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# Keeping America Singing: Key Entertainment and Music Industry Themes During and Post-Pandemic

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## Abstract

This article examines four entertainment and music industry themes that emerged during the COVID-19 pandemic and the resulting effect of such themes on the current entertainment and music industry landscape.

Keywords: COVID-19, force majeure, contract law, insurance, insurance disputes, litigation, alternative dispute resolution, livestreaming, concerts, touring, live events, social media, Facebook, Instagram, TikTok, Clubhouse, corporate collaboration

## Introduction

In addition to the unprecedented toll on mankind that COVID-19 caused as it shook the world, the entertainment and music industry's forced navigation of uncharted waters immediately became an adventure that no one expected and for which no one could plan. From suspension and cancellation of major tours and concerts to the shuttering and/or closing of countless music venues, at best, most of the industry faced severe disruption, or, at worst, unwanted dissolution. No matter how we individually define COVID-19's impact, most can agree that as a result of the pandemic, the music business and entertainment industry faced changes that will have long-term effects. In this article, the authors summarize four entertainment and music industry themes that emerged during the pandemic and discuss how those themes are playing out currently.

## Entertainment Industry Responses, Changes, and Solutions During and Post-Pandemic

COVID-19 impacted all aspects of the entertainment and music industry. In 2020, according to *Pollstar,* the live events industry expected to make $12.2 billion but instead lost more than $30 billion due to, among other things, "unreported events, ancillary revenues, including sponsorships, ticketing, concessions, merch, transportation, restaurants, hotels, and other economic activity tied to the live events."[1] There was no one-size-fits-all response to the challenges faced during the pandemic. Responses to the COVID-19 virus have been as unique and varied as the virus itself. Although no exhaustive or exclusive list of solutions exists for our industry, certain legal and business response themes materialized that should be examined by all who have been impacted as we navigate our resilient industry. In response to the COVID-19 pandemic, certain collaborative and creative approaches have been developed by an industry that has always relied upon imagination, inspiration, and interconnectivity.

This article discusses four themes that emerged during the pandemic and that will have lasting effects post-pandemic with respect to entertainment and music business:

1. Stakeholders were forced to take a closer look at force majeure and related clauses in contracts and will continue to do so going forward as this language has proven to be critical in certain situations.
2. Stakeholders were obligated to dive deeply into the language of their insurance policies to answer novel questions related to coverage and will continue to pay very close attention to policy language going forward to ensure adequate coverage.
3. Artists had no choice but to pivot to livestreaming as a way to stay connected and generate revenue and will continue to use livestreaming as an important tool to engage with fans for promotion and other purposes.
4. New social media platforms emerged during the pandemic (e.g., TikTok) that remain extremely relevant to our industry as they caused artists and other stakeholders to think outside the customary digital box to continue growing, learning, and connecting.

## Contracts

Although every industry relationship is different, the first place to look for solutions to business relationships facing stress is to review the parties' contracts. In theory, the contract should "hold the answer to any legal question the contracting parties might face."[2] Contracts allow the parties to customize the terms of their relationship, and as such, bring predictability to their interactions.

In the negotiation and drafting of contracts, some of the most important provisions that contracting parties seek to include are related to the allocation of risk. These clauses allow the parties to reasonably allocate the risks involved while also selecting a resolution that will work best for their own situation.[3] Although parties attempt to envision all the issues that might arise and impact the relationship, few contracts are designed to deal with unexpected or novel issues. Even though they do their best to foresee the future when drafting contracts, lawyers cannot be expected to predict an outcome that has never occurred.

In practice, force majeure and related clauses, such as impossibility and impracticability, have been utilized to deal with unforeseen circumstances. Force majeure began as an implied principle to excuse non-performance that resulted from an "act of God, [or] natural disasters such as earthquakes or floods," but it has grown to "encompass many man-made and man-caused events such as strikes, market shifts, terrorist attack[s], computer hacking, and governmental acts."[4] It now offers "a flexible concept that permits the parties to formulate an agreement to address their unique course of dealings and industry idiosyncrasies."[5] Force majeure is defined by *Black's Law Dictionary* as:

> an event or effect that can be neither anticipated nor controlled; esp., an unexpected event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars).[6]

Prior to COVID-19, the force majeure clause and others like it were often included in the boilerplate sections, tucked into the last provisions of normal commercial contracts. They were rarely utilized as these so-called "superior force" situations did not often arise. A typical example of a force majeure clause found in a tour-related contract is as follows:

> Force Majeure: The parties agree that in the event of an act of God, riot, strike, disability, sickness, insurrection, war, natural catastrophe, or the exercise of authority of either the federal or state government or any political subdivision thereof, or any event beyond the reasonable control, including, but not limited to, vehicular mechanical failures or accidents that are not under either party's reasonable control (individually and collectively, "force majeure event(s)") that renders either party's performance hereunder impossible, or that renders either party unable to fully perform as required herein with respect to one or more concert performances on the Tour, then said party shall be relieved of its obligations under this Agreement for such concert appearance(s) and shall not be liable for any loss, cost or expense resulting from such failure to perform. Either party shall have the right to terminate this Agreement if a force majeure event, which renders the performance hereunder impossible, shall continue for seven (7) consecutive days.

Just as attorneys and business stakeholders frequently glossed over force majeure clauses in contracts, the COVID-19 pandemic abruptly stopped us in our tracks. Suddenly all interested parties dusted off their contracts to review this important clause while business shutdowns began wreaking havoc. As COVID-19 created unique challenges never before faced in our lifetime, industry stakeholders and their advisors were left to think outside the box while reviewing contracts in light of the pandemic. Most reviews began with answering the threshold question of whether the contract contained a force majeure clause. Generally, this sort of clause "excuses both parties from liability or a contractual obligation upon the occurrence of some extraordinary event or a circumstance beyond the control of the parties."[7]

After reviewing a contract and confirming that a force majeure clause is included therein, of utmost importance is determining how such clause defines the so-called "superior forces" that would rise to the level of excusability of the contract. The following necessary components typically exist for any force majeure claim:

- The claim must define the breach for which the promisor seeks to be excused;
- The claim must define the "force majeure event" itself;
- The claim must require (and define) the causal connection between these two; and
- The claim must explain what will happen if performance is excused.[8]

In order to invoke most force majeure clauses, the execution of the contract must be *impossible*, not just more burdensome or more expensive, unless the language of the contract says otherwise.[9] Further, attention must be paid to whether there are any notice and/or timing periods that must be met or followed. Special consideration to the language of the force majeure provision itself must be had as these cases are naturally very fact intensive. For example, "an entertainment company might be fully excused from its obligations to host a concert at a local amphitheater, but a construction contractor who was tasked with renovating the amphitheater may only be excused from performance until the force majeure event ceases."[10] The determination of to what degree, and for how long, a particular party is excused from performance is typically found within the plain language of the contract.[11]

In case after case that has been filed in connection with the pandemic, the principal goal of the court in interpreting a contract is clear: accomplish the parties' intentions. "Courts are loathe to rewrite agreements to reallocate risks they expressly assumed. Those intentions are manifested in the plain words of an unambiguous contract. Courts generally will not entertain arguments that the parties intended something that is contrary to what the contract says. They will not read an allocation of risk into a contract that does not exist."[12] Whether the pandemic created a force majeure excuse is dependent upon a careful analysis of the facts and circumstances of each contract and each case.

The case of *NetOne, Inc. v. Panache Destination Mgmt.* illustrates that courts will hold parties to the words they use (or do not use) in their force majeure provision.[13] In this live event case, the pandemic was determined to be a force majeure event, relieving both parties from future performance under the contract even though the booking party had paid a substantial deposit.[14] Their claim was dismissed because the contract was clear that the force majeure provision relieved both parties of future performance, and "nowhere in the force majeure provisions does it say that, if the contracts are terminated due to a qualifying event, the non-terminating party must return all deposits made."[15] In a later decision, the Court reaffirmed its holding, suggesting that the booking party could bring an unjust enrichment claim.[16]

If a determination is made that a force majeure clause can be invoked, decisions as to how to proceed become critically important. Of course, litigation is always available as one course of action, but parties should carefully consider other possible solutions, such as alternative dispute resolution (ADR). Other options like ADR may prove to be more flexible and less expensive than the litigation process. At all times, communication with the other party should be the first course of action, even if one's contractual position is weak.

Now that we have endured and continue to experience a global pandemic, there is no excuse to not plan for another world issue—especially as we move forward in business relationships. In so doing, contracting parties should meticulously select a resolution that works best for their individual situations.[17] As contracts are negotiated and drafted, risks and costs related to an unexpected catastrophe should be assessed and allocated.

Moving forward, force majeure clauses should be strengthened so there are no ambiguities—the more specific, the better—including being clear about whether a pandemic can form the basis for a force majeure event; defining "pandemic," "epidemic," and "endemic"; and setting forth definite guidelines on timing and impacts on performance.[18] Remember, no one can think of everything; therefore, a prudent stakeholder should consider including a broad-sweeping, catch-all provision.

Additionally, when drafting a contract, one should pay close attention to internal inconsistencies of the language and provisions of the contract. For example, in *Zhao v. CIEE, Inc.*, the Court noted that while the contract for a study program, which was interrupted by COVID-19, broadly allowed for refunds in the event of cancellation, it also had a waiver of liability stating that the company would not be responsible for any damage arising from an "epidemic."[19] The student did not receive any refund as the risk of an epidemic was anticipated and dealt with in a different section of the contract.[20]

Vigilant scrutiny should also be afforded to dispute resolution clauses. If we have learned anything from the COVID-19 pandemic, it is that a litigated contract dispute may take a considerably long time to reach a final resolution, and the resolution may not be what was anticipated when drafting the agreement. Contracting parties should determine whether there is a need to require some sort of alternative to litigation, even if only a mandated pre-litigation mediation or a form of alternative dispute resolution. In order to mitigate unfavorable results, we must re-evaluate how we negotiate and draft contracts as the world adjusts to life amidst COVID-19.

## Insurance

Besides entering into ironclad agreements that contain force majeure and related clauses, insurance has long been a way for businesses to transfer risk or the cost of doing business. Many commercial property insurance policies require physical damage (such as material alterations) to covered property as a basis for coverage.[21] Such policies also often contain exclusions such as virus, contamination, and/or loss of use.[22] In order to protect its specialized assets, the greater entertainment industry utilizes various other forms of insurance as well such as production and event cancellation insurance. Contrary to commercial property policies, whose contracts are often on standardized forms, language contained in policies covering production and event cancellation varies quite a bit.[23]

Event cancellation insurance, designed to protect the interests of venue owners, sponsors, promoters, and others, covers an extensive assortment of live events, such as festivals, athletic events, conferences, and concerts.[24] Obtaining these policies, especially those that cover cancellations due to pandemics, can be quite expensive.[25] Since the 2003 SARS outbreak, some policies contain exclusions for diseases, some allow for coverage in the event of disease outbreak, and some are silent, failing to mention disease outbreaks at all.[26] The All England Lawn Tennis & Croquet Club, which organizes the Wimbledon tennis tournament, was set to run from June 29 to July 12, 2020, but because of the pandemic, the tournament was canceled for the first time since World War II.[27] According to reports, organizers received a $141 million payout from their pandemic insurance policy for which they had paid $34 million in premiums over the prior 17 years.[28]

The causes of action available to a policyholder to determine if coverage exists for COVID-19 claims include breach of contract and declaratory judgment.[29] As part of any party's pleadings in any litigation, any exclusions and exceptions to coverage must be closely examined.[30] "An exclusion is a loss or a cause of loss that is not covered by the policy and an exception is a policy provision that narrows the scope of an exclusion. An exception returns to the scope of coverage, in whole or in part, a loss or cause of loss that was excluded."[31] If a policyholder contends that an exception applies that returns the loss or cause of loss to the scope of coverage, then such policyholder has the burden of proof.[32]

The language of the policy is central to the result of any insurance lawsuit. In litigation over what certain policy language means, "If it is found to be ambiguous (i.e., susceptible to more than one reasonable meaning, one finding that there is coverage and one finding that there isn't), the outcome will usually be that coverage is found to exist."[33]

Production insurance is another interesting type of policy that is unique to the entertainment industry. A production policy generally covers motion picture and television productions, such as casts, props, sets, wardrobes, miscellaneous equipment, etc.[34] This kind of insurance may come into play should a cast member become infected with COVID-19.[35] Various types of exclusions exist for production policies. Some exclude losses from a specified virus, while others may more broadly exclude losses arising from many diseases.[36]

In addition to commercial property, production, and event cancellation insurance, numerous other insurance options are available, including business interruption. Some of the most significant insurance-related lawsuits generated by COVID-19 involve the issue of whether insured businesses that were forced to cease operations during the pandemic had valid claims for coverage under their business interruption policies.[37] Legislators and regulators at both the state and federal levels disagree as to whether insurers are obligated to cover these types of claims.[38] The controversy stems from the provision in business interruption policies that typically requires a "direct physical loss arising from a covered peril to trigger coverage."[39]

Many of the lawsuits that have been filed following COVID-19 alleged that coverage should apply despite the fact that there was no "physical loss" and despite that policies contained virus exclusions.[40] A considerable amount of cases referenced "stay home" government orders to claim loss under civil authority clauses in certain policies, which covers loss arising from business closure due to government action.[41] Complaints also alleged loss where problems with ingress and egress to insured premises caused business interruption.[42] See the following statistics, which high-light the number of insurance cases related to business interruption claims that were filed in federal district courts during the listed time periods:

- March 2020 to December 2020 – 1,471
- March 2019 to December 2019 – 394
- March 2018 to December 2018 – 354[43]

In May 2021, Live Nation urged a California federal judge to allow its COVID-19 business interruption lawsuit against Factory Mutual Insurance Co. to proceed, arguing that its policy specifically includes communicable disease, and as such, constitutes "physical damage" under the policy.[44] At the time of this writing, the case, like many others related to COVID-19, is unresolved and awaiting a Court decision.

Other cases filed by music venues against insurers that remain unresolved at the time of this writing include suits filed by Raven and the Bow, a San Francisco music venue, and Till Metro Entertainment, doing business as The Vanguard, a concert venue in Tulsa.[45] Both plaintiffs alleged that their insurance policies covered losses suffered by COVID-19 while the insurers, First Mercury Insurance Company and Covington Specialty Insurance Company, argued otherwise.[46]

Another lawsuit involving a "cancellation, abandonment and nonappearance insurance" policy was filed by Metallica against their insurer in June 2021 after forced postponement of certain South American shows.[47] The insurance company denied coverage under a communicable disease exclusion, but the band argued that the South American shows were not postponed due to any feared threat of communicable disease.[48] In its complaint, the band accused underwriters of not investigating whether venues were actually closed by government order, among other things.[49] At the time of this writing, this case also remains unresolved.

Because of the flood of insurance-related lawsuits following COVID-19, Congress is reviewing the proposed Pandemic Risk Insurance Act of 2020, 116 H.R. 6983, which would enact certain protections for insurance industry losses.[50] In exchange for these protections, insurers would have to make business interruption coverage available for insured losses that do not "differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than public health emergencies."[51] The proposed Pandemic Risk Reinsurance Program would do the following:

- "Function as a reinsurer for commercial property and casualty insurers";
- "Be administered by the Department of Treasury";
- "Be triggered when industry losses exceeded a $250 million threshold"; and
- "Cap aggregate losses at $500 billion in a calendar year for both insurers and the government."[52]

Peter Tempkins, the Managing Director of Entertainment for HUB International Limited, a global insurance brokerage, explained that once the novel coronavirus was recognized as a serious risk to public events, insurers began to exclude COVID-19 from most new policies.[53] According to Mr. Tempkins, "Everybody now knows about COVID-19 and so they want to buy coverage…But you can't—it's too late."[54] Going forward, industry stakeholders should monitor the insurance industry to determine how it continues to respond to the pandemic and whether these types of insurance policies are made available again.

Existing, specialized entertainment policies must be extensively and continuously analyzed as policy forms and endorsements change over time and upon renewals. Policyholders must first scrutinize the policy that was in force on dates material to the loss because that is the particular policy on which any litigation would be based.[55] Determining the exact date of loss for claims related to COVID-19 is particularly confusing since some jurisdictions look to the date of local lockdown while others use different methods.[56]

In the future, when negotiating insurance policies, stakeholders must continue to prudently review the language. Decision makers should evaluate, perhaps by way of a decision tree, all possible scenarios—from full completion of an event to full loss, and everything in between. Having a mindset of partnership, understanding, and sharing mutual goals has always been a hallmark of the entertainment industry. The same principles also hold true for entertainment insurance. Relationships are important and should be preserved—even in the insurance arena.

## Livestreaming

> Livestreaming is a new genre, a new form of entertainment. It is not ephemeral. People will doubt it—but I believe that it will stay and be a complementary form of entertainment that will compete with playlists and

videos and live shows. (Fabrice Sergent, co-founder of Bandsintown)[57]

As discussed, COVID-19 hit the entertainment and music industry harder than ever thought possible. With the cancellation of live events left and right, the industry was forced to take a hard look at alternate methods of income for artists and musicians. The music business quickly turned to livestreaming as a way to keep artists connected to fans while attempting to replace lost income. Virtual concerts existed long before the pandemic; however, the pandemic forced the music industry to consider virtual events as the new normal.

The live music sector continued to be disrupted in 2021, with the future of live, in-person music remaining an unknown. One thing has become clear: the innovations during the pandemic in livestreaming were not simply a band-aid to get the music business through the COVID-19 pandemic. The livestreaming innovations were the "foundations for permanent additions to the live music mix."[58]

Live, in-person concerts used to be entirely separate from virtual concerts because live events required certain logistical assets like buildings, ticket-takers, parking, etc.[59] The pandemic has shown us that the livestreaming sector is its own standalone sector, successfully operating separate from traditional live events.[60] Over the past year-and-a-half, the music industry has learned what does and does not work when it comes to livestreaming, and fan engagement has shown that although livestreaming will never serve as a full replacement of a live concert, the livestream experience will continue to exist in a complementary lane of its own far beyond the pandemic.

Before discussing the success of livestreaming amidst the pandemic, we should look at the reality of what was lost during 2020. During the first quarterly analysis of 2020, box office tallies showed an increase of 10.9 percent in overall gross revenue and sold tickets for the top 100 tours as compared to the first quarter of 2019.[61] By the end of 2020, totals reported for events that occurred during the first quarter of 2020 showed an even higher percentage of growth during the first quarter than initially anticipated.[62] Had the global pandemic not occurred, 2020 may have produced the first $12 billion year in box office earnings worldwide.[63] Because the majority of live events were canceled as a result of COVID-19, touring revenues plummeted in 2020 and totaled only $1.2 billion, far less than the $5.5 billion of total gross revenues achieved in 2019.[64] "What was projected to be the highest grossing year in live entertainment history has resulted in 90 percent loss due to the pandemic," said Henry Cárdenas, President and CEO of the Cárdenas Marketing Network.[65]

In March 2020, once the entertainment and music industry began to surrender to the reality that life might never be the same, the industry turned to livestreaming as a method of survival. Livestreaming is a format that has been around for many years but assumed new importance and increased demand during the pandemic.[66]

Some of the first livestreams of the pandemic consisted of grainy, poor-quality footage shot from cell phones and broadcast from living rooms.[67] However, as 2020 progressed, artists acclimated to the new medium and started investing in better production (as evidenced by startup livestream companies popping up during the pandemic, which are discussed more below) and even left home for exciting venues like the Grand Canyon.[68] LiveXLive Founder, Chairman, and CEO Rob Ellin stated, "This is the next generation music video. It's driving audio sales. It's going to drive ticket sales when live comes back. It's not just about the livestream, it's about the curation. It's about delivering something unique."[69]

The Grand Ole Opry pivoted to livestreaming early on and excelled at delivering unique and high-demand content during 2020 and 2021. The Grand Ole Opry / Circle Live was named the 2020 Top Streamer by *Pollstar*[70] When the Opry learned on March 13, 2020 that it would have to close its doors to live audiences, it was uniquely positioned to quickly (i.e., in less than twenty-four hours) pivot to livestream with the help of Circle, the country music lifestyle streaming channel that it launched in January 2020 with Gray TV.[71] Circle Network's Opry livestreams amassed 18.7 million viewers in the third quarter of 2020, demonstrating the Opry's worldwide appeal.[72] The year ended with a whopping 30.3 million viewers and 88,347 shares for Circle Network's Opry livestreams.[73] The Circle Network Opry livestream featuring Vince Gill and Reba McEntire on July 18 was also the ninth-ranked individual livestreamed show in 2020 according to *Pollstar*, with 2.6 million viewers.[74] "Almost simultaneously, our strategies began to include widening the show's distribution through livestreaming and the Opry's new network, Circle Television, to showcase the Opry and the artists on its stage to a larger audience than ever before," Dan Rogers, the Opry's VP and Executive Producer told *Pollstar*.[75] "Within a day of having paused shows with a live audience in the Opry House, fans across the country and around the world who were sheltering in place could watch the Opry on their televisions, computers, and smartphones."[76]

Like the Opry, others were quick to adapt in 2020 and pivot to livestreaming as a means of staying connected to fans. Twitch reported that livestreams boosted viewership of its Music and Performing Arts category of streams from 92,000 to 574,000 average viewers in the period from March 8 to March 22.[77] Almost immediately, artists embraced their new normal in quarantine and found ways to perform "live" on platforms like Instagram and YouTube, rallying around hashtags like #TogetherAtHome.[78] John Legend and Chrissy Teigen connected with fans via Instagram for an hour on March 18, 2020, with Legend casually playing fans' song requests as Teigen read comments from fans while wrapped in a bathrobe sitting on the piano near Legend.[79] On March 16, Coldplay's Chris Martin played acoustic versions of the band's hits on Instagram Live, and Swae Lee of rap duo Rae Sremmurd drew nearly 250,000 viewers for his solo show on March 20.[80]

Later, on March 30, 2020, Elton John hosted a livestream benefit concert with iHeartRadio, with artists including Billie Eilish, Billie Joe Armstrong, and Dave Grohl, all performing from their homes.[81] Then, in April 2020, more than 27 million people logged into the video game platform "Fortnite" to attend a live event featuring a performance by rapper Travis Scott.[82] WaveXR Inc. and TikTok also collaborated on a live event in August 2020 that featured artist The Weeknd and garnered approximately 3 million viewers.[83]

Early during the pandemic, with the exception of a few big names like Travis Scott and The Weeknd, many livestream performances were random, impromptu, and free of charge.[84] As the days and weeks passed, however, artists began adding high-quality lighting, special effects, and varied camera angles, and even started making their shows exclusive, pay-per-view events.[85] Ticket prices to livestream shows vary but are often around the $15 mark.[86] Dua Lipa's livestream show on November 27, 2020 priced tickets in the $15 to $20 range while Billie Eilish charged up to $30 for her October 24, 2020, livestream from Los Angeles.[87] Dua Lipa's show took five months of planning and sold 284,000 tickets.[88] Eilish's fans who purchased tickets were not only given access to the livestream, which they could re-watch for up to twenty-four hours, but also discounts on merchandise.[89]

The ability to participate in something exclusive appears to correlate with ticket prices. Fans of folk artist Jason Isbell paid $100 in July 2020 to watch a live performance and gain access to a special Q&A session afterwards.[90] Isbell added the option to pay an extra $25 to receive a recorded version of the livestream event.[91] While the topic will not be discussed here, worth noting for further research and discussion is artists' potential violation of the exclusivity requirements of their record deals when creating or authorizing the creation of "records" from their livestream events.

Nugs.net followed the livestream frenzy and created a popular series called "Metallica Mondays" which consisted of weekly archival concerts streamed by Metallica to benefit their All Within My Hands Foundation.[92] Metallica later staged its only 2020 show, a pay-per-view livestream in November, which raised $1.3 million for charity.[93] Tickets for the livestream started at $15, but a $95 option allowed fans to appear on screen with the band members, who could interact with them in real time.[94]

Another livestream success story involved San Francisco's Outside Lands music festival, which went digital on Twitch, calling itself "Inside Lands."[95] The revamped Inside Lands festival consisted of a mix of livestreams and archival sets, with commentary and Q&A opportunities.[96] The festival was able to extend its reach to millions of people and, for the first time, create a global audience that far surpassed the number of fans who could fit in a physical venue.[97] The ability to reach a vastly larger audience is certainly a significant appeal of livestreaming for artists, and fans see this as an opportunity to see a live show that they otherwise may have been unable to attend in person due to geographical or venue size limitations or otherwise.

Other successful livestream events include Post Malone's Nirvana Tribute, Offset's Oculus/Facebook Festival, and Kaskade's performance at the Grand Canyon.[98] The list goes on and on for artists who, perhaps not initially by choice but rather out of necessity, embraced livestreaming as a source of connection and monetization. Data from music industry analysts show that tickets and merchandise for livestreamed shows generated $600 million in revenue in 2020 and increased nearly 300 percent from June to November 2020.[99]

Not all virtual events have been expensive, complex, visually stimulating experiences like the Travis Scott, Billie Eilish, and Dua Lipa performances. During the pandemic, artists and companies were able to experiment and see what resonates with fans in order to make livestreaming a continued viable revenue source post-pandemic. The casual shows, which may not have the best audio quality and where artists are playing inside their homes and sometimes distracted by things happening around them, have proven to be very endearing to fans.[100] These laid-back, no-budget shows allow fans to have a glimpse at real life, without all the makeup and expensive outfits.[101]

The necessity and demonstrated success of livestream concerts during the pandemic caused many new companies to emerge and existing companies to expand their services to include livestream capabilities. StageIt was an early company in the livestream space, starting around 2012 and recognized by *Billboard* that year as one of the Top 10 Music Startups.[102] According to its website, StageIt is an "online venue where artists perform live, interactive, monetized shows for their fans directly from a laptop, offering fans unique experiences that are never archived… Artists decide when to play, what to play and how much they want to charge. Fans then buy virtual tickets to the show using [StageIt's] virtual currency called 'Notes.'"[103] Artists who have used the StageIt platform for livestream shows include Ingrid Michaelson, Jimmy Buffett, Jason Mraz, Plain White T's, Korn, Indigo Girls, Sara Bareilles, and more.[104]

Other veteran livestream companies like nugs.net, YouTube Music, and LiveXLive continued to crack the livestreaming code during the pandemic and will do so post-pandemic, developing strategies to engage viewers, monetize content, integrate merch sales, and bring a high-quality product to fans worldwide.[105] Newcomers in the space like Mandolin and NoonChorus quickly racked up shows in 2020, becoming livestream hubs.[106] Mandolin launched at the beginning of the pandemic and teamed with venues like Ryman Auditorium and City Winery to unite monetization, merchandising, and VIP experiences, with plans to provide a hybrid model of live, in-person and livestreaming performances so that fans can choose the best experience for their specific needs.[107]

In January 2021, Live Nation announced that it acquired a majority stake in Veeps Inc., a livestreaming company that hosted almost 1,000 ticketed streaming shows in 2020.[108] Live Nation also outfitted 60 physical venues across the country with livestreaming technology.[109] In addition, Sony announced that it had launched a division called Sony Immersive Music Studios to produce a series of ticketed virtual concerts.[110] Other notable transactions include Melody VR's purchase of streaming service Napster, Scooter Braun's investment in virtual concert company Wave that was founded in 2016, and TIDAL's $7 million purchase of interests in virtual concert space Sensorium.[111] Wave even announced that it raised $30 million in funding during the pandemic and will use the funds to expedite expansion into global markets including Japan and China.[112]

These types of investments indicate that livestreaming will continue to play an important role in the music industry far beyond the reopening of in-person shows. MIDiA Research lead music analyst Mark Mulligan stated, "Livestreamed concerts will be a long-term part of the music market, not just a lockdown stopgap."[113]

Music industry stakeholders agree that although livestreaming will never replace the live, in-person music experience, livestreaming is not going away. Dave Brooks, *Billboard's* Senior Director of Touring and Live, stated, "I don't think streaming will replace concerts. I think streaming performances will become their own category of what artists offer their fans."[114] Brooks went on to say, "There will likely be a small group of artists who figure out how to make more money from streaming [than live, in-person shows] and a smaller group who stop touring and only stream. Streaming will gain in popularity for artists as an alternative to touring, which is expensive and requires being on the road for long stretches of time."[115]

After being around for more than a decade, livestreaming has improved during the pandemic and proven itself to be an effective platform that will continue gaining traction in our post-pandemic music business. Live Nation has already confirmed twice as many major tour dates for 2022 than in 2019.[116] As artists continue to get back to business post pandemic, livestreaming can and will be a useful tool in marketing a new tour or album, as well as creating branding partnerships.

## Social Media

Another major change during the COVID-19 pandemic involved our daily routines, which inevitably created a new normal for how and when we use technology. As a result of social distancing and working remotely during the pandemic, creators, fans, music industry executives, and educators craved connection. Social media became a critical component of quarantine as "stay at home" orders were issued rampantly in 2020, with rippling effects into 2021 and beyond. Artists, fans, and industry affiliates began utilizing social media like never before. With more time spent on social media, consumers started using new platforms and discovering new talent. Social media engagement does not seem to be slowing down any time soon, and it remains a viable tool that some would consider crucial for artists and industry affiliates post-pandemic.

The pandemic certainly changed engagement with social media and how consumers use the available platforms. The year 2020 saw an increase in social media usage throughout the day, especially during 9:00 a.m. to 5:00 p.m. working hours.[117] After the workday ends, there has been a decrease in social media use as a result of family and home needs.[118] Social media usage was 10.5 percent higher in July 2020 as compared to July 2019.[119] Of 4,500 individuals surveyed, 72 percent responded that their social media consumption increased during the pandemic, and 43 percent responded that their number of social media posts increased.[120] Historically, we have seen Generation Z and Millennials at the forefront of social media usage, but Baby Boomers started implementing social media into their daily habits during the pandemic as well.[121]

With consumers' usage of social media drastically increasing, artists have correspondingly seen substantial upticks in their fan engagement on social media. Indie act Penelope Isles took followers behind the scenes via Instagram Stories and Facebook Live to show the process of recording a new album during quarantine.[122] Connecting with fans in this way resulted in a 94 percent increase in video views on Instagram and an 88 percent increase in overall followers.[123]

For artists, brands, and influencers, the strategy behind posting content to social media also changed during the pandemic. Before the pandemic, the most optimal times for posting on Facebook were Wednesdays at 11:00 a.m. and between 1:00 p.m. and 2:00 p.m.[124] Following lockdown orders, when social media use skyrocketed during the workday hours, the most optimal days for posting on Facebook were Mondays, Wednesdays, and Fridays between 10:00 a.m. and 11:00 a.m.[125] Posts after 5:00 p.m. have lower engagement because focus changes to home and family after "office" hours.[126] Pre-pandemic, the best times to post to Instagram were Wednesdays at 11:00 a.m. and Fridays between 10:00 a.m. and 11:00 a.m.[127] User engagement was fairly consistent in the early mornings and late evenings throughout the week before the pandemic. Weekends, particularly Sundays, were the worst time to post.[128] However, during the pandemic and with more users on their phones while working remotely, the best times to post to Instagram became Mondays, Tuesdays, and Fridays at 11:00 a.m. and Tuesdays at 2:00 p.m.[129] Weekends between 9:00

a.m. and 5:00 p.m. also saw a substantial increase in engagement during lockdown.[130] The optimal posting times will likely continue to evolve as businesses create their new "normal" and allow for continued work-from-home policies.

Not only did the popular times for user engagement change during the pandemic, but the type of content being shared also saw a major shift. People began using social media as a way to foster community, causing content to become much more raw, unplanned, and authentic.[131] "COVID has changed the type of content that's being created. We crave connection online because the real-life kind has been taken away from us," said TJ Leonard, CEO of Storyblocks.[132] "DIY creativity is at an all-time high. People, brands and everyone are so starving for human interaction that the content we're seeing now is a little more honest, a little more direct, a little more personal and human."[133]

The change in the type of content being shared has resulted in new platforms rising in popularity and veteran platforms wisely developing ways to stay competitive. Zoom rose in prominence during the pandemic, becoming the go-to application for "face-to-face" meetings. Facebook launched Rooms as a competitor to Zoom, Instagram rolled out Instagram Reels for short-form videos, and YouTube announced YouTube Shorts for the same purpose.[134] Other platforms that gained traction during the pandemic included Google Hangouts, WhatsApp, newcomer Clubhouse, and most notably, TikTok.

Each platform serves a different, distinct purpose, informing which of them generated the highest engagement during the pandemic. For example, Facebook has "serious content, news, and personal updates"; TikTok has "personal updates, but with funny memes and entertaining video"; and Instagram is "a melding of the two; news shares, memes, videos, life snapshots."[135] User goals and needs during the pandemic (i.e., connection, fun, and entertainment) and even things they did not know they needed (e.g., crafting, makeup tutorials, social commentary, comedy, and, of course, dances) were best met by TikTok, as evidenced by its spike in popularity.

TikTok arrived in the United States in August 2018.[136] Before the coronavirus pandemic, for those who had heard of TikTok, it was seen as a hub for Generation Z where the younger generation posted funny dancing videos.[137] However, in February 2020, TikTok was downloaded 113 million times, resulting in 800 million active users.[138] By April 2020, TikTok had been downloaded more than 2 billion times, making it the most downloaded app of 2020 and resulting in an estimated 850 million monthly active users by fall 2020.[139] With the rise in usage, the demographics of users also changed, with 28.8 million adults in the United States using the platform in mid-2020 as compared to 14.2 million in March 2019.[140] In 2021, TikTok had approximately 100 million active users in the United States, up 800 percent from January 2018.[141] Astonishingly, the fifty biggest accounts on TikTok have around 500 million followers.[142] A significant amount of TikTok's growth comes from older social media users, who previously looked at the platform as silly and immature but quickly changed their tune at the onset of quarantine when they craved easy and fun entertainment.[143]

With respect to the music business, Ole Obermann, Global Head of Music at TikTok, stated, "We at TikTok share our community's passion for music and we're dedicated to providing a platform where artists and fans can interact and thrive. It has been inspiring to watch our community bring new talent to the forefront, help send songs up the charts, and use music to create an oasis of joy during a trying time. We will continue to work hard to make TikTok a platform that supports artists and encourages musical engagement and discovery."[144]

The rise of TikTok has made a substantial impact on the music industry when it comes to discovering new music and reinvigorating hits from existing catalogs. As live music venues were out the window during the pandemic, TikTok filled the communal music experience void.[145] It became America's go-to platform for discovering new music and launched the careers of many artists.[146] Over 176 different songs exceeded one billion video views on TikTok in 2020. Some of the most significant TikTok songs racked up over 50 billion video views, and 5 of them reached number one on the *Billboard Hot 100*.[147] Almost 90 songs that trended on TikTok in 2020 made it to the Top 100 charts in the United States, with 15 of those reaching number one on a *Billboard* chart.[148] In 2020 alone, over 70 artists who broke on the platform signed major record label deals, including Priscilla Block, Dixie D'Amelio, Powfu, Claire Rosinkranz, and Tai Verdes, and dozens more have charted on *Rolling Stone's Breakthrough 25*.[149]

TikTok not only won as the platform for new music discovery, it also demonstrated how the platform can turn existing catalog cuts into viral hits. The ten fastest songs in 2020 to reach one billion video views on TikTok were as follows:

1. “Toosie Slide” - Drake
2. “WAP” (featuring Megan Thee Stallion) - Cardi B
3. “Therefore I Am” - Billie Eilish
4. “Let’s Link” - WhoHeem
5. “Say I Yi Yi” - Ying Yang Twins
6. “Where Is The Love?” - The Black Eyed Peas
7. “Whole Lotta Choppas” - Sada Baby
8. “Adderall (Corvette Corvette)” - Popp Hunna
9. “Mood Swings” - Pop Smoke
10. “THICK” - DJ Chose & Beatking[150]

The above list shows that the TikTok community embraces both old and new music, with some of the songs having never been heard until their viral breakthroughs and others being released almost two decades ago.[151] Many catalog songs experienced a massive increase in streams as a result of being used on TikTok, including Fleetwood Mac’s “Dreams,” which re-entered the *Billboard Hot 100* after a forty-three-year absence.[152] TikTok has shown us that a viral song can come from any year, any genre, or any artist.

Another platform that made its mark on the music industry during the pandemic and continues to remain viable is Clubhouse, which launched in April 2020.[153] Pre-COVID, artists, music industry executives, and other entertainment stakeholders networked at bars, music venues, and industry conferences. With lockdown orders in effect, Clubhouse became the new hub for exchanging ideas and information. Clubhouse allows users to host and join real-time, audio-only conversations about a plethora of topics including those related to the music business. The app has risen in popularity because it combines the communal interaction of platforms like Instagram with the information aspects of Zoom webinars.[154] Users can hop from chat room to chat room and participate in live, panel-style discussions regarding any topic they find interesting.[155] At the time of this writing, the app is still in beta testing and is currently invitation-only, but it has attracted international attention as big names like Mark Zuckerburg, Drake, Scooter Braun, Elon Musk, and Oprah Winfrey have joined the platform.[156]

Clubhouse has been especially helpful to the music industry because it has provided a space for industry professionals to discuss cutting-edge concepts like non-fungible tokens (NFTs), the future of live events, branding and sponsorships, and more.[157] In early 2021, one Clubhouse room featured Timbaland, Scott Storch, Mike Dean, and Jozzy, among others.[158] This group of acclaimed musicians discussed tips for producers, the future of music production, and shared their unique industry insights and experiences, attracting thousands of listeners.[159] Scooter Braun also holds regular virtual parlors on Clubhouse speaking with other music industry moguls while users enjoy the Master-Class-level conversation free of charge.[160] Dozens of rooms like these are hosted on Clubhouse every week with top music executives and artists discussing experiences and trends and offering advice for navigating the industry.[161] The creative community on Clubhouse has also used the platform to offer virtual jam sessions, songwriting workshops, and album premiere parties.[162]

As of February 2021, Clubhouse boasted 2 million active weekly users with a $1 billion valuation, making it one of the world's largest social media startup companies.[163] The active user count increased to 10 million active users by May 2021.[164] Clubhouse has announced that it plans to invest in creators, including a Creator Grant Program and monetization features, such as tipping, ticketing, and subscriptions.[165] While the future of Clubhouse is uncertain as it remains in beta mode, the music industry has found plenty of ways to utilize the platform, and it remains an excellent resource for the exchange of information related to the industry.

## Conclusion

The entertainment and music industry looks very different in our COVID world. During the COVID-19 pandemic we witnessed deep dives into critically important contract clauses like force majeure, conversations with insurance companies involving intricacies of policy language and coverage disputes, a total reliance on livestreaming as a method of industry survival, and substantially increased engagement on social media and its latest and greatest platforms like TikTok. As a result, our industry learned that it could withstand even the most taxing crisis and get to the other side with an appreciation for new approaches, tools, and resources that it would not have otherwise explored. Going forward in our new "normal," we will see our industry stakeholders pause and pay closer attention in contractual and insurance dealings and utilize digital assets like livestreams and social media platforms to the fullest extent possible.

As our wiser and more informed industry begins its comeback, corporate collaboration and maintaining relationships is more important than ever. During a tremendously challenging time, we have seen individuals unite for the benefit of the whole and collaborate within the entertainment industry like never before. Employment challenges have been met on many levels—from remote work options and requirements to vastly improved technology. We have seen ticket companies and venues positively engage with concerned ticket holders, and artists maintain and even increase connections with fans. By reexamining conventional channels of communication, we have continued to shape our business. Through these uncharted times, the entertainment and music industry has risen to the occasion and developed creative business solutions to existing processes as it seeks to protect long-standing relationships. Our industry has always relied upon imagination, inspiration, and interconnectivity, so it comes as no surprise that our creators and stakeholders continue to work together tirelessly and passionately to keep America singing.

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