

The Non-Profit Dance

By John Lahr



Coverage of music industry news tends to follow, as this Journal does, the for-profit sector. Corporate market leaders, like Apple, Spotify, and Live Nation, get special attention on a regular basis. Not so for the vibrant non-profit sector of public charities and private foundations, which remain largely unexplored in the music business literature. Yet in the United States non-profits in the arts generate as much as \$33 billion in revenue every year and support over four hundred thousand jobs. It is difficult to distill from there the value of music related non-profits without more detailed research, something that is urgently needed. Nevertheless, a reasonable and conservative back-of-the-envelope estimate is to consider that one-tenth of the non-profit sector in the arts, directly or indirectly, is tied to music. The dollar value of the U.S. non-profit music sector could then approach \$3 billion, as much as the annual revenue of either the live music business or the publishing business.

The implication is that the non-profit music sector should no longer be just an afterthought in the music marketplace. Moreover, music business professionals, especially, should begin to unlock more value for themselves by paying closer attention to what the non-profit model is and how it is constituted --- just as an introductory music business textbook considers whether a general partnership or a limited liability company is the best practical legal arrangement for a band.

In fact, a lot of the information pro-

vided below is not yet covered in the U.S. music business textbooks. Rather, it complements the existing literature. The topic is better covered in many developed countries in Europe and Latin America, where musicians have to scrape a living (or do better than that), especially with public money at a federal, state, or municipal level. The region of Germany, Switzerland, and Austria is perhaps the best example, but countries like Colombia and Argentina have local authorities that are actively engaged supporting the efforts of their musicians, and this is true in Bogotá as well as in Buenos Aires. Funding is usually at hand where music is acknowledged as a national cultural patrimony.

Starting A Non-Profit

Fundamentally, the non-profit model depends on tax-deductible donations and grants from exclusive foundations, like the National Endowment for the Arts. In the U.S., the Boston Symphony collected about \$43 million on both counts in 2014. And whereas making classical music may not be the aspiration of contemporary musicians, artists in other genres deemed to have cultural or societal value, such as jazz musicians, could take a page out of The Boston Symphony's book --- and its non-profit model.

In the United States, non-profit organizations are generally corporate entities organized under state law, founded by filing

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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

The non-profit music sector is undervalued in the literature and we launch this issue with some overdue coverage. Its value and potential will surprise the reader, and we offer advice to DIY musician on how to start their own non-profit company.

In addition to our coverage of standard music business topics, this issue reflects restlessness in our society. Artist activism, for instance, now rides on the wings of the Black Lives Matter movement, as seen in the Grammys, in the Oscars, and the Super Bowl. Authenticity is the new currency, not just entertainment. Moreover, gender and sexual harassment issues are never far from the surface, and we cover Kesha's legal proceedings against her former producer, Lukasz Gottwald (Dr. Luke) and Sony Music.

A recent landmark decision has called into question the relevance of the Digital Millennium Copyright Act's Safe Harbor Provision, and its role in protecting online service providers and preventing copyright infringement. We discuss current legal terms such as contributory liability and vicarious liability, and wonder to what extent online services should be held liable for the actions of their customers and users.

Streaming news came in the form of the Copyright Royalty Board's ruling on Pandora's rates. We cover the topic and offer as well a story about the impact of these new higher rates on small radio using the example of Live365. Also, SoundCloud is taking affirmative steps towards mainstreaming their business, much of it serving, incidentally, the EDM market.

That is where we go next. The recent collapse of Robert Sillerman's SFX venture has left many in the industry wondering what caused the company to fail so spectacularly. In the meantime, the future of EDM appears bright. If anything, SFX's bankruptcy suggests that corporate players that do not have organic ties to that genre may be not be able to play the game well.

In tech, we take a look at the future of virtual reality, and the role that the music industry may play in its development. VR also presents a unique opportunity to make live music more affordable to the average consumer, which may help expand the already fruitful live music market.

Finally, we examine Billboard's Power 100 list to give us a sense of history. For an industry that has had so much change, there is surprisingly much continuity at the top.

Thanks, as always to you, our readers, for your support!

Sincerely,

Spencer Ritchie
Editor-In-Chief

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BUSINESS ARTICLES

The Non-Profit Dance (cont.)

(FROM PAGE 1)

“Articles of Organization” with the local Secretary of State. While filing the articles of organization incorporates the entity, one of the hallmarks of a non-profit is its tax-exempt status. This requires separate IRS approval. While there are many kinds of tax exempt organizations, the focus here is on the 501(c)3, as this is the most popular and the choice of most arts based non-profits. To be eligible for 501(c)3 status, the purpose must be “religious, educational, charitable, scientific, artistic, [to] test for public safety, to foster national or international amateur sports competition, or [to prevent] cruelty to children or animals¹.” The application process normally takes six to nine months, and the guidance of a lawyer is recommended.

Moreover, when applying for 501(c)3 tax exempt status the founders of an organization must choose to apply as either a public charity or a private foundation. While both are tax-exempt, each carries a different set of regulations and tax benefits. Public charities enjoy more favorable rules with regards to charitable income and tax deductions, while private foundations are subject to strict behavioral codes. A rule of thumb is that charities perform charitable work, while foundations fund and support them.

Public Charity or Private Foundation

To become a public charity, an organization must “earn” public charity status. In order to qualify for public charity status -- as well as keep it, as the status can be removed should the organization not continue to fulfill certain requirements -- the charity must be organized exclusively for the purposes set out in its Articles of Organization and the IRS application. The charity must represent the public interest by having a diversified board of directors. More than half of the board must be unrelated by blood, marriage or outside business co-ownership and not be compensated as employees of the organization².

Public charities must also pass an income test. To be granted public charity status, the organization must be “supported by the general public”. The legal requirement is at least 33% of revenues must come from donors who give less than 2% of the organization’s annual income. This ensures the organization is receiving sizable funding from general donations, instead of exclusively grants or large charitable contributions. In addition to these fundraising requirements, all of the charity’s assets must be used to benefit the public, and

not for private use. Charities are also not allowed to devote substantial portions of activities to lobbying, or participate in elections.

For example, a music educator seeking to start an independent music institute would need to seek public charity status. Indeed, music schools, a classification that includes colleges, performing arts high schools, and independent educational programs, require the non-profit consideration to accept charitable donations for scholarships, for the endowment, and, generally, to assist in the execution of the school’s mission statement.

The default classification for a 501(c)3 is the private foundation. Most foundations choose this status intentionally. One of the most important reasons justifying the choice is control. Although there are stricter reporting requirements, and minimum annual asset distributions of 5%, private foundations can be controlled by related parties. They can also be funded by a select group of donors. Examples include the Bill and Melinda Gates Foundation, or the New England Foundation For the Arts.

Structuring the entity as a foundation allows the enterprise to focus on funding and supporting charitable work instead of operating charitable programs. Usually, musicians will not find wealthy donors to set up a foundation and support their music forever. In certain cases, however, the involvement of a foundation with a group of like-minded musicians can be continuous and generous to the point that it may not even be a problem. Boston Baroque, a Grammy nominated ensemble, is dedicated to giving performances in period instruments. It has relied extensively on the Andrew W. Mellon Foundation and its Arts and Cultural Heritage Program. Starting with a \$50K grant in 1989, Mellon awarded \$100K in 1991, \$150,000 in 1994, and another \$125,000 in 1997. Other foundations and sponsors have since stepped in and paid for international tours, including the last trip in 2015 to the prestigious Beethoven festival in Poland.

This suggests that the non-profit arena is tapped continuously and that, regardless, there is a proliferation of donors. In the U.S., this is mostly private foundations rather than taxpayers. These foundations don’t just write the check but provide support services. They can offer marketing and promotional help, legal advice, and offer free advocacy.

ArtsBoston, for example, offers promotional services for local performances, as well as

half price tickets to its nearly two hundred member organizations. They are the medium by which the greater arts community coordinates and interacts. During the 2014 Boston Mayoral election, ArtsBoston partnered with MASSCreative, an arts-focused political advocacy organization and was able to galvanize the local creative constituents. This ultimately led to the creation of a cabinet level arts/cultural position, as well as increased city arts budgets and staffing.

Smaller organizations such as the Arts & Business Council/ Volunteer Lawyers for the Arts provide services to individual artists. These include training sessions on everything from marketing to intellectual property law, and free or reduced legal services for artists.

Overview

Understanding the use and benefits of a non-profit status is important for U.S. musicians. Certainly, even if well justified, procuring non-profit status is more complicated than starting a general partnership or a limited liability company. None of this will probably matter to a performing musician that is intending to be a sideman or a featured commercial artist. As explained, it could have implications, especially if a change of heart leads to the consideration of a career in music education.

For that matter, every musician should be aware of the huge and dormant potential of the myriad foundations that support non-commercial efforts in the arts, including music. The market of both private and public money for special art projects is, as was suggested at the beginning, enormous. The irony is that many U.S. musicians tend to have a vibrant and rewarding interaction with the commercial music market. Theirs is the only story that gets told.

In short, non-commercial musicians ignore at their peril the private and public sources of funding outside the music mainstream. The solution for access is, to some extent, obvious. Many of the non-profit foundations that are interested in helping the arts are listed, with their full mission statement, in public records. These are available online, but it probably helps to find a centrally located library and get some assistance from the librarian—a low-tech approach that can yield quick dividends.

MBJ

BUSINESS ARTICLES

The Billboard Power 100

By John Lahr



One could do worse than write a history of the business from the pages Billboard's Power 100 rankings. This year the venerable music industry weekly has added thirty-nine new executives to its list, for a likely all time record. It suggests much change in the business of recorded music, live music, and music publishing.

The reasons are not hard to find. First, the current wave of technology appears to be extensive and impacts the very center of gravity of the trade -- product delivery, social analytics, and talent recruitment. Second, changes in Billboard's list reflect the magazine's weighting system, which privileges the music intermediaries of hit artists; this year, the honor went to Adele related staffers.

But the variation in the Power 100 list would seem to point out an industry that is actively recruiting personnel for a different *modus operandi* and embracing its own renovation as a goal. The picture is complex because there is much continuity too among its top brass. But the most highly ranked individuals in Billboard's list gladly share turf with its Young Turks and embrace the future both in spirit and in action, whereas the new executives do not seem to be just the result of a mad quest for hires by desperate corporations.

Universal Music Group's Lucian Grainge's has kept his grip on the top spot of the list, and for good reason. This year seven of the top ten selling albums were on his watch, as were all five Grammy nominations for Album of the Year. The stunning success of Universal's roster gave Grainge's company a commanding forty per cent market share. Billboard also cites UMG's investments in the future, for instance, by referencing Grainge's presentation at the Consumer Electronics Show (CES). There, he demonstrated the value of UMG to unrelated technology, marketing, and multi-media companies. A partnership with iHeart Media to develop virtual reality content for UMG artists is also notable.

Streaming is an important part of UMG's core business and a reason for its success. Overall income was two points better in the first three-quarters of 2015, and streaming already explains half of UMG's digital receipts. A new partnership with SoundCloud should bring in fresh money, and so will, apparently, a tribute to The Beatles at the Apollo Theatre in London. Like the Amy Winehouse biopic, other projects with films studios will continue bolstering the company's recording assets in multimedia. As Grainge says "[As music companies] we want take advantage of the opportunities that technology and a global

market give us."

The number two spot went to Live Nation's Michael Rapino, and is also the same as last year's. Live music has been making money for the business steadily, and Rapino reports a record year in 2015. Through the third quarter of 2015 revenue was up nine percent compared to the previous year, and Live Nation grossed \$6 billion; ticket sales also rose five percent over the same period to \$115 million. Rapino stands behind 11 of the 25 highest grossing tours of 2015, including top earners One Direction (80 performances for \$208 million) and U2 (76 performances for \$152 million).

Part of Live Nation's success has to do with its aggressive investment in the lucrative festival space. Rapino went three for three, buying controlling stakes in Electric Daisy Carnival, Lollapalooza, and Bonnaroo. Live Nation is now focused on upgrading the infrastructure of its existing festivals, which will soon include running water and permanent bathrooms. As a result, Billboard notes that Live Nation has strengthened its ties with corporate sponsors and advertisers. Its income in this category is up by nearly one-fifth over 2014 to \$275 million, paid by 800 sponsors. Two partnerships helped. Its live streaming relationship with Yahoo generated 369K viewers per concert, for a total 135 million live streams. On the other hand, Live Nation expanded its video and a potential TV presence by creating a Live Nation TV channel in conjunction with Vice Media. The driver of this alliance was the possibility of monetizing rich content and bringing sponsors like Budweiser and Citibank aboard.

The number three spot on the Power 100 ranking is occupied by the music executives at Apple, who with the combined team of Eddy Cue, Robert Kondrk, Jimmy Iovine, and Trent Reznor, accounted for 40 cents of every dollar earned in sales by music retailers and digital services in the U.S. According to Billboard, the introduction of Apple Music in the summer of 2015 showed a continued commitment by the company to working with both labels and artists and staying in tandem with the industry. Billboard also gives Apple points for averting a public relations disaster when criticized by Taylor Swift for not paying artists royalties on their three month trial period; the

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April 2016

LAW SECTION

Kesha's Quagmire

By Spencer Ritchie



The recent Kesha-Sony lawsuit has struck a nerve across the music industry by highlighting personal abuse and issues of gender inequality. It has also raised questions about the contractual control that a label can have over its artists.

Underlying it all is the typical rags to riches story of Kesha, the young Cinderella whose prince charming turned out to be a talented and well-connected LA producer, formerly a guitarist at *Saturday Night Live*. Swept away by Dr. Luke (Lucasz Gottwald), Kesha dropped out of high school. Dr. Luke then signed her to his own publishing company *Prescription Songs*, and *Kemosabe Records*, a subsidiary of Sony Music Entertainment. The label then penned a six record deal with Dr. Luke serving as Kesha's producer, publisher, label rep, and day-to-day de facto manager.

Kesha released only two albums out of the six, and an EP—and then had enough. She now wishes to ink an alternative deal either with a major or an independent label, but *Kemosabe Records* and Sony still have Kesha under exclusive contract. Sony and Dr. Luke claim to have invested in excess of 60 million dollars to launch and sustain Kesha's career building it to its peak second album, *Warrior*. Dr. Luke's role is not in doubt. Kesha's success started when Dr. Luke orchestrated her appearance in Flo Rida's 2009

single *Right Round*, and continued with his efforts on her two albums. One of them, *Warrior*, went platinum. Ten songs overall charted in the Billboard Hot 100.

The singer alleges that what is prompting her lawsuit are serious offenses by Dr. Luke, on both a personal and professional level. The suggestion is that the execution of the contract may have been faulty and that it should be prone to review. Kesha's original lawsuit, launched against Dr. Luke in 2014, accused the producer of abusing her "sexually, verbally, emotionally and physically to the point where she (sic) nearly lost her life." At the time, the complaint for damages included charges of sexual assault and battery, intentional and negligent infliction of emotional distress, and the violation of California's unfair business laws. For Kesha, Dr. Luke's egregious behavior was perpetrated in an effort to shatter her self-image and self worth. She did indeed check in to a rehab facility in the Chicago area in 2014 and was treated for an eating disorder which she blamed on the producer's remarks about her size and image.

In 2015, Kesha extended the lawsuit to include Sony Music Entertainment, and sought as well a preliminary injunction to limit the damage being done to her career through the drawn out legal battle that would ensue from her claims. Early in 2016 a judge denied her injunction. She has since resorted to denouncing Dr. Luke in the media and drawing attention to gender issues in the music industry. In the social space, Dr. Luke's guilt is presumed. There is also no recognition of Sony's financial investment and the company's role in her success: her contract is often portrayed as a form of modern indentured servitude.

While Dr. Luke could be guilty of assault and abuse, there is so far little evidence to substantiate Kesha's claims. Curiously, even if Kesha's were proven to be a victim, it is unclear that she would be absolved of her contractual obligations with Sony if the label offered to have her release product without working with Dr. Luke directly. Whether or not such recordings would be released through *Kemosabe Records* and still benefit Dr. Luke is unknown. Judge Shirley Kornreich of the New York State Supreme Court did not find that Kesha's career would be irreparably harmed if she could not record without Dr. Luke and Sony.

Kesha's more recent allegations against Dr. Luke include the suggestion of

date rape. But Kesha never reported rape or abuse to any law enforcement authority or Sony Music, and no criminal charges have been filed on this count or, for that matter, on any other felony. This may be too because Kesha's past allegations do not help. In a videotaped deposition from 2011, on an unrelated lawsuit, Kesha states that Dr. Luke had not sexually assaulted her, that there was never any intercourse between them, and that he had not purposely drugged her. The result is that Dr. Luke's defense claims that Kesha is subjecting their client to "trial by Twitter", while instigating a smear campaign to ruin him and "extort" a superior recording contract in the process, from Sony or any competitor.

So the case exists solely in civil court. Mark Geragos, Kesha's attorney, has said that this will allow him to interview witnesses and "do all the discovering", a supposedly good legal strategy. He claims too that Dr. Luke verbally threatened his client into denying the allegations of sexual assault.

Meanwhile, emotions are spilling over within the industry. Prominent female musicians are up in arms, including some that owe their success to Dr. Luke, or have worked with him. Among them is Taylor Swift, who donated \$250,000 to Kesha's legal fund—a princely sum. At the other end, Bob Lefsetz, a well-known blogger, has urged the public not to rush to judgment.

Takeaway

In the meantime, Kesha's career is on hold. The opportunity cost to her must be huge. In the eyes of a jury this would likely bolster her legal case, for there can be no real motivation to speak of from stopping cold in your tracks when you are a 29 year-old artist. If, as Dr. Luke's defense argues, Kesha is hoping to pick up a better recording contract after her lawsuit, the gamble on her career to achieve that seems disproportionate to the rewards she could earn. Common sense would dictate that her energies be better expended on her art rather than in a courtroom with lawyers. Moreover, the odds seem to be against her having her winning day in court. This is not just due to the merits of the case: no female artist has ever successfully rendered a contract void due to sexual assault, a fact that Kesha must have known. She might well be said to be fighting for the principle of

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BUSINESS ARTICLES

The Case For SoundCloud

By Michael Kostaras

SoundCloud's mission has been to offer a free-to-register music platform with little or no advertising. It has gained a reputation since its foundation in 2007 as a safe haven where upstart musicians, including Skrillex and the EDM crowd, could easily upload, share, and discuss their work. Now, the platform is running into the business limitations of its own philosophy.

Growth

SoundCloud has seen unprecedented growth. The company swelled from fifteen million users to 200 million in the last four years, and claims that roughly twelve hours of audio are uploaded every minute. Approximately five billion streams were estimated to run through the platform in May 2015. But hardly any revenue and a wave of foreseeable headaches over copyright clearances have taken their toll. Publishers and their songwriters have not been forgiving, even when new paid subscription tiers and advertising was added after 2014 to prepare SoundCloud as a more commercial operation. The latest financials, released in February of this year, show losses of almost \$85 million in 2012-2014, almost half of them coming in 2014.

Now, the company is pinning its hope on a new paid streaming service, which will be subscription based. It intends to launch the service by the end of the year using licensed music as well as promotional uploads. Yet there is much drama in the story of SoundCloud, and success could be elusive.

The value of SoundCloud was based on it becoming a sort of digital business card for the work portfolio of, mostly, independent musicians. They could direct fans, employers, media, and followers to a single location from which they could easily distribute their music.

In EDM circles, SoundCloud became a cornerstone. Features like the ability to create playlists and discuss a song in-depth made it a valuable promotional tool, and essential for top artists like Skrillex and Deadmau5. Paid subscriptions were justified later with extra hours of audio upload, metrics on how many plays a song was getting and from where, and an ad-free environment. A new app named SoundCloud Pulse ensured more connectivity. It all added up to create a large community of loyal users.

Some publishers benefitted too.

SoundCloud's average revenue per user may have been a paltry €11, compared to Pandora's \$11 and Spotify's \$27. But its users came from the same talent pool that those publishers sought to recruit from, the platform was sufficiently large to create a promotional first wave that brought attention to similar songs in their catalogs at no cost, and, finally, various remixes and mash-ups created interest for derivative works of already existing licensed music.

Modus Operandi

Underlying it all, however, was a rogue mentality over the use of intellectual property. For years, SoundCloud built its business model without consideration for licensing fees. The industry finally caught on. A string of lawsuits and eventual compromises followed in 2014-16. Notable among them were the deals with (i) Warner Music Group (believed to have received in exchange a 5% ownership stake); (ii) Universal Music Group (terms undisclosed, but likely against an ownership stake too); (iii) the National Music Publishers Association (for 11% of SoundCloud's annual revenue); (iv) with the indie trade group Merlin, which represents over 20,000 labels (for undisclosed ad money and access to metrics); and (v) the UK's performing right's society PRS (terms undisclosed, except to say that in future its 115,000 composers, songwriters, and publishers will be 'fairly compensated'). Currently, Sony Music, the remaining major in the U.S. is suspected of holding out for its own equity deal.

Trading ownership shares to secure the future of the company is a poor man's strategy, but the only one really open to SoundCloud right now. Cash is in short supply. The latest information puts receipts at \$18 million (2014), with cost overruns driven by a headcount growth of one-fifth, a two-thirds increase in administrative and staffing expenses, and a total wage and salary bill nearly a half above the total of 2013.

Losses are bound to grow too as SoundCloud redirects its business model. New and higher licensing costs and the research and development of its new streaming service, which has had a history of delay, will likely weigh on the books for times to come. CEO, Alexander Ljung may insist that the company is here to stay and that their current tight spot is only the result of a hard transition, but arguably the end of 2016 could be its desperate last stand.

* * *

The case for SoundCloud is that it may be doing in the streaming space what hardly any one else can for music makers. First, it offers a vast collection of user generated music that Spotify and Apple Music do not. Second, the platform is the most interactive, and marries social media and marketing probably better than any, including the provision of quantitative usage data. Third, it is certainly well prepared to offer a central location for an artist or band, including, just like Bandcamp and MySpace, bios and tour dates. Finally, by offerings legally recorded music from the major labels it can attract a wider audience and better leverage its own advantages at a time when music making is not just the province of dedicated professionals. If so, we may be looking at the future of music streaming. In fact, as we went to press, Apple announced a new partnership with Dubset Media to stream remixed songs and DJ mixes that have copyright clearance. Apple, therefore, could become an important competitor. ^{MBJ}

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LAW SECTION

The DMCA's Takedown Notices

By Spencer Ritchie

Secondary liability for copyright infringement occurs without the defendants directly committing an act of copyright infringement themselves. There is no direct language pertaining to secondary infringement in U.S. copyright law, but there are sets of common law precedents that have enabled its implementation in the courtroom. In a landmark court case this past December, a well-known provider of Internet services was held accountable for secondary copyright infringement on a large scale. A legal brief follows, and the case will be discussed after that.

Secondary Liability

For secondary infringement to occur there must be a primary act of copyright infringement, i.e. one of the six exclusive rights under the Copyright Act must be violated directly by an individual or group of individuals.

For example, an owner of an MP3 reproducing and distributing an unauthorized copy through a P2P file sharing website, is directly committing an act of copyright infringement. Or, say an aspiring DJ remixes Bruno Mars' hit *Uptown Funk* without obtaining a derivative works license, and proceeds to reproduce and distribute it digitally via the Internet. While both individuals are violating copyright law, those websites and Internet service providers within which the infringing activity takes place may also be liable for copyright infringement in a secondary manner (we will collectively refer to them as Online Service Providers or *OSP's* for the remainder of this article). In the case of copyright infringement of sound recordings and compositions of musical works, these secondarily liable parties are often streaming websites such as YouTube and Soundcloud, and file sharing sites such as Limewire and the Pirate Bay.

Secondary liability for copyright infringement is legally classified as either vicarious or contributory. For a judgment of vicarious liability, the party at fault must have no "actual knowledge" of the infringement taking place, but it must be profiting in some way.¹ The intent of the law is "to punish one who unfairly reaps the benefits of another's infringing activity."² It is, in the end, a case of negligence, where the party in question is not deliberately ignoring illegal activity across an OSP.



Contributory liability is different. It implies that the defendant knowingly committed copyright infringement, and is actively causing, encouraging or contributing to that activity in their OSP. In *Viacom International v. YouTube, Inc.*, Viacom claimed that YouTube was actively encouraging its users to upload videos time and again, knowing full well that this could promote the illegal use of Viacom's catalog. The case was settled out of court, likely because it would have been difficult for YouTube to refute the premise that it was failing to take down the offending material and acting as a contributing infringer. Cases of vicarious liability are less likely to be prosecuted, for evidence may be harder to come by. In effect, there are more instances of contributory infringement because a connection can be more easily made between the defendant and the act of infringement.

OCILLA

The 1998 *Online Copyright Infringement Liability Limitation Act* (OCILLA), a component of the Digital Millennium Copyright Act, limited the secondary liability of OSPs for copyright infringement. The OCILLA (17 U.S.C. § 512) specifically lays out a legal framework through which OSP's can be found not liable for copyright infringement. This is commonly referred to as the "safe harbor" provision of the DMCA. An OSP is not liable (i) if they do not have "actual knowledge" of infringing activity taking place on their service; (ii) they are not aware of "facts

or circumstances from which infringing activity is apparent"; or (iii) if they remove infringing content expeditiously upon being made aware of infringing activity.³ Additionally, the OSP is not liable if they do not receive a financial benefit directly attributable to the infringing activity. The OCILLA also stipulates a 'non-compete' clause, where the OSPs can be made liable for taking down or limiting access to fair use works, including original songs and videos (the OSP issuing the takedown notices would be liable for any damages incurred for loss of access to the non-infringing content).

OCILLA's provisions mirror many of the themes discussed above, and there is congruence between the common law interpretation of secondary liability in copyright infringement and the stipulations of the DMCA embodied in its safe harbor exemptions. However, a safe harbor defense is now less effective than it has ever been.

In Court

This became clear in December when BMG Rights Management and Round Hill Music LP filed suit against Cox Communications, a big player in the high-speed broadband market and the third-largest cable television provider in the United States. The ISP, it was said, was at fault for being both deliberately negligent and willfully ignorant of blatant copyright infringements on their

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network. Its users were frequenting Torrent sites and Cox Communications “repeatedly refused to terminate the accounts of repeat offenders”. Further, it was alleged that Cox allowed the infringing activity to take place in order not to lose revenue from Internet fees, playing fast and loose with copyright law.⁴ Cox pleaded ignorance, which entitled them to protection under the OCILLA of the DMCA; BMG and Round Hill replied that they made the infringing activity abundantly clear to them on many occasions.

Cox Communications was found guilty of contributory copyright infringement and ordered to pay \$25 million in damages.⁵ The damages paid by Cox do not include any expense for policing the network on an ongoing basis.⁶ Moreover, there will be strong ripple effects of the judgment, because it was against one of the largest communications companies in the U.S. Precedent determines the interpretation of common law and this is one case that cannot be dismissed.

The End of the Far West

The days of the Internet’s Far West may well be over. “Actual knowledge” is easy to prove with dedicated spider bots roaming the Web and reporting in real time to the aggrieved parties. Copyright infringement watchdog companies, such as Rightscorp, are getting better at their job and are increasingly seen as effective tools to enforce copyright protection. The common law judgment of December adds much more incentive for similar operations to come to market and will likely tighten the protective circle around content creators.

The recent settlement of SoundCloud with most of the U.S. majors, covered elsewhere in this issue of *The MBJ*, also speaks to a tougher legal climate for OSPs. Playing unlicensed music is becoming harder and SoundCloud is the music industry’s most current example of this shift towards licensed content. This also applies to YouTube. A licensing deal will always be an insurance payment against a lawsuit and it makes new business much easier.

But Darwin is on the side of pirates too. Even if the service providers run a carefully gated operation, some infringers may still fly under the radar. Moreover, the new ruling could lead to an increased sense of responsibility and due diligence by the OSPs in

filtering unwanted content and in turn affect the availability of recorded music on the Internet. Civil society, and the music industry, might then be worse for the punishment. **MBJ**

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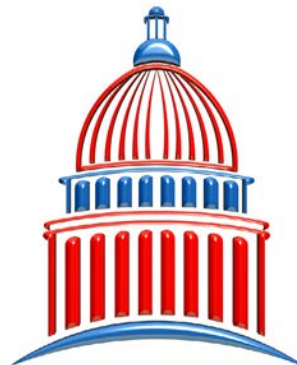
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Kesha (cont.)

(FROM PAGE 6)

being right.

Kesha’s heavy heart with the Sony family of labels does not bode well for her creativity or the business. Dr. Luke’s contract is up for review this year and Sony may decline to renew it and so earn back some political capital. But if the legal battle is protracted, the artist-label partnership that once was may never recover. The possibility that this platinum selling artist may have her career end in the courtroom is real. **MBJ**

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BUSINESS ARTICLES

Robert Sillerman's SFX

By Brooke Adams



The recent and sudden collapse of SFX is a sobering lesson for the live music market. The business has many intermediaries and is perforce regional in nature. Money can go so far in building the market, for it is largely decentralized and depends on the whims and the attentions of the local concert promoter. Even a successful genre like EDM (Electronic Dance Music) is no guarantee that success will be within reach quickly if the holder of the purse strings is not familiar with the culture and ways of the market operators.

SFX sought a shocking bankruptcy protection on Feb. 1, effectively ceding management to its creditors, who are now left holding arrears of nearly \$500 million. Shareholder value has plummeted from an IPO price of \$12 a few years ago to just ¢5. Creditors own the firm and owners of stock have no leverage at all. Bondholders will likely seek liquidation by looking for a buyer in the private equity markets, for a proper restructuring of the company is not a probable outcome. Three subsidiaries are already up for sale. They are FameHouse, a marketing company; Flavorous, a ticketing agency; and Beatport, a store for DJ tracks. SFX has already laid off fifty employees in New York.

History

The story of SFX Entertainment is inextricably linked to the idiosyncrasy of its owner, Robert F.X. Sillerman. The business's name was a play on Sillerman's, and his ambition to champion EDM in his mid sixties was all encompassing. In the last four years Sillerman acquired (i) concert promoters ID&T, with its Tomorrowland, TomorrowWorld, and Mysteryland Festivals; (ii) Made Event, another EDM concert promot-

er and producer of New York's Electronic Zoo; (iii) Disco Donnie Presents, a concert and festival producer in the U.S., Canada, Mexico, and South America; (iv) dance music download/streaming service Beatport; and (v) artist management firm TMWRK (Teamwork Management).

Sillerman had built a reputation of buying single companies, repackaging them, and selling them at a profit. He found buyers like Capstar Broadcasting in the 1990s, to which he sold 71 radio stations for \$2.1 billion. He then entered the concert business, acquiring top regional concert promoters. In 2000 he turned his purchases to Clear Channel for \$4.4 billion, which bought his holdings as SFX Entertainment (Editor's note: we covered this transaction in earlier editions of the MBJ).

The New SFX

With his new SFX, Sillerman went into a \$1 billion EDM spending spree. Ready cash was his tool, above all. In Sept. 2012, he could tell *Billboard*: "I know nothing about EDM, I [only] meet the people whose places we're buying; and I [haven't a clue about] what they do or what they are talking about--not a clue." When SFX was going down he added that the reason for failure was "mistakes in management and a misunderstanding of the complexity and time of marketing partnerships". Indeed, it seems that early on the market's functionality and its operators were of little consequence and an attitude, even if it was presumptuous, was good enough for success (Sillerman has since lost favor with Wall St.).

That SFX failure was its own making relies on further testimony from its main protagonist. For example, Sillerman tells *Forbes* that "the last thing [we were] thinking about [was] margins; [when you make] cars or washing machines or something like that, I guess you have to focus on margins, but that's not the way I [viewed] the entertainment business: [it is] an art, not a science." The lack of proper cost-benefit standards in SFX's trajectory surely contributed to its downfall. Moreover, the lesson is that an M&A entrepreneur like Sillerman, or a detached investment banker, may not do well in the arena of live music, espe-

cially if they intend to emulate the way they have run their many businesses in the past. Clearly this was on Sillerman's mind, for he was often quoted for trying to replicate on a grander scale the first SFX.

Sillerman's *sui generis* management in short, is the reason why it is easy to reconcile the failure of SFX with a thriving EDM market today (see the EDM related piece in this issue of the MBJ). Still, Atlanta-based EDM festival TomorrowWorld, one of SFX's largest festivals, will now not take place in 2016. The festival first hit hard times last year as a massive rainfall led all non-camping fans to be turned away. The news of SFX's financial troubles did not help either. But TomorrowWorld seems to be the exception. The bankruptcy protection clauses have earmarked \$23 million in operating expenses to continue normal operations of any festival owned by SFX.

Projection

Creditors have been generous with their allocation of festival money because, as Richard Tullo, a Bloomberg analyst, says, "SFX is likely well-managed on the festivals and business unit level and the company's shortcomings, in our view, appear to be with the holding company management and its board of directors, which have arguable destroyed shareholder value." In effect, Sillerman spent badly needed receipts attempting to take SFX private before the bankruptcy. Shares were liquidated for cash while joint financing was being pursued, creating a perception of weakness and adding substantial operational costs --which is what Tullo appears to be referring to. In fact, after SFX initially went public 2013, and attracted equity worth \$260 million, it was making profits of \$146 million from a revenue of \$239 million; profit turned to a loss of about \$15 millions in its latest statement.

As an investor, Sillerman would be in error if he did not take the opportunity to invest when profits could be made. But he could also be in error by taking risks that did not return the value that was expected. Clearly, business moguls win some and lose some. What is puzzling, though, is the lack of due diligence that Sillerman and SFX brought to the table. MBJ

BUSINESS ARTICLES

Long Live EDM

By Matt Mannino

Introduction

The electronic music industry has grown up. Attendances at Electronic Dance Music festivals in the United States exploded between 2007 and 2014, going from 145,000 people to 1.4 million. This has made EDM the poster child for the millennial music industry, for no other music genre or industry sector can compare in performance (a tenfold increase in audience is equivalent to a staggering 34% annual growth rate).

In May 2015, the International Music Summit (IMS), a think tank dedicated to promote market research in EDM and serve as the unofficial trade body for the genre, evaluated the entire electronic music industry at an impressive \$6.9 billion, which would top sales of recorded music, including streaming, compete with the value of the products industry, and surpass concert ticket grosses and publishing monies. The Electric Daisy Carnival in Las Vegas, for instance, had over 400,000 attendees in 2015, making it the largest festival in North America. The business of EDM awaits its own TV marquis show this April, FOX's first annual Electronic Music Awards.

Similar stories can be told in Europe and Australasia, two regions that were early adopters of the form. In Belgium, Tomorrowland attracts 360,000 visitors, and other shows are drawing thousands more visitors with each annual iteration, among them Creamfields in the U.K., Stereosonic in Australia, Nature One in Germany), and Sunburn in India.

Such an impressive run is bound to slow down at some point, but the EDM market will still remain vibrant. IMS's \$6.9 billion figure for 2015 was only a 12% increase from 2014, and considerably smaller than the 37% increase between 2013-14. These figures would not likely cause concern anywhere else, but in the bullish EDM market they receive much attention.

SFX

America is especially singled out for questioning. As the narrative goes, the numbers of festivalgoers there hardly showed growth in 2014-15. A partial ex-

planation is that the Ultra Music Festival returned to a one-weekend event only in 2014 compared to two-weekends in 2013. But it is the troubles of SFX Entertainment, a company built to on the promise of EDM, which is likely fueling most anxiety.

On February 1, 2016, SFX Entertainment filed for Chapter 11 bankruptcy. Formed in June of 2012, SFX Entertainment, was Robert F.X. Sillerman's project to take the EDM market by a storm. He spent \$1 billion to acquire and consolidate several independent EDM promoters, including Disco Donnie Presents, Miami Marketing Group, and ID&T. SFX also acquired the online electronic music store Beatport. In retrospect, he over invested. SFX went public at \$13 per share in 2013 but by the summer of 2015, its share price had fallen to \$4 (it plummeted as low as €11 per share a year earlier).

High debt, poor cash flow, and the odd less than stellar festival, pushed the company to the brink. By the time SFX decided to cancel One Tribe in Los Angeles because of poor ticket sales, the dye had been cast. Earlier, Sillerman had offered to buy the SFX's shares at \$5.25 a piece in order to take the company private again, but investors were skeptical about the availability of funds for the transaction. They were proved right when he finally abandoned his bid at even more depreciated share prices; when SFX failed to make a \$3 million dollar payment on a \$10.8 million promissory note the company entered bankruptcy proceedings. Bankruptcy planning will likely involve making the company private again, and removing a \$300 million debt with the help of bondholders, which may accept an equity conversion and provide \$115 million in additional financing—a sign that there is hope for the future of the EDM market as perceived by its investors. In the meantime, Sillerman will be replaced and its BeatPort store, purportedly the world's largest for DJ's, will be auctioned. However, SFX's major festivals, including Tomorrowland, Electric Zoo, Mysteryland, and Stereosonic will continue as planned.

The story of SFX could have a sliver lining. The electronic music world feared that, since its inception in 2013, SFX would corporatize the EDM market.

SFX was expected to take fewer risks and promote the same, well tested, DJs at their venues. Indeed, EDM festivals all over the world still feature many of the same talent, including Tiësto, David Guetta, Avicii, Afrojack, Martin Garrix, and Deadmau5. The hope is that the demise of SFX, and its new incarnation, might return EDM to its bolder roots.

After SFX

It is thus foolhardy to dismiss the future of EDM based on the early record of SFX. An indicator of the resilience and strength of the genre is, for that matter, the global DJ product market, which is thriving and moving \$350 million in gear annually. Moreover, Soundcloud, where the EDM music maker culture lives, reported having 175 million unique listeners monthly and 10 million users creating music every year — many if not most of these are EDM fans.

The Internet is aiding an abetting the growth of EDM, and this will not change. Festivalgoers are sociable, depend on the web for media information, and on their cyberspace friends to find places to celebrate music together. EDM is also tied to the advances of music product technology in the Digital Age. Both factors, and the talent out there, explain the quick rise of the genre. The artist Kygo embodies every one of these considerations. He is from an under populated country, Norway, and is known for his signature Tropical House style. His music shows tremendous potential, and he skyrocketed to the top of the EDM world by getting 80K Facebook likes in half a year, signing a with Ultra Records/RCA Records, and then becoming the fastest artist to get 1 billion streams on Spotify — all in two years. ^[MBJ]



BUSINESS ARTICLES

Pandora's Evolution

By Shereen Cheong



Of late, the sustainability of streaming giant Pandora has become questionable. Losses are fivefold what they were a year ago, even though revenue has grown beyond a billion dollars. The service, as ever, depends upon its free ad supported streaming tier. Maximizing revenue, a strategy that ultimately guided the company's growth, is being now reexamined in favor of cost minimization—although given the evidence presented below this would appear to be merely an aspiration more than a matter of policy. Neither does Pandora enjoy a profitable international presence: so far the only markets it has fully penetrated are the United States, Australia, and New Zealand.

Events precipitated this year. A payout to the majors on the use of their pre-1972 recordings introduced a new expense line, while the Copyright Royalty Board's (CRB) decision on the statutory rate met Pandora's needs only half way. Even with the purchase of streaming service *Rdio* the value of Pandora's stock plummeted. A recent *New York Times* piece suggests that discussions have started with Morgan Stanley to consider a potential sale.,

Money In, Money Out

About four-fifths of Pandora's receipts come from advertising and with its recent acquisition of *Ticketfly*, Pandora has nevertheless added some momentum to revenue generation. *Ticketfly* allows Pandora to direct its music fans to events that may interest them. With a loyal base of eighty million active listeners, Pandora is now profiting from the ticket-sale market, where *Ticketfly* currently provides ticketing and marketing software for approximately 1,200 venues and event promoters across North America.

Costs, as suggested above, have taken their toll. The company made a loss of

\$170 million last year. Pandora's 2015 purchase of *Rdio*, for \$75 million in cash, has no yield for now. *Rdio*'s technology and other assets are not operational, and this will only change when the service is launched as an interactive service, somewhat comparable to Spotify, later this year. In addition to the purchase of *Rdio*, there was a \$90 million settlement for the use of pre-1972 recordings with Capitol Records LLC, Sony Music Entertainment, UMG Recordings, Warner Music, and independent record label ABKCO. About \$70 million was paid out in 2015, and the balance is due in 2016 (there is little comfort knowing that Sirius XM paid more than twice what Pandora did). As well, Pandora paid \$43 million in commissions to tech giants Apple and Google last year: this was essentially a levy on any subscribers acquired through the duo's respective app stores rather than through a browser; the commission is expected to be about \$50 million by 2016.

SoundExchange

In December last year, the CRB came to a final decision on the statutory per-stream rate paid out to recorded music rights-holders by non-interactive digital streaming platforms. This statutory per-stream rate was set at \$0.0017, which was \$0.0003 more than the amount that recorded music rights-holders currently received. The rate will only definitely apply to 2016 payouts, but not necessarily in the following four years (2017-2020), when it will be adjusted for fluctuations in the US Consumer Price Index (CPI)—which could bring the rate up or down. During the CRB's decision-making process, Pandora made the case for lowering the per stream payout from \$0.0014 to \$0.0011. Conversely, SoundExchange argued for a drastic increase to \$0.0025. Pandora will be paying out \$94 million more to recorded music rights-holders in 2016 for the same amount of consumption, according to an estimate. Publishers and songwriters will make gains too.

Overview

Since the CRB has raised the per-stream rate, it has made it harder for Pandora to survive. Scaling for Pandora was anyway a double-edged sword, always requiring higher payments to rights holders. Initially, those rights holders had agreed on easier rates to allow growth and, back then, the establishment of Pandora. But Internet radio is now well de-

veloped, and the majors are not as easy going. The collective licensing agreement with SoundExchange is practical for Pandora though unpalatable, and unless Pandora can offer other services for a discount, such as the promotion of new releases, little will change.

It is in this context that Pandora has revamped its Artist Marketing Platform to support a direct-to-fan business. Its AMPcast feature now allows artists to target their Pandora fans by sending them audio messages about local concert dates, album releases, and other 'behind the scenes' content. AMPcast also provides links for the purchase of both albums and concert tickets. This new tool could be a market changer, for it would make the online radio provider not just a distributor of recorded music but an active player in the live music space. For Pandora, this chance at disrupting the existing business model may in the end hold the biggest promise of all. [MBJ](#)

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BUSINESS ARTICLES

Small Radio and the CRB: Live365

By Alexander Stewart

The Copyright Royalty Board ruled recently on the per stream rate that Pandora, and similar non-interactive online radio services, are to pay SoundExchange. As was expected, the ruling made the rate more expensive. Sound recording owners had agreed to license their copyrighted music at a lower rate to encourage new business, and new higher terms for non-interactive streaming rates were now inevitable. The CRB tried to be fair, and Pandora, and SoundExchange, accepted the ruling and moved on (Editor's note: we cover the topic elsewhere in the issue).

However, press coverage, including that of this Journal, has been mostly about Pandora and whether or not Pandora will be able to sustain its business model under the new CRB rate. This is understandable: the company's pioneering efforts in online radio, its iconic status as the first technology company to launch an IPO after the Big Recession of 2008, and, last but not least, its vast audience of about 80 million active users, sucks the air out of all the other stories.

Here, however, we pay attention to Live365, a service that flew under the radar of the streaming world and closed its doors immediately after the CRB ruling. It is a case study on small business and the openings that such businesses can exploit while the big players, i.e. the owners of copyrighted sound recordings and the online services that use their work, are coming to terms with a compensation model that works for them.

Case Study

Live365, which launched in 1999, provided Internet broadcasting for small-scale and community broadcasters based in the United States. Users were able to create their own online radio stations, or choose to listen to thousands of human curated stations as well. The service also had many well-established AM and FM radio stations that utilized the online broadcasting platform to simulcast their terrestrial radio streams via the Live365 network.

On December 16, the CRB released webcast rates for 2016-2020, which was significantly higher than previous years. Their ruling also simplified the structure of non-interactive digital streaming by erasing the difference between pure play webcasters like Pandora and other online radio station. This decision forces smaller radio station webcasters to pay a per-stream rate of 17 cents per hundred streams, iden-

tical to pure play Pandora.

Around the same time of the CRB ruling, the Webcaster Settlement Act of 2009 expired, discarding legislation which allowed smaller online radio stations, Live365 among them, to pay lower royalties to labels than those paid by larger brands. The Webcaster Settlement Act's renewal is now uncertain, as Congress must sanction it before negotiation between industry groups and smaller webcasters can begin in earnest. In the meantime, smaller webcasters face worrying times.

Live365 managed the licensing fees for webcasters using the company's Pro plan, allowing webcasters to run their own ads and blanket, i.e. switch off, any advertisements from Live365 and their sponsors. As limited by BMI, the webcasters could make up to \$1,200 per month in revenue related to their station, or station's website, while Live365 covered their royalties. If a webcaster or station exceeded the limits placed on the Pro plan, they would have to get licensed directly through BMI and pay the higher costs associated with these licenses.

The CRB December ruling left Live365 pondering how to afford higher rate obligations for people on the Pro plan, and whether the platform could retain non-Pro webcasters who were now facing dramatically higher costs. Ironically, it would be the more popular stations that experienced and delivered the most financial hardship to Live365. More successful stations with a higher number of listening hours and more listeners than the company's Pro plan threshold could not afford the CRB's increased per stream rates, and therefore many went out of business, removing large blocks of revenue for Live365.

The rest is history. Live365 investors took fright and started withdrawing. By late December 2015, Live365 had laid off most of its employees and vacated its office, ceasing operations on January 31, 2016. The shutdown of Live365 also affected many terrestrial AM and FM stations using Live365 for they now had to find an alternative Internet radio broadcasting service.

Conclusions

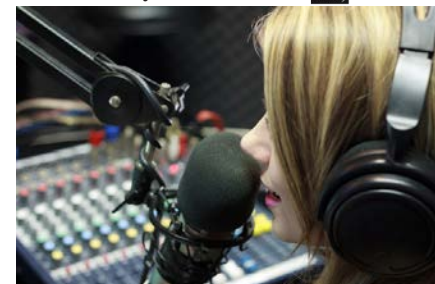
The market of online radio is growing. There were 160 million monthly digital radio listeners in the U.S. in 2014, and that au-

dience is expected to grow to over 180 million by 2018; time spent on the medium is expected to rise by about a third. Listeners were spending on average only six hours a week in 2008 compared to today's thirteen.

Still, much of the data probably comes from top sites like Pandora, Spotify Radio, and iTunes Radio, and smaller radio can only find pockets of listeners in compliance with current practices for such online stations. Moreover, the story of Live365 shows that the new expenses associated with online streaming make smaller Internet broadcasting networks harder to operate. What Pandora can accommodate in royalties is not what smaller broadcasters can bear to pay. The demise of smaller scale Internet broadcasting, in short, is now likelier.

To survive, smaller webcasters will have to take measures both to limit listenership and reduce costs. Converting into 501C non-profit could be a solution, and there is the possibility of seeking better direct licensing deals, uncomfortable and cumbersome as this may be. It is a pity that the influence of smaller webcasters on the Copyright Royalty Board was not enough to change its ruling. Legislators may have to work harder too to review the terms of the Webcaster Settlement Act.

With the end in sight, Live365's website epitomized the drama of small radio. It talked about the 'revolution' it had instigated. Anyone that had something to say or play could use Live365's network tools. They saw themselves as talent aggregators, one of the first but certainly not the last, and claimed they had ultimately served over a hundred thousand webcasters and a hundred million dedicated listeners. But the company's parting advice for clients and competitors was simple: stay anonymous to avoid getting listeners that are financially unsustainable. MBJ



TECH NEWS

The Spell of Virtual Reality

By Summer Whittaker



The next frontier of a musical experience may well happen inside a specially designed virtual reality headset. Developers like Oculus, Microsoft, Samsung, and Sony are blurring the distinction between reality and fiction. They are adapting the contents of real world activities, such as going to a concert or watching a music video, and are beginning to generate both immersive and interactive experiences that have integrity for the user, such as enjoying a live performance as if on stage but from the comfort of one's home.

The players in the Virtual Reality (VR) camp have deep pockets. Facebook bought Oculus, a market leader, for \$2 billion in 2014. Microsoft has since partnered with Oculus supplying the Xbox One hardware that will ship with the new headset. The headset became available for pre-order as this publication went to press. VR technology, in fact, is turning the corner, with Mark Zuckerberg, Facebook's iconic founder, comparing its possible impact to that of the smartphone. And the smartphone did not turn the video game industry on its head, whereas a VR headset might.

Music related companies are jumping aboard in the belief that that is the future. The most important partnership so far is between Universal Music Group, the leading major in the global music business, and iHeartMedia Radio, the largest owner of radio stations in the United States (formerly known as Clear Channel). This association between iHeartRadio and UMG would merge a business based on advertisements with another one based on revenues generated from recorded music sales and sound recording copyrights. The union is unusual, but both have an interest in common: monetizing better, to their own ends, any fan and artist interaction. In part this is because the expectation is that VR technology will migrate to the iPhone and that fans could experience a virtual concert anywhere just with the VR headset.

VR recordings are meant to give

a more personal viewing experience, where proximity to the artist is enhanced by 360° views and virtual interactions with the audience. Off stage experiences are a big feature too, and pre and post show access is a good sell. The trick will be to confound the user with elements recorded from the show and others produced by the software when triggered by the headset.

Universal Music Group plans to video-record multiple shows in 2016 to supply VR product, but it has not yet released the list of artists being booked. iHeartMedia has plans to launch its first ever VR series at the iHeartRadio Theater on April 3rd, 2016, and a list of UMG artists is likely to be put forth then. iHeart shows include the iHeartRadio Country Music Festival, the iHeartRadio Music Jingle Ball Tour, and the iHeartRadio Music Awards.

Virtual technology use in the music industry has a strong economic imperative. Jingle Ball's tickets, for instance, go for \$300. A cheaper alternative, viewed at home, makes a lot of marketing sense. Indeed, the avowed goal of UMG and iHeartRadio is to make live music more accessible to fans that cannot afford artists like Taylor Swift and Adele. The Oculus VR headset is expected to retail at \$599, a price that includes the Xbox One. The system might require a powerful PC in order to properly run it, which, by Oculus's own estimate, would cost another \$1,000. Therefore, the purchase of the system may not be justified for a few concerts. However, if the product is purchased for the variety of other entertainment applications it can offer it will definitely give fans a live music experience at a lower price.

In the meantime, sitting on the sidelines are some well-known companies and new startups.

Samsung may be responsible for the introduction of VR technology into live music. The Coldplay *Ghost Stories* concert was recorded in 2014 using Samsung's Gear VR device. According to Phil Harvey, considered to be the fifth man in the group and its creative director, the band's goal was to use the technology to render an improved concert experience for fans that would supersede, if possible, the actual concert. Harvey seems to have been more than pleased with the results, suggesting that user interactions with actual VR recordings could open up new avenues of expression for artists. The South Korean company has announced new VR product almost in tandem

with Oculus, but with less fanfare.

Sony's consumer version of its PlayStation VR is scheduled to launch in October 2016. Sony is the only one of the three majors (Sony Music, UMG, and Warner Music) to own a consumer electronics division. Sony usually takes its time to engage its software and hardware divisions together; it was the last label to support the iPod and agree to license its full catalog to Apple in 2003. But this is a case where the tortoise might indeed catch up with the hare (UMG), because on the face of it Sony might do a better job of aligning its artists with its new VR technology.

A sign of the times is given by California startup Wevr. Wevr intends to become the YouTube of virtual reality, and in February it raised \$25 million to build an online reality content network that will allow users to view videos in VR mode using their proprietary headsets. If successful, Wevr could prove a boon for artists and their labels, for it will offer many of the capabilities of YouTube such as easy search and play and, most importantly, full upload. [MBJ](#)

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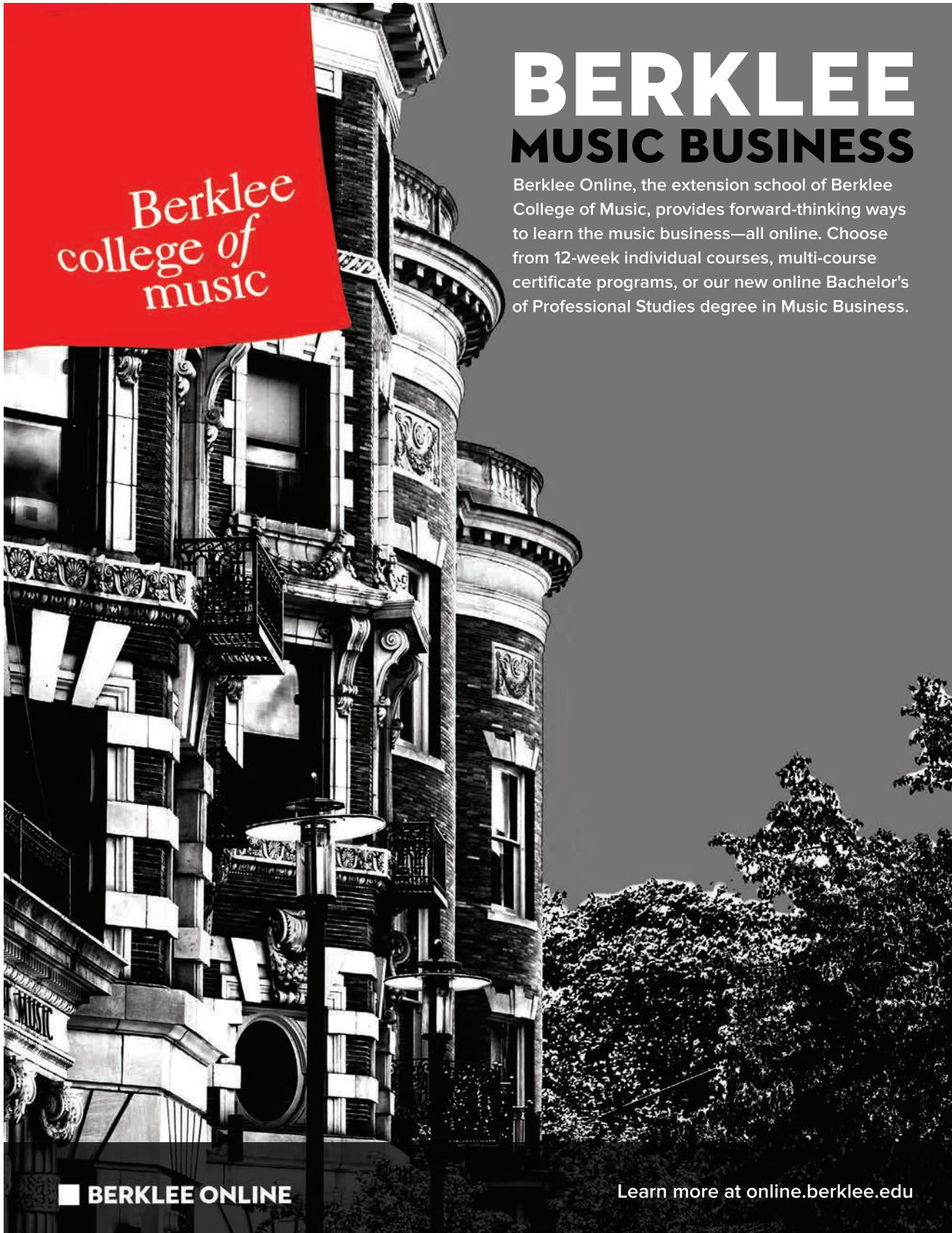
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The Power 100 (cont.)

(FROM PAGE 4)

company reversed its policy and Swift later offered her 1989 concert film as a Christmas exclusive. Finally, Apple went public against building illegal business models on the backs of musicians. The most valuable corporation in the planet, it appeared, was putting the ghost of free music to rest.

The rest of the Billboard Power 100 seems to skew to record label related executives. Doug Morris, the CEO of Sony Music Entertainment is listed in fourth place, while Len Blavatnik, Vice Chairman/Owner of the Warner Music Group is listed in eighth place. Among the top fifteen are Michele Anthony and Boyd Muir (UMG) in 12th place, Stephen Cooper (Warner) in 13th place, Rob Stringer (Columbia) in 14th place and Avery and Monty Lipman (Republic Records) in 15th place. Daniel Ek, of Spotify, ascended to the tenth position, climbing ten places. File sharing and the World Wide Web may have disrupted the record business, but for Billboard fee-paying subscriptions must be a harbinger of good things.

Live music power brokers are also featured prominently. Irving Azoff, Chair-

man of Azoff Madison Square Entertainment takes sixth place; Coran Capshaw, Founder, Red Light Management, takes seventh place; and Rob Light, Partner and Managing Director of the Creative Artists Agency, takes ninth place. Music publishing appears to be given short thrift: Jody Gerson, Chairma/CEO, Universal Publishing Group, is the first representative for the sector back in eighteenth place.

There can be, of course, a lot of debate about the Billboard rankings. Still, all the executives chosen represent trade sectors that stack in the same order than they did in the 1990s. If we ignore the business of gears and instrument accessories, which Billboard does not follow, back then recorded music was the cash cow, with live music and publishing falling far behind in terms of total sales.

In writing history, continuity rather than change is often the plausible assumption to explore. In spite of all the changes since the 2,000s, Billboard gives the impression that the main building blocs of the industry are standing tall -- if not exactly in the same proportion, still in the same ranking. **MBJ**

Activism (cont.)

(FROM PAGE 5)

the day for her there—she would have likely been criticized for apathy. But it seems that the artist was concerned too about police violence against African Americans and the legacy she was considering for her daughter.

* * *

The music and film industries are no strangers to events that affect us deeply as a society. Creative talent, moreover, cannot but reflect the times. In the rear view mirror, 2016 could be an inflection point, a year when politics, arts, and society came together in unexpected ways. As well, there seems to be an expectation by the public that the complexity of life today cannot be drowned in simple entertainment. There has to be context, and while music and film can be made for their own sake, a more involved and outward looking artist, or creative director, is now back in favor. In short, commercial calculation does not seem to be completely at odds with a passion for activism. As conversations about society heat up, entertainment may well become less bland. **MBJ**