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The *MEIEA Journal* provides a scholarly analysis of technological, legal, historical, educational, and business trends within the music industry and is designed as a resource for anyone currently involved or interested in the music industry. Topics include issues that affect music industry education and the music industry such as curriculum design, pedagogy, technological innovation, intellectual property matters, industry-related legislation, arts administration, industry analysis, and historical perspectives. The *MEIEA Journal* is distributed to members of MEIEA, universities, libraries, and individuals concerned with the music industry and music business education.

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Concert Promotion Centralization and the Artist Management Response: 1990s–2010s

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Abstract

Centralization in the concert promotion business affected not only the independent regional concert promoters who made up the bulk of the industry from 1965 to 1995, it also affected the artist and the artist manager. Prior to the centralization, the artist manager, the booking agent, and the promoter worked together to discover, nurture, and develop new acts, providing different perspectives while all sharing a common goal. During this early period the artist was able to establish baseline rights and prerogatives by which the concert promoters needed to abide. However, in the face of this industry centralization, there is potential those artist rights may erode or be lost due to confusion or uncertainty if the artist manager is not an informed negotiator when dealing with the concert promoter, venue owner, booking agent, and ticketing agent (who are very often one in the same).

Keywords: concert promotion, centralization, music industry, artist manager, booking agent, concert promoter, SFX, Clear Channel, Live Nation, Ticketmaster, StubHub

Introduction

Beginning in the mid-1990s the concert promotion industry underwent significant changes, disrupting the thirty-five year business model of individual, regional concert promoters in favor of centralized, national control—first by SFX, then by Clear Channel Communication, and then by Live Nation (rebranded as Live Nation Entertainment after its merger with Ticketmaster). The ten-year period of centralization between 1995 and 2005 brought significant and long-lasting changes to the financial relationship among the artist, the promoter, and the venue, with the artist arguably experiencing the greatest disadvantage under this altered business model. This paper explores the early history of the concert business, the period of centralization, and responses that artist managers can employ to maintain the artist's interests in the new era of centralization.

A Brief History of the Concert Industry: 1965–1995

Up until the mid-1960s live music concerts by popular artists were primarily promoted by the artists' record labels. The labels would package their most popular artists on multi-act bills, sending them out to tour regionally and nationally, booking whatever supper clubs, theaters, or civic halls happened to be available. While this business model was suitable when the primary goal was to increase record sales, it proved inadequate by the beginning of the psychedelic movement and the expanding youth market for live music in the 1960s. Artists and their audiences, seeking places to interact through music, wandered through former vaudeville houses, to desanctified houses of worship, to moribund ballrooms and dance halls. The patchwork, hit-or-miss nature of the concert industry for rock and roll in the mid-1960s, created an opportunity for professionalization and integration among concert promoters.[1]

Into this void came talent agent Frank Barsalona, who started Premiere Talent Agency in 1964 as the first agency to recognize and work with "modern" or "rock" artists.[2] Barsalona thought the best way to build an artist's career was by developing a network of regional promoters who could "promote" his artists in their markets.

> One of the reasons I started Premier was to bring in promoters that understood the music and were willing to work from the very beginning to help break the act—on the promise, and obviously I couldn't give them a contract, that if everything went well and they did what they were supposed to do, then we would endeavor to deliver that act to them as long as they did a good job and so long as their offers were competitive. (*Pollstar*, "Executive Profile: Frank Barsalona 1988" 2012)

Two of the first concert promoters he worked with, Bill Graham in San Francisco and Don Law in Boston, represented not only both the West Coast and the East Coast, but also the two epicenters of the college student and youth audience markets.[3] As Barsalona was taking risks by backing his artists, people like Bill Graham and Don Law were taking the risks of concert promotion. One way of mitigating those risks was to come up with a mutually beneficial profit split between the artist and the promoter. While different split ratios were tried, eventually Barsalona and Bill Graham developed the 85/15 split deal.[4]

According to this deal, after the promotion and production expenses (including the artist's guarantee) were deducted, the artist would receive 85% of the profits and the promoter would receive 15%. Familiarity with this system and skilled negotiation could often move the needle to 90/10 in the artist's favor[5] for the larger acts. While the promoter would earn less per show, the personal relationship between the artists and the promoter was the key to the financial relationship, as long as the promoter could count on presenting the artists whenever they played in the promoter's city.

During the 1960s it was common for local or regional promoters to have a virtual lock on any significant shows happening in "their" towns. They did this by getting "buy-back" agreements with agents and managers. The buy-back allowed the promoter to be the first to bid on a date for an act's next tour date when they had just finished promoting the previous concert date. The promoters could therefore assure themselves of being able to promote shows most likely be successful in the future (Hull, Hutchison, and Strasser 2011, 153).

As the working partnerships fostered by Frank Barsalona between artist and agent on one side and regional promoter and venue on the other proved mutually beneficial, others sought to join in. Table 1 shows some of the major regional concert promoters, their promotion companies, and their primary geographic operating regions.

By stitching together this promoter network, the concert industry grew considerably. Artists went from performing on multi-act, community theatre-type bills to headlining arenas and stadiums. As the artists and agents continued their commitment to regional promoters, promoters began to modify their own business models.[6] Initially the promoters of the mid-1960s and early 70s leased their venues, and often more than one venue in a market, depending on the capacities. However, as they came to rely on their relationships with the artists and the agents, promoters began to purchase or build their own venues while also getting exclusive booking rights over other venues in their markets.

Promoters responded in other ways as well. Rather than remaining solely dependent on their concert promotion business, they sought to di-

Promoter	Company	Region
Bill Graham	Bill Graham Presents	San Francisco
Gary Perkins, Brian Murphy, Bob Bogdanovich	Avalon Attractions	Los Angeles
Barry Fey	Fey Concerts	Denver
Louis Messina	Pace Concerts	Texas
Arnie Granat	Jam Productions	Chicago
Dave Lucas	Sunshine Promotions	Indianapolis
Michael and Jules Belkin	Belkin Productions	Ohio
Ron Delsener, Mitch Slater	Delsener/Slater Presents	New York City
Don Law	Don Law Company	Boston
Jack Boyle	Cellar Door	Carolinas & Virginia

Table 1. Major concert promoters, their companies, and their markets.

versify their support services to the concert industry. Many of the promoters followed Bill Graham's lead in establishing production companies, merchandising companies, tour management companies, artist management companies, and ticketing companies. These self-contained units supporting the promoter's concert business worked in conjunction with one another, but were also capable of functioning independently as commercial opportunities arose.

From Promoters to Venue Owners

Once popular artists reached a certain plateau in their careers, they were able to move on from smaller venues like the Fillmore East or the Fillmore West and were ready for shows in arenas, which were typically not licensed exclusively to promoters. Arenas were built for sports. While they may have had the requisite seating capacities to support the growth of the concert industry, they were not built for live music and the sound quality was often terrible. This meant that the promoters, if they were to continue working in their regions with the artists they had nurtured, needed to take the leap from concert promoters to venue owners.[7] The movement into live music venue ownership was most pronounced during what became known as the "Summer Shed Tour" era. By the mid 1980s, most major regional concert promoters began building amphitheaters specifically to host "summer shed tours."

In the mid-1980s, larger promoters like Cellar Door, PACE, and the Nederlander Organization began building and operating their own venues in what became the beginning of the amphitheater boom. Promoters, tired of watching arenas capture all the ancillary revenue from their own risk-taking, felt they needed to get into the real estate game themselves, and the amphitheater or shed could be built for a fraction of the cost of an arena (Waddell, Barnet, and Berry 2007, 112).

In making this leap, the concert promoters were encouraged by the agents, especially Frank Barsalona, who saw what the promoters were up against. "We've been advocating that promoters find their own outdoor venues for a long time. …it makes a lot more sense for the local guy in the marketplace to own his own shed" (*Pollstar*, "Executive Profile: Frank Barsalona 1988" 2012). In Table 2, one can see the names of the major concert promoters who took Barsalona's advice by building or acquiring summer sheds with state-of-the-art production facilities and within the right capacity range. As the "Year Built" column shows, the promoters were led by early adopters Avalon Attractions and then Bill Graham Presents. Note that most of the promoters aimed for a shed capacity of 16,000 to 24,000.

Concert Promoter	Summer Shed[8]	Year Built or Acquired	Capacity
Bill Graham Presents	Shoreline Amphitheatre	1984	22,000
	Concord Pavilion	1987	12,500
Don Law Company	Great Woods	1986	19,000
	Harborlights Pavilion	1994	5,500
Cellar Door	Virginia Beach Amphitheatre	1991	22,000
Sunshine Promotions	Deer Creek Amphitheatre	1989	24,000
Avalon Attractions	Irvine Meadows	1981[9]	16,085

Table 2. Major concert promoters and their summer sheds.

By acquiring these sheds, the concert promoters, their promotion companies, their real estate units, and whatever ancillary live music industry operations they owned became attractive investment opportunities for people outside the music industry. This was a far cry from the early days when, as Frank Barsalona phrased it, "Booking rock acts in those days was like being in the armpit of show business" (*Pollstar*, "Executive Profile: Frank Barsalona 1988" 2012). The live music industry was about to transform into a very different business model.

SFX and the Era of Centralization: 1996 – 2000

Robert F.X. Sillerman, and his broadcasting company SFX Entertainment, led the first major development in the centralization of the concert industry. SFX began to acquire regional concert promoters, focusing on those with substantial assets including:

- in-house promotion companies,
- ticketing companies,
- merchandise companies,
- production companies, and
- venues (either owned outright by the promoter or with long-term leases)[10]

At the time, this centralization trend in the live music industry was much lamented by many who saw it as another example of the "corporatization" of music and at odds with the earlier independent ethos. However, many of the generation of concert promoters who started in the 1960s and 1970s agreed to be bought out by SFX. In most cases, a significant part of the deal was that these regional promoters would remain in place with their staff, still working their markets, but now reporting to SFX. The interesting question is, why did SFX go on this buying spree in the first place? To some critics, SFX's intent was to acquire all the concert promoters, put everything under one roof, and then sell the entire enterprise to a larger company. Those same critics questioned Sillerman's love of music and the concert industry. Looking back at this contentious period, while testifying against the proposed Live Nation/Ticketmaster merger to the U.S. Senate Committee on the Judiciary in 2009, independent promoter Seth Hurwitz of I.M.P. saw these acquisitions in the following light:

> A roll-up artist named Robert Sillerman got the idea that if he assembled all of these promoters under one compa-

ny—SFX—he could find someone to buy SFX under the auspices of controlling the concert industry. He bought as many of these cowboys up as he could, by paying them whatever it took to abandon their independence. (Hurwitz 2009)

If Mr. Sillerman's plan was to eventually sell out to a larger organization, he must have been very confident of finding one with deep pockets. Table 3 details some of the major acquisitions made by SFX and the extraordinary amount of money spent in such a brief span of time.

Company	Year Acquired by SFX	Purchase Price
Sunshine Promotions	1996	$55 million
Delsener/Slater	1996	$20 million
Don Law Company	1996	$90 million
Contemporary Productions	1997	$91 million
Bill Graham Presents	1997	$65 million
Pace Concerts	1997	$165 million
Avalon Attractions	1998	$30 million
Cellar Door	1998	$105 million
Belkin Productions	2001	$25 million

Table 3. Major concert promoters and their acquisition by SFX.

After SFX made these acquisitions, it began to look for ways these properties could produce additional revenue streams, thus adding value. The natural place to look for examples of how to monetize a venue was the professional sports industry. First SFX sold multi-year licensed naming rights to its venues. Once in place, the revenue covered a significant percentage of the venue's operating costs. Depending on the size of the venue and its market, the name-in-title sponsorships could generate revenue from hundreds of thousands up to millions of dollars. Next, SFX began installing corporate boxes, premium seats, and subscription seats to their existing venues, again following the model of the professional sports industry.

Although SFX was learning from the sports industry, its business model was quite different. Sports teams and athletes do not get paid based on ticket sales; a musical artist does. So while SFX's additional seats are included in the venue capacity, they are listed as unmanifested seats—the revenue from these seats does not appear in box office reports, nor does it get included in artist settlement. Those seats represent lost revenue to the artist. Using data aggregated from Live Nation venue sites, Table 4 shows the impact on the artist's bottom line. The chart includes corporate boxes, premium seats, and subscription seats. Using an estimated average ticket price of US$120, one can see that anywhere from $50,000 to $60,000 is potentially lost by the artist at each show.

Venue[11]	Number of Boxes	Total Number of Seats	Estimated Average Price Per Seat	Potential Average Unmanifested Seating Income Per Show
Xfinity Center (formerly Great Woods), Massachusetts	81	420	$120.00	$50,400
Shoreline Amphitheatre, California	109	530	$120.00	$63,600
Klipsch (formerly Deer Creek), Indiana	100	480	$120.00	$57,600
Farm Bureau Live (formerly Virginia Beach)	72	410	$120.00	$49,200
Concord Pavilion, California	75	415	$120.00	$49,800
Verizon Wireless (formerly Irvine Meadows), California	100	480	$120.00	$57,600
Verizon Wireless (formerly Riverport), Missouri	100	480	$120.00	$57,600

Table 4. Venues and their potential unmanifested seating income. Sources: See endnote 19 for relevant Live Nation venue sites.

The SFX era of rapid change in the live music industry not only affected the artist, it also had an impact on the average ticket price. Jerry Mickelson, Chairman and Executive Vice President of Jam Productions, tied the rise in ticket prices to the structural changes initiated by SFX. "This new company was the beginning of an unprecedented increase in concert ticket prices" (Mickelson 2009). According to *Pollstar*, the average ticket price in 1996 was $25; by 2000 it had risen to $40.[12]

Clear Channel Enters the Field: 2000 – 2005

On February 20, 2000 SFX announced the sale of its assets—including all the acquired promotion companies and venues—to Clear Channel Communications for $4.4 billion. Robert Sillerman's buying spree had come to an end. Seth Hurwitz said, "Sillerman made his money and hasn't been heard from since, in our business."[13] Like SFX, Clear Channel (rebranded as Clear Channel Entertainment) started as a broadcast company, with radio, television and billboard holdings. Also, like SFX, Clear Channel went on a buying spree in the early 2000s acquiring venues and buying major act tours. However, because of the massive expansion (through acquisitions) in both the broadcast industry and the concert promotion industry during this era, Clear Channel Communications spun off its concert promotion division, renaming it Live Nation, and also created separate divisions for its media holdings and its outdoor advertising business.

As part of its growth strategy, first Clear Channel and then Live Nation, established relationships with secondary ticket brokers like StubHub, which like its peers, buys premium seats directly from the promoter or venue, thereby decreasing the direct availability of good seats to patrons.

> How big is the resale market? The second largest ticket seller behind Ticketmaster is StubHub, a reseller. Not only is the market large, so are the profits. The Madonna tour prompted the biggest resale ticket in 2008. Regular ticket prices for her shows went from about $60 to $350 per seat in most places. The average *resale* ticket was $378. Ticket reselling sites either charge a commission of 15 percent or more, or simply pay the ticket holder an agreed price and retain the rest of themselves. (Hull, Hutchison, and Strasser 2011, 160-161)

The partnership between Live Nation and StubHub was very contentious and alienating to the artists and their fans. For the fans, the computerized buying of the house's best seats left fewer for the general (and more price-sensitive) fan. From the artist perspective, the additional revenue from the ticket mark-ups only benefited the secondary ticket broker; it was not calculated into the artist's percentage at settlement. While this example is not the only source of discord resulting from industry centralization, it does provide a segue to the next section: how should artist managers respond?

The Artist Management Response

Given the seismic shifts in the live music industry over the period under discussion, and the resulting revenue implications for musical artists, it is important that artist managers possess the skills and knowledge to advocate effectively for their artists when negotiating with concert promoters and venues. In the pre-centralization era, artists and their managers had made great strides in establishing a balance of power between the artist and the promoter—both in regards to industry standard practices as well as negotiable areas. One example of how far things have come is encountered in the legendary Bill Graham's autobiography when he recalls the early days:

> When I started there in 1968, we were still in an era where thank God the agent and the manager and the artist did not know that they could dictate who else should be on the show. So I was able to book the other acts the way I wanted to without being challenged about who else would be playing. (Graham and Greenfield 1992, 241)

With the centralization of the industry, one might predict an erosion in the power balance between the artist and the other stakeholders in the live music industry, especially when the concert promoter, the venue owner, and the ticketing agency are all under one roof. The artist and the manager may once again "…not know that they could dictate…" certain key terms and conditions to the promoter. It is important that current and future artist managers remember that the audience is buying tickets to see an artist, not a concert promoter or venue.

Although this paper examines four key artist manager responses, these are just four of many proactive steps artist managers can take in support of their artists. Negotiating from a position of strength is key. If a corporate promoter objects to negotiating the artist manager's documents, there will always be an independent promoter willing to work hard and promote the show. With that in mind, this section focuses on:

1. conscientious and effective document crafting of contracts and negotiating offers;
2. managing the fans' ticketing, sponsorship, and merchandise experiences;
3. creating "package deals" and fan experiences; and
4. implementing paperless ticketing systems

Artist Management Response 1: Document Crafting

Negotiating the Deal Point Memo

If artist managers are to best serve their artists, they need to reexamine the potentialities of deal point memos (DPM). The DPM should include all of the non-negotiable points in the artist rider before the promoter submits an offer to the artist's agent. The deal point memo is constructed by artist management and issued by the artist's agent to the prospective promoter who, if the deal is to proceed, must sign off on all the terms before submitting an offer. In preparing the DPM, the artist manager should require the following:

- disclosure of the number of corporate boxes and subscription seats,
- disclosure of ticketing fees,
- disclosure of venue sponsorships and signage issues, and
- disclosure of merchandise rates

By getting these disclosures, the artist manager has the best information available to move forward. This information allows artists to have more control over the types of venues in which they play and the types of deals and guarantees they receive. Additionally, these disclosures allow artists to have control over any conflicting sponsorships or vendor relationships that they may not, or cannot, be associated with, while also allowing artists to have control over ticket prices and merchandise rates.

Specifics of the Rider

The artist manager should ensure that the rider is very specific about what is acceptable for the artist's show. Using the information in the deal point memo, the rider could include the following targeted clauses (if relevant to the specific event).

- All Occupied Seats Deemed Sold – this provision obligates the concert promoter to compensate the artist for all seats in the house, including corporate box and subscription seats.
- Incidental Sales – this provision requires the negotiated rates for various merchandise categories, included t-shirts, CDs, etc. Established artists have control over these rates and the artist manager needs to assert this control. Although a venue might claim it has to be the one to sell the artist's merchandise, if the artist already has a merchandise person on tour, then those personnel costs, including per diems, represents money wasted.
- Stage Announcements – The artist manager should have control over who, why, and when announcements are made from the stage. It is very important for the artist that while the promoter (or a co-promoter like a radio station) may need to make announcements from the stage, the timing and the content of those announcements should not detract from the ambiance and the connection the artist establishes with the audience.
- Venue Signage – the artist manager needs to establish the artist's control over where in the venue any signage specific to the venue, its sponsors, or its upcoming shows, may be hung. For example, while the lobby or the concession areas might be fine for signage, the artist manager should insist no signage be hung on stage or in the audience area. And lastly,
- Commercial or Corporate Sponsorship – the artist manager will need to determine if the venue has any commercial or corporate sponsorships that conflict with the artist's sponsorships or with the artist's moral, social, or political values. If there are, the artist manager must negotiate to have them removed.

Artist Management Response 2: Managing the Ticketing, Sponsorships and Merchandising

By being creative, and selecting their own tour sponsors to offset costs, artists can control ticket price, sponsors, parking, and more. In 2013, during his Best Night Ever Tour, Kid Rock and his management team used a variety of approaches to maintain cost-effective fan outreach and engagement. He used a three-pronged approach—ticketing, sponsorships, and merchandise—to achieve his goals.[14] Regarding ticketing, he required:

- that tickets be sold through Walmart;
- that tickets retail for twenty dollars across the board—and with no additional fees;
- that the first two rows be reserved for fans, chosen at random, as free upgrades from their twenty-dollar tickets; and
- he offered 1,000 sixty-dollar "platinum" tickets for highly motivated, less price sensitive fans, essentially scalping his own tickets. When fans purchased their twenty-dollar tickets, either through Walmart or on his own website, they had the option to request the "platinum" upgrade.

Kid Rock's next approach was to select the sponsors whose presence and products would be associated with his tour. Given his audience and his brand, his sponsors included Jim Beam bourbon whiskey and its associated products, and Harley-Davidson motorcycles and related gear. The featured food vendor, Jimmy John's Gourmet Sandwiches, sold discounted menu selections and provided free coffee at the end of the show. Kid Rock's team also brought in their own "Badass American Lager" as the featured beer vendor, selling four-dollar drafts, and retaining 100% of the profits. And lastly, concertgoers were able to purchase discounted artist and tour merchandise.

Artist Management Response 3: Selling VIP Experiences

Artist managers, particularly of pop acts with primarily younger fans, maximize live music revenue by selling VIP packages, which in effect scalp their own tickets directly to fans thereby eliminating the secondary ticket broker. Acts like One Direction, Miley Cyrus, and Taylor Swift will take the most expensive seats in the house, the first ten to twenty rows, and package them as "meet-and-greets" available for purchase only through the artist. Consider this recent example involving Miley Cyrus.[15]

The face value of Miley Cyrus tickets can reach $107. However, it is likely that secondary ticket vendors like StubHub would sell those same tickets for considerably more. Recognizing there are fans with both the means and the motivation to pay more than the highest ticket's face value in exchange for added value, Ms. Cyrus' management team put together a

$995 VIP Package:

1. One reserved seat along the catwalk
2. Individual photo op with Miley Cyrus
3. Pre-show drinks and snacks in the Bangerz Ballroom
4. Exclusive Miley Cyrus gift bag
5. VIP laminate and commemorative ticket
6. Crowd-Free Merchandise shopping
7. On-site VIP host
8. Parking

By offering such interaction with the artist and the artist's brand, Cyrus' management team effectively competed against StubHub and other secondary ticket brokers by offering considerably more value for the dollar.

Artist Management Response 4: Paperless Tickets

One of the most intriguing developments in the concert industry over the past few years has been the advent of paperless tickets; however, there still remains technical issues and inefficiencies because there is no industry standard system. This can be problematic for secondary ticketing agencies that purchase large blocks of tickets before they are made available to the general public; buying and reselling paper tickets at a surcharge is easy—doing the same with electronic tickets is more challenging. By insisting on using paperless ticketing, artists are able to ensure that more tickets are available to the fans at face value. It is interesting to compare data from Bruce Springsteen's 2012 tour.[16] Springsteen required that 50% of the tickets for the Izod Center in East Rutherford, New Jersey (capacity 20,049) be paperless. This ultimately resulted in only 131 tickets per show going through StubHub. In contrast, there was no paperless ticketing at his Madison Square Garden shows (capacity 18,200). This enabled StubHub to acquire 355 tickets per show.

By using a paperless ticket system, artists and their management teams deny secondary ticket brokers the ability to buy tickets at face value and resell them at extreme markups. Since this is a new system, the technology is still developing and many flaws exist, causing frustration for some fans. In most cases paperless tickets are non-transferrable, and in all cases fans must present an identification card and the debit or credit card used to purchase the ticket in order to enter the venue. Miley Cyrus, in 2009, was the first to try paperless ticketing at the arena level. Tickets were available through Ticketmaster and could only be transferred using Ticketmaster's Ticket Transfer service; transferring incurred a twenty percent surcharge.[17]

Perhaps one of the more dramatic displays of the efficacy of paperless tickets (in this case a non-Ticketmaster example) was Bob Dylan's 2010 show at the Warfield, in San Francisco presented by Goldenvoice.[18] The 8 p.m. show was announced only one week in advance. Beginning at 5:30 p.m. on the day of the show, tickets went on sale for sixty dollars (first-come/first-served, no ticket fees, and cash only—no credit cards). The box office allowed only one ticket per person and once purchased, the buyer had to enter the venue immediately. The 2,300-seat theater sold out, resulting in a $138,000 gross.

New Artist Development and Longevity

In 1996, the consolidation of the live music industry began in earnest through the acquisitions of SFX and continued under both Clear Channel and Live Nation. In moving, perhaps inexorably, towards this consolidation, the symbiotic relationship between the concert promoter, the talent agent,[19] and the artist manager was essentially compromised. When local promoters competed, actively working to bring artists to their markets, they worked to maintain a relationship of support and trust with artists and their management teams. In return for this commitment, artists were more likely to allow the concert promoter to promote the artist's next show in their market.[20] This, however, has changed, certainly at the highest grossing levels of the live music industry. While Live Nation maintains venues of differing sizes in its major markets, the real money is made with the big acts in the big venues, leaving scant attention, and even less nurturing, for independent or emerging artists. In looking at the top-twenty grossing North American tours, *Pollstar's*[21] list is dominated by long-established artists from the 1960s through the 1990s including The Rolling Stones, Paul McCartney, Elton John, The Eagles, Dave Matthews Band, Celine Dion, George Strait, etc., leaving few spots for artists who broke in the 2000s. Because of this centralized approach to live entertainment, independent promoters will find it increasingly difficult to stay competitive, and with the weakening of independent promoters, artists themselves will lose a valuable member of their support teams.

> So my question and challenge is: When those young promoters pop up, working with young artists and building them to say 5,000-seat rooms, what happens when that big offer comes in from AEG or Live Nation for $500,000 that they can't compete with? Are you going to just let that guy lose his relationship?…We need to grow those [promoter] careers again, that is what I think that last 10 years of corporatization of the rock business has done to keep everyone not focused on growing the business. [Tom Ross] (Speer 2011)

With the loss of the local promoter's contributions to an artist's development, the artist manager has become the artist's sole support system and, "The old days of promoter and agent meetings, managers' conferences, the protection of each of those areas is no longer being practiced" [Ross] (Speer 2011). The industry very well may be the weaker for it, as the untested and untried artists who represent the future remain in the wings while the industry remains dependent on heritage acts for lucrative tours.

Conclusion

The goal of this paper was two-fold: to look at the changes to the concert industry's business model and to remind artists and artist managers that, although the industry is very different from its early days, the gains made by artists cannot and should not be abandoned in the face of the new, centralized reality. The working relationships between the artist, the manager, the booking agent, the concert promoter, the ticketing agency, and the venue have been considerably reshuffled, and the artist and the manager are many times now working with a single entity representing the other concert promotion stakeholders. Given the amount of time, money, and personnel that Live Nation and AEG have invested in building the new concert industry, artists and artist managers must remember that, while the new industry is a reality, without the music and the fans, the whole structure is untenable. The artist and the artist manager still have significant negotiating power in this new world.

Endnotes

1. See *This Business of Concert Promotion and Touring*, Chapter 9 "Types of Talent Buyers" (111-113), by Waddell, Barnet, and Berry for a fuller description of this era.
2. "Barsalona took music seriously, unlike most of the agencies of the day that preferred to focus on film and television bookings, relegating music to fledgling personal appearance departments. Rock music was regarded with even more disdain by the major agencies. When Barsalona jumped ship and formed Premier, he not only rescued rock performers from the personal appearances ghetto, he developed an entire network of young promoters who, like himself, were passionate about new music and eager to develop and present emerging talent. Much of that talent now makes up rock 'n' roll royalty, and the promoters formed the backbone of a national—and now, dominant—industry." (Speer, *Frank Barsalona Dies* 2012).
3. (Goodman 1997, 28).
4. "Payment for personal appearances can take several forms, with multiple variations within each method. Typical forms include that flat fee, straight percentage, flat fee against a percentage, or flat fees plus percent. The flat fee is a guaranteed set amount, which is not dependent on ticket sales, prices, or any other factor. Payment is usually made by cash or certified check and maybe made in installments—a proportion paid upon confirmation of the engagement (usually held again by the artist agent if involved) and in balance upon performance. …Percentage compensation is generally based upon admissions revenue, excluding tax. The percentage can be applied to all revenue or to revenue in excess of certain delineated costs incurred by the talent buyer. For example, a performer appearing at a music club may receive 85 percent of all admissions revenue in excess of the cost of lighting, sound system, and security. Since the amount the performer will receive is unknown until revenue is calculated on the night of performance, payment is generally made in cash…The promoter profit is frequently calculated as 15 percent of promoter's breakeven point for the presentation of the event, other than the amount paid to the artist as a guarantee." (Leavens 2013, 142-143). Also, per Donald Passman: "The usual split is from 90/10 to 85/15, meaning the artist gets 90% (or 85%)

of the net profits the show, and promoter gets 10% to 15%. Superstars push promoters for even further (e.g., 92.5/7.5 or even 95/5) but that takes a *lot* of clout and it only kicks in after the promoter has gotten back all of their money. For example, there may be a 90/10 split until the promoter breaks even, then 92.5/7.5 to a certain level above break-even, and then 95/5 after that." (376).

5. "Peter [Grant, manager of Led Zeppelin,] insisted on a much higher percentage of the profits for his band, forever changing the economics of the touring business. The biggest rock attractions, such as Grand Funk Railroad, were getting about 50 percent of the gross, which usually amounted to around 75 percent of the net profits. (And promoters often fudged on expenses taken off the top.) Grant insisted that Zeppelin receive 90 percent of the net profits and insisted on personally approving any expenses. …Soon, every major headliner demanded and received a 90/10 deal." (Goldberg 2008, 64).
6. "While many promoters started as club owners, as bands grew in popularity, these promoters established relationships with larger venues, including civic centers, auditoriums, arenas, and stadiums." (Waddell, Barnet, and Berry 2007, 112).
7. "…If you don't have control of a building, sooner or later, they'll bring somebody else in who'll work your market for less. Or they might just offer a flat fee. If you don't own the facility, you have to accept that or give it to somebody else. It gives you some leeway, but it's also a tremendous risk." (*Pollstar*, "Executive Profile: Bill Graham 1989" 2011).
8. Sources for Venues: Xfinity Center. "Live Nation," http://www.livenation.com/venues/14479/xfinity-center; Shoreline Amphitheatre. "Shoreline Amphitheatre," http://www.theshorelineamphitheatre.com/; Klipsch Music Center (2012, June 19). "Klipsch Music Center," http://www.klipschmusiccenter.org/; Farm Bureau Live at Virginia Beach. "Live Nation," http://www.livenation.com/venues/14474/farm-bureau-live-at-virginia-beach; Concord Pavilion (Formerly Sleep Train Pavilion). "Live Nation," http://www.livenation.com/venues/14806/concord-pavilion-formerly-sleep-train-pavilion; Verizon Wireless Amphitheater (Irvine). "Live Nation," http://www.livenation.com/venues/14469/verizon-wireless-amphitheater-irvine; Verizon Wireless (MO) Verizon Wireless

Amphitheater St. Louis. "Live Nation," http://www.livenation.com/venues/14396/verizon-wireless-amphitheater-st-louis.

9. Irvine Meadows was built by Avalon Attractions in 1980 and opened in 1981.
10. "In the late 1990s, as all types of businesses including music business began to consolidate, radio entrepreneur Robert F.X. Sillerman began, quietly at first, buying up regional concert promoters. In most cases, the promoters he targeted had some sort of venue commodity, either owning amphitheaters or long-term exclusive booking deals at other venues." (Waddell, Barnet, and Berry 2007, 113).
11. See endnote 8 for venue information sources.
12. Per *Pollstar*, as reported in the *Wall Street Journal*. (Karp 2013).
13. That may have been true in 2009, but by 2012 things had changed: "Robert Sillerman may be quietly finding his way back into music promotion: The former leader of SFX, the rollup that eventually turned into Live Nation, is interested in investing in electronic dance music, according to a recent article in the *New York Times*." April 05, 2012 (*Pollstar* 2012).
14. "Kid Rock," http://www.pollstarpro.com/NewsContent.aspx?&cat=3&ArticleID=25785 Tuttle, Brad (2013, June 26); "Kid Rock's $20 Concert Ticket Plan: Good for Fans, Bad for Scalpers," *Time*, http://business.time.com/2013/06/26/kid-rocks-20-concert-ticket-plan-good-for-fans-bad-for-scalpers.
15. "Miley Cyrus Meet and Greet Package." *Miley Cyrus Tour*. http://miley-tour.com/post/66735886676/miley-cyrus-meet-and-greet-package-995-miley.
16. Rob Golum, "Live Nation Wields 'The Boss' in Stub Hub Ticket Battle," *Bloomberg*, (March 2, 2012), http://www.bloomberg.com/news/2012-03-02/live-nation-wields-the-boss against-stubhub-in-paperless-ticket-battle.html.
17. "Paperless Ticket Twists," *Pollstar Pro*, (October 12, 2009), http://www.pollstarpro.com/NewsContent.aspx?&cat=3&ArticleID=13944.
18. Aidin Vaziri, "Bob Dylan's No-Ticket Show No Sell-Out," *SFGate*, (August 26, 2010), http://blog.sfgate.com/culture/2010/08/26/bob-dylans-no-ticket-show-no-sell-out/f.
19. As an example of the tight working relationships between pro-

moters and agents: "Bill calls me up and he said, I can't take the business any more. It's not the same business I got into…Bill said, 'I don't think this business is good for another two years. I want to get out before it goes down the tubes. I want out.' I said, 'Bill, you're wrong. It's only going to get bigger. From here, if you go to the arenas and from the arenas, it will probably go to the stadiums'…My thing to him was, 'I'll bring in another promoter. Once I do that, Bill, I would give you one month to change your mind.' I was going to start working with other people and everything that he had done would be washed out. 'Okay?' I said. He said, 'That's fair. Absolutely.'" [Frank Barcelona interview] (Graham and Greenfield 1992, 333)

20. "The acts would say, 'We must play for Bill Graham. Last time we played for Bill Graham, we got two billiard tables, three dartboards, 15 palm trees, all from Bill's own company, and three leather couches, all also from his own company. Fourteen security guys. The offer of a security guy in our hotel as well. We want to play for Bill.' So you played for 50 percent as opposed to 60 percent. Bill got onto that so very quickly and he didn't ever think that people really knew what he was doing. But it didn't matter with the acts. It was very hard to convince the acts not to play for Bill Graham…" [Peter Rudge interview] (Graham and Greenfield 1992, 323)
21. "Pollstar Year End Business Anaylsis," *Pollstar Pro*, http://www.pollstarpro.com/files/charts2013/2013YearEndBusinessAnalysis.pdf.

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Songs As Branding Platforms? A Historical Analysis of People, Places, and Products in Pop Music Lyrics

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Abstract

Artists have become decidedly more accustomed to partnering with product marketers. Typically, though, the relationships have involved tour sponsorships, endorsements, or the use of the artist's music in commercials. There are plenty of examples of using popular music in advertising. However, how often has there been *advertising in popular music*? Artists are in a sense "brands." Many of them appear to promote or acquaint audiences with their lifestyles through the music they create. Popular songs can serve not only as a mechanism for the subtle marketing of commercial consumer products, but also as a platform for marketing artists. Three types of branding devices are typically employed by songwriters: the mention of specific product brands, geographical places including cities and states, and well-known people (e.g., celebrities, cultural icons, and politicians). The aim of this study is to identify just how often these three types of lyrical references have occurred in popular songs through the years. How frequently have popular songs employed lyrics that may be serving the purpose of branding or advertising consumer products or the artists themselves, and are there observable trends regarding the practice over time?

Keywords: music industry, music marketing, branding, music lyrics, popular music, advertising, artist development, music promotion

Introduction

In 2012, Yankee Stadium was an appropriate venue for famed New York baseball legend Derek Jeter to speak to a group of beauty editors about the re-launch of his cologne line, Driven Black.[1] During the event, Jeter admitted that in his younger days he had used a popular line of cologne in the 1990s called Cool Water.[2] It's certainly not unusual for someone hawking his or her own brand to admit once using another. It's interesting, though, that Jeter said the only reason he tried that particular scent was because rapper Snoop Dogg referenced it in one of his songs.[3]

Cool Water wasn't the only brand referenced in Snoop's 1993 song "Lodi Dodi." Along with references to using Johnson's baby powder and Oil of Olay, he also included shout-outs to fellow rapper Slick Rick and locales such as the San Fernando Valley and Long Beach.[4] Along with those apparent endorsements of specific consumer brands and places, consider other lyrics in the song, including "for all my Doggs," "my brand new Doggy underwear," and "Doggy Doggy…your words just hypnotize me," and one could argue that the hip-hop legend was also promoting another product: himself.[5]

Artists have become decidedly more accustomed to partnering with product marketers.[6] Typically, though, the relationships have involved tour sponsorships, endorsements, or the use of the artist's music in commercials.[7] There are plenty of examples of using popular music in advertising. However, how often has there been *advertising in popular music*?

Artists are in a sense "brands." Many of them appear to promote or acquaint audiences with their lifestyles through the music they create. Through his lyrics, Snoop Dogg certainly informed listeners about his inspirations, what he liked, and the places he frequented. Popular songs can serve not only as a mechanism for the subtle marketing of commercial consumer products, but also as a platform for marketing artists.

Three types of branding devices seem to be exemplified in the lyrics of "Lodi Dodi": the mention of specific brands (Cool Water, Oil of Olay, etc.), places (the San Fernando Valley and Long Beach), and people (Slick Rick and Snoop Dogg). The aim of this study is to identify just how often these three types of lyrical references have occurred in popular songs through the years. How frequently have popular songs employed lyrics that may be serving the purpose of branding or advertising consumer products or the artists themselves, and are there observable trends regarding the practice over time?

A Study of Words in Pop Song Lyrics

This particular research was one segment of an analysis of the words used in the lyrics of the most popular hit songs each year over the course of more than five decades. In this segment, the intent was to identify the frequency of words that fell into the three specific categories: product brand names, specific locations, and names of artists or well-known persons. These three types of word usage were determined to be the most indicative of potential branding activity at work. Prior investigations have focused strictly on consumer product mentions in hit songs. This subsequent research is relevant in that it also involves two other analyses and quantifies additional potential branding activity. These additional criteria may provide further knowledge as to how popular songs are transforming in terms of their lyrical content. An understanding of these changes and their implications would be helpful to practitioners, educators, and students of the craft as they navigate both the creative and entrepreneurial arenas of the music business.

Advertainment

Perhaps the most recognizable type of marketing through song lyrics occurs when consumer product names are used. A new term has been used to label this type of activity. "Advertainment" has been defined as "the merge of entertainment programming with brand messaging, direct promotions, and public relations."[8] Patrizia Musso, an Italian professor of brand communication, first used the description in 1999.[9] Utilizing product placement in television shows or movies, where a specific product may be used as a prop or mentioned by name in the dialogue, is one example. The *New York Times* 2011 article "That's Advertainment" referred to a music-related use of the practice. In the video for her song "Telephone," pop artist Lady Gaga checked her messages on a Virgin Mobile phone in one scene and in another she made a sandwich. It was more than clear to the viewer that it was prepared with Miracle Whip dressing and Wonder bread.[10] Later in the video she took a photo of duet partner Beyoncé. An ironic zoom-in toward the camera emphasized it was a Polaroid product.[11] Shortly after that a close-up shot focused once again on the word "Polaroid," clearly for added impact.

Interspersed product close-ups in music videos are one form of advertainment, but the equivalent activity in the recording of the song itself, as inclusions in the title and/or lyrics, could be perceived differently. Product placement in songs has also been described as "brand dropping," and could potentially call into question artistic integrity and the motive of the song or artist.[12]

Mentions of popular brands in songs or their titles are not necessarily a recent invention. In fact, one could go back over a century, to when "In My Merry Oldsmobile" and "Budweiser's a Friend of Mine" were hit songs in 1905 and 1907, respectively, to find early examples of so-called "promotional songs."[13] More than a half-century later singer-songwriter

Paul Simon recorded the hit song “Kodachrome.”[14] Though Eastman Kodak Company might have appreciated the plug for its photographic film, it went so far as to require a registered trademark symbol to be included after the song’s title on the album, and a similar message had to be imprinted on the 45 rpm single.[15] Ironically, the song could not be played in the United Kingdom, where songs aired on the radio at that time could not include brand names.[16]

Simon’s prominent use of a brand name wasn’t necessarily intended to advertise the product or gain sponsorship funding. In fact, he has said his original chorus used the words “going home,” but the word “Kodachrome” simply sounded better to him as he sang.[17] That comfortable rhythmic fit could be the simple reason for many of the uses of brand names in song lyrics today. On the other hand, in the last few years at least, some artists or their handlers have indeed pursued opportunities to benefit financially from product mentions in songs.[18] A leaked email from the Kluger Agency in 2008 revealed how a certain brand of jeans could, for the right price, “find its way into the lyrics of an upcoming Pussycat Dolls song.”[19] To preserve credibility, many of these deals are kept under wraps.[20] When addressing the placements of brands into lyrics of rap songs, for example, William Chipps, senior editor with the IEG Sponsorship Report, commented that “corporations want consumers to assume that rappers name-dropping hamburgers, cell phones, or cars wrote the brands into their lyrics because they love them, not because they were paid.”[21]

Name Checking

Another type of brand dropping in song lyrics doesn’t inherently involve payments or endorsements. The practice of “name checking” (sometimes known as “name dropping” in everyday language) in order to portray a desired image can also be applicable when blending an artist’s or public figure’s name into song lyrics.[22] To at least some degree, the practice has been around for a long time. In 1927, for example, songwriter Irving Berlin included the line “trying hard to look like Gary Cooper” in the classic song “Puttin’ On the Ritz,” later recorded by Fred Astaire, Harry Richman, and others.[23] There have also been instances of dropping one’s own name into a song, as Archie Bell and the Drells did at the beginning of their 1968 number-one hit “Tighten Up.”[24] In prior years, rock and roll pioneer Bo Diddley had several hits in which he went so far as to use his name in the actual titles of songs that were literally about him.[25] Songs such as “Bo

Diddley," "Bo Diddley Is a Lover," and "Bo Diddley Is a Gunslinger" are a few examples.[26]

The mention of someone else's name in a song can create an association and identification for the listener. For the same reason that someone at a dinner party might subtly brag that he or she just so happens to be a friend of a particular celebrity, the inclusion of someone's name in lyrics might give the performer a higher degree of credibility or hipness, or at least create a desired image or theme. It could also be a way to call to mind a particular era, as was probably the case when Madonna mentioned Greta Garbo, Marlene Dietrich, Ginger Rogers, and others in her song "Vogue."[27] A songwriter might simply include names to pay homage, as Stevie Wonder did in "Sir Duke," a nod to jazz legend Duke Ellington.[28]

The insertion of one's own name into a song could involve anything from a simply practical purpose to sheer ego. When artists mention their name in a song, particularly at the beginning, they can in effect be accomplishing what many radio deejays stopped doing some time ago: front- or back-announcing the name of the artist performing the song.[29] Basically, singers may simply be ensuring that listeners know who they are. On the other hand, it could be pure self-promotion, whether for marketing purposes or self-indulgence.

Whatever the intent, the mention of a well-known person or icon can tell the listener more about the artist performing it, whether it is intended or not. Singing about, or referring to, oneself in a song, especially repeatedly, ensures name recall and awareness—a chief goal of advertising. In several ways, and at various levels, name inclusion can serve the purpose of branding the artist.[30]

Locations

Mentions of locations in lyrics might also be a mechanism to promote the image of an artist or a song. Specific cities, regions, and hot spots can call to mind certain attributes. A reference to spending a weekend in Las Vegas, Nevada, can suggest hipness and wealth much more than a reference to time spent in Toad Suck, Arkansas. The use of locations in song lyrics can serve the same purpose as the names of popular products and people in that they communicate an image of the performer as well. Identifying where an artist is from or where he or she spends time further informs the listener about the artist's persona.

As with products and names, locations can be included in lyrics for many reasons other than branding. Mentions of real places add color and texture to lyrical descriptions, for example. It can help the listener more easily associate with the song. Or the geographical reference might simply fit the point or theme of the track. Waylon Jennings immortalized the town of Luckenbach, Texas, with a hit song by the same name in 1977.[31] The small town seemed to simply be a metaphor for an escape from the hustle and bustle of life.

Regardless of the purpose, the inclusion of specific places and locations in lyrics can provide more information about performers, or associate them with a certain lifestyle or demographic. In that sense it can at least, in some cases, be recognized as another form of branding at work.

It is worth mentioning that there is an additional practical advantage, in terms of marketing, for dropping the names of cities—especially if presented in "call out" fashion, as rapper Tupac did in 1995's "California Love." Giving shout-outs to specific locales can influence radio or club airplay in those markets.[32]

Data Collection and Analysis

To identify the occurrences and trends in these three categories of lyric usage in pop music, the top thirty pop songs, according to *Billboard* magazine, for each of the years 1960 through 2013 were analyzed. For obvious reasons, songs classified as instrumentals were removed from the sample. They were not replaced with lower-ranking songs that did include lyrics. After removing the instrumentals, there were a total of 1,583 songs utilized for the study.

Lyrics for many popular songs, past and present, can be found online. However, most of the companies that host such material offer the lyrics purely to draw traffic to paid advertisements.[33] The content is consistently fraught with errors and misspellings and there is little incentive to correct this.[34] Therefore, every sample song had to be listened to personally and a great deal of manual correction was necessary to ensure the accuracy of the corpus of song lyrics built for the analysis.

More than 510,000 words were visually reviewed and identified as to whether they fit the criteria. There are software programs that will, in seconds, count the number and frequency of words in text. However, the problem with using such software in this case was the issue of context. For example, the word "fifty" would normally be accumulated with all other uses of the word as an identifier of quantity. The word "cent" would likewise be included with all of the other uses of that word to identify a monetary value. However, both of those categorizations without reference to context would prevent the proper identification of instances in which the artist 50 Cent's name was mentioned in a song.

Classification of Words

To identify lyrics pertinent to the research, certain criteria had to be applied in order to attribute words consistently and correctly into the three categories.

Regarding the use of locations, the specifications were quite simple. Most importantly, the place had to be used as a proper noun. For example, use of the word "south" in the context of a direction one travels was not counted, whereas when someone sang that he or she was from "South" Carolina the words were counted as a location reference. The place or region also had to exist geographically. "Heaven" was not, for example, considered a place for the purposes of this research.

The criteria for names were a bit more complicated. Much like locations, a person referred to must exist, or have existed, in order to be counted. "Susie" in the Everly Brothers' hit "Wake Up Little Susie" is presumed to be a fictional character and thus not included. On the other hand, references to gangster legends Bonnie and Clyde were counted as name checks, because they did exist at one time. When the lead singer of the glam band The Sweet roll-called his band mates ("Ready Steve? … Andy? … Mick? … ") at the beginning of the 1974 hit "Ballroom Blitz," it was also categorized as such, since they could be reasonably verified as real people and as public figures since they were members of a popular band.[35] Self-references, as was the case when artist Lil Jon shouted out his name at the beginning of pop star Usher's 2004 hit "Yeah," were considered name checks as well.[36] On the other hand, mentions of well-known fictional figures and icons like Spider Man or Mr. Clean were counted as product brand names, rather than celebrity or public figure mentions.

Identification of product brand names in lyrics was a little more straightforward. References to iPods, Lehman Brothers, Geico, and other such monikers were placed in this category. Subtle hints at brands, however, were not. For example, in Chris Brown's 2008 hit "Forever" he sings the words "double your pleasure, double your fun."[37] Some might recognize that as a reference to a classic marketing slogan for Wrigley's gum. But since the brand name was not specifically stated, the words were used regularly in pop songs with other contexts, and most listeners would likely not recognize the connection, those words were not classified as brand mentions.

Sometimes judgment calls had to be made for certain nebulous uses in order to classify words and lyrics. Some decisions could certainly be questioned. Nonetheless, the rules and methodologies were applied consistently throughout the project.

Findings

The analysis of more than half a million words from the top hits of 1960 through 2013 did indeed provide insights as to the frequency of use of the three types of words in popular songs of the period. There was an observable trend in all three cases. Figure 1 shows the number of mentions of locations in the sample songs by year.

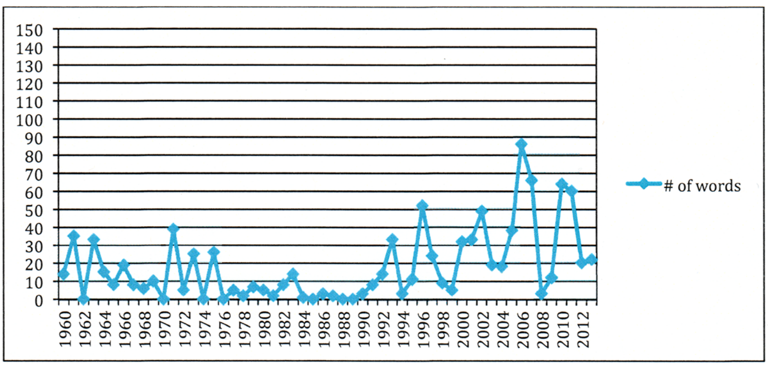

Figure 1. Number of words in the top thirty songs of each year that reference locations/places (total words by year).

The use of location names was in many cases seemingly innocuous. In 1961, when the vocal group The Dovells sang about the Bristol Stomp, a dance that was popular at that time in Bristol, Pennsylvania, the songwriters' intent was simply to write about a dance craze that happened to become popular in a town outside of Philadelphia.[38] There was no apparent connection between the group and the city.[39] When Madonna and her co-writers referred to Paris in "Justify My Love," they were probably using that city in order to add to the sensuousness and romanticism of the song.[40]

However, there still exists a clear increase in the number of mentions of places and locations in hit songs over the period reviewed, especially from the mid-1990s to the mid-2000s. Such mentions were found to be relatively infrequent in the 1960s and 70s. In most cases during that period the total instances were heavily concentrated in only a couple of songs. For example, in 1963's "Surfin' U.S.A.," the Beach Boys named various surf spots in Southern California.[41] There were enough to constitute more than half of the location mentions for that year's sample. Curiously, in the 1980s—particularly the latter portion—it became far less common to mention proper locations in lyrics. But in the 1990s the practice re-emerged with a much greater frequency than ever before. In the 2000s, the use of place names increased even more, with usage peaking in 2006. Over the years, there were 976 total location mentions. That peak year of 2006, with 86 references, represents almost nine percent of all the inclusions. After a precipitous drop in 2008 to hardly any use, there were 12 in 2009 and 64 (the third highest amount of any year) in 2010, before the frequency declined.

Figure 2 is a summary by year of occurrences of names (first and/or last, or nicknames) of recognizable and real (living or dead) individuals in the top-thirty songs of each year.

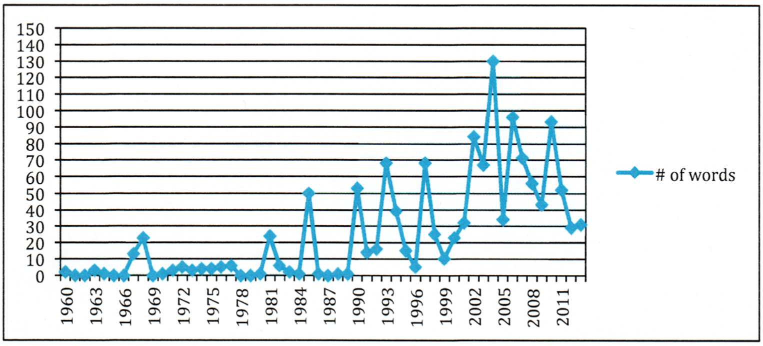

Figure 2. Number of words in the top thirty songs of each year that reference specific people (total by year).

The increase in the frequency of usage of people's names in the sample songs over time is clearly evident. While barely used until the early 1980s, the practice markedly increased in the early 90s and continued an up-and-down trend, all the while increasing to levels not seen in the prior decades. Observations peaked in 2004 with 130 words making such reference, as compared to 39 in 1994, 1 in 1984, 4 in 1974, and 1 in 1964.

The totals and trending patterns for the occurrence of product mentions in pop lyrics are somewhat similar to the findings for mentions of people. References to products have clearly increased significantly over the past fifteen to twenty years, peaking in 2004. There were 1,544 total brand-referencing words in the sample lyrics. More than half of them occurred from 2000 to 2010. The figures for each year are represented in Figure 3.

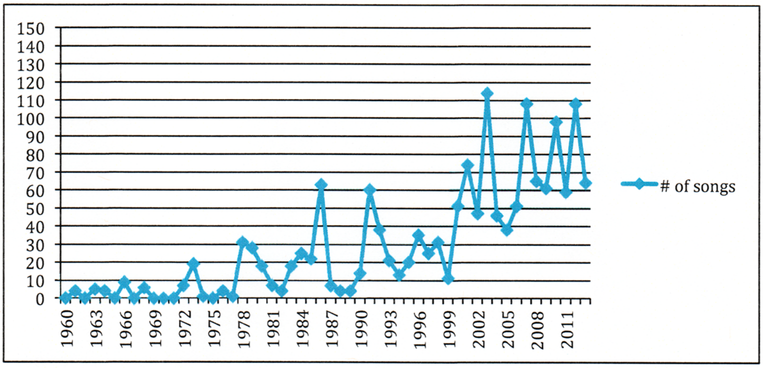

Figure 3. Number of words in the top thirty songs of each year that reference product brands (total by year).

Automobiles were far and away the most referenced product classification. Mercedes-Benz, Bentley, Corvette, Cadillac, and Chevrolet were among the most mentioned brands. These findings were fairly consistent with research published in 2008 in which brand names were counted among a database of U.S. hit songs drawn from an entirely different source.[42]

There has been a general increase in the frequency of references to specific and well-known places, people, and products in the lyrics of pop songs since 1960. Figure 4 displays the trend when the total instances of all three classifications are combined for each year. Viewed in such a manner, the general trend is apparent.

Though there has been a general increase in the quantity of uses of these types of words in the top pop songs over the last several decades, it should be noted that there has also been, in general, an increase in the total number of words used in those same songs. This study found that, for example, the average number of words in a top hit in 1960 was 185. That's

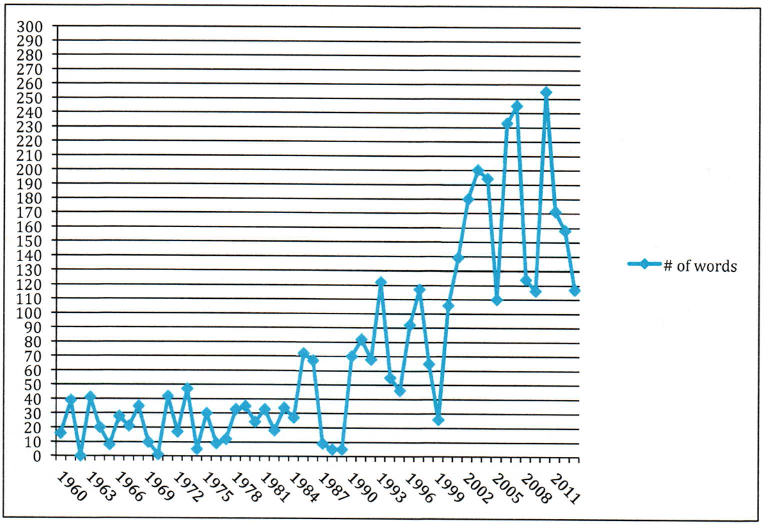

Figure 4. Number of words in the top thirty songs of each year that reference well-known people, places, or products (total by year).

fewer than half the average number of words in the top hits of fifty years later, 2010, when the average number of words was 489, a 164% increase.

There is no direct correlation to the duration of the songs, though songs from more recent years are typically longer than hits from earlier decades. For example, using those aforementioned years as comparisons, data gathered in this study found that the hits of 1960 were an average of 2 minutes, 36 seconds in length, whereas in 2010 they averaged 3 minutes, 53 seconds—a 49% increase. Findings indicate that the number of words used in pop songs has grown at a faster rate than the duration of songs. That observation will be further explored in a separate analysis. With it in mind, though, Figure 5 graphically represents the use of the three types of words through the years as a percentage of the total words in all of the songs each year. Though the peak in 2010 (where 1.8% of all words used represent potential branding) may seem insignificant, in relative terms it is more than double the use of these words twenty-five years earlier, in 1985.

Finally, the presence of these words in pop songs can also be presented in terms of the actual number of songs out of the sample populations that contain at least one instance (Figure 6). In 2006, for example, twenty out of the top thirty, or two out of every three, of the top songs included at least one reference to a person, place, or product.

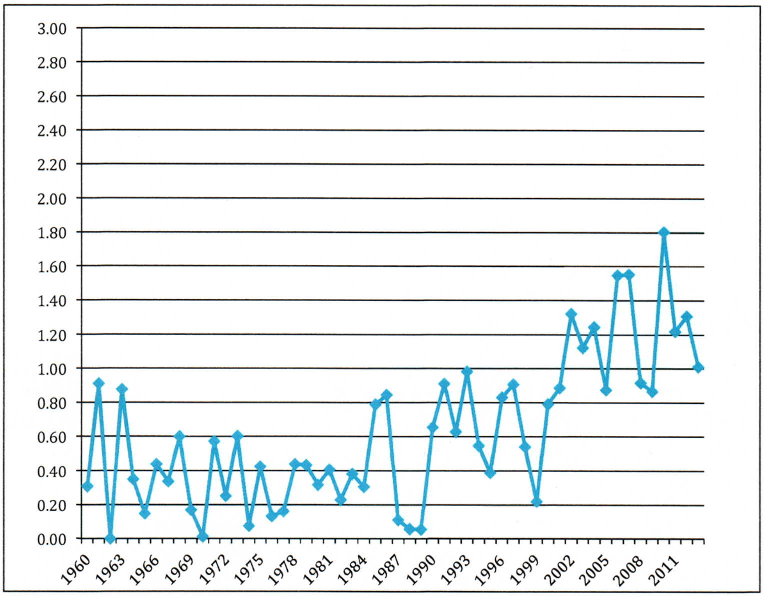

Figure 5. Percentage of total words in the top thirty songs of each year that reference well-known people, places, or products (percent by year).

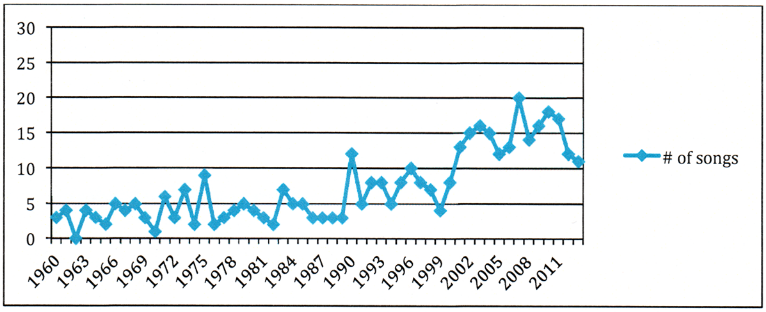

Figure 6. Number of songs out of the top thirty songs of each year that have at least one reference to personal, location, or product brands.

Viewed even from these alternative perspectives, a general trend of increasing occurrences of lyrics used as potential branding messages in pop songs remains apparent. However, there are certainly fluctuations, both up and down, from year to year.

Possible Causes and Implications

What might explain the trends in each of the three categories of word usage in pop song lyrics? What are the implications? Short of surveying the top songwriters and performers who have taken such liberties, there are at least a few points to consider.

For one, in today's music business, artists and their stakeholders have had to take non-traditional approaches in navigating the marketplace.[43] It has become increasingly important to emphasize marketing the artist as a brand rather than focusing so much on the sale of recordings.[44] A recent case study focused on CeeLo Green. His record sales have been relatively low for an artist of his profile, yet he had revenues of over $20 million in 2011, with the "smallest slice of the pie" coming from actual music sales.[45] The report further explains that "Green and his publisher/management team…have realized that the modern music world has huge opportunities in changing the marketing equation, rather than focusing just on music sales." It adds that, "The company has focused on building up Green as a brand in and of himself, which has opened up all sorts of opportunities…"[46] Perhaps this new direction in the industry has influenced the use of music (particularly pop songs) to be more of a branding platform that includes—along with all of the other elements of a hit song—more information about the artist as well. Artist and music business mogul Jay-Z has been specifically pointed out as someone who uses mentions of brand names "as a way of marking his authenticity as a self-made businessman."[47]

Another possible factor is the increased competition for the attention of consumers. With the click of a computer mouse or the button of a mobile device, music fans can easily skip past music that's not maintaining their interest. Mentions of products, people, or places to whom they can relate might increase the chances they'll keep listening. This consideration may be motivating songwriters and artists to adopt the practice of incorporating branding into lyrics.

The trend of popular artists including more references to themselves, where they're from, or where they travel, and the practice of name-dropping, might be somewhat explained by psychological shifts in our society as well. The aim of one previous study of popular music from 1980 to 2007 was "to determine whether lyrics changed over time in a manner that mirrored documented psychological changes across the same time period."[48] In their research paper, "Tuning in to Psychological Change: Linguistic Markers of Psychological Traits and Emotions Over Time in Popular U.S. Song Lyrics," C. Nathan Dewall, Richard S. Pond, Jr., W. Keith Campbell, and Jean M. Twenge found a direct correlation between indexes that identified an increase in narcissism in U.S. culture and self-focused pronoun use in song lyrics during that same period.[49] The increased self-focus in our society has apparently been reflected in the lyrics of our pop music. Indeed, the lyrics utilized for the study presented here were processed through the same Linguistic Inquiry Word Count program utilized in that study and an increased use of self-referencing words, particularly since 2001, was observed.

Beyond societal influence, another factor mentioned earlier may help explain an increase in the tendency of artists to drop names, particularly their own, into pop songs. The need for artists to make it absolutely clear to a radio audience who is performing the song (for the purpose of branding and to influence record sales) could be affecting the practice. Perhaps the perceived need by artists to make such communications themselves, instead of depending on radio personalities, explains at least part of the increase. Separate research to identify the point in time at which U.S. radio deejays in general ceased mentioning the names of artists before or after the airing of songs would be helpful in determining the extent to which this might be a factor.

In regard to consumer brands in song lyrics or titles, one reason the activity may have increased might be observed success in increases in sales or awareness for products mentioned in pop songs. According to reports, after Busta Rhymes had a hit single with "Pass the Courvoisier" in 2002, sales increased ten to twenty percent that year, and Run DMC's top-five hit "My Adidas" had a similar effect on sales for that shoe company.[50] Sister Sledge's 1979 disco smash "He's the Greatest Dancer" brand-dropped Halston, Gucci, and Fiorucci, and awareness of those brands "skyrocketed."[51] Notable successes such as these, and likely many others, could certainly have motivated product marketers to seek more partnerships with artists.

Artists might be attracted to such partnerships and be increasingly willing to include such placements in their songs. This could be affecting the increase to some degree. Since the details and the extent of those deals are quite difficult to learn, as mentioned earlier, just how much of a factor they are playing is difficult to determine. Some of the partnerships have indeed been made public, or they're at least quite obvious. The aforementioned subtle reference to Wrigley's gum by Chris Brown in his song "Forever" was in fact taken from an actual commercial he did for the Doublemint product line.[52] In his 2004 hit "Freek-a-Leek," Petey Pablo sang, "Now I got to give a shout out to Seagram's gin, 'cause I'm drinkin' it and they're paying for it."[53] In general, though, the details or existence of such transactions would likely not be made public. Whereas some advertising media (magazines, for example) are required to identify any text that is paid advertising, songs are not required to do so.[54]

Perhaps pop songs are simply a reflection of the culture and the times in which they are created, and the transformations observed are indicative of the trend in recent years of increased emphasis on brand identity. Lucian James, founder of brand consultancy Agenda, Inc., stated in 2006 that, "Contemporary culture defines itself through the brands that we associate with."[55] Robert Passikoff, president of Brand Keys, a brand and customer loyalty consulting company, said that same year, "It's the way the world is moving, to an ultra-capitalist marketing environment," in regard to the trend of mentioning brands in music.[56]

One might attribute increases in the frequency of name checking brands, people, or locations to an increased presence and influence of hip-hop among the most popular hits. In this research there were more instances found among songs from that genre than any other. A study of college student consumers' attitudes toward brand placement in songs found that respondents identified this genre as particularly appropriate for brand placement.[57] Jonah Disend, president of consulting firm Redscout, once referred to a focus group he led in which the participants were asked how to make a brand popular. Their response was overwhelming: "Put its name in a rap song."[58]

Additional research for this study, though, found that the use of brand names in lyrics is not entirely a rap/hip-hop phenomenon. Brand Channel is a website that annually features the Brandcameo Product Placement Awards. In 2011 an award for the song that best incorporated a brand went to rock/pop chanteuse Lana Del Ray, whose "Diet Mtn Dew" song included the verse "Diet Mountain Dew baby New York City, never ever was there a girl so pretty."[59] A review of the lyrics of the Billboard Top 30 country songs of 2002 versus 2011 found that in the former year there were five songs containing any references that fit the criteria of this study. By 2011 there were twelve, with six out of the top ten containing mentions.

What is the future of the practice of including mentions of brands, people, and places in popular songs? This research has identified a growing acceptance of music as a branding platform. Many other forms of entertainment have also seemed to find it more acceptable. Jonah Disend, the aforementioned president of Redscout, stated that, “People understand the machine, and even when they know they shouldn’t buy into it, they do.”[60]

There are certain risks involved with dropping name brands and other mentions into pop songs. The most obvious is perhaps the possibility of the artist being labeled a “sell out.”[61] But there is at least one additional consideration for the long term, particularly where opportunities for licensing music in film and television are concerned. Though it is not so much the case with places or locations, mentions of people and products in a song can tend to date or time-stamp a song, especially if what or who is mentioned loses relevance or gains a negative connotation in the following years.[62] On the other hand, music from a particular period might just be what’s desired. According to Justin Kalifowitz, Senior Director of Spirit Music Publishing, “Period music is often requested, which may make these songs more appealing.”[63] He also mentioned a case in which a song was sonically perfect for a film, but it referenced some bands from the 80s, which “killed the use.”[64] There might be other valid reasons to be careful regarding the use of songs as branding platforms.

Conclusion

An empirical analysis of more than five decades of popular song lyrics found that there has been a general increase, with fluctuations from year to year, in the use of words relating to specific people, places, and products. There are a number of possible explanations for the trends observed. Songwriters over the past few years might simply have preferred to use more specific language when crafting a potential hit, choosing to use “I hopped in my Mercedes” rather than “I hopped in my car,” for example. The practice might be purely a reflection of the times in which the songs are written, or a trend among artists and songwriters who observe their contemporaries doing the same thing.

“Brand dropping,” mentioning famous people, or referring to popular locations might simply be a very effective way to build or increase consumer appeal. However, the mentions, specifically in regard to consumer brands, could be the result of a monetary deal. Employing “advertainment” in song lyrics can be lucrative.[65] Is that a bad thing? Should real estate in the lyrics of pop songs be for sale to a sponsor? That question is a matter of larger debate beyond the intent of this study. Many artists already align themselves with brands through tour sponsorships, product endorsements, and other associations.[66] Doing so with the creation of their musical works, especially in volatile economic times, might be viewed by some as necessary.

The findings presented here are relevant in that they inform us as to the prevalence of these uses and how they relate to the state of popular music. Today's songwriters, musicians, their stakeholders, and educators can utilize this information as they help shape the business of popular music.

Words like "Snoop Dogg," "Long Beach," and "Cool Water" might have greater impact on a listener than "a rapper," "a nice place I visited," and "my favorite cologne." They obviously did in Derek Jeter's case. This study found that the use of more specific, branding-related words has increased, but it still constitutes well less than two percent of all the verbiage utilized in any portion of five decades of pop music. Moreover, it was also observed that there are an abundance of pop songs that don't include such words.

In fact, even the most prolific users of advertainment in other types of music performance (music videos, live concerts, etc.) might have their limits when it comes to brand involvement in their recorded songs. Lady Gaga, whose music video was used earlier as an example of blatant product placement, also had her last tour sponsored by Virgin Mobile. She would even call someone in the audience during the concerts and mention the brand as a sort of commercial between songs while the company's logo adorned the video screen. Advertainment seemed to be a non-issue for her. So it is both telling and perhaps ironic that among all of her hit songs analyzed for this study she only mentions one brand (herself) and does not include references to any commercial products.

Whether intended for profit, self-branding, or simply to enhance or improve the song, uses of the names of specific and well-known people, places, and products in lyrics will always be the decision of songwriters and performers. Ultimately, listeners will decide whether or not it's a good idea. The marketplace, as usual, will determine whether, and to what extent, the practice will continue.

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The Protection and Licensing of Music Rights in Sub-Saharan Africa: Challenges and Opportunities[1]

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Abstract

Africa has given the world such wonderful tunes as "The Lion Sleeps Tonight," and Ladysmith Black Mambazo's "Homeless." It inspired the 2010 FIFA World Cup official song, "Waka Waka," so beautifully rendered by Shakira. Africa is a wonderful, massive source of great talent and creativity waiting for an opportunity to express itself. Nevertheless, the business aspects of this rich cultural heritage still, to a large extent, needs to be cultivated. A lot still needs to be done in many parts of the region to ensure that Africa can effectively compete in the elaborate, exquisite, and well-oiled machinery termed "the global music industry." Many parts of Sub-Saharan Africa still display a dearth of the skills, knowledge, and expertise that are crucial to a successful, globally-oriented industry. However, in spite of gross financial constraints, there is no lack of entrepreneurial and creative endeavors in the region—and the industry is a lively hub of adventurous activity. The sheer resolve of participants in this industry demonstrates the fact that the situation can only get better.

Keywords: Sub-Saharan Africa, music licensing, collective management, authors' rights, sound recordings, performers' rights, music business, music industry

Introduction

Africa is a huge continent teeming with people—a vast sea of over one billion souls. Sub-Saharan Africa, which this research focuses on, boasts the majority of this population.[2] All things being equal the region should have one of the biggest and most-thriving entertainment business sectors in the world. It is clear however that, to a large extent, the entertainment sectors in the region remain largely underdeveloped—at least in the conventional sense. In many instances it may be difficult to even clearly delineate an entertainment "industry,"[3] despite a recognition of the great potential of the entertainment or creative sectors in spurring economic development in the region.[4] The music industry is no exception in this regard.

Even so, a lot of activity is in fact taking place, albeit largely on a low-scale, amateurish, or subsistence level with not much impact on GDP growth. Importantly, there have also been many success stories over the years. This makes the African music licensing environment at once enigmatic, interesting, and bemusing for the practitioner working in this market. Enigmatic because of the many activities in the industry that do not conform to the conventional understanding of how the industry "works" or how it should work; interesting because of the feeling of adventure and exhilaration arising from having to work with impassioned artist entrepreneurs delving into hitherto untapped areas; and bemusing because sooner or later the practitioner will have to face the fact that certain rough "survival tactics," including the "big-fish-eat-little-fish" syndrome referred to by some earlier,[5] may still be prevalent.[6]

What will immediately be evident to one seeking to work in this market is the difficulty in finding any reliable information on the African music industry, both at a regional or national level. It is this lack of information that the Music in Africa project, an initiative of the Siemens Stiftung Germany and the Goethe-Institut, seeks to address.[7] In this regard Edington Hatitye, Project Manager for the initiative, explained that the aim of the initiative is to foster a well-informed and African-driven music community and to facilitate an inter-African exchange, through creating an online-based portal for the dissemination of knowledge.[8] Amongst others the project aims to have a directory of the various players in the African music industry, to have a section for useful resources about the industry (whether in the areas of entertainment law, the music business, music technology, or other relevant areas), and to have a section on education in which all information relating to music education and institutions will be reported. At this point, in the absence of this information this research had to depend on information gleaned from limited key players in the industry, as well as information available through research.

The lack of a harmonized legal framework in the area of copyright and related rights protection on a pan-African basis, especially in the area of digital exploitation, may be another reason why the licensing of music rights in Africa poses some difficulties. Progress with regard to the African Economic Community formed in terms of the Abuja treaty of 1991 has been rather slow. This naturally affects regional integration and hampers any attempt at the harmonization of laws. The Southern and Eastern African Copyright Network (SEACONET), an ambitious non-governmental organization comprised of copyright offices, collective management organizations, rights holder organizations, and other organizations interested in copyright and related rights, was formed in 2008 with the support of a number of governments in Southern and Eastern Africa. One of the objectives of this organization is to harmonize the laws relating to copyright and related rights in this sub-region, especially in the area of enforcement and cross-border measures.[9] In 2012 the organization adopted a model copyright law with rather noble ideals. Whether this model law will be widely utilized by the governments concerned is something that remains to be seen.

Because of a lack of harmonization in the various legal systems, Africa does not offer a uniform or homogenous system of music rights administration. This may however, have less to do with different legal systems and more to do with the fact that, as someone put it, we are involved with "an industry that's perpetually emerging."[10] The African music scene thus clearly presents a potpourri of licensing possibilities, ranging from the more established and Western-style market in South Africa; to the licensing wilderness of Tanzania where the crisp answer of a prominent musician to the question whether artists are signed to record companies in Tanzania was, "There are no record companies here"[11]; to the Wild West of Nigeria,[12] a country which offers "a context in which most Western artists would stumble and fall."[13] In a snapshot we could say that the development of the African music business has been overtaken by events. By this is meant the fact that the digital revolution, which has inarguably changed and continues to change the nature of the global music business, came at a time when Africa was still trying to get to grips with the traditional music business model.

On the other hand, since a universally accepted model of the new digital music business has yet to be agreed upon, Africa is, as it were, in a similar footing with many with regard to its involvement in the new music business experiment. Of course in this regard Africa finds herself with serious limitations such as limited access to the internet, low broadband infrastructure,[14] and limited access to personal computers. Generally however, the digital environment is presenting Africans, especially solo entrepreneurs in markets where the old music business was not strong, with a platform to stretch their imaginations wider and to "grab the bull by the horns" by taking advantage of the opportunities that present themselves.

In this regard the fast emergence of a burgeoning legitimate music scene, sparked, inter alia, by "digital startups helping to leapfrog infrastructure weaknesses [and] making major African cities emerge as not only sources of great local talent that can go global in a meaningful way, but also markets and venues for U.S. and other global artists touring and selling their music," has been noted.[15]

Christopher Kirkley reports how he went to Africa "in hopes of capturing sounds rarely heard by the rest of the world," only to find a "new, wholly modern" music tradition disseminated through "cellphones, specifically of the cheap, off-brand variety…"[16] Rob Hooijer, a veteran music rights consultant with vast experience in collective management and as African Director for CISAC, and who has travelled extensively in Africa helping fledgling societies, confirms the growing importance of cellphones in Africa.[17] Rather than just the cheap brands referred to by Kirkley however, Hooijer speaks of the growing use of smartphones in countries like Kenya in the dissemination of music, particularly as ringtones. USB sticks and SIM cards are also increasingly being used. In fact, Hooijer remarks, "They are designing their own models. Some of these models are used for short periods and get out of use, but they would have made money out of it. In this environment cash is king."

Having indicated the above, the question as to whether the digital revolution has brought changes to musicians with regard to providing more opportunities for exploitation of their music was answered more positively by respondents from Nigeria, than it was by respondents from Kenya. Tabu Osusa from Ketebul Music in Kenya (http://www.ketebulmusic.org/) remarked that while this new mode of exploitation has benefited urban musicians, "this technology has not benefited or reached the majority of musicians based in the rural areas."[18] June Gachui[19] sees the current role of the digital and online platforms as being more in the area of creating an opportunity for more visibility and marketing, with limited revenue generation. Ms Gachui believes that this situation arises from the lacunae in the Kenya Copyright Act, which "is still silent on digital exploitation."

Notwithstanding this trend towards exploration of the online market, and despite the general decline in interest in physical formats of exploitation worldwide, another enigma concerning Africa is the fact that CDs, and even the outdated cassette, remain the standard form for dissemination of music in many parts of the region.[20] Even in more-developed South Africa the sale of CDs still takes precedence over digital sales, and retail stores such as Musica, Reliable Music Warehouse, and Look and Listen appear unfazed by the official opening of the iTunes Store in South Africa in December 2012.[21]

The Individual Exploitation of Authors' Rights

What became clear in the interviews and research conducted is the fact that there is a general lack of understanding among authors/composers, of the rights involved with the exploitation of their musical works. In the interview with Rob Hooijer he reiterated this point. As a result, the practice of buy-out of rights and the big-fish-eat-little-fish trend alluded to above, is very prevalent, especially as one moves further from Southern Africa. Authors/composers are not aware of the bundle of rights that are involved in relation to their compositions (or where they are aware, they feel powerless to effectively exploit these rights on their own).

In many African countries the trend of the independent producers (rather than music publishers) owning all rights (in exchange for some form of up-front payment), seems to be prevalent. Chinedu Chukwuji, General Manager and CEO of the Copyright Society of Nigeria (COSON), acknowledged that music publishing is a very new (but growing) area in the Nigerian music industry, further remarking that record companies "double as publishing companies".[22] Mayo Ayilaram, CEO of the rival Musical Copyright Society Nigeria (MCSN) affirms[23] that the publishing market "is an emerging market which has generally not been explored or properly understood." In Tanzania John Kitime confirmed there are no publishing companies and that the practice of buyout of rights (presumably from the record producers) is the norm.

Because of this situation the culture of payment of royalties with respect to authors' rights (whether mechanical, print, or synchronization) is virtually unknown or non-existent except at the collecting society level. In Kenya the veteran musician Tabu Osusa acknowledges that the majority of musicians "have very little or no knowledge at all [of] publishing and similar rights." He attributes this to lack of awareness of the rights, with the result that authors "don't engage [in] publishing deals." Osusa also made a very interesting observation regarding buy-out of rights, indicating that most musicians, especially those from rural areas, prefer buy-out of rights (in exchange for some form of payment), "since they don't have much faith on [the] royalties mode of payment." It is to be expected that this ignorance with regard to the rights involved would also play itself out in the entrepreneurial terrain of online licensing—an area which clearly involves more complex issues than terrestrial licensing. Thus, without a supporting team of advisors the unwary authors are entering a minefield when they dabble with the online and digital.

The situation is somewhat different in Southern Africa, where buy-out of rights is not very widespread. It is submitted that this is less to do with a higher level of understanding of rights on the part of authors and more to do with the fact that the region boasts a more established publishing industry, which naturally operates from a tradition of entering into publishing deals with authors. There is no pressure in South Africa for composers/authors to sign with publishing companies.[24] It is also true however that it is publishers (especially the established publishers) that possess the necessary expertise and resources to carry out transactional licensing of rights (i.e., print, mechanical, and synchronization). In South Africa a good market for the licensing of print, mechanical, and synchronization rights does exist, albeit a tight one. Authors/composers signed to publishing companies share from royalties generated from these forms of licensing.

Among authors/composers, ignorance with regard to the finer details relating to copyright and music licensing is also evident, though it could be said that the general awareness of rights is better in Southern Africa than it is in West and East Africa. Some authors/composers form their own publishing companies and enter into administration deals with the more established companies. This should not however, be taken to imply that unscrupulous practice by some music publishers does not exist in Southern Africa. This practice can be detected, and there would be many publishers that can fit the description of "banking operation" publishers, i.e., publishers with no commitment to promote the works assigned to them but rather interested in acquiring ownership of rights as a way of ensuring that they can share in payment of royalties whenever the work gets exploited.[25] In this regard authors/composers do need to be made more aware of their rights and the true role of a music publisher, to enable them to make informed decisions.

The Collective Licensing of Authors' Rights

As hinted to above, collective management of rights represents the better known or better established system of royalty earnings in most parts of Africa. For many authors/composers in Africa collective management is the only system from which they can ever hope to earn royalties.

Many of the countries in Sub-Saharan Africa have some form of collecting society, many of which are CISAC-affiliated.[26] This does not, however, imply that these societies are all successful. Many of the societies are still struggling and have not managed to break into the market with regard to licensing and collections. Many have high administration costs and are virtually living from hand to mouth, with the result that many of their members are not seeing much in the form of royalties.[27] According to Rob Hooijer, only a handful of African societies, notably in South Africa, Kenya, Senegal, Burkina Faso, Mauritius, and a few other countries make a significant contribution to total royalty collections in Sub-Saharan Africa, (with SAMRO, the Southern African Music Rights Organization, making the bulk of the contributions). Not all societies are affiliated with CISAC. In this regard Hooijer mentions the examples of societies in Botswana, Ethiopia, Zanzibar, Chad, Cape Verde, and a society in Cameroon.

With a few exceptions, the norm is for all rights in respect of a musical work (i.e., reproduction and performing rights) to be administered by one society. A notable exception in this regard is South Africa, where mechanical rights and performing rights have traditionally been administered by two different organizations.[28] Mechanical rights licensing in South Africa has, however, had a tumultuous past culminating in the demise of the main society representing authors/composers.[29] SAMRO, traditionally confined to the administration of performing rights, took over the role once played by SARRAL (South African Recording Rights Association Limited), after the latter's demise, especially as many SARRAL members were also SAMRO members in respect of performing rights. NORM (National Organization for Reproduction Rights in Music) however continued to administer mechanical rights on behalf of its (mainly publisher) members (including the major publishers). The untenable environment created by SAMRO's entrance into mechanical rights licensing (in particular the conflict created by the fact that NORM's publisher members are also members of SAMRO in respect of performing rights), and the need to have a simplified system of mechanical rights licensing in South Africa led to the two organizations agreeing to form one body that will be responsible for mechanical rights licensing in South Africa, termed CAPASSO (the Composers, Authors and Publishers Association).[30]

Another noteworthy aspect of collective management in Sub-Saharan Africa relates to the role of government in this system. There are some societies that are part of government or rather double up as copyright offices, such as COSOTA in Tanzania (and COSOZA in Zanzibar), COSOMA in Malawi and MASA in Mauritius. What is more common however is the existence of societies that, while not part of the Copyright Office, are established under statute and operate under the regulatory supervision of the Copyright Office. While this system seems to work in some countries, it has also invoked some of the bitterest experiences in collective management in Sub-Saharan Africa, more particularly in Nigeria and Kenya. In Nigeria an almost endless wave of litigation and counter-litigation, spanning several years, has raged, primarily in relation to the continued recognition of the Musical Copyright Society of Nigeria (MCSN), the copyright society in existence prior to the introduction of a regulatory system for societies.[31] In a similar situation in Kenya, the Kenya High Court overruled the decision of the Kenya Copyright Board with regard to the deregistration of the Music Copyright Society of Kenya (MCSK).[32] Even SAMRO in South Africa, despite enjoying a relatively positive rating internationally,[33] and despite there being, generally, no regulatory framework for societies in South Africa,[34] has not been exempt from calls for government intervention in its affairs.[35]

Many African countries have repealed the old colonial-era copyright laws and enacted modern laws. However a few other countries still have outdated copyright laws which need overhauling. The worst case in this regard is Swaziland, which still uses the colonial-era Copyright Act 36 of 1912.[36] Some other countries that still have old legislations include The Comoros, Seychelles, Sierra Leone, Somalia and in a rather strange twist, South Africa.[37] Copyright protection in South Africa is still provided for under the Copyright Act 98 of 1978 (as amended), and falls far behind with regard to the latest technological developments. In spite of not having acceded to the WIPO Internet Treaties, the revised copyright legislations of a number of countries make provision for the right of "communication to the public" which is crucial for the effective administration of performing rights in the digital era. A number of countries however, including South Africa, Zimbabwe, Namibia and those members of OAPI (the Organisation Africaine de la Propriété Intellectuelle) whose copyright laws have not been revised and are based solely on the Bangui Agreement of 1977 (as amended), do not make provision for the right of "communication to the public." It is submitted that the omission of a right of communication to the public not only has the effect of hampering the licensing of performing rights at the national level in the countries concerned[38] but would also hamper cross-border or pan-African licensing.

The adverse effects of not having a "communication to the public" right have been felt in a drastic manner in South Africa, where SAMRO's attempts to license new media users have often hit a brick wall. In this regard Nicholas Motsatse, CEO of SAMRO until the end of June 2013, answered my question as to whether he thinks there has been an exhaustion or maximization of music licensing avenues in South Africa, in the negative.[39] In this regard he remarked that, as a result of there being no right of "communication to the public" rights holders have lost out on hundreds of millions of rands[40] in unpaid royalties since the advent of digital exploitation of music in South Africa. He further indicated that the rights holders have completely lost out on the ringtone boom that swept South Africa in the late 1990s and the early 2000s. Many new media users, including the major cellphone companies and ISPs, have defiantly refused to procure licenses for the usage of musical works in their platforms, arguing coldly that the protection of performing rights under the South African Copyright Act is limited to terrestrial broadcasts and public performance and does not extend to the digital environment.

In a rather strange twist, the new media users in South Africa have been paying record companies in respect of the exploitation of sound recordings, while refusing to pay in respect of the authors' performing rights. This strange situation arose as a result of the fact that while the South African Copyright Act makes no provision for a right of communication to the public in respect of musical works, it does make provision for such a right in respect of sound recordings. Section 9(e) of the Copyright Act clearly makes provision for the right of "communicating the sound recording to the public." This right was introduced in amendments to the Copyright Act in 2002, which were primarily aimed at introducing "public play" (or rather "needle-time") rights in South Africa. In introducing this new right, the legislator deemed it necessary to provide for the right of communication to the public in respect of sound recordings, while it did not somehow deem it equally necessary to introduce a similar right in respect of musical works. This has created the current anomaly where the exploitation of a sound recording without authorization constitutes infringement, while it would be well in order to exploit the underlying musical works without authorization. Consequently, whereas composers/authors and their publishers have continued to suffer loss, record companies (and presumably the recording artists participating in the sound recordings) are being compensated.

It is submitted that if this situation were to change, government needs to take seriously the plight of rights holders in this regard. There is a perception within South Africa that government has allowed this state of affairs to continue unabated, has virtually turned a deaf ear to the pleas of rights holders, and has not sought to understand the gravity of the situation. The need to urgently address this situation and to amend South African copyright legislation in order to ensure adequate protection for authors/composers was equally echoed by the commissioners of the Copyright Review Commission[41] set up to investigate nefarious activities in the music industry, in particular among copyright societies. It would probably be possible to interpret current South African copyright law[42] as also covering the activities of new media users in respect of performing rights through a proper understanding of the definition of "broadcast" in the Copyright Act.[43] Such a construction would also assist in attempts to forge cross-border or pan-African licensing deals in respect of performing rights across jurisdictions that may not have a communication-to-the public regime.

The aforementioned should not be construed to mean that there is no activity at all in South Africa with regard to the licensing of new media users. As Motsatse confirmed, there has been some licensing in this regard. However, many of the large new media users have continued to resist attempts at licensing them, and in fact it is the international newcomers who have shown keenness to procure licenses, because "they are concerned about their international reputation," as Motsatse remarked. Motsatse further indicated that the presence of the international newcomers (such as iTunes) has paved a way for pan-African online and digital licensing of performing rights, as many of these international players would prefer having one single, multi-territorial or pan-African license rather than having to negotiate with each society in Africa. This, Motsatse quips, arises from the multi-territorial nature of digital offerings and the existence of multi-territorial satellite networks. Because of its success in collective management international entities prefer SAMRO as their licensing partner with regard to procuring a pan-African license. Stephenson Mhlanga, General Manager: Sales at SAMRO, confirmed[44] that SAMRO is in the process of negotiating with its African counterparts to enable it to act as their agent in the licensing of new media performing rights.

The licensing hurdles experienced in the area of performing rights in South Africa have generally not been experienced in the area of mechanical rights licensing. This is because the Copyright Act simply refers to "reproducing the work in any manner or form," thus also including the digital environment. Seeing that most copyright legislations employ this type of language, it should be fairly easy to forge pan-African licensing deals in the area of mechanical rights.

The Individual Exploitation of Sound Recordings and Performers' Rights

Sound recordings have traditionally been the domain of record companies. Even with the advent of the digital revolution and all the talk about the "long tail,"[45] it seems that a certain preference for established record companies persists, ensuring the continued existence and role of record companies. It appears that even where producer-artists start out in an entrepreneurial drive and achieve success on their own that is traditionally associated with being signed to a record company, many ultimately prefer to "settle down," either by establishing a record label themselves and signing other artists, or by joining an established record label. Explaining this phenomenon, Nick Motsatse had this to say, "A record deal is aspirational, especially out of the need for support. Ultimately the artist would want to have someone with expertise to take care of their affairs. The record companies still have a reputation of being able to provide a service." Upon being asked whether, in his opinion, successful artists whose contracts with recording companies expire would see that as an opportunity to "go independent," Motsatse explained that in his experience many artists who were in record deals seem more reluctant to go independent and that artists generally aspire to have recording deals.[46] Because of this Motsatse firmly believes that the real need is for managers who will be able to take care of the artist's business affairs and administration, "enabling the creator to create." In this regard Motsatse further remarked that there is a dearth of good, competent artist managers in South Africa and the rest of Africa.

While the above scenario may be reflective of the situation in South Africa and many other parts of the world, it does not seem to be always true with regard to the rest of Sub-Saharan Africa. For one thing, apart from parts of Southern Africa, there is no established recording industry in the rest of Sub-Saharan Africa—at least not in the conventional sense.[47] Here the industry "learns as it develops."[48] Speaking about the Kenyan recording industry Eisenberg warns against using the West "as a ready-made model of how things are supposed to work," and describes the industry as having always been highly multifarious, and even more so in the digital era.[49] By multifarious Eisenberg implies that the industry operates "upon multiple models of production, distribution, and propertization." It is submitted that this description explains the modus operandi in other African markets beyond South Africa. As has been noted, the industry reflects an ongoing experiment and experimentation—one that is "perpetually emerging."[50]

In view of this, the music business practitioner advising clients in this environment needs to be prepared to be on a roller coaster of variegated, adrenalin-pumping "deal" scenarios, whose kaleidoscopic nature calls for the secretion of one's best creative juices in order to forge a profitable deal for the client. Today the client may be a performing artist, tomorrow he may be a record company, the next day he may be acquiring rights in musical works in a buy-out deal (which does not have to involve a lot of money), or he may be staging a show at the market where he has managed to secure an open space where he, as a producer-artist, will be the main act, and the artists signed to his producer label will also be performing. It needs to be noted that even where record companies are involved, the artist often has to do a lot of work on his own to ensure that he can make a living. In this regard Ayilaram had this to say: "Since the demise of the majors…from Nigeria in the mid-90s there have emerged local recording labels who record artists, sell and promote recordings…in mix with the artists themselves pushing their products, mostly singles, into the market." Gachui confirms this trend with regard to the Kenyan market, stating that though there are record companies, the majority of artists "push their product substantially and are also the author/composer/producer of their own recordings." On the question as to whether artists signed to the record labels earn any royalties from sales Ayilaram responded, "The artists are paid some money upfront with some other [undisclosed] perks from the labels and that may be the end of that particular recording. …The artists largely thereafter rely on appearances at shows and concerts."

In South Africa a visible independent sector of the recording industry exists alongside the more traditional, major-dominated industry.[51] Although the independents are arguably more organized or established in South Africa—at times achieving levels of success generally attributed to the majors—many of them are not without struggles and often have to re-sort to many of the rugged entrepreneurial endeavors that are so common in other parts of Africa. A problem that nags many independents in South Africa (as also in many other parts of the world), which has prompted them to forge alternative distribution networks, is "the minuscule independent music retail industry."[52] Modiri Mochoari, owner of independent record company, Africo Beam, confirms this.[53] Mochoari mentioned access to resources (both distribution channels and retail stores) as a major handicap facing independent record companies. He argues that independents are "working against established links," and experience blockage "at every point."

Mochoari further indicated that even where the independents want to formally engage the services of the major distributors, this is not easy as one has to wait for up to three months at times "to get a decision." This happens even where the independent undertakes its own pressing and printing. Mochoari added that this delay in finalizing distribution deals is compounded by the fact that even after concluding the deals the distributors do not actively push the material into retail stores. This results in loss of income for the independents and frustrates their marketing endeavors because when they refer fans to the retail stores, the fans often cannot find the records. This may be because the distributor has not dispatched the material to the retailer, or it may be because the material is still in the retailer's warehouse. Thus the independents feel that the major-aligned distributors do not give priority to their material. As a result, independents often have to engage agents or representatives, at a cost, to police the distribution deal for them (in the sense of ensuring that the distributor does dispatch material to the retailers, that the retailers do not keep the material in their warehouses, and that there is enough stock of the material in the stores).

Because of this reality, independents often find themselves compelled to engage in parallel distribution tactics that may contravene the terms of their distribution deal, such as selling the products themselves. One of the respondents mentioned a case where his independent label made more money through these side deals and endeavors rather than through retail store sales. The side endeavors involves guerrilla sales tactics such as conducting house sales,[54] going to taxi ranks,[55] and virtually "going to any place where there is a gathering of people." Mochoari asserts that the age-old gremlin of payola remains a major concern for many independent record labels. According to Mochoari trying to receive airplay for one's music video or radio airplay for the sound recording "is a nightmare," as the majors "have loyalties." The answer, Mochoari offers, is for the independents to also build loyal relationships of their own—something which can only be achieved over time. Another platform used by South African independent musicians to promote and sell their music, "which they do through mail orders or at gigs" is the use of social networks such as Facebook, Myspace, and Twitter.[56] Unlike in East and West Africa, ringtones do not seem to have taken off as expected for independent musicians and companies in South Africa. In contrast Chukwuji explains that in Nigeria artists sell music through cellphones (i.e., ringtones), USB sticks, downloads, etc. Both Kitime in Tanzania and Osusa in Kenya confirm the growing use of ringtones as a means of selling music in these markets.[57]

The springing up of several digital music platforms in Africa will certainly create a legal minefield in respect of those countries that have not fully embraced the new digital technologies in their copyright laws. The fact that key jurisdictions such as Kenya, Nigeria, Namibia, and South Africa have not acceded to the WIPO Internet Treaties means that reciprocal protection in the digital environment cannot be easily achieved. As indicated, although South African legislation does not make provision for a right of communication to the public in respect of musical works, it does, rather strangely, provide for this right in respect of sound recordings (and performers' rights). The launch of international online music retailers, in particular iTunes in South Africa, promises an increase in download music sales. Prior to this, Musica's download service was the only legal download site in South Africa, apart from a site aimed at promoting the music of those not yet established in the industry.[58] Other new ambitious platforms are springing up in Africa, such as Nigeria's iROKING and Spinlet, Africori, with offices in Cape Town, Lagos, and London, Kenya's Mdundo and Waabeh.com.[59] There is also South Africa's Content Connect Africa, with which Gallo Music Records, one of the major record companies in South Africa, has recently announced a mobile digital partnership which will see Gallo's catalog being made available "through multiple mobile platforms."[60]

The Collective Licensing of Sound Recordings and Music Videos

In a number of jurisdictions in Africa the law provides for an equitable remuneration right in respect of the exploitation of sound recordings and the performances embodied in them, when such are exploited through broadcasts and other forms of communication to the public (including public performance and transmission in a diffusion service). This right is generally administered collectively through accredited bodies—either bodies representing owners of sound recording copyright alone, performers alone, or both.

Section 28(1)(d) of the Kenya Copyright Act 12 of 2001 (as amended) provides for the right of communication to the public and broadcast of a sound recording, while section 30(1)(a) and (b) does so in respect of the rights of performers. In Kenya, record producers' rights are administered by the Kenya Association of Music Producers (KAMP), while performers' rights are administered by the Performers' Rights Society of Kenya (PRiSK). Section 30A of the Kenya Copyright Act provides for the payment of a single equitable royalty to the performer and the producer in respect of (i) a sound recording published for commercial purposes or (ii) if a reproduction of the sound recording is used directly for broadcast or other communication to the public. The royalties are to be paid through the performers' and producers' respective collecting society. While the practice of payment of an equitable royalty in respect of the broadcast or other communication to the public of a sound recording is well-established in many parts of the world, it is not clear whether the payment of such a royalty in respect of a sound recording "published for commercial purposes" is intended to replace the role of record companies in paying royalties to performers arising from recording contracts. Upon being asked whether artists earn a steady income from record companies by way of royalties in Kenya, Gachui answered in the negative and made reference to the payment of this equitable royalty by the performers' collecting society. She further remarked, "The previous arrangement of the record label getting paid and paying the artist is becoming less and less popular and will probably in my opinion, phase out eventually."

In South Africa the regime for the payment of an equitable royalty in respect of the broadcast and communication to the public of a sound recording—termed "needle-time" or "public play"' rights—was introduced in an amendment to the Copyright Act in 2002. Relevant regulations were promulgated in 2006, and three collecting societies were accredited.[61] This regime has, however, had a very tumultuous history in South Africa and has been a source of much controversy and ongoing litigation. The crisp issue has centered on the question as to which party is responsible for payment to the performers of their performers' share of royalties. Since record companies own the copyright in respect of sound recordings, they have an exclusive right to license the usage of the sound recording (including in terms of the needle-time right). In view of this, section 9A(2)(a) of the Copyright Act requires the owner of a sound recording who receives a royalty in respect of needle-time rights, to share such royalty with the performer whose performance is embodied in the sound recording (without indicating whether this should be an equal share or not). Furthermore Section 9A(2)(d) provides that a user who pays a royalty to the owner of copyright in the sound record is deemed to have discharged his obligation to pay a royalty to the performer in terms of the Performers Protection Act 11 of 1967, (as amended).

On this basis SAMPRA (the body accredited to represent record producers in respect of needle-time rights) argued that it was required to pass on all royalties collected from users to record companies, and that the record companies would then determine how to pay the performers' share. SAMPRA further argued that there is no obligation on record companies to pay performers 50% of the royalties collected, because the Act is silent on this issue. In counterargument the Registrar of Copyright (who is responsible for supervising the activities of accredited societies), and SAMRO (on behalf of performers), expressed the position that SAMPRA was required to pay the performers' share to SAMRO, which would then distribute it among its performer members; and further that the share should be 50% of the collected license fees. The dispute has been one of the most protracted music business disputes in South Africa. Fortunately however, an announcement has just been made by the two parties that they have ended their longstanding dispute and have resolved to merge their operations into one society, which shall represent both performers and record companies.[62]

The collective role of KAMP in Kenya also extends to the licensing of the broadcast and other communication to the public of music videos. In South Africa music video licensing is done through RiSA Audio Visual (RAV), an organization formed by the Recording Industry South Africa (RiSA) to undertake music video licensing for its members. RAV licenses broadcasters (such as the SABC, MNET and eTV), program makers, and video jukebox system suppliers.[63] RiSA membership is comprised of the majority of record companies in South Africa, including the major record companies. Independent record companies have organized themselves into the Association of Independent Record Companies (AIRCO)[64] although a number of their members remain members of RiSA. AIRCO's licensing activities include the public exhibition of music videos, the use of music videos in webcasts, and simulcasts of broadcasts.[65] Recently a music video distribution agreement with the public broadcaster, the South African Broadcasting Corporation (SABC), which is linked with the SABC's drive to source local content, was announced.[66] The deal covers the use of music videos in broadcasts and digitally.

Endorsements and the Live Performance Scene

In South Africa product endorsements and merchandising have been good alternative sources of income for successful musicians. According to both Ayilaram and Chukwuji, many Nigerian artists are beginning to earn income from product endorsements, mainly as brand ambassadors (e.g., with the telecoms). In Kenya, Osusa and Gachui confirm that some Kenyan artists earn endorsement income in respect of mobile phone brands, toilet cleaning products, deodorants, beverages, etc. Merchandising however, is still at a very low scale. On the other hand Kitime states that in Tanzania (where he argues, there are no record companies), very few incidents of product endorsements and merchandising exist, and the buyout of rights is prevalent.

The live music scene has always been a very important source of income for musicians in Africa—sometimes the main or only source of income, as a result of there being no formal recording industry and thus no recording advances or a steady source of income in the form of royalties. Even in South Africa where the record industry is more developed, live performances have always been an important source of income for artists. However, even though the South African live music scene is seen as being more lucrative (with some forty-three festivals and sixty-two venues comprising the "permanent features of the live music circuit"), it is still seen as being haphazard, irregular and seasonal, and centered in the large cities in the Gauteng and Western Cape provinces.[67] In Kenya Osusa remarked that though the few existing recording companies pay some royalties, because the sales "are so minimal…the artiste [*sic*] can only sustain themselves through live performance." Gachui further comments that over the past five to eight years there has been a significant increase in the number of bands performing at regular venues and gigs, including corporate gigs, and there have been several successful concerts featuring local and international artists "and well attended."

Notwithstanding the above, Osusa notes that although music promoters and club owners do facilitate opportunities, most of the artists have to seek their own opportunities. Gachui confirms, adding that because music promoters are yet to establish themselves, "most artists hire a team around them to seek opportunities to perform and make all the logistical, marketing, and other arrangements." In Nigeria, Ayilaram paints a bleak picture of a live music scene that is on the downturn, in particular with regard to concerts, with the exception of some events organized by corporations. Chukwuji however counters this position, asserting that the live scene is in fact "very active as corporate organizations are also involved in this area of music promotion." In the end it appears that this may be a question of whether the bottle is half full or half empty! In Tanzania Kitime indicates that there is a live music scene but that artists themselves have to create the opportunities.

Conclusion

It is clear that the African music licensing environment offers a lot of opportunities, albeit at times of a miniscule scale. Because of the grossly underdeveloped nature of the music industry, any hope of making a quick buck in the industry is likely to face frustration. The practitioner desiring to assist clients in this environment therefore needs to exercise patience and to take his clients along, with a view to building a long-term relationship. The practitioner, whether a lawyer or other advisor, may also find himself having to also fulfill the role of a personal manager or an agent, because of a dearth of professionals in these areas. A percentage-based deal, whereby the practitioner gets a percentage of the money earned by the client, may furthermore represent a more viable deal than an expectation for up-front payment for the services rendered. A practitioner with this frame of mind and attitude might just land upon a client who strikes gold. Thus in the end all the practitioner's efforts will prove worthwhile and reap dividends. It needs to be remembered that although the African music industry may still be at a fledgling state, this is the region that has given the world "The Lion Sleeps Tonight" (a hit song which continues to entertain millions worldwide through the *Lion King* franchise); "Homeless," which has wowed crowds the world over in Paul Simon's Graceland tours; "Waka Waka," inspired by African melodies and so beautifully rendered by Shakira at the 2010 World Cup; and many other beautiful melodies.

Endnotes

1. Research for this paper was originally prepared for inclusion in the 2014 International Association of Entertainment Lawyers (IAEL) book, titled *Licensing of Music—From BC to AD (Before the Change / After Digital*. The research went beyond the scope required for the book and in the end only an abridged version was published in the book. The full research is published here with approval of the IAEL editorial team for the 2014 book.
2. Nearly 800,000,000 according to the World Bank. http://www.tradingeconomics.com/sub-saharan-africa/indicators-wb. Accessed 05 July 2013.
3. In the sense of "having strong domestic rivals, aggressive home-based suppliers, and demanding local customers" (Porter, M. E. "The Competitive Advantage of Nations," *Harvard Business Review* 68, no. 2 (March-April 1990): 73-93). For a broader understanding of Porter's concept of "industry clusters" see Porter M.E. *Competitive Strategy: Techniques for Analyzing Industries and Competitors.* New York: The Free Press, 1980.
4. This was recognized as early as the beginning of the 1990s in the so-called "Dakar Plan of Action," available at http://www.acpcultures.eu/_upload/ocr_document/UNESCO-OAU_Cult%20Ind%20For%20Dvp%20in%20Africa_1992.pdf. Accessed 14 July 2013.
5. This phenomenon is explained by Penna, F.J., Thormann, M., and Finger, J.M., "The Africa Music Project," in Finger, J.M. and P. Schuler. *Poor People's Knowledge – Promoting Intellectual Property in Developing Countries*. Washington D.C.: World Bank / Oxford University Press, 2004: 102-103.
6. One well-known independent publisher is said to be on a drive to recruit composers in their hundreds, with no real purpose of finding exploitation for their works but as a way of acquiring ownership in order to benefit from a residual source of income in the event that these composers (many of whom are also recording artists), break through. See Baloyi J.J. "To Publish or not to Publish: A critical consideration of the role of the Music Publisher today." *SA Mercantile Law Journal* 24, no. 2 (2012) for a critique of these "banking operation publishers."
7. Available at http://themusicinafricaproject.net/. Accessed 05 August

2013. This is a newly-formed initiative.

8. In an interview with the author.
9. See for further information in this regard www.seaconet.org accessed on 09 September 2013.
10. See http://www.hypebot.com/hypebot/2013/01/africas-music-industry-building-with-cassettes-mp3s-in-an-underdeveloped-terrain.html. Accessed 8 October 2013. The same commentator remarks, "The African music industry is fascinating less for the sectors that appear similar to U.S. or European sectors of the industry and more for what is unique about emerging African nations."
11. This was the communicated to the author by Mr. John Kitime, a Tanzanian musician, in response to a questionnaire interview.
12. The expression "Wild West of Nigeria" is the author's coinage used not with a negative connotation but rather admiringly at the entrepreneurial prowess of Nigeria, a country that birthed "Nollywood," the world's second largest film market in terms of number of productions (ahead of Hollywood and trailing behind Bollywood)—and this largely from make-do resources.
13. See supra note 10.
14. The problem of low broadband differs from country to country, or sub-region to sub-region. Rob Hooijer, Music Rights Consultant and former CISAC Africa Director, noted in an interview with the author (on 2 July 2013) that broadband is much cheaper in East Africa (e.g., Kenya) and parts of West Africa than it is in Southern Africa, which places these countries in a better position to explore digital online opportunities than their counterparts in Southern Africa.
15. See *Billboard* at http://www.billboard.com/biz/articles/news/digital-and-mobile/1488307/digital-startups-developing-market-establishing-new?page=0%2C0. Accessed 14 October 2013.
16. See http://www.wweek.com/portland/article-19788-africa_high_tech.html. Accessed 15 October 2013.
17. This was communicated to the author in a face-to-face interview with Mr. Rob Hooijer in South Africa.
18. This was communicated to the author by Mr. Tabu Osusa in response to a questionnaire interview.
19. General Manager of the Kenya Association of Music Producers (KAMP), in response to a questionnaire interview.

20. It has, for example, been reported that the audio cassette is experiencing a boom in Zimbabwe, Mozambique, and Botswana, garnering more sales than even the CD. In Zimbabwe, where the cassette is preferred to the CD because of considerations of affordability, durability, and the belief that it is more difficult to pirate than the CD, a record company has opened a cassette plant in Harare in order to meet this growing demand. See http://edition.cnn.com/2011/BUSINESS/06/07/cassette.culture.zimbabwe/index.html. Accessed 17 October 2013.
21. This situation is often attributed to low internet penetration and costly bandwidth. See http://www.bdlive.co.za/business/technology/2012/12/16/music-retailers-unfazed-by-sa-itunes. Also http://enitiate.me/2011/12/30/are-digital-music-downloads-a-better-deal-for-artists/. Accessed 23 October 2013.
22. This was communicated to the author in response to a questionnaire interview.
23. In response to a questionnaire interview.
24. Perhaps this arises from the fact that authors/composers can be a member of the Southern African Music Rights Organisation (SAMRO), the South African performing rights organization (PRO) and the most important royalty administration body, without having to be associated with a publisher. Consequently there are many authors/composers that are members of SAMRO that are not signed to any publishing entity.
25. The term "banking operation publisher" is borrowed from Passman, D.S. *All You Need to Know about the Music Business*. (6th U.K. ed.) London: Penguin Books, 2008: 256. See further in this regard Baloyi, JJ. "To Publish or not to Publish" (supra note 6). Thus a banking operation publisher would be able to earn performing royalties from a PRO such as SAMRO, without having done anything with regard to the broadcast or public performance of the musical works. The songs may have received airplay as part of the record company's promotion of its recordings (in which the songs feature), or the singer-songwriter signed to the publisher may have, through his own initiative or that of his manager, performed the work in public.
26. Countries in which societies do not exist include Lesotho, Swaziland, the DRC, Somalia, Gabon, Eritrea, and a number of the other

smaller states. In countries such as Rwanda, Burundi, Comores, and Central African Republic either infrastructure is being established or there is no significant activity taking place. In Ghana legislative changes in 2012 resulted in the demise of the Copyright Society of Ghana and its replacement by the newly-formed Ghana Music Rights Organisation, whose effectiveness remain to be seen.

27. In Kenya there has been an on-going conflict between the Kenya Copyright Board (the body entrusted with the supervision of collecting societies) and the Music Copyright Society of Kenya (MCSK), which resulted in the former deregistering the latter, and the latter obtaining a court order to nullify the deregistration. See in this regard http://ipkenya.wordpress.com/2013/05/16/lessons-for-mcsk-from-nigeria-music-copyright-society-of-kenya-must-administer-rights-even-without-government-license/. Accessed 25 October 2013. The deregistration was apparently motivated by allegations of high operational costs as opposed to the royalties actually paid to members, with it being alleged that MCSK used Sh 137 million for operational purposes, against revenues of Sh 185 million, thus leaving only 25% of collections available for distribution. See http://ipkenya.wordpress.com/2012/01/09/the-fate-of-music-copyright-society-of-kenya-mcsk/. Accessed 25 October 2013.
28. SAMRO has traditionally administered performing rights, with SARRAL (the South African Recording Rights Association Limited) and NORM (the National Organisation for Reproduction Rights in Music in Southern Africa) administering mechanical rights. SARRAL, a member of BIEM and CISAC until its liquidation in 2009 arising from litigation instituted by prominent members (see http://colinshapiro.co.za/truthaboutsarral/ for full information in this regard), was the main organization administering mechanical rights until NORM was formed as a breakaway body to focus mainly on the interests of music publishers. NORM has never been a member of either BIEM or CISAC.
29. Ibid.
30. See in this regard http://capasso.co.za/.
31. See for more in this regard Ola, O. *Collective Management of Copyright in Nigeria: Lessons for Africa*. Heidelberg: Springer-Verlag Berlin and Heidelberg GmbH & Co. KG, 2013.
32. http://ipkenya.wordpress.com/2011/09/28/ip-crammer-2011-the-

good-the-bad-the-ugly-of-intellectual-property-in-kenya/. Accessed 25 October 2013.

33. SAMRO pays millions of rands in royalties to foreign societies every year, and its senior managers have often served in various committees and organs of CISAC, including its board.
34. Except in respect of public play (i.e., the so-called “needle-time”) rights.
35. These calls culminated in the establishment of a copyright review commission to look into the practices of copyright societies and other music businesses, which has recommended the introduction of a regulatory regime in respect of copyright societies. See in this regard www.gov.za/documents/download.php?f=173384. Accessed 13 September 2014.
36. It has recently been reported that the Swaziland cabinet approved a bill that is aimed at modernizing the Swaziland legislation. http://afro-ip.blogspot.com/2010/05/swaziland-cabinet-approves-new.html. Accessed 14 October 2013.
37. Except for South Africa and the Comoros, the other countries mentioned here are not, as on the date of writing this, members of the Berne Convention.
38. Countries that do not have a “communication to the public” right would, in respect of performing rights, have to rely on provisions in copyright legislation that deal with the broadcasting of a work, the transmission of the work in a diffusion service and/or the public performance of a work—all of which are not adequate to deal with digital forms of exploitation.
39. In a one-on-one interview prior to his stepping down as SAMRO CEO.
40. The South African monetary unit.
41. See supra note 35. See in particular page 38 of the report.
42. And, depending on the definitions employed, also the copyright laws of the African countries that have not incorporated a right of communication to the public but deal with performing rights in the traditional manner of seeing it as involving either (i) a public performance, (ii) a transmission in a diffusion service, or (iii) a broadcast.
43. One of the arguments made by the new media users is that the transmission of musical works through digital platforms does not

constitute a "broadcast" and thus does not constitute infringement of the copyright in the musical works. The circumstances are in many ways akin to those that prevailed in the Australian case of Telstra v APRA (Music on Hold) 146 ALR 649 (1997), a case which involved music-on-hold used in both traditional telephones (diffusion service) and mobile phones (broadcast). Although the relevance of this case in Australia may have been overtaken by developments, it is submitted that it would still have persuasive relevance in jurisdictions that still define performing rights solely in respect of broadcasts, diffusion service, and public performance with respect to digital exploitation of copyright works.

44. In interactions with the author.
45. The "Long Tail" is a theory for the digital music business first popularised by Chris Anderson in an October 2004 *Wired* magazine article, which morphed into his popular book, *The Long Tail: Why the Future of Business is Selling Less of More* (New York: Hyperion, 2006). The theory essentially postulated that the online era had rendered obsolete the era of the making of a few hits, paving the way for many more artists to earn income, albeit less income than the few used to earn. The theory has however, received criticism from others as not reflective of reality. See in this regard "The Long Tail of P2P," http://www.prsformusic.com/creators/news/research/Documents/The%20long%20tail%20of%20P2P%20v9.pdf. Accessed 27 October 2013.
46. Motsatse mentions the possible exception of the musician Spoek Mathambo, a self-made artist entrepreneur who has attained international acclaim, "rewriting any artistic laws in his way." See http://www.artistdirect.com/artist/bio/spoek-mathambo/4912532. Accessed 26 October 2013.
47. With the exception of South Africa, the major record companies no longer have a presence in the rest of Africa. Recently it was reported that Universal Music is considering setting up offices in Kenya again. See http://www.capitalfm.co.ke/lifestyle/2013/02/08/kenyan-music-built-on-talent-part-2/. Accessed 27 October 2013.
48. See http://strictlyentertainmentgroup.com/Music_Week_Africa_Report.pdf. Accessed 25 October 2013.
49. A.J. Eisenberg, "The Kenyan Recording Industry in the Digital Age," working paper, accessed 27 October 2013, http://www.

academia.edu/2222556/The_Kenyan_Recording_Industry_in_the_Digital_Age_Preliminary_notes_and_findings_from_research_in_Nairobi_Working_paper_2012.

50. See supra note 10.
51. http://www.hypebot.com/hypebot/2013/01/africas-music-industry-building-with-cassettes-mp3s-in-an-underdeveloped-terrain.html. Accessed 29 October 2013.
52. http://mg.co.za/article/2011-04-21-uncovering-south-africas-indie-spirit. Accessed 29 October 2013.
53. In a one-on-one interview with the author.
54. Mochoari explained this phenomenon by giving the example of using churches as a distribution channel for gospel records. The records would be advertised at church home cells, and persons interested in earning a commission would be invited to take CDs and to sell them to their friends or acquaintances—meaning visiting homes—in return for earning a commission. Thus if the CD retails for R60, the salesperson may be allowed to sell it for R65. Mochoari reported great success through the use of this strategy.
55. For more information on how South African musicians use the taxi industry to promote their music see http://www.vice.com/all-thewrongplaces-2/south-africa-taxi-hit-squad. Accessed 29 October 2013.
56. http://mg.co.za/article/2011-04-21-uncovering-south-africas-indie-spirit. Accessed 29 October 2013.
57. This is to be contrasted with the general decline in the ringtone market in the major markets as well as in South Africa.
58. See http://www.balancingact-africa.com/news/en/issue-no-240/top-story/south-africa-leads-t/en. Accessed 29 October 2013.
59. See http://www.balancingact-africa.com/news/en/issue-no-658/top-story/music-to-the-ears-af/en. Accessed 29 October 2013.
60. http://www.timeslive.co.za/thetimes/2013/06/04/gallo-music-goes-mobile. Accessed 29 October 2013.
61. The one society, SARRAL, which was accredited to represent both performers and owners of sound recordings, has since been liquidated. The remaining societies are the South African Music Performance Rights Association (SAMPRA), on behalf of owners of sound recordings, and SAMRO, on behalf of performers (through the Performers Organisation of South Africa—POSA—Trust, a

trust formed specifically to deal with performers' rights).

62. See in this regard http://citizen.co.za/238773/samro-sampra-reach-agreement-music-royalties/. Accessed 15 September 2014. For more on the dispute between the parties see the very informative article by Adv. Nick Matzukis at http://preditor.mio.co.za/assets/articles/attachments/00247_the_great_south_african_needletime_debacle.pdf. Accessed 29 October 2013.
63. See http://www.rav.org.za/. Accessed 30 October 2013.
64. http://www.airco.org.za/. Accessed 30 October 2013.
65. See the AIRCO music video Distribution policy at http://airco.org.za/images/pdf/aircodistributionpolicy.pdf. Accessed 30 October 2013.
66. http://www.buanews.gov.za/rss/12/12020215451001. Accessed 30 October 2013.
67. See http://www.citypress.co.za/lifestyle/sa-live-music-lucrative-but-has-a-long-way-to-go-20110822/. For the actual report see www.moshito.co.za/attachment_view.php?_id=124. Accessed 30 October 2013.

Joel Baloyi is an advocate of the High Court of South Africa, admitted in 2006 and works as Senior Lecturer at the University of South Africa, Pretoria, where he teaches intellectual property law and commercial law. He has had wide experience in the entertainment industry, having worked as Head of Legal and Company Secretary for a PRO and having consulted widely in various areas of entertainment law. He has also been a board or committee member of several entertainment industry organizations, including the CISAC Legal Committee. He has presented on music and copyright law at a number of fora, including industry conferences, academic conferences (both local and international), television (e.g., the Rights & Recourse program in South Africa) and radio, and has published in the area of copyright/music rights. He is a member of the Music and Entertainment Industry Educators Association (MEIEA), the International Association of Entertainment Lawyers (IAEL), the National Bar Council of South Africa (NBCSA), and several other organizations. He has contributed a chapter in the 2014 IAEL publication titled "Licensing of Music – From BC to AD (Before the Change / After Digital), and was accredited as the 2014 entertainment law expert for South Africa by Global Law Experts (with a further similar nomination by Corporate INTL Magazine for its 2015 Legal Awards). He has three law degrees obtained from universities in South Africa, namely a BJuris, LLB, and LLM (International Trade and Investment Law). He is currently reading for his doctoral degree (LLD) at the University of South Africa, with specialization in Music Rights Law.

A Survey of Graduated Response Programs to Combat Online Piracy

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Abstract

Recent studies indicate that a significant amount of all internet traffic is generated by the use of peer-to-peer and cyberlocker sites, and most of the activity involves illegal file sharing. Opinions differ as to how to quantify the losses due to online piracy, however, there is general agreement among the copyright industries that it is a serious problem worthy of significant effort and attention. Efforts to combat online piracy have been underway since the late 1990s and some approaches have proven more successful than others. One of the more recent approaches is the so-called graduated response which involves the imposition of a gradually escalating series of consequences. This article examines the history of digital music and the battle against online piracy in the United States, and the legal, political, and industrial origins and current state of the graduated response programs in France, South Korea, New Zealand, the United Kingdom, Ireland, Taiwan, and the United States.

Keywords: graduated response, intellectual property, copyright, online piracy, file sharing, peer-to-peer, cyberlocker, digital music, music business, entertainment business

Introduction

Online piracy is a huge threat to all of the copyright industries. The copyright industries are described in the World Intellectual Property Organization (WIPO) 2012 study on the Economic Contribution of Copyright-Based Industries as "industries which are dependent on copyright and related rights protection."[1] These industries include music as well as motion picture, press and literature, software, and others. Online piracy refers to the sharing of content, such as recorded music, movies, ebooks, and computer programs in violation of copyright laws (i.e., illegally), via the internet. According to a recent *New York Times* editorial, online piracy is "growing by leaps and bounds."[2] The article cites a powerful statistic from Cisco Systems' Visual Networking Index indicating that over one-fourth of all internet traffic is generated by the use of peer-to-peer and cyberlocker sites, and most of the activity involves illegal file sharing.[3] Unlike a typical website where a visitor is able to view content hosted on the website's computer server, like iTunes, peer-to-peer file sharing networks enable individuals on the network to share their files with other individuals on the network without the use of an intermediary or central computer server. Cyberlockers provide the ability for a user to store digital files on servers operated by the Cyberlocker provider. Their use becomes problematic when the particular service includes tools that enable the widespread sharing of files among its users. A study by Stephen Siwek at the Institute for Policy Innovation indicates that the annual losses in the United States relating to sound recordings alone number around US$12.5 billion.[4] However, the economic losses resulting from online piracy are difficult to quantify precisely. The U.S. Government Accounting Office (GAO) has indicated that this is due to the illicit nature of the activity and the reliance on assumptions to estimate what purchasing activities consumers would engage in if they were not obtaining the goods illegally. However, the GAO did find that the problem is sizeable and concerning.[5] Even some critics of the various economic studies which have attempted to quantify the size of the problem agree that, through the eyes of the copyright industries, it is seen as a serious problem worthy of significant effort and attention.[6] Efforts to combat online piracy in the United States have been underway since the late 1990s. Some approaches have proven more successful than others. One of the more recent approaches is the so-called graduated response, which involves rights holders, and internet service providers (ISPs) and their subscribers.

Early History of Online Piracy in the United States

The technological seeds of online piracy today were planted as early as 1988, when the Motion Picture Experts Group (MPEG) was created as a working group of the International Standards Organization (ISO) and International Electrotechnical Commission (IEC), for the purpose of developing standards for digital audio and video compression. Within the MPEG, a sub-group focused on audio was formed. After just over four years of work, the MPEG-1 standard was published around the beginning of 1993. Within the MPEG-1 standard, Audio Layer 3 was the ability to "compress high quality audio CD data by a factor of 12 while maintaining a high quality audio sound."[7] This form of compression became known as MP3. In 1994, the first MP3 encoder software, "L3enc," was released by the Fraunhofer Institute (FI), followed in 1995 with the first MP3 decoder (player) software, "WinPlay3."[8] These software tools were widely available for little to no cost, and relatively easy to use on Microsoft Windows-based personal computers, giving the average computer user the ability to convert a professionally manufactured CD into MP3 files with little effort or training. In 1996, electronics giant Philips demonstrated its audio MPEG technology at the Consumer Electronics Show, and by 1997 unauthorized MP3 copies of recordings were popping up on fan-created websites. An article about this new phenomenon, which appeared in the music industry trade publication *Billboard* contained several important statements which foretold events to come: "More conflicts over copyright violations on websites are likely to arise as the industry aims to protect copyrighted material on the internet" and, "Major entertainment companies that choose to crack down on fan-created sites may find themselves with a public relations nightmare."[9] The record companies, owners of the copyrights in the sound recordings which were being illegally shared, were slowly starting to realize that they had a major problem brewing. That same year, the music industry took what it considered its first collective legal action to stop internet piracy, bringing suit against the operators of three different internet sites, all of which supported the sharing of unauthorized MP3 files.[10]

Concern over this new problem within the music industry continued to grow and attract more attention. Industry conferences, such as the 1998 Webnoize conference, held panel sessions dedicated to the topic, including one titled "MP3s: Friend or Foe."[11] The 1998 *Billboard* article titled "Industry Grapples with MP3 Dilemma" warned that Pandora's digital box had been opened and that "no amount of policing pirate Websites will force the lid shut."[12] The article's author also pointed out, insightfully, that

"Ironically, the CD format that revived and invigorated a stalled music industry may be responsible for its greatest future worries," referencing the fact that every professionally manufactured CD had become, in effect, a digital master from which an unlimited number of MP3 files could be created.[13] In a short amount of time, a large number of websites sprang up to offer illegal MP3 files of popular music. A *New York Times* article published in 2000 said that "MP3" was as popular a search term in internet searches as "sex."[14]

In 1998, the Digital Millennium Copyright Act (DMCA) was passed in the U.S., which made numerous amendments to the existing copyright law in order to address digital technologies. One of the components of the law, which plays a major role in the fight against online piracy, was the establishment of a safe harbor from copyright infringement liability for online service providers, which includes ISPs as well as website operators and others, so long as they comply with the conditions of the law. Without such a safe harbor, online service providers may be found liable for copyright infringement based on the actions of their users or subscribers, under the theories of vicarious and/or contributory liability. These theories of liability hold that those who assist and facilitate copyright infringement should be held responsible for their actions in the same way that the party who actually commits the infringement is. Section 512(i)(1)(A) of the DMCA requires ISPs to maintain a policy for "the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers."

Looking Back: Fighting Online Piracy in the U.S. With Lawsuits

A series of highly publicized lawsuits followed the first collective legal action taken by the music industry to stop internet piracy in 1997. During this initial phase of fighting internet piracy, the music industry focused on stopping the operators of websites and services which enabled the sharing of unauthorized MP3 files. The key question raised in these lawsuits was whether or not the operators could be held vicariously and/or contributorily liable for the unauthorized peer-to-peer sharing of MP3 files that was taking place on their services.

In August 1999, a new software client called Napster became available via the internet. Napster users were able to download the software for free and install it on their computers. The software enabled the central

Napster server to identify the MP3 files which existed on each of the users computers. When users wanted to find an MP3 file of a particular recording, they would initiate a search of Napster's central server index, find an instance of that recording on another Napster user's computer, and click on the file to download it from the computer where the file was stored. In December 1999, the Recording Industry Association of America (RIAA), the trade association representing the major record labels, on behalf of its members, brought suit against Napster. The case was considered the first time a company was sued for trafficking in unauthorized music.[15] The lawsuit alleged that Napster was guilty of copyright infringement, under the theories of contributory and vicarious liability. In March 2000, the *New York Times* ran a cover story titled "Potent Software Escalates Music Industry's Jitters," describing Napster and how prevalent its use had become, including diagrams of how the system worked. The article quoted the RIAA as saying it "has no plans to prosecute individual users of Napster, though copyright experts say the industry would have a very strong case" and that doing so would be counterproductive.[16] The article confirmed that not only the music industry, but also the television and film industry, had growing concerns about whether or not the internet would undermine the control of copyright holders. After a few court decisions and appeals in the case, Napster ultimately had to block access by its users to recordings owned by the record companies that the RIAA represented, which resulted in Napster shutting down its service in July 2001.

Once Napster stopped working, its more than 50 million users went looking for alternative ways to share files.[17] The music industry pursued lawsuits against each of the new peer-to-peer services that popped up, including Kazaa, Morpheus, Grokster, Aimster, LimeWire, and MegaUpload. New technical protocols for sharing files became more popular, such as BitTorrent, and operators of services moved overseas where some copyright laws treat secondary liability for infringement differently than the United States laws. Lawsuits have been filed in many countries around the world, including Finland, Hong Kong, Sweden, and New Zealand. Some of these have been civil suits initiated by the copyright owners, while others have been criminal cases brought by the governments. In the Grokster case, once the file sharing service ceased operating, the following text appeared on the site, at the URL http://grokster.com/, and remains there today:

> The United States Supreme Court unanimously confirmed that using this service to trade copyrighted material is illegal. Copying copyrighted motion picture and music files using unauthorized peer-to-peer services is illegal and is prosecuted by copyright owners. There are legal services for downloading music and movies. This service is not one of them. YOUR IP ADDRESS IS XX.XX.XXX.XX AND HAS BEEN LOGGED. Don't think you can't get caught. You are not anonymous.

This got the attention of peer-to-peer service users who mistakenly thought their actions could not be tracked.

In 2003, the RIAA filed suit against 261 individuals who had been using peer-to-peer sites to illegally trade music files.[18] In these cases, unlike those brought against the operators of the peer-to-peer services, the individuals' actions were alleged to have directly infringed the rights of the copyright owners. Individuals were identified via their Internet Protocol (IP) address, which is the unique identifier assigned to a device participating in a computer network. The identification process involved the John Doe subpoena process. The copyright owner, or its representative, uses a variety of means, including automated or manual searches of file sharing sites, to identify the IP addresses associated with the sharing of large numbers of their recordings. The most common way this is accomplished is with the aid of a third party online investigative service, like BayTSP, which uses a number of techniques, including masquerading as pirates and digital fingerprint and/or watermark analysis of shared files, to snoop out the illegal sharing of copyrighted content owned by its clients.[19] With the IP address, the copyright owner can readily find, through the American Registry for Internet Numbers (ARIN), which entity owns the IP address. This is typically the ISP, such as a cable or telephone company. In 2003, the process involved the RIAA sending subpoenas to ISPs to obtain the identity that corresponded to the IP address before the RIAA actually filed the copyright infringement lawsuit. At the beginning of 2004, this legal process changed, requiring the RIAA to file a suit against the John Doe before issuing the subpoena to find out their identity. That year, the RIAA announced that it had brought suit against an additional 532 individuals. Defendants in these suits were typically given the opportunity to settle the suit by paying the RIAA US$3,000, although that figure varied depending on the number of infringements. The RIAA was widely criticized for its approach in going after individuals. Despite the fact that the RIAA had no way of knowing the identity of a particular IP address until the legal proceeding was already underway, it was often characterized as a bully going after twelve-year-olds and grandmothers. While most of these lawsuits resulted in settlements, a few highly publicized trials took place, including one against Jammie Thomas-Rasset and another against Joel Tenenbaum, both of which resulted in judgments against the defendants for more than $200,000 and $675,000 respectively. In December 2008, the RIAA, after bringing more than 35,000 suits, announced the end of its approach to suing individual file sharers, saying that it was going to focus instead on working with the ISPs to disconnect the internet access of repeat infringers.[20]

Looking Back: Fighting Online Piracy in the U.S. With Technology

In response to the rapidly growing use of the MP3 file format, in 1998 the five major record labels of the day, EMI, Sony Music, Warner Music, Universal Music, and BMG, launched the Secure Digital Music Initiative (SDMI). The goal of the initiative was to, "develop open technology specifications for protected digital music distribution."[21] They hired the originator of the MPEG/MP3 standard, Dr. Leonardo Chiariglione, to spearhead the effort, and formed an independent coalition of over 150 recorded music, information technology, and consumer electronics companies. The specification was to be implemented in two phases. The first involved creating an SDMI standard for portable player devices which would prepare them for special handling of SDMI-tagged music files through the use of a digital watermarking system. A digital watermark is essentially identification information embedded into a digital file in a way that is invisible to the user of the file without a decoder. The idea was that SDMI-compliant devices would treat SDMI-tagged files differently from unsecured files, like MP3s, by limiting certain uses such as making copies of copies, or only permitting the file to be listened to for a specified trial period. In the second phase, record companies would begin commercially releasing SDMI-tagged digital files into the market. Owners of SDMI-compliant devices would have the option of upgrading the software on the device to enable listening to SDMI-tagged music files. The upgraded software would be able to accommodate the special handling requirements that were embedded in the music files. The application of rules governing how a digital file can be used is referred to as Digital Rights Management. DRM technology enables control over the "rights" that an end user has with respect to use of the content it is applied to. At the time, portable digital music players and digital music files were generally not compatible across manufacturers. The SDMI standard was intended to support interoperability by enabling different music file types and music players to work together. It was also intended to support the sorts of activities that legitimate owners of CDs wanted to be able to do, like rip their CDs and copy the digital files to their computers or portable devices.

As part of phase one of the project, the SDMI announced a public challenge, promising to pay $10,000 to any hacker who could successfully crack the watermarking technology the initiative had selected. The watermark was hacked, there was a dispute over the rules of the contest with respect to how the sound quality of the digital file had to be preserved, there was a controversy regarding the publication of an academic paper about the SDMI standard by the hacker, and there was a backlash from the information security community who regarded the contest as a way for SDMI to test the security of their system without paying for a typical system security audit.[22] In 2001, the initiative was suspended indefinitely because, according to Chiariglione, "Unfortunately it turned out that none of the technologies submitted could satisfy the requirements set out at the beginning, e.g., of being unnoticeable by so-called "golden ears." So SDMI decided to suspend its work in this area and wait for progress in technology."[23]

In Germany and Japan in 2000, and then in the U.S. in 2003, the physical compact discs that were released as albums by some record labels also included a form of DRM. They were not legally referred to as CDs because use of the "CD" trademark was limited to compact discs which were in compliance with the official audio CD Red Book standard, which they were not. They included technology that interfered with the ability to play them in CD ROM drives like those typically found in a computer. Consumers were generally displeased with the copy protected discs, and there was a public outcry for required labeling which would make clear to the consumer that the discs may not play in some devices. In 2005, there was a widely publicized controversy over a particular DRM technology on compact discs released by Sony BMG, one of the major record labels at the time, which included software called a rootkit that secretly embedded itself into the operating system of the PC it was played on, making the computer vulnerable to hackers. The use of this hidden software resulted in class action lawsuits and a Federal Trade Commission settlement over unfair and deceptive business practices. By late 2006, the two major labels which had been releasing copy protected discs in the U.S.—Sony BMG and EMI—both discontinued the practice.[24]

When iTunes was launched in 2003, the digital files available for purchase were not MP3 files, rather they were another type of audio file called an Advanced Audio Coding (AAC) file, which included a form of DRM called FairPlay. The AAC file format was designed to be the successor to the MP3 format. FairPlay limited a consumer's ability to play the files on anything other than a limited number of iPods or other Apple devices. The use of DRM was widely criticized as doing little to help combat illegal piracy and for interfering with legitimate consumers doing what they were entitled to do under copyright law, like make limited copies for personal use. It was also seen as interfering with competition by stifling interoperability. Consumers could not decide to switch from their Apple iTunes account and iPod to a competitor without losing the ability to play all of their previously purchased AAC files. In late 2006 and early 2007, both Steve Jobs and Bill Gates went on record to express their opinion that DRM for music files should be abolished. Soon after, Apple and EMI, one of the major record labels at the time, announced that EMI's music would be available in the iTunes store in a DRM-free format. By 2009, all of the music on iTunes was available for sale in a DRM-free format.[25]

Today: Internet Service Providers and Access

Pursuing legal action against the operators of websites and services that encourage peer-to-peer sharing of unauthorized copies of music is often described as being analogous to the arcade game, Whac-A-Mole, such that for every site that ceases to operate, a new one pops up. Pursuing legal action against individuals who share unauthorized music files proved to be a public relations nightmare for the music industry, and didn't achieve the deterrent effect that had been hoped for. In searching for a more effective means to combat online piracy, the music industry shifted its focus to how websites which encourage peer-to-peer sharing are accessed. This latest phase of the fight to stop online piracy has a number of different components to it, including the seizing of internet domains and so-called graduated responses to continued infringement by individuals.

In 2010, the U.S. Department of Homeland Security's Immigration and Customs Enforcement branch (ICE) began a major crackdown on websites promoting copyright infringement and dealing in counterfeit goods. This crackdown involved the government taking over control of a number of domains and replacing the websites that they previously mapped to with a warning page. The warning page reads:

> This domain name has been seized by ICE—Homeland Security Investigations, pursuant to a seizure warrant issued by a United States District Court under the authority of 18 U.S.C. §§ 981 and 2323. Willful copyright infringement is a federal crime that carries penalties for first time offenders of up to five years in federal prison, a $250,000 fine, forfeiture and restitution (17 U.S.C. § 506, 18 U.S.C. § 2319). Intentionally and knowingly trafficking in counterfeit goods is a federal crime that carries penalties for first time offenders of up to ten years in federal prison, a $2,000,000 fine, forfeiture and restitution (18 U.S.C. § 2320).

The United States government controls all of the .com and .net domains, as well as those ending in .org, .cc, and several others. Other countries control their own top-level domains, such as .uk for the United Kingdom and .fr for France. The enforcement initiative falls under an umbrella of activities overseen by the National Intellectual Property Rights Coordination Center (IPR Center), a U.S. government task force which focuses on combating intellectual property theft. Similar efforts have been launched in other countries including Italy and Denmark. One of the most notable international seizures was of the Pirate Bay website, which began with a Swedish domain (.se). After getting wind of the imminent seizure of its domain by Swedish authorities, it quickly moved its website to a .gl domain in Greenland where it was then also seized, then to a .is domain in Iceland, then, fearing what the Icelanders would do, finally settling with a .sx domain in Sint Maarten in the Caribbean. The Pirate Bay's aggressive effort to evade intellectual property law serves as a good example of the challenges faced when seeking to enforce intellectual property rights in the international arena.

In 2007, France became the first country to seriously consider implementing a graduated response to the infringing actions of individual file sharers. The broad concept, which has been implemented differently in various countries, involves an escalating series of consequences each time an individual is caught engaging in illegal file sharing. The response is therefore graduated in that it gradually increases in severity. The theory behind it is that once people realize they have been caught, and are made aware of the consequences, they will stop the behavior. This approach differs from the one in which individual filer sharers were sued for copyright infringement as the first step in an attempt to curtail their efforts in that there are numerous warnings given, many of which involve an educational component.

The graduated response approach has been implemented in numerous countries, and has become one of the primary ways online piracy is being combatted today. In some countries, the approach had been codified into law, while in others it has been implemented as a result of voluntary agreements between rights holders and ISPs. How an ISP is defined also differs somewhat from country to country, and some graduated response programs exclude certain ISPs, such as governments or schools, and those with fewer subscribers than a specified threshold. In most cases, the ISP is not monitoring peer-to-peer use by its subscribers. Rather, copyright owners must use a variety of measures, including anonymously venturing onto the peer-to-peer websites, and using third party monitoring companies, such as Dtechnet, to detect the illegal sharing. In almost all of the cases, the graduated response program is paired with an educational initiative to make the public more aware of copyright law, and an effort to expand the number and awareness of legal digital music services and retailers.

Critics of the approach tend to focus on two main arguments. One is that access to the internet is a fundamental right, which is tied closely to free speech, and therefore should not be restrained in any way. The other is that there is not sufficient due process involved in the approach, to wit, the typical appeals process puts the burden of proving that the access or sharing was permissible on the subscriber, which looks like a guilty-until-proven-innocent schema. Proponents of the approach often cite studies which show that most people sharing music illegally would stop if they received a notice from their ISP. Nevertheless, rights holders in numerous countries continue to pursue the implementation of such programs.

Prior Research

The topic of graduated responses to piracy has been the focus of considerable study. The vast majority of research was published in 2010, which aligns with the implementation of the first program. Much of the research is found in journals focused on business, law, or technology. Many researchers have taken an in-depth look at the implementation of graduated response programs in only a single country, such as Bomsel and Ranaivoson,[26] Meyer,[27] and Danaher, Smith, Telang and Chen[28] who all focus on France, Suzor and Fitzgerald[29] on Australia, Moreno[30] on the U.K., Wan[31] on Hong Kong, and Yu[32] and Bridy[33] on the U.S., while others focus on only two or three countries, such as Rayna and Barbie[34] on France and the U.K., and Bridy[35] on France, Ireland, and the U.S. Researchers such as Haber,[36] Yu,[37] Suzor and Fitzgerald,[38] Bridy,[39] and Moreno[40] explored the due process implications of graduated response programs, and other related questions regarding the principles of proportional justice, privacy, and fairness. Bomsel and Ranaivoson[41] and Wan[42] explored the programs from an economic perspective, while Bridy[43] explored the legal underpinnings of limited liability for ISPs and how that may be changing. Bridy[44] and LaFrance[45] call attention to the lack of transparency regarding the negotiations of the Anti-Counterfeiting Trade Agreement (ACTA), and the voluntary industry agreement in the U.S. Barron[46] and Meyer[47] argue that there is far more at stake here than simply addressing online piracy such as freedom and internet governance. Danaher, Smith, Telang, and Chen[48] performed a statistical analysis to arrive at the conclusion that the French graduated response program was effective at increasing legitimate digital sales, while Giblin[49] argues there is little to no evidence that these programs are effective or successful. This paper builds upon previous research, and provides the reader with both a retrospective and updated view of the graduated response programs in each of the seven countries where they have been implemented, in a manner designed to appeal to a broader population, helping to bridge the divide between theoretical and applied research.

Graduated Responses: Approaches Around the World

France

In 2001, the European Parliament and Council enacted the European Copyright Directive, which was designed to harmonize some aspects of copyright law across the different countries in the European Union. Each member state of the European Union was required to implement the directive into its own national law. In 2006, the French enacted DADVSI, which is an acronym for the French title, *Loi sur le Droit d'Auteur et les Droits Voisins dans la Société de l'Information*, or the law on authors' rights and related rights in the information society. Parts of the law were designed to address illegal peer-to-peer sharing of copyrighted works, and in many ways it is similar to the U.S. Digital Millennium Copyright Act. The law was considered highly controversial and went through a complicated and protracted political process. It prohibited certain acts, such as taking the action "to edit, place at the public's disposal or communicate to the public, voluntarily and under any form, a means destined to place non-authorized works at the disposal of the public," or "voluntarily incit[ing], including through advertisement, such use," making them punishable by up to three years imprisonment and a fine of up to EUR300,000. The law also provided for establishing an independent commission to oversee the implementation of portions of the law. The commission was created and called ARMT, which is an acronym for *Autorité de Régulation des Mesures Techniques*, or authority for the regulation of technical measures, otherwise known as digital rights management (DRM). DRM is a type of technical measure that controls the use of digital content, preventing unauthorized copying. ARMT focused primarily on regulating DRM, rather than on the peer-to-peer sharing. In 2007, at the request of the French Minister of Culture, a task force was created, called the Olivenne Commission, to explore sanctions for illegal file sharing. The commission's work resulted in a Memorandum of Understanding (MoU) between rights holders and ISPs to experiment with new ways to address illegal file sharing. The recommendations of the Olivenne Commission led to the enactment of another law, in May 2009, designed to supplement DADSVI, called the Creation and Internet Law, which expanded and renamed the ARMT commission. The new name became HADOPI, an acronym *Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet* or High Authority for the dissemination of works and protection of rights on the internet.[50] Because HADOPI puts in place a three-level graduated response to illegal file sharing, it is often referred to as a *three strikes law*. In June 2009, part of the HADOPI law was declared unconstitutional because it would have allowed a non-governmental body to impose a sanction. A revised version of the law was approved in October 2009, and HADOPI first began sending notices in October 2010.

The first step in the HADOPI graduated response procedure involves a copyright owner providing an IP address to HADOPI, which then obtains the IP address owner's contact information from his or her ISP, and the Commission for the Protection of Rights sending the subscriber a warning via email. The warning informs the subscriber of the allegations and the existence of legal alternatives available in the market. If a second infringement is detected within the six-month period following the warning, a certified letter, requiring acknowledgement of receipt, is sent to the subscriber with similar information as that found in the first email warning. The subscriber is then monitored for an additional period of one year. If a third infringement is detected during that period, another letter is sent informing him or her that the actions are subject to criminal prosecution. The Commission may also decide to refer the case to a criminal prosecutor. Subscribers may find themselves in court, subject to a fine of up to EUR1,500, and to a court order disconnecting internet access for a period of up to one month. Throughout the entire process, a subscriber may challenge the notices by contacting HADOPI.

By the end of 2012, HADOPI had sent over a million first warnings, over 100,000 second warnings, and 340 third warnings. Of the 14 cases referred to a criminal prosecutor, judgments were reached in only three of them, with only one resulting in a fine of EUR150. A study was released in March 2012 by HADOPI, analyzing the effects of its warning system, and it found a steady decline in use of illegal peer-to-peer sharing in France since the warnings went into effect, and that 71% of internet users surveyed said they would stop downloading illegal content if they received a warning from HADOPI. However, numerous other studies that followed, including one by the French music industry body SNEP, found that illegal peer-to-peer sharing was increasing while legal digital download sales were dropping. In May 2013, the report of a government-commissioned panel, referred to as the Lescure report, named after the person who led the panel, was published, reporting on the efforts against online piracy. It recommended numerous actions, including shutting down HADOPI and handing over the policing of online piracy to the *Conseil supérieur de l'audiovisuel* (CSA), the agency that regulates electronic media in France. Part of its proposal included replacing the three-strikes approach with automated fines that would kick in after two warnings, which start at around EUR60 and escalate for repeat offenders. In July 2013, it was announced that HADOPI would be shuttered and replaced with a new system of fines overseen by the CSA. The official statement announcing the change also stated that the new focus of online anti-piracy efforts would be on websites that commercially profit from the activity. Information regarding how the new program has been implemented has not been publicly released.

South Korea

In July 2009 South Korea enacted amendments to its copyright law that addressed online piracy. One section of the law gave the Minister of Culture, Sports, and Tourism the right to order Online Service Providers (OSPs) to (a) issue warnings to subscribers who are transmitting illegal reproductions, and (b) suspend the accounts of infringers who had received at least three warnings. In November 2010 the internet accounts of eleven subscribers were ordered suspended, which is considered the first instance globally of someone losing internet access as a result of illegal file sharing activities. Another section of the law created the Korean Copyright Commission (KCC) and gave it the power to recommend that OSPs send warnings, delete the illegally copied materials, and/or suspend subscriber accounts.[51] Compliance with the recommendations of the KCC is voluntary; however, if not complied with, the KCC may request that the Minister of Culture issue an order requiring the suspension. While the law does not require the KCC to utilize a three-warning approach before making a suspension recommendation, that is the process currently specified in the Commission's bylaws. Some have argued that South Korea enacted the copyright law amendments, such as the graduated response provision, because of pressure from the United States and the European Union, which required increased protection of intellectual property in the trade agreements they each entered into with South Korea. In 2009, South Korea was removed from the United States Trade Representative's piracy watch list for the first time in twenty years.

The process is outlined in the Enforcement Decree of the Copyright Act, issued in February 2010, and begins with the KCC monitoring illegal file sharing activity on its own. When it detects illegal activity, it sends the subscriber a warning. A process whereby a subscriber can challenge the allegations is also established by the decree. Under the law, the penalties are a one-month suspension of internet access for a first suspension, which comes after three warnings, between one and three months for a second suspension, and between three and six months for a third or subsequent suspension.

During the first year of operation after the law went into effect, the KCC recommended that warnings be sent to 32,878 subscribers. 31 subscribers had their accounts suspended by their OSPs for less than one month, which was the recommendation of the KCC. There were very few instances of an OSP declining to follow the KCC recommendation. By early 2013, according to the press, over 450,000 warnings had been sent and 380 user accounts had been shut down. In early 2013 Korea's National Human Rights Commission recommended the law be reexamined because it may violate constitutional rights. Around the same time, a member of the Korean National Assembly, Congressman Choi Jae-cheon, put forth a proposal to repeal the graduated response portion of the law. He argues that the law violates due process and is inefficient from an economic perspective, imposing a punishment that is disproportionate to the crime. Proponents of the law argue that it has been very effective at curtailing illegal file sharing and has helped to support the growth of the legitimate digital music business in South Korea.

New Zealand

In 2008 New Zealand passed the Copyright (New Technologies) Amendment Act, to address copyright in the digital world. A specific section of the act, labeled Internet Service Provider Liability, required internet service providers to have a policy for terminating the accounts of repeat infringers. There was significant public outcry against how broadly internet service providers were defined in the law and how the provision was to be implemented. Public protests were staged and, for a period of time, New Zealand internet users changed their avatars to black squares to express their disdain for the particular section of the law. The implementation of the section was postponed until it was announced that it would be removed from the law and redrafted. In April 2011 a new law was passed, titled the Copyright (Infringing File Sharing) Amendment Act, which repealed the prior section. The new law established a graduated response approach, and replaced the term Internet Service Provider with Internet Protocol Address Provider (IPAP) to exclude schools and government departments that provide internet access, but are not traditional ISPs.[52]

The first step in the graduated response process in New Zealand involves a copyright owner providing an IP address to the IPAP. The IPAP then sends the subscriber a detection notice, informing the subscriber of the allegations and informing him or her that what has been done is illegal. If a second infringement occurs within the 28 days from when the detection notice was received, a warning notice is sent, which says the same thing as the detection notice, but makes clear that it is a second notice. If a third infringement occurs within the 28 days following when the warning notice was received, an enforcement notice is sent. The copyright owner may bring the subscriber before the Copyright Tribunal and seek damages from the subscriber of up to NZD15,000. It is not until the process gets to the Copyright Tribunal phase that the identity of the subscriber is revealed to the copyright owner. The subscriber can challenge the notices all throughout the process. While the 2011 Act contemplates the suspension of a repeat offender's internet connection, that portion of the act can only be activated by an Order in Council, a form of legislation, which has not yet taken place. The Commerce Minister has stated that it will not be activated unless the existing process is unsuccessful.

In early 2013 the first case where the Copyright Tribunal assessed a fine after the graduated response protocol had been followed was decided, resulting in a fine of NZD616.57. A short time after came the second case, resulting in a fine of NZD557. By that time the Recording Industry Association of New Zealand (RIANZ) had requested that around 6,000 notices be sent by IPAPs, and 11 subscribers had been forwarded to the Copyright Tribunal. As of late 2013 there had been 17 rulings by the Copyright Tribunal, all of which found the account holders liable and assessed each of them fines averaging approximately NZD500. Currently, the copyright owner must pay a NZD25 fee for each notice they want issued, and the fee is designed to pay for the costs incurred by the IPAP. The RIANZ has argued that the fee is too high, particularly given that they are dealing with issuing thousands of notices, and are asking for it to be lowered to NZD2. The IPAPs have argued the fee is too low because it does not adequately cover the administrative costs of the notice program. In September 2012 after conducting a review, the Minister of Commerce recommended the current fee not be changed.

The United Kingdom

A government commissioned report published in 2006, called the Gowers Review of Intellectual Property, highlighted the damage being caused to the creative communities in the U.K. by illegal file sharing. It called for rights holders and ISPs to work together to create a set of best practices which would change attitudes and behavior with respect to illegal file sharing. Further, it said that if the two groups cannot reach agreement on the practices, the government should intervene and establish a statutory protocol. The trade associations for the music and film industries, six of the leading ISPs, and the government, came together and entered into a Memorandum of Understanding (MoU) in July 2008. The goal of the MoU was to achieve a significant reduction in illegal peer-to-peer activity within two to three years. Each ISP was to put in place a three-month trial to send notifications to 1,000 subscribers per week, and the results were to be analyzed to determine how to move forward. The ISPs and rights holders were to craft a Code of Practice, which would be facilitated by Ofcom, the independent regulator for the U.K. communications industry. Despite much effort, the rights holders and ISPs were not able to reach an agreement over the practices. At the same time, the government was considering the results of several other commissioned studies on how intellectual property law supported innovation and growth in the digital realm. Another such study, published in June 2009, titled the Digital Britain Report, outlined the U.K.'s strategic vision for its role in the digital economy. The report included a section which addressed protecting and rewarding creativity, which recommended that Ofcom be required to place obligations on ISPs to (a) notify alleged infringers that their conduct is illegal, and (b) collect information on repeat offenders which can be, subject to a court order, turned over to copyright owners so that may pursue individual legal action against the infringer. If, after twelve months from initial implementation, these two approaches do not prove effective in reducing illegal peer-to-peer sharing, then Ofcom would be able to direct the ISPs to implement a series of other steps, including blocking particular URLs and capping subscriber bandwidth. However, the report did not recommend the penalty of having a subscriber lose his or her internet access.

In April 2010 the U.K. passed the Digital Economy Act, which was based heavily on the Digital Britain Report, as well as the Gowers Review and MoU. Unlike the Digital Britain Report, the act included the penalty of losing one's internet access for repeat infringement. This additional remedy was included at the urging of the Secretary of State, Lord Mandelson, who some argue was swayed by lobbyists from the content communities such as music and film. The law could not be implemented until Ofcom set forth a code of practice, which would explain how the law would be implemented in detail. A draft code of practice has to go through a number of stages before it becomes law, to wit, a period where public comments are solicited, a review by the European Commission to ensure it does not pose any potential barriers to trade, the approval of the Secretary of State, and then the approval of Parliament. The initial draft of the code was published in May 2010. However, before the end of the public comment period, in July 2010, two of the largest ISPs in the U.K., BT and TalkTalk sought a judicial review of the law on a number of grounds, including that it breached European Law. The High Court decided in April 2011 in favor of the law, and BT and TalkTalk appealed the decision. During the time period while the law was under judicial review, its implementation was put on hold. In March 2012 the appeals court dismissed the appeal, clearing the way for the law to be implemented. In June 2012 a revised draft of the code was put forth by Ofcom. However, issues regarding how costs associated with the program would be shared were raised, requiring the draft to be further altered, resulting in the expectation that the first warning notices will not go out until late 2015 at the earliest.[53]

The first step in the proposed Ofcom graduated response process involves a copyright owner sending the ISP a Copyright Infringement Report, which includes the IP address associated with the illegal file sharing. The ISP then sends a warning notice to the subscriber, on paper, via first class mail. If the subscriber is issued three warnings within a twelve-month period, his or her name is to be placed on the ISPs Copyright Infringer List. Copyright holders are allowed to ask for a copy of the list once a month. The list does not contain any identifying information about the subscribers other than their IP addresses. However, if copyright owners see that a subscriber has received three or more warnings within the twelve-month period, they may go into court to seek an order requiring the ISP to reveal the identity of the subscriber, and then pursue direct legal action. A subscriber who has received a warning notice may appeal the notice at any stage throughout the process. There are costs involved with the process. Copyright owners must pay a fee that is meant, in the aggregate, to cover all of the costs incurred by Ofcom for administering the program, the majority of the costs incurred by operating an appeals body, and 75% of the cost that the ISPs incur for administering the program. Subscribers must pay a fee of GBP20 to challenge the warnings, but the money is refunded if the challenge is successful.

However, progress has been made in reaching a voluntary agreement between the rights holders and the ISPs. According to several news reports in May of 2014, a deal had been struck between BT, Sky, TalkTalk, and Virgin Media (ISPs), and BPI and MPA (which represent music and film content creators, respectively) to create the Voluntary Copyright Alert Programme (Vcap). The Vcap calls for ISPs to send out "alerts" which are educational in nature, promoting legal downloading services, starting sometime in 2015. The rights holders will pay for 75% of the costs of the program. The ISPs will keep a record of which subscribers have received alerts, and how many, for up to twelve months, and will provide rights holders with a monthly report of how many alerts were sent out. The ISPs will not provide the rights holders with any identifying information about subscribers who have received alerts. A maximum of four alerts will be sent to a subscriber, with escalating language, but no threats with respect to service disruption or potential legal language will be included. The program will run for three years and then be reviewed to determine its effectiveness.

Ireland

In 2008 the Irish Recorded Music Association (IRMA), on behalf of its member record companies, sued Eircom, the largest ISP in Ireland. The suit alleged that Eircom failed to remove copyright infringing material from its systems, and failed to put in place measures to combat piracy. In February 2009 the parties decided to settle the case, resulting in an agreement where Eircom agreed to put in place a graduated response program, which would ultimately disconnect a subscriber's internet access after repeated warnings. The agreement was reviewed by the court and the graduated response process was found to be lawful. The agreement also required IRMA to do all that it could to put in place a similar agreement with Eircom's competitors. After the other ISPs declined to voluntarily agree to implement the same program, IRMA sued one of them, seeking to force their hand. In October 2010 the court found that laws to suspend internet access for illegal file sharers were not enforceable under the present law in Ireland, which, the court pointed out, meant that Ireland was not in compliance with its obligations under European law. Specifically, Irish law was not in line with the European Directive, 2001/29/EC, Article 8(3), which provides that an injunction may be sought by a rights holder who is affected by an infringing activity. However, since the graduated response program in place at Eircom was the result of an agreement, rather than a law, the court decision did not stop the program's implementation.

The same month, due to a technical glitch, Eircom mistakenly sent out warnings to 300 subscribers who were not at fault. This got the attention of the Office of the Data Protection Commissioner (ODPC), which decided to launch an investigation to determine if the program was violating data protection laws. In December 2011 the ODPC issued an enforcement notice banning Eircom from operating their graduated response program, which temporarily shut the program down. In July 2012 a court overturned the ban, and the program re-started.[54] In February 2012 an amendment to the Irish copyright law was enacted to remedy Ireland's non-compliance with European law, which paved the way for IRMA to once again pursue voluntary agreements with or legal action against the other ISPs. In early 2014, after attempts by the IRMA to enter into a voluntary agreement with Ireland's second largest internet service provider UPC failed, the three major music companies brought suit to compel compliance. The case is still pending.

The first step in the graduated response process involves a copyright owner sending the ISP notice regarding a specific IP address engaged in illegal file sharing. The ISP then contacts the subscriber, in writing, as well as by telephone and browser pop-up windows, to let him or her know that his or her IP address has been associated with copyright infringement, that such acts are illegal, and where legal alternatives can be found. If subscribers continue to engage in the illegal behavior, they are sent a second warning letter, making it clear that if they continue, their internet access will be suspended for a period of seven days. If subscribers continue the same behavior, internet access is suspended for the seven-day period. If subscribers still continue to engage in illegal behavior, internet access is suspended for a period of twelve months.

Taiwan

In May 2009 Taiwan passed an amendment to its Copyright Act which created a liability safe harbor for ISPs, so long as they comply with a number of different requirements. Among the requirements, the ISPs had to inform subscribers of their copyright protection policy, and let them know that, in the case of repeat infringements of three times or more, the ISP will terminate the subscriber's internet access in whole or in part. The Taiwan Intellectual Property Office (TIPO) would oversee the implementation. TIPO, after a period of consulting with rights holders and ISPs, prepared Regulations Governing Implementations of Limitations on Liability for Internet Service Providers, which were promulgated in November 2009.[55] A 2013 report on Taiwan by the International Intellectual Property Alliance (IIPA), an alliance of trade associations representing U.S.-based copyright industries, drew attention to the fact that, despite being enacted four years prior, the law had not yet been implemented as the regulations only addressed the proper notice and counter-notice process, and did not set out the process regarding how ISPs should implement the law. The report urged further work by the rights holders, ISPs, and TIPO to reach agreement on a Code of Conduct. The report refers to a 2012 meeting which was held on the subject, but only resulted in an agreement by one ISP to test a proposed process for a limited time period. Although the U.S. Trade Representative removed Taiwan from the list of countries that do not sufficiently protect intellectual property in January 2009, the IIPA has indicated that its failure to implement its graduated response law remains an important issue to be watched closely.

While the graduated response process has yet to be ironed out, the first step involves a copyright owner sending the ISP notice regarding a specific IP address engaged in illegal file sharing. The ISP then sends a warning to the subscriber. If subscribers are warned three or more times, their internet access is somehow restricted, although the specifics of the restriction are yet to be determined. The ISP is not required to provide the identity of the subscriber to the copyright owner unless the subscriber files a counter-notice, claiming he or she has a right to access the content. Once the copyright owner knows the identity of the subscriber, in addition to whatever actions the ISP might take with respect to restricting internet access, the copyright owner is also free to pursue a direct legal action against the subscriber for infringement.

Other Countries

A number of other countries including Australia, Belgium, Colombia, and Spain have considered a graduated response program, but thus far have decided not to implement one. In 2009 the European Parliament voted against keeping a three-strikes policy within a telecommunication reform legislation, because it found that including it would restrict the fundamental rights and freedoms of users, without affording them an opportunity to be heard before a judicial authority. In June 2011 more than forty nations, including the U.S., signed a statement made by Sweden to the United Nations Human Rights Counsel condemning three-strike laws against online copyright infringers as violating human rights. Neither France nor the U.K. signed the statement. New Zealand did sign the statement, despite having its own graduated response law, although the portion of its law that allowed for restricting internet access was not activated at the time, nor has it been thus far.

Graduated Responses: The United States Approach

As early as December 2003, the RIAA sent letters to the fifty largest ISPs in the United States asking them to voluntarily notify subscribers involved in file sharing over peer-to-peer networks that their activity is illegal. This letter came right at the time when the RIAA lost a lawsuit arguing that it had the power to send ISPs subpoenas for the identity information corresponding to IP addresses, without first needing to file a legal action against those John Doe subscribers. The court disagreed, which resulted in the RIAA changing its process to first bring suit against the John Doe subscriber before issuing a subpoena to learn his or her identity. As already discussed, the RIAA program of pursuing legal action against individual file sharers continued from 2003 until late 2008, when the RIAA announced that it was going to cease filing new actions against individuals, and instead seek cooperation from ISPs. In a hearing in May 2008, in front of the U.S. House of Representatives, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, on the then-proposed Internet Freedom Preservation Act of 2008, Mitch Bainwol, the RIAA CEO, testified that the industry was engaged in discussions with a number of ISPs about ways to address the illegal piracy issue, including a graduated response approach, among others. In the months that followed, the RIAA, as well as leaders from the movie and television industries, worked with New York Governor Andrew Cuomo to craft an agreement with the ISPs.

In January 2009 it was reported in the press that AT&T and Comcast, two of the largest ISPs in the U.S., were among the group of ISPs working with the RIAA on a solution. In March 2009 AT&T announced it would begin implementing, on a trial basis, a notification program. Two additional ISPs, Comcast and Cox, also confirmed they were exploring working with the RIAA on a new program, although they had been forwarding infringement notices to their subscribers for years. In July 2011, over two years later, the Memorandum of Understanding (MoU) was finally announced. Parties to it included numerous trade associations from the entertainment industry, as well as their members, such as the RIAA, the Motion Picture Association of America (MPAA), the Independent Film & Television Alliance (IFTA), the American Association of Independent Music (A2IM), and five ISPs: AT&T, Cablevision, Comcast, Time Warner Cable, and Verizon. It is worth mentioning that Cox chose not to sign the MoU, and instead maintains its own graduated response protocol, which involves internet restrictions and potentially, after more than ten notices, termination of the subscriber's internet access. The MoU established a six-step Copyright Alert System (CAS), which is a common framework of best practices, and created the Center for Copyright Information (CCI), to support implementation of the program.[56] In a White House blog post the same month, Victoria Espinel, the United States Intellectual Property Enforcement Coordinator, commended the entertainment industry and ISPs for reaching the agreement, and stated the administration would continue to pursue solutions to the problems posed by online piracy. In order to give the ISPs time to implement the system, the first notices under the new program were not expected to be sent out until the second quarter of 2012. In September 2011 the CCI was formed, and in April 2012 an Executive Director was appointed at the CCI, its advisory board was established, which included members from the consumer and privacy protection groups, and it announced that it had entered into an agreement with the American Arbitration Association to implement an independent review process. After numerous delays, said to be the result of those involved wanting to ensure the program was consumer-friendly and remained true to the MoU, the CCI said in October 2012 that the program would be launching within several weeks. Unfortunately, hurricane Sandy hit the east coast of the U.S. in October which affected the CCI final testing schedules. In February 2013 the Copyright Alert System was officially launched. In May 2013 the press reported that the CCI had somehow lost its status as an official corporation due to a likely paperwork mishap, however that was quickly remedied and the CCI continues to operate as before. In May 2014 the CCI issued a progress report, indicating that 1.3 million alerts were sent out in the first ten months of the program, 70% of which were in the initial phases which focus on education, with fewer than 3% at the final escalated stage. During that time, 265 challenges were filed, and only 47 were successful based on an "unauthorized use of account" defense.

The first step in the CAS process involves a copyright owner providing an IP address to one of the participating ISPs. The ISP then notifies the subscriber associated with the IP address, via email and/or other technologies such as in-browser alerts, that the account was involved in sharing copyrighted content over a peer-to-peer network. The notice, which is meant to be educational in nature, also includes information about how one can prevent this from occurring again, such as securing a wireless internet connection with a password, and where one can legally access or purchase digital music. The second time an alert is sent, the notice is essentially the same as the first. The third and fourth alerts require subscribers to acknowledge that they have received the alert and pledge to stop the unlawful activity. If a fifth and sixth alert are sent, mitigation measures will be utilized, such as requiring a subscriber to take a copyright tutorial, or reducing internet speed significantly for several days. If no further alerts are sent within a twelve-month period, the number of strikes against the subscriber is reset to zero. If a subscriber's activity warrants alerts beyond the sixth alert, he or she is considered to be the type of infringer who falls outside of the scope of the CAS, and no further alerts will be sent. A copyright owner's ability to pursue legal action against an individual infringer is not affected by the CAS process, and that may be the recourse a copyright owner seeks with respect to hardcore infringers. Subscribers who have received three or more alerts may appeal the alerts, based on six different grounds, to an independent arbiter, but they have to pay a $35 fee to do so. The fee is refunded if the appeal is successful, and if they are not able to afford it, it can be waived. The goal of the fee is to prevent frivolous appeals. Unlike some graduated response programs in other countries, a subscriber's internet connection will not be suspended or terminated, nor will a fine or criminal penalty be incurred.

Conclusion

The graduated response approach and its implementation is an evolving area of law, policy, and industry. The fundamental issues facing each of the countries that have implemented some form of graduated response are the same, to wit, how the content industries get the ISPs to participate, who administers the program of issuing notices, who pays for the program, and how due process rights of consumers will be protected. In terms of how to obtain ISP participation, the options range from statutory regulation (France, New Zealand, South Korea, Taiwan) to voluntary or court-sanctioned agreement (Ireland, U.K., U.S.). The programs are administrated by government agencies (France, South Korea), by non-governmental entities created primarily for this purpose (U.S.), by the ISPs (Ireland, New Zealand, U.K.), or are stalled because it remains unclear how they will be implemented (Taiwan). In some countries, dissatisfaction regarding the cost and efficiency of administering the programs has been raised as a significant issue (France, New Zealand), and the question of due process protection for the purported infringer has been raised as a challenge to the applicable legislation (France, South Korea). As with any attempt to curtail online piracy, there will be proponents and critics of the approach. As results of studies on the effectiveness of graduated responses continue to be reviewed and compared to other approaches such as seizing domains, and the digital music marketplace is influenced by factors such as the availability of free streaming services like Spotify and Deezer, the approach may be refined, more widely embraced, or abandoned.[57]

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Rigor, Grades, Support, and the Amount of Time Students Spend Outside of Class: A Comparison of Full- and Part-time Faculty in an Entertainment and Music Business Program

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Abstract

MEIEA institutional data suggest entertainment and music business programs have historically relied heavily on part-time "professionally-oriented" faculty for delivery of their programs. This study analyzes faculty course evaluations and surveys to examine the relationships between perceived course rigor, anticipated and earned final grades, faculty accessibility and support, and the amount of time students spend outside the classroom preparing for class. Analyses of by-course data found no significant differences between student opinions of part-time and full-time faculty performance and/or courses taught by adjunct or full-time instructors. Results here suggest that the evaluation and comparison of faculty performance, across courses and between full- and part-time instructors, when based on student-generated perceptual data, may be highly unreliable and should be used with great caution.

Keywords: course rigor, grades, adjunct, faculty, performance, evaluations, accessibility, support, entertainment business, music business, MEIEA

Introduction

While there are few reliable data on exact proportions of full-time and part-time faculty in entertainment and music business programs, MEIEA (Music and Entertainment Industry Educators Association) institutional data suggest entertainment and music business programs have historically relied heavily on part-time (adjunct) "professionally-oriented" faculty for delivery of their programs (MEIEA 2014). Additional study of full- and part-time faculty between 1987 and 2003 revealed a steady increase in the percentage of part time faculty in four-year, higher education institutions; specifically, increases in fine arts and business were 7.5%

and 6.2% respectively (NEA Update 2007). Given that music and entertainment industry programs in the United States are typically "housed" in either a department of fine arts or business, the increase in the number of part-time faculty may impact student perception of course rigor, anticipated and earned final grades, faculty accessibility and support, and the amount of time students spend outside the classroom preparing for class. Most institutions utilize some form of course evaluation that measures these points, with the intent of improving course content and instructional practices. Most often, those data are generated by students via questions that may suggest conclusions about instructional clarity, helpfulness of the faculty, relevance of homework assignments, and so on. Rigorous course content is often defined as being more demanding, with more time spent outside the classroom preparing. Studies also suggest students tend to over-estimate the amount of time they spend preparing for class, and students expect higher grades for "more rigorous" classes, and students' anticipated grades are often greater than their actual final grades. In addition, it is also widely assumed that faculty members who were "more accessible" and "supportive" award higher grades than those who were less accessible and less supportive, and part-time faculty award higher grades than their full-time counterparts.

This study used nine matrices to analyze three semesters of faculty course evaluations and surveys in order to examine the relationship between perceived course rigor, anticipated and earned final grades, faculty accessibility and support, and the amount of time students spent outside the classroom preparing for class. Finally, this relationship was compared between full- and part-time instructors.

Literature Review

Rigor has been simply defined as the degree or amount of time that students spend in learning that requires higher order thinking (Bogess 2007). Blackburn (2008) expands upon this by claiming that instructional rigor "is creating an environment in which each student is expected to learn at high levels, each student is supported so he or she can learn at high levels, and each student demonstrates learning at high levels." More specifically, Wagner (2006) defines the outcomes of rigorous instruction as "creating a 'jury-ready' populace" who can "analyze an argument, weigh evidence, recognize bias (their own and others), distinguish fact from opinion, and be able to balance the sometimes competing principles of justice and mercy." After plotting course outcomes against Bloom's revised Taxonomy Table, Wagner concluded that "college- and career-ready students should be able to analyze and evaluate conceptual knowledge and apply underlying procedures for concluding a verdict"—hence, the result of a rigorous curriculum.

In 2005, Higgins, Hall, Baumfield, and Moseley examined twenty individual studies of students' academic achievement in secondary schools and its relationship to cognitive rigor. They found substantial evidence that indicated higher cognitive rigor was associated with greater academic achievement. A study conducted by Meyer, Spencer, and French (2009), concluded that student perception of academic rigor is often influenced by the information received from close, interpersonal sources, such as family members and close friends. In addition, Meyer, Spencer, and French also found that students' initial perceptions of academic rigor exceed their actual experience (2009). Germain and Scandura (2005) and Johnson (2003), explored the relationship between faculty evaluations and students' grades after realizing a positive correlation between the two. Their findings were supported by at least three other studies that equated higher grades to better evaluations (Gordon 2010; Kennedy 1975; Schriver 2007). On the other hand, research by Malmstrom (2007) and Moore (2006) indicated no positive correlation between grades and evaluations: although the grades awarded during the trial periods of each study were lower than the norm for the college, the student evaluation of faculty scores remained high.

The positive correlation found by Germain and Scandura (2005) and Johnson (2003) then led them to hypothesize that student evaluations of professors are a significant reason for grade inflation at the college level. College grading first appeared at Yale University in 1783 as a way to rank students (Milton et al. 1986), and by the early 1900s—when percentage-grading systems became popular—grade inflation had been documented. One of the first efforts at increasing the validity of grading was by Max Meyer in 1908. Meyer introduced the grade curve (Schriver 2007), as well as the modern-day grade point average (GPA) (Burke 2006). Grade inflation has been well documented by several researchers, including Juola (1979), who reported a GPA increase of 0.40 between 1965 and 1973, and Rojstaczer (2007) who analyzed grade point averages between 1991 and 2007 and discovered that GPA had increased on average by 0.18 points in that time period. An additional reason for grade inflation was institutional pressure for student success (Jennings et al. 2013; Schriver 2007).

In concert with this perspective, a study by Jennings et al. demonstrated that students considered academic achievement—especially getting good grades—the most important criterion to defining success in college (Jennings et al. 2013).

The results of studies of students' anticipated grades versus actual earned grades have also been consistent: students tend to overestimate their final course grade (Buckelew et al. 2013; Prohaska, 1994; Remedios et al. 2000; Svanum and Bigatti 2006). In addition, students who more accurately predicted their final course grade tended to attribute their class performance to effort, and students who overestimated their final course grade—on average, one-letter grade higher—tended to attribute class performance to luck (Buckelew et al. 2013).

Most universities and accrediting organizations provide a benchmark for the number of hours they expect students to study outside of class. In general, that number is two to three hours of out-of-class study for every hour spent in the classroom (or twelve to fifteen hours per week preparing for a 3-credit class) (Gordon and Palmon 2010; Lutes and Davies 2013; SACS COC 2012). However, in 2000 the National Survey of Study Engagement reported that almost sixty percent of full-time university students were studying less than fifteen hours outside of the classroom each week, and "many of those students were not studying at all."

Faculty members were often evaluated by students using an end-of-the-semester course evaluation (Danielson and McGreal 2000); these evaluations generally fell into one of two "means-oriented" models: Traditional and Neo-traditional. The Traditional Means approach is the oldest and most widely-used assessment: it defines a good teacher as "one who possesses traits and uses techniques, procedures, and skills or means predetermined as essential to effective learning." Historically, its purpose was to assess teaching and classroom performance (Tracy and MacNaughton 1993). One faculty evaluation at a SACS (Southern Association of Colleges and Schools) accredited university that utilized a Traditional Means Approach, contained the categories "Challenge," "Assessment," "Accessibility and Support," "Course Design and Organization," and "Course Delivery and Communication." Embedded within the category of "Accessibility and Support" were the questions, "I found it easy to approach the teacher with questions," "The instructor was accessible outside of class," and "The instructor treated the students with respect" (CampusLabs 2014).

According to Joiner (2009), there was a strong relationship between support and student success. McNulty (2007) stated that high quality teaching includes the values respect, responsibility, honesty, civility, and tolerance; only after those values are established in the classroom can "real learning," i.e., learning based on rigor and relevance, occur. Deiro (1996) and Schmuck and Schmuck (1989) found students wanted teachers to treat them with respect. Respect was measured by the perceptions of others as an appraisal of the behavior of another person that causes an emotional reaction (Ellis 1997). Webster (2003) defined eight elements of teacher respect: caring, understanding, listening, patience, help, fairness, flexibility, and treating students as unique individuals. The results of studies about the relationship between student/teacher respect and academic achievement have not been consistent. In 1997, Ellis conducted such a study and found a positive correlation between students' perceptions of teacher respect and academic achievement. In contrast, a similar study conducted in 2003 found no relationship (Webster 2003).

One of the arguments about full- versus part-time instructors suggested that full-time faculty apply more demanding grading standards than part-time faculty. Schultz, Drake, and Lessner conducted a study of community college faculty and determined that although full-time faculty reported higher grading rigor than part-time faculty, there was no significant difference in self-reported grade inflation. This indicated that part-time faculty did not differ from full-time faculty in their perceptions of assigning final grades that were higher than what students actually earned (2013).

Another point of view pertains to course rigor: how challenging is a course and whether the instructor sets high standards. Adjunct faculty members were also often accused of not providing the course rigor and attention to students, necessary for a robust education (Schackner 2013; Schutz et al. 2013). This may be because according to Monks (2009), two-thirds of full-time faculty held a doctorate or terminal professional degree, while only 27% of part-time faculty held an advanced degree. In addition, the National Education Association (NEA) reported that part-time faculty were less likely to produce publications and scholarly works than full-time faculty, and when published, part-time faculty were more likely to produce less "academic" products comprising non-refereed articles, patents, or computer software (2007). As a result, the expectation for rigorous course outcomes may be less among part-time faculty.

In addition, most part-time faculty members hold jobs outside of academia and spend the vast majority (91%) of their university time in the classroom teaching. In contrast, full-time faculty spend only about 61 percent of their time in the classroom, with the rest of their time spent supervising, advising and mentoring students, participating in academic research or clinical service, and participating in university service (NEA Update 2007). This additional, out-of-the-classroom interaction between students and full-time faculty may impact the students' perception of how accessible the faculty is outside of class as well as their expectations for rigor in the classroom.

A recent survey by MEIEA (Music and Entertainment Industry Educators' Association) involved 39 music business and entertainment education programs, representing 2- and 4-year public and private colleges and universities. Of the faculty in those programs, 38% were reported to be full-time and 52% were reported to be part-time faculty. (The remaining 10% were not classified as music business and entertainment and were not included in the survey) (MEIEA 2014). By comparison, national reports of full- versus part-time faculty across all programs (business, engineering, fine arts, etc.) indicated 47% of faculty were part-time (Hart 2010). According to NEA Update (2007), faculty in departments of education (56%), fine arts (53%) and business (51%) were most likely to be working part-time. Given that all the reporting institutions on the MEIEA survey were "housed" in a program of either fine arts or business, the 52% reported part-time faculty in music and entertainment education is consistent with national statistics.

This study compared the rigor, anticipated and earned final grades, faculty accessibility and support, and the amount of time students spent outside the classroom preparing for class between full- and part-time faculty in a music and entertainment program.

Research Methods

This study analyzed the results of anonymous faculty and course evaluations from twenty-four courses taught by twenty faculty members across three consecutive fall semesters, at a private university of about 5,000 full-time undergraduate students (Factbook 2013). All courses were three-credit. The semesters analyzed were fall 2011, fall 2012, and fall 2013. All the evaluations were from music business-related courses.

The Course Review was developed by a faculty workgroup as part of the college's continuous curricular improvement plan (Appendix A).

Courses were selected for rotational review by the workgroup; a member of the workgroup administered an in-class survey-type evaluation, the first ten minutes during the final week of the semester. In order to maintain consistency across classes and to minimize potential evaluator influence, administration of the evaluation was prefixed with a scripted facilitator statement (Appendix B).

The questions on the course review used for this study were, "This course was challenging" and "The average number of hours I dedicated to this course per week outside of class was approximately." The answers to the question, "This course was challenging" were measured on a five-point Likert scale: "Strongly Agree, Moderately Agree, Undecided, Moderately Disagree, and Strongly Disagree." The answers to the question, "The average number of hours I dedicated to this course per week outside of class was approximately" was measured by selecting one of the following: "1 hour or less, 2 hours, 3 hours, 4 hours, 5 hours or more." Course rigor was determined by the five-point Likert scale responses to the question, "This course was challenging."

The second evaluation was an institutionally administered end-of-semester Course Evaluation (Appendix C). Participation was voluntary and all students were reminded to participate in the online survey via email, in class by instructors, and by the statement on all course syllabi, "Course Evaluations: It is expected that all students will participate in the end-of-the-semester, online course evaluation." Online evaluations opened two weeks prior to the posting of final grades, and closed prior to the posting of final grades.

For this study, students' self-reported anticipated grades were responses to the question on the institutional Course Evaluation, "What grade do you expect for this course currently?" Rigor was determined by the responses to the institutional Course Evaluation questions, "The course assignments required me to think critically," "The assignments in this course challenged me to do my best work," "The instructor set high standards," and "The instructor used challenging questions, problems, or assignments." Also from the institutional Course Evaluation, Accessibility and Support were determined by responses to the questions, "I found it easy to approach this instructor with questions," "The instructor was accessible outside of class," and "The instructor treated students with respect." Finally, the actual students' final grades that were used for this study had been calculated and inputted by the faculty and recorded in Banner, the university's software system.

Twenty-four courses with twenty instructors were analyzed: six courses from fall 2011, seven courses from fall 2012, and eleven courses from fall 2013. Those courses were all music business-related, and respondents were freshmen, sophomores, juniors, and seniors. Two courses had multiple sections taught by the same instructor, and those sections were analyzed together. Response rate for the voluntary institutional Course Evaluation (online) ranged from 12.5% to 85%, with class size mean of 23.75 students. Response rate for the in-class Course Review evaluation averaged 97%. Of the twenty-four courses, twelve were taught by full-time faculty members and twelve were taught by part-time.

Data Analysis and Results

For this study, evaluations were made between:

- Course rigor as reported on Course Reviews and Course Evaluations.
- Rigor and outside-of-class hours
- Anticipated and earned grades
- Course rigor, anticipated grades, and earned grades
- Course rigor and accessibility and support
- Anticipated grades and faculty accessibility and support
- Full- and part-time faculty

Rigor Versus Rigor: A paired sample *t*-test was used to compare mean students' report of course rigor on the Course Reviews and Course Evaluations (Figure 1). Rigor as reported on the Course Review surveys was significantly lower than rigor reported on the Course Evaluations ($t = 4.23$, $df = 19$, $p = 0.0004$). (See Appendix D for tabled data sets.)

Rigor and Outside-of-Class Hours: A comparison of rigor by Course Evaluations and outside-of-class hours indicated no relationship. An additional comparison of rigor by Course Evaluations and Course Reviews, and outside-of-class hours also indicated no relationship (Figures 2 and 3). (See Appendix E for tabled data sets.)

Anticipated and Earned Grades: A paired sample *t*-test was used to compare mean students' report of anticipated grades on their Course Evaluations and earned grades, as recorded in Banner (Figure 4). Earned grades were significantly lower than anticipated grades ($t = 3.91$, $df = 19$, $p = 0.0009$). (See Appendix F for tabled sample sets.)

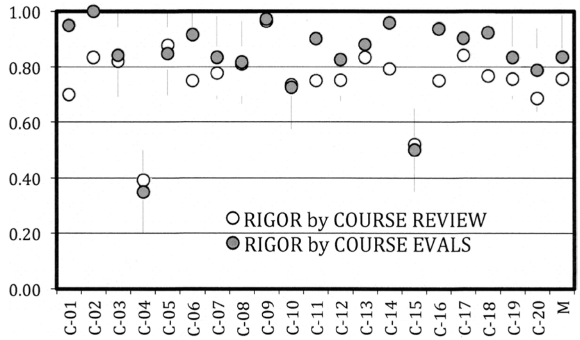

Figure 1. Scaled student rigor ratings by Course Reviews and Course Evaluations.

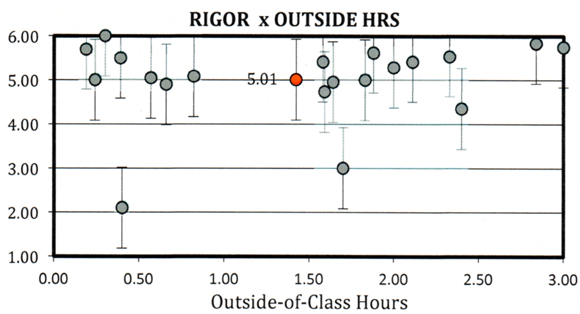

Figure 2. Outside hours and rigor ratings by Course Evaluations. Red point is mean rigor rating (5.01, SD = 0.92) by mean outside hours (1.42, SD = 0.88).

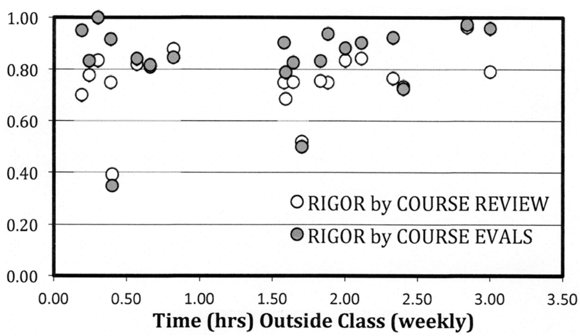

Figure 3. Outside hours and rigor ratings by Course Evaluations and Course Reviews.

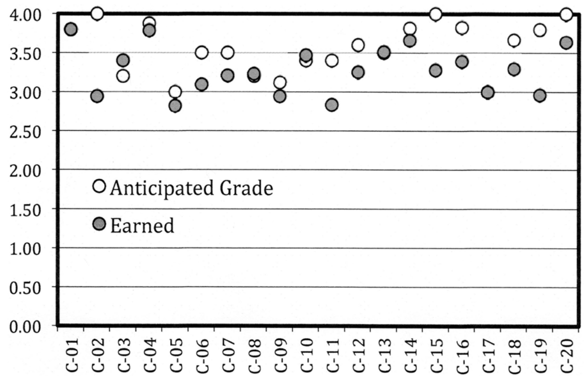

Figure 4. Anticipated and earned grades.

Course Rigor, Anticipated Grades, and Earned Grades: A three-way ANOVA revealed no correlation for rigor as reported in Course Evaluations, anticipated grades, and earned grades; $F = 2.258$, $df = 2$, $p = 0.11$) (Figure 5). (See Appendix G for tabled sample sets.)

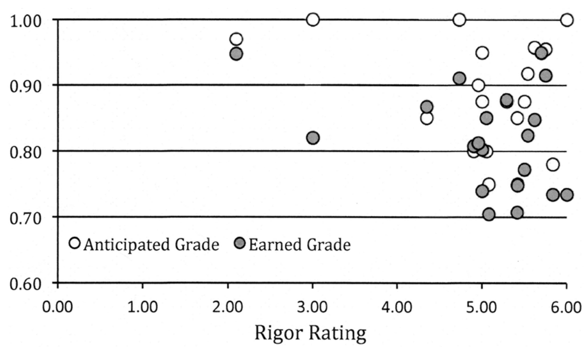

Figure 5. Course rigor, anticipated grades, and earned grades.

Course Rigor and Accessibility and Support: A comparison of rigor by Course Evaluations and accessibility and support yielded no relationship (Figure 6). (See Appendix H for tabled sample sets.)

Anticipated Grades and Faculty Accessibility and Support: A comparison of anticipated grades and accessibility and support yielded no relationship (Figure 7). (See Appendix I for tabled sample sets.)

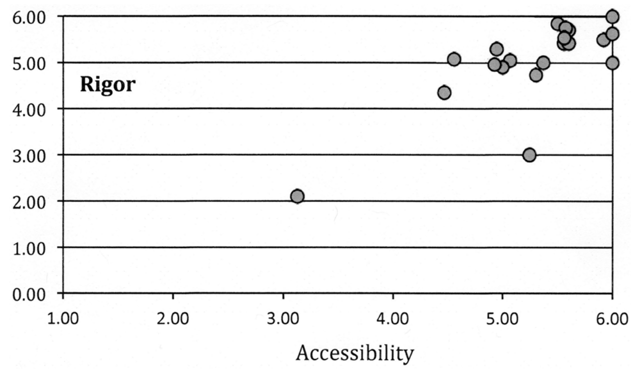

Figure 6. Rigor ratings by accessibility rating.

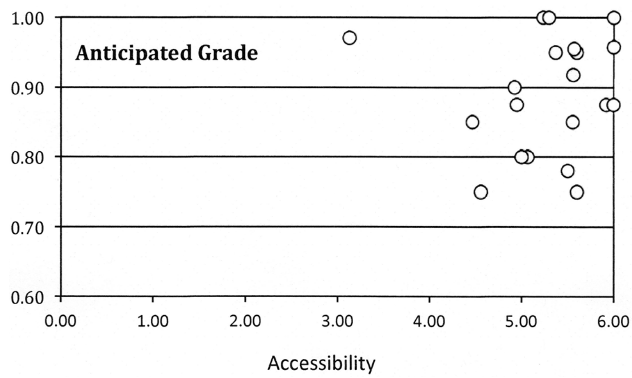

Figure 7. Anticipated grade by accessibility rating.

Full-time Faculty Versus Part-Time Faculty: A two-tailed *t*-test was used to compare full- and part-time (adjunct) faculty with the amount of time students spent studying outside of class, course rigor by Course Review, course rigor by Course Evaluation, students' anticipated grades (Figure 8), students' earned grades, and accessibility. By conventional criteria, only the earned grades (Figure 9) were considered statistically significant. (See Appendix J for the intermediate values used in calculations.)

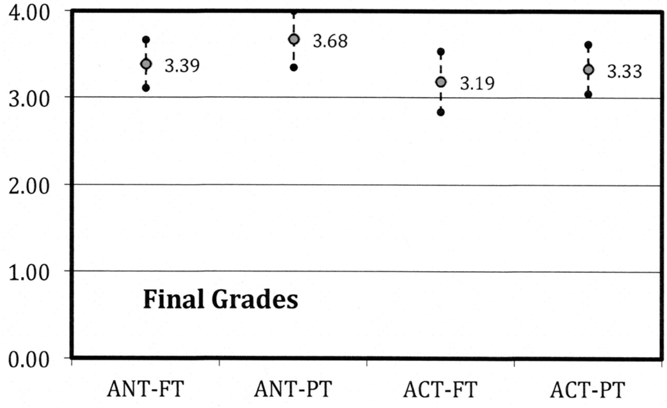

Figure 8. Anticipated (ANT) and actual (ACT) grades by full- and part-time faculty (4-point GPA scale).

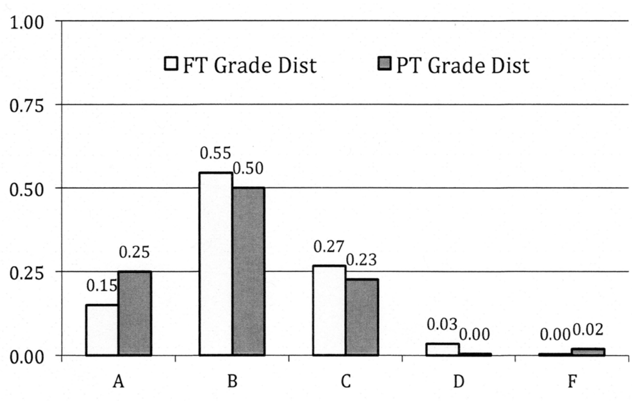

Figure 9. Grade distribution between part- and full-time faculty.

Discussion

Of the nine tests, only three yielded measurable differences. First, earned grades were significantly lower than anticipated grades ($t = 3.91$, $df = 19$, $p = 0.0009$). This result is supported by Buckelew et al. (2013), Prohaska (1994), Remedios et al. (2000), and Svanum and Bigatti, (2006). Another test that yielded a measurable difference was between course rigor as reported on Course Reviews and that reported on Course Evaluations. Course rigor as reported on the Course Review surveys was significantly lower than rigor reported on the Course Evaluations ($t = 4.23$, $df = 19$, $p = 0.0004$). Several factors may have contributed to this reporting: while studies about the psychology of anonymity have had varying results (Britton 1983; Lelkes 2012), most researchers agree that anonymity impacts responses. The course reviews were administered during class at the end of the semester while evaluations were voluntary and made available online during a two-week period at the end of the semester. It could be that students may have perceived the in-class survey as less "anonymous" and that may have affected response ratings.

Another reason students may report a difference in rigor is because of the wording of the surveys. The Course Review is designed to review *the course,* not the instructor. Instructions—read by a faculty member not associated with the class—for taking the survey include the statement, "This short survey is focused on improving this course…" (Appendix B). On the other hand, the institutional Course Evaluations—in spite of the title—are designed to evaluate teaching and implementation as much as course design, and therefore evaluate both the course *and the instructor*. Examples of instructor-focused questions include, "The instructor displayed enthusiasm for teaching" and "The instructor provided clear explanations" (Appendix C). While it was not entirely clear, because of the wording of the statements, students may have been more inclined to focus on rating the instructor as opposed to course design and learning expectations.

Although students anticipated higher grades from the part-time faculty, that difference was not quite statistically significant ($t = 2.04$, $df = 18$, $p = 0.056$). However, there was a significant difference between students' earned grades from part-time faculty versus full-time faculty ($t = 2.84$, $df = 407$, $p = 0.0047$) (Figure 8) where full-time faculty consistently assigned lower overall grades than part-time faculty. This observation was supported by Fedler (1989) and Kezim (2005) and, interestingly, an analysis of grade distributions between part- and full-time faculty shows an even, relatively normal distribution for both types of instructors, even though the overall earned grades from part-time faculty were statistically higher (Figure 9).

Given that there are no significant differences between part-time (adjunct) and full-time faculty and the amount of time students spent outside of class, course rigor by Course Review, course rigor by Course Evaluation, students' anticipated grades, and accessibility, the question remains whether the significant difference in earned grades between part- and full-time faculty was the result of course content, instructional practices, or student learning outcomes; or whether or not full- and part-time faculty were simply more or less lenient with regard to the assignment of final grades.

Conclusion

The hiring of part-time faculty has come under intense scrutiny, as part-time faculty members often feel discriminated against, exploited, or under-appreciated (DeSantis 2013; Schmidt 2013; Ellis 2013) and accreditation bodies push for increased full-time faculty resources. This was in spite of the finding that among part-time faculty surveyed, about half (50%) preferred part-time teaching (Hart 2010). Regardless, institutions often see the hiring of adjunct faculty as a cost-saving measure. In a 2013 study by the *Chronicle of Higher Education*, 52% of college presidents reported "increased use of contingent faculty" as a way to reduce net costs for students (Selingo 2014). In entertainment and music business oriented programs, adjunct faculty members are often professionals in their fields (e.g., entertainment attorneys, publishers, studio engineers, etc.) who teach specialized courses, contribute by being current in their fields, and help students establish professional connections (Cline 1993; Phelan 1986). In addition, the use of part-time faculty instruction is often seen as providing institutional flexibility to meet fluctuating enrollment demands (Lankard 1993; McGuire 1993). On the other hand, because the majority of part-time faculty members hold more than one job (Hart 2010), they may be less engaged on campus, may not be well-versed in educational teaching practices, and may not be familiar with educational resources (Moczygemba 2008).

Accreditation standards may also play a role in decisions about hiring full- versus part-time faculty members. AACSB (Association to Advance Collegiate Schools of Business) recommends a very specific 60/40 ratio of full- to part-time faculty (AACSB 2014). However, programs in schools of music that may be accredited by NASM (National Association of Schools of Music) make decisions based on less stringent, somewhat more flexible accreditation standards. For example, NASM recommendations state, "The number and ratio of full- and part-time faculty positions, and their distribution among the specializations must be sufficient to achieve the music unit's purposes; appropriate to the size and scope of the music unit's programs; and consistent with the nature and requirements of specific programs offered" (NASM 2014).

Empirical evidence from this study, investigating relationships between Faculty Evaluations and Course Reviews for student perceptions of course rigor, faculty accessibility and support, student-anticipated grades, amount of time spent outside of class, and actual earned grades revealed differences in grading but no differences between the common perceptual measures of part-time and full-time faculty performance. Results from this study revealed two significant observations: that students expected and generally received higher grades from part-time instructors as compared to full-time instructors; and that the evaluation and comparison of faculty performance, across courses and between full- and part-time instructors, when based on student-generated perceptual data, may be highly unreliable and should be used with great caution.

Course:
Date:

Please indicate your degree, major, and status. **Degree:** **BBA __ B.S. __ B.A. __ Other __** **Major/Emphasis:** **Music Business __ Production __ AET __ EIS __ SNG __ Other __** **Status:** **Senior __ Junior__ Sophomore __ Freshman__**

COURSE DESCRIPTION:

Circle the response below each statement that most closely identifies whether or not you agree or disagree with that statement.

1. The course description above reflects what I have studied.

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

2. Assignments given were related to the subject matter described in the course description.

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

3. The tests and the grading of assignments accurately measured what I studied.

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

As a result of this course:

4. Course outcome #1

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

5. Course outcome #2

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

6. Course outcome #3

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

7. Course outcome #4

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

Appendix A. Course Review.

8. This course was challenging.

Strongly Agree	*Moderately Agree*	*Undecided*	*Moderately Disagree*	*Strongly Disagree*

9. The average number of hours I dedicated to this course per week <u>outside of class</u> was approximately:

1 hour or less	*2 hours*	*3 hours*	*4 hours*	*5 hours or more*

Comments or suggestions for improvement:

Appendix A. Course Review (continued).

STUDENT SYLLABUS REVIEW SURVEY

FACILITATOR STATEMENT
(Please read aloud to the class)

THIS SHORT SURVEY IS FOCUSED ON IMPROVING THIS COURSE AND IS **NOT** PART OF THE UNIVERSITY COURSE EVALUATIONS THAT ARE CONDUCTED ONLINE EACH SEMESTER.

PLEASE DO **NOT** FORGET TO PARTICIPATE IN THE ON-LINE COURSE EVALUATIONS.

THIS SURVEY **IS** BASED SPECIFICALLY ON THE COURSE DESCRIPTION FOR **THIS CLASS** WHICH IS AVAILABLE AS A REFERENCE AT THE TOP OF THE SURVEY. IT READS… [*READ COURSE DESCRIPTION*]

PLEASE CIRCLE YOUR RESPONSE FOR EACH STATEMENT THAT MOST CLOSELY IDENTIFIES WHETHER OR NOT YOU AGREE OR DISAGREE WITH THAT STATEMENT.

THERE IS A BOX ON THE SURVEY THAT MAY BE USED FOR YOUR COMMENTS AND SUGGESTIONS FOR IMPROVEMENTS TO THIS COURSE.

THIS IS AN ANONYMOUS SURVEY. PLEASE DO **NOT** PUT YOUR NAME ON THE SHEET. WE WILL ALLOW FIFTEEN MINUTES TO COMPLETE THE SURVEY. WHEN FINISHED, PLEASE KEEP YOUR SHEET UNTIL EVERYONE HAS FINISHED.

Appendix B. Facilitator Statement.

Challenge

Please indicate your level of agreement with the following statements:

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
The course assignments required me to think critically.					
The assignments in this course challenged me to do my best work.					
The instructor set high standards.					
The instructor used challenging questions, problems, or assignments.					

Assessment

Please indicate your level of agreement with the following statements:

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
Information was provided to the students about how assignments would be graded.					
The instructor provided me with written or oral feedback on my work in a reasonable amount of time.					

Accessibility and Support

Please indicate your level of agreement with the following statements:

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
I found it easy to approach this instructor with questions.					
The instructor was accessible outside of class.					
The instructor treated students with respect.					

Course Design and Organization

Please indicate your level of agreement with the following statements:

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
Course content was organized.					
Course requirements were clear.					

Appendix C. Institutional Course Evaluation.

The assignments in this course contributed to my learning.					

Course Delivery and Communication

Please indicate your level of agreement with the following statements:

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
The instructor displayed enthusiasm for teaching.					
The instructor provided clear explanations.					
The instructor used examples or illustrations to clarify course material.					
The instructor communicated course material effectively.					

What year are you in school?				
Freshman	Sophomore	Junior	Senior	Graduate

I am taking this course to fulfill:			
General Education requirement	Major/Minor requirement	Elective	Audit

What grade do you expect for this course currently?				
A	B	C	D	F

Appendix C. Institutional Course Evaluation (continued).

Student Rigor Ratings by Course Reviews and Course Evaluations			
Course	Rigor by Course Review	Rigor by Course Evaluations	N
C-01	0.70	0.95	10
C-02	0.83	1.00	8
C-03	0.82	0.84	25
C-04	0.39	0.35	30
C-05	0.88	0.85	24
C-06	0.75	0.92	24
C-07	0.78	0.83	11
C-08	0.81	0.82	23
C-09	0.96	0.97	73
C-10	0.73	0.73	21
C-11	0.75	0.90	35
C-12	0.75	0.83	26
C-13	0.83	0.88	13
C-14	0.79	0.96	30
C-15	0.52	0.50	11
C-16	0.75	0.94	7
C-17	0.84	0.90	23
C-18	0.77	0.92	25
C-19	0.76	0.83	25
C-20	0.69	0.79	31
M	**0.76**	**0.84**	**5.01**
SD	**0.12**	**0.15**	**0.92**

Appendix D. Rigor Versus Rigor.

Outside Hours and Rigor Ratings by Course Evaluations			Outside Hours and Rigor Ratings by Course Evaluations and Course Reviews			
Course	Outside Hours	Rigor x Outside Hours	Course	Outside Hours	Rigor by Course Review	Rigor by Course Evals.
C-01	0.19	5.70	C-01	0.19	0.70	0.95
C-02	0.30	6.00	C-02	0.30	0.83	1.00
C-03	0.57	5.05	C-03	0.57	0.82	0.84
C-04	0.40	2.10	C-04	0.40	0.39	0.35
C-05	0.82	5.08	C-05	0.82	0.88	0.85
C-06	0.39	5.50	C-06	0.39	0.75	0.92
C-07	0.24	5.00	C-07	0.24	0.78	0.83
C-08	0.66	4.90	C-08	0.66	0.81	0.82
C-09	2.84	5.84	C-09	2.84	0.96	0.97
C-10	2.40	4.35	C-10	2.40	0.73	0.73
C-11	1.58	5.42	C-11	1.58	0.75	0.90
C-12	1.64	4.96	C-12	1.64	0.75	0.83
C-13	2.00	5.29	C-13	2.00	0.83	0.88
C-14	3.00	5.75	C-14	3.00	0.79	0.96
C-15	1.70	3.00	C-15	1.70	0.52	0.50
C-16	1.88	5.62	C-16	1.88	0.75	0.94
C-17	2.11	5.42	C-17	2.11	0.84	0.90
C-18	2.33	5.54	C-18	2.33	0.77	0.92
C-19	1.83	5.00	C-19	1.83	0.76	0.83
C-20	1.59	4.73	C-20	1.59	0.69	0.79
M	**1.42**	**5.01**	**M**	**1.42**	**0.76**	**0.84**
SD	**0.88**	**0.92**	**SD**	**0.88**	**0.12**	**0.15**

Appendix E. Rigor Versus Outside of Class Hours.

Paired Anticipated and Actual Grades on a 4.0 GPA Scale		
Course	Anticipated Grade	Earned Grade
C-01	3.80	3.80
C-02	4.00	2.94
C-03	3.20	3.40
C-04	3.88	3.79
C-05	3.00	2.82
C-06	3.50	3.09
C-07	3.50	3.21
C-08	3.20	3.23
C-09	3.12	2.94
C-10	3.40	3.47
C-11	3.40	2.83
C-12	3.60	3.25
C-13	3.50	3.51
C-14	3.82	3.66
C-15	4.00	3.28
C-16	3.83	3.39
C-17	3.00	3.00
C-18	3.67	3.30
C-19	3.80	2.96
C-20	4.00	3.64
M	**3.56**	**3.28**
SD	**0.32**	**0.30**

Appendix F. Anticipated and Earned Grades.

Course	Rigor by Course Evaluations	Anticipated Grade	Earned Grade
C-01	5.70	0.95	0.95
C-02	6.00	1.00	0.74
C-03	5.05	0.80	0.85
C-04	2.10	0.97	0.95
C-05	5.08	0.75	0.71
C-06	5.50	0.88	0.77
C-07	5.00	0.88	0.80
C-08	4.90	0.80	0.81
C-09	5.84	0.78	0.74
C-10	4.35	0.85	0.87
C-11	5.42	0.85	0.71
C-12	4.96	0.90	0.81
C-13	5.29	0.88	0.88
C-14	5.75	0.96	0.92
C-15	3.00	1.00	0.82
C-16	5.62	0.96	0.85
C-17	5.42	0.75	0.75
C-18	5.54	0.92	0.82
C-19	5.00	0.95	0.74
C-20	4.73	1.00	0.91
M	**5.01**	**0.89**	**0.82**
SD	**0.92**	**0.08**	**0.07**

Appendix G. Course Rigor, Anticipated Grades, and Earned Grades.

Course	Accessibility	Rigor
C-01	5.60	5.70
C-02	6.00	6.00
C-03	5.07	5.05
C-04	3.13	2.10
C-05	4.56	5.08
C-06	5.92	5.50
C-07	6.00	5.00
C-08	5.00	4.90
C-09	5.50	5.84
C-10	4.47	4.35
C-11	5.56	5.42
C-12	4.92	4.96
C-13	4.95	5.29
C-14	5.57	5.75
C-15	5.24	3.00
C-16	6.00	5.62
C-17	5.60	5.42
C-18	5.56	5.54
C-19	5.37	5.00
C-20	5.30	4.73
M	**5.27**	**5.01**
SD	**0.66**	**0.92**
N	**20**	**20**

Appendix H. Rigor Rating by Accessibility.

Course	Accessibility and Support	Anticipated Grade
C-01	5.60	0.95
C-02	6.00	1.00
C-03	5.07	0.80
C-04	3.13	0.97
C-05	4.56	0.75
C-06	5.92	0.88
C-07	6.00	0.88
C-08	5.00	0.80
C-09	5.50	0.78
C-10	4.47	0.85
C-11	5.56	0.85
C-12	4.92	0.90
C-13	4.95	0.88
C-14	5.57	0.96
C-15	5.24	1.00
C-16	6.00	0.96
C-17	5.60	0.75
C-18	5.56	0.92
C-19	5.37	0.95
C-20	5.30	1.00
M	**5.27**	**0.89**
SD	**0.66**	**0.08**
N	**20**	**20**

Appendix I. Anticipated Grade by Accessibility and Support.

Full-Time and Part-Time Faculty and Outside of Class Hours:
The two-tailed P value equals 0.8443
t = 0.1991
df = 19
standard error of difference = 0.420

Group	Adjunct	Full-Time
Mean	1.4508	1.5344
SD	0.8481	1.0796
SEM	0.2448	0.3599
N	12	9

Full-Time and Part-Time Faculty and Rigor by Course Review:
The two-tailed P value equals 0.2111
t = 1.2967
df = 18
standard error of difference = 0.055

Group	Adjunct	Full-Time
Mean	0.7267	0.7975
SD	0.1372	0.0851
SEM	0.0396	0.0301
N	12	8

Full-Time and Part-Time Faculty and Rigor by Course Evaluation:
The two-tailed P value equals 0.4220
t = 0.8217
df = 18
standard error of difference = 0.073

Group	Adjunct	Full-Time
Mean	0.8117	0.8713
SD	0.1931	0.0792
SEM	0.0558	0.0280
N	12	8

Appendix J. Full- and Part-Time Faculty.

Full-Time and Part-Time Faculty and Accessibility:
The two-tailed P value equals 0.9368
t = 0.0805
df = 18
standard error of difference = 0.316

Group	Adjunct	Full-Time
Mean	5.2558	5.2813
SD	0.7711	0.545
SEM	0.2226	0.1927
N	12	8

Full-Time and Part-Time and Anticipated Grades:
The two-tailed P value equals 0.0560
t = 2.0429
df = 18
standard error of difference = 0.141

Group	Adjunct Anticipated Grades	Full-Time Anticipated Grades
Mean	3.675	3.388
SD	0.325	0.280
SEM	0.094	0.099
N	12	8

Full-Time and Part-Time and Earned Grades:
The two-tailed P value equals 0.0008
t = 3.3585
df = 517
standard error of difference = 0.069

Group	Adjunct Earned Grades	Full-Time Earned Grades
Mean	3.334	3.102
SD	0.806	0.764
SEM	0.049	0.049
N	276	243

Appendix J. Full- and Part-Time Faculty (continued).

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Developing Information Literacy Skills for Tomorrow's Music Industry Leaders

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Abstract

What research skills should undergraduate music industry studies majors develop over the course of their studies? With the non-stop proliferation of news and information sources available, how are students being trained to do research appropriate to their field to make informed decisions? Some employers now screen for information literacy skills as a preferred qualification, due to the perception that recent graduates lack advanced research skills. This paper discusses one model of developing research skills that a future music industry leader will need. The authors show the collaboration between faculty and librarians that progressively teach students to find, access, evaluate, and use a variety of credible sources. Assignments embedded in various courses in the major allow students to scaffold and advance their confidence and skills to conduct meaningful research. These skills have been identified as a vital twenty-first century core competency by faculty, administrators, and accrediting agencies.

Keywords: information literacy, assessment, music industry curricula, music management, music business, research skills, career readiness

Introduction

We live in an age in which the amount of information available to students, educators, business persons, and the general public is at an all-time high as more and more information is made available in various forms on a daily basis. In 2012 it was reported that each *minute* 571 new websites are created, Facebook users share 648,478 pieces of content, YouTube users upload forty-eight hours of video, and Twitter users send more than 100,000 tweets.[1] Additionally, newspapers, magazines, journals, television networks, music companies, recordings artists, and film studios all have online presences and many have developed specialized online products and services. With all this information readily at the fingertips of anyone with internet access, one might think that we are in a potential golden age of knowledge and learning. In fact, the opposite is true.

The plethora of information freely available to students on the internet creates three major problems:

1. Many students come to college believing that all information is freely available on the internet; however, many resources (such as ComScore, SoundScan, and LexisNexis) require costly subscriptions;
2. Students have a difficult time knowing when to stop looking for information;
3. Students are unsure when a source is credible and appropriate for their research.

Due to the tidal wave of information that is readily accessible and the highly variable quality of much of this information, students, educators, business leaders, and the general public run the risk of finding and using data or information that might be inaccurate, outdated, intentionally misleading, or incomplete. To help reduce the likelihood that students and future music business persons will fall into such habits, educators may wish to consider the topic of information literacy in reviewing their degree learning objectives as well as specific courses and assignments. Since music industry studies programs rely largely on the study of current trends, news, and events, the field presents an opportunity for educators to intentionally design activities, discussions, and assignments that can help students become savvy users of credible information.

In this article the authors report on their efforts to incorporate assignments and experiences into the music management curriculum that are designed to build student awareness of information literacy and improve skills in finding, evaluating, and using data and information. If successful, such learning may help students avoid the pitfalls mentioned earlier.

Information Literacy — What Is It?

Information literacy is defined by the National Forum on Information Literacy as "…the ability to know when there is a need for information, to be able to identify, locate, evaluate, and effectively use that information for the issue or problem at hand."[2] Information literacy is sometimes known as "information competency," "information fluency," "research skills," or "critical thinking skills," but all have roughly the same definition. Information literacy is a multidimensional set of skills. In 2000, the Association of College and Research Libraries published a document entitled "Information Literacy Competency Standard for Higher Education," which provides a helpful outline for this set of skills and includes practical outcomes.[3] [4]

Librarians have championed information literacy as a set of skills for many years. In the last decade, information literacy has gained greater recognition in all areas of education. For example, at the authors' institution, University of the Pacific, the learning objective "Critical & Creative Thinking" specifically addresses information literacy. The three applicable outcomes of this objective are:

1. Apply reasoning and evidence to judge and support claims;
2. Effectively analyze, integrate, and evaluate information; and
3. Construct well-reasoned arguments and solutions.

Information Literacy is one of the Western Association for Schools & Colleges (WASC) five Core Competencies.[5] According to the WASC's 2013 *Handbook of Accreditation*,

> Baccalaureate programs engage students in an integrated course of study of sufficient breadth and depth to prepare them for work, citizenship, and life-long learning. These programs ensure the development of core competencies including, but not limited to, written and oral communication, quantitative reasoning, information literacy, and critical thinking.[6]

Not only is there motivation to teach and assess information literacy based on what faculty members see in the classroom, but all WASC-accredited schools with undergraduate programs must document and demonstrate the extent to which students have achieved each competency at or near graduation.

The Conversation Around Information Literacy Beyond Academia

Aside from academia, information literacy is also a skill that employers desire in their new hires. According to a study conducted by Project Information Literacy in 2013 in which the researchers interviewed twenty-three employers from a range of industries, "Employers said they recruited graduates for their online searching skills but…they [the recent graduates] rarely used the traditional, low-tech research competencies that their employers…needed."[7] In general, the researchers found that information literacy skills are invaluable to the types of tasks that employers want their employees to perform. It appears that recent graduates sometimes have a difficult time adapting and transferring the information literacy skills they gained as an undergraduate to the culture and norms of the workplace.[8]

In addition, the National Association of Colleges and Employers' (NACE) "2014 Employer Survey" sheds light on just how critical information literacy skills are in the minds of those hiring college graduates. Employers rated the "ability to make decisions and solve problems" and the "ability to obtain and process information" as two of the top three "most important candidate skills and qualities."[9] This is a change from the prior year with the "ability to obtain and process information," the attribute that most closely aligns with information literacy, moving up from fifth place in the prior year's survey data.

Students themselves are also increasingly aware that so-called "real world skills" are vital to adapting to the workplace.[10] Increased student interest in completing one or more internships and the growth of student-led enterprises on many campuses help students gain such skills.[11]

At the authors' institution, the music industry program's advisory board has repeatedly emphasized to faculty that understanding how to acquire information and building up the critical thinking and analysis skills necessary to contribute as a music manager should be a key outcome of the undergraduate music industry curriculum.[12] It is their belief that knowing how to find, assess, and use reliable information in a professional setting is now a basic job requirement. Thus, one can conclude that students lacking these skills are not fully prepared for their music industry careers.

Academia is increasingly asked whether or not college graduates will be employable upon graduation. Stakeholders including employers, students, prospective students, parents, and accreditors are all encouraging educators and administrators to incorporate career readiness programs and initiatives into college programs. Further emphasizing the need to track employment outcomes after college, Arkansas, Colorado, Tennessee, Texas, and Virginia are now using graduation data tied to unemployment rolls to determine which colleges have the lowest and highest numbers of unemployed recent graduates.[13] In this environment of increased scrutiny and questions about employability for college graduates, it seems imperative to advance information literacy as a key learning goal for programs since it aligns with employers' hiring priorities. Thus, it is vital that our academic programs provide a multitude of ways for students to become fluent in identifying, locating, evaluating, and effectively using information to make informed decisions.

Literature Review

There are many articles on information literacy in the librarianship literature. More commonly, the literature focuses on topics such as credit-bearing courses on information literacy,[14] an assignment or an activity,[15] or a set of tutorials.[16] While this literature is valuable to librarians and faculty members alike, it is important to see where all of these elements fit within the context of the curriculum. Information literacy as a set of skills cannot be fully explored through one-shot library sessions or even credit-bearing courses. These skills need to be honed and developed throughout the students' academic careers.

For the Literature Review, the authors focused exclusively on how information literacy is integrated throughout the curriculum through courses in music or business schools. In Beth Christensen's article, "Warp, Weft, and Waffle: Weaving Information Literacy into an Undergraduate Music Curriculum," from *Notes, Quarterly Journal of the Music Library Association*, she describes her role as music librarian with St. Olaf's music department to develop a "course-integrated, sequential library instruction program."[17] She states,

> …we work with existing courses and schedule course time, collaborating with the faculty, to weave the library and the concept of information literacy into the course content with which students are presented. We accomplish this with specific assignments that build upon the knowledge and skills that students gain from semester to semester. And we do it again, and again, and again.[18]

For Christensen as well as for the authors, the process is organic and changes each semester. Christensen mainly works with the music history courses and scaffolds her assignments accordingly. Her article includes a summary of the assignments students complete as well as the specific skills she and the music faculty are trying to develop.

In the business librarianship literature, there are many articles on the importance of information literacy including articles on learning outcomes, experiential learning, and incorporating information literacy into MBA programs; nevertheless, the authors identified no articles describing information literacy curriculum at the undergraduate level. Therefore, it seems that information literacy is not often described in a comprehensive manner. This is not to say that librarians and faculty members are not thinking about this or doing this. The authors of this article have the benefit of working with a small department in which they have control over much of the curriculum design.

Overview of the Music Management Program at University of the Pacific

Pacific's Music Management program serves students seeking a degree through its Conservatory of Music, Business School, and other majors who may be working toward a twenty-credit minor in Music Management. Common classes have been identified where information literacy activities and discussion can be incorporated. Even though today's student is often one who has grown up using computers from an early age (a "digital native"), the location, acquisition, and analysis of data is something that many students have not had to address using standards that require evaluation of sources for reliability, accuracy, and relevance.

In 2010, the authors began collaborative discussions which led to developing course assignments and experiences to assist students in understanding the role and importance that information literacy can have in both academic and professional settings. Since that time, they have met regularly to fine-tune curricular elements focused on improving student information literacy.

While the next section will look at specific assignments that have been developed to enhance student understanding of information literacy, other courses provide additional assignments and projects that help further extend the student's information literacy skills. These courses are either in the University General Education sequence or for Music Management majors studying in the Conservatory of Music who take a sequence of music history courses. Table 1 shows the courses and the corresponding information literacy assignments. Bold text indicates a music management course.

Year	Course	Assignments
First year, first semester	**MMGT10: Freshman Seminar**	**Scavenger hunt and library orientation**
First year, second semester	First Year Seminar 2 (General Education course)	Research paper
First year	**MMGT 11: Introduction to Music Business**	**Web Credibility Assignment** **Literature Brief Assignment: Analyze and interpret industry data to draw conclusions**
First year, second semester	Music History Survey	Library project
Junior year	**MMGT 111: Music Industry Analysis**	**Rock's Back Pages Assignment: Using and analyzing primary sources to develop an argument** **Research project**
Junior or senior year	Upper level music history course	Research project
Senior year, second semester	**MMGT 196: Senior Seminar**	**Company Profiles Assignment: Researching potential employers**
Senior year	**MMGT 199: Exit Examination**	**Oral exam before a panel of experts requiring selection and interpretation of industry facts and knowledge to demonstrate competency and fluency**

Table 1. Courses with information literacy assignments – Music Management degree track.

Key Assignments

Below are summaries of selected assignments and the ways they help students develop information literacy skills.

Library Introduction (MMGT 10)

Within a few weeks of coming to campus, students spend a class period of the First Year Seminar (MMGT 10) in the library on a scavenger hunt—seeking out a book, a music CD, a magazine, a scholarly periodical, and an electronic document. Students are asked to find physical materials held in the library, as well as to access specific electronic databases of journals and articles. The instructor explicitly emphasizes that a library is much more than stacks of books—it is a resource center for information that can be used to learn, grow, and develop as a music manager in training. Librarians are introduced as helpful guides for finding and using information resources effectively.

Web Credibility Assignment and Literature Brief (MMGT 11)

In the first year, students take an introductory music business class (MMGT 11) to provide them with an overview of the industry, which includes how various sectors operate and who the players are that make up the backbone of the entertainment business. Early in the term, students are asked to identify three websites that they use to gather information about the music industry and to then rank them in order of credibility and report their findings. Students use a ten-point listing of criteria that can be used to determine the relative authority and accuracy of their chosen sites.[19]

In the latter part of the term, students are assigned to write a Literature Briefing, based on a current article from *Billboard* (see Appendix A). The student is told to consider that he or she is employed as an analyst at a music industry business and will prepare a briefing for executives summarizing an important article, which covers a topic or issue that has been addressed earlier in the term.

Selecting an appropriate article is an important part of the assignment. Students are also required to use the full-text version of the article, either by photocopying the hard copy or accessing the electronic full-text version via the library's paid subscription to a database of such articles. They are encouraged to mark up their copies of the article and required, at minimum, to turn in a copy of the entire article to receive full credit.

The assignment instructions require a summary of the article as well as the student's own analysis of why the information in the article is important. Finally, the student is asked to recommend a specific course of action to be taken by the "employer" based on the new information learned from the article and the subsequent analysis.

Within this assignment, students are challenged to build their information literacy, analytical, and written communication skills to achieve the intended outcome: a persuasive, accurate, and thoughtful brief that demonstrates understanding of a particular music industry issue or topic. A rubric was designed based on the Association of American Colleges & Universities (AAC&U) standards to assess this assignment (see Appendix B). Students earning a grade of A or B on the assignment have demonstrated their ability to use a trade magazine article to develop and make a case that is plausible. Students earning a C or lower have not yet demonstrated proficiency in these areas and will need to improve their skills through other assignments.[20]

Using Primary Sources — Rock's Back Pages Assignment (MMGT 111)

Rock's Back Pages is an electronic database of music journalism, which includes articles, interviews, and audio clips from the last fifty years.[21] The authors' institution began subscribing to this resource in 2011 and the authors have incorporated this resource into the curriculum in various ways.

In MMGT 111 students complete an assignment that requires them to use Rock's Back Pages to locate historical articles in popular music publications. The focus is on reading primary sources written contemporaneously to the events being covered. The librarian gives a brief demonstration of how to use the resource since it is structured differently than traditional resources from vendors such as EBSCO and ProQuest. Students must compare two articles or other primary documents on the same topic that span at least thirty years and explain how reporting on that topic or issue has or has not changed during the time span. Examples include music festivals, race or gender issues, drug use by artists, etc. Students develop a persuasive argument using the evidence that they cite in their essays.

Students learn to not only analyze biases that may be inherent in the primary sources, but also to question what actually happened versus what was reported. In addition, they are encouraged to consider how societal viewpoints may have evolved during the intervening time period and can look for other information to corroborate their argument outside the Rock's Back Pages database. This type of inquiry helps instill a healthy sense of skepticism and caution when a thoughtful and engaged student is building an argument using multiple sources.

Research Project (MMGT 111)

A required upper-division course provides students with the opportunity to continue to expand their information literacy skills. Using a survey of the past 150 years of American popular music history as a backdrop, students must develop their own thesis statement and set about developing a research paper and presentation arguing their point to an audience of peers and faculty.

The following excerpt from the course syllabus details the course learning objectives that can be met through successfully completing the research project. The instructor and librarian developed this jointly.

1. Demonstrate ability to complete substantial and thorough original research into an industry-related topic, the process of which will include:
    a. Developing and supporting an original, approved topical thesis;
    b. Ability to access needed information effectively and efficiently;
    c. Evaluating information and its sources critically and only incorporating appropriate selected information into a project as demonstrated by annotated bibliography and outline;
    d. Using information effectively to write and present a persuasive case which proves or disproves original thesis, included graded draft of essay;
    e. Using information ethically and legally, while following prescribed conventions for citation, computer-assisted in-class presentation, format, etc.; and
    f. Presenting findings effectively in the form of a research paper and in-class oral and computer-assisted presentation per class guidelines and research rubric.

This research project reflects the greatest level of direct collaboration between librarian and instructor and is organized in a prescribed sequence as follows:

Student Action	Librarian Action	Instructor Action
Thesis drafts (including peer review session)	Available for consultation	Review and approve
Reading & Research	Library tutorials and in-class library session	
Outline	Available for consultation	Review, comment, grade
Annotated bibliography	Available for consultation	Review, comment, grade
First draft essay	Available for consultation	Review, comment, grade
Final draft essay	Available for consultation	Review, comment, grade
Public presentation of findings	Attend public presentations	Coaching session, dress rehearsal, grade

Table 2. Student, librarian, instructor interaction - MMGT 111.

This sequence allows students to have multiple reviews by peers, faculty, and librarians. It also helps them learn what sources best support their arguments and how to distill source information into usable bits that can help support their thesis and argument. It's interesting to note that at this point, quite a few students are adept at gathering relevant, credible information. However, they still have limited ability to provide the necessary analysis of the sources to argue their papers effectively. The authors have found that challenging students in a writing conference with questions such as, "How does this relate to your thesis?" or "How do you know what you are stating is accurate?" is difficult for students to answer and sometimes throws them off balance, but once they eventually learn how to connect their findings (credible, relevant source material) to their arguments, they have a skill they can use the rest of their lives.

In 2011, the librarian created a short online tutorial series on topics such as "Forming an Effective Search," "Choosing a Research Topic," and "Assessing Sources." After viewing the tutorials, students attend the in-class library session. The topics covered in the tutorial are reviewed and students are shown how to search relevant library resources. Then, students complete a CRAAP (currency, relevancy, authority, accuracy, and purpose) activity. Students are divided into groups of three to four and each group is given three sources. These sources can be anything, such as an artist's Twitter stream, a YouTube video, or a peer-reviewed article.

After about fifteen minutes, the groups present their sources to the class and explain if and how they would use each one for a potential research project. This activity provides context for a larger discussion on evaluating sources.

The Research Project continues to evolve. Throughout the years, the authors have gradually started students on this assignment earlier and earlier. Presently, the students begin thinking about their research projects during the second week of the semester. Some semesters, through the University's Student Writing Center, the class has had access to a student mentor who works individually with students on developing their various drafts.

Each semester the authors have adapted the amount of interaction that the librarian has had with the class. One semester, the authors heavily advertised the librarian's office hours and encouraged all students to make individual meetings. Approximately half of the students met with the librarian at least once and those students received higher grades on the final research paper. On average, the students who met with the librarian scored twenty points higher than those who did not. Students could earn up to 250 points. However, this is a correlation and not necessarily causation. It is possible that the reason the students who met with the librarian scored higher on their research papers was because they were more persistent than their peers to succeed in this particular assignment.[22]

For the upcoming term, the authors plan to devote two consecutive class meeting periods to conferences following thesis approval and before the first drafts are due. On Tuesday, half the class will attend a private consultation with the librarian, while the remainder will have a writing conference with the instructor. During the Thursday class period, the students will switch.

Company profiles (MMGT196)

As part of the Senior Career Seminar (MMGT 196), students participate in another in-class library session on how to gather relevant data on firms that are prospective employers in a student's career area(s) of interest. The resources covered typically include Google Finance, LexisNexis, and other library-licensed databases. Students must research a total of three companies. They are given a list of companies and must choose one public and one private company from the list. Students choose any company they want for their third company. This assignment shows them what kind of information is publicly available in comparison to what information either requires payment for access or is not available. The assignment also helps them to identify where to find reliable business information and gives them the practice of looking up company information they will need as they prepare for interviews and careers in the music management field. Students are encouraged to step out of their comfort zones and call the businesses that they selected when they have problems finding the information they need to complete the assignment.

Exit Exam (MMGT199)

During students' final semester in the program, they are required to complete an Exit Exam (MMGT 199) which draws on the breadth of major-specific knowledge acquired and asks them to think on their feet by responding to broad questions related to these knowledge areas.

- Area 1. General music industry knowledge
- Area 2. Music publishing and intellectual property
- Area 3. Technology and its role in the music industry
- Area 4. Student selected career area—topical question
- Area 5. Career mapping question

Students enter a conference room and face a panel made up of practitioners and faculty members who ask questions and then adjudicate the responses. Students receive a copy of their first question, and then have ninety seconds to develop their argument before launching into what is intended to be a three-minute answer. While this is a high stakes experience for students, since they must pass the exam to graduate, it closely parallels the interviewing process they will soon be experiencing in the industry. See Appendix C for the MMGT 199 exam rubric.

This exam provides the most comprehensive means to evaluate just what students have learned and retained over their time in the Music Management program. It also serves as motivation for students to actively engage in research and be current on industry trends, with the express purpose of preparing them for both exam success and being able to speak with confidence and accuracy as they navigate the industry post-graduation. In this way, information literacy ties directly to career preparedness by design. Involving practitioners on the adjudication panel helps to take the students further out of their comfort zones and more closely simulate the job interview process.

Information Literacy Assessment at University of the Pacific

Information literacy assessment at the institution-level has been led by the university's librarians. In 2011, 2012, and 2014, the library administered the Standardized Assessment of Information Literacy Skills (SAILS) Test. The results showed that first-year students at the University of the Pacific score lower on the test in comparison to first-year students at other doctoral-granting institutions. But when Pacific students are at or near graduation, they score higher than seniors at other doctoral-granting institutions. Unfortunately the sample size was too small to isolate students in the Conservatory of Music, let alone the Music Management Program. Nevertheless, the library intends to administer the test again with a much larger sample size, which will provide more data that will hopefully show how students score based on major and skills.

Taking this data along with the Music Management students' grades, which are being tracked longitudinally in key assignments such as those listed here, the authors hope to have a well-rounded assessment of music management students' information literacy skills in the coming years as the program continues to evolve.

Looking Ahead and Conclusion

In 2014-2015, the authors' music management program will be undergoing a major curriculum shift via a newly proposed music industry studies degree. One of the new classes will be a two-semester, self-directed Senior Project that will require students to do competitive analysis and feasibility evaluation of a product or service they may wish to launch. This will afford another opportunity for students to strengthen their information literacy skills. The authors plan to continue incorporating these types of assignments and instruction and will explore opportunities to alter the curriculum as needed. The authors expect that external factors, such as WASC's emphasis on information literacy assessment at or near graduation, will continue to be an influence.

Music management programs must stay nimble and flexible in the ways they educate future music industry leaders because the profession continues to evolve. It is the authors' belief that music business programs can only benefit from the type of instructor-librarian collaborations outlined in this essay. The ongoing co-evaluation of student essays, presentations and research methods, and findings by instructors, librarians, and administrators helps to ensure that the intended outcomes from information literacy assignments are being achieved.

Due to the rapidly expanding sea of freely available information and the music management profession's expressed need for employees who are capable of finding, evaluating, and using information, the authors maintain it is vital to incorporate information literacy assignments into the management curriculum when possible. By incorporating assignments that emphasize these skill sets, students will learn the transferable skills they need to succeed in the workplace, as well as gain confidence. Information literacy is, more than ever, a vital set of skills that students need to develop before graduating.

MMGT 11
Guidelines for Trade Publication Literature Briefs & Analysis

A "brief" is a short summation on a topic, theme or issue that is written expressly to convey the most important elements of that topic for a reader who may not be completely familiar with the topic, although they usually have general industry knowledge. A well-written brief will provide the reader with a clear and basic understanding of the key issues and what bearing they may have on the situation or parties involved. They are often written by junior staff to prepare, or "brief," executives for upcoming meetings.

<u>For this assignment, pretend you work as an intern for a mid-sized record label. You will be writing the brief to your boss, the label's Vice President, from that perspective.</u> Your assignment will be to report on a significant article from *Billboard* magazine and assess the topic's likely impact on your company's future business. You will use a <u>breaking news</u> article from the <u>print edition</u> of *Billboard* for your brief. Current issues are found in the library or may be borrowed from instructor. The Billboard.com and Billboard.biz free sites do NOT publish the entire articles from the print edition, thus may not be submitted as your article for these papers. ***You must attach a copy of the article to your submission.***

STEP 1 – Research
Find a <u>recent</u> issue of *Billboard*. Find an article of substantial length and depth (breaking news stories often make especially good sources), which covers a music industry business, company, topic, or trend that is relevant to the materials covered in class. Please do NOT use an artist profile, commonly referred to in the industry as a "puff piece" as your source. *The more controversial the subject of the article is, generally the more fruitful it will be for your brief.*

STEP 2 – Analysis – Read your article (more than once) to and analyze <u>how the article/the article's content affects your record label and the music industry as a whole</u>. **Consider these questions as you read and analyze the article –** *<u>these are not all-inclusive</u>*. There will likely be issues that should be addressed in *addition to or instead of* these questions.

- How is it relevant to today's music industry?
- What territory is discussed? (i.e., domestic, international, regional)?
- Does the article's author simply report the facts, or does she/he also provide some interpretation or analysis of the evidence presented?
- What other sources are cited in the article? (Industry experts, attorneys, managers, demographers, economic data, etc.)
- Are there any biases or perspectives that the author of the article possesses that may influence the manner in which the information contained in the article is received by your employer?
- Does the information pose a threat or an opportunity, or a combination of both? Be clear as to why you think the information will be either (or both).

STEP 3 – Suggestions
Consider what the content of the article means for your company and *formulate suggestions* as to what your employer should do regarding the content of the article.

Appendix A. MMGT 11 - Lit Brief assignment.

STEP 4 - Writing the Brief -please follow these instructions closely
Identify your name, class, and due date in the heading. Also be sure to include the article title, author, publication name and date of publication. Your memo should have three sections: a summary, an analysis, and suggestions for your company. Be sure to separate these sections *using headings and subheadings* to facilitate easy reading.

In the first section, **summarize** the article that you chose. A summary is a concise statement of the main point(s) of an article. Being able to break down an article and decipher its main points is important. **Summarizing is an exercise in brevity.** To effectively summarize the article, read it through once. Then, read it again and list all the points that the author makes. Once you have your list, look for a common theme and write **one** sentence that summarizes, connects, or combines all of the points together. This is your **main point**. Now you need to find what facts the author used to support the main point. Re-read the article and make a list of all of the evidence or proof that the author uses to support the main point. Then, see if you can categorize those pieces of evidence or proof together into groups so that you can make them as concise as possible. Next, draft your summary. Only include information that is pertinent to your analysis and suggestions (the other information is not relevant). Be sure that you are concise but thorough.

In the second section, provide an **analysis** of the article. Consider the questions in step 2, above. Your article's subject and content will dictate your analysis, and a brief that merely answers the questions will not receive a good score.

In the third section, provide **suggestions** for your company. This section should be *persuasive*. That means that you are trying to *convince your employer to do what you are suggesting*. This section should be more than a list of suggestions. You should elaborate and explain why your suggestions should be implemented.

<u>Attach a photocopy of the article to your brief</u>. It is important that you present the relevant information in a clear and *concise* fashion. <u>Do NOT recapitulate the article's content; instead focus on answering the questions above and making recommendations for your supervisor, who may not be fully up to speed on this issue.</u>

Grammar and spelling are of utmost importance. Note where you place commas and periods when using quotation marks. Staple your assignment when you turn it in. Remember that use of the words, "I," "me," "my," etc. make your writing less formal and less persuasive. Accordingly, those words should be avoided.

Please consider using the University Writing Center – they are an amazing resource for you!

Draft Due March 5, 2014

Final Due April 23, 2014

Appendix A. MMGT 11 - Lit Brief assignment (continued).

MMGT 11 Rubric for Lit Brief Assignment

Students will complete one Lit Brief during the semester after completing a previous assignment to assess credibility of online resources. For this assignment, students will be assigned a mock job requiring them to perform research on the music industry by reading a current and significant article from *Billboard* magazine. Students will then prepare a memorandum directed to their supervisor that (1) summarizes the content of the article, (2) analyzes the article based on the specific field in which they are employed, and (3) proposes suggestions or a course of action for their supervisor or company to implement in light of the article's content.

Rubric for GE Area I-B Written and Critical Thinking Skills in Lit Brief

	Exemplary - "A" range	*Very Good - "B" range*	*Meets the Standard - "C" range*	*Does not meet the Standard - "D-F" range*
Writing Skills: Context of and Purpose for Writing *Includes considerations of audience, purpose, and the circumstances surrounding the writing task(s).*	Demonstrates a thorough understanding of context, audience, and purpose that is responsive to the assigned task(s) and focuses all elements of the work.	Demonstrates adequate consideration of context, audience, and purpose and a clear focus on the assigned task(s) (e.g., the task aligns with audience, purpose, and context).	Demonstrates awareness of context, audience, purpose, and to the assigned tasks(s) (e.g., begins to show awareness of audience's perceptions and assumptions).	Demonstrates minimal attention to context, audience, purpose, and to the assigned tasks(s) (e.g., expectation of instructor or self as audience).
Writing Skills: Content Development	Uses appropriate, relevant, and compelling content to illustrate understanding of the subject, conveying the writer's perspective, and shaping the whole work.	Uses appropriate, relevant, and compelling content to explore ideas within the context of the discipline and shape the whole work.	Uses appropriate and relevant content to develop and explore ideas through most of the work.	Uses appropriate and relevant content to develop simple ideas in some parts of the work.

Appendix B. MMGT 11 - Lit Brief scoring rubric.

Writing Skills: Control of Syntax and Mechanics	Uses graceful language that skillfully communicates meaning to readers with clarity and fluency, and is virtually error-free.	Uses straightforward language that generally conveys meaning to readers. The language in the brief has few errors.	Uses language that generally conveys meaning to readers with clarity, although writing may include some errors.	Uses language that sometimes impedes meaning because of errors in usage.
Critical Thinking: Influence of context and assumptions	Thoroughly (systematically and methodically) analyzes article, evaluating for the relevance of context, bias, assumptions, and current trends in the music industry when presenting a position. Position is supported by concrete deductions that merge article contents and course material.	Identifies the presence of bias and assumptions and their impact on student's position. Analysis of context does not extend beyond that discussed in article. Makes reasonable deductions and assumptions to support position.	Accepts article as fact; does not question validity or application of facts and evidence contained in article to current situation/ context. Makes some reasonable deductions unrelated to student's position.	Student's analysis does not extend beyond article's commentary or analysis. Student repeats or rephrases the article's analysis.
Critical Thinking: Analysis and Application to Current Situation	Student suggests a unique course of action supported by facts and evidence from the course material and article. Acknowledges other means of reaching the same end and explains why they are inferior to student's suggested course of action.	Student suggests an appropriate course of action supported by facts and evidence from the course material and article.	Student suggests a course of action that is simplistic and obvious or fails to support an appropriate suggestion with facts and evidence.	Student lacks a course of action; the course of action is not evident or misinterprets facts and information presented in the course material and article; student repeats or rewords the exact strategy discussed in the article.
	Exemplary - "A" range	*Very Good - "B" range*	*Meets the Standard - "C" range*	*Does not meet the Standard - "D-F" range*

Appendix B. MMGT 11 - Lit Brief scoring rubric (continued).

MMGT 199 Rubric for Exit Examination

All SCHOOL OF MUSIC Music Management students must complete the Exit Examination prior to graduation. The exam is given each spring term and consists of a seven-week colloquium followed by individual oral exam hearings before of a panel of faculty and practitioners. The colloquium is designed to help students prepare for oral elocution at their hearing. Evaluation of each student's performance is based on the rubric below. The first table (Specific Areas) is used on each of the student's answers for the five different topical areas. The second table (Holistic Evaluation) is used to evaluate the student's overall performance during the hearing.

A passing score will be 70 or more total points on the Exit Exam. In the event a student does not pass at the first hearing, specific topic areas may be orally re tested one additional time. If a student is unable to demonstrate having met the standard after two hearings in a specific topical area, they will be afforded an opportunity to demonstrate subject mastery via written submission under the direction of the Program Director.

Specific Areas of Evaluation for Each Question (5 questions, each 10% of score)

	Exemplary (5)	*Very Good (4)*	*Meets the Standard (3)*	*Does not meet the Standard (2)*
Central Message	• Central message is compelling (precisely stated, appropriately repeated, memorable, and strongly supported)	• Central message is clear and consistent with the supporting material	• Central message is basically understandable, but is not often repeated and is not memorable	• Central message can be deduced, but is not explicitly stated in the presentation
Information Quality, Variety and Analysis	• Use a variety of types of credible supporting materials from relevant authorities, such as: - Explanations, examples, illustrations, statistics, analogies, and quotations • Make appropriate reference to information or analysis that significantly supports the presentation or establishes the presenter's credibility/authority on the topic	• Use credible supporting materials from relevant authorities, such as: - Explanations, examples, illustrations, statistics, analogies, and quotations • Make appropriate reference to information or analysis that generally supports the presentation or establishes the presenter's credibility/ authority on the topic	• Use some credible supporting materials from relevant authorities, such as: - Explanations, examples, illustrations, statistics, analogies, quotations • Make appropriate reference to information or analysis that partially supports the presentation or establishes the presenter's credibility/authority on the topic.	• Use insufficient credible supporting materials from relevant authorities, such as: - Explanations, examples, illustrations, statistics, analogies, quotations • Make reference to information or analysis that minimally supports the presentation or establishes the presenter's credibility/authority on the topic.
	Exemplary (5)	*Very Good (4)*	*Meets the Standard (3)*	*Does not meet the Standard (2)*

Appendix C. MMGT 199 - Exit Exam rubric.

Holistic Evaluation for Student's Overall Performance (50% of score)

	Exemplary (5)	*Very Good (4)*	*Meets the Standard (3)*	*Does not meet the Standard (2)*
Organization & Time Management (2:30-3:00 per answer) *(Organizational pattern = specific introduction and conclusion, sequenced material within the body, and transitions)*	• Presenter effectively uses allotted time. • Organizational pattern is: - Clearly and consistently observable - Skillful - Makes the content of the presentation persuasive.	• Presenter effectively uses allotted time. • Organizational pattern is: - Clearly and consistently observable	• Presenter effectively uses allotted time. • Organizational pattern is: - Intermittently observable	• Presenter ineffectively uses allotted time. • Organizational pattern is: - Not observable within the presentation
Language & Delivery	• Language in presentation is appropriate to the audience • Speaker appears polished and confident • Language choices are imaginative, memorable, and compelling, and enhance the effectiveness of the presentation • Delivery techniques (posture, gesture, eye contact, and vocal expressiveness) make the presentation compelling	• Language in presentation is appropriate to the audience • Speaker appears comfortable • Language choices are thoughtful and generally support the effectiveness of the presentation • Delivery techniques (posture, gesture, eye contact, and vocal expressiveness) make the presentation interesting	• Language in presentation is appropriate to the audience • Speaker appears tentative • Language choices are mundane and commonplace and partially support the effectiveness of the presentation • Delivery techniques (posture, gesture, eye contact, and vocal expressiveness) make the presentation understandable	• Language in presentation is not appropriate to the audience • Speaker appears uncomfortable • Language choices are unclear or minimally support the effectiveness of the presentation • Delivery techniques (posture, gesture, eye contact, and vocal expressiveness) detract from the understandability of the presentation
	Exemplary (5)	*Very Good (4)*	*Meets the Standard (3)*	*Does not meet the Standard (2)*

Appendix C. MMGT 199 - Exit Exam rubric (continued).

Endnotes

1. Josh James, “How Much Data is Created Every Minute?” *Domo*, June 8, 2012, accessed June 2014, http://www.domo.com/blog/2012/06/how-much-data-is-created-every-minute/?dkw=socf3.
2. “What is the NFIL?” *National Forum On Information Literacy*, accessed June 20, 2014, http://infolit.org/about-the-nfil/what-is-the-nfil/.
3. “Information Literacy Competency Standards for Higher Education,” *American Library Association*, 2006, accessed June 20, 2014, http://www.ala.org/acrl/standards/informationliteracycompetency.
4. As of this writing, an ACRL task force is extensively revising the “Information Literacy Competency Standards for Higher Education.”
5. The authors’ institution is a member of WASC.
6. WASC, *Handbook of Accreditation*, July 1, 2013, accessed June 20, 2014, http://www.wascsenior.org/content/2013-handbook-accreditation.
7. Alison J. Head et. al., “What information competencies matter in today’s workplace?” *Library and Information Research* 37, no. 113 (2013): 74.
8. Ibid., 91.
9. “The Skills and Qualities Employers Value Most in Their New Hires,” *National Association of Colleges and Employers*, accessed June 20, 2014, http://www.naceweb.org/about-us/press/skills-employers-value-in-new-hires.aspx.
10. Law student Thomas Cribbin expressed the frustration that many undergraduate programs do little to prepare graduates for the actual work environment they will be competing in. “Colleges Must Emphasize Real-World Skills,” *The Courant*, March 11, 2014, accessed June 24, 2014, http://articles.courant.com/2014-03-11/news/hc-op-fresh-talk-focus-college-courses-on-work-ski-20140311_1_college-students-student-debt-college-graduates.
11. See Tonya D. Butler, “Blue T.O.M. Blueprint: A Case Study on the Creative Design of a Student-Run Record Label,” *MEIEA Journal*, 7, no. 1 (2007): 99-118. And Guy Morrow, “Testing ‘Music 2.0’: Building an International Network of Student-Run Music Companies to Assess New Music Business Models,” *MEIEA Journal* 8,

no. 1 (2008): 105-139.
12. This advisory board is made up of program alumni and industry professionals who provide advice to the program and help see that the evolving curriculum is in step with industry needs.
13. Jeffrey J. Selingo, "The Diploma's Vanishing Value," *The Wall Street Journal*, April 26, 2013, accessed June 20, 2014, http://online.wsj.com/news/articles/SB10001424127887324874204578440901216478088.
14. For an example of an article discussing a for-credit class: Nancy Goebel et. al., "Assessment within the Augustana Model of Undergraduate Discipline-Specific Information Literacy Credit Courses," *Public Services Quarterly* 3, no. 1-2 (2007): 165-189.
15. For an example of an article discussing an in-class library activity: Veronica A. Wells, "Hunting for QR codes: Linking students to the music collection," *Music Reference Services Quarterly* 15, no. 3 (2012): 137-148.
16. For an example of an article discussing library tutorials: Mariela M. Gunn and Cynthia E. Miree, "Business information literacy teaching at different academic levels: an exploration of skills and implications for instructional design," *Journal of Information Literacy* 6, no. 1 (2012): 18-34.
17. Beth Christensen, "Warp, Weft, and Waffle: Weaving Information Literacy into an Undergraduate Music Curriculum," *Notes, the Quarterly Journal of the Music Library Association* 60, no. 3 (2004): 616.
18. Ibid., 616.
19. The authors would like to acknowledge Professor Gabrielle Beatrice from Sacramento City College who first developed this assignment and kindly shared it with them. The ten-point criteria for evaluating web site credibility were developed by Professor BJ Fogg who directs the Persuasive Technology Lab at Stanford University, accessed July 1, 2014, http://www.slideshare.net/bjfogg/web-credibility-bj-fogg-stanford-university. Additionally, the authors suggest that instructors of introductory music business courses may wish to clearly identify some of the leading authorities in a specific area to students as a baseline of credible commentary (e.g., *Billboard* Editor Ray Waddell with regard to concerts and touring, or Harold Vogel on entertainment industry economics).

20. Special thanks to Professor Dana Myers who has further refined this assignment during her time teaching this course. This Literature Brief assignment is also used to help evaluate the University-wide General Education standards since the course fulfills a GE requirement for majors and non-majors.
21. *Rocks Back Pages*, accessed July 5, 2014, http://www.rocksbackpages.com/.
22. Evaluating information literacy is complex, and when possible quantitative data such as test results can be one part of such evaluation. However, by taking a holistic approach, significant evidence of student information literacy skills (or their absence) may also be found through discussion with students, fluency in presenting industry information in written forms, and the student's overall ability to make a persuasive argument on an industry-related topic.

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Beyond Jamming: A Historical and Analytical Perspective on the Creative Process

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Abstract

The process of the jazz jam session was analyzed from a historical and social perspective based on literature reviews, oral histories, interviews, and survey results. The analysis produced seven factors that facilitate the successful outcome of a jazz jam session. The factors include individual competence and knowledge of the field, practicing improvisation as the ability to overcome self-consciousness, establishing a mentoring system and role models, democracy and collaboration, leaders and sidemen, community support, and a continuous evaluation system. Each factor was defined and exemplified towards a model for group creativity with suggestions for further research and applications.

Keywords: creativity, jazz, jam session, group creativity, improvisation, music education

Introduction

The goal of this project is to document the creative process of a jazz group often referred to as "jamming" from a historical, social, and musical perspective, and offer strategies for transfer of the findings to any group setting. While there are some authors who have drawn parallels between the creative process of jazz musicians and general creative thinking techniques,[1] this article adds an in-depth historical and social perspective based on personal interviews, surveys, and a variety of historical documents. The broadened scope of "jam" settings and historical evolution enlightens the dynamics and social context of the creative process and also preserves essential historical facts of the first century of jazz history. In addition, analysis of the "jazz jam" process reveals seven factors that facilitate group creativity. Definitions and examples of these factors frame a possible model for innovative group interaction, thus serving the needs of our current creative economy.

Originally used as a verb, jam indicated cramming as many musicians as possible into one room. Carr, Fairweather, and Priestley (1987) suspect though that the idea of cramming the maximum number of ideas into each solo comes closer. The term jam session came to denote informal gatherings of musicians allowing for extended playing opportunities away from the demands of their regular jobs. The sessions also bring together artists from different bands and diverse playing levels.

Paul Berliner (1994) points out that sessions may arise spontaneously when musicians drop in on each other at practice studios. They might arrange invitational practice sessions lasting a long time, often playing one single tune for hours. Such relaxed environments were ideal for learning and the exploration of new ideas. Of course, nightclubs often offered more formally organized sessions during afternoons, after hours, or for Sunday matinees. Art Farmer recalls[2] just walking the streets at night and going from one place to another. Sometimes musicians would distinguish those sessions in terms of skills of the participants. Certain clubs hosted groups with more advanced players and potential jammers would not dare to sit in until they knew the repertoire. Probably some of the most documented and well-known sessions were in the 1940s in Minton's Playhouse, Monroe's Uptown House, and Small's Paradise Club in Harlem. On the other hand, other settings often not perceived as jam environments, such as "Jazz at the Philharmonic" or performances by "Riff" Big Bands were crucial in developing the language and etiquette of jazz performance in form of a repertoire of common beginnings and endings, accompaniment patterns, stylistic conventions, as well as musical skills for the participants.

Throughout its historical development from the New Orleans red light districts to concert halls, from party music to art form, from segregation to worldwide integration, from musical illiteracy to integration into the university curricula, the model of the jazz combo combining improvisation with collaboration has proven successful as an incubator for innovation and creativity. As economic development increasingly depends on novel ideas and creative group interaction, the study of the dynamics of the jazz model and factors influencing the process of group creation could encourage new models of entrepreneurship and business innovation. In his book *Jamming - the Art and Discipline of Business Creativity* (1996) John Kao takes a similar approach by analyzing the process of creative thinking as an analogy to a group of jamming jazz musicians.

This article presents an analysis of the historical and social context of the jazz jam session as a tool for training young musicians, developing creativity, and professional networking. Based on interviews and excerpts from oral histories with prominent jazz musicians as well as survey data and personal experience as touring jazz musicians, a series of factors were identified that shape the creative group process in the jam session model. Examples for transfer to a variety of creative group settings and successful applications are also provided in order to encourage further investigation and discussion.

Historical Context

Early jam session culture is often romanticized as a purely non-commercial form of music making with a myth of primitivism attached, meaning minimal formal training. Ted Gioia[3] finds a romantic portrayal of jazz life in the early writings of critics such as Hugues Panassié[4] based in urban black folk culture. He points out how the primitive ideals of pioneering European jazz writers Hugues Panassié, Charles Delaunay, and Robert Goffin have formed an expectation of excitement and frenzy still present today. One of the most critical attributes of a jazz performance is the label "cerebral" in contrast to the praise "with feeling."[5] Lopes[6] clarifies though that the pleasure of jam sessions was not an exclusive reserve of untrained musicians but also part of black professional musicians' artistic lives. In fact, many of the celebrated early black artists were quite literate musicians, e.g., pianist Lil Hardin (Armstrong) who was a graduate of Fisk University, and many others who joined professional orchestras early on, requiring a high level of music-reading literacy.

As collecting "hot" jazz records became popular among white male jazz enthusiasts in the early 1930s, a new culture of jazz aficionados played a major role in the transition of jazz from entertainment to art. These increasingly large groups of jazz enthusiasts believed that the Great Depression had left behind real jazz as a stepchild of music commercialism. Besides being avid collectors, they formed hot jazz societies producing their own jam sessions and concerts, as well as their own recordings. In fact, jam sessions were viewed as the most authentic expression of jazz with the main focus on improvisation. The settings for such sessions were recording studios, hotels, clubs, inns, restaurants, and private homes. Hot clubs were established in numerous cities around the United States, inspired by the hot club scene in Europe. Eventually, Milt Gabler, John Hammond, and Marshall Stearns organized a national network for the emerging hot club culture, the "United Hot Clubs of America" (UHCA) in 1935, supporting the presentation of organized jam sessions usually on Sunday afternoons, as well as small concerts and independent recordings, around the country. In order to avoid conflicts with the union, musicians usually received minimum union scale and the events were entitled Jazz Matinees.[7]

Jazz impresario Norman Granz successfully expanded the jam session concept from clubs into the concert halls and recording studios. The *Jazz at the Philharmonic* (JATP) series was based on the principle of staging concerts without previous rehearsals, thus inviting the audience to witness a jam session. Granz intentionally invited performers with contrasting styles and personality to be featured hoping for explosive excitement on stage similar to a revival meeting, such as the saxophone acrobatics of Illinois Jacquet. In fact, trombonist J.J. Johnson recalls during an interview with David and Lida Baker for the Smithsonian Oral History Projects standing behind the stage with Granz, where he exclaimed, "J.J., the only meaningful music is jam sessions and the Blues. All other music is pure bullshit."[8]

Especially young audiences in the 1940s and 1950s responded to the exciting and unpredictable environment of these concerts, often spilling over into rowdiness. The concerts were recorded and released on Granz's various labels together with large amounts of studio sessions produced without rehearsals and from first takes. Granz confirmed in a 1979 article in *Down Beat* magazine that the concerts were the most profitable aspect of his enterprise, while the recordings rarely recouped their investments.[9]

Even though these concerts were commercially successful, and Granz was also celebrated as a civil rights crusader due to his insistence on integrated audiences and performers, the history of jazz seems to have some surprising parallels to the history of boxing at this time. Staged "cutting" contests focusing purely on the competition between performers are quite reminiscent of aggressively pitting individuals against each other in a sporting event. Dizzy Gillespie drew on the image of boxing to exemplify the notion that in such public cutting contests the winner achieved not only a victory for himself but for everyone.[10] He further notes: "Black people appreciate my playing in the same way I looked up to Paul Robeson or to Joe Louis. When Joe would knock out someone, I'd say, 'Hey…!' and feel like I'd scored a knockout. Just because of his prowess in his field and because he's black like me."[11]

Furthermore, jazz record producer Bob Weinstock built the success of the Prestige label on a jam session environment in the recording studio. He often sent his musicians into the studio without rehearsal and encouraged them to write original songs and record in long, jam-style takes.[12] Some of the best known jazz tunes are the results of these sessions, including Sonny Rollins' "St. Thomas" and "Pent-up House," John Lewis' "Django," Lee Konitz's "Subconscious-Lee," and the famous saxophone exchange of Sonny Stitt and Gene Ammons on "Blues Up and Down." In addition, the Miles Davis recordings *Relaxin' with the Miles Davis Quintet, Steamin' with the Miles Davis Quintet, Workin' with the Miles Davis Quintet, and Cookin' with the Miles Davis Quintet* were completed in two days of non-stop jam sessions on May 11 and October 26, 1956 with producer Rudi van Gelder at the request of Weinstock, before he released Davis from his contract with Prestige in order to record for the Columbia label, and are still considered some of his finest work. Concerns have been raised that such commercial exploitation of the after-hours jam sessions in the 1940s and beyond undermined the community-centered and mentorship core of such sessions by promoting the image of the competitive individualist and the angry maverick.[13]

Especially due to the after-hour nature of the sessions, noise issues, limited financial resources of club owners and musicians, and with the rise of a bohemian arts underground culture in New York, the informal gatherings of jazz musicians moved into the emerging New York City loft scene. In 1954 David X. Young, a twenty-three-year old painter from Boston, together with musicians Hall Overton and Dick Cary, moved into a large, low-rent place at 821 Sixth Avenue. Young recalled, "The place was desolate, really awful. The buildings on both sides were vacant. There were mice, rats, and cockroaches all over the place. You had to keep cats around to help fend them off. Conditions were beyond miserable. No plumbing, no heat, no toilet, no electricity, no nothing. My grandfather loaned me three hundred dollars and showed me how to wire and pipe the place."[14]

821 Sixth Avenue became the main after-hours gathering place for jazz musicians over the next two decades. Pianist and composer Dave Frishberg recalls "playing in a free atmosphere all night long without anybody complaining or hearing you except the guys you were playing with." Gatherings usually started after 11pm and continued into the morning hours with a general expectation of playing well and with drugs and alcohol freely available.[15] The informal gatherings of musicians in the downtown lofts became the seeds for the fertile period of "Downtown Music,"

a series of boundary-pushing music presentations in loft venues from 1971 to 1987. Main venues were The Kitchen, where composers Steve Reich and Philip Glass premiered some of their most influential works, and Sam Rivers' loft, central for the avant-garde jazz scene.[16] Notable is that similar to the commercialization of the jam sessions by the Jazz at the Philharmonic concerts, the open jam environment of the 821 Sixth Avenue loft scene now had transformed into more formalized public concert venues. The opening of the Knitting Factory in 1987 completed this transformative cycle.

Over the past two decades, economic demands on jazz clubs have risen and many performance venues have disappeared. In order to stay profitable club owners rely on food and drink consumption by paying audiences. Long-term jam session host Robert Porter confirmed that, "Most club owners do not understand jam sessions. Most of them aren't into it—they're about making money."[17] He believed that it is now the responsibility of the jam session host to develop a positive relationship with the club owner and teach him or her about the function of the jam session, including the need to bring up the occasional "clunker" and have longer intermissions in order to allow for instruction and networking. As a result of diminishing public venues, jam sessions are increasingly found in private settings such as homes and educational institution, even as recently witnessed in Germany, in the facilities of a local auto mechanic on a Sunday afternoon.[18]

An additional component of this study was a survey conducted by the authors between April and November 2012. 370 jazz musicians ranging from beginners to professionals with a wide variety of experiences and instruments participated in the online survey in response to an invitation distributed through a variety of jazz and jazz research lists. In response to the question on where and how frequently they participate in jam sessions, it seems that rehearsal spaces and private homes are currently more frequent jam spaces on a weekly basis, followed by jazz clubs on a monthly basis (Figure 1).

The function of the jam session has taken on various forms due to the aforementioned historic, economic, and social changes. While it can be a tool to evaluate the skill levels of new players, often referred to as cutting contests,[19] sessions now serve mostly as opportunities to enable musical connections, train young players through mentoring, hone improvisational skills in front of an audience, and develop repertoire and musical style.

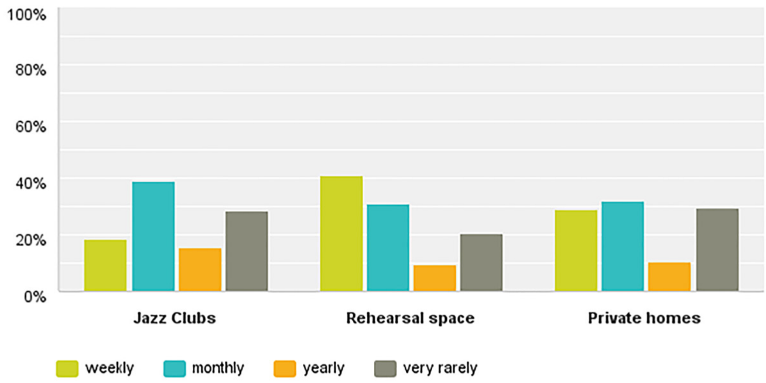

Figure 1. Where do you participate in jam sessions and how frequently?

Sessions may also become rituals of purification and affirmation for musicians after the confinement of performing commercial engagements.[20] Bobby Hutcherson remembers from the early 1960s:

> There was [*sic*] so many really great musicians around in those days that were all—we used to have—we played these gigs in Los Angeles, and then we'd have after-hours. After hours we go from—we played from eight to twelve, have a break. After hours, we go from two to six. We go to the after-hours jam session, two to six. Everybody go for breakfast, and then we'd play that morning from 7:30 to 10:30. Got to bed, go to sleep, and get back up and do it again. That was the school.[21]

Survey data confirmed the importance of these functions as well as the crucial intrinsic motivation of pure enjoyment, as noted by 38 of 77 additional comments (Figure 2).

Social Context

A set of shared expectations and goals have shaped rules and norms for jam sessions that maintain a social structure and provide the basis for a successful creative outcome. These rules are highly flexible and open for revision depending on the circumstances of any particular jam session, but overall they help maintain a degree of stability.[22]

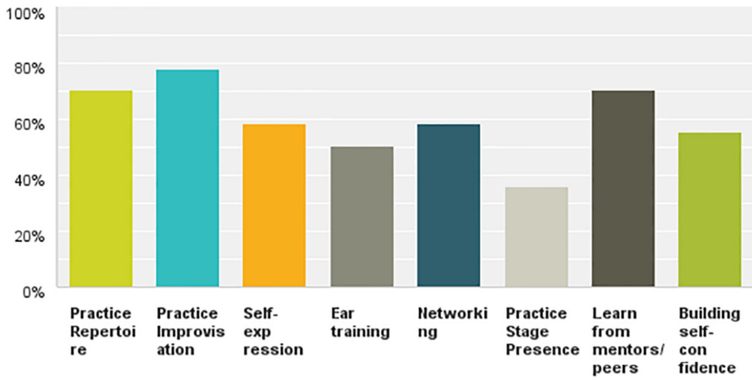

Figure 2. Why do you participate in jam sessions (mark all that apply)?

In fact, having limitations on the range of behavioral and musical choices enable creative collaboration and reduce individual uncertainty.[23] Musical structures include of course the grammar of music theory as well as songs. The chosen songs feature particular patterns of chordal structures and immediately provide information on time, chord progression, chorus length, and complexity. Musicians who are familiar with the song may use this information in creating variations on musical themes. Hence, the level of collaborative creativity then directly depends on the skill and knowledge level of all collaborating musicians, with the weakest participant dictating the limits of creative potential. Social structures include behavioral norms and communication codes. Such codes are also referred to as etiquette and usually include visual and verbal cues.

Traditionally, [24] the young players quietly observed what the older players did at jam sessions and learned the rules and etiquette of improvisation. Bassist Lynn Seaton recommends:

> Well, I think it's smart if you're wanting [*sic*] to meet new people, to listen to them first. Especially if they're an established player you should know something about what they do, you know. And, I think that's smart.[25]

Some of the rules include adjusting the length of one's solo to the standard that previous players at a session have set. Playing longer than the previous soloists would be rude, playing less would indicate inferiority. Guitarist Corey Christiansen shares his thoughts:

> And, don't take more choruses than anybody else. Usually, the best way is if it's your first time in a jam session maybe just not only listen for this during the tunes you're not playing on but when you get up there don't take the first solo. Listen to how many choruses, maybe the first and the second soloist and then you kind of gauge what's going to be appropriate for that session.[26]

Jazz is often considered a model for democracy, especially in a jam session situation. Every participant is considered equal when entering the bandstand and everyone is expected to listen closely to one another in order to develop a collective direction. Of course outcomes vary as players are usually on unequal levels and might or might not have acquired the traditional etiquette rules.

> …it's a sad sight to see somebody get up on stage and just be in way, way over their heads. And, in New York especially it's real cold and people don't show any mercy. And, they don't, you know, they say, well, that's the way you learn. You get up and you make a fool out of yourself. And, then you go home and shed for six months. And, then maybe you come back. But, that's the school of hard knocks. (John Goldsby)[27]

Additional rules include respecting the host, keeping solos short and to the point, picking tunes that everyone knows (and to lay out if one doesn't know a particular tune), to listen first and get a feel for the level and dynamics of the players, to study tunes at home and not on stage, and to dress appropriately.[28] Saxophonist Chris Hankins believes:

> You know, don't just play high, fast, and loud. And, you have to listen to the rhythm section. They may not want to do it that way. You don't just come in, take out your horn, and jump up on the stage and start playing. I think that people that, sometimes, and I, you know, it depends again

> on where they get their education. But, people that learn it from books, or learn it in a very scholastic sort of way, they lose that feeling of respect. I mean it's the whole thing of showing up in t-shirt and ripped jeans to go do a performance where people are paying you money. And, if you look at Jimmy Heath, if you look at Gene Walker, I mean, he came in in a suit to play the gig the other night. It's a respect for the music and why you're doing it.[29]

Several social mechanisms and communication tools are typically present to maintain basic etiquette rules. Nelson[30] identifies three such social mechanisms that help mediate the tension between the need for personal creativity versus the need for cooperation among the participants. First, a designated leader helps facilitate performers and their order of appearances, tunes, and tempos with varying degrees of control. Nelson refers to the second mechanism as "sanctioning behavior"[31] consisting of facial expressions, body language, comments, or a change in performance level and expression if a participant is in violation of an "unwritten rule." Such violations include calling an unapproved tune, performing at an inappropriate level, or other etiquette breaches. Finally, audience response reflects on the social reality of the event. Low response might indicate a low level of cooperation on the bandstand, while active audience responses can raise the expression and cooperation of the musicians to a higher level. Other tools include the standard terminology known by jazz insiders, such as the "head" referring to the main melody of the tune, or "trading fours" to a practice of exchanging bars of four between the soloists and the drummer, or "rhythm changes" as a particular kind of form and harmonic structure. Gestures are used to indicate the next soloist or to end a song, the audience responds with applause or other body language that communicates approval or disapproval, and even the type of tune selected for a newcomer can indicate the expectations of the band. For example calling a simple blues means taking the level to the lowest denominator as an indication of uncertainty.

It is still not uncommon though for competitiveness, jealousy, and resentment to hamper cooperative attempts. Musicians have to pay their dues, meaning they have to prove themselves and show their commitment before being accepted into the jazz community.[32] Another motivation for such "testing" of newcomers might also stem from the traditional need for jazz students to be very self-motivated learners. For the determined players such failure and public humiliation at a jam session would result in the creation of a new practice regime to overcome musical weaknesses. One of the most popular stories about turning failure at a jam session into self-determined learning is that of saxophonist Charlie Parker. At the age of sixteen, he sat in at a jam session in his hometown of Kansas City with still limited skills and as a result couldn't keep up with the band. His failure was made public by drummer Papa Joe Jones throwing a cymbal at him to force him off the bandstand. As a result, Parker went back to a rigorous practice routine and became one of the most prominent icons of modern jazz.[33] Those who persevere will be able to add a certain element of soul and individuality to their interpretations, the very essence of jazz.[34]

Touring musicians seek out sessions in different towns in order to socialize and find new ideas. Local players may also benefit from this interaction. Trumpeter Art Farmer mentions how as a fifteen-year-old growing up in Arizona, he took advantage of learning from touring musicians:[35]

> We would go over to where they were staying and invite them over to our house to play some. I remember some of the guys, if they had time, they would come over. They were very nice. They would sit down and play our little stock arrangements with us.

An incentive for club owners is the opportunity to get cheap entertainment on an off-night, which is why jam sessions usually occur during the week or on weekends after regular concert hours. Of course, the off-night scheduling could also be attributed to the high demands on audiences that such jam sessions might pose. Depending on timing and popularity, there might be long lines of horn players each taking a solo on a song, thus stretching the length of the song and the creativity of the rhythm section to its limits. Especially with varying ability levels of the soloists and the long repetition factor, the audience might be bored and lose interest. On the other hand, there is always the possibility of lightning striking in the form of some special interaction or a new player turning out to be very good. J.J. Johnson recalls one particular night during the legendary sessions at Minton's Playhouse:

> They were mind-boggling to say the least—most of them—because you would have the top practitioners of the genre, shall we say, stopping in just to have some fun. I think the one that stands out in my mind over all the others was, on this particular occasion, the night four trumpet players had a go at it. On this given night there was Dizzy [Gillespie], Freddie Webster, Fats Navarro, Miles Davis, and a fifth trumpet player—it may have been Howard McGhee. Words could not ever describe what happened on the bandstand with these five trumpet players having a go at it. It was something not to be believed. I still don't believe it. It's too bad it wasn't recorded, and it wasn't.[36]

The social structure of jam sessions can be described as concentric circles around a core of performing musicians clustering together on stage, with the second tier being the musicians waiting to get their turns, and the third tier any audience members attempting to look into that inner circle without disturbing the ambience.[37] Panassié (1942) confirms this focus on the performers and musical creation:

> This is the music they are not permitted to play in the large commercial orchestras, which they have been forced to join to earn their living… The jam session overflows and is carried away with an enthusiasm for which one could search vainly elsewhere. During these hours, the musicians play out of a love of music, without attempting to create a "work" but simply because the music makes them feel intensely alive. Here certainly music is returned to its natural state and is delivered of all preparations and artifice.[38]

Elements for Successful Group Creativity

The historical and social analysis of the jazz jam session reveals a variety of factors that seem to shape the successful outcome of the creative group process. The premise of creativity in the jazz jam gathering is based on Einstein's definition of finding new solutions by reconnecting familiar pathways: "Creativity is seeing what everyone else has seen, and thinking what no one else has thought."[39] Jazz performers engage in the jamming process with the goal of creating a new musical product of the highest possible quality. Thus an analysis of the seven facilitating factors during this process may reveal a transferrable model for group creativity.

1. Individual Competence and Knowledge of the Field

As illustrated earlier with the example of Charlie Parker's dismissal from the stage by throwing a cymbal, limited competence and knowledge of one participant inhibits the creative potential of the whole group. Jazz musicians spend hours every day listening to, imitating, and transcribing famous jazz figures.[40] Benny Golson confirmed the process of reaching for the highest competency level possible:

> By then, I knew John Coltrane. We were playing at all the jam sessions together and playing every day, trying to make out what this music was.[41]

In his book *Outliers: The Story of Success* Malcolm Gladwell (2008) described the similar example of Bill Gates who, due to his obsession with computer programming, had the opportunity as a high school student to spend countless hours in a computer lab with a group of like-minded peers as he helped a company with their payroll software. By the time he dropped out of Harvard he was way past the ten thousand hours rule of competency and ready for creative entrepreneurship.[42]

The Beatles honed their skills in the Hamburg strip club Indra from 1960 to 1962. John Lennon recalled:

> We got better and more confident. We couldn't help it with all the experience playing all night long. It was handy them being foreign. We had to try even harder, put our heart and soul into it, to get ourselves over.
>
> In Liverpool, we'd only ever done one-hour sessions, and we just used to do our best numbers, the same ones, at every one. In Hamburg, we had to play for eight hours, so we really had to find a new way of playing.[43]

That's eight hours a day for 270 days over 18 months, or 2,160 total hours of performance practice—quick progress towards 10,000 hours of practice time, the magic number for mastery (Ericsson 1990).

2. Practicing Improvisation as the Ability to Overcome Self-consciousness

Participation in a jam session requires taking a series of risks. When a player decides to join the performers on the bandstand, he or she encounters an unknown group of musicians, possibly uses an instrument or amplifier that belongs to someone else, risks having to play unfamiliar repertoire, and engages in improvisation in front of an unknown audience. Don Squires compared the process to jumping into the deep end of the pool with the options of sink or swim.[44]

According to recent research, jazz musicians actually train their brains in this type of risk-taking. Researchers Charles Limb and Allan Braun developed a special keyboard that musicians could play while lying on their backs in a brain scanner. Experienced jazz performers were asked to perform a piece of notated music and then improvise on a blues form.

> We found that improvisation (compared to production of over-learned musical sequences) was consistently characterized by a dissociated pattern of activity in the prefrontal cortex: extensive deactivation of dorsolateral prefrontal and lateral orbital regions with focal activation of the medial prefrontal (frontal polar) cortex. Such a pattern may reflect a combination of psychological processes required for spontaneous improvisation, in which internally motivated, stimulus-independent behaviors unfold in the absence of central processes that typically mediate self-monitoring and conscious volitional control of ongoing performance.[45]

Hence, through continuous engagement in improvisation, jazz musicians are actually training their brains to be risk-averse and to follow their intuition. According to the earlier definition of creativity, this is the trait needed to reframe knowledge into novel solutions. Similarly, Dennis and Macaulay (2003) introduced the metaphor of engaging in improvisation around a structured core in order to achieve higher levels of creativity, flexibility, and innovation in strategic marketing.[46] After further investigation, the team suggested a jazz-based improvisation matrix comprised of the elements of musical knowledge, role definition, quasi-autonomous leadership, open communication, and self-reflexivity as a model for a market-based organization.[47]

The willingness to embrace risks is not only fueled by improvisational training and exercises, but also by the attitude of believing in one's capability of finding new solutions. Participants in a jam session join the group with an attitude of openness towards new ideas and solutions for the musical task at hand. In a recent Stanford alumni magazine article, Marina Krakovsky discussed a variety of research studies on the power of attitude confirming the positive effect of improvisational training and the willingness to take risks.[48]

3. Establishing a Mentoring System and Role Models

The mentoring aspect of jam sessions historically developed from a need to learn the art form through oral imitation with no written materials available. More established players instructed younger players on the bandstand and functioned as role models. Bassist Rich Armadi recalls:

> So the jam session has been an integral force in my development because without it I would not have been able to learn the repertoire, learn to play with other players, get networking possibilities, and just be part of the scene. So I think it's of fundamental importance. And, it always has been, especially having come up with some of the older players like Von [Freeman] and all. They would often talk about their experiences with the jam session and how it was a place where they learned from each other, they heard other great players, and not only networked with them but learned by hearing their artistry and their approach to tunes or certain types of chord changes or what have you. So it's a fundamental aspect of our development.[49]

In fact, jazz musicians still believe that engaging in jam sessions is a central learning experience for young players. Participants in the 2012 survey indicated a rating of 4.56 on a 5-point scale when asked to rate the importance of participating in jam sessions for aspiring jazz musicians (n=365) with two thirds indicating "extremely important (5)" as their answer. Further evidence is a study on artistic creativity and interpersonal relationships conducted by Dean Keith Simonton (1984)[50] that documented the positive correlation of a large number of diverse models and mentors with a successful artist career.

4. Democracy and Collaboration

As discussed under the social context heading, successful jam sessions follow a series of rules and depend on equal collaboration by all participants. The collective product rises and falls with the willingness of each performer to engage in this truly democratic process of trading leadership and supporting roles and contributing towards the common good at every moment during a performance. The jamming process depends on a delicate balance of competence, personality match, and individual engagement. When asked about factors that cause problems at jam sessions, the 2012 survey respondents mentioned:

1. Limited repertoire and unprepared performers (69)
2. Self-focused players, show-offs not willing to listen, ego (61)
3. Too varied or low musicianship among all performers (54)
4. Uninvited players, playing too long (47)
5. Bad leadership, disorganized sessions (30)
6. Bad venue, sound issues (29)
7. Too many, unprepared vocalists, inappropriate repertoire (16)
8. Lack of artistic commitment by performers (16)
9. Too many horn players, soloists (14)
10. Exclusive leaders, performers hogging the stage (13)
11. Performers getting lost in the form (9)
12. Not knowing how to end a solo or tune (6)
13. Lack of confidence (4)
14. Missing mentorship (2)
15. House band abandoning stage (1)

The innovation labs especially at IDEO, the award-winning global design firm with a focus on a human-centered approach to innovation,[51] operate on similar principles of democracy. IDEO aims to combine groups of people with high levels of various expertise, keep communication open at all times, trade leadership and support roles and ideas, and provide ample time for the creative process. A crucial element is the ability and willingness of participants to exchange roles in the group and provide equal opportunity for each to step forward as a soloist while everyone else assumes supporting roles.

Another example for the principle of democracy is Minnesota Mining and Manufacturing Co. (3M). The company has commercialized more than fifty thousand products over the course of a century. 3M's innovative success is the result of a deliberate corporate culture that fosters creativity by giving employees the freedom to take the lead with company support. William L. McKnight (1887-1978) was the leading force in establishing this culture and his philosophy was based on providing the opportunity for leadership (taking a solo) to anyone with an original proposal.[52] Hence employees get an opportunity to develop proposals and ideas with a fifteen percent work time allotment for doodling.

The above list of inhibiting factors for a successful jam session includes environmental factors such as a bad venue or sound system. In her recent book *inGenius: A Crash Course on Creativity*,[53] Tina Seelig similarly noted the influence of space on creative group activity. Groups need adequate space for intense collaboration with the ideal configuration, lighting and colors, ambience, and environment that unlock the imagination. For example, recent studies indicate that blue walls foster creative thinking while red walls help focus attention.[54]

5. Leaders and Sidemen

Bassist Lynn Seaton had this story to share:

> And, I also remember the pianist. I wish I could tell you his name for the documentation of it all. But if a guy couldn't play then he would smash the keys, stand up, and yell, "next." He was, you know, one of the elder statesmen in Wichita.[55]

While this is a more extreme example of leadership, it does suggest the need for guidance towards successful collaboration. When asked about the importance of a variety of set-up conditions for jam sessions, survey respondents indicated a 3.5 out of 5 rating for the importance of having a designated leader. Even though this is a mostly positive response, it also indicates an "it depends" attitude as each gathering features a unique set of dynamics in terms of personality, skill levels, instrumentation, and environment rather than a "one size fits all" solution (Figure 3).

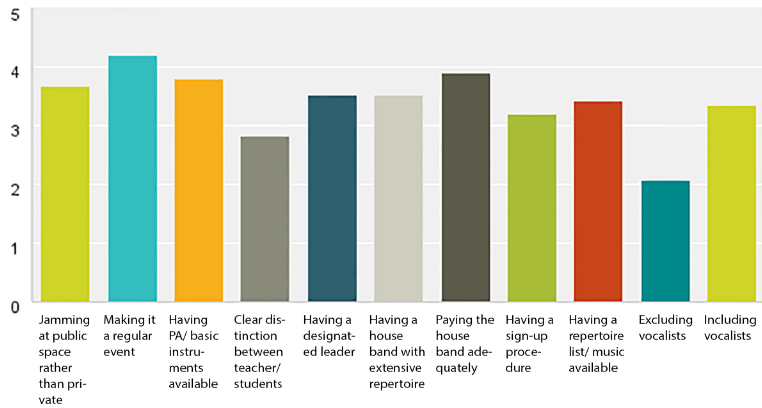

Figure 3. Rate the following jam session set-up conditions in terms of importance for maximizing the learning benefits/effectiveness.

Usually a jam session is led by an experienced performer who functions as a liaison between the venue management, the house band, the jam session participants, and the audience. Gatherings that attract large numbers of players, especially inexperienced ones, need much stronger leadership than smaller sessions with skilled players. For a variety of reasons, musicians might not be willing to take on such a managerial task and rather be what is commonly referred to as "sidemen." As such they need to develop musical versatility in order to meet the demands of any musical settings they might get hired for. Saxophonist Chris Hankins points out:

> But, you know, somebody needs to be the leader and kind of dictate how things go. But, it doesn't have to be so like military sort of, this is the way it has to be. But, there has to be some sort of organization. Some sort of, you know, this is how it's going to go. And, it doesn't always have to be the same. I mean it depends on where you are. It depends on the level.[56]

Acknowledging the variety of roles required for a specific situation, and gathering the ideal personnel and mix of leaders and sidemen, are two of the ingredients for the success of Pixar Studios.[57] The leader of this particular jam session was visionary and project manager Steve Jobs. The drummer and bass player in the group, setting the pace and musical framework, were computer scientists Ed Catmull and Alby Ray. The lead instrumentalist performing the tune was designer John Lasseter, and the venue owner providing the space, funding, and promotional network was George Lucas. In addition, each performer gathered a team of "sidemen" to collaborate with and switch off during the jam session in their specific areas of expertise. Through constant democratic interaction, peer evaluation, taking the lead when needed or supporting the common goal, this jam session team was able to make Pixar Studios one of the most innovative companies worldwide.

6. Community Support

In a 2002 NEA Research Report on the work-life of jazz musicians, Joan Jeffri documented a highly competitive field of self-employed individuals with lower than average income, requiring them to frequently moonlight. On the other hand, they displayed a strong degree of intrinsic drive and high educational level.[58] With the high supply and low demand parameters of the jazz performance job market, external motivators are limited and according to economic principles, competition should be driving down motivation for entering the field. Nevertheless, Kenny Barron recalls:

> I don't know what it was about Philly, but, yeah, guys always—they hung out together. You played together. So all somebody had to do was say, "A jam session," and everybody would be right there. It was great.[59]

Hence, the intrinsic rewards of performing together are high and outweigh the extrinsic threats. As mentioned earlier, over half the comments on motivating factors for participating in jam sessions during the 2012 survey identified enjoyment as the main motivator. Furthermore, hanging out together at any time, and as often as possible, is also an important aspect of the jam session gatherings and community as mentioned in the preceding quote. The transformation of jazz from popular music to art during the

1940s was partially an outcome of the dedicated after-hours jamming that allowed for the development of new ideas, such as the legendary Minton's Playhouse sessions. The above observations seem to confirm Sternberg and Lubart's (1995) investment theory of creativity that is based on the premise that creative thinkers, like good investors, buy low and sell high.[60] Initially most of these ideas are rejected by society as useless but later hailed as classics.

Morrow's (2013)[61] case study of a Nashville recording session documents where conflicts due to uneven power relationships (between the band Boy & Bear, producer Joe Chiccarelli, and their record label) can inhibit creative potential. In this case, the surrounding "community" of producer and record label were not in support of the group's artistic goal to create a novel product, and due to economic and contractual dependence, the musicians were forced to compromise their creative potential.

A variety of positive examples document these unique dynamics of small, intrinsically motivated communities whose ideas, after initial rejection, eventually prevail. The segregated community clustered around Indiana Avenue in Indianapolis during the 1930s and 40s was small but extremely supportive and full of opportunities. Indiana Avenue was lined with over forty clubs, and the teachers of Crispus Attucks High School believed in the creativity and potential of their students. A host of legendary jazz musicians including Wes Montgomery, Slide Hampton, Freddie Hubbard, J.J. Johnson, David Baker, Larry Ridley, Leroy Vinnegar, and many more were the result of this community investment.[62]

Further examples include the community of Silicon Valley where small, fledgling companies collaborate on projects, form cross-cutting relationships and large professional networks, and as a result became the center of technological innovation; or the growing number of arts districts where small organizations collaborate in creating strong arts communities with increased economic impact.

7. Continuous Evaluation Systems

Visual and verbal cues continually guide the jam session process as participants present their ideas to performers and audiences. The immediate feedback shapes the group process and enhances the learning experience for participants. Organist Bobby Floyd had this memory to share:

> One time we were playing a jam session. We were in France, somewhere in France. We were playing during a jazz festival but we were playing the gig at a hotel every night after the festival. And Wynton Marsalis' band happened to be in town. They were playing. They came to the jam sessions. And his whole band, they were on stage, the rhythm section playing. They were playing and a saxophone player got up and he, you could tell it was all about him. This saxophone player, he got up man, and he probably took about five or six choruses and wasn't playing anything, wasn't making any sense at all. They, and I learned this, I'm going to start doing this myself, the rhythm section, they were playing and they just faded. They just kept fading and came to a complete halt and left the horn player standing out there all by himself. And, he kind of looked around and he got scared. And he walked off stage. Then they faded back in. I said, "That was great."[63]

Similarly, continuous evaluation and shaping of the performance process on the bandstand includes facial expressions, body language, comments, or a change in performance level and expression as discussed earlier during the social analysis. Participants also use specific cues and vocabulary to guide the format of the performance and respond to audience feedback. Through frequent participation in these sessions, jazz musicians "pay their dues" in order to find the right style, personality match, and acceptance by their peers. Pianist Dan Haerle confirms the high degree of learning through continuous feedback and frequent participation:

> When I was an undergrad in college I worked in a club in Cedar Rapids. We played from ten until two. And there was a ballroom in Cedar Rapids called Armar Ballroom that was open until one o'clock. And all the road bands played there. You know, Woody Herman, Stan Kenton, Buddy Rich, whatever. You know, all those bands played at Armar Ballroom. They closed at one o'clock and the guys would find out where there was action going on. And, so they'd come down to this club I worked in at a

> little bit after one o'clock and we'd have people sitting in. You know, like many nights. And so then a session would ensue and it would go until four or five in the morning. I mean, we'd walk out of the club and it would be getting light. And those were fantastic times. I got to play with some really amazing players. And I felt like I was just hanging on for dear life. But it was really stimulating, really excited me about wanting to play better. And it made me aware of what I couldn't do. You know, how I needed to practice and so forth. So the session was always a very enlightening experience. I came away from every session learning a lot. And those were very significant experiences for sure.[64]

Recent research on brainstorming techniques confirms that groups who also engage in active debate and critical feedback on ideas beyond traditional brainstorming are able to generate more meaningful results.[65] Historically, brainstorming sessions were based on these four rules developed by Osborn (1957):[66]

1. Come up with as many ideas as you can
2. Do not criticize one another's ideas
3. Free-wheel and share wild ideas
4. Expand and elaborate on existing ideas.

In the 2008 study by Feinberg and Nemeth, groups who took rules only as suggestions and continuously debated their results by far outperformed traditional brainstorming groups who followed the rules. Again, Pixar Studios incorporated this system of continuous constructive feedback in their daily meetings of the Brain Trust (eight directors), shortly named Daily, where creative issues and progress are discussed in an environment of trust and respect.[67]

Conclusion

This analysis of the jazz jam session group model revealed seven common traits that facilitate the successful outcome of this traditional gathering of jazz musicians outside of commercial constraints. These seven traits were discussed and exemplified as possible facilitators for any group engaging in the creative process. Jazz musicians have engaged in this model for over a century as a training ground for their improvisational, musical, and collaborative skills. Of course, individual circumstances and needs have to be considered, but the factors have the potential to provide a transferable model to be tested and adapted in a variety of settings.

The training of improvisational skills combined with the willingness to take risks is the basic premise of jazz as an art form. This analysis of the jazz jam session acknowledges jam-type gatherings as a training ground for musicians who engage in the process as much as possible in order to train these skills. Our current educational system, in a era of standardized testing, doesn't favor the principles of taking risks and learning from failure. On the other hand, the ability to generate ideas and take risks is currently cited as one of the most important traits for employment. In a recent article in *Forbes* magazine, contributor Ken Sundheim (2013) lists the number one trait of the ideal employee as the willingness to take action and take chances. He explains that, "While chances may lead to failure, they will more often lead to success and mold confidence while generating new ideas. Stagnant employees won't make your company money; action-oriented employees will."[68] As documented in the study by Charles Limb (2008), the brain can be trained in taking risks by engaging in improvisational activities. Hence, similar to employing the scientific process when engaging in research, there are principles for the creative process that unlock innovation and can be trained and codified. Dennis and Macaulay (2007) confirmed the need of training improvisational capacities in market-oriented organizations.

Experts in a variety of fields have discussed the metaphor of the improvisational process in jazz for group creativity (Barrett 1998; Bastien & Hostager 1988; Dennis and Macaulay 2003 and 2007; Holbrook 2007; Kao 1996; Sawyer 2006; Weick 1990). The focus of this specific analysis is on the concept of jazz jamming, the informal gathering of musicians away from commercial constraints. A combination of interview and survey results as well as literature reviews and examples led to the following seven factors that facilitate successful jam sessions:

1. Individual Competence and Knowledge of the Field
2. Practicing Improvisation as the Ability to Overcome Self-consciousness
3. Establishing a Mentoring System and Role Models

4. Democracy and Collaboration
5. Leaders and Sidemen
6. Community Support
7. Continuous Evaluation Systems

Tina Seelig (2011) proposed a model for creativity and innovation based on the triangular relationship of knowledge, imagination, and attitude enhanced by resources, habitats, and culture. She calls it the "Innovation Engine" and admits that mastery is complex but results can be achieved through practice and improvisatory engagement with the components. Similarly to Seelig's model and based on the results of this investigation, we would like to suggest the jazz jam session model and its seven factors as a metaphor for group creativity. Suggestions for further investigation include qualitative and quantitative analysis of the impact of these factors in a variety of group settings as well as further analysis of various innovative groups. Furthermore, the process of improvisation and best practices for engaging and learning improvisational skills warrant further analysis.

Appendix A

Questionnaire administered to 370 participants between April to October 2012

The Jazz Jam Session

1. Please indicate your age.

☐18 and under ☐19 – 35 ☐36 – 55 ☐56 +

2. What is your instrument?

☐woodwind ☐brass ☐piano/guitar ☐bass ☐drums ☐vocals ☐other: ________

3. How long have you played your instrument?

☐Less than 1 year ☐1-5 years ☐6 – 10 years ☐11 -20 years ☐20+ years

4. How long have you studied jazz?

☐Less than 1 year ☐1-5 years ☐6 – 10 years ☐11 -20 years ☐20+ years

5. How would you categorize your jazz expertise?

☐Early Student ☐Advanced Student

☐Amateur Performer ☐Professional Performer/ Educator

6. Where do you participate in Jam Sessions and how frequently?

☐Jazz Clubs	☐weekly ☐monthly ☐yearly ☐very rarely
☐Rehearsal spaces in schools	☐weekly ☐monthly ☐yearly ☐very rarely
☐Private homes of friends/mentors	☐weekly ☐monthly ☐yearly ☐very rarely
☐ Other: ______________________	☐weekly ☐monthly ☐yearly ☐very rarely

7. Why do you participate in jam sessions (mark all that apply)?

☐Practice Repertoire
☐Practice Improvisation
☐Self-expression
☐Ear training
☐Networking
☐Practice Stage Presence
☐Learn from mentors/peers
☐Building self-confidence
☐Other: _________________________

8. How would you rate the importance of participating in jam sessions for aspiring jazz musicians on a scale from 1 – 5 with 5 being the highest score?

☐5 ☐4 ☐3 ☐2 ☐1

OVER

9. Rate the following jam session set-up conditions in terms of importance for maximizing the learning benefits/effectiveness on a scale from 1 – 5, with 5 being the highest importance and 1 being unnecessary:

Jamming at public space rather than private	□5	□4	□3	□2	□1
Making it a regular event	□5	□4	□3	□2	□1
Having PA/ basic instruments available	□5	□4	□3	□2	□1
Clear distinction between teacher/ students	□5	□4	□3	□2	□1
Having a designated leader	□5	□4	□3	□2	□1
Having a house band with extensive repertoire	□5	□4	□3	□2	□1
Paying the house band adequately	□5	□4	□3	□2	□1
Having a sign-up procedure	□5	□4	□3	□2	□1
Having a repertoire list/ music available	□5	□4	□3	□2	□1
Excluding vocalists	□5	□4	□3	□2	□1
Including vocalists	□5	□4	□3	□2	□1
Other: ________________________________	□5	□4	□3	□2	□1

10. What are some problems that you have encountered at jam sessions?

11. List 15 essential repertoire tunes for jam sessions.

Appendix A. Questionnaire (continued).

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Get Classy: Comparing the Massive Marketing of *Anchorman 2* to the Non-marketing of Beyoncé's *Beyoncé* Album

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Abstract

In the fourth quarter of 2013 two entertainment industry blockbusters were released: the film *Anchorman 2: The Legend Continues* and a release by recording artist Beyoncé Knowles titled *Beyoncé*. While the *Anchorman 2* team spent months promoting the December 18 release by traditional (and some very non-traditional) means, the *Beyoncé* album was cloaked in secrecy until it was issued by surprise on December 13. These two completely different strategies both proved successful, as the film sold US$122 million in tickets within its first month of release and *Beyoncé* sold 1.4 million albums during this time. This paper describes the marketing tactics used by both camps and the market and critical reactions to those tactics, and shows how sales success is not dependent upon one single strategy but rather upon a strategy that works best for a particular release at a particular time, both on the calendar and during an artist's career. Implications for music labels, managers, and artists are discussed.

Keywords: Anchorman 2 marketing, marketing Beyoncé's surprise album, marketing Ron Burgundy, marketing the Beyoncé brand, DIY artists, DIY marketing, music marketing, music industry, entertainment industry, film industry

Introduction

When Beyoncé released a new album to an unsuspecting public on December 13, 2013 she was widely praised for the lack of marketing that accompanied the record. Out of the blue, it was there, available worldwide on iTunes. Singles, the most popular configuration on Apple's store, were not made available. Instead, those wanting Beyoncé's new music had to purchase the full album for US$15.99. This harkened back to an era when record labels made most of their money from sales of full-length CDs. Because *Beyoncé* included seventeen new videos, this "visual album"[1] included enough value that neither fans, critics, nor the greater music industry complained. The headlines were supportive:

> "The Brilliant Business Strategy Behind Beyoncé's Record Breaking Weekend."[2]

> "Beyoncé Broke The Music Business: Release Of Her New LP Changes Everything."[3]

By the following week, this surprise release was the number-one album on the Billboard Top 200 Albums chart and breaking iTunes sales records around the world.

Five days later a movie began playing in theaters around the country that was anything but a surprise. *Anchorman 2: The Legend Continues*, a comedy starring Will Ferrell, Steve Carell, and Paul Rudd, had been announced with great fanfare a full twenty months earlier. The marketing and promotion that followed became what one writer considered the "most content-rich marketing campaign in history."[4] From social media to unique corporate partnerships, in addition to traditional marketing elements, *Anchorman 2* beat the first movie's box office internationally by more than eight times while breaking the domestic $100 million tally, something its predecessor could not do.

How did Beyoncé do it? In an industry built on tried and true pre-release marketing tactics, what did she and her team do differently? How did the *Anchorman 2* team do it? What made their marketing campaign so different from traditional movie marketing campaigns? This paper describes the background behind each brand and then highlights the different aspects of each operation. Then it examines the key techniques and characteristics the two teams shared to see what young filmmakers and unsigned, do-it-yourself musicians can learn to achieve their own successes.

Anchorman Background (2004-2013)

On Friday, the ninth of July in 2004, Paramount Pictures released a film with a $26 million budget[5] titled *Anchorman: The Legend of Ron Burgundy*. By Sunday evening, the film had earned back its production budget with receipts of $28.4 million.[6] By the time the film left theaters on October 7, it had earned over $90 million worldwide.[7]

Anchorman, as the film came to be known, was not a massive hit. Even with international ticket sales, the movie couldn't break the film industry's $100 million benchmark for hits. It was a success, but not the kind of success that spawns sequels and prequels. The director/co-writer, Adam McKay, star/co-writer Will Ferrell, and cast members, including Paul Rudd, Steve Carell, and Christina Applegate, carried on with their careers creating and acting in other projects. *Anchorman* was in their rear-view mirrors.

Paramount spent $40 million on prints and promotion for the film.[8] While the theatrical box office didn't break any records, the film did take on legendary status upon its home video release on December 28, 2004. Rather than package the film with the customary single DVD, Paramount took extra steps. In addition to the original theatrical release, it also made an unrated version of the film available. Also, what has been coined a "spiritual sequel"[9] or "alternate film companion,"[10] *Wake Up, Ron Burgundy: The Lost Movie* was included. This additional film was made up of scenes edited out of the finished theatrical release. Enough content existed to create this standalone film. Because of the film's eventual airing and re-airing on pay and basic cable stations including HBO, TBS, and TNT, plus the growing influence of video social-sharing networks like YouTube, *Anchorman*'s shelf life persisted for years.[11]

Anchorman creators Adam McKay and Will Ferrell created comedy video website Funny or Die in April 2007.[12] During a 2008 Funny or Die comedy tour of eight college campuses, Ferrell reprised the Ron Burgundy character and interviewed celebrities including Tom Brokaw.[13] More one-off joke than strategic initiative to further brand Ron Burgundy, the character was put aside by its creators. *Anchorman* was done. It was time to move on.

Other comedies released in the same period as *Anchorman*, such as *Dodgeball* ($167 million),[14] *50 First Dates* ($196 million),[15] and *Along Came Polly* ($173 million)[16] all grossed more at the box office than *Anchorman*. But the mix of characters, comedy, and social media fan support helped *Anchorman* seize a place in America's cultural zeitgeist. None of the other three received the long-term love from audiences that *Anchorman* enjoyed for years (see Table 1).

Social media deserves much of the credit for the continued interest in the film. "The concept of social media barely existed at the time of the first *Anchorman*," Andrew Runyon, Paramount's Vice President of International Interactive Marketing, said to *Adweek*. "Facebook had just been conceived a few months prior, and YouTube and Twitter hadn't been created. But social has allowed *Anchorman* to live on as a film. And it

Film	Release Date	U.S. Box Office	International Box Office	Total Box Office
Along Came Polly	1/16/2004	$88,097,164	$83,866,222	$171,963,386
50 First Dates	2/13/2004	$120,908,074	$75,574,808	$196,482,882
Dodgeball: A True Underdog Story	6/18/2004	$114,326,736	$53,395,574	$167,722,310
Anchorman	7/9/2004	$85,288,303	$5,285,885	$90,574,188

Table 1. Comparable Comedies to *Anchorman* In 2004.

makes us believe that we have something really zeitgeisty here that we can capitalize on."[17] "Our fans have been creating content and essentially marketing for us," said Megan Wahtera, Paramount's Senior Vice President of interactive marketing.[18] Clearly, there was ongoing interest in *Anchorman* since its 2004 release.

Beyoncé Background (2003-2013)

One year before *Anchorman*'s theatrical release, former Destiny's Child vocalist Beyoncé Knowles released her first solo album, *Dangerously In Love*. According to SoundScan, this album has sold 4,910,114 units[19] in the United States since June 17, 2003. She released three more albums between 2006 and 2011. Table 2 shows release date and album unit sales as of February 2014 for Beyoncé's four solo album releases, courtesy of SoundScan.[20]

Album Title	Release Date	Domestic Sales
Dangerously In Love	6/17/2003	4,910,114
B'Day	8/15/2006	3,365,740
I Am…Sasha Fierce	11/18/2008	3,126,911
4	6/28/2011	1,392,141

Table 2. Release date and album unit sales as of February 2014 of Beyoncé's four solo album releases (SoundScan).

Beyoncé stayed in the public eye between 2003 and 2013 with four solo album releases which sold a combined 12,794,906 units. She toured five separate times, a total of 371 shows, including one European tour, one North American tour, and three tours worldwide.[21] There were four promo tours, one major charity concert (in 2003), two telethons, the MTV

Music Awards in 2011, and a performance as headliner for the Super Bowl XLVII Halftime Show in 2013.[22] She also appeared in eight films over this ten-year period and sang three songs during the 77th Academy Awards telecast[23] on February 27, 2005. The ceremony was broadcast in over 150 countries.[24]

Beyoncé created and endorsed the perfume line *Heat* in February 2010;[25] the catch phrase "Catch The Fever" helped market the new brand. A limited edition EP ("extended play" or short album) featuring Beyoncé's rendition of the 1950s song "Fever" came out a year later. Three other scents were released in August of 2010, February of 2011, and July of 2012 respectively. A fifth, limited edition scent named *Heat: The Mrs. Carter World Tour* came out in June 2013 to promote the ongoing concert tour of the same name.[26]

In December 2012 Beyoncé signed a novel type of endorsement deal with Pepsi-Cola[27] that focused on the traditional and non-traditional. The singer's face appeared on a limited-edition line of soda cans and Beyoncé appeared in television spots internationally.[28] But in a new twist, Pepsi also set aside a "creative content development fund"[29] to collaborate with Beyoncé in new creative ventures. The overall deal was estimated to be in the $50 million range.[30]

A high profile marriage to hip-hop artist/record company executive/entrepreneur Jay-Z in 2008[31] and higher profile birth of a daughter, Blue Ivy, in 2012[32] kept her consistently in the public view.

Life Is But A Dream, a documentary directed by and starring Beyoncé, aired on HBO in February 2013.[33] The film also aired in the U.K., Belgium, and Australia later that year.[34] It was reported to be HBO's highest rated documentary in ten years and was watched by 1.8 million viewers.[35]

In August 2013 it was announced that Beyoncé's "Love On Top" video, from her album *4*, received Vevo certification after being viewed over 100 million times.[36] It was another in a string of massive hits for Beyoncé, with perhaps her best-known song to date being "Single Ladies (Put A Ring On It)" from her 2008 *I Am…Sasha Fierce* album. "Single Ladies" was more than a number-one hit in the U.S.[37] The video was a cultural phenomenon.[38] Parodies from *Saturday Night Live* to Joe Jonas,[39] cover versions of the song, and even a mention and "hand flip" by President Obama and his wife Michelle in 2009[40] strengthened the Beyoncé brand.

To date, Beyoncé's Facebook fan page has over 56 million "Likes."[41]

Considering she has only tweeted eight times, 13.2 million people follow Beyoncé on Twitter. She is one of the music industry's biggest superstars.

General Movie Marketing and Distribution

As with music, there are different classes of movies released on any given weekend. There are the blockbuster films, with production budgets well over $100 million, like *Iron Man 3* ($200 million budget)[42] and *The Hunger Games: Catching Fire* ($130 million).[43] There are middle-market films, like *Lee Daniels' The Butler* ($30 million)[44] and *Lone Survivor* ($40 million).[45] There are also the independent films, many created by independent filmmakers willing to put the entire budget of the film on their credit cards and face the risk of personal bankruptcy, like *Uncross The Stars*.[46] *Anchorman 2* fell into the middle-market film budget category, with a production budget of $50 million.[47]

Each class of film is marketed based upon the studio budget, the season of its release (e.g., Memorial Day or Christmas), competing releases from other studios, and the number of screens available at that time.[48] The films with the largest production budgets are released on as many screens as possible simultaneously.[49] A film's gross revenue in its first weekend can be a strong indicator of what its eventual box office will be.[50] And the greater a film's final theatrical box office, the greater the revenues of future ancillary markets like pay-per-view and home video.[51] In order to maximize publicity a marketing budget can sometimes add nearly 50% to a film's production budget.[52]

Traditionally, the areas in which a studio spends its marketing dollars range from newspapers and magazines to television, from theatrical trailers to billboards, from the internet to special events.[53] Most studio films in the middle- and blockbuster-tiers follow standard marketing procedure: a press junket (round-the-clock interviews for one or two days by the stars and director with as many news and entertainment outlets as possible), one or two movie trailers, and appearances on various television talk shows.[54] Online marketing of a film can also be similar across tiers and genres: periodically updated Facebook pages and Twitter feeds, plus YouTube videos mainly comprised of the same trailers moviegoers see in theaters.[55] The *Anchorman 2* team did not follow tradition.

General Music Marketing and Distribution

Unlike movies, which can have budgets up to $200 million, the budget for a typical record album is anywhere from $125,000 to $300,000.[56] Marketing costs range from $100,000 to over $500,000 depending upon the artist. Like the film industry, there are tiers of artists. The highest tier is made up of the superstars, like Justin Timberlake (over three million full-length units sold in 2013) and Bruno Mars (over two million).[57] There are middle-tier artists, like Kings of Leon (250,000 full-length units sold in 2013) and Ariana Grande (390,000).[58] The majority of releases are from independent label and DIY (do-it-yourself) artists (to whom most of the public is never exposed). For example, of the twenty million songs available on streaming service Spotify, twenty percent, or four million, have never been streamed.[59]

It is widely known that for an artist to sell large quantities of music, he or she needs the help of a major label. In 2013, there was not one artist on the Top 10 Most Streamed Songs or Top 10 Most Played Songs who did not have an association with a major label distributor.[60] Generally, new and unknown artists need the budgets, connections, and expertise of major labels if they are to have any hope of making a substantial living in the field.

Prior to a major label artist releasing new material, it is traditional for an initial single to be released to radio, along with an accompanying music video (uploaded to YouTube and other video websites, and made available to cable television music networks). The artist may visit radio stations in a region and perform interviews for magazines and newspapers. In addition, a tour supporting the album will be either announced or well underway once it has been released. *Beyoncé's team* did not follow tradition.

Anchorman 2 Marketing and Results

When the sequel to a film is announced, normal Hollywood procedure is to send out a press release.[61] As with everything related to *Anchorman 2*, "normal Hollywood procedure" would not be followed. On March 28, 2012, Will Ferrell, dressed in the maroon suit his character Ron Burgundy wore while broadcasting the news throughout *Anchorman: The Legend of Ron Burgundy*, interrupted Conan O'Brien's late-night TBS talk show *Conan* by playing jazz flute, a well-known comic bit from the first film. After Ferrell-as-Burgundy poked fun at O'Brien ("It's probably something only a professional like me would notice, but…Conan, you look awful."), the audience erupted at some news: "I want to announce this to everyone here in the Americas…to our friends in Spain, Turkey, and the U. K.—including England, that as of O-900 Mountain Time, Paramount

Pictures and myself, Ronald Joseph Aaron Burgundy, have come to terms on a sequel to *Anchorman*."[62]

The announcement took place nearly twenty months before December 18, 2013, the date the film arrived in theaters. That week in December 2013 *Conan* averaged 1.1 million viewers per show.[63] To date, the Ferrell/Burgundy sequel announcement has received over 5.7 million views on YouTube. Google lists over 123,000 results for the term "Anchorman sequel announcements."[64] It was just the beginning.

The marketing surrounding the sequel, and the creativity that went into that marketing, was put together by multiple parties: Paramount Pictures, the film studio; Zemoga, a digital design agency; Jetset Studios, "an agency of content creators who tell stories that connect people to brands;"[65] social site Tumblr; the website Funny Or Die, owned by *Anchorman* & *Anchorman 2* creators Adam McKay and Will Ferrell; and the writers, director, and "talent" from the film.[66] Table 3 summarizes the major marketing efforts put together in the long run-up to *Anchorman 2: The Legend Continues*.

As Table 3 suggests, there were many non-traditional *Anchorman 2* marketing activities, a handful of which were completely new to movie

Partner	Type of Marketing
Dodge/Funny Or Die	70 commercials filmed
ESPN	Peyton Manning interview
CNN/Funny Or Die	Short film: *Burgundy's America*
Newseum	Anchorman exhibit, 11/13/13 - 8/14/14
Conan	Three Ron Burgundy appearances: 3/28/12, 1/31/13, 11/20/13
KX News (North Dakota)	Co-Anchor of Nightly News
Ben & Jerry's	Scotchy Scotch Scotch limited edition ice cream
Tumblr/Jetset Studios	50+ videos, memes, and GIFs
Dan Patrick Show	December 5, 2013 appearance
Paramount Pictures/Zemoga	"Join Ron's News Crew" Tumblr promotion
Emerson College	School of Communication named after Ron Burgundy for one day

Table 3. *Anchorman 2: The Legend Continues* marketing chart.

marketing. The key component of this marketing variety was actor Will Ferrell's dressing and acting as the lead Ron Burgundy character at nearly all appearances. This concept worked as the team focused on what a real news anchor does—read the news. Ferrell, as Burgundy, was recorded reading the news about other countries, like Ireland and Australia, in order to bring local interest to those territories.[67] The process worked, as Ferrell told *Fresh Air's* Terry Gross in December 2014, "We've kind of gotten into different pockets of the audience we never would have reached through Ron's appearances."[68] The Ron Burgundy/news anchor theme was taken even further. Ferrell, as Burgundy, read a full half-hour newscast as co-anchor of the evening news on North Dakota's KX News on November 30, 2013, two weeks after an *Anchorman* exhibit opened in Washington D.C.'s Newseum, an interactive museum of news and journalism.[69]

On December 4, 2013 Boston's Emerson College renamed, for one day, its School of Communication as "The Ron Burgundy School of Communication."[70] Ferrell visited the school in character and held a press conference with the Dean of the School of Journalism and the college president. During the 45-minute Q&A, the Dean and President were not asked a single question.[71] The press conference has received to date over 92,000 views on YouTube.[72] In addition, there were up to one hundred media requests in the Boston area for time with Ferrell/Burgundy.[73]

Adam McKay and Will Ferrell's Funny or Die website also produced a short film in conjunction with CNN titled *Burgundy's America*. This film, just over three minutes in length, stars CNN personalities Wolf Blitzer, Chris Cuomo, and Anderson Cooper.[74] Interestingly, Ferrell/Burgundy never speaks on camera. Instead it is a scripted "documentary" with the three CNN anchors talking about their (fictional) relationships, past and present, with Burgundy.

As a comic character, Ron Burgundy's personality was also effective as a pitchman for something not news related: the Dodge Durango. In August 2013, Funny or Die filmed seventy commercials[75] starring Burgundy. After the spots began airing in October, sales increased by 59%.[76]

The real news coverage, Dodge commercials, and CNN documentary were all successful in promoting the film's release, December 18, 2013. The final five seconds of each thirty-second and sixty-second Durango commercial featured an "In Theaters This Christmas" bumper. The final seven seconds of the CNN piece also featured a bumper with the release date. In addition, Ferrell/Burgundy performed a filmed interview with

Denver Broncos quarterback Peyton Manning for *ESPN The Magazine* that to date has received over 4.9 million views.[77] A radio interview done for *The Dan Patrick Show* was filmed and split into two YouTube videos. Combined, they received nearly 560,000 views.[78] For perspective, the second most popular *Dan Patrick Show* interview, with ESPN personality Erin Andrews, received 57,000 views, just over one tenth as popular as the Burgundy interview.[79]

Paramount also put in place a promotion based on the traditional movie marketing idea of cross-promoting movies with products. In this case, rather than simply brand the film's logo on a package, Paramount and Ben & Jerry's ice cream got a little more inventive. Burgundy's likeness appeared on packages of a limited edition flavor named "Ron Burgundy's Scotchy Scotch Scotch."[80] The product featured butterscotch ice cream with butterscotch swirls. The web page featured a large image of the container and a description fitting with Burgundy's attitude and famous oft-repeated expression, "Stay classy."

Memes and GIFs (Graphics Interchange Format, a form of computer image that is capable of animation)[81] were prepared by the *Anchorman 2* team and Jetset Studios on a special Tumblr page. Fan engagement, including creation of their own memes and GIFs, was encouraged. In fact, much time was spent organizing the thousands of user-generated GIFs[82] in order to maximize the promotional possibilities.

Paramount didn't ignore traditional marketing, as there were billboards and ads placed on television networks, websites including *The Huffington Post*, and as trailers before other films.[83]

From videos customized for territories all over the world to multiple character-driven appearances in unlikely (for a movie) places, from ice cream to autos to the internet, the marketing surrounding *Anchorman 2: The Legend of Ron Burgundy* is now considered by some to be not only the future of movie marketing, but the greatest combination of content marketing to date for anything.[84]

The *Anchorman 2* team did not "force" fans to watch the film with a bombardment of traditional television, print, and social media advertising. They drew attention to themselves by creating entertaining content that brought attention to the movie and its release date without blatantly telling people to go. The content they created—the CNN faux-documentary, the Emerson College press conference, the Newseum exhibit, another appearance on *Conan* hawking an imaginary book by Ron Burgundy featuring prison riot survival tips, a "Scotchy Scotch Toss" mobile app that required the actors to come in and record new lines independent of the film,[85] and even the Dodge Durango ads—was content that could be watched independently of *Anchorman 2*. It was content that, on its own, was entertaining. The goal, facilitated by creating all this content, was to generate as big a box office as possible, which down the line would generate larger revenue streams from home video, pay-per-view, first-run and syndicated television commitments, merchandise, and more.

Anchorman 2: The Legend of Ron Burgundy was a story on film, but the content surrounding it created more stories. As Jonny Rose, product evangelist at U.K.-based "content intelligence" company, idio[86] wrote in *The Guardian*, "All Ron Burgundy has to do is turn up in a new situation, that is appropriate for a 'celebrated' news anchor, and the brand storytelling continues."[87] Go to Google and type in "Anchorman 2 marketing" and there are 1.2 million results.[88] That means there are a lot of people impressed with the work put in to promote this sequel.

From a bottom line, how did the film do? Table 4 presents a comparison of the first and second *Anchorman* films. Clearly, the sequel made more money at the box office than the original film. What's telling is how *Anchorman 2* made nearly nine times the international box office as the original. This can be attributed to not only nine years of pent up demand due to television and social media attention but also the marketing team's push to "localize" marketing content for territories outside of the United States.

Film	Budget	Domestic Gross	International Gross	Total Gross
Anchorman	$26,000,000	$85,288,303	$5,285,885	$90,574,188
*Anchorman 2**	$50,000,000	$124,894,430	$44,100,000	$168,994,430
*Figures based upon 58 days of release.			Difference:	+$78,420,242

Table 4. *Anchorman*, *Anchorman 2*: comparison.

Surprisingly, the film did not open up at the number-one position at the U.S. box office. In fact, according to Box Office Mojo, a website that tracks the film industry, the first *Anchorman* had a better first week, $28.4 million, compared to *Anchorman 2's* $26.2 million.[89] *Forbes* magazine believes the core audience knew about the film and wanted to see it but they were ten years older than when the first film came out. They had different lifestyles now; they'd see it when it was convenient for them (and their babysitters), not the movie studio.[90]

The box office tallies show that *Anchorman 2's* marketing investment was worth the time, money, and effort. Could they have followed the traditional path of movie marketing and turned a profit? Quite possibly. Smartly, the sequel's budget was middle-tier, which gave more latitude to all involved to experiment and create. The bottom line is that more people came to see *Anchorman 2* worldwide than the first film. *Anchorman*'s box office was $64.5 million more than its original budget. The *Anchorman 2* box office was nearly $119 million more. Based upon these comparisons, one might conclude that *Anchorman 2* was 84% more successful than its predecessor.

On Friday, February 28, 2014 Paramount Pictures took the unprecedented step of releasing a second version of *Anchorman 2*. Titled *Anchorman 2: The Legend Continues: Super-Sized R-Rated Version*, the new rendering opened in one thousand theaters for one week only and featured the same story but with all new jokes.[91] This was done in keeping with the tone of the *Anchorman 2* marketing. Surprisingly, said Adam McKay, it wasn't the filmmakers who came up with idea of another release. Rather, it was Paramount, which decided to move ahead mainly because this concept had never been done before.[92]

The home video was released on April 1, 2014. This move was about more than generating home video revenue. This additional slice of content marketing, albeit on a large scale, also reinforced awareness of the *Anchorman*/Ron Burgundy brands. For example, it brought more awareness to ancillary markets such as pay-per-view. Viewers now had more choices in how to spend their *Anchorman 2* money.

There weren't sequels to *Along Came Polly* or *Dodgeball.* Based upon the strong ticket sales and positive worldwide reception to the content surrounding *Anchorman 2: The Legend of Ron Burgundy*, one might think we will one day see *Anchorman 3*: *Staying Classy*. According to writer/director McKay, we won't.[93] "It's done," he said. It was almost ten years between the first two films. Despite what McKay says, maybe he and Ferrell will revisit the idea in another ten.

Beyoncé Marketing and Results

Five days before *Anchorman 2* reached movie theaters, the entertainment world was rocked by the unannounced release of a new Beyoncé album simply titled *Beyoncé*. There was no advance single. The artist had not held a press conference nor done the talk show circuit. At a few minutes after midnight on Friday, December 13, 2013 *Beyoncé* was suddenly available for consumers to purchase, solely as a full-length album in the iTunes store.

What was novel about this surprise approach was how the focus of consumers and the record industry machine over the past decade had been on singles. Ever since Napster had illegally taken individual track downloads into the mainstream in 1999[94] and Apple's iTunes Store had legitimized the practice in 2003,[95] long-form albums had lost favor among music buyers, much to the chagrin of the major record labels.

The twenty-first century record business is drastically different compared to the last thirty years of the 1900s. What was once an industry built upon long-form LPs, cassettes, and CDs was also an industry built upon dollars. The retail price of a CD was $18.99 at its peak in the late-1990s. That price meant real dollars in revenue to the labels, enough dollars so that after they paid out manufacturing, publishing, marketing, and artist royalty expenses, they could still keep dollars.

Today, it's a business of pennies.[96] While the labels would love to go back to receiving revenue mainly from full-length album sales, the business has become one that is based upon the sale of individual tracks, generally priced at $0.99 to $1.29 per song. Critics deride albums stating there is no point in putting out collections of singles in which nine out of every ten songs are not very good.[97] Today labels report album sales as "equivalent albums" because, in a land of single-track sales, the majority of sales off of an album come from only one or two songs.[98]

Artists also fear today's singles-driven culture. When Flo Rida can sell two million singles of his song "Club Can't Handle Me" but only move 62,000 full-length albums,[99] or Cobra Starship can sell two million copies of "You Make Me Feel…" but only 33,000 albums,[100] artists don't have the "luxury"[101] of sitting back and resting on the success of a single. As artist, songwriter, and Senior Vice President of A&R at Universal Motown Records, Ne-Yo, said in mid-2012, "I feel like the thing that makes you go out and get a person's whole album is you liking that artist, you connecting with that artist."[102] His suggestion to the industry: Don't build "fly-by-night, add-water-and-stir artists." Build icons.[103]

Beyoncé is anything but a "fly-by-night" artist. She is an example of the icon Ne-Yo suggests the industry build. As one of the songwriters of Beyoncé's "Irreplaceable," a song that spent ten weeks at number-one on the Billboard Hot 100 Singles chart in 2006 and 2007, he should know.[104]

The decision to release *Beyoncé* only as a full-length album, from which consumers could *not* buy singles, and the decision to distribute it exclusively through one retailer, iTunes, could therefore be considered risky given the current state of the music industry. *No* singles? If fans wanted Beyoncé's new music, they had to buy the whole record. No doubt her label, Columbia Records, loved this return to a business of dollars, even if it was with only one artist.

Did the strategy work? According to SoundScan, *Beyoncé* sold 617,319 units and was the number-one album in its debut week.[105] Considering the album was released on a Friday, and other new albums competing for that top slot were released three days earlier, on Tuesday, her accomplishment is even more impressive. Table 5 shows the artists from the week of December 15, 2013 who sold albums in excess of 100,000 units. Note how *Beyoncé*, at number-one, sold 445,811 more full-length units than number-two, *Blame It All On My Roots* by country music icon Garth Brooks.

The plan to sell *Beyoncé* as a full-length album at a $15.99 was likely a business decision, but Beyoncé presented *her* reasoning in a press release: "While not a concept album, the record is designed to be consumed

Wks On	Label	LW RK	TW RK	Artist	Title	TW Sales
1	COL		1	BEYONCE	BEYONCE	617,319
3	GBRK	1	2	BROOKS*GARTH	BLAME IT ALL ON MY ROOTS	171,508
7	RCA	3	3	CLARKSON*KELLY	WRAPPED IN RED	136,016
1	RCA		4	KELLY*R.	BLACK PANTIES	133,426
3	COL	2	5	ONE DIRECTION	MIDNIGHT MEMORIES	123,224
7	ENAS	5	6	ROBERTSONS	DUCK THE HALLS:A ROB	107,714
	Key:	Wks On = Weeks On Chart LW RK = Last Week Rank on Chart TW RK = This Week Rank on Chart TW Sales = This Week Sales				

Table 5. Top albums for week ending Dec. 15, 2013.

as a comprehensive audio/visual piece from top to bottom. The antithesis of making singles, the visual album is a non-linear journey through the thoughts and visions of Beyoncé."[106]

The visual portion of *Beyoncé* was an inclusion of seventeen music videos. This video inclusion was a smart move, as it brought tremendous added value to a project asking consumers to spend $15.99 at iTunes when they were more accustomed to spending $1.29. Including a music video with an audio project is not a new concept. The newness here was the sheer volume of videos included with the release. Fans could perceive this extra content as a great deal.

Beyoncé and Columbia Records took a risk with this surprise release by selling exclusively through iTunes. By locking out Target and Walmart, two of America's top music retailers, and other online stores like Amazon, was she not only limiting sales potential during the iTunes period of exclusivity but also in the aftermath should any of these retailers elect to not carry the title out of punitive resentment?

Beyoncé broke iTunes sales records with its number-one week,[107] besting the previous first-week sales of Justin Timberlake's *The 20/20 Experience* and Taylor Swift's *Red* by 27,000 units and 152,000 units, respectively. In addition, Beyoncé was the number-one album in 104 of the 119 countries where iTunes is available.

If one wanted to calculate the benefit of making *Beyoncé* exclusive to just one retailer, one might look at the aggregate hype to judge if the marketing exposure and overall buzz would have been the same had she and her team followed the traditional release and distribution model. According to *Mashable*, "Facebook mentions spiked 1,300% in the hours after the album dropped."[108] Twitter released an animated map showing the location and density of Beyoncé-related tweets during December 12 and 13.[109] While tweets heavily skew toward the United States, international impact of the release is also evident as demonstrated by intense social chatter in Europe, Brazil, Indonesia, South Africa, and Australia. In all, she was mentioned 1.2 million times on Twitter immediately following the album's release. "That's 1.2 million essentially free pieces of advertising, perfect for a generation whose news comes in the form of Twitter links and Facebook shares," wrote Florent Le Mens, a social media strategist in Brisbane, Australia.[110] Searching Google for "Beyoncé new album" yields more than 70 million results. After announcing the album release on her Instagram page, where she has 8 million followers, the post (Surprise!)

received over 603,000 Likes.

Would this amount of social energy have occurred if the album had been announced months in advance and if fans were able to sample a single or two before deciding whether to buy the album? Possibly. But consider Beyoncé's previous four solo albums. Her first peaked with sales of 4.9 million units; her fourth dropped to 1.4 million. Even if a traditional marketing approach had been applied to *Beyonc*é, sales would have likely been strong—but not record-breaking. As Maura Johnston, editor of *Maura Magazine* and ILA Journalism Fellow at Boston College, wrote, "By allowing listeners to click the 'buy' button in iTunes when the memory of the album's announcement was fresh, it cut through the chatter that so many other cultural products fall prey to in the promotion-saturated age."[111]

Interestingly, much of the buzz following the album's release speculated how other retailers—all shut out from iTunes' exclusive deal—would react. Industry insiders looked towards Target, Walmart, and Amazon; would they carry the album in its physical format? Target did not. Its reasoning was that, because the album had already been made available digitally, potential CD sales would be negatively impacted.[112] But beyond that, perhaps Target's decision not to sell Beyoncé's new album (they'd had an exclusive with her in 2011 for *4*) was a message to the rest of the industry: beware the decisions you make that don't include us.[113] Walmart and Amazon did carry the album.

Beyoncé's release plan has been described as risky. But was it? Was it risky for Beyoncé to release an album with no advance notice and no pre-marketing to support the release? As the artist's press release stated when the album first came out: "Stripped of gimmicks, teasers, and marketing campaigns, this project is truly about art before hype."[114]

What many people missed as they praised the *Beyoncé* release was the fact that it was *because* she was a superstar artist that the surprise release skewed so positive. It was as if every blogger and reporter loved the tactic so much that they didn't realize Beyoncé, the artist, had been very active promoting herself all along. In fact, 2013 had been one of Beyoncé's busiest years (see Table 6).

In 1980 John Lennon released the album *Double Fantasy*. It was his first solo album in five years. During the period from 1975 to 1980, Lennon had not toured the world multiple times, starred in films, enjoyed multi-million dollar endorsements, or appeared as a guest on other artists'

Date	Partner	Type of Marketing
July 2012	Heat	New fragrance release
December 2012	Pepsi	Endorsement (and more) campaign announced
2013		
January 21, 2013		Sang "The Star Spangled Banner" for President Obama's Second Inauguration
January 29, 2014	Columbia Records	Destiny's Child compilation and new single release
February 3, 2013	NFL	Super Bowl XLVII Halftime Show
February 10, 2014		Grammy Award appearance and win
February 16, 2013	HBO	"Life Is But A Dream" documentary
April 15-June 1	Pepsi	Mrs. Carter World Tour - Europe
May 7, 2013	Interscope/Warner Bros. Records	"Back In Black" released on Great Gatsby soundtrack
May 24, 2013	20th Century Fox	Character voice in animated film *Epic*
May 28, 2013	Def Jam Recordings	Track appearance on The-Dream album
June 14, 2013	Universal Republic	Track appearance on Kelly Rowland album
June 28-August 5	Pepsi	Mrs. Carter World Tour - North America
July 2013	Heat	New fragrance release
July 4, 2013	Universal Music	Three-track appearance on Jay-Z *Magna Carta* album
September 8-September 28	Pepsi	Mrs. Carter World Tour - South America and North America
October 16-November 9	Pepsi	Mrs. Carter World Tour - Australasia
November 25, 2013		*Life Is But A Dream* DVD release
November 30-December 22	Pepsi	Mrs. Carter World Tour - North America
December 13, 2013	Columbia Records	Beyoncé surprise CD release
2014		
February 20-March 24	Pepsi	Mrs. Carter World Tour - Europe

Table 6. Beyoncé marketing chart.

albums. When asked in 1980 by *Playboy* magazine what he had done during those five years, he replied, "Baking bread."[115] Surely, he was goaded, there had to have been "secret projects" taking up much of his time. "Are you kidding?" Lennon replied, "There were no secret projects…Because bread and babies, as every housewife knows, is a full-time job. There ain't no space for other projects."[116]

Beyoncé's first child, Blue Ivy, was born on January 7, 2012. Nineteen months later, the superstar was not at home, John Lennon style, baking bread. She was busy releasing a surprise album to a fan base she had been meticulously cultivating. While *Beyoncé* was an album that came out of nowhere, and the marketing leading up to it was not traditional, there *was* a year-long strategy that culminated in record sales and a massive public, critical, and social media reaction. In all that was written about her in December 2013, most of the accolades focused on the surprise itself. The bloggers and traditional media seemed to miss that, while her fans had no idea an album was coming, they also had no idea that they were being marketed to so fiercely and intensely all year long.

In other words, what was being marketed was the Beyoncé brand. It didn't matter what she was selling, e.g., concert tickets, DVDs, or a fragrance. She spent 2013 selling us Beyoncé and all that the Beyoncé brand represents: fun, energy, and empowerment. That an album was released with no advance warning did not mean there was no advance marketing. There was, but the message was about the person, not the product. And in the end, after moving away from the traditional model and focusing instead on the grander idea of artist and career—not individual unit sales—Beyoncé and her team succeeded.

Conclusion

In order for an NFL running back to score a touchdown when the ball is handed off to him, he has to find a hole. He must see where everyone who wants to tackle him is going, and either run through before they get there or slip beyond their grasp. The running back isn't somebody the team randomly selects from the stands. He is a professional athlete, finely tuned and trained to be on that gridiron. And when handed the ball, he doesn't decide on the spot where to run. On the contrary, he is working in conjunction with ten other teammates on the field and a full coaching staff on the sidelines, all of whom have planned and practiced for years for this very moment.

The *Anchorman 2* and *Beyoncé* teams were well prepared for their respective games. Adam McKay and Will Ferrell didn't decide out of the blue to put out a movie sequel and create incredible supporting content. Beyoncé didn't decide on December 12 that she wanted to put out an album when the clock struck midnight. In order for each project to achieve successful results, the two teams had to have strong, comprehensive plans in place, plans that took advantage of each party's strengths.

The team around *Anchorman 2* was made up of funny, intensely creative people. The actors and creators were comedians before they were stars. Taking comedic risks and making people laugh is in their blood. If being funny was what they knew best, they wisely took full advantage of those gifts and made more than just a funny movie. They set the bar for other content creators (movies, music, arts and sciences, etc.) to do more. Based upon the principles of *Anchorman 2* marketing, the project isn't over when the director on the set yells, "That's a wrap." In fact, it's just the start.

Beyoncé, artist and businesswoman, took the same approach. Her December 13 "surprise" release was a well-calculated event that took into account her skills as a performer, personality, and music superstar. A likeable person with a strong voice and beautiful face, Beyoncé was able to spend a full year promoting her album worldwide—even though nobody knew that was what she was doing. By being the type of star who could sell out venues, attain high-profile sponsorships, and appear at even higher profile events, Beyoncé was able to take advantage of her place in popular culture for a full year before her album came out.

Perhaps the most important key that both the *Anchorman 2* and *Beyoncé* teams shared was the focus on creativity. Both teams could have followed traditional paths and made money. Nearly ten years of pent-up demand for a sequel was probably assurance enough that Paramount would earn back its investment and have a property that could generate modest ancillary revenue for years to come. Therefore, the *Anchorman 2* team didn't have to film 70 Dodge commercials. But they did. Will Ferrell didn't have to appear in character as Ron Burgundy in so many different places. But he did. Beyoncé could have released a single to radio in November to prime fans for her album release. But she didn't. She could have announced on YouTube or at a concert that her new album was coming out on December 13 so her fans could keep $15.99 on hand before spending it on other Christmas gifts. But she didn't.

A quote aimed at the *Beyoncé* release applies to both. "Beyoncé didn't break the rules, she simply figured out a way to take existing notes and rhythms and write a new song."[117] There are only eighty-eight keys on a piano, yet people keep writing new songs. The same goes for marketing a film, a song, or an album. It's the creativity that matters.

Unfortunately, the results—a film with a $180 million worldwide gross and a record-breaking number-one album—are not necessarily replicable for independent filmmakers and unsigned artists. For example, unsigned musical artists release songs on iTunes every day. To the greater public, all of these are "surprise" releases. But we never hear about them because the name one clicks on to buy them is not "Beyoncé." As stated earlier, four million songs available on Spotify have never been streamed once. One can learn the following from this:

1. The artists didn't maximize their inherent "gifts" to build an audience.
2. The artists and their respective teams didn't plan well enough to build demand for even one stream (note the artists themselves don't appear to be streaming their own songs even once).
3. The artists and their teams didn't use creative focus to help maximize awareness of each song's existence.

In Anita Elberse's book, *Blockbusters: Hit-making, Risk-taking, and the Big Business of Entertainment*, she reinforces the Spotify example. "According to Nielsen SoundScan, of the 8MM unique digital tracks sold in 2011, 94% sold fewer than 100 units, and an astonishing 32% sold only one copy. In that same year, 102 tracks sold more than 1MM units each, accounting for 15% all sales."[118]

Maura Johnston made the following point comparing Beyoncé to independent artists: "Eight million Instagram followers translating into one million sales is a 12.5% conversion rate, which is good for an artist with eight million followers but not so great with one who has one-thousandth of that."[119] In that case, the artist would have 8,000 Instagram followers and sales of 1,000 units. The profit to the artist(s) from the sale of 1,000 units wouldn't be enough to fund another album.

For recording artists who have an established fan base, there are lessons that can be taken from *Anchorman 2* and *Beyoncé*. Don't rush. Plan ahead. Be creative. These lessons also apply and may be even more important for the DIY artist. Remember, Beyoncé was once part of a group that started from zero. Before *Anchorman 2*, there was a first film that wasn't considered a big success. If artists and independent filmmakers can understand the lessons from *Beyoncé* and *Anchorman 2*, they may be able to maximize their opportunities in any career stage. Who knows? Maybe in ten years, those artists will break through based upon what they learn here.

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Authors Influencing Others to Follow: An Analysis of a Social Media Platform Through the Framework of Persuasion Theory

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Abstract

Technology has not only transformed the music sector of the entertainment industry, it has also transformed the book publishing sector. Just as musicians have opportunities to go direct to the market with their music, an author has an opportunity to reach and engage an audience directly like never before. This paper demonstrates, through an exploratory case study, how authors can use scientifically proven persuasion techniques to influence visitors to reply to their online requests. These requests often originate from the author's social media platform, and come in the form of asking the visitor to like a social profile, comment on a blog, provide a review, share a link, join the tribe, or buy a book, among others. After a brief summary of the publishing sector, the author defines what a social media platform is using a Social Media Framework refined by social media expert Michael Hyatt (Hyatt 2010c, March 25). This will be followed by a review of persuasion research and Cialdini's six principles of social influence (2008). Finally, we examine some of the elements of a successful social media platform and draw conclusions on how these features may influence a response to one of many requests.

Keywords: social media, persuasion theory, internet marketing, publishing, authors, Michael Hyatt

Introduction

According to the Global Entertainment and Media Outlook: 2014-2018 (PwC 2014) global consumer books revenue grew in 2013 after years of decline, as the increase in ebook revenue surpassed the decreasing print revenue. This type of tipping point is not new to those watching another sector of the entertainment industry. While there are some differences in methodology, Peoples (2012) argued U.S. digital recorded music revenue exceeded physical sales in 2011.

The fact is these two sectors of the entertainment industry have much in common. Just as technology has transformed the music industry

(Graham et al. 2004) and allowed unsigned musicians the opportunity to create and build an audience for their music, the book publishing industry has also experienced seismic shifts, allowing book authors to create and build an audience for their books.

While much of the supply chain of the traditional publishing industry is still intact—from agents pitching books to publishing houses, to distribution of books to physical and online retailers—authors can now build their personal brands online and drive sales wherever their books are sold.

Just as Chris Anderson's *The Long Tail* (2006) has been applied to the music industry, it also explains the publishing industry. There are authors who will find themselves at the "head" (titles are found on the shelves of retail stores) and there are authors who will find opportunity "down the tail" (titles of self-published through mid-level published authors found primarily online). Regardless of their level, or placement of their books, authors have a unique opportunity to build a tribe of followers with the social media tools available in today's online environment.

The Tribe and the Social Media Platform

British novelist Elizabeth Jane Howard is frequently quoted as saying, "Call it a clan, call it a network, call it a tribe, call it a family: whatever you call it, whoever you are, you need one" (Howard 1998, 260). If authors are going to have success in the marketplace, they need a group of people connected to one another, connected to a leader (author) and connected to an idea. To become a tribe, people need only a shared interest and way to communicate (Godin 2008). The strategic use of interactive online social media allows for a tribe to communicate clearly in four directions: "leader to tribe, tribe to leader, tribe member to tribe member, and tribe member to outsider" (Godin 2008, 28).

Brian Solis's *Conversation Prism* (2013) depicts how "the social [media] landscape is evolving with increasing acceleration." The number of social media networks that have vanished and emerged is staggering, and as a result, it can make the process of understanding and building a social media platform difficult.

In an attempt to help others understand how the various social media work together, social media expert Michael Hyatt (Hyatt 2010c, March 25) borrowed from Chris Brogan's (2010) "Simple Presence Framework" and Jon Dale's "Social Media Framework" (2009) to come up with a refined version of a Social Media Framework (Hyatt 2010c, March 25).

According to Hyatt, a good social media strategy has three components.

1. A Homebase: The homebase is the digital property that one owns. It is unique from the other two components in that it is fully under the control of the author. It usually comes in the form of a website or blog, and it is where the author wants to drive traffic. According to Hyatt (Hyatt 2010c, March 25), "You can control the borders and determine who has access." The homebase usually integrates social media network features and metrics within its borders, but only if it serves a purpose.

2. Embassies: These are the places that are not owned or controlled by the author; instead the author will create profiles with different social media networks like Facebook, Twitter, etc., and engage in conversations with those who congregate there. "You generally need a 'Passport' (verified credentials) granted by the site owner to maintain residency or participate in conversations" (Hyatt 2010c, March 25).

3. Outposts: An outpost is a location one does not own nor have a regular presence. An outpost comes closest to what Brogan (2010) described as a "listening station." It is a place you go to listen to the "conversations about you, your brand, your company, or topics that interest you" (Hyatt 2012a, 70). Examples include, Hootsuite where one can monitor mentions of one's name or product, and Google Alerts, where one can receive scheduled emails that capture mentions on the internet.

The focus of this paper is to analyze the social media platform (and specifically the homebase) of a successful author. The goal is to uncover the elements of a social media platform that might impact the ability of an author to "persuade" his or her website visitors to comply with the author's online requests. The next section introduces the science of persuasion and is followed by a case study to illustrate the principles of influence underlying social media strategy.

The Science of Persuasion

For the past six decades, researchers from the fields of psychology, sociology, anthropology, and communication have conducted experiments that shed light on certain interactions that lead people to comply to the requests of others. The research from Cialdini (2008) shows that persuasion (or influence) works by appealing to a limited set of deeply rooted human drives and needs. As a result, Cialdini contends that the ability to influence can be taught, learned, and applied.

Cialdini (2008) identified six principles of influence through experimental studies, and by immersing himself in the world of what he called "compliance professionals," (fund raisers, advertisers, recruiters, marketers, salespeople, health educators, etc.) he asserted these people are skilled in the art of convincing and influencing others to change an attitude or behavior.

According to Cialdini, the six principles of influence are reciprocity, consistency, social proof, liking, authority, and scarcity, and serve as heuristic cues for decision making. In other words, when processing information or faced with uncertainty, among other conditions, individuals use certain cues, rules of thumb, shortcuts, or surface features to determine whether to comply with a request. What is common across the research on persuasion is that "shortcuts" are as important, and in some contexts more important, than the message's argument, structure, or quality.

For example, "the personal characteristics of a communicator (e.g., attractiveness, expertise, likability) are factors that influence the extent to which individuals targeted for an influence attempt are swayed by the individual attempting to influence them (i.e., the influence agent)" (Guadagno et al. 2013, 53).

Cialdini's six principles have been of interest to both researchers and influence practitioners alike. One such area of interest has been in the effectiveness of Cialdini's principles of influence when applied to online contexts, particularly in text-based interactions in which the communicator is distant from the target of influence (Guadagno et al. 2013).

After reviewing the literature, Guadagno et al. found there has been a dearth of research examining whether or not the influence principles are effective in online settings. Guadagno and Cialdini (2005) found only three of the six principles had been examined in online contexts (i.e., in the absence of a face-to-face condition) and some of the results are contradictory. This prompted Guadagno and her colleagues (2013) to study likability and social validation (social proof) in an online context. The results revealed social validation affected compliance, but communicator liking did not.

One of the chief limitations of the studies of influence in online contexts is the use of primarily text-based computer mediated communication (see Van Der Heide and Schumaker (2013) for a comprehensive review of computer-mediated persuasion). Guadagno et al. (2013) concluded "It is an open empirical question as to whether these results would generalize to other more interactive online technologies such as Facebook" (p. 58), and further, suggested more research needs to be done via other online contexts, such as social networking sites.

We now turn our attention to using the six principles of persuasion developed by Cialdini as framework for analyzing a more interactive online technology as called for by Guadagno et al.—in this case, a social media platform. The goal is to begin identifying, through a case analysis, the features (or "heuristic cues") present on a successful social media platform of a best-selling author and social media expert. Specifically, we want to uncover how some of the features incorporated on a successful social media platform might serve as a trigger for Cialdini's six principles of influence.

As discussed earlier, authors have a unique opportunity to influence their visitors through the effective use of a social media platform. Authors, like most online businesses, want to attract visitors to their websites or blogs. The author's requests come in the form of asking website visitors to say yes—yes to liking, yes to commenting, yes to sharing, yes to subscribing, and yes to buying, among others.

It should be noted that while Cialdini was eloquent in laying out the dangers of persuasive techniques in the wrong hands in his 2008 book *Influence*, this analysis takes no side in determining the motives of the owner of the social media platform under review. The goal is to simply explain why certain features of this social media platform might have an influence on the growth and success of the platform.

Case Study: MichaelHyatt.com

MichaelHyatt.com is the "homebase" for author and social media expert Michael Hyatt. He is the author of the *New York Times* best-selling book, *Platform: Get Noticed in a Noisy World* (2012). Recently, *Forbes* (2014) magazine named him one of the "Top 10 Online Marketing Experts to Follow in 2014." Mr. Hyatt is the former CEO of Thomas Nelson Publishers, now owned by HarperCollins.

Mr. Hyatt explains how his social media platform grew from 2004 through 2012 in his blog post *4 Insights I Gleaned from Building My Own Platform* (Hyatt 2012b, April 23). Mr. Hyatt started blogging in 2004 on topics related to leadership, social media, and publishing, among others. He explains that his social media platform grew from 110 unique monthly visitors in 2004 to over 302,000 unique monthly visitors in 2012 (Figure

1). By any measure, this is significant growth. His subscriber counts and follower figures will be discussed later.

Figure 1. Michael Hyatt unique blog traffic growth (Hyatt 2012b, April 23).

Because of the growth of his platform, and his status as a social media expert, I used Mr. Hyatt's "homebase" as the online setting for examining evidence of cues that might trigger Cialdini's six principles of social influence (Figure 2).

What follows is a summary of each of the six principles of social influence. Each principle will be followed by an informed extrapolation of the principle when analyzing elements of MichaelHyatt.com (http://www.michaelhyatt.com).

The Principle of Reciprocity

The Rule: *People are wired to repay in kind*

Cialdini (2008) found that if people are offered a gift, a favor, an invitation, or the like, they will feel obliged to repay the gesture. If people

Figure 2. MichaelHyatt.com homebase (Hyatt 2010c, March 25).

are helped, they will feel obligated to help in return. People have been conditioned from a very early age that when receiving a gift or favor—even if uninvited—they should honor the rule of reciprocity. If not, society may sanction one with a label of moocher, ingrate, or freeloader. As a result, people will usually go to great lengths to avoid this and repay the favor in the future.

Cultural anthropologists contend there is a "web of indebtedness" that developed in society that is a unique adaptive mechanism resulting in the division of labor, the exchange of goods and services, and the creation of interdependencies. This adaptive mechanism has allowed individuals to work together in highly efficient units (Tiger and Fox 1971). Marketers have used these techniques for years. In recent years, we see significant amounts of samples provided free of charge at large gatherings. On college campuses, for example, energy drink companies are using student representatives to give away samples of their most recent flavors. While there is certainly a legitimate desire to expose the public to the qualities of the product, it is also experienced as a gift. As such, the free sample can release the natural indebting force inherent in the gift. While the obligation to repay is activated, there is considerable flexibility in how it is repaid (Cialdini, 2008).

The Application of Reciprocity: *Give a little to get something in return*

The Evidence:

1. Free Gift: One of the first things one notices when visiting MichaelHyatt.com is an offer to download a free ebook in exchange for signing up to receive his blog posts by email. It's prominently displayed above-the-fold on the home page, where visitors see the free gift immediately at the top of the page without having to scroll. One thing Hyatt is known for is the quality of these free gifts. They are attractively designed multipage downloads that have substance. *Creating Your Personal Life Plan* was a 94-page ebook that generated 23,326 subscriptions in the first six months it was offered (Hyatt 2011, September 21). The number of subscribers suggests the ebook is viewed by the readers as adding value.

Is it really a free gift? While there is something visitors do have to give-up (an email address) to get the free ebook, they always have the option to opt-out or unsubscribe. This is similar to Cialdini's examples of marketers giving free samples away to expose the public to the product, the act of providing something of value at no real cost is "experienced as a gift."

It also becomes a sample of the kind of content being produced and it can release a natural indebting force inherent in the gift (Cialdini 2008). Hyatt makes it easy for his visitors and tribe to reduce the subtle pressure to repay in kind. His tribe is responsive to his requests as evidenced in several areas discussed later.

2. The 20-to-1 Rule: Hyatt suggests a 20-to-1 Rule when using social media like Twitter and Facebook (Hyatt 2010a, April 21). Other social media experts recommend a 12:1 rule (Brogan, August 12, 2010). This is the ratio of providing helpful resources that are not your own, compared to the number of requests to buy your book, come to a conference, or sign up for a cause. Though Hyatt admits he has broken the rule on occasion, he explains why he and other social media marketers practice *digital generosity*. "Twitter and Facebook are relational tools not transactional tools. Contrary to what many think, social media rewards: 1. Generosity; 2. Other-centeredness; and 3. Helpfulness…if you want to build a social media platform, one where people listen to you, then you have to be a *giver* not a *taker*" (Hyatt 2010a, April 21). A quick scan of Hyatt's social media feeds see this rule carried out most of the time.

We would expect these two implementations, among others, to have a positive impact on the perception of the author being generous. If the principle of reciprocity applies, we should see high levels of engagement in the form of shares, follows, and comments. This will be addressed later.

The Principle of Consistency

The Rule: *People align with their clear commitments*

Consistency is a laudable quality that most people admire in others and aspire to for themselves. Being consistent is often associated with personal and intellectual strength and is at the heart of logic, rationality, stability, and honesty (Cialdini 2008). Those not viewed as consistent are often seen as confused, indecisive, and undisciplined.

"Like the other weapons of influence, this one lies deep within us, directing our actions with quiet power. It is, quite simply, our nearly obsessive desire to be (and to appear) consistent with what we have already done. Once we have made a choice or taken a stand, we will encounter personal and interpersonal pressures to behave consistently with that commitment." (Cialdini 2008, 81). To resolve these pressures people will respond in ways that justify their earlier decision to commit.

One of several studies completed clearly demonstrates this point. Psychologist Thomas Moriarty (1975) staged thefts on a New York City beach to determine if randomly selected onlookers would put themselves at personal risk to halt a crime. One researcher was listening to his portable music device on his beach blanket, and after some time, left to go to the water. At that point, another researcher, posing as a thief, grabbed the radio and attempted to run away with it. After running the experiment twenty times, only four of the twenty randomly chosen subjects tried to intervene. However, when the same experiment was repeated another twenty times, there was one simple change. Before taking his stroll this time, the researcher asked a random onlooker to please "watch my things." Now propelled by the rule for consistency, nineteen out of twenty subjects became virtual vigilantes trying to apprehend the thief.

Cialdini (2008) explains that consistency is a powerful motive because, in most circumstances, consistency is valued and adaptive. Without it, our lives would be difficult, erratic, and disjointed. It is also valued because like most other forms of automatic responses, it offers a shortcut through an ever-increasing amount of stimuli in our culture. Once we have made up our minds—taken a stand, made a commitment to some issue—we don't have to think hard about it again when bombarded by another or similar request.

This automatic consistency is activated through commitment. Studies by Freedman and Fraser (1966) have shown that if people make a small commitment, they are more likely to respond to larger requests later to maintain consistency. When residents of one neighborhood were asked to display a three inch square sign in their yard that read "Be a Safe Driver" and then two weeks later asked to place a large obtrusive billboard in their yard that read "Drive Carefully," a surprising 76% complied with the request compared to only 17% who were not previously primed with the smaller request.

In summary, small requests, using a variety of tactics, can lead people to comply with other requests so that they feel like they are being consistent.

The Application of Consistency: *Make commitments active, public, and voluntary*

The Evidence:

1. Launch Team Commitment: The clearest evidence of the principle of consistency being used by Michael Hyatt is found when he appealed to his tribe for a favor. Hyatt was getting ready to start the marketing of his book *Platform* (2012a), which would eventually hit the *New York Times* bestsellers list. Hyatt incorporated several of the principles of persuasion (Cialdini 2008) when he made a request of his tribe to join his Platform

Book Launch Team. His request came after years of practicing digital generosity through his 20-to-1 Rule. In other words, he made relational deposits for some time, and was now asking his tribe to respond in kind (Reciprocity) to his invitation. The Launch Team would be limited to only 100 members and there was a limited time to apply (Scarcity). There were 786 people from his tribe who applied, and 100 were randomly selected to be part of this exclusive team (Scarcity) (Hyatt 2012e, August 24).

Hyatt asked members of this Platform Book Launch Team to voluntarily make a commitment to do three things:

- Write a brief book review on Amazon or some other e-tailer site
- Help spread the word about the book in any way you can, to your existing platform and beyond, during the week of May 21st
- Share ideas and brainstorm additional ways we might further expose the message to an even greater audience.

There are at least three subtle ways in which Hyatt helped his Launch Team members stay true to their commitments and be consistent (Cialdini 2008).

1. Declarations in Writing: Using an online application form, potential Launch Team members were asked to state how they would get the word out via their social media platform.

2. A Private Facebook Group for Public Declarations: By creating a private group, Hyatt and his Launch Team members would publicly declare what they were doing to promote the book, brainstorm ideas using status updates, post images of accomplishments, and be reminded of the status of sales and deadlines. An added benefit was the camaraderie created among the Launch Team members. Hyatt tried closing down the group after it had fulfilled its purpose and the collective asked that it continue. It became a tribe within a tribe.

3. Public Listing of Team Member Names: Another evidence of consistency-producing triggers came in the form of a public web page listing the name of each team member with a link to his or her blog. Hyatt publicly announcing and displaying the names of all team members is another commitment-inducing cue.

Theoretically, making Launch Team member commitments active (in written form), public (displayed publicly), and voluntary, would lead to a higher level of follow-through as members were motivated to be consistent. In addition to Hyatt proclaiming his Launch Team was a success, and the fact that his book hit the bestsellers list, there is one other data point that can be used as a measure of success. According to Hyatt (Hyatt 2012e, August 24), there were 76 reviews posted on Amazon prior to publication date, and 197 reviews posted within ninety days of publication.

The Principle of Social Proof

The Rule: *People follow the lead of similar others*

This shortcut is most often triggered when faced with uncertainty. When people are in conditions that are uncertain, they tend to look to the ways others are behaving to decide for themselves how they should act (Cialdini 2008). Another condition that makes this shortcut even more powerful is when the "others" are similar. Our tendency is to assume that if a lot of people are doing something, then it is the right thing to do.

There have been many studies demonstrating the power of peer pressure. One such study was conducted by Peter Reingen (1982) who was investigating the impact of social proof and similarity on donations to a charity. For this study, a group of researchers requested donations for a charity door-to-door in a neighborhood. In some cases, neighbors were shown a list of others from the neighborhood who had already donated. The longer the donor list, the more likely residents were to give money. In summary, people will do things they see other people doing, especially if those people seem similar to them (Cliffe 2013).

The Application of Social Proof: *Make it obvious what others are doing and sharing*

The Evidence:

1. Social Media and Subscriber Counts Prominently Displayed: Hyatt is effective in displaying his social media metrics so others can be influenced to join suit. His total number of subscribers is an impressive 414,884 as of July 14, 2014, and the count includes those who have subscribed to his email feed, or liked or followed him on Twitter, Facebook, LinkedIn, Google+, Pinterest, or Instagram. This number is displayed above-the-fold on the home page. This is immediate feedback to the visitor that hundreds of thousands of people find this person or place interesting enough in which to connect.

2. Share Bar at Top and Bottom: Another area prominently displaying social proof evidence is found at the top and bottom of every blog post. Hyatt refers to this as the share bar. The share bar accomplishes two things. First, it provides an easy way for someone to share, comment, or email the blog post to his or her audience. Second, it displays the number of shares and comments for that post. His most popular post is "The Beginner's Guide To Twitter." It shows 588 Comments, 1,397 Facebook shares, 1,791 Tweets, and 243 LinkedIn shares.

What makes these two social proofs significant is that they are system-generated cues. System-generated cues, as you might suspect, are pieces of information that have not been generated directly by the owner of the social media platform, but from the actual behavior of the user, or visitor to the website. Research has shown that individuals do form impressions of people's attractiveness and general positivity on Facebook according to the number of friends (or followers) they have. (Kleck, Reese, Behnken, and Sundar 2007; Tong, Ven Der Heide, Langwell, and Walther 2008).

While there are ways to manipulate the system to inflate these numbers, it is generally accepted as a reliable indicator of popularity, especially when correlated with the shares and comments on the blog post.

3. Community Members and Bookmarks: Another social proof found on MichaelHyatt.com is the list of community members displayed on the right column of the home page. This list provides a brief biography and photograph of seven community members who have agreed to "moderate comments and provide leadership to [the] growing community." A review of the biographies indicates a heavily male dominated list (6 males, 1 female) with positions and experiences in which visitors may be able to relate. In addition to the community member list, Hyatt also provides a list of bookmarks. This includes a list of links to some of Hyatt's favorite bloggers and resources. Here again, we see the heuristic value of this list; it becomes a shortcut for determining if the visitor has similar interests.

4. Links to Reputation Systems: While not prominently displayed on the home page of MichaelHyatt.com, there are occurrences in which Hyatt links to external feedback-based reputation systems. For example, Hyatt occasionally links to the reviews of his book found on Amazon.com. Resnick et al. (2000) suggests that aggregated feedback systems like this help users establish trust. Research by Resnick and colleagues (2006) established that favorable feedback aggregated by online auction site eBay (http://www.eBay.com) generated greater rewards for users with stronger aggregated reputations. It would be expected, then, that aggregated reviews from peers about a book or author on Amazon.com will provide heuristically valuable information about the target's credibility.

The Principle of Liking

The Rule: *People like those who like them*

Another shortcut most are familiar with is based on the principle that people will tend to say yes more often to those people whom they know and like. You can see this principle exploited by many sales organizations. Whether it's a Tupperware party, or some other door-to-door sales company like Shaklee or Amway, there is heavy reliance on using friends or dropping names of friends to open a door or close a sale. Compliance professionals who understand this shortcut of liking increase its effectiveness by emphasizing several factors that increase overall likability:

1. Physical attractiveness tends to create a halo-effect that extends to favorable impressions. Many studies have demonstrated that attractive people are more persuasive both in terms of getting what they request and changing other's attitudes (Mack and Rainey 1990, Eagly et al. 1991).
2. When someone is similar to us we tend to say yes more often to his or her request, often without thinking.
3. Extending genuine compliments and praise to others also makes the sender more likable, even if the praise is not true. (Drachman et al. 1978)
4. Increased familiarity through repeated contact and cooperation, as long as it is positive, facilitates liking.
5. An innocent association with either bad or good things will influence the degree to which people will like us, or dislike us (Lott and Lott 1965). For example, a local news weatherperson is often liked or disliked based on the forecast for the day.

In summary, if people like you because they sense you like them, they're more apt to say yes to requests—and there is a boost if there are similarities.

The Application of Liking: *Design for attractiveness, Uncover similarities, Offer genuine praise*

The Evidence:

1. Attractive Person, Attractive Design: While physical attractiveness is always in the eye of the beholder, when analyzing a social media platform, we are looking for cues that would make the platform owner attractive and similar to the visitor.

When trying to influence someone to say yes to following you, you do not want a poorly designed website to get in the way of attracting someone to your personality or your content. Hyatt does an excellent job of ensuring he has a clean professional design that enhances the experience. In fact, Hyatt places importance on design by providing a public Design Guide specific to his site (see http://michaelhyatt.com/design-guide). Future research should examine what role design can have on influence.

Hyatt also extols the importance of photos. "The right photo can help establish credibility, build trust, and promote engagement. These are at the heart of connecting in the world of social media and essential if you ever hope to sell someone on what you have to offer" (Hyatt 2013, August 19). Notice the photo on his landing page is what he refers to as a full-face smile. Compare that with a typical business suit photo shoot. This photo, in addition to photos of his family and pets, create subtle cues to the visitors that Hyatt is approachable and, perhaps, similar to them.

2. Comments and Engagement: We've already mentioned the number of comments and shares found in the Share Bar area of his blog posts. Now, we will turn our attention to both the quantity and quality of Hyatt's replies to visitors leaving comments. First, we see the sheer volume of his replies to commenters. Hyatt uses Disqus (http://www.disqus.com) for his commenting system. Disqus tracks the number of comments made by anyone who has an account. The data reveals that Hyatt has replied to commenters over 15,000 times as of July 14, 2014. This means he has had 15,000 interactions with the readers of his blog alone. (He has tweeted to his followers using Twitter another 40,000 times since April of 2008). An examination of his blog comment replies show a significant amount of compliments and praise directed toward the commenters.

Based on Cialdini's principles of influence, Hyatt's "repeated contact" through blog posts (three times per week), replies to comments, and frequent presence on social media like Facebook and Twitter should increase familiarity, which facilitates liking.

3. Disclosure of Material Connection: This element on Hyatt's social media platform might fit under the Cialdini principle of liking or authority (trust). At the bottom of every blog post that has links, Hyatt has inserted the following Disclosure of Material Connection statement:

> Disclosure of Material Connection: Some of the links in the post above are "affiliate links." This means if you click on the link and purchase the item, I will receive an affiliate commission. Regardless, I only recommend products or services I use personally and believe will add value to my readers. I am disclosing this in accordance with the Federal Trade Commission's 16 CFR, Part 255: "Guides Concerning the Use of Endorsements and Testimonials in Advertising." (http://www.michaelhyatt.com)

Theoretically, this will have one or two effects. It may boost his liking because he is being upfront about his affiliate links—the average consumer may find that a likable quality. Or, it will boost his authority because it suggests he is a credible and trustworthy source.

The Principle of Authority

The Rule: *People defer to experts*

People tend to be influenced by both legitimate and perceived authority. With the classic Milgram experiments as support, Cialdini reminds us of the chilling reality that adults are willing to suspend rational and reasonable judgment when faced with a request by an authoritative figure, even if it inflicts pain on others (see *Obedience to Authority* (Milgram 1974) for all the variations of the experiments).

Cialdini (2008) explains that we are trained from birth to obey authority, and that we have come to learn obedience to authority is right, and disobedience to authority is wrong. As a result, when we are faced with uncertainty or a complex environment, our automatic unthinking response (shortcut) will be to say yes to a request from a legitimate authority, or even one who appears to have authority. According to Cialdini (2008), there are several symbols that connote authority, and when present, will trigger compliance. The three kinds of symbols that have been shown to be associated with authority are titles, clothing (such as uniforms and business attire), and the trappings such as jewelry and fine clothes (see for example Wilson 1968, Hofling et al. 1966, and Lefkowitz et al. 1955). While the Milgrim studies show us the allures and dangers of blind obedience, "information from a recognized authority can provide us a valuable shortcut for deciding how to act in a situation" (Cialdini 2008, 290). In summary, people will have the tendency to defer to experts and those in positions of authority, often underestimating their tendencies to do so.

Application of Authority: *Expose your expertise; don't assume it's self-evident*

Evidence:

1. Brand Slogan and Categories: Hyatt clearly identifies what he is an expert on by placing his brand slogan, *Helping Leaders Leverage Influence*, directly under his name logo. Immediately a visitor recognizes he's all about helping leaders. This is augmented by the clearly identified categories of Personal Development, Leadership, Productivity, Platform, Publishing, and Resources. This clarity becomes a shortcut for decision making about expertise for the first time visitor.

2. As Featured In: Directly under Hyatt's head shot is an "As Featured In" graphic that includes all of the logos of media channels in which he has been featured. Corporate logos from the *New York Times*, the *Wall Street Journal*, *Forbes*, *BusinessWeek*, and *CNN* bring instant credibility. Immediately, one knows he has a national, or larger platform. The subdued two-tone Featured In graphic doesn't scream with bravado. Instead, it complements his approachable photo with an understated confidence.

3. About Me: According to Hyatt, his About Me page (Figure 3) is among the top-ten most visited pages of all time (Hyatt 2010b, September 8). On this page he inserts some of his credentials including his *New York Times* bestseller recognition and his role as former Chairman and CEO of a large publishing company. Notably, he wrote the About Me page in first person, and with a conversational style. This is more evidence of his interest in being an approachable authority. Not only does the About Me page provide clues about Hyatt's expertise and authority, it also mentions personal interests, hobbies, and makes reference to his family, all of which can inform the visitor that he is human (Dooley 2012) and has similarities, which boosts liking.

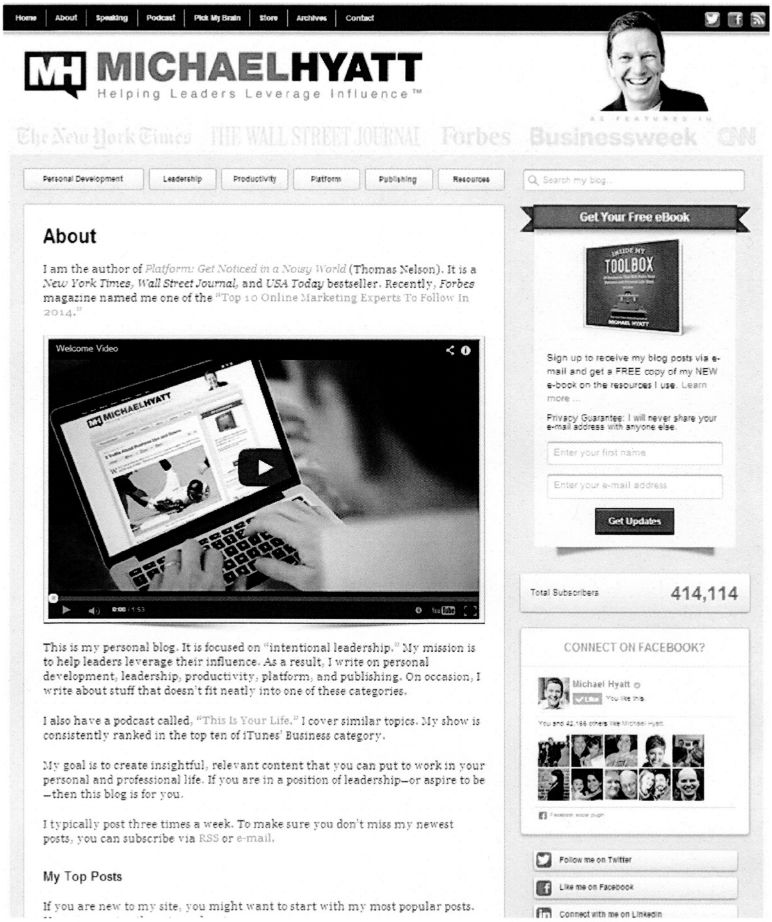

Figure 3. "About Me" page (http://michaelhyatt.com/about).

4. Upcoming Speaking Engagements: This is an area that highlights some of Hyatt's speaking engagements. It reinforces his credibility and expertise as a communicator to many different audiences.

5. My Video Interviews: On the home page sidebar, Hyatt includes videos of his interviews with some of the top leadership experts in business and ministry. This is a subtle cue that suggests to his visitors he interacts with high-level experts frequently, thus boosting his credibility and authority.

The Principle of Scarcity

The Rule: *People want more of what there is little of*

We have all been vulnerable to the scarcity principle. Opportunities seem to be more valuable to us when they are less available. It could be a product, a service, or even trading cards or collectible coins. As a rule, if it's rare, or becoming rare, it's more valuable. As a result, if the item is of value to us, it will trigger an emotional automatic response to obtain it.

Further, Cialdini (2008) points out that we tend to be motivated by the potential loss of something rather than the potential benefits of something. For example, health researchers (Meyerwitz and Chaiken 1987) found that pamphlets urging women to do monthly self-examinations are more successful if they state the case in terms of what may be lost (e.g., "You can lose several potential health benefits by failing to spend only five minutes each month doing breast self-examination") rather than what is gained (e.g., "You can gain several potential benefits by spending only five minutes each month doing a breast self-examination").

The power of the scarcity principle comes into play from two major sources. One is our weakness for shortcuts and the assumption we make that less of something is a cue to its quality. Second is the notion that as things become less accessible, we lose freedoms. According to psychological reactance theory (Brehm and Brehm 1981), we respond to the loss of freedom to access something by wanting to have it more than before. To illustrate, Cialdini reminds us of the two times reactance behavior is most obvious—during the terrible twos and during the teenage years. When anything interferes with our prior access to something, we will react against the interference by trying hard to possess the item more than before.

We see the use of the scarcity principle most often employed by limiting the quantity of the item, or by creating time limits to access the items. We see it in promotion materials with phrases like "a limited number available" or "time is running out." To kick in the shortcut, Cialdini (2008) suggests there are two optimizing conditions. First, when an item is newly scarce rather than restricted all along, and second, when we have to compete with others for the item.

Application of Scarcity: *Highlight unique benefits and exclusive information*

Evidence:

1. Launch Team Limited Time, Limited Seats: As mentioned earlier in the text, Hyatt effectively employed the scarcity principle when he invited his tribe to be one of only 100 members on his Platform Book Launch Team. With a deadline and unique benefits for this exclusive team, he had almost 800 "compete" for the 100 volunteer positions. This fulfilled the two optimizing conditions in which the scarcity principle kicks in: when an item is newly scarce, and when one has to compete with others for the item (Cialdini 2008).

2. Countdown Clock: The only other occasion Hyatt uses a limited time offer is when he is offering a new product or service. He has a well-designed countdown clock that appears on his product landing pages, and on his home page side bar during promotional campaigns. In addition to the countdown clock, he also sends emails to remind people of the closing time for the special offer, or the limited number of seats still available.

Discussion and Future Research

The social media landscape is changing rapidly, and it's difficult for a social media specialist to navigate, let alone an author, or other creative. Nevertheless, every author—and really anyone who has something to say or sell (Hyatt 2012d, May 23)—has an interest in building an audience using the social media tools available today. Authors want to attract traffic and move online visitors to a deeper level of engagement, in hopes that they may not only become customers, but become members of the author's tribe.

It is the opinion of this researcher that a well thought out social media platform is the best way to engage visitors over the long term. However, it does require the author, or members of the author's team, to think strategically about what is communicated and how it is communicated.

An exploratory case study like this is not intended to make generalizations about the effectiveness of Cialdini's principles of influence in all interactive online contexts. However, by examining the best practices of a social media expert, author, and blogger, my hope is that it prompts authors and other creatives to view themselves as agents of influence.

Future research should examine whether musicians and visual artists, for example, can implement similar practices to build an audience. For authors and bloggers, compelling words found in a regular schedule of blog posts and outbound emails is the currency used to progressively engage readers. Would the fans of musical artists and visual artists be drawn to blog posts and outbound emails? Or, are these fans interested in only news and new releases—the frequency of which may be more irregular. Demographic-related questions may also play a part in the type of social media used to engage. A blog-centric homebase may be a fitting way to engage middle-aged readers who check their email often, but will a blog-centric homebase be appropriate for college-aged music fans who regularly scan and consume short tweets, status updates, and photos instead of blog posts?

It is also important to note that Cialdini spends a significant amount of time in his book *Influence* (2008) discussing the dangers and abuses of social influence techniques, and how to defend against them. Research needs to be done to examine which internet-based techniques are abused, and how they impact the creative's credibility and influence. It's the opinion of this writer that authors should avoid using influence principles to deceive or mislead people. They should always protect the trust that has developed as a result of more intentional interactions.

Borrowing from the field of oratory, Aristotle suggested that it's more than the message that influences people to respond: "The orator must not only try to make the argument of his [*sic*] speech demonstrative and worthy of belief; he must also make his character look right, and put his hearers, who are to decide, into the right frame of mind" (Roberts, trans. 1954, 25). After all, who our audience perceives us to be can have a profound effect on the success of our persuasive attempts (Van Der Heide 2013).

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Economy of the Ether: Early Radio History and the Commodification of Music

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Abstract

The early history of radio is an absorbing and complex saga. Often told from the narrative perspective of its inventors, technical milestones, or regulatory developments, little has been written about the commercial history of early radio and its influence on the commodification of music. Using a theoretical framework of commodification based upon the concepts of Ideologies, Reification, and Fetishism, this article builds upon an earlier case study of the player piano. Attention is given to under-researched aspects of early radio history such as the department store station phenomenon circa 1910-1931. As a conclusion, some observations are made about commodification's impact on the current state of the music business, the future relevance of radio, and how theory can inform future research.

Keywords: commodification of music, ethnomusicology, mass communication, music business, radio, radio history

Introduction

History offers many examples of events that are unduly neglected because they do not memorialize an individual of charismatic personality, have timelines with a quantifiable beginning and end, or possess some other narrative device for easily communicating their story. The complex history of early radio often results in an oversimplification of the facts, as the narrative of its creation becomes obscure nearly before it begins. A technical history of tuners, tubes, and transistors would serve radio well as a chronicle of its evolution as a workable device, but such a history is of interest only to those with the requisite expertise to appreciate its nuance. Similarly, a legislative account of the various radio and communication acts of the twentieth century has merit, but it lacks the intimacy of human interest to which great history aspires. An under-explored methodology examines radio as an influence upon the commodification of popular music. This article delineates such an approach by establishing a theoretical framework for the process of commodification, applying this framework to the early history of radio, and concluding with some observations about the future of radio and popular music.

The Process of Commodification

Culture scholar Stuart Hall noted the difficulties a "periodisation" of popular culture involves, though he offered the 1880s-1920s as a broad era of its genesis.[1] Sometimes called "The Gilded Age" in American history, this period is marked by profound advances in scientific, economic, and artistic pursuits. It is also the era in which America emerges as a world power. While founding fathers such as George Washington and Benjamin Franklin defined the first one hundred years of the nation's history, industrialist inventors such as Thomas Edison and George Westinghouse defined the next one hundred years. Edison in particular, perhaps more than any other man of his day, had a knack for recognizing the "commercial utility" of invention.[2] His belief that the value of a new discovery was commensurate with its potential for monetization has become a bedrock principle of modern American capitalism.

While he acknowledged the impact that Edison's phonograph, and later radio, had on the commodification of music, ethnomusicologist Timothy D. Taylor defended a theoretical basis for the process by which music became commoditized through scrutinizing the evolution of the player piano.[3] By applying the concepts of Ideologies, Reification, and Fetishism to player piano advertisements, Taylor revealed several similarities between the economic behavior of music and that of traditional commodities.[4] Whether or not an intangible product, such as music, can become a commodity in the purest sense is contingent upon how much room for abstraction is given to its definition.[5] Still, despite any difficulties of classification that arise, the common language that these ideas offer is a convenient place to begin an exploration of how technology and mass communication have fundamentally changed the business of music.

It is clear that from the late nineteenth century on, music evolved from a primarily personal, cultural, and religious enterprise to become a highly commercialized entity. Taylor highlighted the central role that music technology and music products play in this phenomenon:

> The production and dissemination of music involves a wide range of technological artifacts: violins, pianos, tin whistles, radios, CD players, MP3 players, and so forth.

> Each of these technologies exists as a separate commodity—yet inextricably intertwined with the musical commodities they contribute to producing.[6]

He also identified ideologies of democratization and personal autonomy as crucial stratagems used by player piano advertisers to hawk their wares.[7] Ideologies of democratization took a three-pronged approach by promoting: 1) "access" to music in the home, 2) the "ability" of anyone to play music using a player piano, and 3) the "availability" of more and more music as the library of player piano rolls expands.[8] Ideologies of personal autonomy reinforced the necessity of the human element as the "soul" of the music in player piano operation, at least until later models became fully automated.[9]

Reification is the process by which an abstract concept becomes objectified. Player piano advertisers first emphasized the human operator providing a "self" to the music being played, and then later the importance of "the music itself."[10] This reification of "music itself" served an important function in overcoming an objection of some consumers, namely that music produced by player piano rolls was not "real" music at all. For the first time in history, music was available to the listener in a medium other than live performance, and reifying the idea that the "self" was still in music was critical to bridging this transition.

Taylor concluded his theoretical treatment by examining the Fetishism of attaching celebrity endorsement to the player piano product, writing:

> In order to locate an object on which to direct the fetishism of reified music, advertisers and proselytizers for player pianos and phonographs focused on the great musicians who could come into the home because of these technologies, thereby transferring abstract, reified music onto the face of a particular musician who becomes in part a fetish herself.[11]

The celebrity fetishism that intertwined itself with music, and eventually with entertainment in general, was the logical conclusion of the advertising strategies pursued by player piano manufacturers. Rather than simply an art to be enjoyed, manufacturers had a vested interest in music being positioned as a product to sell. Though the player piano has become somewhat of a historical novelty since its heyday, it helped to set the stage for the device that would complete the commodification of music: radio.

The Commercial History of Early Radio

The early history of radio is a story of genius innovators, great technical achievements, and the regulatory initiatives necessary to bring the medium to the masses. It reaches back as far as the early 1800s and the work of Michael Faraday, and incorporates the incremental advances of Heinrich Hertz, James Clerk Maxwell, and Oliver Lodge among others.[12] Nevertheless, until the time of Guglielmo Marconi radio remained largely an ethereal mystery, an inventor's dream. The historiography of radio does not allow for the narrative convenience of one definitive creator, but Marconi did set in motion a number of factors that all but ensured the dream would become reality.

Historian Tom Lewis made a distinction between the point-to-point nature of the wireless telegraphy that Marconi achieved, and the much farther reaching implications of broadcast radio.[13] He named Lee de Forest, Edwin Howard Armstrong, and David Sarnoff as the primary movers behind radio's eventual success, and also recognized important contributors such as Reginald Fessenden and John Ambrose Fleming.[14] Supporters of Nikola Tesla's claim to the invention of radio point to the 1943 Supreme Court ruling in *Marconi Wireless Co.* v. *U.S.* that invalidated Marconi's original patent on the grounds that it was not substantially differentiated from Tesla's.[15] Kentucky farmer Nathan Stubblefield is yet another early pioneer with a claim to the title of "the father of radio," though his story has largely been lost to history.[16]

Marconi did not invent radio, but his advancements in wireless telegraphy did lead directly to its realization. For all his inspired improvements to existing technology though, it was his shrewd marketing and entrepreneurial tactics that left what eventually became his most lasting legacy.[17] Marconi sold the world on a fledgling industry, supplying it with vital resources for its continued growth.

Player pianos, and later the phonograph, were aggressively marketed as consumer products. Yet, while physical radio sets were wildly popular with the public, radio as a mass communication medium had a much broader impact. In a seminal dissertation, Noah Arceneaux rejected the notion that radio declined into commercialism over time, and argued instead that it was expressly commercial from its earliest days.[18] As early as 1910, Wanamaker's Department Store experimented with using the wireless telegraph to communicate between its retail locations in New York and Philadelphia.[19] David Sarnoff himself was once employed as a wireless operator at the New York station.[20] One of the first to seize upon the commercial value of the new medium, vice-president of Westinghouse H.P. Davis created station KDKA in 1920 that "from its very inception, was conceived as an adjunct to the merchandising" of radio sets that his company was eager to manufacture.[21] At Bamberger's in Newark, former wireless operator for the U.S. Navy Jack Poppele continued broadcasting from the store's station WOR throughout the Christmas Holiday of 1922 because of the added incentive this content would provide shoppers who considered purchasing a set.[22]

The rush to join the market of radio receiver retail was an important incentivizing factor for the creation of these early department store stations, and they added immediate value to the network of content available on the radio dial. Without this initial injection of content, radio might have taken much longer to catch on. Furthermore, while the initial business model of radio focused on the selling of physical sets, department store stations were among the first to realize the advertising potential of the new medium. The advertising-based model of radio and television programming is so ubiquitous as to be taken for granted today, but it began in the control rooms of Gimbel's WIP, Wanamaker's WOO, and Bamberger's WOR.[23]

Ideologies

While player piano rolls and phonograph records are tangible products, in contrast "radio broadcasts are inherently intangible and ephemeral resources."[24] This fundamental difference between physical and non-physical mediums proved to differentiate the way each influenced the commodification of music. Like the player piano, sellers of radio sets used ideologies of democratization of access and availability to market their product. Radio promised to bring music, news, and other content to the masses like never before. Yet radio, unlike the user-operated player piano, had no need for a democratization of ability. The centuries old concept of music as a participatory exercise had now given way to "passive listening."[25] In place of democratized ability, sellers of radio sets employed a new ideology of "democratized luxury."[26] Radio was the fruit of American hard work and ingenuity, a fruit rightly to be enjoyed by all. This materialist worldview was well suited to the newly available leisure time and disposable income of many Americans in the 1920s.

After the initial heyday of the amateur hobbyist, personal autonomy was no longer a useful ideology for promoting radio sets either. It was replaced by an audience-centered ideology that framed the listener as a participant in a vast social experiment. The end result of this experiment promised prosperity and a brand of egalitarianism that only equal access to information could afford. The workman, the alderman, and the captain of industry could all share in the same experience simply by tuning in. Listeners might enjoy a symphony, a radio drama, updates on the latest news, an educational lecture, or a sales pitch from the local department store.[27] Yet the mere fact that they were listening, along with countless others in the signal's radius, meant they were an important cog in the machinery of this brave new world of science, technology, and materialism. They were early adopters in the economy of the ether.

As radio encroached upon the phonograph's market share, Edison disparaged radio's lack of fidelity suggesting that "undistorted music in time will sound strange to those brought up on radio music and they will not like the real thing."[28] The lack of sufficient quality for the broadcast transmission of music was a genuine issue for early radio, and the ideology of democratized luxury helped to focus consumer attention on reasons for buying radio sets that transcended their technical difficulties. This is an early example of how the commodification process served to devalue the music product that it objectified. Audiences learned to tolerate poor quality music because the exact nature of the content being delivered on the radio was marketed as less important than the social status that radio ownership afforded.

Ideologies are not static phenomenon. Dramatic improvements in the quality of broadcast music came with frequency modulation (FM), and this development also served to change the ideological narrative surrounding radio.[29] As its chief competitors transitioned from player pianos and the phonograph into film and television, radio concentrated on satisfying increasingly diversified audience segments with its many stations. Overt emphasis on participating in consumer culture through radio ownership became obsolete as consumer culture became an ingrained, accepted aspect of American society. Not surprisingly, quintessentially American ideologies of democratization were appealed to again as the radio transitioned into the automobile, and arguably as radio entered the digital age through satellite and streaming technology. Radio has exhibited a remarkable resiliency in the face of the disruptive innovations it has encountered over the years, and the ideological strategies employed by its early proponents helped to result in its longevity.[30]

Reification

Reification is a reflexive process of give and take between the idea being objectified and the audience it is objectified for. Radio was promoted as an audience-centered medium, and, in turn, the audience became "critical components in the making of radio, the establishment of its genres and social operations."[31] Similar to the player piano's accomplishment in reifying the idea of "the music itself," radio played a substantial role in reifying the idea of a mass audience for a communication medium. The individual could now be transcended, as they became part of a population, demographic, or audience segment. This reification of the audience as a great, untapped reservoir of commercial potential would in time prove to have as much influence on the future of music and popular culture as radio's implementation of an advertising-supported programming model would have on television.

Radio, as the first mass communication medium of the technological era, was both influenced by an emerging materialist culture, and an influential reinforcement of its values. It helped to introduce the idea of corporate sponsorship for music as an extension of the artistic patronage that had existed for centuries among kings and clergy. Many of the most important programs of radio's golden age overtly showcased their respective backers with titles such as "The Bell Telephone Hour" (Bell Telephone Company), "Cities Service Concerts" (Cities Service Petroleum Company), "The Railroad Hour" (Association of American Railroads), and "The Voice of Firestone" (Firestone Tire and Rubber Company).[32] Like the advertiser-supported model of programming, corporate sponsorship is so pervasive in modern media that it is hardly noticed, but early radio is largely responsible for its origin and acceptance.[33]

Radio also served to continue the reification of "the music itself" as it packaged and sold music that listeners were increasingly made to believe had become "better than what they could make for themselves."[34] To suggest a nefarious or calculated rationale for this outcome goes beyond the available source material. The conjured image of unprincipled capital-ists, smoking cigars in the oaken-paneled parlors of high society, all while plotting to steal the soul of the people for profit and conquest is overly conspiratorial to say the least. It is far more likely that, at every turn, radio advertisers naturally followed the course of action they felt would best lead to the advancement of their product. Taylor emphasized the haphazard nature of commodification, remarking:

> Thus music was gradually *made* into a commodity, but this could not be achieved in a direct fashion at first: It was music technologies that were advertised, marketed, hyped, while music went along for the ride… slowly becoming separate and transformed into a new form of commodity itself after its means of reproduction have become well known and naturalized.[35]

Fetishism

The celebrity fetishism used in the marketing of player pianos was nothing new in its day, and it continues to be a primary strategy used in all manner of advertising and commercial ventures. Edison said of audiences that they are "self-hypnotized by [the] reputation"[36] of the artist, and also described the tangible documentation that his phonograph record provided as "for the performer, a form of immortality."[37] As the content of programming for radio became more sophisticated, radio personalities in the form of composers, band leaders, disc jockeys, and announcers became celebrities in their own right.

In addition to the fetishism attached to individual celebrities, radio's ability to mass communicate helped to reify a broader meaning of celebrity in culture. Much as heroes of patriotism gave way to heroes of invention in The Gilded Age, the postwar era saw heroes of invention give way to "heroes of consumption."[38] Radio was on the one hand responsible for blurring the lines of traditional socio-economic classes through the aggregation of large audiences, while on the other it had the effect of creating a new caste of celebrity status.[39] Qualifications for this new class did not originate in noble birth or accumulated wealth, nor did they derive from merit as "radio shows emphasized status and prestige rather than knowledge and accomplishments."[40] Yet celebrity fetishism became an updated form of the class system nonetheless. The trappings of celebrity continue to dominate the music and entertainment industries as each generation produces its stars and starlets, glorifies its heroes, and vilifies its villains.

Contemporary Commodification

The essence of a commodity is in its ubiquity. Classical examples of commoditized goods like corn, wheat, sugar, and oil are thought of as commodities precisely because they are so universal as to be indistinguishable by brand or origin. The conceptualization of a commodity used here is more abstract, and it is not meant to imply that modern music is bland or unremarkable when compared with previous eras. To think of popular music as a commodity is helpful in an economic sense, as it offers an explanation for how the industry could allow its productive output to become undervalued past the point of sustainability. Ultimately though, the similarities between music and traditional commodities do break down because the symbolic value that human beings attach to music causes us to treat it less rationally in economic terms than we do commoditized goods. The similarities that do exist do not suggest that commoditized music now has *only* an economic value, but simply that financial factors with overlapping—and often competing—priorities are now in play along with music's artistic, social, and cultural functions.

Radio delivers many types of content other than music, and music exists outside of radio in many formats. While it is true that as early as the 1920s "music constituted the heart of radio broadcasting," with the majority of its airplay being devoted to music of all types, ultimately they are two separate entities.[41] Their effects on each other are not absolute. Music began to have commoditized value before radio in player piano and phonograph advertisements. Arguably the process could go back further still to printed sheet music or even to the prestige a commissioned symphony added to its patron nobleman or religious institution. The crux of this theoretical argument is that radio was the first medium that utilized music to aggregate a mass audience for advertising purposes.[42] No longer was music's value found solely in items that were explicitly musical in nature, like player pianos or phonograph records. It now had the potential to help sell any good or service in the market through radio commercials interspersed between musical programming. In this way, radio brought about the completion of the commodification of music.

As a point of observation, the similarity of tensions between physical phonograph records and ethereal radio broadcasts in the early twentieth century with that of physical media and digital media in the present day bears mention. It seems that this struggle is nothing new, although the stakes have risen considerably. The financial underpinnings of the music industry have completely fallen out in the wake of streaming services and the digital download.[43] The consequences of this fallout are not fully known. Is the music business in the early stages of a vast market correction that will shift the balance of power away from the advertiser and the industry mogul back to the listener and the musician? It is too soon to tell, but future historians may explore the extent to which the commodification of music went too far. Perhaps they will find that "the music itself" ultimately rejected the process of commodification and refused to fully assimilate into an industrial, product-driven market structure. Moreover, radio's history of resiliency may be put to the ultimate test as it struggles to find paths to profitability in satellite and streaming markets, not to mention ways to pay more than a mere pittance to the artists who supply it with content.

Conclusion

Any consideration of the commodification of music would be remiss without some record of the many subcultures within the music business that have resisted its effects. Folk music survived the popularization of much of its standard repertoire throughout radio's golden age, and resurged with a vengeance in the beatnik clubs and protest songs of the 1950s and 60s. Jazz splintered into genre after sub-genre as its greatest practitioners chose time and again to put the music first rather than follow the easiest path to profitability. "Independent" has become a byword for any new form of musical expression that is original, provocative, and disdainful of mainstream tastes or financial models. In a 2007 Seeger Lecture to the Society of Ethnomusicology, Bill Ivey describes the preeminent place that music holds for the millennial generation, noting that they "want to make [their] own art" as a way to reclaim some measure of the soul of music that has been lost to commodification.[44]

The limitations of this analysis are three-fold. First, an exhaustive survey of the commodification of music through radio, such as Taylor has produced in his examination of player pianos, is beyond the scope of this article. It is perhaps beyond the scope of a multi-volume anthology. While the breadth of source material available to a historian of the player piano is attainably bounded by the relegation of the device to the curiosity shop of history, the historical record of radio enjoys no such limitation. Second, this analysis has occupied a specifically American perspective throughout for the sake of clarity and brevity, but simultaneous advances in radio and music were happening around the world, especially in Europe, during this same period. A comparison study between the U.S. and the U.K. that examines the evolution of radio policy, copyright law, and popular music is just one example of a course that future work might take. Third, a history of radio that centers on the complex relationship of the medium with music, economics, and popular culture is inherently specialized in nature. The narrow scope of this article is in no way meant to diminish the validity of studying radio on its own terms. What is offered here is simply a thumbnail sketch of an under-researched and under-valued topic, one especially deserving of further study.

Additionally, this article undertakes the same, somewhat rigid, treatment of the process of commodification that Taylor uses when examining the player piano in an effort to build upon existing work of recognized value. Yet, just as radio and the music business evolved considerably throughout the twentieth century, economics also evolved and inspired modern theorists. To apply Robert McChesney's theories of political economy to this same subject matter, more focus could be given to "issues of ownership, subsidy and control" as well as "the role and implications of the market" and "broadcasting's contribution to society at large."[45] Or to take Thomas Streeter's critique of McChesney, more emphasis could be placed on cultural differences, the social inequalities reinforced by mass media, or feminist criticisms of Marxism.[46] Jo Ann Tacchi advocates for an "anthropology of mass media," and notes that most work in this area has focused on television studies.[47] Her anthropological treatment of radio and popular music is offered as an initial foray into a field wide open to future scholarship. Finally, Michele Hilmes suggests that radio in the digital age may transition once again, this time from a hyper-local to a global medium.[48] For Hilmes, the "flexibility, portability, and adaptability" of radio's "stealth" nature gives it an "ability to evade control," and this inherent counter-cultural aspect of radio should not be overlooked in future work that seeks to reinforce a sense of its relevance in the modern world.[49]

If Hilmes is correct in her estimation of the future relevance of radio, it may indeed have counter-cultural potential to challenge the very hegemonic power structures in the entertainment and information industries that it helped to create. Yet even if modern technologies do result in increased empowerment for the musician and the listener, financial considerations informed by the process of commodification will continue to exert influence on any content delivery system that radio uses to reach an audience with musical content. Musicians are often asked about their influences, and having a sense of lineage is considered central to finding one's own unique voice. An exposition of the roots of commodification in early radio helps to reveal an important part of popular music's lineage, and thus contributes to a deeper understanding of the tumultuous marriage between money and music.

Endnotes

1. Stuart Hall, "Notes on Deconstructing 'The Popular'," in *People's History and Socialist Theory*, ed. Raphael Samuel (Boston: Routledge and Kegan Paul, 1981), 92-94.
2. Charles D. Lanier, "Two Giants of the Electrical Age," quoted in *Empires of Light: Edison, Tesla, Westinghouse, and the Race to Electrify the World*, Jill Jonnes (New York: Random House, 2003), 54.
3. Timothy D. Taylor, "The Commodification of Music at the Dawn of the Era of 'Mechanical Music'," *Ethnomusicology* 51, no. 2 (Spring-Summer 2007): 293.
4. Ibid.
5. Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, trans. Martin Nicolaus (New York: Random House, 1973). Note that Marx's somewhat infamous assertion that the piano maker is a "productive worker" while the piano player is not can be taken out of context (p. 305). In context, it is a matter of precision in conceptual definitions of "productive labor" and "capital" for him, and not intended as a slight against music as an art form. However, it is debatable that Marx's conceptual definition will allow for an intangible music commodity.
6. Taylor, "Commodification and Mechanical Music," 283.
7. Ibid.
8. Ibid., 288-291.
9. Ibid., 291-292.
10. Ibid., 292.
11. Ibid., 298.
12. G. R. M. Garratt, *The Early History of Radio: From Faraday to Marconi* (London: The Institution of Electrical Engineers, 1994).
13. Tom Lewis, *Empire of the Air: The Men Who Made Radio* (New York: E. Burlingame Books, 1991), 1.
14. Ibid.
15. Robert Henry (Bob) Lochte, "Invention and Innovation of Early Radio Technology," *Journal of Radio Studies* no. 1 (2000): 108.
16. Robert Henry (Bob) Lochte, *Kentucky Farmer Invents Wireless Telephone! But Was It Radio?: Facts and Folklore about Nathan Stubblefield* (Murray, Kentucky: All About Wireless, 2001).

17. Lochte, "Invention of Early Radio," 102.
18. Ronald J. (Noah) Arceneaux, "Department Stores and the Origins of American Broadcasting, 1910-1931," (PhD diss., The University of Georgia, 2007). Note that while this dissertation does not claim to exhaust all source material available on its subject, it is the most thoroughly researched and highly regarded scholarship of the commercial origins of radio produced to date. This work is an excellent resource for those interested in more on this topic.
19. Ibid., 30.
20. Ibid., 48. Note that the lively account of Sarnoff as the lone receiver of distress signals from the RMS Titanic while at his post at Wanamaker's on that fateful day in April 1912 has been proven apocryphal.
21. Ibid., 67.
22. Ibid., 72.
23. Ibid., 81.
24. Christopher Crawford-Franklin and Lyn Robinson, "'Even in an Age of Wonders': Radio as an Information Resource in 1920s America," *Journal Of Documentation* 69, no. 3 (May 2013): 426.
25. Taylor, "Commodification and Mechanical Music," 291.
26. Arceneaux, "Department Stores and Broadcasting," 6.
27. Ibid., 96.
28. Paul Kempf, "Thomas A. Edison Sees a Menace for Music in the Radio," in *Music, Sound, and Technology in America: A Documentary History of Early Phonograph, Cinema, and Radio*, ed. Timothy D. Taylor, Mark Katz and Tony Grajeda (Durham, N.C.: Duke University Press, 2012), 304.
29. Gary L. Frost, *FM Radio: Incremental Technology in Twentieth-Century America* (Baltimore: The Johns Hopkins University Press, 2010).
30. Alan B. Albarran et al., "'What Happened to our Audience?': Radio and New Technology Uses and Gratifications Among Young Adult Users," *Journal Of Radio Studies* 14, no. 2 (November 2007): 92.
31. Elena Razlogova, *The Listener's Voice: Early Radio and the American Public* (Philadelphia: University of Philadelphia Press, 2011), 3.
32. Jim Cox, *Music Radio: The Great Performers and Programs of the 1920s Through Early 1960s* (Jefferson, N.C.: McFarland & Com-

pany, Inc., 2005).

33. Storm Gloor, "'Selling Out' Taken To New Levels: The Evolving Relationship Between Brands, Artists, and Record Labels," *MEIEA Journal* 8, no. 1 (2008).
34. Taylor, "Commodification and Mechanical Music," 297.
35. Ibid., 297.
36. Kempf, "Edison Sees a Menace," 304.
37. Susan Douglas, *Listening In: Radio and the American Imagination, from Amos 'n' Andy and Edward R. Murrow to Wolfman Jack and Howard Stern* (New York: Random House, 1999), 46.
38. Ibid., 149.
39. David Goodman, "Making Early American Broadcasting's Public Sphere: Radio Fortune Telling and The Demarcation of Private and Public Speech," *Historical Journal Of Film, Radio & Television* 32, no. 2 (June 2012): 187-188.
40. Douglas, *Listening In*, 149.
41. Benedict Atkinson and Brian Fitzgerald, *A Short History of Copyright: The Genie of Information* (Cham, Switzerland: Springer International Publishing, 2014), 71.
42. This is known as a "joint commodity" because the same product is being sold simultaneously in two different markets, in this case to the audience who wishes to listen to the music and to the entrepreneur who wishes to advertise to that audience.
43. For further reading regarding the state of the music business around the turn of the 21st Century, the author suggests the following articles published in the annual Journal of the Music and Entertainment Industry Educator's Association: Peter Alhadeff, "U.S. Music Industry Statistics: A Reappraisal," (2001); Peter Alhadeff, "The Value of Music and the Trappings of the Marketplace, 1990-2005," (2006); Paul Friedlander, "It's the End of the World as We Know It: Music Delivery After the Digital Big Bang," (2002); Storm Gloor and Clyde Philip Rolston, "Can The Madness Be Monetized?: An Exploratory Survey of Music Piracy and Acquisition Behavior," (2010); John P. Kellogg, "Do Recording Artists Deserve a Greater Share of Revenue in the Emerging Digital Age?," (2005); Richard Strasser, "Restructuring the Recording Industry: Are EMI's Problems a Warning Sign for Others in the Music Industry?," (2003); and Frederick J. Taylor and Phillip A. Terrell, "An Analysis of

Economic Trends in U.S. Music Industry Capitals: 1995-2003, with Implications for Music Industry Education," (2004).

44. William (Bill) Ivey, "Ethnomusicology and the Twenty-First Century Music Scene," *Ethnomusicology* 53, no. 1 (Winter 2009): 26-28.
45. Robert W. McChesney, "Communication for the hell of it: The Triviality of U.S. Broadcasting History," *Journal of Broadcasting and Electronic Media* 40, no. 4 (Fall 1996): 540.
46. Thomas Streeter, "The 'New Historicism' in Media Studies," *Journal Of Broadcasting & Electronic Media* 40, no. 4 (Fall 1996).
47. Jo Ann Tacchi, "Radio Sound as Material Culture in the Home," (PhD diss., University College London, 1997), 4.
48. Michele Hilmes, "Foreword: Transnational Radio in the Global Age," *Journal of Radio Studies* 11, no. 1 (June 2004).
49. Ibid., vi.

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Jason Lee Guthrie is currently a Doctoral Student in Mass Communication at The University of Georgia. His research focuses on media history and the music industry, and he teaches audio production, video production, photography, and media management. He has toured with several bands, managed a national concert tour in 2007, and he released "Cities", an album of original folk material, in 2011.

Prior to beginning doctoral studies, he received a bachelor's degree in Communication Studies from the University of North Carolina-Wilmington in 2009 and a master's degree in Educational Media from Appalachian State University in 2011. He is a member of MEIEA and the American Journalism Historian's Association.

Reviews

Daniel Frankel and Gideon Frankel, editors; Interviews by Kara Pound. *Artist in Control: Success in the New Music Business*. Artist in Control, 2013. artistincontrol@gmail.com.

Hearing from professionals and entrepreneurs working on the front lines of the music industry is always helpful, especially when they are recognized leaders who have broken new ground within their segments of the business. Their insights and commentary can provide good source material for teaching and learning strategies to effectively maneuver through today's complex and ever-changing marketplace.

Artist in Control: Success in the New Music Business is a collection of documented conversations with eight individuals who share their stories and advice based on their experiences and everyday work in the music business. Independent journalist Kara Pound conducted the interviews; editors Daniel Frankel and Gideon Frankel compiled the fruits of those discussions with the intention of providing "a resource and inspiration for artists around the world" (p. 57). After each interview "key points" are included. Though they don't necessarily summarize the readings, they are useful takeaways from the conversations.

There is an intentional diversity among those who were interviewed. Young entrepreneur Alex White, the CEO of Next Big Sound who was included in *Forbes* magazine's "30 Under 30" music list, offers his insights. Industry veteran Bruce Iglauer, who founded the seminal blues label Alligator Records in 1971, also puts forth his commentary on the changing business environment. Q and A sessions with thought leaders recognized for their work in live music, public relations, social media, digital services, record labels, analytics, and music business education are included in this compilation.

While the diversity is effective, the commentary from the respondents is useful as well. The subjects provide keen insights into what they do and offer advice, without dwelling too much on self-promotion or their own experiences. In rare cases, there is what seems to be a bit of salesmanship occurring. For example, Ian Rogers, a pioneer in the digital music sphere, refers to the advantages of using Topspin, the service for which he was the CEO at the time. However, the philosophies and strategies that are inherent to Topspin would be applicable to all artists, whether they use the service or not. He mentions that an initial focus for artists should be to aggressively grow their fan base, for example. Topspin's tools certainly support that activity, but it is by no means the only option.

Artist in Control could potentially be used as a supplemental text in a music course; there is simply not enough material included to qualify it as a primary textbook. The interviews are relatively short, and there are only eight. The quality is definitely there, but the quantity, or lack thereof, would likely leave the reader wanting more. This is not necessarily an entirely scholarly work. The interviews are simply presented, without commentary or any presentation of an overall theme or analysis of the content.

Still, *Artist in Control* is quite useful. The all-star industry cast was well selected. The subjects offer insightful commentary into artists' places in the industry and what they must learn and realize along the way. The variety of viewpoints is effective as well. Just as technology-focused solutions are recommended, there are also "old school" philosophies espoused. There are some true gems of advice in their comments. In a sense, what's presented here is a great gateway into the minds of these revered experts. A reader, especially a student of the music business, would be well served by seeking out even more content from these leaders and learning more about their companies. In the meantime, *Artist in Control* is a great introduction.

Storm Gloor

Storm Gloor is an Associate Professor in the Music and Entertainment Industry Studies department of the College of Arts and Media at the University of Colorado Denver. He teaches courses in music marketing, the future of the music business, and is the faculty advisor for the College's internships. He has also managed the award-winning student-run record label, CAM Records. In 2010 he was the recipient of the College's Excellence in Teaching award and is currently a

Faculty Fellow in the Center for Faculty Development. Professor Gloor worked in the music industry for fourteen years and holds an MBA degree with a marketing concentration. He is currently vice president of the Music and Entertainment Industry Educators Association (MEIEA) and a member of the Denver Music Task Force. He has presented at numerous events and programs, including SXSW.edu, the Future of Music Summit, the Underground Music Showcase, the Denver Music Summit, and the 2012 EdMedia world conference.

The Event Safety Alliance, Donald C. Cooper, Editor. *The Event Safety Guide: A Guide to Health, Safety and Welfare at Live Entertainment Events in the United States*. New York: Skyhorse Publishing, 2014. www.skyhorsepublishing.com.

Everyone agrees there have been too many accidents at live concert events in recent years. One of the most notable accidents we have on record is the 1942 Cocoanut Grove fire in Boston which resulted in the death of over four hundred patrons due to decorations catching fire after a waiter lit a match and dropped it. Unfortunately this trend has continued with the 2003 Great White fire at the Station nightclub in Rhode Island, which claimed the lives of more than one hundred people due to poor choices by the crew and venue management, and it hasn't stopped. These horrific accidents are sometimes associated with the band performing at the time; however, those organizations were not completely at fault. These accidents could have been prevented and yet they were not, due to uninformed decision-making and the lack of established safety guidelines and protocols for live events. The promoter, event planner, venue manager, production team as well as band members either work together or against each other to create a live event. How these constituents interact will determine the level of safety provided to the patrons.

The Event Safety Guide: A Guide to Health, Safety and Welfare at Live Entertainment Events in the United States, created by the Event Safety Alliance (ESA), addresses the lack of safety protocols for live events. For those students entering college with dreams of going on the road, managing a band, or becoming a tech at a house of worship, the information presented in this guide is necessary for their careers. Students are focused on how to make their dreams of being in the music industry a reality and not necessarily how to keep themselves and those around them safe in the process. The guide is divided into four major sections beginning with concepts pertaining to all live events, patron needs and experiences, protecting workers and the venue, and concludes with managing the show (p. 1). In the Planning and Management chapter, it describes how to coordinate with local authorities and the consideration needed for how the event may affect the larger community support systems. For example, the type of event and number of attendees is explained in detail. It also breaks down an event into three phases: pre-production, production, and post-production, and details how to prepare for each of them. In Chapter 4 the ESA addresses the subject of fire safety in depth. Classifications of fires are defined as well as the designation symbol associated with them (p. 45). The ESA also describes which type of fire could happen in specific venues and what chemicals could be the potential culprit. Most importantly the acronym for operating a fire extinguisher, "PASS", is reviewed here as well. This information is most important for students, as they may not have reviewed fire safety information since childhood education.

Section two (chapters 9 through 14) focuses on crowd management at live events. Chapters 10 and 11 discuss federal regulations when planning events with children and individuals with special needs. This information is helpful because it brings together in one place ideas of how to properly address the needs of distinct groups of people. Simple direction and understanding in the preplanning stages such as those suggested here make all the difference. Chapter 12 examines transportation of patrons and parking related concerns such as pedestrians and building temporary roadways. Table 14.1 on page 157 provides details for the number of people per day and the number of hours per day on site to calculate the number of portable restrooms required. Even if event planners do not quite hit the mark there is a standard for what will meet the needs of attendees and workers. These topics to my knowledge are not discussed in a standardized college curriculum. The insights in these chapters are instrumental in defining the structures found at live events including stages, sets, lighting, seating, video screens, and sound equipment to name a few, and for describing which safety protocols to use for each. Details are also included on electrical, food and water, merchandizing, sanitary facilities, and waste management.

Section three (chapters 16 through 23) covers protective equipment, rigging, pyrotechnics, lasers, sound, and protective barriers. Without being a technical manual, this information represents the "nuts and bolts" of how to keep a live event safe while it is actually happening. Protocols on how to protect the venue, the patrons, and the workers are thoroughly reviewed. Chapter 22 is another chapter that should be emphasized for students since the topic is sound and noise reduction and protection. This chapter spells out OSHA guidelines for noise exposure. Table 22-1 defines safe levels and exposure times (p. 243). Understanding the physical effects of noise exposure is crucial for students if they want to work long-term in the live entertainment industry.

Chapters 24 through 27 review how to manage a show including topics such as merchandising and how to handle television and media personnel. Chapters 28 to 33 round out the book with information about types of events. From small events to stadium events this final section of the book specifies safety guidelines based upon event and venue types. This format brings the awareness to students that each show has different needs. For example, theatrical safety books exist but do not specifically address the complexity of a traveling live event. Those systems are often permanently installed, and the venue has a regular support staff to work with audience and house issues. Traditional theater does not address portable systems that are assembled and disassembled daily, and a crew that changes regularly, or incorporates fifty to one hundred new members for each event (stage hands). The ESA concludes the guide with a glossary of terms, addresses and checklists for live events are found in the appendix. Many of the regulations for live entertainment are found in the numerous publications of OSHA and other regulatory agencies. Until now, in order for one to find specific information one would have to laboriously sift through numerous standards, regulations, and codes. This guide, although by no means exhaustive, provides an overview of many agencies in one location. Specifics must still be obtained from local authorities, but it does provide a direction.

The *Event Safety Guide* clearly fills a void in the U.S. live entertainment industry. This book is for anyone who oversees event planning, sits on an event committee, or works at live events. If everyone has a sense of what is and is not safe we all win. The material covered in this book would be a great addition to a course in the music business/live entertainment industry; several of these topics will be included in my curriculum next year. The authors do an excellent job of filling a void within the industry regarding public safety. Keeping safety in mind as we hold public events will protect patrons, professionals, and the live music entertainment industry as well.

Frank Baird

Frank Baird is an Assistant Professor at Middle Tennessee State University specializing in sound reinforcement. Originally from the Pittsburgh area, Baird grew up with a love for music and the excitement of live performance. He attended his first concert at the Scottish Rite Cathedral, a 2,800 seat auditorium, in New Castle, Pennsylvania where Atlanta Rhythm Section and 38 Special performed. At the time he did not realize he could build a career in live sound but loved every minute of it and still has the t-shirt.

Baird's first big break in the sound reinforcement industry was working for Clair, and he felt as if he went back to school. The years have proven to be the foundation for his live sound career as he practices and teaches in the Clair tradition. Touring with both Elton John and Madonna provided technical experiences in front of an audience. In 1994 Baird relocated to Nashville and began work immediately with Soundcheck. National tours with artists including Clay Walker, Joe Diffie, and Bob Carlisle followed. An opportunity to manage a theatre at Belmont University appeared and he spent the next fifteen years working for the School of Music supporting more than 10,000 events while completing his Master's degree in Education. In addition to his duties at MTSU, Baird is the Production Manager and teaches a seminar at Whitehall Camp in Pennsylvania. He also acts as a consultant for churches, theaters, sound companies, and universities.

Ralf Schmerberg, Director; Many Ameri, Ralf Schmerberg, and Torsten Schmidt, Executive Producers; Easton West and Ralf Schmerberg Writers. *What Difference Does It Make: A Film About Making Music* (Video). Mindpirates Productions, 2014. www.rbma15.com.

Over a frenetic montage of flight and travel footage, *What Difference Does It Make: A Film About Making Music* opens to the sounds of phone conversations between newly accepted students in the Red Bull Music Academy and the film's producers. This divergent mix of lo-fi sound with elegant, high definition visuals sets the spastic, eclectic, and even schizophrenic tone the documentary will occupy over the next 95 minutes. Primarily staged against the backdrop of New York City's thriving music scene, this cinematic aesthetic mimics the environment well, and the viewers find themselves quickly immersed in a world of digital sound, technological artistry, and the absolute supremacy of musical excellence above all other pursuits.

The film premiered on February 17, 2014 at invitation-only screenings in over sixty international cities. It was released to free online streaming the following day. According to the film's website it was commissioned to celebrate the fifteenth anniversary of the annual music academy. Asking the question, "What does it mean to live a life for, and through, music?" is the central theme, and Director Ralf Schmerberg searches for answers through interviews with established artists, vignettes of academy participants, and street footage of life in the city that never sleeps.

Brian Eno is one of many industry luminaries interviewed, and his commentary guides the beginning of the film as he speaks of his inspiration to become an artist as well as his motivation to remain one. Also featured are Lee "Scratch" Perry, Deborah Harry, Rakim, Q-Tip, Philip Glass, and Erykah Badu. Beatles producer Ken Scott urges aspiring musicians to "give up now" if they are not committed to music above all else, and vinyl pioneer Tom Moulton discusses his refusal to let go of an artistic career path long after critics considered him too old to remain relevant. Perhaps the film's most original contributions to music history documentation are found in homages to jazz bassist Malcolm Cecil and synth pioneer Giorgio Moroder.

Topics considered include the challenging economics of the modern music industry. DFA Records' James Murphy speaks about his label's attempts to support creativity and artist freedom. The life of the touring musician and the inherent tradeoffs in an artist's personal life are discussed at length from the perspective of those who have intentionally lived it. There is little in the way of socially correct censorship in this film. Nile Rodgers relates medically dying and being revived from drug overdoses a full eight times. Rather than offering a moralistic memoir of sobriety, he actually claims that the fact he is still alive is proof that he "found a way to relax" as opposed to other founding members of Chic who have died of cancer and stroke. The considerable pressures of fame and living a life in the public eye are also covered in depth.

The film ends with an emphasis on the experience of live music with some interviewees going as far as quasi-spirituality in their personal reflections. Stephen O'Malley describes musicians as "shamans [that] occupy a role that's really necessary for people to have in a society…a point of transference for spiritual energy in the regular, logical world." Though the film's aesthetic is dramatic to the point of pretentiousness in places, the lasting effect is a tender and reverent documentary style that shows an intensely personal side of music and the musician.

It does not take a critic's eye to detect the pervasive influence of Red Bull's brand image throughout, as no attempt is made to conceal it. All of the artists featured are related to the Red Bull Music Academy or the company's music label in some way. The company logo is portrayed on the backdrops of featured concert venues. De La Montagne is shown saying she is "ready to sing" after drinking two Red Bulls, and Lee Perry is shown partaking of the energy drink near the end of the film. Red Bull's patronage of the arts is both an honest attempt at cultural advocacy and unashamed brand transference. The company has a long history of using its considerable resources to sponsor independent music, art, and extreme sports events in exchange for emblazoning its logo on any available surface.

For music industry educators, this documentary provides an opportunity for contemporary and relevant media enrichment of core competencies. Though subject matter and language can be crass at times, the points of view expressed by the working musicians in the film will likely be appreciated by the typical student of the music industry. As an opportunity for classroom discussion, the post-modern commercialism of corporate sponsorship that has become socially acceptable in many circles is particularly interesting, as if "selling out" is now permitted as long as it is blatantly transparent. Indeed, an extreme critical view of the film could find it as nothing more than an hour and a half advertisement for Red Bull's flagship beverage. Yet even this thoroughly negative reading still offers a valuable point of discourse on the role that corporate sponsorship plays in the creation of art, and the evolution of this complex relationship in the face of disruptive innovations that have shaken the music industry to its core. Whatever weaknesses of style, content, and commercialism the film does suffer from, like all good art, there is truth hidden inside. As a documentary of what it means to make music in the modern age, *What Difference Does It Make* is a worthy contribution to the historical record, and potentially a valuable contribution to those engaged in music industry studies.

Jason Lee Guthrie

Jason Lee Guthrie is currently a Doctoral Student in Mass Communication at The University of Georgia. His research focuses on media history and the music industry, and he teaches audio production, video production, photography, and media management. He has toured with several bands, managed a national concert tour in 2007, and he released "Cities", an album of original folk material, in 2011.

Prior to beginning doctoral studies, he received a bachelor's degree in Communication Studies from the University of North Carolina-Wilmington in 2009 and a master's degree in Educational Media from Appalachian State University in 2011. He is a member of MEIEA and the American Journalism Historian's Association.

John C. Maxwell. *Talent is Never Enough: Discover the Choices that Will Take You Beyond Your Talent.* Nashville: Thomas Nelson, 2007. www.thomasnelson.com.

Thousands of talented entertainment and industry students enter universities every year with the vision of perfecting their craft in order to be successful in the industry. *Talent Is Never Enough* poses the question that if talent was the only indicator of success, why do some people never reach their full potential? This text presents thirteen attributes that when combined with talent, make a person successful (or, a "talent-plus person").

Talent Is Never Enough begins with the argument that talent alone does not make a successful person. A few examples include, "More than 50 percent of all CEOs of Fortune 500 companies had C or C- averages in college" and "More than 50 percent of millionaire entrepreneurs never finished college" (p. 2). So rather than dwell on success, the text puts talent into perspective with relation to giftedness; contribution to society; the recognition that everyone has talent; the ability to develop the talent a person has, not the one he wants; and the value of choices. It is the latter, choices, that sets the context for the rest of the book: TALENT + *RIGHT CHOICES* = A TALENT-PLUS PERSON (p.10).

The attributes presented for success are belief, passion, initiative, focus, preparation, practice, perseverance, courage, teachability, character, relationships, responsibility, and teamwork. Each chapter begins with a scenario that establishes the attribute, identifies the importance of the attribute, helps the readers recognize that attribute within themselves, and provides steps to heighten that attribute. In addition, each chapter includes "Application Exercises"—about a half-dozen questions that encourage personal reflection and often build upon previous chapter exercises.

Many institutions require an orientation, or a class, or freshman-success program, or series of workshops that help students identify their strengths, make appropriate choices, and navigate their college and professional career. For a student in the music and entertainment business, *Talent Is Never Enough* taps into students' talent; identifies attributes that, in addition to talent, contribute to success; and helps steer the student in the right direction to make good choices to become a "talent-plus" person. As a teaching tool, a supplemental workbook is available. The workbook chapters correspond to the text chapters and include additional, more detailed questions and exercises that facilitate introspection and action such as, "How can you utilize or further incorporate your talent into those areas of your life where you are most committed?" (p. 70).

The personal and recounted examples of success and failure make this an engaging, easy-to-read text for the student. Combined with the workbook, *Talent Is Never Enough* is a useful classroom tool for the instructor as well.

Kristél Pfeil Kemmerer

Kristél Pfeil Kemmerer is Associate Dean and Associate Professor at the Mike Curb College of Entertainment & Music Business, Belmont University. She previously held teaching and administrative appointments in Texas and Pennsylvania. Dr. Kemmerer earned Bachelor and Master degrees in Music Education from Ithaca College, and a Doctorate in Curriculum and Instruction from Lehigh University. She has been a continuous board member of the Music & Entertainment Industry Educators Association since 2002; is a member of AAC&U, ACAD, and NACADA; and is the appointed Director of the Music Business and Technology Scholarship for Sigma Alpha Iota.

Stephen Marcone and David Philp. *Music Biz 101 & More* (Broadcast, Streaming, and Podcast). Wayne, New Jersey: William Paterson University. musicbiz101wp.com or wpsc.wpunj.edu or bit.ly/1mSfqPc.

At a time when there are thousands of free online courses, Steve Marcone and Dave Philp, two professors in the music management program at William Paterson University, have come up with a weekly radio show that talks and teaches about the business. And it's free! Streamed live Wednesday nights at 8:00 and available as a podcast on Stitcher Radio, the show is entertaining and informative. Philp is a natural for radio. His bigger-than-life personality carries the show and Marcone's dry humor brings out the show's darker side.

I listened in on three different occasions (eleven shows were broadcast during spring semester followed by reruns during the summer). Music attorney Karl Guthrie gave excellent legal answers to several call-in questions (tweets to @MusicBiz101wp are also welcomed) pertaining to registering band names, forming band member agreements, and understanding mechanical reproduction rates. He also spoke about two secrets of artist contracts: 1) artists who are also writers do not need to oblige label requests to be paid at ¾ rate, and 2) the copyright termination law affecting artist contracts enacted thirty-five years ago is now something artists from back then don't know enough about. Guthrie is veteran of the business and very willing to share his knowledge.

Aaron Van Duyne, business manager for *Kiss, Three Doors Down,* and *Dave Matthews,* among others, was equally informative. I learned a great deal about how the role of the business manager in today's industry has expanded beyond collecting and distributing the artist's earnings. Van Duyne said that he participates in negotiations concerning tours, merchandise, and literally all of an artist's new and varied revenue streams.

Lastly in May, I heard them interview Paul Sinclair, Executive Vice President of Digital Media for Atlantic Records. Sinclair gave great information on the direction of digital for the major labels and in particular, concerning deals with the various carriers and streamers. He expressed the importance of playlist curation, apps, and how DIY artists can get more listeners to stream targeted music.

All in all, I'm very impressed with the show. Marcone and Philp play off of each other so the shows never got boring. Speaking for myself, an industry veteran of almost forty years, I found the information timely and accurate. The students on the show were informative as well (each week a student from the university's program serves as a co-host), and the audience asked intelligent questions. Tune in. Maybe you'll learn something… I did.

Steve Leeds

Steve Leeds is Vice President for Talent & Industry Relations at SiriusXM Radio, serving as liaison between Sirius and the entertainment industry, including music labels, film studios, managers, agents, and promoters. He is a member of the adjunct faculty of Bergen Community College, William Paterson University, and formerly at Belmont University and the New School.

UK Music, The Intellectual Property Office, and Aardman Animations. *Music Inc.* (App). 2014. Available for iOS and Android.

MDickie. *Popscene* (App). 2014. Available for iOS and Android.

Here are two new apps that teach you how to manage a career. *Music Inc*. is the result of collaboration among UK Music, the Intellectual Property Office, and Aardman Animations. The free app for Apple and Android comes in fifteen languages and allows players "to take on the role of managing an aspiring musician," and I must add: it's pretty cool! The blurb says it allows a player "to experience the challenges encountered by artists in the digital age."

Okay, what's cool about it? It requires the player to monetize revenue streams, such as live and recording, in order to acquire enough money to promote and advance an artist's career. So in order to assemble the team to take a shot at stardom, one must sell music or perform gigs to earn enough money to pay all the "suits." Protecting your rights (it is also called an antipiracy app), songwriting, producing, and releasing are all part of the process, and when others complete these steps, it's all on the artist's dime. So the player needs to develop a *strategy* in order to get through the maze and become successful. I give it $$$$ out of 5 (it takes a few minutes to learn how to use it).

Popscene, from MDickie.com calls itself a music industry "sim" that teaches how to manage a career. The description reads, "Bring your MP3 collection to life with animated performances as you embark on a career in music! Form your own band by recruiting talent from over 150 artists across 6 unique labels, or enjoy creating your own stars with the editor." The game begins with an artist seated in the office of "The Underground" and a "suit" requests that the artist submits a song, perform it in the office, and then fine tune it in the studio. The player chooses band members (or individual artists) from a list of 150, all with different attributes (or one can create unique artists with the game's built-in editor). Downloading your own MP3s is the fun part or

you can continue to play by using the game's built-in tracks.

The next steps are to record (or submit) hits that will top the charts and then perform them on the road. Once several songs exist, it is the on-stage performers who must make the performances hits by earning high scores. The success rating for a show is the average score of all the songs performed. When booking venues, the player must calculate the chances of making a profit. Tickets to shows are sold at five dollars per song, so the more songs performed the more revenue becomes available.

The game itself is rich and complex. Throughout, revenue and expenses are calculated and different scenarios are created that make use of the various aspects of the business (in some ways this is very realistic). *Popscene* offers a variety of deals with different advances, royalty rates and terms.

I found the game repetitious and the instructions and takeaways, although humorous, were confusing and not as clear as *Music Inc*. The game is free to download, with the option to purchase a "backstage pass" for more content. I give it $$$ out of 5, however most online reviewers love it.

Stephen Marcone

In the late 1960s and early 70s, as a trumpet player in a rock music group, **Dr. Stephen F. Marcone** recorded for Epic Records and toured the country taking an active role in the creative and managerial aspects of the ensemble. In 1973, he joined the faculty of the School of Music at Syracuse University and stayed until 1984. During that time, he was also Vice President of the Syracuse Musicians Association (Local #78). In 1984, he came to the William Paterson University of New Jersey where he was Chairperson of the Music Department for fifteen years, and recently, for two years, was Interim Dean of the College of the Arts and Communication. He has written articles for numerous publications and has lectured at the Hartt School of Music, New York University, and many national and regional conferences. He is the author of *Managing Your Band*, in its fifth edition, and is a frequent lecturer for the New Jersey Council on the Humanities. Each summer Marcone conducts the university's Summer Jazz Ensemble.

Steve Winogradsky. *Music Publishing: The Complete Guide*. Van Nuys, California: Alfred Music, 2013. www.alfred.com.

Steve Winogradsky's *Music Publishing: The Complete Guide* is an exciting new volume on music publishing. This well-organized book lives up to its name through its clear and detailed chapters covering this important area of the music industry.

Winogradsky begins with a history and concise summary of copyright law, establishing the basis for the music publishing industry. Graphics are included to assist the reader in understanding complex topics such as copyright duration and termination of rights. Other chapters in the book are dedicated to performing rights organizations, mechanical licensing, synchronization and print licensing, songwriter and composer agreements, publishing administration, and sampling.

The author wisely dedicates two of the thirteen chapters to explaining the frontier of digital media. Analysis of a digital rights agreement is especially helpful for anyone who has not seen or is attempting to draft such a document. The chapters on pitching and placement agreements and production libraries are yet another attractive component of *Music Publishing.* The chapter on production libraries is one of the best written by any author on this topic. The subject is covered by text and an analysis of three different contracts. The study of this chapter would be a helpful addition to any media production course.

Throughout the book the author clearly defines industry terminology. He demonstrates how these terms function in industry agreements, and provides all of the definitions in a glossary. Winogradsky draws from his many years as an attorney and music industry professional to provide case studies, hypothetical illustrations, and examples from his own career. This brings the material to life for the reader. These personal examples are enlightening, detailed, colorful, and often humorous.

The greatest strength of this book, which really sets it apart from other books on publishing, is the inclusion of sample documents with extensive explanation by the author. These documents include contracts, letters, licenses, special clauses, and schedules where appropriate. Winogradsky walks the reader through each of the contracts using a side-column running analysis and commentary which includes illustrative calculations. It is the next best thing to having an attorney present. There is a thorough description of each section and subsection of the documents. The author gives examples of well-written contracts as well as “bad” agreements. As the author points out, a great deal can be gleaned from studying an unrealistic or unreasonable agreement as well as a model one. This kind of contract analysis can be very time-consuming in the classroom. Students can review these documents on their own, with the author’s help, which makes them invaluable resources.

Music Publishing is aimed at students as well as industry and legal professionals. The extensive document analysis makes this book useful for both music publishing and industry contracts courses. The author does not just explain the workings of the publishing industry but also provides very practical advice. The chapters are precisely laid out in an organized and consistent fashion which makes this an easy-to-use resource. Although *Music Publishing* comes with a somewhat high retail price it is well worth the cost.

Benjamin Smith

Benjamin Smith is Assistant Professor of Music Business at Montreat College in Montreat, North Carolina. A native of Spartanburg, South Carolina, Smith holds a B.A. in Music and a B.S. in Finance from The Florida State University, an M.M. in Music Business and Entertainment Industries from the University of Miami, and a J.D. from the University of Memphis. He is an active professional cellist in Western North Carolina and the Upstate of South Carolina, performing with many orchestras, chamber ensembles, and in solo performances. Smith is a member of the professional cello duo Cello Times Two. His professional career includes work in business and law.