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Brexit and the Music Industry

By Alex Stewart and Ryan Stotland



On June 23rd 2016, the U.K. voted in favor of leaving the European Union. The referendum put the majority at 52%, with England and Wales in favor and Scotland and Northern Ireland against. The turnout of 72%, at 30 million, was the highest in a UK-wide vote since the 1992 general election. The hashtags #Brexit and #EUref trended on Twitter, with celebrities and artists weighing mostly against Brexit. It is good to reflect here on Brexit's impact on the British and European music industry.

Trade and Copyright

The economic consequences of Brexit start with trade. It is early to guess what new agreements the U.K. will forge with Europe. Intra European trade between the British Isles and the Continent might eventually revert to normal if the Kingdom gets, although this is far from being guaranteed, an accommodation within the European Economic Area (EEA) --such as Norway currently enjoys. This would take at least three years to negotiate and will be expensive, with the British Treasury expected to contribute sizeable sums to the EEA for the privilege of continuing to access European markets in the most favorable terms. Such payments would be less than the U.K. pays to Brussels now, but not by much

and Great Britain would have to recognize the free movement of people within the area, a difficult proposition after the Brexit vote.

Without continuity in trade, Brexit's impact on the music economy would be severe. The U.K. is always among the top four music markets in sales of recorded music product, and typically it is one of the highest spending per capita countries. Last year, British musicians accounted for over 17 percent of album sales in Germany, France, Sweden, Italy, Spain, and the Netherlands. A third of all sales in the UK were in domestic recorded product. Physical sales, which typically produce higher royalties for artists and labels, tend to be more popular in Europe, so the U.K.'s exit from the EU has the potential to bruise the market and artists.

To see this in context, many years ago, before Great Britain entered the European Common Market, there were tariffs on goods coming into the U.K. If a record was bought in France and then brought into the U.K., it had to be declared and a tax was levied. With the European Union, U.K. businesses stopped paying import taxes of any kind when trading with other E.U. companies. This could likely change now, raising wholesale prices and causing labels to charge more to compensate. For example, the majority of the vinyl in the U.K. is made in plants in European countries, and the acquisition cost of these recordings is bound to escalate for both labels and consumers.

Law is the chaperone of trade and Brexit has also raised concerns about how copyright is going to be protected and enforced throughout Europe. The European Commission is currently reviewing copyright legislation, including safe harbor provisions, as part of its Digital Single Market strategy, aimed at opening up digital opportunities for people and business, and enhancing Europe's position as a world leader in the digital economy. The current state of the E.U.'s digital landscape is somewhat fragmented, housing twenty-eight separate digital markets, one for each member country. The Digital Single Market strategy is more pro industry than its equivalent U.S. legislation, embodied by the current regulations of the U.S. Digital Millennium Copyright Act

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MISSION STATEMENT

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

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EDITOR'S NOTE

Welcome to the summer 2016 edition of the Music Business Journal. It has been an active summer in the music industry, and the world at large. We at the MBJ have been working hard at understanding how issues such as Brexit, the new Open Music Initiative (OMI), and how the Consent Decrees will impact the music industry moving forward. We also discuss YouTube's value gap, security in live music, and the gentrification effect that follows a vibrant music scene—a phenomenon that is receiving increasing attention in Europe. We have articles too on China's music business and the U.S. summer festivals.

The issue begins with the most high profile event of the summer, Britain's decision to leave the European Union. We discuss trade and the sterling and dive into music. The Department of Justice's decision to alter the consent decrees that govern how PRO's operate was a great disappointment to the publishing industry, including ASCAP and BMI, and deserves our prime attention too: songwriters unite!

Next, we cover OMI, a joint venture between the Berklee Institute for Creative Entrepreneurship (BerkleeICE), the MIT Media lab, and storied design consultants IDEO. Over 120 partners from across the music industry and others, including Netflix, YouTube, and Spotify, are taking up the challenge of making the music trade simpler and more transparent with open sourced attribution.

Music and sociology intersect in our piece on live music in big cities, where developers ultimately crowd out the live music venues that made places 'cool' in the first place. This summer, moreover, security concerns have been on everybody's mind. The tragic shootings at clubs in France, Orlando, but also of YouTube star Christina Grimmie, makes security at live music events more important than ever.

Piracy is still a problem looming large over China's music market, but things are improving and the domestic market is offering opportunity. We give our update.

At home, the ubiquity of mobile apps is providing a more connected experience at music festivals while cutthroat competition is segmenting this lucrative market.

We end with the most music popular service, YouTube. The music industry believes that the 'safe harbor' provisions granted to ISPs have given YouTube an unfair liability exemption that it uses to underpay music publishers and their songwriters. Record labels are also addressing this perceived music value gap, so the creative community is slowly building a common front against Google, hoping to sway Congress. This is good news.

From all of us at the MBJ, thank you for your continued support. Please join the discussion through our website or social media channels.

Thank you,

John R. Lahr

Sincerely,
John Lahr
Editor-In-Chief

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BUSINESS ARTICLES

Brexit (cont.)

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(DMCA). In the U.S., the safe-harbor provisions of DMCA allegedly allow platforms like YouTube to get away with certain forms of copyright infringement not allowed in Europe. Recently, fifty-eight members of the European Parliament signed a letter to the European Commission urging them to give consideration to fair artist payments in Digital Single Market legislation, making it harder for Internet Service Providers to claim ignorance of piracy.

The U.K. stood to benefit from these regulations, let alone having a say in their proposal and implementation. This now seems lost. In fact, Brexit may well reduce British independent artists' negotiating power in both domestic and international copyright reform. And if the Digital Single Market strategy is not actively supported by the British government there is a real possibility that a different, less punitive, set of copyright measure will replace the initiative, with local artists losing even more. Moreover, with Great Britain's departure, Brexit would seem to undermine artists' collective bargaining advantage in Brussels.

Largely because of this, on June 29th U.K. Culture Secretary John Whittingdale, MP, released a statement pledging support for the creative sector, including musicians. After arguing that it was one of the strongest and fastest growing sectors of the U.K. economy, contributing 16% of total gross value added, the minister pledged to work closely with intellectual property owners and others, "[making sure] they have a voice as the U.K. prepares for the negotiation to exit the E.U." Mr. Whittingdale added that he would "support [and seek] new arrangements which will maintain our trade relations and encourage [the creative community] to look for new opportunities across the world." At this stage, the sentiment is unlikely to allay suspicion of a bumpy road ahead, for Great Britain's priorities in securing a new deal with Europe may not lie with cultural workers.

Moreover, the E.U. gives more than £1 billion to the creative industries, and U.K. applications for arts funding and various venues around the U.K. benefit from it. This would be lost. Although the U.K. music industry has not relied on E.U.'s funding as heavily as other member countries, the benefits of these monies

are considerable, even if they are not always obvious to the general public.

Venues such as The Village Underground, a 1000-capacity warehouse venue in east London, currently benefits from two E.U. programs. LivEurope, an initiative supporting concert venues that promote up-and-coming European artists, pays to slot emerging European bands on bigger bills. Another E.U. funded project is Creative Lenses, a four-year investigation into new business models for the cultural sector that is meant to back such new models financially. The British Phonographic Industry (BPI) and PRS for Music (the new amalgam of the Performing Right Society and the Mechanical-Copyright Society that collects on performance rights for songwriters and pub-

throughout the major markets in Europe. Now, it is increasingly likely that they will need to acquire separate working visas for each country in the E.U. they wish to visit, as limitations could soon be placed on British nationals' ability to live and work there. At the very least, the extra work and cost involved in procuring a visa to tour Europe might crowd out the smaller, marginal, bands. This, incidentally, would also apply to European acts wishing to play in the U.K.

Another trade related issue that might have an impact on European touring into Great Britain, is the purported reintroduction of 'carnets', documents that were in existence before the E.U. Carnets detailed every single piece of equipment on deck and were required to move product across borders so the customs authority at the border could keep track. Gear had to be declared, imports identified for tax purposes, and domestic goods checked for payment of the Value-Added Tax. Once this was done, the equipment could travel and clear British ports on exit and entry. A carnet would cost between £1000 and £2000 (approximately \$1400 to \$2900), and would last a year.

Sterling

Clearly, these new trade regulations would make tours more complicated to run and finance – and interfere as well with crew and freight travel. Underlying all of this, of course, is the decline of sterling, making touring artists and their labels prone to pay higher expenses, not least for chartered flights and sundries.

The devaluation of the British pound since Brexit has been very much in the news, and its continuation has the potential to affect many parts of the U.K. music industry. It may not all be bad news, as we observe below.

Days after the vote, two trillion dollars in value was wiped off the global stock markets. The British pound took the biggest hit of all asset classes and fell sharply against the U.S. dollar, falling below the \$1.30 mark for the first time since 1985. Traveling abroad, as noted for touring gigs, will definitely become more expensive. But in the

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lishers) already help British artists fund tours, and do not depend on E.U. handouts. But these are more limited funds and BPI and PRS mostly award artists with a strong fan base in the UK and Europe, not aspiring talent.

Touring

Better returns in recorded music and the intellectual property collections go hand in hand, in the music business, with more touring. Touring musicians are rarely afforded the friction-free entry into a country that ordinary tourists enjoy. Before the Leave vote, British touring artists could travel freely and perform

LAW SECTION

The Consent Decree and Songwriters' Rights

By Spencer Ritchie



In June, the United States Department of Justice both denied a review of ASCAP and BMI's consent decrees and extended the reach of the decrees to eliminate the traditional practice of fractional licensing. Performance rights organizations (PROs), music publishers, songwriters, and rights management businesses are concerned. This is because traditionally these collections societies have operated under a 'fractional licensing' system, issuing public performance licenses for only the percentage of the composition that they control. The recent DOJ ruling will completely upend the practice, mandating that ASCAP and BMI license 100% of a composition. This would take the power away from the PROs to decide whom to license their content to.

After two years of petitioning the DOJ, and the DOJ soliciting opinions from the public at large, ASCAP and BMI are clearly disappointed. The ruling has created confusion in the law and seemingly added new roadblocks that will likely make legal proceedings more expensive in what was already a closely scrutinized and heavily policed market. It is a watershed decision for public performance collections and affects songwriters and their publishers. Both will likely appeal the decision -- if that option is open -- for there appears to be a favorable treatment of tech firms and wholesale music licensors at the expense of content creators and their administrators.

Politics

The consent decrees are regulatory documents that date back to 1941 and are the result of numerous antitrust lawsuits between the United States and ASCAP, and later between the United States and BMI (whose consent de-

cree was modeled on ASCAP's, and drafted later in 1941). They were designed to encourage competition in the marketplace, and prevent ASCAP and BMI from charging different prices to licensees who were "similarly situated". While the decrees placed both organizations under much regulatory pressure, ASCAP and BMI were given exclusive rights to publish any given composer's works and even seek payments for authors when broadcasters did not necessarily chose to perform their songs

The decrees were originally intended to prevent the exercise of a duopoly power, because the two organizations accounted for about 90% of all PRO revenue in the United States. Thus, SESAC, the much smaller and historically less influential PRO, was not bound by the same decrees, and neither was, more recently, Global Music Rights, Irving Azoff's new management company. Today, ASCAP and BMI argue that the World War II era documents have long since become outdated, and that they adversely affect the business of their affiliated songwriters and music publishers. The decrees, they argue, were entered into before the invention of the transistor radio, and were never intended for the era of digital media -- nor could their interpretation extend into that new arena.

The consent decrees limit the licensing ability of ASCAP and BMI just to the public performances of songs or other recorded material, and to this day, ASCAP and BMI do not deal in collections of mechanicals, synchs, or licenses for derivative works. The decrees mandate a limited term of five years to license works and set a going rate for licensees of similar means, with disputes going to a "rate court" (where litigation costs can rapidly escalate).

The problem is the current juncture. For ASCAP, the regulatory regime that governs how public performances are licensed "is making it increasingly difficult to serve the needs of our members (music creators), our customers (music licensors), and the music listening public." ASCAP also argues that its limitation against administering any rights besides the public performance right places it an undue competitive disadvantage with SESAC and Global Music Rights-- and with BMI, who is bound to a consent decree that does not expressly forbid other activity. In the meantime, supporters of consent decrees maintain that anticompetitive behavior will never be erased by technology, so ASCAP's request for a more

modern and flexible licensing system could not level the playing field.

At best, ASCAP and BMI were hoping for a dismissal of the consent decrees. This would allow them full participation in free market negotiations on behalf of all their clients' rights. Second to that would be their hope that there would be a tweaking of the decrees, allowing them, for instance, partial withdrawal of rights for certain content from under the existing blanket licensing system. The PROs believed they should get permission to sell piecemeal certain works that were not fetching their proper value under blanket licensing. Ultimately, ASCAP and BMI would argue, the question is who is to say if a well established radio station and mid-level streaming website are "similarly situated" and should be paying ASCAP and BMI the same amount. The only way of resolving this question, and so maximize revenue for songwriters and their publishers, is to devolve power back to the marketplace. In short, ASCAP and BMI were hoping for a deregulation of their business practices, so that they could be tailored by the organizations themselves to fit the licensing needs of the digital era.

Full One-Stop Licensing

The knockout punch in the DOJ ruling is the notion of 100% licensing, which industry critics have panned. Many see the decision as one that violates the adage "if it's not broken, don't fix it". The ruling further complicates an already highly government regulated business. Ignoring the dissenting opinions of 100% licensing from the US Copyright Office, the songwriting community, members of congress, and ASCAP and BMI, the DOJ has now fundamentally altered the structure of song licensing. DOJ did not defer judgment to "experts" in the field of music licensing. Critics have noted as well that the ruling may well drive down the cost of purchasing licenses, as the ability to license an entire composition with the approval of only one PRO may well result in ASCAP and BMI undercutting each other, driving costs to the lowest possible value and hurting bottom lines across the publishing sector.

The shift may give PROs even more power to license works that they do not

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Brexit (cont.)

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classical economic model, a weak currency can boost economic growth because it makes exports cheaper to foreign countries. This applies to all manner of music earnings abroad.

Record labels, publishers and artists that export music may grow in tandem with a weaker pound. They incur most of their costs of recording and creating music in weaker British pounds but will get paid with more valuable currencies. PRS, the largest performing rights organization in the UK, reported in their latest annual report that their biggest source of revenue, at 36% of the total, came from international royalties. International royalties were more important to PRS than domestic public performance and broadcast collections (of the 196 million pounds that PRS collected last year in international revenues, 61% came from Europe, 21% from North America, 10% from Asia Pacific and the rest came from less established markets).

Where imports are a consideration for record labels or music product retailers, the majority of expenses would come from highly liquid currencies with similarly low interest rates where hedging is cheap. Hedging the British pound against the Euro costs roughly 0.25% compared to the 14% cost of hedging the Euro against a currency like the Brazilian Real. Exchange risk exposure, where it arises, should be manageable.

It should be realized too that foreign companies are seeking out new investment opportunities in Britain as a result of the devalu-

ation of sterling. Unlike a domestic exporter, who prefers a weak currency, a foreign investor wishes for weakness in the currency before the acquisition and then hopes for a rebound after the investment is made.

Peter Hemington, head of M&A for BDO United Kingdom, said he was seeing more interest in the wake of the Brexit vote from private equity firms looking to acquire new companies in the UK. Indeed, AMC Entertainment made it clear recently that the cheaper pound pushed them towards making a \$650 million acquisition of European movie theater operator Odeon & UCI Cinemas; the deal became 10% cheaper for AMC according to Leo Kulp of RBC capital markets in the week after the Brexit vote, and the company saved more than 65 million pounds.

Investors in the music industry will also be looking for opportunities to buy music companies that once looked expensive. And one of the purest ways to take advantage of the drop in value of sterling might be to invest in music publishing catalogues. This is because publishing royalties behave more like bonds and have predictable cash flows. In general, currency fluctuations have a more meaningful impact for bond type investments than equities, which are much more volatile (equity investments are dependent, above all, on beating earnings expectations and/or successful exit strategies).

Veteran management executive Darren Michaelson (Smashing Pumpkins and El-

ton John) announced a £100 million (\$130 million) investment fund early in July. Music, he said, was one of only two industries in the entire commercialized world that operated on royalties, the other being mining. Old-fashioned intellectual property rights were at least as alluring to Michaelson in the days after Brexit as ever.

Finally, a cheap pound has the benefit of attracting tourists because goods and services become cheaper than back home. In fact, a weak British pound could mean that concert tickets, accommodations, food and other expenses are now cheaper for tourists. This is far from being neutral to the U.K. music industry and the U.K. economy. A research piece by UK Music claims that music tourism generated £3.7 billion (\$4.8 billion) in total direct and indirect spending in the U.K., with as many as 10.4 million music tourists making up 38% of the whole live music industry in the last twelve months.

Conclusion

Whereas the impact of Brexit on trade and copyright is uncertain, and potentially harmful to the music industry, there may be short and medium term silver linings in the devaluation of the U.K. currency. Analysts seem pessimistic about the long-term prospects of Brexit for the domestic economy, which would affect all music revenue. If live music continues to be the main source of income for most musicians, new travel restrictions and higher expenses there could hurt touring and the livelihood of performers. There may be some compensation with music tourism revenues picking up in the British Isles, but audiences today are more global than ever and artists look to promote themselves abroad. Moreover, better copyright enforcement under the tutelage of new E.U. initiatives can no longer be taken for granted.

In short, Brexit is a mixed bag for the industry. In the meantime, uncertainty rules because its unraveling will take time. The first rule of playing a new game is, of course, to understand it. This will not happen soon enough. **MBJ**

BUSINESS ARTICLES

Berklee's Open Music Initiative

By John Lahr

In early June Berklee announced the beginning of the Open Music Initiative (OMI), a collaboration between the Berklee Institute of Creative Entrepreneurship, the M.I.T. Media Lab, and globally renowned design firm IDEO. In addition to the three founding organizations more than sixty partners have signed on, including the three major labels, Google with YouTube, the Harry Fox Agency, Spotify, Pandora, Sirius XM, Netflix, and SoundCloud. Other endorsers are advocacy organizations like the Future of Music Coalition and Fair Trade Music, as well as academic institutions like NYU and University College, London. The goal is ambitious: to reinvent, build, and implement a new standardized digital architecture to track, account, and attribute payment for music.

OMI follows in the wake of Berklee's Fair Music Report, released in June 2015. That report was critical of music industry payment practices (see *The MBJ*, Oct. 2015), though its reception was mixed. It is encouraging that many industry practitioners that objected to its findings and tone are nevertheless supporting OMI.

Description

Many observers will note the similarities between OMI, and previous failed efforts at a centralized database for music's metadata, particularly the demise of the E.U.'s Global Rights Database (GRD) in 2014. The OMI is different by design. While the GRD was focused on building a centralized database, OMI attempts to build an open sourced platform with a shared protocol, centered on cryptography, distributed consensus, and interoperability with future and existing systems. Instead of constructing a simple repository of ownership and attribution, OMI seeks to create a self-sufficient system that works with both open and proprietary sourced data.

The broad mandate of the initiative includes the promotion, on the one hand, of a new coded online standard (such as HTML was for the web and SQL was for relational databases), and the creation of an industry-wide research and development lab. The OMI initiative is based on MIT's Pentalytics Model for driving systemic innovation. The five pivot points of the model are, respectively, (i) Entrepreneurs; (ii) Risk Capital; (iii) Corporations; (iv) Governments; and (v) Universities. Each has a role to play, and, simplifying, OMI would argue that it is necessary to empower entrepreneurs

to bring new technologies to market, for governments to adapt policy and so remove roadblocks to growth, for corporations and startups in the private sector to encourage R+D and new partnerships, and for educators to reach out to stakeholders, keeping themselves and their interlocutors informed about changing new market circumstances in an unbiased forum where productive discussions can happen.

Currently, one of the most pressing issues for OMI is solving a recurrent industry problem: properly identifying rights holders. A disruptive and forward-looking industry database cannot presumably make progress without solving that Gordian knot. There is indeed no uniform way to identify rights holders at present, and this creates tensions. For instance, sound recording royalties for public performances cannot always be attributed clearly and a so-called "black box" distribution system is currently in place with royalties



being doled out on the basis of a label's market share. This has traditionally bred mistrust among artists, so if OMI is able to gain traction it could be slaying a big industry dragon.

OMI's solution involves building a distributed ledger customized for the industry. It would use open coding architecture upon which the next set of applications and systems would be added. Technically, the core pieces of this ledger would be its blocks and the coded routines that would allow it to interact with a variety of different approaches to metadata already in use in the business.

OMI's first task, then, is to design and build that distributed ledger. The blocks of the ledger are the record of the data being exchanged. They would confirm when, what, and in what sequence a transaction has occurred. Blocks would also serve as the jury and security of the authenticity of a transaction. In order for a transaction to be placed onto the public ledger a majority number of

computers, known as the 'nodes' of the network, would need to agree that the details of the transaction were correct. This includes who participated in the transaction, what was exchanged, and who the original creators of the asset being exchanged were. The original creator would not have to be part of every transaction, as would be the case with derivative works such as remixes of remixes. In that case, the coding could require a simple majority of consensus from 'the nodes' pertaining to ownership. This consensus mechanism could also be used for dispute resolution or when a transaction has to be revised. This means that should a song be created, and re-entered in order to amend ownership splits, all computers on the industry chain would receive a notification to verify the change. The hope of this is that the method, and its transparency, will keep all parties apprised. There would be no place for backroom accounting once the song was uploaded.

The architecture that OMI is striving for is, of course, blockchain technology. But OMI plans to build as well its own Applications Programming Interface (API) to allow for other products and services to integrate the information contained within the blockchain. The API should make it possible to pull any or all data from the blockchain and use it for industry reference as well as royalty attribution. By open sourcing the underlying data, and providing easy to use access to it through the API, OMI hopes it will make it possible for anyone to experiment with new ways of experiencing music in all manner of future electronic devices.

Politics

To maximize the potential reach and impact of the initiative, OMI has to appeal to the self-interest of its five main subjects, viz., entrepreneurs, corporations, governments, and universities. OMI believes that large corporations will likely be first users. This is because they have the capability to integrate OMI architecture into their operation and benefit from its workings. The hope is that they might also encourage adoption.

Still, not all corporations in the business are created equal, and the devil of OMI politics will be in the detail. The ma-

BUSINESS ARTICLES

Berklee's OMI (cont.)

jors may see long-term benefits allaying artists' suspicions about royalty obfuscation, saving costs, and simplifying operations, especially because they are in the public eye. But that may not apply to the publishing industry, that tends to be much more proprietary about their song ownership data anyway. The PROs follow in their wake, and the last time around scuttled GRD. Tech companies like Google's YouTube, Spotify, Pandora, and Sirius XM are less concerned about direct ownership issues and just may be on OMI's sideline, listening in.

Another key piece of OMI's outreach is academe. All three founding members of OMI are directly involved with it: Panos Panay leads the Institute for Creative Entrepreneurship at Berklee, Michael Hendrix works at the MIT Media Lab, and Dan Harple is a Berklee Trustee. Naturally, universities can provide much needed infrastructure, research capabilities, and large networks of people to draw on: students, alumni, and faculty. New generations, especially, may be inspired and take up the work in future. OMI has so far partnered with Drexel University, NYU, Northeastern/Herlihy Law, Queensland University of Technology, University College London, and USC.

Equally important, governments could get behind the OMI initiative, for it promotes a cultural commodity that is, arguably, second to none as a country identifier. Thus, looking forward, Open Music intends to work with public policy makers and advocate for its distributed ledger. Moreover, as the music trade involves intellectual property and is governed by copyright laws across the world, it will be important that whatever collection and payment systems are built are compliant with the laws and standards of each country. But US copyright law, for example, does not recognize many of the moral and neighboring rights that are enforced in Europe, and this has to be a concern. More standardized legislation would likely help OMI's cause and fair trade on behalf of musicians.

Startup entrepreneurs are crucial to the success of Open Music. They would be the ones that would see the advantage behind OMI's disruption of existing business practices. Startups likely need risk, or venture capital to get going and take a few years to get to market.

First Hackathons

Therefore, to kick-start this piece of

the initiative, OMI held a three week 'summer design sprint' in conjunction with IDEO. Eighteen student fellows from various partner schools, divided into six teams of three, took on a number of challenges.

First, what would incentivize artists to input their data into an open music platform? Without this, of course, OMI would be a fruitless endeavor. So a wish list of benefits was discussed, including giving artists the ability to collaborate more easily across the globe, the advantages of granular data about ownership splits and instant payment, and better attribution to sidemen and auxiliary help. It was noted that music super fans used to be able to use liner notes to discover new connections between their favorite artists and their music but that was somewhat lost in the transition to digital consumption: a simple algorithm to search and rank searches of other musicians connected to the original artist could be easily integrated into a listeners streaming account of choice.

The second design sprint honed in on what new musical experiences could come as result of adopting a new open and trusted data source. Here the OMI fellows dreamt about the future. Some thought about augmented reality concerts with 360-video shoots customized by the user and integrated into future devices, a potentially lucrative new revenue stream for artists. Others experimented with attaching music to geo located beacons where instead of having a streaming service curate a playlist, a playlist would now be created for the listener as they went about their day. Many offered wearable devices that could pull biometric data to adjust plays to a listener's mood. There was also a suggestion to create an app of unique song mashups live that would combine the weather in the user's location and his/her personal calendar information.

It is striking that many of these ideas do not seem farfetched in the present juncture. The digitization of music, and all manner of electronic devices, is pushing the frontier forward. Still, negotiation for permits to use the music in such fashion can be cumbersome and often derail progress. OMI believes that progress cannot happen unless smart contracts and rights' management controls can be integrated into the basic metadata of songs. This is a requirement for real time music trading and artist financing.

No doubt, OMI's goals in this area are unlikely to be met anytime soon. But imagining a better future for the music industry by visualizing a new commoditization of recorded and live music transcends the business and may have ulterior consequences: the efficient trading of intellectual property in the modern digital economy is still a goal for many non-music businesses.

The report on the OMI's hackathon with student fellows will be released soon online. In addition, a full 12-15 week lab will be offered by OMI soon in an effort to bring some of these ideas closer to fruition.

Challenges

The biggest challenge of OMI will remain keeping its rosters of signatories happy. For this, it will need to deliver a workable proof-of-concept demo down the line. Even then, there will have to be a buy in by its signatories – especially by the right holders that are directly affected by the initiative and can make or break it: the record labels and the publishers. But artist songwriters are represented through their publishers, so songwriters too have to jump on board. It is not clear that this happened last time during the GRD negotiations, the closest attempt at trying something out like OMI. OMI's Memorandum of Understanding, moreover, is not binding to the signatories, who are free to back out any time.

True buy in from rights holder is naturally key, since without access to the music, metadata, and the authority to integrate rights proper management controls, OMI could not really take off.

Ironically, another big problem is getting artists on board, both by them first entering the requisite song data that is needed for OMI to work and then by becoming proactive about rights controls when new broadcast or distribution technology develops. It is every artist's right to do with their art as they please, but the business imperatives today demand more of their attention than ever. ^{MBJ}

MUSIC AND SOCIETY

Crowding Out Live Music

By Trine Heide and Jeppe Zielinski Nguyen Ajslev



In a recent study of New York, Fabian Holt describes how many small live music venues have come under threat as the market changes and audiences disappear. In London too newspapers report that one-third of the live music scene there has closed in the last ten years. If art has the potential to trigger new ideas, even social and intellectual revolutions, a lot more than money and jobs may be at stake.¹

An important cause of this decline is the so-called process of gentrification. Local dwellers, entrepreneurs, and shop owners are forced out often because the area becomes attractive to people with a higher income. Text-book gentrification, according to writer Martha Rosler, occurs when there is resistance from at least part of the community.² But change is subtle and evictions rare. Rents usually rise slowly and there is no mass exodus of people or shops. The transformation of existing living spaces also takes time. Of course, the sure tell-tale signs will be growth in real estate prices, higher property taxes, and more sophisticated retail outlets. Overall economic growth may be the driver of gentrification, but not always. Bohemian or artistic neighborhoods can become a magnet for the rich just because of their 'coolness' factor.³

Gentrification is often accelerated by political and urban plans to sanitize a city area. Such regeneration implies the renovation of houses, roads and squares, and it increases prices and reinforces the outward migration of residents. Gentrification then, does not only

affect people, but also the area, which is left with a different physical or atmospheric expression and without its usual users. This can have severe effects on neighborhoods, venues and urban spaces as the area become more economically homogenous. In London, this has prompted much backlash.

This article focuses on live music venues in London. It considers them a crucial part of the city's urban identity, its economy, and way of life -- as many other popular music studies have done (Cohen 2007, Krims 2012). It draws on recent literature, and uses Peter Marcuse's approach to marginalized neighborhoods, part of modern urban theory. Marcuse's analysis is threefold: (i) it depends on the observation of systemic and historic events that reveal exclusionary effects on the local community; (ii) it puts forward conflict-resolution alternatives; and (iii) it addresses the possible politicization of those affected to harness change for the better.⁴

A small or grassroots music venue approximates the following parameters: a place with an audience capacity less than 350 persons, offering nearly 150 live music events during the year, and serving nearly 200 bands and at least as many musicians. Typically, these venues make little profit, rely on a significant number of volunteers, and, because of their relatively high running costs, employ only a few paid workers, such as administrative and programming personnel and sound engineers.⁵

Since 2007, 35% of the small music venues in London have closed,⁶ especially in Soho and the Denmark Street Area.⁷ Two main reasons are generally given: (i) a market failure intrinsic to the music industry, and (ii) external factors that have little to do with the music industry.

Market failure in the music industry is related to the emergence of mega-shows and the 'instant stardom culture'⁸ in shows such as X-Factor. Because small venues are where new talent is discovered, and because they provide a place for musicians to hone their trade and grow their own network of personal connections, the impact of such closings on the music ecosystem is huge. As has been argued, 'without the supply of new talent, the rest [may] fall apart'.⁹

Powerful external forces are probably more important, and here is where the gentrification of urban spaces is clearly a problem.

First, many big cities, including London, are reinventing themselves top-down. Politicians decide to renew particular areas and so reduce crime, help the local economy, and raise income levels (there is also the more aesthetic goal of making the city look better and modern). As part of the political process, laws have allowed entrepreneurs to make old office buildings into luxurious apartments. This pushes overall property values up and increases the density of population.

Second, the establishment cost of these venues is going up. Venues need separate licenses both for entertainment¹⁰ and the consumption of alcohol and liquor.¹¹ The evidence suggests these are onerous for venue owners and are becoming a constraint to artistic practice.¹² Moreover, other business rates usually rise with higher rents, and the possibility of relief is little and far between.¹³ Important cultural protagonists in the London scene are now turning to sponsorship deals and investors to survive, if they can get them. The reputable 100 Club in London would likely have closed without the support of Converse, the sneaker company.¹⁴

Third, the austerity of state funding for the arts, a phenomenon observed now throughout Europe, shows no sign of abating. There is less breathing space for everyone, and not least for students. In the U.K., the rise of tuition payments¹⁵ is curtailing attendance at live music venues.¹⁶

MUSIC AND SOCIETY

Crowding Out (cont.)

(FROM PAGE 8)

The typical cycle of gentrification is illustrated in page 11. The top box in the figure represents the creative workforce and its industry, including artists, venues, and small creative businesses. They make the area trendy and attractive. Then, wealthier citizens get drawn in. Initially, shops, cultural centers, and meeting places benefit from the attention and add to the area's revenue. But this attracts competition and the commoditization of space. This first step is what Eric Clark calls the roots of gentrification. At this stage, it is hard to decide between the cons and pros of the process, and in any case competition is inevitable¹⁷. New agents might start presenting live music and take on existing venues, providing better value.

Gentrification occurs thereafter. With competition, the overall market value of the area rises, and real estate developers seize the moment. They invest in existing property and in old office factory buildings, converting them into luxurious apartments. The real estate market, driven by high profit expectations, will take over and bring with it its own 'upscale' vision to bear on the locals (Clark has compared this vision to the imperialism of colonizers).

Finally, property taxes and business rates go up. As new neighbors move in, taxes go up even more, exacerbating socio spatial inequalities. Class barriers become evident. Money confers power, and gentrification takes power away from erstwhile players. In particular, music venues are often forced to close due to a lack means, as well as political power. They become displaced, and move away from the central location they once enjoyed.

Even if those music venues stay the course, new neighbors create problems. They will complain about noise and waste pollution. Such complaints will often have to be catered to -- and at great expense: soundproofing costs, for instance, can weigh heavily on the bottom line. Moreover, the balance of power between the new and old constituents shifts increasingly in favor of the former. This can result in stricter laws of licensing for the venues. A good example is *Rygeloven* or the *law of smoke free environments* enacted in Denmark in 2007.¹⁸ Since then, people attending a concert at a venue have had to go outside to smoke. When located in a dense city, most venues cannot offer a courtyard for this. Therefore, guests will often be compelled to stand on the street. This fuels the cycle of noise pollution and more neighborhood complaints.

Particularly in Europe, the state both regulates live music and promotes it with subsidies and public money. But a nation state will typically run a balancing act, for it has to promote free trade and support business development in a city.¹⁹ So even if music might have a recognized cultural import, and even define a country by its sound, there are many interest groups that regulators have to keep in mind. The question arises as to whether public officials can do more to recognize live music in the current economic landscape.

In London, The Music Venue Taskforce made four key recommendations to save the city's live music venues and avoid the sorts of issues that gentrification creates. The MVT suggested: (i) adoption of the Agent of Change Principle; (ii) easing regulations on noise pollution and other licenses; (iii) granting relief in business dues; and (iv) more scrutiny over the development-rights of turning old warehouses into apartments.²⁰ Whereas the last three are self evident, the Agent of Change Principle needs some explanation. When new businesses go



into a new area of town, as shown in the second and third step of the diagram (see page 11), they should work and adapt to the needs of existing businesses. For example, if company wishes to renovate an office building close to a venue for conversion into luxurious apartments, and those apartments might be disturbed by the noise produced at the venue, the company has to help the venue pay for soundproofing. In effect, the principle recognizes the rights of old timers. Newcomers buy in on what is already there, respecting the infrastructure. The Agent of Change Principle bodes well for live music venues in London and has a positive history outside the U.K., notably in Australian and Canadian cities.²¹

As mentioned, music venues in Europe are often the result of city or state subsidies. Denmark's *Regionale Spillesteder*, governed by a set of New Public Management Agreements (PM), is a case in point.²² But in the UK, the

municipal mindset is not the same regarding funding for music venues and therefore there is more need for a plan to take on gentrification. If the venues are required to make deals with commercial companies, such as the 100 Club did with Converse, artistic freedom may be compromised. Or so the argument goes. In Denmark, the state run NPM initiative has met a lot of critique by scholars and practitioners in the Arts Management field.²³ Cultural institutions there constantly have to account for the ways in which they contribute to society in terms of music's economic and social value.

* * *

There is no magic wand, of course, that will take care of the plight of small music venues today, especially measured against the forces inherent in the marketplace--and the rise of modern mega cities in other parts of the planet, notably Asia. The irony is that, more often than not, these venues tend to justify their value mostly in economic terms to incur political favor. Yet urbanization is growing across the world by leaps and bounds, and if these bastions of local musical culture expect to get protection from public authorities using the same arguments that their opponents do, i.e. real estate developers, they will surely lose.

Small music venues in big cities are on the cusp of the fight over the future value of music. As long as music continues to be sold more for its entertainment than its cultural value, the prevailing discourse will be mainly economic, with competing claims neatly measured and compared in purely money terms. If so, the gentrification of areas that have been determinant to our modern culture, such as Carnaby St. in London, will continue.

The real challenge for society will be to trade this knee-jerk need for development for a more intelligent planning method that embraces some of the cultural intangibles that have come to define and distinguish many of our cities and regions. This involves supporting the creative community of musicians and their intermediaries, and integrating them into a plan of urban renewal that leaves the city better off than before. London is trying, and perhaps New York will too. They are not alone. Live music venues in cities are as necessary for our music ecosystem today as, arguably, the Church and the odd café were in Bach's time. **MBJ**

(CONTINUED ON PAGE 11)

MUSIC AND SOCIETY

Insecurity and Live Music

By Corliss Lee



Last November, a three-month state of emergency was declared in France after a series of attacks in Paris and Saint-Denis. One of the attacks occurred during the concert of the band *Eagles of Death Metal* at the Bataclan Theatre. On June 10, YouTube star Christina Grimmie, a second runner-up in *The Voice*'s sixth season, was shot at point-blank range by a deranged fan and killed. Two days later, a gay nightclub became the target of a mass shooting in Orlando with 49 people murdered and 53 wounded.

A catalogue of factoids can shed, perhaps, some light on what happened.

EODM's concert at the Bataclan was a target in part because the venue was owned by Jews and supported pro-Israel events. EODM's lead singer Jesse Hughes had been vocal in his support of Israel: two months before the attack, the band performed at Tel Aviv despite Pink Floyd's Roger Waters' calling for bands to boycott Israel; Hughes, at the Tel Aviv concert, had said that "I would never boycott a place like this."

Christina Grimmie's death, instead, had less to do with politics than madness. She was shot four times by fan Kevin Loibl. Loibl had followed Grimmie online and became infatuated with her. He believed they were soulmates and would often discuss his plans to marry her with his co-workers. He changed his religion and his diet on account of Grimmie and went under the scalpel to have his face changed and look more appealing to her.

Days later, tragedy struck again in Orlando. The killer Omar Mateen, had pledged allegiance to ISIS during a 911 call during the attack. But ISIS might have just been a cover or a convenient story. Many believed that the lone wolf attack was a hate crime towards the LGBT community: Mateen was a regular customer at the nightclub and may have had problems with his own sexuality.

Guns and the Cult of Celebrity

If the fact and motives differed, the use of firearms was common in all these crimes. Thus, in the wake of the Orlando massacre, the worst mass shooting in US history, President Obama and U.S. senators renewed the call for gun control. Nevertheless, the status quo prevailed when the usual gun amendments were voted down.

The music industry, instead, has stayed in the sidelines on the issue of guns. Politically, most of the creative community might be inclined to support gun restrictions. In practice, many artists still condone the use of guns in their music -- and the Recording Industry Association of America, its trade representative in Congress, fights vigorously for the right of their free speech.

For example, songs like *Gunwalk*, by Lil Wayne, 2013, and *Pumped Up Kicks*, by Foster the People, 2010, promote de facto violence and romanticize shootings. The mantra of *Gunwalk* is "I don't do no arguing, I let my gun talk", while Lil Wayne recites a laundry list of

ways he'll unapologetically shoot anyone in his path. *Pumped Up Kicks*, oddly a Grammy nominated song, is about a kid preparing to shoot his classmates at school; it was apparently inspired by teenage angst, or mental illness, and meant to (sic) "create an ongoing dialogue". Such lyrics exhibit no remorse for their potential consequence.

Moreover, guns and the modern cult of celebrity don't mix well. Fandom can become its own pathology, something that psychologists are beginning to study. For John D. Moore, for example, obsession with celebrities falls mainly under two mental illness categories. The first is erotomania, a type of delusion that leads a person to believe that another person is in love with them: a fan, for example, may believe that the celebrity is using social media to communicate directly. The second is obsessive love, a delusion that happens when a person, sometimes a schizophrenic or bipolar individual, feels compelled to possess another person towards whom they feel a strong attraction or desire: a fan, for example, may develop an intense romantic attachment to a celebrity.

Elisabeth Sherman writes in *Rolling Stone* that social media plays a huge role in fuelling fans' modern delusion that celebrities are their friends. As celebrities and their PR teams strive to establish an enduring connection with fans through social media, they tread perilously in today's world-- and therefore trigger episodes where erotomania and obsessive love are acted out. A Snapchat capturing a morning visit to Starbucks with the caption 'daily routine' is relatable to fans and may strengthen the appeal of the brand. However, as Christina Grimmie's case shows, too much information can be the kiss of death for an artist at the hands of a mentally ill fan.

Celebrities were murdered before the advent of new social media technology. Mark David Chapman still found a way to stalk and kill John Lennon in December 1980 without it, when the unguarded Beatle lived happily in New York. And psychologists still have to explain how erotomania and obsessive love turns into murder. Crimes of passion have been common in the past, of course, but more often than not they were examples of domestic violence run awry and a matter of private record. There seems to be a shift now by deranged individuals towards seeking retribution with a public figure. Christina Grimmie did not have the stature that John Lennon enjoyed in popular culture, and yet she was murdered.

(CONTINUED ON PAGE 11)

MUSIC AND SOCIETY

Crowding Out (cont.)

(FROM PAGE 10)

It may be wrong to extrapolate from this event, but fan adulation is on the rise and social media is a catalyst.

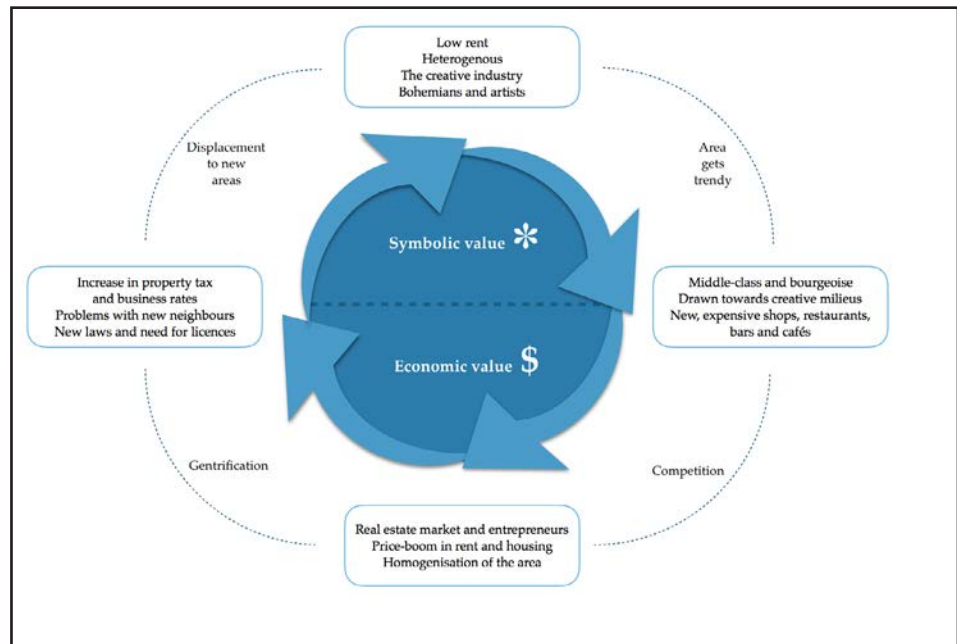
Doing something

In the meantime, music industry professionals are increasingly concerned about security at concert venues. World politics create anxiety and the threat of terrorism loomed largest this summer. At home, an undercurrent of anger is testing civil society and mass shootings by psychopaths are never far from mind either.

Trade publications like *Billboard* mirror this difficult juncture and speculate about changes that concert promoters and venue owners can make. In most cases thin profit margins play against better security, especially for the small to midsize venues. For instance, metal wands, walk-through detectors, and security pat-downs are expensive. A walk through detector sells upwards of \$5,000 and a set of wands can be dear at over \$100 a piece. And this is before the biggest cost of all is factored in -- the hiring of qualified security personnel. This is important. Public assembly safety consultant Russ Simons stresses that the efficiency of pat-downs is dependent on the guards' alertness, training and supervision (where money is not available for new hires, he sees a valuable asset in law enforcement officers coaching guards at the venue, especially on situational awareness). For Steve Adelman, VP of the Event Safety Alliance, well-trained guards are definitely worth the extra expense and are much more effective than a loosely monitored walk-through detector.

Thousands of shows happen almost daily without a problem. But reasonable measures should be taken by the business to prevent shooting tragedies from happening. If ticket prices have to rise to accommodate higher security costs this is surely a better solution than doing nothing, for the potential of mischief from a catastrophe would likely reverberate across the live music industry. Evil-doers will choose big congregations of fans to do their dirty deeds, as the massacre at the Bataclan Theatre showed. It remains that music concerts, along with patriotic events and spectator sports, are one of the easiest soft targets out there. **[MB]**

(FROM PAGE 9)

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BUSINESS ARTICLES

Keeping Track of Music Festivals

By Summer Whittaker



Summertime is the time of year to unwind under a 95-degree sun. For music fans especially, summertime is about enjoying music festivals. The nostalgia for the 1960s, when rock and roll transformed regular live shows into community building events, is never far from mind. Woodstock epitomized this. It brought together an audience of around half a million people over three days, showcased cutting edge music of a high quality, and put popular culture on a pedestal. For *Rolling Stone*, the Woodstock festival rates as one of the most important moments in Rock and Roll history.

Festivals and Social Media

Technology and social media might appear to have diminished the zeal for music festivals. Such events might be at loggerheads with a newfound social connectivity. But this is far from being the case. Events like the Vans Warped Tour and Lollapalooza make up, in combined attendance, for Woodstock's crowds forty-seven years ago. As much as people keep coming for the music, festivals are, of course, not just about that. These are rare events where an audience can explore and find a commonality of feeling and identity unlike any other.

Today, this is in part because people of all ages, genders and ethnicities are trying to find harmony, and music festivals are a model for acceptance and community. Festivals are often the highlight of people's summer, and in the U.S., *Billboard* can report that as many as thirty-two million individuals attend at least one music festival per year, a figure that is ris-

ing.

On The Go

The evolution of music has changed drastically since the 1960s, and mobile technology has revolutionized the world lately. The fans may be at the shows, but they are also glued to their phones. One of the joys of going to festivals is being able to stage hop and get a taste of different bands. But well-known bands can be booked at competing festivals so today's millennial may double dip with live streaming through high definition platforms such as Live Media. Naturally, the cost and inconvenience of this type of multitasking will not be worth the effort for the average festival goer but live streaming of bands with a strong fan base will always have a market, especially for stay at home fans.

Still, live streaming has not had a significant effect on festival attendance -- which probably means that live streaming of festivals and festival attendance are perceived as distinct entertainment experiences. The real competitor of live festivals streams is on-demand recordings. If the Newport Jazz Festival is both streamed live and sold on-demand, that is where buyers might be thinking of interchanging one for the other.

A new issue has emerged concerning video recordings and photos taken from fans' cell-phones. Many fans record the show as it happens on their own 5-inch mobile screen even though they have a 360-degree

view right in front of them. The problem is that when they hold their phone up with their arms extended, they block the view of other fans, even taller ones. Apparently at the request of venue owners of all kind, including major festivals, Apple has come up with a solution (it is unclear if it is prompted too by copyright considerations, being that content owners generally ask for viewers to refrain from taking pictures or recordings of a concert). To prevent such recordings, iOS devices will soon disable the camera feature in proximity with the staging area, where a special signal would neutralize the camera app. The technology would spread to other events, including movie theaters but there is concern as to its reach outside these confined spaces. For music festival owners, the hope is that Apple, or later others, can heighten the live experience of live performances.

Big and Small

Festivals offer fans their own closed echo system and economy. That self-sufficiency avoids distraction and enhances the experience of return customers next year. But it comes at a price for the organizers. In a big festival, vendors will offer free clothes, wristbands, and other wares as well as body paint and fake tattoos, while beverage makers supply unlimited amounts of their product in pre selected performing areas. Contracts for bands are paid for and production sets underwritten. Security has to be hired. All of this presumes larger and larger sponsorships and administrative outlays, and only the most financially successful festivals can afford to keep up the pace.

For festivals like Coachella, this might not be a problem: in 2015, it grossed over \$84 million in revenue, reaching full capacity at 99K attendees per day over six days. Nor would it be for the second highest grossing festival of that year, Outside Lands, which in its three-day run in San Francisco made a distant \$25 million. Such festivals pride themselves on their high-tech stages, wide landscape, and infrastructure. They offer proper restaurants, multiple stages, and elaborate stage productions, and engage well-known corporate sponsors like Red Bull, Heineken, and Monster Energy.

Brands

Sponsorships, in particular, are zero sum games, and someone's gain is someone

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BUSINESS ARTICLES

Back and Forth in China

By Nick Sanchez

(FROM PAGE 12)

else's loss. Enter the smaller music festivals. Laconiafest had to cut its weeklong festival short this year due to the lack of attendance and funding. It closed abruptly. Steven Tyler was only able to draw in 4,000 fans to his performance, and Ted Nugent did not do well either. The festival owes over \$60,000 to local vendors, EMT coverage, and others. Tickets were being sold for \$45 in advanced but then dropped to \$5 on the day of the show. Some fans even claimed that they were able to get in for free.

This suggests that, even with some well-known acts, attendance at smaller festivals is hard to predict. Economies of scale play against the organizers, who have to charge more per person for a lesser experience. Even if an artist of the caliber of Taylor Swift were to agree to take the stage of a smaller festival, unless there were a special arrangement, a 45-minute set would sink the budget. This is why supermarket events are displacing boutique festivals and dimming the hopes of the smaller players. Much consolidation and liquidation are expected in this parallel market over the next five to ten years, if not earlier.

Nothing Like It

Overall, big music festivals are expanding and will continue to increase with more fans every year. History has shown that they are an important marker in the lives of many Americans. New technology may dazzle but the impact of a live music performance is still unique. Even artist holograms of beloved but dead artists have taken time to carry the day, so it may be a while before virtual reality will make its way fully into the industry. In the meantime, nothing will take away from the bear, the sweat, and the yelling. **[MB]**

China, the second largest economy in the world, should be a beacon for the future of the music industry. Communism has given way to a leading edge marketplace with a record population of 1.3 billion, many of them young and with much buying power. Moreover, the emergence of private property, and China's recent membership of the World Trade Organization, would suggest recognition of private property and, therefore, music rights, possibly ushering a bonanza for music publishers and record labels, both national and international. In any case, access to music, especially for its growing young, has never been easier and compares favorably to any top five economy worldwide.

All of which begs the question as to why China has such a low position in global recorded music rankings and music publishing income. The most recent data of the International Federation of the Phonographic Industry (IFPI), for example, places China 19th in the world for total revenue generated through recorded music and a dismal 32nd position in receipts generated just from physical sound recordings. 95% of all music transactions in China are unauthorized, and free downloads, peer-to-peer exchanges, and under-the-table sales of records are rampant. Piracy has led to the decline in hard-copy value, and miserly payments to artists, managers, and other music workers.

Illegal MP3s are rife and downloaded from China's main search engines online, Baidu and Sogou. Baidu's operation, in particular, is predicated on a simple premise: free downloads bring plenty of advertising revenue. Baidu is the most popular search engine and the most common way for Chinese citizens to get digital music. Lawsuits against Baidu by the local record industry are, of course, ongoing. Piracy decimates sales but it also prevents the proper collection of music rights, stunting growth in the domestic market.

Universal Music, Sony BMG Music Entertainment Hong Kong, and Warner Music Hong Kong filed suit against Baidu in 2008 and, remarkably, did not prevail. However, the lawsuit paved the way for better accommodation with the majors starting in 2010. Recently, in July of 2015, China's National Copyright Administration implemented stricter laws regulating the distribution of music online, forcing sites to only distribute licensed material or face hefty fines. Downloads can be free and the search engines will still monetize from advertisers only, but now artists can license music ahead of time. It is a step in the right direction for the future of the industry and copyright law, but it is too early to tell if there will be a trickle down effect on talent, record labels, and publishers.

In the meantime, money generated through music in China continues to grow despite piracy and shrinking hard-copy sales. While physical sales have decreased throughout the years, the digital marketplace has more than made up for it. In 2014 China was ranked 11th in the world for their digital music market, with their digital revenue in 2015 exceeding their total national revenue of music only five years prior. More and more hard-copy distributors are going out of business and streaming websites have taken center-stage. Studies on the Chinese market are encouraging. The China Internet Network Information Center (CNNIC) showed that in 2014 the most popular online and mobile entertainment application was music. The number of people accessing music through mobile apps exceeded those accessing video game apps. Even if much of this is still a result of freely available product, Apple has recently opened for business with Apple Music, after years of dithering about what to do (iTunes had avoided China).

Publishing in China has mostly flowed through one company, the China Music Group. The group also serves as a performance rights organization. It has little competition. Political tensions, however, are always in the backburner and not neutral to potential entrants. The country is still a prisoner of its social history, where intellectual private property, not least, was non-existent. In February of this year a new plan outlawing the publishing of any video, video game, audio, article, map, art, or literature by a foreign company within China has dampened the enthusiasm of music publishers worldwide. This is unfortunate for the business: Last year, BMG had acquired two publishing catalogues and it was rumored that Apple Music was contemplating acquisitions too.

Still, there are promising signs. The number of synch licenses requested within the country has doubled since 2011. Advertisers, films, television shows, and other media are buying synchs to tap spending by the world's most populated nation. Earlier this year, Beijing Enlight Pictures requested a synch license for The Beatles's "Hey Jude", to be used in the upcoming local film, *Yesterday Once More*. The synch, for four minutes of music, cost the company a six-figure sum, which it promptly paid to Sony/ATV. This is remarkable news for it establishes the commoditization of music, and therefore the recognition of musical talent, like few events can. The story also illustrates a particular facet of China. Local industry is more likely to bring about change and grow the music marketplace than any foreign corporation. **[MB]**

LAW SECTION

The Law and YouTube's Value Gap

By Luiz Augusto Buff

In the beginning of the XXth Century music consumption did not compare with today. Music publishers, for instance, were used to generate revenue mostly through the commercialization of printed sheet music. But much like the current moment, innovators were disrupting the music scene, bringing to market new inventions like the record player and piano rolls. These inventions transformed the way music was brought to people's ears. And composers and publishers were not being fully compensated for the use of songs because the legal system at the time was not structured to compensate them for these new technologies. In 1908, the Supreme Court even ruled that manufacturers of music rolls for player pianos did *not* have to pay royalties to composers (*White-Smith Music Publishing Company v. Apollo Company*).

Congress eventually adapted to the marketplace and enacted the Copyright Act of 1909, implementing a Compulsory Mechanical License allowing anyone to make a mechanical reproduction of a musical composition without the direct consent of the copyright owner, provided that the person adhered to the provisions of the license which included a royalty payment at a rate set by the Copyright Royalty Board. Congress intended it to primarily govern piano rolls, but in fact this compulsory license made it possible to develop later a market for phonorecords, in which music publishers and composers were compensated in tandem with the commercialization of the recorded music product by the record labels and their artists.

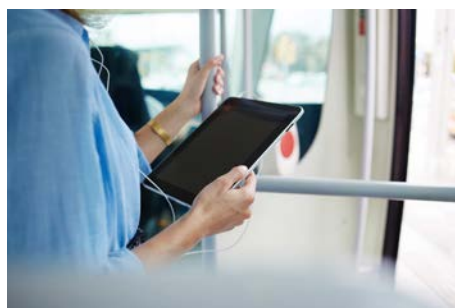
By the end of that century, a new wave of innovation occurred with the advent of the Internet. Anticipating the potential issues arising therein, in 1998 Congress enacted the Digital Millennium Copyright Act (DMCA). Amongst other provisions, the DMCA created certain exemptions from liability for copyright infringement by Internet Service Providers (ISPs) and other intermediaries. These so-called Safe-Harbor provisions allowed the emergence of new forms of media distribution and put a system in place which allowed content to be removed from a website at the request of the copyright owner. Similar provisions were concomitantly passed in Europe.

YouTube could only operate legally due to these safe harbor provisions. The global video-sharing website founded in 2005 and acquired by Google in 2006, quickly became one of the most popular websites in the world, and currently accounts for 40% of all music listen-

ing. More people currently listen to music on YouTube than all other on-demand streaming services combined.

Despite its popularity among music fans, YouTube recently has been the target of a strong backlash from music industry executives and artists, as part of a public relations effort to influence negotiations between the major record labels and YouTube. The current licensing deals are about to expire later this year.

The central argument of the record labels is that there is a "value gap" between what YouTube is willing to pay for music licenses and their real market value. YouTube can strong-arm the music industry by offering an artificial low price for licenses, compared to similar licenses negotiated freely in the market, because YouTube could instead of paying



the license continue using the music content and only take it down after receiving notices from the copyright owners, which has to be done on a case by case basis.

The IFPI, in its Global Music Report of 2016 claims safe harbor rules are being misapplied, because they were originally "intended to protect truly passive online intermediaries from copyright liability", and not designed to exempt companies that actively engage in the distribution of music online from playing by the same rules as other online music services.

YouTube's Head of International Music Partnerships, Christophe Muller, in a response to the music industry claims, affirmed that the video platform has licensing deals in place through which they've already paid out \$3 billion to the music industry, and that 50% of it comes from user-generated content, identified and claimed by the rights' holders through their automated rights management tool, ContentID, which handles 99.5% of the infringement claims on their platform.

Heating up the war between content and technology, is Irvin Azoff, one of the most powerful players in the music industry and the head of Global Music Rights, a new company that collects on public performance royalties. In an open letter published widely, Azoff writes that YouTube should grant more control to rights holders on how their material could be used within the platform. Content owners should decide if their product is to be available for free, or only behind a pay-wall -- namely, the paid subscription service YouTube Red, where YouTube's original video content is made available exclusively. Azoff continues pressuring YouTube to let rights' holders decide whether or not they want to have their content available in the platform at all. He suggests replacing the take down of unauthorized uses on a case by case basis with a "stay down" system, in which content owners would be able to opt-out of the website and not have their music available within the website.

Congress, through the Copyright Office, is currently performing a study to possibly review Section 512 of the DMCA. The issue of remuneration on YouTube is one of the few in which the labels, publishers, and artists concur. Many of them filed a petition to the Copyright Office pledging reform, and more recently 180 artists, including Taylor Swift, Paul McCartney, and Kings of Leon, ran an ad campaign in political magazines in Washington, DC calling for changes to the Digital Millennium Copyright Act. A similar letter was signed by more than 1,000 acts addressed to the president of the European Commission, pledging reform of similar provisions in European law.

In the meantime, artists are finding some of their own *ad hoc* solutions. As long as they can put out content periodically, they can collect through unconventional means. The band *Walk Off The Earth* made on average \$10,325 for every video they released on YouTube by using Patreon. This is a crowdfunding platform created by Jack Conte, half of the duo *Pomplamoose* and a prolific YouTuber. Patreon depends on steady fan funding, and *Walk Off The Earth* reached out to its fan base, 1,400 of which contributed. New possibilities for music financing are also driving the market, and offering alternatives when the wheels of legislative change turn slowly. **MBJ**



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Consent Decree (cont.)

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have full control over, and perhaps allow them more leverage to exercise a broader administration of rights. Additionally, 100% licensing will allow for any party with a claim to a song to administer that song's rights by licensing or removing a song from a blanket public performance license. The impact on mega hits is a big concern: more than 90% of last year's top 100 songs had multiple songwriters. Now, the presence of just one songwriter belonging to ASCAP or BMI could allow for the full blanket licensing of the work by a music user, even if other writers had withdrawn their rights.

ASCAP and BMI have informed their members about the impact of the new ruling, while condemning it publicly. There is industry wide pushback and DOJ is expected to begin preparations for forthcoming appeals soon. In the meantime, there is no current framework for paying out songwriters of differing PRO's rights -- a lawyer's delight, while it lasts. The timing of the ruling, coincidental with the untidiness produced by the Brexit vote in the U.K., has prompted reflection in the industry about the dire consequences

of both events.

To explain the DOJ's actions is difficult. Critics of the ruling suggest that the DOJ may have wanted to favor online services such as Pandora, who would likely benefit from the new competition between ASCAP and BMI -- at the expense, of course, of songwriters. A similar version circulated in the publishing industry. In a biting op-ed in *Billboard*, David Israelite, President and CEO of the National Music Publishers Association, noted that the DOJ panel that decided the case seemed largely out of touch with the basic needs and even the basic form and function of the publishing industry and music licensing; the group seemed biased to the new tech frontier, and in fact the top lawyer at the DOJ had previously represented Google, a big licensee of music. Another factor may have been the historically adversarial relationship that has existed between the Department of Justice and ASCAP/BMI over antitrust issues. Finally, there seems to have been a concern about due process. There were reports of

members of congress being assured that the revision of the decrees was still in progress and that they and other interested parties would have the ability to voice their opinions before a decision was rendered, but this was not the case.

Overall Comment

An important criticism of the ruling is that it may prevent the creative collaborating between songwriters of different performance rights organizations. If the practice of fractional licensing is done away with, either performance rights organization could license an entire work without regard for the other (as long as there are at least two writers, one from ASCAP and the other from BMI). But communication glitches between talent and between the PROs are bound to happen and breed mistrust between all parties. This goes against the spirit of free and unfettered creativity. Minimum price bargaining will also hurt songwriting talent, and dispute resolution will be costly for everyone in court. It is hard to see, then, how this new ruling will help music's public performances, aid music makers, and win more listeners for the business. **MBJ**