would have proper and accurate databases to administer, which would facilitate tracking the flow of royalties. Consequently, they would be able to issue invoices and collect and distribute royalties to their constituent publishers and authors promptly. Furthermore, all works owners would be able to register their works only once, with GRD, rather than numerous times in different territories, which can be both time consuming and cause inconsistencies in information. Additionally, the GRD would facilitate licensing processes by allowing licensees to easily identify licensors. This GRD-aided licensing process would be particularly useful to lesser known, but nonetheless commercially appealing, songs, the ownership information for which would have otherwise been difficult or impossible to find. Finally, the GRD would allow organizations to maintain their current systems by giving collection societies and others access to GRD data through their own portal.

Funding of the GRD

According to Deloitte, the funding for the GRD would be comprised of two parts—funds needed for the initial set-up of GRD, and funds needed to cover the annual operating budget. The funding for initial set-up would be supported mostly by collection societies, who were the most significant initiators of the GRD project. Initial costs were anticipated to be approximately €23-32 million,[3] which would be divided amongst the societies according to their size. In addition to initial costs, GRD anticipated additional yearly operating costs of €6.4-11.6 million.[4] The savings that GRD expected to attain were estimated at 0.7-1%[5] of annual global royalty revenue.

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GRD failure

In July of 2014, the attempt to create the GRD was shelved, leaving behind a debt of more than $13.7 million. It was reported that collection societies had begun pulling out, with ASCAP allegedly being the first one to retract from the project and stop funding it. The combined loss of significant funding and information left the GRD unable to move forward. Some sources suggested that the collection societies feared losing revenue from operational costs under a more efficient GRD system. Another reason could be a dispute over control of the global database. If, potentially, there would be a way to fully realize this project, the question would be who would have control over the data and who would have been administering the catalog. The third potential reason for the GRD's failure might be that the presence of collection societies would become redundant if publishers would start to license songs directly, with no intermediaries in between.

There were other factors that could have contributed to the failure of the GRD. Data would be coming into the GRD from a number of different sources, each of which used its own data standards, making it difficult to provide consistent information. Also the technological and legal barriers the group encountered in the EU could be a reason for the GRD's failure. While the American technological system is well developed, Europe is still facing some challenges to set appropriate databases and legal solutions. Moreover, the European revenue collecting system is far more complex than the U.S's. There are only three performance rights organizations present in the USA market, while each European country has its own performance rights organization--28 collection societies within 28 territories. Also, collection societies in European countries have a slightly different role than U.S. collection societies. The latter only manage public performance rights, whereas European collection societies manage both public performance rights as well as mechanical rights.

Next steps

While the GRD was ultimately a failure, there remains a fairly wide consensus in the music business that a better system of rights ownership information management is crucial to the developing digital music industry, and, despite the failures of previous attempts, a global database still seems like the best system to pursue. There are a number of groups that have already taken up the torch of this cause, many of which are focusing on ways to bring together existing databases through uniform data standards, but few have made any significant impact at this point. With this in mind, it seems that it may be time for a substantial reevaluation of how a global database could be created, and whom to involve in the effort. MBJ

Editor's Note: The author was involved in the production of Fair Music: Transparency and Payment Flows in the Music Industry, *a Rethink Music project at Berklee College of Music that addresses some of the issues in this article. The report was published as we went to press; we will cover the report in full in our next edition.*

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Business Articles

The Boom in Outdoor Festivals

By Zoe Mitchell

Over 32 million people in the US attend at least one music festival a year and more often than not travel 600 miles on average to get there. While the recorded music industry is in turmoil, experiencing live music is at a premium and sellers like Live Nation or SFX Entertainment Live are expanding into new sub genres like Electronic Dance Music (EDM) while brands like Anheuser-Busch, PepsiCo, Coca-Cola, Heineken, and Miller Coors, ranked from the most to the least active, recognize the medium for its branding potential among the millennial generation.

Some of the bigger festivals in the U.S. by 2014 attendance were Coachella, in Indio, California, with 579,000; Austin City Limits, in Austin, Texas, 450,000; EDC Las Vegas 400,000; Lollapalooza, in Chicago, 325,000; and Ultra in Miami with 165,000. 'Social' here means putting boots on the field and few events anywhere can attract such massive audiences. Festival fans are evenly distributed: the age group 18-24, represents 24% of attendances; 25-34, 22%, and 35-49, 28%; the 50+ group, at 15%, tails off some. The medium has its mega fans too, with one in ten attending three or more festivals a year and one in five attending two. Two-thirds, though, will only make it to one festival, and for good reason: last year, passes at Coachella started at $375, early bird passes at Austin at $225 (artists included Foo Fighters, Drake, and the Strokes), and at Lollapalooza early bird tickets paid a minimum of $250 (artists included Paul McCartney, Metallica, and Sam Smith).

Coachella and Lollapalooza, two summer festivals, are among the highest top grossing festivals in the world. Sitting on a lawn chair to listen to Outkast perform 100 yards away may not be as rare an event these days as buying a $9.99 digital album. Last year Coachella grossed over $78.3 million dollars, breaking the Billboard Boxscore record for a third year in a row. Coachella's ticket prices cover a wide range. The general admission price of $375 does not include travel, hotel or food expenses, but prices can go up to $7,000 for a Safari Tent experience with access to VIP areas, a tent with A/C and the option of multiple queen sized beds. Price elasticity of demand, and revenue maximization techniques, do well selling concert and festival tickets (the recorded music industry, instead, came late to variable pricing and then only scratched the surface with Apple's three-tier price system for iTunes).

Brands and Headliners

A festival generates revenue through ticket sales and sponsorships. Wallets that have long hibernated suddenly spring open up in the summer. The weather helps, and listeners are looking for more than a play button. They want to experience the freedom of the outdoors and a face-to-face community with less regard for electronic devices.

Brands try to latch on and connect with the fans. As noted above, the top five most active sponsors of music festivals in 2014 were drink companies. Says Dr. Andrew Bengry-Howell, a visiting fellow from the University of Bath, U.K.: "[These days], people associate the brand with [the] experience." Often, there is a particular symbiosis between festivals goers and sponsors; a drink that is overpriced will be purchased without ill will if the attendee knows that the sponsor is responsible for the event and its possible production next year.

The success of the EDC Festival in Las Vegas and the Ultra Music Festival in Miami show that EDM festivals are gaining a stronger fan base—and that vodka, not beer, is becoming the drink of choice for the festival sellers there. Smirnoff recently became the official sponsor of twenty-six Live Nation EDM festivals across the country. This came after an earlier relationship with THUMP, an EDM culture channel, and other EDM festivals owned by SFX. Smirnoff intends to gain popularity by following up with house parties after the concert with headliners and well-known DJs in attendance, another boon for fans.

When nearly a half of all attendees are part of the millennial generation of 18-34s, social media affords more opportunity for exposure. Experiences are retold, a broader audience of followers is engaged, and value is added to the event because of its broader reach. Though there is undoubtedly a second wind of interest from social media that might bring in more marketing contracts and opportunities for festival organizers, headliners still matter. This past March, Coachella brought Alabama Shakes, Flying Lotus, Steely Dan, Tame Impala, and Drake. This year's lineup at Bonnaroo included Billy Joel, Mumford and Sons, Deadmau5, Kendrik Lamar, Alabama Shakes, Childish Gambino, and D'Angelo. For July and August, Lollapalooza has lined up Paul McCartney, Metallica, Florence + the Machine, Sam Smith, A$AP Rocky, Tame Impala, Alabama Shakes. In each of these shows, of course, more than one hundred lesser know acts typically follow.

Challenges

When promoters choose a headliner they want chart toppers. Yet the runaway success of music festivals is prompting a new question: are there enough acts that can handle the big festival stages? Harvey Goldsmith, the well-known concert promoter that organized Live Aid in 1985 and was knighted for his service to the U.K. industry, thinks there aren't. He has said that between May and September of last year there were about 900 festivals in

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the UK. The market is now oversaturated at a time when artists are not developed by their labels as they used to be. He implies too that the buying music habits of the vast majority of festival goers are not supporting long-term acts as tastes are fickle, so headliners will continue to be in short supply and concert promoters will turn to older legacy acts like Paul McCartney, Metallica, Stevie Wonder, and U2. In fact, Goldsmith points out that the day after the top music festivals are over is the day when booking agents start searching and contacting potential artists for next year's festival lineup; a bidding war then ensues that pushes the prices of megastars up. The same artists may play in more than one festival and overall festival ticket sales suffer.

Long-term, the U.S. may face much the same problems as the U.K., i.e. more fragmentation of consumer tastes, likely less label A&R to develop headliners, and more festivals to supply the dwindling cadres of headliner acts. Seen from this perspective, the current boom in music festival business may run into a natural roadblock. Festival promoters can be expected to depend more on sponsorships than they do today and the pressure to consolidate different festivals into one will mount (for instance, in EDM the EDC of Las Vegas and the Ultra in Miami).

Opportunities

In the meantime, technology may afford new opportunities for live streaming. The luxury of staying at home and having a front row seat is alluring and can bring a newer audience to music festivals. Chris Roach, head of business development for Goldenvoice, a subsidiary of AEG Digital Media and a company that is in the business of streaming festivals live, told Pollstar that "[we've] seen the average view time is over an hour in one sitting… [that's] a pretty engaged eyeball for an advertiser to put their dollar against." Indeed, if paying for an entire festival is too expensive or time is at a premium, this alternative could add an extra stream of revenue and help defray the costs of signing quality acts.

Ultimately, the competitive advantage of music festivals is that they are the purveyor of a unique musical and social experience. They should continue to thrive in a world where a shared face-to-face experience with music is becoming a scarce commodity. Our listening habits have changed and we tend to be much more self-contained in the act than in the days of radio, the jukebox, and stereo. Headphones, it must be remembered, were first introduced attached to an electronic device when Sony debuted the Walkman in the late 1970s. Moreover, the chance to interact with today's technology at a festival and get to know like-minded fans outside of our immediate circle has never been as easy. All of this bodes well for the future. It is a great problem to have when the only downside of this booming business is that musicians have to work harder to supply more talent and meet a rising demand. MBJ

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PonoMusic: Cheeky

By Sanchitha Wickremesooriya

By all accounts, PonoMusic has had a remarkable run. After artist Neil Young appeared on "The Late Show With David Letterman" announcing a special high fidelity audio device that could play original master recordings of hit songs purchased online, Pono raised $6 million in a Kickstarter campaign. It quickly followed by selling $6 million in company stock at Crowdfunder and became the first music company to tap the nascent field of equity crowdfunding.

Young claimed that the idea for a high fidelity music player arose from his frustrations with the quality of music provided by iTunes and other online providers. Instead, the PonoMusic system would put out recordings starting at the CD-quality rate of 16-bit/44.1kHz and quickly move up to the unusual ultra-high resolution rate of 24-bit/192kHz.

Sound Issues

Sound experts and analysts, nevertheless, seem puzzled.

First, the science of the 24bit/192kHz audio has many skeptics. The average human ear has a frequency hearing range of between 20 to 20kHz. PonoMusic's sampling rate of 192kHz would capture frequencies up to the 96kHz, far beyond a human's ability to hear. It also begs the question of how new recordings will rise to the standard, for sound reproduction is as good as its weakest link.

Second, the PonoMusic player appears to be a standalone product at a time when consumers are integrating media. Apple Music, for instance, adds value already to recorded music by bundling it with radio and other features, and PonoMusic is asking for a single device for one single form of entertainment.

Third, the design of the PonoMusic player, an eye-catching prism, does not fit well

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Business Articles

MIDEM in the Music Industry

By Felipe Gonzalez

MIDEM, the music industry conference held in France that is owned by communications company Reed MIDEM, targets the creativity and synergy of musicians, music entrepreneurs, tech geeks, marketing gurus, label executives, and brand managers. It is one of the oldest, most storied, and most glamorous trade events in the international scene. It has, though, seen better times.

In June 2015, MIDEM counted 5,500 paid attendees, a drop of 10% relative to 2014 and 14% relative to 2013. This year, MIDEM had changed its conference date from January to June, the first ever such change for MIDEM in 49 years. Sunny Cannes did little, then, to reverse an overall declining trend. It must be remembered that in the heyday of the late '90s, MIDEM actually topped 10,000+ attendees.

In this Côte d'Azur show, the costs of registration, hospitality, and foreign travel have always been expensive, even for its traditional European constituents. Such costs may not have mattered as much when registrants were affiliated with the major label and publishing industries --which always afforded useful networking events for everyone else in the business and drove more interest to MIDEM. But the market is now much more fragmented and power is diffused in more players, so MIDEM needs to target a younger audience interested, for example, in technology innovation, entrepreneurship, and DIY business. This group, as well as the personnel that comes over for record label business, is much less affluent. The complaint by MIDEM director Bruno Crolot, when interviewed by Hypebot, is telling: many music industry professionals apparently attended MIDEM with pirated tickets.

Another issue is an excess supply of top-level conferences, especially in the US. There is much more now than there was before the new millennia, with SXSW and a variety of Billboard conferences covering similar topics often with the same distinguished panelists.

SXSW, which holds music and film conferences, competitions, and showcases in Austin, Texas, had more than 30,000 participants in 2015. Attendance at SXSW has been progressively increasing since 2012, with more than 18,000 people coming just for music. Billboard holds the Touring Conference and Awards every year in New York City and their 12th edition will take place in November 2015 after witnessing a rise of 6% in attendance in 2014. Unlike MIDEM, this event may not be known for its hackathons or branding panels and workshops, but topics like these are arguably covered in more specialist gatherings. For that matter, attendance at NAMM, the venerable flagship show for the international music products industry, surged, apparently, by 41% in 2014 to over 90,000 participants. MIDEM may not be in the same business as NAMM, a trade organization for manufactures of music gear, but its ability to generate a marketplace for the makers and holders of sound recording copyrights is no longer as clear cut as it once was.

Even though it is becoming harder for MIDEM to differentiate itself in the crowded field of music business events, its undoubtedly international flavor still affords it a competitive edge. There are simply no shows where a nation state will put up a music exhibit, and credit goes to the Reed MIDEM group for reaching out to the culture ministries of countries like South Africa, Israel, and the Ivory Cost, represented directly or in directly, among others, at the show. MIDEM is also a vehicle for students of international law to keep up with the many guises of national copyrights. Indeed, MIDEM will continue to afford opportunity for E.U. officials to come together and seek ways to consolidate and harmonize local legislation with the general good. There is much to learn here at MIDEM.

MIDEM notables this year included Doug Morris (CEO at Sony Music Entertainment), Arnaud de Puyfontaine (Senior VP at Vivendi, owning company of UMG), Paul Williams (President at ASCAP), and Alexander Ljung (Founder of Soundcloud). A plethora of useful sessions complemented the keynote addresses, while the imminent release of Apple Music (covered elsewhere in the MBJ), afforded much topic for discussion--with Doug Morris's favorable review at MIDEM at a Billboard interview setting the stage for major label support for Apple.

For this writer, the impact of holograms and cashless payments on the live music and touring business was of particular interest, as was covered in the session by the CEO of Bandsintown, Sergent Fabrice, and the Director of Lollapalooza Berlin, Szép Fruzsina. Also inspiring and very popular among attendees was the presentation of the pointed collaboration between Lexus and the artist will.i.am by Lexus's head of European marketing and a top executive at the Creative Artists Agency.

Both of these gatherings documented the disruption of the old business model and the potential for artists and their managers/agents to find new ways of doing business-- often with the labels taking a backseat role. That is the ultimate tribute to MIDEM, for it has stuck to its mission of providing insightful coverage on the current workings of the business while keeping the many parties that are involved in the making, distribution, and collection of music monies engaged. It is good that MIDEM insists on putting its stamp on the industry. MBJ

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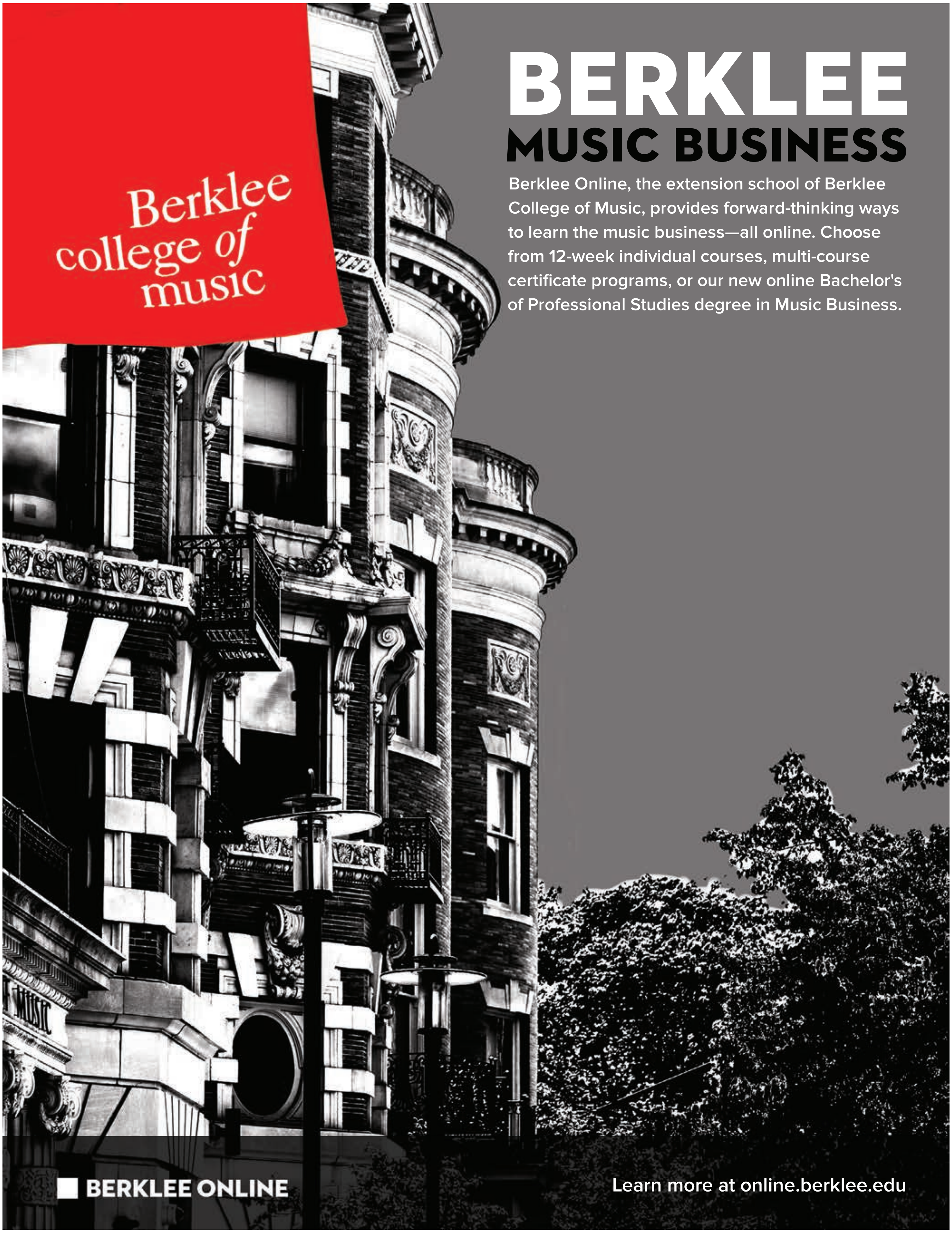
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Pono (cont.)

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in a pocket although it carries well by hand. In addition, battery life, at between six and eight hours, is judged to be under par and there is no Wi-Fi or Bluetooth functionality, making the player outdated.

Lastly, prices at PonoMusic for single songs and albums would be double what are currently charged at iTunes. And the price differential is too steep to be justified by storing considerations alone. A 24bit/192 kHz audio takes up roughly six times more file space than compact discs but the storage cost per GB has dropped from $9.85 to $0.03 in 2000-2015.

Growth in the field of "HD Audio" applications ultimately relies on the belief that more audio data returns a higher dynamic range (the span between the softest and the loudest sound), and that this is where the detail in live, original, sound is. 16-bit CD sound corresponds to a range of 96dBs (a measure of loudness) and Pono's 24-bit sound gives 144dBs. This difference in dynamic range may be noticed in classical music, especially listening to a symphony orchestra, but there is too much compression and processing in a modern recording studio — where the type of recordings that Neil Young and PonoMusic mostly focus on are produced.

Perspective

PonoMusic is not the first company to capitalize on the idea of a luxurious sound; Bang & Olufsen, Bose, and Beats, among others, have been there. Overall, the funding success of Pono Music suggests that there is an appetite for hi-fi playback audio online. The company is determined to transcend current broadband limitations and many artists and their fans rushed in to make pledges based on that promise. So did investors.

But marketing overkill alone will not do the trick and PonoMusic will have to prove its product the old fashioned way, by subjecting it to independent consumer listening tests.

For the best experience, moreover, the binaural separation of speakers will always yield a more complete sense of space than headphones do, so PonoMusic cannot escape competition with the on ground market. And even assuming that recordings can be made that match the standards of PonoMusic in the future, it is likely that audiophiles will continue to play high-fidelity audio through speaker systems. That is surely what legacy artists expected and what musicians today like. If so, the PonoMusic player is not really advancing the cause of the online playback of richer music files—just their distribution.