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In order to seek professional practical knowledge and functional strategies in education, MEIEA endeavors to:

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- Assist institutions with the development of music and entertainment industries programs and curricula;
- Facilitate interaction between the music and entertainment industries and music and entertainment industries educators and affiliated educational institutions;
- Promote student interests in the music and entertainment industries.

# From The Editor

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# Contents

## The Industry

- 13 Unfair? The Unique Status of Sound Recordings under U.S. Copyright Law and its Impact on the Progress of Sample-Based Music  
*Reynaldo Sanchez*  
*University of Miami*
- 43 Race, Hegemony, and the Birth of Rock & Roll  
*Paul Linden*  
*University of Southern Mississippi*
- 69 The 1969 Creedence Clearwater Revival Recording Contract and How it Shaped the Future of the Group and its Members  
*Hank Bordowitz*  
*Bordowitz Media Werx*  
*Bergen Community College*
- 91 Historical Changes in the Music Industry Supply Chain: A Perception of the Positioning of the Artist Musician  
*Stanislas Renard*  
*Providence College*  
*Eastern Connecticut State University*  
  
*Peter Spang Goodrich*  
*Providence College*  
  
*Philip Vos. Fellman*  
*American Military University*
- 131 What's Up with MXSupps? Interviews with the Purveyors of Cool  
*Andrea Johnson*  
*Berklee College of Music*

*Continued on next page*

- 159 Artists' Chart Careers: A Study of How They've Changed Through the Years  
*Storm Gloor*  
*University of Colorado Denver*

## Pedagogy

- 179 EntertainmentManagementOnline.com: Integrating an Online Publication into the Entertainment Management Curriculum  
*Philip C. Rothschild*  
*Missouri State University*  
  
*Melissa van Kluyve*  
*Missouri State University*
- 195 Slaying the Starving Artist Paradigm and Teaching Professionalism in the Entertainment Business: The Entertainment Law and Professionalism Clinic  
*Cheryl L. Slay*  
*Belmont University*
- 209 A Focus on Robert Gagné's Instructional Theories: Application to Teaching Audio Engineering  
*David Tough*  
*Belmont University*

## Student Paper

- 221 Music Entrepreneurs in the Twenty-First Century: A Case Study on the Career of Jay-Z  
*Leanne Perice*  
*Indiana University*

## Reviews

- 239 Will Hermes. *Love Goes to Buildings on Fire: Five Years in New York That Changed Music Forever*

*Ben Neill*  
*Ramapo College of New Jersey*

- 241 Kathy Sloane. *Keystone Korner: Portrait of a Jazz Club*

*April Brumfield*  
*Eastern Kentucky University*

- 246 Stephen Marcone. *Managing Your Band: The Ultimate Responsibility* (5<sup>th</sup> edition)

*Steve Leeds*  
*SiriusXM*  
*William Paterson University*

- 248 Simon Cann. *Jumpstart Your Music Career*

Bernie Finkelstein. *True North: A Life In The Music Business*

Milton Okun, as told to Richard Sparks. *Along the Cherry Lane: Tales from the Life of Music Industry Legend Milton Okun*

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# Unfair? The Unique Status of Sound Recordings under U.S. Copyright Law and its Impact on the Progress of Sample-Based Music

Reynaldo Sanchez  
*University of Miami*

## Introduction

On June 3, 2005 in a United States federal courtroom in Nashville, Tennessee, seven words disrupted the age-old, natural cycle of musical development: “Get a license or do not sample.”<sup>1</sup> At the heart of the case was a sample<sup>2</sup> of a common, three-note guitar riff<sup>3</sup> from the introduction to the George Clinton funk song *Get Off Your Ass and Jam*. The sampled portion was sonically altered and repeated five times in the background of the song *100 Miles and Runnin’* by the hip-hop group N.W.A. *100 Miles* was also featured on the soundtrack to the film *I Got the Hook Up*. In this pivotal case, the Sixth Circuit Court reversed a lower court ruling that the use of the sample was *de minimis*<sup>4</sup> and established a bright-line rule<sup>5</sup> for digital sampling. The three-judge panel concluded, “We do not see this as stifling creativity in any significant way.”<sup>6</sup> This article intends to show that while the court was technically correct in its assessment of the Copyright Act in relation to Sound Recordings,<sup>7</sup> the decision exposed a flaw in the Act itself. Namely, as currently defined, Sound Recordings are fundamentally different from other categories of works<sup>8</sup> in that they do not, and in fact cannot, meet the same minimal creativity requirement<sup>9</sup> for copyright. The “idea/expression dichotomy”<sup>10</sup> is not relevant to Sound Recordings because unlike every other category of works, they are not the result of an expression of ideas fixed in tangible form. They are strictly the result of fixation regardless of the nature, quality, and originality (or lack thereof) of the sounds embodied therein. Authorship of Sound Recordings is problematic since they are not the result of any individual’s expression and thus cannot be infringed upon save by the physical duplication of a material object. Therefore in contrast to all other categories of copyrightable works, ideas cannot be freely extracted from them to be used as the building blocks for new, independent creations. The historical record shows that Sound Recordings were afforded copyright protection for a singular

economic reason: to combat record piracy. Owners exercise a complete monopoly over any reproduction and derivative of Sound Recordings for the full term of copyright. While enormously effective in battling record piracy, this broad statutory stranglehold continues to impact the naturally transformative cycle of musical development in regards to sample-based music. The court was legally right: sampling requires copying.<sup>11</sup> But the court was musically wrong: transformational copying is the heart of musical innovation and development. Creativity has been significantly stifled.

### A Brief History of Copyright in Sound Recordings in the United States: 1900-1970

Law typically follows innovation; an axiom exemplified throughout the history of recorded music. By the turn of the twentieth century, emerging audio recording technology had already made an indelible mark on the music industry. Three major labels (Edison, Victor, and Columbia) were selling three million records per year in the United States by 1900.<sup>12</sup> Yet federal copyright protection was not made available to producers of recordings until 1972. Why? Lawmakers in the U.S. were reluctant to define recordings, then known as phonograms, as “writings.” The U.S. Constitution states that “Congress shall have the power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”<sup>13</sup> The Copyright Act of 1909 specified in Section 4, “...the works for which copyright may be secured under this Act shall include all the *writings of an author*”<sup>14</sup> (emphasis added). In 1908 the Supreme Court in the landmark case *White-Smith Co. v. Apollo Co.* concluded that because the pattern of perforations on piano rolls<sup>15</sup> were not *visually* perceivable as music, the objects were not copies of musical works (i.e., not *writings*),<sup>16</sup> authors could not control their use.<sup>17</sup> The legal consensus leading up to the Act of 1909 was that recordings were not writings but mechanical reproductions.

Between 1909 and 1970 a number of bills related to copyright in Sound Recordings were submitted to Congress. The Perkins Bill (1925) was the first to include Sound Recordings as a category of copyrightable works.<sup>18</sup> During deliberations, J.G. Paine of the Victor Co. testified that the recording manufacturers were not sure they wanted statutory protection at all as they already had protection under the common law theory of unfair competition.<sup>19</sup>

The growing use of recordings in radio broadcasts was among the issues discussed in 1932 during hearings before the House Committee on the Judiciary. For the first time, the recording industry pressed for full copyright protection, including performance rights for recordings. Broadcasters stood in opposition arguing that small radio stations would be hurt.<sup>20</sup> The result of these hearings were a series of general revisions known as the Sirovich Bills<sup>21</sup> that included copyright protection for recordings as well as arrangements, adaptations, and compilations. A representative for ASCAP<sup>22</sup> argued that recordings were not copyrightable under the constitution and that the provision “will result in a duplication of remedy, a multiplicity of suits, and possible bankruptcy of even an innocent infringer.”<sup>23</sup>

The Daily Bill (1936) included performers as authors for the first time, defining copyrightable works as “...all the writings of an author, whatever the mode or form of their expression, and all renditions and interpretations of a performer and/or interpreter of any musical, literary, dramatic work, or other compositions, whatever the mode or form of such renditions, performances, or interpretations.”<sup>24</sup> Contending that new technology (radio) was unfairly exploiting them, performers with support from the American Federation of Musicians and others argued that only copyright could protect their creative expressions. At the same time, recording companies maintained that “...a record is an artistic creation and that protection should vest in the record producer.”<sup>25</sup> As with the previous bills, the opposition included radio broadcasters, music publishers, and ASCAP arguing that performances were too vague to be copyrightable and that granting protection to recordings would create “...practical difficulties in having to obtain licenses from more than one copyright holder.”<sup>26</sup>

One of the most interesting chapters in the history of copyright in Sound Recordings is the period between 1938 and 1940. Professor James T. Shotwell of Columbia University, then chair of the National Committee of the United States of America on International Intellectual Cooperation, formed a group to explore revising copyright law to conform to the Berne Convention. The Committee for the Study of Copyright met with all interested parties including recording companies, broadcasters, authors, publishers, and motion picture producers, soliciting statements from each that delineated their positions on changes in the copyright law. The responses were not surprising. Record companies contended that, like motion pictures, records should also be protected by copyright. Authors, publishers, and broadcasters insisted that manufacturers were not authors and records

were not copyrightable works of authorship (writings). Motion picture producers supported the record companies with an interesting twist: while they saw no practical difference between visual and audio recordings in regards to copyright, they maintained that "...protection should extend solely to the actual reproduction of a recorded performance, and that there should be no rights against imitators or mimics."<sup>27</sup> However, there was no mention at all of copyright in Sound Recordings when the Shotwell Committee Bill was finally introduced in 1940. Executive Secretary Edith T. Ware explained in a memorandum in the Congressional Record that "...there is considerable opposition to giving copyright in recordings for they are not commonly creations of literary or artistic works but uses of them."<sup>28</sup>

There was a flurry of legislative activity between 1942 and 1951 in response to the landmark *RCA Mfg. Co. v. Whiteman* ruling,<sup>29</sup> a case where the Supreme Court refused to consider a Court of Appeals decision denying copyright to performers. Six similar proposals known as the Acoustic Recording Bills were introduced during that period in an attempt to amend the copyright law to extend protection to performers. While the bills also provided for copyright protection of recordings, they were not supported by the recording industry. Reasons included opposition by the manufacturers to any copyright protection for performers and to provisions requiring the permission of authors as a condition of copyright for recordings.<sup>30</sup>

The Copyright Office prepared a series of studies of the Copyright Law starting in 1955 for the Subcommittee on Patents, Trademarks, and Copyrights of the Senate's Committee on the Judiciary covering a broad range of issues. Study number 26 on the Unauthorized Duplication of Sound Recordings was completed in 1957 by the then Assistant Chief of the Examining Division (and later Register of Copyrights) Barbara A. Ringer. It was distributed to a number of scholars and finally printed with their commentaries appended in 1961.<sup>31</sup> The comprehensive study detailed the issues surrounding "...the rights of performers and record producers to prevent unauthorized duplication of their own contribution to the record."<sup>32</sup> Ringer concluded, "It is generally recognized that unauthorized dubbing<sup>33</sup> constitutes a problem in the sound recording industry, and that some legal protection against it is desirable."<sup>34</sup>

The Copyright Office was now on record recommending a limited copyright in sound recordings. Several more legislative attempts were

made in 1967, 1969, and 1970 to amend the copyright law in favor of sound recordings. The 1969 bill even included a performance right for record companies and performers in addition to protection against unauthorized duplication.<sup>35</sup>

All of the preceding efforts failed to extend copyright to recordings. The opposition consistently argued that recordings were not creative “writings” but rather mechanical objects—reproductions of musical or literary works.<sup>36</sup> However, the historical record also shows that virtually no one opposed protection against the unauthorized duplication of recordings.

## 1971-1972

The 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (also known as the Geneva Phonograms Convention) was an important impetus for the United States to finally assign copyright protection to recordings. Ten years earlier the U.S. had declined to sign the Rome Convention<sup>37</sup> treaty in part because, while it included international protection for sound recordings for the first time, the U.S. could not agree to the scope of protection the treaty offered performers. By contrast, the Geneva Convention was singularly focused on protecting sound recordings, leaving any protection for performers up to the discretion of individual nations.<sup>38</sup> By 1971 U.S. lawmakers were eager to enter into an international treaty protecting sound recordings and thus domestic protection would be desirable. According to a statement included in the House Report on the Sound Recording Amendment of 1971, “The Department of Commerce is also vitally interested in this bill from the international trade standpoint. Unauthorized reproduction abroad of sound recordings is resulting in losses to U.S. record manufacturers [*sic*], not only in export sales, but in royalties. A proposed international ‘Convention for the Protection of Phonograms Against Unauthorized Duplication’ designed to remedy the international piracy situation is scheduled for negotiation in Geneva, next October. *Enactment of the bill would enhance the United States Delegation’s negotiating position at this revision conference in efforts to achieve effective international protection for sound recordings*”<sup>39</sup> (emphasis added).

The breakthrough for the recording industry finally came on February 8, 1971 when Senator John L. McClellan of Arkansas introduced S. 646. Record piracy had become rampant and “...the need for special remedial action became apparent.”<sup>40</sup> S. 646 passed the Senate in April and the

companion bill, H.R. 6927 passed the House in early October. President Richard M. Nixon signed Public Law 92-140 on October 15, 1971, amending the copyright law to grant limited protection and additional sanctions for infringement to sound recordings. The act, effective on February 15, 1972, "...was enacted to combat the widespread and systematic piracy that had seriously jeopardized the market for legitimate tapes and discs."<sup>41</sup>

The newly revised copyright law defined Sound Recordings as "... works that result from the fixation of a series of musical...sounds, but not including the sounds accompanying a motion picture."<sup>42</sup> It labeled the material objects in which the sounds are fixed as "Reproductions of Sound Recordings."<sup>43</sup> The law also required a notice of copyright appear on all reproductions of sound recordings consisting of the letter P in a circle (©), the year of first publication, and the name of the copyright owner.<sup>44</sup> The latter was in conformity to a requirement of the Geneva Phonograms Convention treaty, also signed by the U.S. in 1971 and ratified in 1973.

## 1976

The revision of 1972 was the last leg of the journey resulting in the first major overhaul of copyright law in almost seventy years. On October 19, 1976, President Gerald R. Ford signed Public Law 94-553, an Act for the General Revision of the Copyright Law (Title 17 of the United States Code)<sup>45</sup>—the Copyright Act of 1976. It included a number of significant modifications relative to Sound Recordings.

First, the Copyright Act of 1976 abandoned the use of the term "writings" in favor of "works of authorship." Under the 1909 Act, "all the writings of an author" were protectable by copyright. The 1976 Act specifies that all "original works of authorship" are copyrightable. This term was purposely left undefined. "In using the phrase 'original works of authorship,' rather than 'all the writings of an author'... the committee's purpose is to avoid exhausting the constitutional power of Congress to legislate in this field, and to eliminate the uncertainties arising from the latter phrase."<sup>46</sup> The choice was made to give Congress more latitude and to remove the ambiguity historically connected to "writings."

Second, the term "phonorecords" replaced "reproductions of Sound Recordings" as the material objects in which Sound Recordings are embodied. The letter P in a circle (©) from the 1972 revision was retained as the proper notice for phonorecords to avoid a "likelihood of confusion if the same notice requirements applied to sound recordings and to the works

they incorporate.”<sup>47</sup>

Third, the scope of the exclusive rights of owners of Sound Recordings remained limited to the reproduction and distribution of phonorecords, and to the preparation of derivative works from the Sound Recordings. Owner’s exclusive rights specifically did not extend to any other Sound Recording “...that is an *independent fixation* of other sounds, even though such sounds *imitate or simulate* those in the copyrighted recording”<sup>48</sup> (emphasis added). A performance right for digital performances was added in 1995.<sup>49</sup>

Fourth, the Act of 1976 extended the duration of copyright to life of the author plus 50 years, or the lesser of 75 years from publication or 100 years from creation for anonymous or pseudonymous works for all works, including Sound Recordings. The U.S. was now in line with the minimum duration specified in the Berne Convention,<sup>50</sup> which the U.S. ultimately joined in 1989. Duration of copyright was extended by 20 years overall in 1998 by the Copyright Term Extension Act (the Sonny Bono Act). As a result of the Act of 1976 and subsequent extension, the minimum 95 year duration of copyright for Sound Recordings in the U.S. now stands in sharp contrast to the 50 to 70 year term in effect today in most other countries.

## An Analysis of the U.S. Copyright Act Regarding Sound Recordings

### The Idea/Expression Dichotomy

The Copyright Act states that “copyright protection subsists...in *original works of authorship* fixed in any tangible medium of expression...”<sup>51</sup> (emphasis added). It goes on to state that, “In no case does copyright protection for an original work of authorship extend to any *idea... regardless of the form in which it is...embodied in such work*”<sup>52</sup> (emphasis added). In other words, copyright can only protect a particular *expression* of an idea, not the idea itself. This is also known as the “idea/expression dichotomy.” As Justice O’Connor expressed in the landmark Feist ruling, “The key to resolving the tension lies in understanding why facts are not copyrightable. The *sine qua non*”<sup>53</sup> of copyright is originality. To qualify for copyright protection, a work must be original to the author... and that it possesses at least some minimal degree of creativity.”<sup>54</sup>

Ideas are the building blocks of all art forms. A songwriter starts with

a concept, maybe a simple, common phrase like “with or without you.” He picks up his guitar and plays a simple I-V-vi-IV<sup>55</sup> chord progression over and over to a simple eight-note rhythm pattern at a medium tempo. He comes up with a simple, conversational lyric describing a painful relationship. It is sung to a simple, not unfamiliar melody. As of this writing there are 57 musical entries with the title *With or Without You* registered with the U.S. Copyright Office, 17 of which are dated prior to 1985 when Bono of U2 began to write his rendition. The I-V-vi-IV progression is one of the most common in popular music; it’s used in numerous hit songs including *Can You Feel The Love Tonight* (Elton John), *Don’t Stop Believing* (Journey), *Let It Be* (The Beatles), *Man In The Mirror* (Michael Jackson), and countless more. Lyrics about hurtful relationships are ubiquitous. But when all of those common, everyday elements come together in a U2 record, something very uncommon happens: art. U2’s *With or Without You* memorialized on a recording is the expression of an idea fixed in tangible form, an original work of authorship. But it’s important to note that it is the *musical work*, *With or Without You*, that is the product of those common, un-protectable ideas creatively assembled by its author. The protectable Sound Recording resulted from the fixation of a *performance* of the musical work. It is also, by its very nature, a *derivative* of the musical work. All of the underlying, non-protectable ideas are one generation removed from the Sound Recording, embodied within the musical work itself.<sup>56</sup>

## Sound Recordings as Works

The Copyright Act lists eight categories of copyrightable works, five of which are defined in Section 101. “The three undefined categories—‘musical works,’ ‘dramatic works,’ and ‘pantomimes and choreographic works’—have fairly settled meanings.”<sup>57</sup> However, in the case of the other items, including Sound Recordings, “...definitions are needed not only because the meaning of the term itself is unsettled but also *because the distinction between ‘work’ and ‘material object’ requires clarification*”<sup>58</sup> (emphasis added). Section 101 defines Sound Recordings as “...works that *result from the fixation* of a series of musical, spoken, or other sounds, ...regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied” (emphasis added). In other words, a Sound Recording is *not* a series of recorded sounds but is the *result* of their fixation. The sounds themselves are not the Sound Recording. It is curious to note that the other categories are described with

present tense verbs such as “is” and “are,” not with an intransitive verb like “result:” “An ‘architectural work’ *is* the design...A ‘computer program’ *is* a set of statements... ‘Literary works’ *are*...expressed in words... A ‘work of visual art’ *is* a painting, ...”<sup>59</sup>

## Authorship and Sound Recordings

If in fact Sound Recordings are defined in terms of fixation, their authorship must by necessity be different from that of other works. With Sound Recordings, the act of fixation *is* authorship. A dramatic example of this difference becomes apparent when contrasting Sound Recordings to what at face value appears to be a visual equivalent—motion pictures. “Motion pictures are audiovisual works *consisting of a series of related images* which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any”<sup>60</sup> (emphasis added). In motion pictures, the series of related images *are* the work. The word “related” implies minimal creativity—someone has to relate them to each other: the author. In motion pictures, the work is separate and distinct from any material object. As such, it is quite possible to infringe on the copyright of a motion picture without ever duplicating a material object. Elements such as storylines, characters, dialog, costumes, etc. are protected as part of the work and may be the subject of infringement if improperly taken. By contrast, it is *not possible* to infringe on the sonic elements embedded in a Sound Recording without *physically duplicating the material object*. “The exclusive rights of the owner of copyright in a sound recording...do not extend to the making or duplication of another sound recording that consists entirely of an *independent fixation* of other sounds, *even though such sounds imitate or simulate those in the copyrighted sound recording*”<sup>61</sup> (emphasis added). The ability for anyone to appropriate any of the elements embodied in a Sound Recording by imitation, no matter how realistic or accurate, *is codified*. As the Bridgeport court stated, “This means that the world at large is free to imitate or simulate the creative work fixed in the recording so long as an *actual copy* of the sound recording itself is not made.”<sup>62</sup> One result of this current legal climate is the thriving industry of *sample recreation*. Companies such as Rinse Productions (rinseproductions.co.uk), Replay Heaven (replayheaven.com), and Scorccio (samplereplay.com) specialize in reproducing highly accurate recreations of popular records for the sole purpose of sampling by circumventing the Sound Recording copyright owner(s).<sup>63</sup> This is impossible to do with mo-

tion pictures or any other type of copyrightable work.

As of this writing there is considerable interest in termination rights<sup>64</sup> in Sound Recordings. Artists, producers, record companies, and their attorneys are gearing up for what promises to be a contentious legal battle to answer one simple question: who is the author of a Sound Recording? Since the only statutory standard for U.S. copyright in Sound Recordings appears to be independent fixation, it stands to reason that authorship will likely vest in the originator of the fixation.

## The Unique Character of Sound Recordings

There are a number of differences between Sound Recordings and other categories of works. Of these, three are significant:

1. The scope of exclusive rights in Sound Recordings is limited to “the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording...the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality.”<sup>65</sup> And, “In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”<sup>66</sup>
2. The work and the material object are in practice, indivisible. Sound Recordings “...result from the fixation of a series of musical, spoken, or other sounds...” and, “The term ‘phonorecords’ includes the material object in which the sounds are first fixed.”<sup>67</sup> According to a footnote from the Bridgeport ruling, “...it seems like the only way to infringe on a sound recording is to re-record sounds from the original work... Then the only issue becomes whether the defendant rerecorded sound from the original.”<sup>68</sup> And finally this quote from a 1978 U.S. House report, “It is interesting that, although fixation is an important concept throughout the law, sound recordings *are the only ‘works of authorship’ actually defined in terms of fixation*”<sup>69</sup> (emphasis added).
3. There can be no practical minimal creativity require-

ment for copyright in Sound Recordings if they are exclusively the result of fixation. In fact the creative or qualitative nature of the actual sound fixed is irrelevant. "...There may be cases (for example, recordings of birdcalls, sounds of racing cars, et cetera) where only the *record producer's contribution* is copyrightable"<sup>70</sup> (emphasis added). This fact is at the heart of the Bridgeport decision. The creative nature of the content was not a factor at all. "In most copyright actions, the issue is whether the infringing work is substantially similar to the original work...The scope of inquiry is much narrower when the work in question is a sound recording. The *only issue* is whether the actual sound recording has been used without authorization. *Substantial similarity is not an issue...*"<sup>71</sup> (emphasis added).

## Unique Notice and Material Object

It seemed from the outset that Congress intended to provide a separate, but somewhat equal, type of copyright protection for Sound Recordings—parallel provisions. "It is also true under existing [*sic*] law that the protection given to owners of copyright in musical works with respect to recordings of their works is *special and limited*...the bill creates a limited copyright in sound recordings, as such, making unlawful the unauthorized reproduction and sale of copyrighted sound recordings"<sup>72</sup> (emphasis added). Evidence of this treatment is the fact that Sound Recordings were ascribed two proprietary elements of copyright: their own copyright notice symbol and a distinct material object.

The standard symbol for a copyright notice, the letter "C" in a circle (©) does not apply to Sound Recordings. Instead, Congress adopted the formality originally set forth in the 1961 Rome Convention:<sup>73</sup> the letter "P" in a circle (©). A Senate report from 1975 states, "There are at least three reasons for prescribing use of the symbol "(P)" rather than © in the notice to appear on phonorecords of sound recordings. Aside from the need to avoid confusion between claims to copyright in the sound recording and in the musical or literary work embodied in it, there is also a necessity for distinguishing between copyright claims in the sound recording and in the printed text or art work appearing on the record label, album cover, liner

notes, et cetera. The symbol “(P)” has also been adopted as the international symbol for the protection of sound recordings...<sup>74</sup>

All copyrightable works must be fixed in some tangible form. “The two essential elements—original work and tangible object—must merge through fixation in order to produce subject matter copyrightable under the statute.”<sup>75</sup> Phonorecords are the material objects<sup>76</sup> that embody Sound Recordings. “Phonorecords’ are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”<sup>77</sup> By definition, phonorecords must exclusively contain “sound.” The embodied works may only be perceived aurally. In contrast, “copies” may contain visual material (books, magazines, etc.) or both visual and aural material (movies, games on DVD). A Sound Recording may be embodied in a “copy” if there are also visual elements present (music video, recording in movie soundtrack, etc.). However, a recorded performance is not a *copy* of a musical or literary work. Under the current definition, a copy must have a visual component. Phonorecords typically contain three distinct elements: 1) a musical or literary work, 2) a rendition or performance of the work, and 3) a Sound Recording.<sup>78</sup> Only two of these elements currently receive copyright protection in the United States<sup>79</sup> (see Figure 1).

## The Bridgeport Effect on Sample-Based Music

### The Transformative Cycle of Musical Development

In the early 1940s, Minton’s Playhouse in Harlem was filled with the innovative sounds of a handful of young musical pioneers. At late-night jam sessions, Charlie Parker, Dizzy Gillespie, Thelonious Monk, Charlie Christian, and Kenny Clarke forged a new sound unlike anything else of the time. “These forerunners of the new music...began exploring advanced harmonies, complex syncopation, altered chords, and chord substitutions.”<sup>80</sup> They *transformed* popular songs of the day such as *Back Home Again in Indiana* and Gershwin’s Broadway hit *I Got Rhythm* into new tunes such as *Donna Lee* and *Anthropology*,<sup>81</sup> sophisticated settings for their soaring improvisations. Bebop was born.

In December of 1945, an audience at the Ryman Auditorium in Nashville witnessed musical history in the making. Band leader and mandolin

Sound Recordings	Other Copyrightable Works
The “work” results strictly from the act of fixation. Fixation <i>is</i> authorship.	Results when “works of authorship” are fixed in tangible form. Authorship is separate from fixation.
Exclusive rights are limited to reproduction, derivative works, and digital performance.	All exclusive rights are in force.
The “work” and the material object are in practice inseparable and indistinguishable.	The “work” and material object are separate and distinct.
The “work” cannot be infringed without physical reproduction of a material object. (The copyright law specifically allows for recreation of embodied elements in whole or in part.)	The “work” can be infringed without physical reproduction of a material object. (Recreation of embodied elements could be infringement.)
“Minimal creativity” and “independent creation” not required for copyright—only “independent fixation.” There is no idea/expression dichotomy.	“Minimal creativity” and “independent creation” required for copyright. The idea/expression dichotomy is in operation.
Unique copyright notice: ©	Common copyright notice: ©
Unique material object: <i>phonorecords</i> .	Common material object: <i>copies</i> .

Figure 1. Contrasting Sound Recordings with other copyrightable works.

player Bill Monroe, along with fiddler Chubby Wise, guitarist Lester Flatt, bassist Howard Watts (a.k.a. Cedric Rainwater) and twenty-one year-old banjo prodigy Earl Scruggs unleashed a furious new sound that will forever be associated with the band the Blue Grass Boys. “In retrospect, this lineup of the Blue Grass Boys has been dubbed the ‘Original Bluegrass Band,’ as Monroe’s music finally included all the elements that characterize the genre, including breakneck tempos, sophisticated vocal harmony arrangements, and impressive instrumental proficiency demonstrated in solos or ‘breaks’ on the mandolin, banjo, and fiddle.”<sup>82</sup> They *transformed* the old-time music<sup>83</sup> of Appalachia into a vehicle for unabashed virtuosity. Bluegrass was born.

The evolution of bebop and bluegrass, contemporaneous styles separated by geography and culture, showcase how musical styles develop and proliferate—by transformational copying. The two styles have much in common: they developed at roughly the same time; their sound was influenced by, but quite unlike, any previous styles; they were both considerably more sophisticated and complex than earlier styles; performing either style entailed a high degree of musical and improvisational skill; and improvising and composing in either style *required adopting the unique musical vocabulary* originally developed by their founders. It is not possible to play bebop or bluegrass without appropriating large swaths of the musical *expression* of their originators. Aficionados spend countless hours listening to recordings to learn the nuances of the styles. They transcribe improvisations in order to incorporate them into their own music. Composer David Cope writes, “I argue that while plagiarism certainly cannot fall within the boundaries of creativity, many of the most renowned artists and composers of history have borrowed extensively from their predecessors.”<sup>84</sup>

The cycle of copying and transforming is at the heart of every musical style and genre. Idea leads to expression. Expression, appropriated and repeated enough times by enough people, eventually transforms back to idea. In other words, original expression, subject to cycles of transformational copying, eventually loses its originality and reverts to the realm of ideas, and as such the building blocks for new expression. While the cycle necessarily begins with copying, in the hands of creative individuals the music begins to evolve and transform into altogether new expression. Bluegrass as we know it originated with Monroe’s band. Those that followed played similar music with similar elements, adding originality along the way. Every subsequent generation of bebop musicians share a common musical ancestry with Parker, Monk, and Gillespie. Over time styles evolve into new styles: cool, hard bop, newgrass, and so on. The Bridgeport decision denies the sampling musician access to the very first step in this natural cycle: copying.

## The Development of Sample-Based Music

The use of recordings as source material to create new music arguably predates both bebop and bluegrass. In 1930, composers Paul Hindemith and Ernst Toch premiered three new works in Berlin using a technique they dubbed *Grammophonmusik*. Using multiple turntables, “Novel

sounds and textures were created by altering the speed and direction of discs during playback; passages performed at different times were juxtaposed and superimposed.”<sup>85</sup> (Sound familiar?) In the early 1940s, French composer Pierre Schaeffer began to experiment with sound-based composition. “Another important influence on Schaeffer’s practice was cinema and the techniques of *recording and montage*, which were originally associated with cinematographic practice, came to serve as the substrate of *musique concrète*”<sup>86</sup> (emphasis added). The influence of the *musique concrète* movement eventually made its way into the music of artists such as The Beatles and Frank Zappa. There’s even a small reference to this type of sample-based music in a 1975 Senate report in a section discussing definitions under Section 101: “There is no need, for example, to specify the copyrightability of electronic or *concrete music* in the statute since the form of a work would no longer be of any importance...”<sup>87</sup> (emphasis added). Mashup<sup>88</sup> artists Buchanan & Goodman<sup>89</sup> had a number of hit records in the late 1950s and early 60s. Since the 1970s, the use of recordings as source material has been widespread in popular music. With the advent of inexpensive digital samplers and personal computers in the 1980s, the technique has become foundational to styles such as hip-hop and electronica.

Recordings by their sheer proliferation have not only accelerated the natural cycle of music development, but have also introduced a wholly new element: the permanent performance. Judge Learned Hand wrote in 1940, “Until the phonographic record made possible the preservation and reproduction of sound, all audible renditions were of necessity *fugitive and transitory*; once uttered they died; the nearest approach to their reproduction was mimicry. Of late, however, the power to reproduce the exact quality and sequence of sounds had become possible, and *the right to do so, exceedingly valuable...*”<sup>90</sup> (emphasis added). Recordings capture, memorialize, and create potential value in unique performances. The nature of the performance itself now has intrinsic value, both creative and economic. With today’s technology, a sampled performance in the hands of a creative musician can spawn ideas that lead to altogether new expression, the essence of transformation.

## Sampling before Bridgeport

In the late 1970s, a struggling record producer named Sylvia Robinson, after first hearing rap music at a Harlem nightclub, was inspired

to record this new musical phenomenon. She convinced three unknown rappers from New Jersey to improvise their rhymes over a fifteen-minute track featuring a recurring portion of the popular dance song *Good Times* by Chic. They became known as the Sugar Hill Gang and the song *Rapper's Delight*, the first commercially successful hip-hop record, went on to sell more than eight million copies.<sup>91</sup> It also attracted the attention of *Good Times* co-writers Nile Rodgers and Bernard Edwards who sued for copyright infringement. They settled out of court for joint authorship of *Rapper's Delight* and a "...large cut of the royalties."<sup>92</sup> Ironically, by Rodgers' own admission, the lyrics to *Good Times* were appropriated from two Depression-era songs, *Happy Days are Here Again* and *About a Quarter to Nine*.<sup>93</sup>

After *Rapper's Delight*, a slew of hip-hop records hit the market, many if not most featuring sampled portions of other songs. A number of infringement lawsuits followed. Many were settled out of court, including Vanilla Ice's dispute with Queen and David Bowie.<sup>94</sup> A notorious pre-Bridgeport case involved rapper Biz Markie's use of a 1970s iconic song, *Alone Again (Naturally)* by Irish singer/songwriter Gilbert O'Sullivan.<sup>95</sup> Markie sampled the song's highly-identifiable, but rather common piano introduction and looped it continually throughout his track. He also repeated the phrase "alone again naturally." Judge Duffy began his now infamous opinion by quoting from the Ten Commandments: "Thou shalt not steal." In ruling against the defendants, he went as far as to recommend that Markie and his label Warner Brothers be charged with criminal infringement. The opinion has also been widely criticized: "Duffy's opinion...betrays an iffy understanding on the part of this judge of the facts and issues before him in this case."<sup>96</sup>

## The Bridgeport Bright-Line

Two factors, one musical and one legal, make Bridgeport Music v. Dimension Films different from previous sampling cases: 1) the sampled portion was not readily identifiable, and 2) the court abandoned the substantial similarity test<sup>97</sup> altogether, instead focusing on the act of sampling itself.

Unlike *Rapper's Delight*; *Ice, Ice, Baby*; or *Alone Again* where prominent portions of prominent songs were featured repeatedly throughout the tracks, the use of a sample from a George Clinton track in N.W.A.'s *100 Miles and Runnin'* would have likely never been discovered had there

not already been a prior understanding between Bridgeport Music and the owners of *100 Miles* for the use of samples.<sup>98</sup> “After listening to the copied segment, the sample, and both songs, the district court found that no reasonable juror, even one familiar with the works of George Clinton, would recognize the source of the sample without having been told of its source.”<sup>99</sup> In other words, the sample was not readily identifiable.

A *bright-line rule* is a clear legal standard, the purpose of which is “...to produce predictable and consistent results in its application.”<sup>100</sup> In the Bridgeport case the three-judge panel that included Judge Ralph Guy who issued the original *de minimis* opinion at the district level, reversed the lower court’s decision by applying a bright-line rule to sampling. Judge Guy’s reassessment focused wholly on the nature of Sound Recordings, to the total exclusion of the underlying work. He writes, “The analysis that is appropriate for determining infringement of a musical composition copyright, is not the analysis that is to be applied to determine infringement of a sound recording. We address this issue only as it pertains to sound recording copyrights.” And also, “We think this result is dictated by the applicable statute...For the sound recording copyright holder, it is not the ‘song’ but the sounds that are fixed in the medium of his choice. When those sounds are sampled they are taken directly from that fixed medium. *It is a physical taking rather than an intellectual one*”<sup>101</sup> (emphasis added). The result of this “new rule” as Judge Guy referred to it,<sup>102</sup> is that all sampling requires permission of the copyright owner(s) of a Sound Recording because all sampling requires copying.

## The Bridgeport Effect on Sample-Based Music

The Bridgeport decision, while hailed by the recording industry, was widely criticized by many others. “Most copyright scholars think the decision is both activist and bogus—in the words of leading commentator William Patry, ‘Bridgeport is policy making wrapped up in a truncated view of law and economics.’”<sup>103</sup> The Court’s insistence that it did not see a licensing requirement for sampling as “any barrier to creativity” is particularly troubling as licensing erects both financial and creative obstacles to producing sample-based music.

Judge Guy stated that “...the market will control the license price and keep it *within bounds*”<sup>104</sup> (emphasis added). Within whose bounds? “A sound recording license fee for a three-second sample used only once in a new major label work may cost US\$1,500 as an advance on future

royalties from album sales. For a looped sample of three seconds or less, the fee varies from \$1,500 to \$5,000, while a looped sample greater than three seconds can run into the tens of thousands of dollars.”<sup>105</sup> The cost of sample licensing is prohibitive for most fledging artists. “For an independent artist, the price for clearing a single sample can run more than an entire album’s recording budget. With an album or single that sells fewer than 10,000 units, the cost of clearing the sample is almost never recouped by the album’s sales. This creates a barrier to entry for independent or developing acts.”<sup>106</sup>

An equally formidable obstacle is the inertia a licensing requirement places on the creative process from the beginning. Sampling is an essential component of the musical vocabulary of certain genres. When a hip-hop producer is “beat-mining”<sup>107</sup> obscure vinyl records, he’s looking for that special musical clip that will hopefully inspire a whole new work. Spontaneity is essential. The producer finds a sample immediately adds it to a track to see if it will work musically. Maybe it does, maybe it doesn’t. A producer can’t possibly license a sample *before* it’s put into use. The musical decision always comes first. The process is not unlike a jazz musician transcribing records for material to use in her own improvisations. She’ll work through a number of transcribed solos looking for portions to adapt to her own playing. Samples are as much a part of the musical vocabulary of hip-hop as ii-V patterns<sup>108</sup> are for jazz players. What would have happened to jazz if bebop musicians had been required to get a license every time they performed a variation of the ii-V pattern found in measures 15 and 16 of Charlie Parker’s *Donna Lee*?<sup>109</sup> The sampling musician is caught in a catch-22. The notion of having to license a sample prior to completing the creative process is absurd. However, the time, effort, and expense invested in producing a track only for a license request to be turned down is equally illogical. The current situation has resulted in two economic classes of musicians: a minority that can afford the license fees and due to their stature are reasonably sure they can clear the samples; and the majority who can’t afford it and/or don’t have the stature. The latter simply break the law.

## Conclusion

This author concludes that sampling is first and foremost the appropriating of a desired musical performance embodied in a phonorecord for the purpose of creating an altogether new musical work. The inevitable

consequence is the copying of a Sound Recording. While in practice indivisible, a Sound Recording and its underlying recorded musical performance are not one and the same.<sup>110</sup> If it were, the law could not allow for, much less encourage, the imitation of the embodied performance no matter how similar; it would be infringement.

The Bridgeport ruling exposed a critical flaw in the Copyright Act; the current standing of Sound Recordings continues to adversely impact musical styles that rely on sampling for their creative building blocks. The statutory pendulum has swung to the opposite extreme of where it once was following the 1908 *White-Smith v. Apollo* ruling when recorded music was not deemed to be protectable as “writings.” Sound Recordings today effectively enjoy *more* protection than other categories of works—*any* use no matter how minimal or insignificant *must* be licensed. With apologies to Orwell, all copyrights are equal, but Sound Recordings are more equal than others. Bridgeport is not the problem, the law is. The legislative history shows that lawmakers and the recording industry were only concerned about one thing: stopping record piracy. In 1972, Congress essentially created a second copyright system of a primarily economic nature to govern Sound Recordings, in some ways similar to neighboring rights.<sup>111</sup> However they failed to foresee, and thus account for, the use of portions of Sound Recordings as the creative building blocks for new works—the idea/expression dichotomy present in the remaining seven categories.

What is the solution? The Bridgeport ruling hinted at a possible fair-use work-around, “Since the district judge found no infringement, there was no necessity to consider the affirmative defense of ‘fair use.’ On remand, the trial judge is *free to consider this defense...*”<sup>112</sup> (emphasis added). It would obviously be beneficial if there ever happens to be a sampling equivalent to the *Campbell v. Acuff-Rose Music* decision, a definitive case for the fair use of musical works. However a fair use case is an expensive proposition and something both sides would likely be hesitant to pursue.<sup>113</sup>

A more elegant solution should ultimately be reached by means of the legislative process. As Judge Guy wrote, “If this is not what Congress intended or is not what they would intend now, it is easy enough for the record industry, as they have done in the past, to go back to Congress for a clarification or change in the law. This is the best place for the change to be made, rather than in the courts, because as this case demonstrates, the court is never aware of much more than the tip of the iceberg.”<sup>114</sup> The stated goal of U.S. copyright law is to promote the progress of art and science

by allowing for a temporary and limited monopoly of exclusive rights to a work.<sup>115</sup> Any change in the law must strive to balance conflicting interests by continuing to protect producers of Sound Recordings against piracy while encouraging creative expression and the production of new works.

How could the law be changed to achieve this elusive equilibrium? This author believes that equity could be realized by rethinking the very nature of Sound Recordings. In particular:

1. Redefining Sound Recordings in a manner similar to motion pictures, acknowledging the fact that they are at the core derivative works;
2. Recognizing a recorded performance (i.e., the production) as the expression that is fixed to create (not “result” in) a Sound Recording;
3. Identifying the actual creator(s) of the work as the author(s) of the Sound Recording;
4. Granting all exclusive rights to Sound Recordings, not just the current subset; and
5. Conceding that rights in Sound Recordings are not intrinsic, but rather inherited from and through their underlying musical or literary work and the performance thereof.

In short, Sound Recordings would be treated under the law as inherently intertwined with the underlying work. The mimicking portion of the current statute would effectively be invalidated and literal imitation would then be considered infringement. The end result would be that Sound Recordings would become subject to the idea/expression dichotomy and thus available to be excavated for the creative building blocks that result in new works and musical styles. Sampling would be just another creative technique to draw from. Sound Recordings would possess the same level of protection against piracy as all other works. Under this scenario, non-transformative sampling such as in the Biz Markie or Vanilla Ice cases would still be infringement while the highly-transformative Bridgeport sample would not. Cases would be decided on their individual merits; there would be no bright line. Finally, implied in this model is a performer’s right<sup>116</sup> that would ultimately recognize and account for the rights of the musicians, producers, and engineers whose contributions are the true objects of sampling.

## Endnotes

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1. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 8 (6th Circuit 2005).
2. Sampling is the term used to describe the taking of a small portion of one recording and reusing it in another recording.
3. A riff is an expression common among musicians that denotes a short musical idea or motif.
4. *De minimis* in copyright means insignificant.
5. A bright-line rule is a clear, objective standard.
6. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 8 (6th Circuit 2005).
7. When capitalized throughout this article, the term Sound Recording(s) refers to the copyrightable work “Sound Recording” as defined in the U.S. Copyright Law, 17 USC §101. When spelled in lower case, sound recording(s) refers to the generic understanding of the term, synonymous with recording, record, etc.
8. Throughout this article the terms “work” and “works” refer to the legal classifications of copyrightable works as defined in the U.S. Copyright Law, 17 USC §101.
9. *Feist Publications, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 18 U.S.P.Q.2d (BNA) 1275 (1991). This ruling highlighted the notion that works of authorship must possess a “minimal degree of creativity.”
10. The “idea/expression dichotomy” is a concept in copyright law that states that an idea is not protectable, only its expression. The 1879 *Baker v. Selden* case (101 U.S. 99) highlighted the concept.
11. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 9 (6th Circuit 2005).
12. David Morton, “Recording History—The History of Recording Technology—The First Peak, 1900-1925,” 2006, accessed May 24, 2012, <http://www.recording-history.org/HTML/musicbiz2.php>
13. *U.S. Constitution*. Art. I, Sec. 8, Cl. 8.
14. “Act of March 4, 1909 (in effect July 1, 1909),” *Copyright Law of the United States*. Sect. 4. Pub. L.60-349, 35 Stat. 1075 (Mar. 4, 1909; repealed Jan. 1, 1978).
15. Piano rolls are continuous rolls of perforated paper used by player pianos to perform music.

16. 209 U.S. I (1908).
17. The Compulsory Mechanical License provision of the 1909 Act was a legislative response to the White-Smith decision, compensating copyright owners for all such mechanical reproductions including piano rolls and records.
18. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 21.
19. *Ibid.*, 22. The common law theory of unfair competition prevents a business from profiting unfairly at the expense of a competitor.
20. *Ibid.*, 25.
21. *Ibid.*, 27.
22. The American Society of Composers, Authors, and Publishers.
23. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 27.
24. *Ibid.*, 28.
25. *Ibid.*, 29-30.
26. *Ibid.*, 30.
27. *Ibid.*, 34. (It is ironic that the notion there should be not protection against mimicking a sound recording seems to have originated with the motion picture industry, a concept they would certainly resist in relation to their own works.)
28. *Ibid.*
29. *RCA Mfg. Co. v. Whiteman*, 114 F. 2d, 86 (2nd Circuit, 1940).
30. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 36.
31. Joseph C. O'Mahoney, foreword to *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, by Barbara A. Ringer,

- US. Senate, 86th Cong., 2d Sess., 1961 (Comm. Print 1961), III.
32. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 1.
  33. The term *dubbing* appears throughout the legislative history and refers to the physical reproduction of a sound recording. Unauthorized dubbing is synonymous with what is at this time commonly called piracy.
  34. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 47.
  35. U.S. House, The Committee on the Judiciary, *The House Report on the Sound Recording Amendment of 1971*, (H. Rpt. 92-487) 22, September 1971.
  36. Barbara A. Ringer, *The Unauthorized Duplication of Sound Recordings, Study No. 26 in Copyright Law Revision, Studies Prepared for the committee on Patents, Trademarks and Copyrights of the Comm. on the Judiciary*, U.S. Senate, 86th Cong., 2d Sess., 1957 (Comm. Print 1961), 37.
  37. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Done at Rome on October 26, 1961 (Also known as the Rome Convention).
  38. World Intellectual Property Organization, *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms*, Art. 7, Sec.2, 29, October 1971.
  39. U.S. House, The Committee on the Judiciary, *The House Report on the Sound Recording Amendment of 1971 (to accompany S. 646)*. Statement of William N. Letson, General Counsel, Department of Commerce, (H. Rpt. 92-487) Washington: Government Printing Office, 1971.
  40. Barbara A. Ringer, Register of Copyrights, *Annual Report of the Register of Copyrights for the Fiscal Year Ending September 30, 1977* (1977, Print 1978), 5.
  41. George D. Cary, Register of Copyrights, *Annual Report of the*

*Register of Copyrights for the Fiscal Year Ending June 30, 1972* (1973), 1.

42. USC 17 §26. *Copyright Law of the United States*, (Rev. to Jan. 1, 1973; repealed Jan. 1, 1978).
43. *Ibid.*
44. *Ibid.*, §19.
45. Barbara A. Ringer, Register of Copyrights, *Annual Report of the Register of Copyrights for the Fiscal Year Ending September 30, 1977* (1977, Print 1978), 1.
46. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 50.
47. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 127.
48. *Ibid.*, 88.
49. The Digital Performance Right in Sound Recordings Act of 1995.
50. The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, amended on September 28, 1979.
51. USC 17, §102 (a).
52. USC 17, §102 (b).
53. A Latin term meaning “an essential condition.”
54. *Feist Publications, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 18 U.S.P.Q.2d (BNA) 1275 (1991).
55. A common chord progression consisting of the 1, 5, 6m, and 4 chords in a given key: C-G-Am-F in the key of C.
56. A “production” is not synonymous with a Sound Recording. What is commonly understood as the record production is actually a part of the performance of the musical work embodied in a Sound Recording. Elements such as instrumentation, microphone choices and placement, effects, equalization, panning, mix, etc. are but some of the non-copyrightable “ideas” that make up the recorded musical performance.
57. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 52.
58. *Ibid.*, 52-53.
59. USC 17, §101.

60. Ibid.
61. USC 17, §114 (b).
62. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 7 (6th Circuit 2005).
63. The Rinse Production website states, “We are the original music production company that specialises with problematic copyright issues. We have produced over 300 sample recreations and sound-a-likes for all types of music.” Scorccio, an international company with studios in the U.S., U.K., and Spain, claims to “remake any style of music and produce sound-a-like vocals—to match any original recording as closely as possible...”
64. The Act of 1976 includes a termination clause that gives the author(s) the option to recapture a copyright between the 35<sup>th</sup> and 40<sup>th</sup> year after an assignment of copyright.
65. USC 17, §114 (b).
66. USC 17, §106 (6).
67. USC 17, §101.
68. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 8 (6th Circuit 2005) (See endnote 13).
69. U.S. House, The Committee on the Judiciary, *Performance Rights In Sound Recordings*, (H. Rpt. 22-046) Washington: Government Printing Office, 1978, 27.
70. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 53-54.
71. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 5 (6th Circuit 2005) (See endnote 6).
72. U.S. House, The Committee on the Judiciary, *The House Report on the Sound Recording Amendment of 1971 (to accompany S. 646)*, (H. Rpt. 92-487) Washington: Government Printing Office, 1971.
73. The U.S. is still not a party to the Rome Convention. The same formality was specified in the 1971 Geneva Convention, which the U.S. ratified.
74. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 128.
75. Ibid., 16.

76. Material objects include physical devices such as CDs, vinyl records, and cassettes, as well as audio sound files of any kind including MP3s, AACs, and WAVs.
77. USC 17, §101.
78. U.S. House, The Committee on the Judiciary, *Copyright Law Revision – Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*, (H. Rpt. 61-62) Washington: Government Printing Office, 1961, 17. This concept has been acknowledged throughout the history of copyright in sound recordings. Exceptions would be cases where embodied material was not copyrightable such as nature sounds, traffic sounds, birdcalls, etc.
79. Individual performances are protected in countries that are signatories to the Rome Convention through neighboring rights.
80. Wikipedia contributors, “Bebop,” *Wikipedia, The Free Encyclopedia*, accessed June 1, 2012, <http://en.wikipedia.org/wiki/Bebop>.
81. These and many other jazz compositions from this era are known as “contrafacts”—works that consist of new melodies written over the same harmonies as other popular songs.
82. Wikipedia contributors, “Bill Monroe,” *Wikipedia, The Free Encyclopedia*, accessed June 1, 2012, [http://en.wikipedia.org/wiki/Bill\\_Monroe](http://en.wikipedia.org/wiki/Bill_Monroe).
83. Wikipedia contributors, “Old-time Music,” *Wikipedia, The Free Encyclopedia*, accessed June 1, 2012, [https://en.wikipedia.org/wiki/Old\\_time\\_music](https://en.wikipedia.org/wiki/Old_time_music).
84. David Cope, *Computer Models of Musical Creativity* (Boston: MIT Press, 2005), 12.
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87. U.S. Senate, The Committee on the Judiciary, *Copyright Law Revision Report together with Additional Views (to accompany S22)*, (S. Rpt. 94-473) Washington: Government Printing Office, 1975, 52.
88. A musical Mashup is a work created by mixing two or more other songs.
89. See [http://www.rockabilly.nl/references/messages/bill\\_buchanan.htm](http://www.rockabilly.nl/references/messages/bill_buchanan.htm) and [http://en.wikipedia.org/wiki/Dickie\\_Goodman](http://en.wikipedia.org/wiki/Dickie_Goodman).

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92. Wikipedia contributors, "The Sugarhill Gang" *Wikipedia, The Free Encyclopedia*, accessed June 1, 2012, [http://en.wikipedia.org/wiki/The\\_Sugarhill\\_Gang](http://en.wikipedia.org/wiki/The_Sugarhill_Gang).
93. "EMP Oral History Videos, Category: Black History Month, Video Title: Happy Days Are Here Again" EMP Museum, accessed June 1, 2012, <http://www.empmuseum.org/programs/index.asp?articleID=613>.
94. See <http://www.benedict.com/Audio/Vanilla/Vanilla.aspx> for a comparison of both songs and a brief history of the dispute.
95. *Grand Upright v. Warner*, 780 F. Supp. 182 (S.D.N.Y., 1991).
96. Commentary on "Grand Upright v. Warner 780 F. Supp. 182 (S.D.N.Y. 1991)," UCLA School of Law, Music Copyright Infringement Resource, accessed June 1, 2012, <http://cip.law.ucla.edu/cases/1990-1999/Pages/granduprightwarner.aspx>.
97. Substantial similarity is a legal standard for determining if one work was copied from another.
98. The opinion shows that Bridgeport Music had previously entered into an agreement with the owners of *100 Miles* granting a sample use license.
99. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 4 (6th Circuit 2005).
100. Wikipedia contributors, "Bright-line Rule," *Wikipedia, The Free Encyclopedia*, accessed June 1, 2012, [http://en.wikipedia.org/wiki/Bright-line\\_rule](http://en.wikipedia.org/wiki/Bright-line_rule).
101. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 8,9 (6th Circuit 2005).
102. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 9 (6th Circuit 2005).
103. Tim Wu, "The shady one-man corporation that's destroying hip-hop," *Slate.com*, November 16, 2006, accessed June 1, 2012, [http://www.slate.com/articles/arts/culturebox/2006/11/jayz\\_versus\\_the\\_sample\\_troll.single.html#pagebreak\\_anchor\\_2](http://www.slate.com/articles/arts/culturebox/2006/11/jayz_versus_the_sample_troll.single.html#pagebreak_anchor_2).

104. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 8 (6th Circuit 2005).
105. Josh Norek, “‘You Can’t Sing without the Bling:’ The Toll of Excessive Sample License Fees on Creativity in Hip-Hop Music and the Need for a Compulsory Sound Recording Sample License System,” *UCLA Entertainment Law Review* 11, vol. 1 (2004): 89.
106. *Ibid.*, 91.
107. Beat-Mining is a common term among producers for the process of listening through old and often obscure records for portions suitable for sampling. Many producers are known for the quality of the beats they mine.
108. The ii-V-I chord progression is the most common harmonic element in jazz. Players memorize numerous melodic patterns to play over those chord changes when improvising.
109. The pattern referred to is a commonly used series of musical notes in Bebop style jazz improvisation.
110. An example of this principle would be a Grateful Dead concert recorded by several different individuals at the same time. The band historically allowed fans to record its performances. Each recording would result in a separate and distinct Sound Recording of *the same, identical performance*. However, each resulting Sound Recording would be owned by each respective “producer.”
111. Neighboring (or Related) Rights are used in many countries to protect works such as phonograms, performances, broadcasts, and other works not defined by the Berne Convention as “literary and artistic works.” The U.S. is not a signatory to the Rome Convention, the primary international treaty governing neighboring rights.
112. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 11 (6th Circuit 2005).
113. It is this author’s personal belief that the fear of a landmark fair-use ruling is a possible reason why the recording industry has not pursued an infringement action against mash-up artists such as Girl Talk as of this writing.
114. *Bridgeport Music, Inc. v. Dimension Films*, 410 F. 3d 792, 11 (6th Circuit 2005).
115. U.S. Const. art I, sec. 8, cl 8.
116. Performer’s rights are recognized by countries that are signatories to the Rome Convention, the only major international copyright treaty the U.S. has not yet agreed to.

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# Race, Hegemony, and the Birth of Rock & Roll

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## Introduction

*The Blues Had a Baby and They Named it Rock & Roll*

On his Grammy winning album, *Hard Again*, McKinley Morganfield (a.k.a. “Muddy Waters”) sings his song *The Blues Had a Baby and They Named it Rock & Roll*.<sup>1</sup> What are the racial and social implications of this rebirth? In this study, I will argue that the cultural context during the birth of Rock & Roll was such that Blues music had to be “reborn” in order to enter into the predominantly white mainstream. From the perspective of a Blues musician, Morganfield’s use of the idea of rebirth is a subtle apology for the Blues, preserving the filiation and downplaying the issue of racial division. However, a more critical analysis of the situation questions the aptitude of rebirth as a metaphor for the process of change that was required of (Rhythm &) Blues music before it could be embraced as a mainstream art form. Contemporary scholarship suggests a range of terms as more accurate descriptors of this transformative process, including appropriation, assimilation, blanching, and subsumption.<sup>2</sup> We can add terms like “translation” and “renaming” to this list, each bringing a slightly different perspective to the issue.<sup>3</sup> By attempting to recognize a convergence of unseen or “behind the scenes” forces that cause this transformation to take place, the current study seeks to demonstrate their consequences not simply with respect to the development of popular music, but with respect to the larger relationship between popular culture and race in the latter half of the twentieth century.

## Review of Literature

The study at hand seeks to discern an account of the birth of Rock & Roll that is informed by multiple perspectives including social, economic, biographical, historical, and political ones. While such an approach will help us avoid the pitfalls of more commonplace approaches to this subject, it also risks complexity. Part of the strategy behind our study is therefore to rely on simple guiding threads that will work for cohesion. These include a theoretical perspective that is centralizing in nature as well as the breakthrough of Elvis Presley that will serve as a sort of window through

which we can take in the various forces at work. A third thread—and the one with which we will begin our survey of literature—is an appraisal of scholarship that uses race as a way to address the birth of Rock & Roll. Among these are works by Glenn Altschuler, Nelson George, Margo Jefferson, and Eileen Southern that focus on the white power structure disenfranchising black creators.<sup>4</sup> Others by Paul Eichgrun and Ross Porter applaud the function of all or part of the corporate structure while a final group of studies is focused on the few players of the pre-civil rights era who crossed over the color barrier.<sup>5</sup> Authors of these studies include Robert Pielke, Reebee Garofalo, and Steve Perry.<sup>6</sup>

Common to almost all of the consulted literature are two interrelated discussions that address the institutional process of transformation that turned black R&B into mainstream Rock & Roll. These issues are cover songs and the development of the persona of Elvis Presley. The importance of the first issue includes its commentary on the nature of creation in pop culture as well as the fact that, in this particular instance, we find it acting as a vehicle by which musical compositions are reorganized and assimilated across racial borders. This is an essential context for locating the main camps of critical interpretation that are organized around the initial explosion of Presley as a nationally visible artist.

“Covers” are songs that are initially released by one recording artist and then re-recorded and released again by another. Covering another artist’s material is more common to artists in the early stages of their careers, as younger artists depend on their influences as reference points to help them carve out a new artistic terrain. As Michael Bertrand indicates in his insightful *Race, Rock, and Elvis*, by the end of 1954 “the majors had pushed their new cover tactics to fruition and were successful in getting their own R&B type material into the pop market.”<sup>7</sup> In other words, the tactic of major labels releasing a white version of a song originally released by a black artist had achieved some success by late 1954. However, other critics are keen to point out the truism that there is “no original riff” in music and likely in representational art due to the fact that representation implies imitation.<sup>8</sup> As a result, creation can be understood as quotation or pastiche, where artists are nodding to each other by including parts of each other’s work in new creations—as opposed to creating *ex nihilo*. As Garofalo reminds us, what sets popular music apart in circa-1950 America is the fact that nearly all the original compositions are by black artists and nearly all the cover versions are by white artists.<sup>9</sup> A sample list of this

common practice might include *Shake, Rattle and Roll* (Bill Haley, 1954 from Jesse Stone, 1953); *Rocket 88* (Bill Haley, 1952 from Ike Turner, 1951); *A Little Bird Told Me* (Evelyn Knight, 1948 from Paula Watson, 1947); *Sh-Boom* (the Crew Cuts, 1954 from the Chords, 1952). In all of these instances, the cover version would place near the top of the more lucrative pop music charts while the original versions may or may not reach the less lucrative R&B charts. Adopting a perspective oriented toward class and race alone (prior to any economic consideration), contemporary scholarship has used names like “assimilation,” “blanching,” or “subsumption” to describe this situation. Each of these terms presupposes a certain perspective on the birth of Rock & Roll. “Assimilation” has been both used and criticized by scholars of race due to the relationship it presumes between black and white culture. “Blanching” is a more figurative variation of “assimilation” that likewise assumes an act of authorship on behalf of all of white America—yet the idea of a writing that also involves erasure is worthy of note in this context. “Subsumption” is also a recasting of “assimilation” in that it presumes a dissymmetry of social class, but recasts the scenario on the model of human learning, apprehension, and learning. We will return to the discussion of the relevance of these terms in the conclusion of this study. For now, let us note that the translation across cultural borders is marked by an act of renaming.

There is more ambivalence in the literature when it comes to the evaluation of Elvis. The major division separates those who associate Elvis with all the other cover artists and those who have recently begun to reappraise him using separate theoretical criteria. The works of Southern and Bertrand represent opposite ends of the spectrum. While the first group essentially labels him more as an opportunist or even thief than an artist of note, a second includes socio-economic and musicological perspectives that rescue the “hillbilly hep cat” from academic infamy. The central thesis of Bertrand’s work, for example, is that Elvis’ impoverished upbringing resulted in experiences that made black music (and the culture itself) much more accessible to him than mainstream white culture. In turn, John Morthland takes the stance that Elvis borrowed equally from Country, black and white Gospel, Blues, and R&B before turning out his own style, originally dubbed as “hillbilly bop.”<sup>10</sup> In other words, seeing his work in only black and white terms is myopic and limited in scope. Garofalo insists that it is important to prioritize the disenfranchisement of the black musical community in this instance, but this does not necessarily

make Elvis part of the problem. Authors like Bertrand support this position by using criteria like social caste to give greater resolution to what is left unaddressed by a strictly race-based argument. Showing that Elvis was initially in the same boat as other early Rock & Rollers, including Fats Domino and Roy Orbison (all of whom suffered from record company mismanagement of artist royalties), Bertrand calls for us to see larger social forces at work both within and beyond the music business. From this perspective, the lines of division are not drawn strictly by race, but by the location of an individual within the hierarchy of power, ownership, and control. The current study considers these two perspectives to be complementary rather than exclusive.

A final point of interest regards the development of Elvis' persona in the first five years of his national presence. Like the Beatles, Elvis had an active career arc that witnessed several phases. Scholarship that seeks to use him as an example, oftentimes fails to attend to the development of his artistic persona. For example, Robert Pielke's 1986 study entitled *Rock Music in American Culture* is based primarily on Elvis' initial phase in which he represented a negation of the values and codes of decency imposed by standing conservative tradition. Several authors show that Elvis elicited fear in the establishment: the threat of racial mixing, the rise of the independent labels out-earning majors ill-prepared to exploit this new "trend," broadcast media forced to censor any shots that included his gyrating waist. Bertrand's work exemplifies the value of consulting the larger cultural context (in his case, the socio-economic situation) for a greater understanding of the forces at work during the birth of Rock & Roll. A good example is that by 1952, the major labels saw they were unable to control that market by means of cover songs and they needed a new tactic. Paraphrasing George Lipsitz, Bertrand writes: "[...] if the popular music establishment had to 'accept' the fad, it would make sure that only one 'Rock & Roll revolutionary' from outside the mainstream received corporate clout and a national forum from which to articulate the music's working class message."<sup>11</sup> This theory of R&B's subsumption by the mainstream was realized by RCA who signed Presley in 1955 to a \$40,000 contract. Within a year, teen magazines carried interviews with Presley in which he was beginning to cultivate a "whitewashed" image: "I don't smoke and I don't drink, and I love to go to movies. Maybe someday I'm gonna have a home and a family of my own, and I'm not gonna budge from it. I was an only child but maybe my kids won't be."<sup>12</sup> Bertrand's

study is exemplary in its approach. It invites us to step back and address these issues anew. In the following pages, we will carefully attend to the process by which Elvis was “brought in line,” properly owned and exploited, washed of his dangerousness and made to signify a more idealized version of whiteness.

## Theories of Control through Mass Culture

The attempt to bring into view that which is normally unseen (structures of ownership, systematic and class-based disenfranchisement) or that which is a condition of visibility (mythologies of identity) requires the destruction of assumptions and beliefs purported as common sense, *status quo*, or simply as given facts that need not be questioned. The study at hand uses a perspective provided by cultural theoreticians exploring a Marxist interpretation of popular culture. Herbert Marcuse (1898-1979), Louis Althusser (1918-1990), and Antonio Gramsci (1891-1937) are all Western European philosophers who address popular culture to some extent.<sup>13</sup> As an ensemble, their theories allow us to approach popular culture from a philosophical perspective that takes into account the ways that dominant social classes maintain their position. The decades leading up to the civil rights movement in the U.S. are immediately pertinent from this theoretical perspective because of the increased significance of popular culture, and in particular, the political valence of Rock & Roll. Such a historical context corresponds to the issue of the institutional protection of mainstream white image and identity at a time when control of this identity was threatened if not temporarily lost.

A common question that unites the cultural theorists above is, “How can subordinate classes make a claim to meaningful historical change through popular culture?” This question encourages us to reappraise the idea of narrative or “text.” While the history of pop culture is certainly composed of books, films, songs, and other storytelling media, there is also the idea of deciphering historical events as being brought about by forces that makeup another sort of text. While Marcuse reads popular culture as an institutional means of using illusion to blunt any real instinct of popular insurgence, Gramsci insists on a more nuanced reading. He sees popular culture in terms of a constant negotiation between dominant and subordinate classes. Althusser’s take on the issue assumes a sort of middle ground between Marcuse and Gramsci inasmuch as it adds the element of consent on the part of those that the official discourse seeks to construct as

a subject. While the macro-vision of the theoretical model itself remains the same, it is ultimately the agency of the subordinate (as opposed to dominant) group that separates these philosophers. Marcuse sees popular culture as a top-down imposition of order, Gramsci sees it as a space for negotiation, resistance, and ultimately translation, while Althusser sees it in a hybrid fashion—an apparatus of the state that creates subjects only once they buy in. Despite the fact that Gramsci is the eldest of these three cultural theorists, his contribution to the conversation was later than the others due to a tardy English translation of his works. The impact of these ideas upon popular culture studies thus develops the understanding of social interrelation by progressively inscribing the non-dominant classes with a certain agency. In the hands of Gramsci, this agency is expressed as negotiation—the key characteristic of his central concept, hegemony.

In *An Introduction to Cultural Theory and Popular Culture*, John Storey describes Gramsci's particular elaboration of this key concept:

Although hegemony implies a society with a high degree of consensus, it should not be understood to refer to a society in which all conflict has been removed. [...] That is, hegemony is maintained (and must be continually maintained: it is an ongoing process) by dominant groups and classes. [...] Because hegemony is always the result of 'negotiations' between dominant and subordinate groups, it is a process marked by both 'resistance' and 'incorporation'; it is never simply power imposed from above.<sup>14</sup>

Storey goes on to elucidate the meaning of this "negotiation" as it is applied to popular culture. He uses the French term *bricolage* to refer to the process by which youth subcultures appropriate commercially provided commodities for their own purposes, recombining them in ways not intended by their producers. It is not difficult to see this process exemplified in the use of network news footage by short form music video directors at the outset of the MTV era. The end result is work that often opposed the political establishment by using reconfigured bits of its official language. Likewise, this theoretical perspective has pragmatic effects for the current study. It brings into value a type of historical interpretation that seeks to identify multiple layers to a given event, much in the manner of Stuart Hall.<sup>15</sup> If we can identify and then dispel a dominant version of the birth of

Rock & Roll, it will clear the way to other, negotiated or even oppositional readings of the same event.

More specifically speaking, this study values various socio-cultural media as the terrain of negotiation between what Max Horkheimer calls “authentic” and “mass” or “commercial” culture.<sup>16</sup> In other words, media is subject to the time it takes for a theoretically “authentic” expression from below (subordinate classes) to be assimilated, repackaged, and marketed by the dominant ones. The version that is resold following this process is the “negotiated version.” As such, media are primary texts that allow for interpretation and critical reading of the Rock & Roll assimilation. These include traditional media such as radio broadcasts and television programming as well as those media that are specific to the music industry, such as musical compositions and recordings of those compositions. In order to respect the fact that the industry depends on the exploitation of the latter, we are compelled to recognize the ownership structures that use traditional media (the first group) as promotional vehicles for the sales of songs and records. We therefore accord a particular value and double status to record companies and publishing companies as both owners of records and songs, as well as mainstream institutions that either support or subvert mainstream values. By the same token, the broadcasting industry is simultaneously paid and contracted by the music industry to promote specific properties while also having the power to support or subvert the *status quo*. This then is the theoretical expression of our particular industrial or corporate situation.

Adding the racial situation into this picture requires some preliminary observations. First of all, it must be noted that the mainstream of American music at this time is owned, controlled, and defined by four white-owned major record companies: Capitol, Decca, Columbia, and RCA/Victor. The 1950s however witness the rise of the independent labels that are either immigrant owned or feature black artists (Chess, Specialty, Atlantic, Sun, Modern, Aladdin, VeeJay, Duke, Imperial, etc.). The issue of race is therefore rather neatly expressed on the level of music industry ownership of the period. Mainstream American values are represented via a small group of larger corporations with white ownership and talent while smaller companies with non-white ownership and/or talent are relegated to the margins in terms of status (independent labels), genre (race records like Blues, Gospel, and R&B), distribution, and above all, sales. Looking at this issue from the dual perspectives of race and ownership demonstrates the corpo-

rate interest in both defining and exploiting the mainstream. Furthermore, it is important to avoid a related over-simplification—namely, that only mainstream, white-owned corporations were subject to greed and abuse of the creative component (artists, musicians, songwriters, etc.). Scores of exploited artists, black and white alike, testify to the fact that greed was not exclusively a feature of the major labels.

With the theoretical perspectives outlined above, let us turn to an analysis of the developments surrounding the birth of Rock & Roll in 1950s America. Some questions that will guide our analysis seek to recognize the socio-economic situation of this period. In particular, we are interested in gaining an understanding of how mainstream American society perceived black American culture, both at large and with respect to its music. Beyond the collapse of segregation, what specific threats to mainstream America are posed by Rhythm and Blues music? We are likewise interested in the possible means of regulation by which upper echelons of society might exert control over black music. By what processes can we see the establishment (government, religion, media, education) re-branding Rhythm and Blues as Rock & Roll? In particular, we are interested in the role of mass media as a possible means of control. What position did the first Rock & Roll radio stations assume with respect to the black community as they essentially functioned to bring this “race” music to larger audiences?

### Identifying and Confronting the Threat

The threat of black music in 1950s America is largely that of black culture itself. Examples abound of local and regional officials from the clergy, municipal government, educators, citizens associations, law enforcement, and even broadcasters who decried the savage obscenity and vulgarity of Rock & Roll music that they saw as a threat to debase white society (Figure 1). There are two aspects of this well-documented story of censorship and racial ignorance that merit its inclusion here. First of all, anti-Rock & Roll activity is not exclusively a southern phenomenon—despite the pre-civil rights hostility towards all things black that continues to stigmatize the south. This observation invites us to question other ways that early rock & rollers threatened the authorities. Secondly, the fact that the issue of “Rock & Roll as threat” receives national attention, and the development of that story, including the way it is framed, all point to forces at play that are not directly related to the issue of segregation.<sup>17</sup> To this

# **NOTICE!**

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(If you don't want to serve negroes in your place of business, then do not have negro records on your juke box or listen to negro records on the radio.)

The screaming, idiotic words, and savage music of these records are undermining the morals of our white youth in America.

Call the advertisers of the radio stations that play this type of music and complain to them!

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Figure 1. Citizens' Council of Greater New Orleans, early 1960s.

point, our research shows two points that are worthy of consideration: the fact that the majors initially passed on Rock & Roll as a fad and the impact of black culture imported through Rock & Roll upon the extant mores, customs, and values of mainstream white America.

In his authoritative book, *The Recording Industry*, Geoffrey Hull discusses the rise of the independent record companies during the period of interest. In the year 1950 the recorded music market was similar to that which we see today—it is essentially an oligopoly (i.e., few companies control the vast majority of the marketplace). Columbia, RCA/Victor, Decca, and Capitol controlled 78% of all record sales (leaving 22% of sales to other, independent labels).<sup>18</sup> Much like today, this led to a listening experience that lacked diversity and innovation. The resulting situation is also similar to our own—the public hungers for something new. Another effect of this type of environment is that the idea of what makes a “hit” can become very narrow. For the purposes of this study, such a situation represents a highly normalized marketplace where the *status quo* is maintained with minimal disruption. Hull’s description of the *late* 1950s however, is radically different: the independent labels preside over 76% of sales leaving just 24% for the majors.<sup>19</sup> In the space of less than ten years, the market share any one of the majors had enjoyed became the total percentage to be shared by all five of the majors! The average market share enjoyed by a given major over this period goes from approximately 15% down to 5%.

A primary reason for this powerful disruption of the former stability is a new sound emerging from black culture and exploited by a growing number of independent labels. “Sepia tones,” “race records,” “boogie,” “jump blues,” and “nigger bop” were all names for this music, names that betray a wide spectrum of affinity for black culture in 1950s U.S.A. The division however was not as much along racial lines as along generational ones. Thanks to the efforts of a handful of pioneering DJs (to be discussed below), this new music that was essentially an up-tempo black pop music was gaining considerable grass roots momentum among white youths. To the extent that younger whites adopted it, their parents tended to reject it. So a self-perpetuating cycle took root that threatened to rip the very fabric of mainstream society by virtue of this music serving as the vehicle for a new youthful defiance. Also serving as the grounds of this tussle between parent and child, black music enabled white youths to give a voice to an entire set of topics held to be taboo by the older generation: those that revolved around human sexuality, overt emotionalism, and even self-de-

termination. In addition to a damn good time, this music allowed for white youths to identify themselves against the Victorian values by which they would have otherwise been restricted.

If it seems too dramatic to speak of this music in terms of white parents' struggle for the hearts and minds of their children, it requires no license to speak of its direct and overt challenge to the Victorian value system within which the older generation rooted their authority as adults and sometimes parents. As Rhythm and Blues artist Hank Ballard points out in the documentary *The History of Rock & Roll*, "movement of the butt, shakin' the leg... these were considered obscene for white folks."<sup>20</sup> In addition to the liberated dancing and artistic performance of this music by the original artists, some were known for making a career with *double entendre* lyrics whose references to intercourse were more or less veiled. Wynonie Harris enjoyed great success in the late 40s with songs that used food metaphors to articulate the carnal enjoyment of his partner: songs like *Keep on Churnin'*, *Lollipop Momma*, *I Like My Baby's Puddin'*, and others. Due to his crossover success with the song *Shake, Rattle and Roll*, Big Joe Williams' lyric is equally notable as he sang of the fruits of his romantic labor "like a one-eyed cat, peepin' in a seafood store."

The need for a white purveyor of this music can be understood in relationship to some of these threats. Real or rumor, Sam Phillips' purported prayer for a "white singer who can play black music" was answered on July 5, 1954 when young Elvis Presley cut two sides, *That's Alright Mama* and *Blue Moon of Kentucky*. The former, a cover of the obscure bluesman Arthur "Big Boy" Crudup, was particularly indicative of the historical impact Presley was to have on American pop music. At 20,000 copies, sales were not enough to earn a spot on any national charts, however it did put Elvis on the map and within eighteen months he had a major record deal with RCA as well as a series of national television appearances. It is important to note that Elvis as a white practitioner was not enough to immediately inoculate the white masses to the perceived threat of black popular music. Instead, we can see this as a process of development—not unlike the shortening of his name from Elvis Aaron Presley to simply "Elvis." This is to say that certain elements of his early image were too much for the mainstream public to cope with, and they had to be removed. As Ballard has already told us, the "movement of the butt" was simply too much for the older generation, but it was exactly the thing that made the youngsters go wild. As it turns out, adults and not youngsters owned the

major labels and broadcasting firms, so part of the re-branding for white America included Elvis in a tux and, following that failure, no television shots that included his hips. By the time the dangerous sexuality had been erased (omission as blanching), it was a matter of the institution who authored this change to inscribe its ownership, not in the artist, but in the genre itself: R&B was out to the margins of race and lowered sales, lesser stardom, and Rock & Roll, now disinfected and de-sexualized was fit for consumption. Each of these steps (subsumption, renaming, and ultimately coronation) belongs to the larger process of hegemonic negotiation. Little matter that there are already several kings of the upbeat, Blues-based boogie from which Rock & Roll is derived (Albert King, B.B. King, Freddie King), Elvis was now the figure of translation by which all of the best artistic innovation was free to enter into the pantheon of mainstream American stardom. The actual men and women who had created that art form were all too often left outside looking in.

### Media, Ownership and the Myth of the Pioneering DJ

There is a common mythological story of Rock & Roll. It is the soundtrack to a generation demarcating itself from the values and identity of preceding ones. Overlooking issues of class and color ultimately in favor of love, unity, and freedom, Rock & Roll as a cultural movement reveals the old, Victorian sensibility as stilted, stiff, and a bit uptight. While the co-mingling of these influences presents a compelling artistic balance, the social, cultural, and political stakes were perceived as too great to be supported by the ruling class, corporations, the government... in short, the *man*. Thus Rock & Roll is used to frame a struggle for the hearts and minds of America's youth. The dominant, conservative values starkly oppose the liberating beats and moods portrayed by Rock's forebear, Rhythm and Blues. Although the black artists were likely indifferent to crossing over, their music appears to the establishment as a battleground for the allegiance of America's youth. In between the forces of subversive artistic expression and hegemonic *status quo*, the early Rock & Roll DJs are often painted as heroically but naively constructing an impossible bridge. Such is the image of Rock & Roll's early years handed down through various media.

Looking more closely at the role of the music and associated media that spread this new world-view into the U.S., we find a romantic quality. It is the rise of the oppressed given voice by the irresistible force and ar-

tistic energy jumping off the grooves of the “race records” that could not be contained by any federal declarations. The somber truth is that the role of mass media only exacerbated the speed with which the “Rock & Roll beat” would overrun the land. The fact that many of its greatest propagators were white DJs is a remarkable historical fact that provides an important moment for critical reflection and debate. Here we can ask, “To what degree are these music businessmen—mostly young white men—exploiting the work of black artists for profits that are beyond professional measure and standard?”

While the condensed nature of the current study does not allow space for a case-by-case study of these DJs’ presentation of black music to a mainstream audience, some general remarks are in order. Let us consider the romantic if not heroic way that these music industry professionals are portrayed by the various media for which they worked. This group of mostly white men is celebrated for their bravery to take the music of the oppressed through a gatekeeping system of ownership and profit-seeking that had marginalized race music because it is poor folks’ music. However, a more objective stance reveals a couple of basic truths. First, these were in fact members and employees of prominent radio stations, and as such were caught up in the effort to exploit the recorded musical compositions of artists. Secondly, when we look at the larger arcs of the entire careers of these individuals, we find that their careers are definitively marked by the corruption of the federal anti-payola hearings. We should point out that there are strong camps on each side of this issue.<sup>21</sup> One claims that the payola hearings of the late 1950s were a straw-man issue used by the government to oppress any surge towards black entry into mainstream popular culture. Another side argues that DJs and record company owners and their A&R reps were in collusion to exploit the artists in any way possible, but most frequently by inserting themselves into rights and royalty streams of income that should have been enjoyed by the artists themselves. Although these issues are not 100% mutually exclusive, when we apply the litmus test of race—and to a lesser extent, class—we find that the true nature of, and conduct of, these DJs is, at best, questionable.

In his commendation of WHBQ’s Dewey Phillips—the DJ credited as the first to spin Elvis’ debut record (Sun 209) *That’s Alright* b/w *Blue Moon of Kentucky*—fellow Memphis DJ Rufus Thomas said, “He was the only white who could go anywhere he wanted on the black side of town.”<sup>22</sup> Thomas goes on to indicate the extent to which Phillips was embraced by

the black community for his defiant playing of their music on the radio. The “crazed hillbilly” persona he adopted as his on-air personality was also the one on display during his short-lived television show on WHBQ/TV-13. Let us note that Dewey’s relationship to his audience was mediated by an invented personality, or mask, that may have left some part of his identity hidden. Without impugning anyone’s motives, it is important to recognize that the contrived nature of their public face at the very least obscured these motives. The adoption of a larger than life persona is common to this pioneering generation of race-music playing disc jockeys. The “wild bunch” at WLAC in Nashville is also credited with being the first or among the first white DJs to bring R&B to white audiences. By adopting black colloquial speech, John Richbourg, Bill “Hoss” Allen, and Gene Nobles took this public persona to another level. From a psycho-linguistic perspective, this “hepster” mask is not unlike a form of invisible black-face with the important exception that it not only served as a marker of authenticity to racially and socially locate the music in modern black culture, but it also appears to have worked as a means of access for these DJs to address that black culture. Richbourg in particular is remembered not only for his “down-home” (or derivative “black”) phrasing as a pitchman, but for marketing scam products directly to his black clientele as well. Products included a box of live baby chicks that were sold under the idea of a “month’s worth of chicken dinner” when raised and bred, but the customer actually ended up with a box of a couple dozen dead baby chickens that were unable to withstand the rigors of ground service postal delivery.

From the larger perspective of the career trajectories of these men, we find a strong and nefarious association with the wealth that was amassed in the process of their pioneering ways. Between 1960 and 1963, two of the most visible DJ’s of this era, Hunter Hancock and Alan Freed, had careers that were ended by the payola scandals, while Richbourg and “Hoss” Alan escaped to other corners of the music business. Regardless of where we stand on the issue of payola, the mere association of business and race music is one that works to separate these DJ pioneers from the black culture for whom they are painted as champions in the *Invaders* documentary. On the side of the artists and musicians themselves, their creative work justifies their ownership of any original songs according to U.S. copyright law. Due to the relatively high levels of illiteracy and low levels of education, artists, performers, and songwriters were often disenfranchised not only by accepting one time, flat fee payments for their studio work, but by

signing away their ownership rights when asked to sign what they were told was a “receipt for payment.” Once the song was recorded and signed away in this fashion, the rights to the song and the recording both resided with the record company. As we have seen, this was not just a white-black power play. For example, Bill Haley’s mega-hit on Decca records *Rock Around The Clock* has Decca executive Milt Gabler listed as a co-writer. “Ghost writing” is the term for this tactic used by executives to insert themselves into (and thereby dilute) the artist royalty stream.

In this situation, the only barriers to instant wealth were promotion and ensuing distribution. This is the place and function of the disc jockey and the reason why record companies made large cash payments to disc jockeys to get them to spin certain records. One hit would yield a hundred times return on the initial investment in the 1950s, a thousand times in the 60s, ten thousand times in the 70s. If the DJs were in fact the champions of the black community—only in it for the music and invested in the subversive power of Rock & Roll culture—then we should find something more along the lines of “Robin Hood” and less along the lines of “Pied Piper.” In other words, the cash payoffs to the DJs did not find their way back to the black artists, songwriters, and musicians. In fact, we would have never heard about any of this if the DJs had only paid taxes on this common expense called radio promotion. The main vehicles that brought this situation into the light—the federal payola hearings of 1960 and the anti-payola laws from five years earlier—are both functions of the fact that the U.S. government was not getting its piece of the action: the DJs were evading taxes, not claiming this as part of their income. This is what is passing for justice: the greed of the DJs is clearly evident, and Uncle Sam is simultaneously getting paid while slapping the hands of the growing music industry. But without the songs, the beats, and the performances, none of the industrial and economic machinery can run. Regardless of what mask they wore, we must not consider these early DJs as champions of the black community. They were entrepreneurs, not pioneers, and as such their proper place is inside this industrial complex of power relationships that safeguard the mainstream. The story of the early Rock & Roll DJs supports our hegemonic reading by indicating that positions of power are primary in revealing motives that are often hidden by some more beautiful story.

## Rebranding Race Music

Applying the theory of hegemony to the two-year period from 1958-1960 is a useful way to outline a major adjustment of mainstream culture as it absorbs the Rock & Roll movement. During this period, a select group of the Rock & Roll luminaries find themselves somehow, and sometimes permanently, removed from the national spotlight. In March of 1958 Elvis was inducted into the United States Army, in December, 1959 Chuck Berry was sentenced to three years in prison for bringing a minor across state lines, and from 1958 to 1960 Alan Freed saw his career decimated by pressures that could justly be called hegemonic. Religious authorities, law enforcement, network broadcasters, citizen groups, and ultimately the federal investigation into payola became an impenetrable force working to silence the New York-based DJ and promoter who had built a career acting as a powerful voice and advocate for Rock & Roll. As we have already seen, all of the “pioneering” DJs who chose to build their national personae on bringing R&B to mainstream audiences during the mid 50s, were no longer doing so by the end of the decade. The year 1960 demonstrates a major adjustment by mainstream society to the Rock & Roll movement. In March, Elvis returned from Germany to find that the music that inspired him had brought the inner workings of the music industry under federal inspection as the payola hearings were already underway. One important result of this process would not only be the spectacular demise of Freed’s career—an effective warning to others who might wish to emulate him—but a locking of the door by which popular music could make it onto the air. The keys to that door were now being taken away from DJs and small, independent record labels only to be handed over to managers and majors in the form of increased rates and federal regulation.

The genie had, however, been let out of the bottle and even though the government might be able to discourage future “disruption” to the proper operation of the recording industry, there was no way to make mainstream youth forget the new sensibility introduced by the Rock & Roll sound. In the summer of 1960, less than a year after being called before the Senate payola hearings, Dick Clark debuted *The Twist* on his show, *American Bandstand*. The formerly illicit “movement of the butt” by whites was certified as acceptable behavior by mainstream America. Interestingly, the song was a cover version—but this time it was the “wholesome and black” Chubby Checker who sang the song of another, older black artist, Hank Ballard. Checker’s version hit number one in 1960 and again in 1962 (his

*Let's Twist Again* reached number eight in 1961), while Ballard's original hit the twenty-eighth spot in 1960. So fervent was the twist craze during this time, that the Peppermint Lounge in New York City became a twist-only dance club where the upper crust of white society would wait in line for hours for the chance to experience "movement of the butt" set to lively, musical accompaniment. Between 1960 and 1964, seventeen twist-themed songs made the *Billboard* charts, along with the national release of two feature films.

The operation of the subtle, unseen reifications of the *status quo*, coined by Gramsci as hegemony, is clear in this process of translation. To adopt a Marxist perspective, the base of production—maintaining control of mainstream recordings from signing the talent all the way to retail record sales—is safeguarded by the superstructure. The first generation of Rock & Roll (ca. 1952-1959) is a disruption to that system of control on many fronts including the economical, social, and educational. The responses to this disruption are made from these very arenas in an effort to regain control of the hearts and minds of the (white) youth. Schools begin to enforce dress codes defined explicitly against Rock & Roll dress (leather jackets, tight skirts); religious leaders reinforced this message by addressing Rock & Roll as a cancer to spiritual sanctity. Grassroots citizen associations spontaneously spring up in reaction to this threat, echoing the language of the educational and religious leaders. Corporate media outlets cut ties with any employees who had prospered by masquerading as "white renegades" embracing this new black music. It is interesting to note that this operation includes its own process of nomination. Once cleansed of its residual contagion from the maternal R&B music, the music would then be repackaged for a more mainstream consumption, under the name of Rock & Roll.

## Conclusion

While the bias of some writers is evident in their use of terms like "theft" and "disinfection," such vitriol threatens to compromise a critical account that attends to the complexity of the process at hand. Criticism of the term "assimilation" to describe black-white relations in America is based largely on the fallacies that underpin its use. As Marcus Garvey's analysis of the term shows, the primary presumption is that black cultural expressions need to conform to the values of the larger white system in order to become legitimate.<sup>23</sup> Though we are interested in demonstrating

the corrupt nature of such assumptions and their place in 1950s America, the theory of racial assimilation by way of popular music is problematic on multiple accounts.<sup>24</sup> On the other hand, “blanching” refers to any whitening process as exemplified by various processes (medical, cooking, horticulture). Its linguistic heritage has roots in renaissance rhetoric where it describes a process through which a writer seeks to make a point by way of suppressing certain information. While these ideas of whiteness, erasure, and omission do apply to the general contours of the social situation surrounding the birth of Rock & Roll, “blanching” also suffers as a critical concept in much the same way as assimilation. Namely, they presume a unified cause of action on the part of white society as a whole. Finally, “subsumption” provides a more nuanced theoretical framework for the study at hand. A descendant of Gestalt theory as well as those of Schema, subsumption is a theory of learning based on the idea that new material is related to relevant ideas in the existing structure.<sup>25</sup> This theory invites us to metaphorically reconceive our socio-cultural situation along the lines of learning and early human development. We are less bound by the idea of an overt, communal gesture imported by the previous terms. One interesting shift that comes with this new way of seeing the birth of Rock & Roll is that it decenters our perspective from its position of white or “hegemonic” predominance. Now, the culture of black America is represented more as a separate kind of knowledge—or even a new epistemology—about which mainstream white America must learn in order to grow. The idea of white predominance is effectively relegated to that of the confrontation of two cultures within what Garvey describes as “the great panorama of races.”<sup>26</sup>

To varying extents, each of the theoretical perspectives we have considered has its pros and cons. Nonetheless, the act of considering them together benefits us with a wider perspective. Individually, they naturally invite us to see a single historical moment in multiple ways. Perhaps the greatest benefit of theories like hegemony, cultural theory, and subsumption is their displacement of the critical perspective that now sees the birth of Rock & Roll from the more objective point of view of cultural confrontation rather than solely from the perspective of one of the cultures in question. There is, nonetheless, something that passes between black and white popular cultures in the years leading up to the “Rock & Roll Era.” The direct and vibrant musical inspiration is but one part of a larger way of being that is translated between the two cultures, a lesson learned on a mass scale by the youthful “counter culture” raised in the 1960s. Muddy

Waters' metaphor of Rock & Roll as the baby of the Blues is thus curiously insightful. It recasts the nuances of cultural communion, translation, and the communication of a lesson in beautifully simple and poetic verse.

*I want to tell all you peoples, you know the Blues got soul.*

*This is a story, a story ain't never been told:*

*You know the Blues got pregnant, and they named the baby Rock & Roll.<sup>27</sup>*

## Endnotes

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1. McKinley Morganfield (a.k.a.: “Muddy Waters”), *Hard Again*, copyright 1977, 1994 by Blue Sky Records, CDSKY 323576, Compact Disc.
2. See Michael Bertrand, *Race, Rock, and Elvis* (Chicago: University of Illinois Press, 2000) for the use of the term “assimilation,” and *Rock & Roll Invaders: The AM Radio DJs*, DVD, produced by Paul Eichgrun and Ross Porter (Carson City: Filmwest Associates, 1998) for use of the term “blanching,” and Herbert London, *Closing the Circle: A Cultural History of the Rock Revolution* (Chicago: Nelson Hall, 1984) for use of the term “subsumption.”
3. A more detailed discussion of the implications of these terms is below in the section entitled “Review of Literature.”
4. Among these are historical analyses: Glenn Altschuler, *All Shook Up: How Rock ‘n’ Roll Changed America* (New York: Oxford University Press, 2003); Nelson George, *The Death of Rhythm & Blues* (New York: Penguin, 2003); Margo Jefferson, “Ripping off black music,” *Harper’s*, January, 1973, 40-45; and Eileen Southern, *The Music of Black Americans: A History* (New York: Norton, 1971).
5. *Rock & Roll Invaders: The AM Radio DJs*.
6. Robert Pielke, *You Say You Want a Revolution: Rock Music in American Culture* (Chicago: Nelson Hall, 1986); Reebee Garofalo, “Black Popular Music: Crossing over or going under?” in *Rock and Popular Music: Politics, Policies, Institutions*, ed. Tony Bennett et al. (New York: Routledge, 1993), 231-248; Steve Perry, “Ain’t No Mountain High Enough: The Politics of Crossover,” in *Facing the Music: Essays on Pop, Rock and Culture*, ed. Simon Frith (New York: Pantheon, 1988), 55-87.
7. Bertrand, op. cit., 77.
8. Ortiz Walton, *Music: Black, White, and Blue: A Sociological Survey of the Use and Misuse of Afro-American Music* (New York: William Morrow & Company, 1972).
9. Garofalo, op. cit., 234.
10. John Morthland, “An Oral History of Elvis,” *Country Music*, July, 1997, 46-56, 79-82.
11. Bertrand, p. 80. He is paraphrasing George Lipsitz, *Footsteps in the Dark: The Hidden Histories of Popular Music* (Minneapolis:

- University of Minnesota Press, 2007).
12. Elvis Presley, Elvis Presley: *The 1950's Interviews*, copyright 1957, 1991 by Magnum Records, CDD 270, Compact Disc.
  13. Herbert Marcuse was a member of the Frankfurt School established in the 1920s at Columbia University in New York. His *One Dimensional Man* (London: Sphere, 1968) discusses mass media as an arm of the state to dissuade popular revolt. The Algerian-born Louis Althusser contributes the idea of "hailing" as a means of seeing how dominant groups construct subjects through the media in *Lenin and Philosophy* (New York: Monthly Review Press, 1971). The Italian Marxist and political philosopher Antonio Gramsci set down his theory of hegemony while a political prisoner in Rome. We are referring to the initial English translation, *Selections from the Prison Notebooks*, edited and translated by Quentin Hoare and Geoffrey Nowell-Smith (London: Lawrence & Wishart, 1971). The work of Theodor Adorno is a useful entry point to critical theory.
  14. John Storey, *An Introduction to Cultural Theory and Popular Culture* (Athens, Georgia: University of Georgia Press, 1998), 126.
  15. In his seminal article, "Encoding/Decoding," in *Culture, Media, Language* (London: Hutchinson, 1980), Stuart Hall sets forth modes of reading he calls "dominant," "negotiated," and "oppositional" that have varying degrees of complicity or subversion with respect to the message intended by the speaker.
  16. Max Horkheimer, "Art and Mass Culture," in *Literary Taste, Culture and Mass Communications*, vol. 12, ed. by Peter Davison, et al. (Cambridge: Chadwyck Healey, 1978).
  17. For example, various anti-rock "activists" couched their rhetoric in religious terms, referring to rock & roll as "the devil's music." Other motivating factors include race as well as the fear of communism.
  18. Geoffrey Hull, *The Recording Industry* (New York: Routledge, 2004), 123.
  19. *Ibid.*, 124.
  20. *The History of Rock 'n' Roll*, VHS, produced by Jeffrey Peisch (Burbank: Time Life Video & Television, 1995).
  21. For social, historical, and cultural reviews of the payola hearings of the late 1950s, see Michael Bertrand, *Race, Rock, and Elvis* (Chicago: University of Illinois Press, 2000), 84-91; Russell and David

- Sanjek, *American Popular Music Business in the 20<sup>th</sup> Century* (New York: Oxford University Press, 1991), 173-177; and Wes Smith, *The Pied Pipers of Rock 'n' Roll: Radio Deejays of the 50s and 60s* (Athens, Georgia: Longstreet Press, 1989).
22. *Rock & Roll Invaders: The AM Radio DJs.*
  23. Marcus Garvey, *Philosophy and Opinions of Marcus Garvey*, ed. Amy Jacques-Garvey (*The Journal of Pan African Studies*, 2009) eBook, 20.
  24. In addition to the issues raised by Garvey, assimilation presumes a unified cause of action on the part of white America as a whole, which was not the case.
  25. David Ausubel, *Educational Psychology: A Cognitive View* (New York: Holt McDougal, 1978).
  26. Garvey, op. cit., 20.
  27. Morganfield, op. cit.

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Photo: Vincent Tseng ©2011

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# The 1969 Creedence Clearwater Revival Recording Contract and How it Shaped the Future of the Group and its Members

Hank Bordowitz  
*Bordowitz Media Werx*  
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By 1969, the record business had been around in some way, shape, or form for nearly eighty years. For an octogenarian, it had never been healthier. A study commissioned by John Wiley of Columbia Records said that the business had grown 250 percent in the decade between 1955 and 1965. It predicted the record business would double in size again within the next decade. “The end of the upward trend is not yet in sight,” added Wiley. “Our future has never held more promise” (Rood 1965).

With the passing of rock and roll into just rock, the day of the music business robber barons had begun to fade. The previous decade saw musicians with massive hit records living in poverty, contracted to virtual slavery as recording artists. As Etta James once said, “I...started my show business life living in a private hotel where you could cook.

Other entertainers were there, like Curtis Mayfield. Everybody lived in this one hotel. I was the one who had the kitchen. We used to put all our money together to eat. At that time, we would get two cents, three cents, five cents for bottles and at the end of the day we would get our money together and we’d get some food and cook it. I remember us putting together and not having much, just enough to get some corn meal. And I learned that whenever you get hungry—I’ve told my kids this—if you’ve got enough money, you get some yellow corn meal and you get some sugar. You can always get some sugar somewhere, even if you have to walk into a McDonald’s someplace, and steal some of the sugar. Take sugar and cornmeal and fry it. Boy, is that good. Then, if you’ve got enough money, you get a little syrup. I remember we ate that for two days. (James 1988)

James recorded for Chess Records at the time, and had enormous crossover hits like *At Last* that continued to make money for *someone*, but certainly not for James (except, perhaps when she would perform in concert). The fact that such famous and popular musicians could be living in relative poverty on Chicago's South Side spoke to both legalities within the music business and race relations of the times, but only in terms of the degree to which they were exploited. James further recalled, "I remember going to Chess records and Leonard Chess had a check on his desk.

He said, 'I want you with Chess records. You will be really good. I'll get you out of the deal with Modern'<sup>1</sup>...He picked up this check and said, 'Let me show you what kind of royalties my artists make.' He lifted this check up to me and it was for ninety some thousand dollars, and it was made out to Chuck Berry and Alan Freed.<sup>2</sup> I was about to faint, there were so many zeros there. And he said, 'This is just for six months payment for *Maybelline*.' I had one hit record, *All I Do Is Cry*, and then I had *Stop The Wedding* and then I had, *My Dearest*... They were going in layers. So, it was about a year later, when it would be time for me to receive some royalties, I went down there. I was rubbing my hands together. I knew I was going to look down there and see a nice fat figure. I saw that it was written in red. And I said, '\$14,000! All right!' And Leonard said, 'Hold it, hold it. Don't get all bent out of shape.' And I was kind of confused, like what is he saying that for. And he says, 'Look Etta, don't worry about what that says. What do you need?' Now, I'm really confused. 'Here's what I need, in big red numbers.' I said, 'Wait a minute. You're saying I don't have this coming?' 'Hell no, you don't have this coming,' he said. 'You owe me this. Just tell me what you need.' I received a check for \$10,000. I took that \$10,000 straight to Los Angeles and put \$8,000 down on a house. (James 1988)

She passed on in that house in 2012. Fellow Chess recording artist and rock and roll pioneer Elias "Bo Diddley" McDaniel's feelings about Chess were more succinct: "They made me a mean dude" (McDaniel 1996).

In part due to the low maintenance paid to the artists, and in part due to the giddy advent of youth culture, the music business would continue to live up to Wiley's predictions until the very late 1970s and early 1980s, when it would experience its first major dip since prior to World War II. The advent of rock had been a boom time for all aspects of the music business—people lined up around the block to get into the Fillmore Ballrooms on both coasts, musical instruments sold well, especially after the Beatles appeared on *The Ed Sullivan Show*. It seemed as if everyone wanted an electric guitar. At the apex of this boom, perhaps half a million people gathered in the exurbs of New York City and Albany to see several dozen bands over the course of about three days at the 1969 Woodstock Music and Art Festival. In many ways it was a legendary time for both music and the business that thrived off of the music.

One of the bands that performed at Woodstock was Creedence Clearwater Revival (CCR). The band's leader, John Fogerty, refused to let Woodstock's producers use the band's musical performance for the Woodstock records and did not allow their images to be displayed on the screen when the film came out; Fogerty was neither happy with the band's performance nor the circumstances of that performance. They followed fellow Bay Area denizens The Grateful Dead, taking the stage at 3 AM. Fogerty said, "Wow, we get to follow the band that put half a million people to sleep...I look out past the floodlights and I see about five rows of bodies just intertwined—they're all asleep...It was sort of like a painting of a Dante scene" (Henke 1987).

The band's bassist Stu Cook added, "I'm still amazed by the number of people who don't even know we were one of the headliners at Woodstock" (Cook 1996).

By the late sixties the Wild West nature of music business legalities were waning, at least in terms of issues between recording companies and artists.<sup>3</sup> Some attorneys at the time had started to learn the basics of the music business. For attorneys who did not practice in the music business, even the language of the music business contract seemed strange. What exactly were "statutory rates," "compulsory licenses," and "controlled compositions?" What effect did the determination of gross and net sales have on a musician's royalties? Why should I object to having a non-compete clause in the contract? What the heck is music publishing? What do ASCAP, BMI, and SESAC actually *do*? These concepts were mysteries to the lawyer who did not practice in this specialty during the 60s, and even

before. Still, a growing number of artists had the foresight, or forewarnings from other musicians like James and McDaniel, to hire lawyers literate in these issues. Generally, these attorneys either practiced some form of intellectual property law or were previously contract attorneys who drafted music business documents for the record, publishing, and management companies. However, there continued to be many artists who were just happy to have a contract proffered to them. This was the case for CCR, who were overjoyed to find that they did not have to go to Los Angeles to explore making records. They had Fantasy Records right across the Bay Bridge in San Francisco, a fact that they discovered when a program called *Anatomy of a Hit*, dealing with Vince Guaraldi's 1962 top ten, Grammy-winning song *Cast Your Fate to the Wind*, aired on the local NET Station.

Creedence Clearwater Revival actually had a quasi-entertainment attorney in their camp; Stu Cook's father worked for a law firm that was counsel to the Oakland Raiders. However, even Herman Cook, Esq. was unprepared for the agreement Fantasy President Saul Zaentz extended to the band in 1967. Even the elder Mr. Cook was unfamiliar with some of the aspects of the contract and, therefore, not equipped to save his son and cohorts from years of grief.

Fantasy, like Chess, was an independent record company. This meant that it had to count on other companies for the distribution of its product, as opposed to the major record companies that had their own affiliated distribution networks. The Bay Area company had a long history of putting out phenomenal jazz records by artists like Dave Brubeck and John Coltrane, spoken word albums by Allen Ginsburg and Lawrence Ferlinghetti, and comedy albums featuring Lenny Bruce. While cutting edge and in keeping with the tastes of the Weiss Brothers, owners of the company even before they made records,<sup>4</sup> these were not powerhouse sellers, albeit slow and steady catalog albums. Fantasy was certainly not used to having huge hit records. This is illustrated by a scene from the NET documentary showing everyone who is not pressing copies of the single loading boxes of the single into trucks, including the artist Guaraldi. At one point Guaraldi wipes his face with a handkerchief and says, "As you can see, we're not ready for success" (Moore 1963).

While not as onerous as the rarely vetted Chess contracts (which were often—as in the James story—ameliorated by Leonard's genuine fondness for his artists), the Fantasy boilerplate contract contained many clauses that would help the company recover the money they spent on

small press runs, such marketing as they were able to do, and the notorious financial practices and demands of the independent record distributors. For example, most recording contracts continue to contain a passage contained in the CCR contract, which states, “Any recordings made by the Artists or any of them during the Term hereof and all reproductions made therefrom and performances embodied therein and the copyrights and/or copyright renewal rights therein and thereto are and shall be entirely the property of Galaxy<sup>5</sup> free and clear...” (CCR Recording Contract 1969, 8). Very few artists had—or have today—the forethought and leverage to retain their master recordings. The master recordings, which are the actual recordings of the songs, generally become the record company’s property under an exclusive recording artist agreement.

In 1964, Stu Cook, Doug Clifford, and the Fogerty brothers, John and Tom, initially signed to Fantasy as the Blue Velvets. When the former head of sales, Saul Zaentz, bought the company in 1967, he offered the band a new contract and instructed them to pick a new name. They chose Creedence Clearwater Revival.<sup>6</sup> The company offered CCR the 1969 contract—or more correctly CCR demanded it—because over the course of the previous year they had become the number one American band. The following year, with the dissolution of the Beatles, CCR would briefly become the world’s most popular band (Bordowitz 2007, 105).

After comparing notes with bands on other labels, CCR realized that their 10.5 percent contractual royalty was a mere pittance (CCR Recording Contract 1969, 18). While Zaentz would not raise their royalty rate (although it would escalate to 12 percent within two years), he had a plan. The contract would no longer be with Creedence Clearwater Revival. It would be with a Bahamian company *owned* by Creedence Clearwater Revival, but not subject to U.S. taxes (CCR Recording Contract 1969, 1). This way, Zaentz told them, they would receive 35 percent more than they had before, which made their royalty more like 13 percent, and it would escalate to the 15 percent that most of their successful contemporaries were earning. Thus, as a corporate entity, Creedence Clearwater Revival became “King David Distributors Limited, a Bahamian corporation” (CCR Recording Contract 1969, 1).

Despite the changes, much of the contract remained boilerplate. Fantasy retained the right to buy the artists out of the contract if they wanted to cut them loose (CCR Recording Contract 1969, 14-15) by paying \$100 to \$400 per contracted master based on the minimum number of masters

required in the contract (CCR Recording Contract 1969, 18). The boilerplate also allowed Fantasy to reduce the statutory mechanical royalty rate to 2/3 on all singles, 5/6 for original songs on albums, and 2/3 of 5/6 (or 5/9) for recordings and new arrangements of compositions that were out of copyright, i.e., in the public domain; this is still a fairly common practice. The contract actually didn't require the 10% "breakage allowance," built into the boilerplate of contracts even today,<sup>7</sup> over sixty-five years after the last glass and lacquer disc of recorded music left a factory. However, the 100% was based on the net sales rather than the gross sales (CCR Recording Contract 1969, 3). In the movie business, percentages of the net proceeds from a film in actors' or directors' contracts are referred to as "monkey points," because one would have to be a monkey to take them. Theoretically, a clever accountant, using such clauses as the CCR contract's Section 3.4, which allows the company to maintain a reserve account of 25 percent against returns (CCR Recording Contract 1969, 7), can make it so a project never achieves a net, rendering that 100% royalty on net returns virtually worthless.

The contract also gave CCR 1/2 of that 100% of the net rate on cassettes, which escalated to 2/3 of the rate on music released after 1970. The rate on cassettes also applied to "any device utilizing a new medium of sound and/or sight and sound reproduction..." (CCR Recording Contract 1969, 4). Even more so than the previous boilerplate, this clause would come back to haunt the band members when CDs became the prevailing medium for sound recordings.

The 1969 contract revised several aspects of the previous contract, reflecting the band's learning curve over the previous three years. For one thing, John Fogerty hated his masters being included on compilation albums. The main culprit in that arena was a company called K-Tel that licensed original recordings of six-month-old hits from the record labels and put them together on one album (Jaffee 1986). You might find songs like *Dizzy* by Tommy Roe; Henry Mancini's *Love Theme from Romeo and Juliet*; *Sugar, Sugar* by the Archies; Simon and Garfunkel's *Bridge Over Troubled Water*; and *Ain't No Mountain High Enough* performed by Diana Ross—all of whom had number one records that kept CCR's then number two song off the top of the singles charts—compiled on one of the company's mail-order albums. Thus, Fogerty negotiated into the new agreement clause 4.3, which rendered Fantasy unable to, "without prior written consent of King<sup>8</sup> produce or release records comprised of masters recorded by

Artists hereunder with other masters” (CCR Recording Contract 1969, 9).

More importantly, Fogerty also finally realized what he had given away in Article VII of the contract. This was a lot more delicate. Article VII is sub-headed “Musical Compositions.” Within that article, the band originally agreed to assign its music to “any publishing companies designated by Galaxy with statutory fees applying unless otherwise agreed to” (CCR Recording Contract 1969, 13).

To understand just how important these fourteen words are, one needs to understand the vast returns that can be generated by a hit song. Briefly, a song theoretically makes “public performance royalties”<sup>9</sup> every time it gets played on the radio, every time someone performs it for money, and every time it gets played on television. Every time a song is recorded or copied onto a medium of musical delivery (i.e., a “mechanical” device like a CD), and then is distributed to the public, that song generates mechanical royalties at a statutory rate established under the Copyright Act of 1976 and set by the United States Copyright Office. When a film or television show uses a piece of music, the users need to negotiate a synchronization license.<sup>10</sup> This can be worth hundreds of thousands of dollars to the songwriter and publisher, and even something for the recording artist. For example, when Microsoft used the Rolling Stones’ *Start Me Up* to introduce Windows 95, it reportedly paid the Stones an estimated fee of \$8 million to \$15 million for those rights. The owner of two holiday songs heard throughout November and December in venues ranging from churches to television advertisements told me that those two songs alone, with all these streams of revenue, made roughly \$4 million every year.

*Proud Mary* (one of CCR’s major hits) alone has been covered on one “medium of sound and/or sight and sound reproduction” or another by well over five hundred artists, including performers ranging from Elvis Presley to New York Yankee Nick Swisher (*All Music Guide* n.d.). It is also performed thousands of times a month by bar bands around the world. All performances of *Proud Mary* by Ike and Tina Turner, Elvis, or even Swisher—all airplay, all live performances, any time it is played over the public address system of a ballpark—theoretically meant money generated for both Fogerty as the songwriter and Fantasy (actually its Jondora Music Publishing subsidiary) as the publisher.

So, as much as Fantasy was making from selling actual Creedence recordings, it didn’t hold a candle to the money it was raking in as the publishers of Fogerty’s songs. It is postulated that somewhere in the world at

any given time, someone is broadcasting or playing a Creedence Clearwater Revival song. The amount of performance royalties paid to the songwriter and the publisher for music that gains sizable amounts of airplay, cover versions, and other legal performances is phenomenal. Additionally, the contract allowed Jondora to keep the publisher's half of the mechanical royalties, a nice little kickback. This is where much of the money that allowed Zaentz to produce the movie *One Flew Over the Cuckoo's Nest* came from (Bordowitz 2007, 159). It was the predominant source of funds for the Saul Zaentz Film Center that occupies the better part of a square block in Berkeley, California. Fogerty and his bandmates had signed a contract that assigned the songs to Jondora, and Fantasy was loathe to lose this income as part of this new contract. Fogerty hated the fact that he had been duped out of his publishing through his own ignorance and impatience to sign a recording contract. So, negotiations ensued.

Eventually, CCR and Fantasy agreed to split Article VII into two sections. Until midnight on December 31, 1970, about eighteen months after they signed the contract, the then-current situation would remain in place. Starting with the New Year in 1971, songs written by the band "may be assigned by Artists or their respective successors in interest to a publishing company or companies of their choice" (CCR Recording Contract 1969, 13).

If signing away his publishing rights angered Fogerty, another series of agreements would prove far more onerous. A recording contract, by its legal nature, is a personal services contract. Indeed, most recording contracts *specify* this, as it says on the second page of the CCR contract:

- 1.1 Grant of Exclusive Rights. King hereby agrees to furnish Galaxy the exclusive *personal services*<sup>11</sup> as performers of each Artist in connection with the production of phonograph records and/or sight and sound recordings during the period commencing on the date hereof and ending December 31, 1974 or such later date as any suspensions or extensions of this Agreement may require.<sup>12</sup>

The date is important, as it is seven years after the initial contract was signed. In many states, including California where the CCR contract was signed, there is a strict limitation on personal services contracts. "[The]

California State Labor Code has a ‘7 Year Rule’ (as referred to in the music industry) stating that personal service contracts which last more than seven years cannot be specifically enforced,” write attorneys Ira Scot Meyrowitz and Jon Jekielek (2009). “Many record companies may define the contract’s term as, say, a two-year initial period plus three one-year option periods to protect themselves against California’s seven-year rule.” This rule was instituted in the 1930s to allow stars caught up in the Hollywood studio system the ability to renegotiate their contracts or go out as free agents after seven years (Hoffman 2006). This statute—California Labor Code Section 2855—should have prevented the contract CCR signed from holding the band and its members for only seven years.

Fantasy finessed this in several moves within the contract. On the second page of the contract, in Section 1.2, Number of Recordings, it reads:

King agrees to cause Artists to record for Galaxy a minimum number...of masters...embodying performances by the Artists...in each year of the term hereof...and such additional number of masters (not to exceed ten (10) as Galaxy may elect upon written notice to King no later than three (3) months from the end of each year in which such election is made by Galaxy, and such additional number of masters as required under Article XI...All material shall be subject to Galaxy’s approval as commercially satisfactory. (CCR Recording Contract 1969, 2-3)

While a cursory explanation of what Fantasy meant by a “master” is included in this paragraph, to get the official definition of how the contract views a master, one must turn to page 24, under article XIV, Section (b):

“Master” means an original recording whether sound only or sight and sound and embodying the performance of the Artists delivered to Galaxy by King and accepted as commercially satisfactory for the production of records...If the selection performed has a playing time of five (5) minutes thirty (30) seconds or less, it shall be deemed to be one master. If the selection has a playing time in excess of five (5) minutes thirty (30) seconds, but less than ten (10)

minutes and thirty (30) seconds it shall be deemed to be two (2) masters...and so forth. (CCR Recording Contract 1969, 24-25)

Article XI, Section 11.1 establishes the Minimum Number of Masters the band had to record for Fantasy (and the advance royalty per master) (See Figure 1.)

Period	Minimum Number of Masters to be Recorded	Advance Royalty Per Master
Date of Agreement to Dec. 31, 1969	12	\$100
Jan. 1, 1970 to Dec. 31, 1970	12	\$100
Jan. 1, 1971 to Dec. 31, 1971	24	\$200
Jan. 1, 1972 to Dec. 31, 1972	24	\$200
Jan. 1, 1973 to Dec. 31, 1973	24	\$400
Jan. 1, 1974 to Dec. 31, 1974	24	\$400

Figure 1. Article XI, Section 11.1: minimum number of masters (CCR Recording Contract 1969, 18).

After doing the math, one discovers that the contract called for the band to record 120 masters, plus the ten additional masters each year of the contract called for in Section 1.2, for a grand total of 180 masters owed to Fantasy during the term of the contract.

This brings us back to Article V, Section 5.1, a paragraph labeled Failure to Perform:

Should there be a failure to perform on the part of King under this Agreement and should such failure to perform not be corrected to the satisfaction of Galaxy, Galaxy in addition to all other rights and remedies available to it,

shall have the absolute right in its sole discretion to extend the then current year and/or the term of this agreement until such failure to perform is corrected... (CCR Recording Contract 1969, 9)

While this would seem to fly in the face of the seven-year statutory limitation in California, it was tough to fight for several reasons. The film industry honored these seven-year limitations to the degree that “contract players,” once the lifeblood of the business, had become a quaint anachronism. Actors are no longer employees under long-term contract to the film companies. At this point, producers accept that actors, no longer bound by long-term film company contracts, are hired and paid by the project. While not employees of the record company, many recording contracts—like this one—bind the artist for terms of many years. However, the music business has not challenged the seven-year statute, so, as attorney Stan Soocher (2011) says, “There’s not a lot of case law.”

Part of the reason no one has challenged the law is that no one wants to risk the upshot of pursuing a case and losing it, setting a legal precedent. *The Harvard Law Review* (2003) notes that the California statute left “record companies wary of the possibility that a section 2855” ruling favorable to the artists, granting them free agency, might irrevocably change the way they do business. This led the industry to “renegotiate dissatisfied artists’ contracts, often providing more generous terms and large advances” (California Labor Code Section 2855 and Recording Artists’ Contracts 2003).

Indeed, the closest court case that dealt with these provisions, in terms of their personal services, was litigated several years after CCR broke up, when Olivia Newton John fought an injunction that prevented her from recording for any company besides MCA. This ruling would not have helped Fogerty regarding the “Seven Year Statute.” While the court had “grave doubts that defendant’s failure to perform her obligations under the contract could extend the term of the contract beyond its specified five year maximum,” they would not rule on the statute, *per se* (John 1979).

“According to the original contract between CCR and Fantasy, it seems that they contracted for the members of the band to remain obligated under the terms of the contract, should the band break up,” noted music business attorney Jeffrey Jacobson (2011) points out. He continues:

Under Article 10(g), if the group disbanded, a new agreement could be entered into by each member for a term not less than the remaining time left on this agreement, but the agreement could be extended if there were masters that still needed to be provided (Article 5). Since Fantasy released the other members of CCR from their contracts, it seems that Fogerty entered into a solo artist agreement that branched off of and incorporated the terms of this contract. Therefore, a new contract would have been entered into and triggered a new time period, and avoided the ‘seven year statute,’ California Civil Code §2855. (Jeffrey Jacobson 2011)

Or, as John Fogerty described it about a decade after he was finally cut loose from that provision of the contract, “I owed so much product...I felt like I was chained in a dungeon” (Selvin 1985).

Over the course of nearly five decades the members of CCR continue to feel the legal ramifications of this 1969 agreement. The terms of the contract continue to be binding as regards the band’s output from that time, even after the parties to that contract had moved on. Some of the repercussions from this contract were severe. The personal services issue, combined with the betrayal John felt from Zaentz not negotiating in good faith, and the “loss” of his publishing ultimately caused severe writer’s block. After two post-Creedence albums that were released, and one that was not, John became a rock and roll recluse. He did not put out any music, nor perform for a paying audience, for over a decade. He wouldn’t play any of his CCR songs for just shy of two decades.

In 1975, David Geffen’s Asylum Records bought John out of his indentured servitude to Fantasy, at least in North America. He was still recording for Fantasy everywhere else in the world. “I think [Fantasy] proposed a number that Asylum wasn’t ready to pay,” John’s brother Bob, who has served as his aide-de-camp for more than forty years, noted (B. Fogerty 1997).

John’s first, eponymous album for Asylum met with mixed criticism and lukewarm sales. His next record for Asylum, *Hoodoo*, was never commercially released (though because of press advances one can find a bootlegged copy fairly easily). John spent the next decade “working on a solo LP...,” said Tom Fogerty. “Nobody gets to hear it. He gets about halfway

through it, then he scraps the whole thing and starts over” (T. Fogerty 1981).

In addition to his indentured servitude to Fantasy, and its subsequent ownership of the non-American rights to his music, there was more that led to his creative paralysis and withdrawal from the public eye. He (and the rest of the band members) suffered from the upshot of the tax-dodge at the heart of the 1969 contract rewrite.

When Asylum Records President Joe Smith told Fogerty he was not going to put *Hoodoo* out, he suggested John take some time off. This reduced his sources of income to his performance royalties so he decided to take some of his King David Distributors money out of the bank in the Bahamas. He sent his attorney down to the Islands to make the withdrawal. When his attorney got there, he found the door to the bank chained. A look in the window revealed nothing but a few trash cans and shredders. All the money had disappeared. “Rumors are that it’s either the Mafia or the CIA,” Tom Fogerty said, “or the officers of the bank offed with it. We got left holding the bag. The *Wall Street Journal* printed a couple of stories on it, and it was on *60 Minutes* twice” (T. Fogerty 1981).

Whoever took it (as far as can be determined, no one ever found out), the band’s nest egg, some six million dollars, had disappeared. Fogerty, and later, in 1980, the rest of the group, joined in a lawsuit against the people that had fiduciary responsibility for the band—the law firm in which Stu’s father had been a partner (specifically, attorney Barry Engle, who oversaw the account), the Chicago-based law firm that promoted the Bahamian bank in the United States, and the group’s accountants. The two attorneys settled with the band but the accountants did not. So the band was often together in Bay Area law offices getting deposed. The case didn’t conclude for over ten years, with a federal appeals court finding the accountants liable.

By the time the case finally got settled, John had done a bold and perhaps foolish thing: he decided that the royalties he actually did receive from Fantasy for the CCR recordings, the worldwide, non-North America sales of all his music, and his share of the mechanical royalties for his songs owned by Jondora, now that they were not getting sent to the Bahamas, really didn’t amount to much. Fantasy owed him much of the foreign royalties accrued for his more recent music. He told Zaentz that Fantasy and Jondora could keep those royalties, and any other monies they would owe him in the future. In return, Fantasy would no longer have the non-

North America rights to his recordings from that point forward. Essentially, Fogerty traded his past music for his future. For the first time in his professional career, he was no long financially beholden to Fantasy.

Even as John abrogated his fiscal rights to masters and the royalties, that money became a major issue for the rest of the band. On August 17, 1982 Philips introduced a new medium for sound recording, the digital compact disc, or the CD (Beschizza 2007), and by the middle of the decade, it had all but replaced the vinyl record. People rushed to record stores to replace their popping, skipping vinyl LPs with this new medium.

Historically, the recorded sound industry makes a large percentage of its money selling through the catalog.<sup>13</sup> Some people discover older music and want to own it. Some people wear out music in an older medium and want to replace it with a shiny new one. Certain people have to have the latest technology and purchase music they might already own in a new format for their new technology.

As previously mentioned, under the terms of their contract, the greater portion of the music recorded by Creedence earned a 1/2 royalty tape rate, somewhere between five and six percent of the net profit earned by Fantasy, as per Article II, Section (b). This is because, per Section (c) of the same article, that rate also covered new technology—which included the CD and the download. So, as the vinyl record sailed off into the sea of dead media (to rise from the dead some years later), the royalties the band earned on its catalog began to shrink considerably from the time when the LP reigned. They needed to renegotiate.

As noted, John insisted on adding an article to the 1969 contract that prevented Fantasy from combining masters without the group's permission. A majority vote of the band was needed to override this article. By 1988, Cook and Clifford had negotiated an override on this clause for the trio masters, i.e., the masters recorded after Tom left the band. When Tom signed on, the override was achieved for all the other masters. In exchange, the band got a significant increase in their royalties for CD sales. John did not participate in these royalties, and was further outraged when his songs started turning up on compilation albums.

Of course, the biggest issue for John was the music publishing rights. John's music fueled Jondora in a way Vince Guaraldi, Lenny Bruce, or John Coltrane could not. CCR was selling millions of albums worldwide, and continue to sell perhaps a million catalog items each year. CCR songs are featured in films and other media. As the majority of the band regularly

outvoted John on contractual issues, he became angrier. While Fantasy retained the rights to CCR's masters and his publishing rights, at least the songwriter share of the public performance royalties and other royalties generated by his songs' usages continued to belong to him. However, for two decades he would not play any of his CCR songs, nor would he give Fantasy the satisfaction of collecting more royalties that may have emanated from his works. Eventually, it took the legendary Bob Dylan to break this self-enforced moratorium. During an after-hours jam session in the spring of 1987, Dylan requested that they play *Proud Mary*. John demurred. Dylan scowled at him and said, "If you don't start playing it, people are going to think that it was a Tina Turner song." So, by the time CCR was inducted into the Rock and Roll Hall of Fame, he had been playing his CCR heritage for about a decade.

Jondora's ownership and control of Fogerty's music led to one of the most bizarre court cases in the annals of the music business. When John broke ten years of musical silence following the shelving of *Hoodoo*, the first single from the new album *Centerfield* was *The Old Man Down The Road*. It sounded enough like the CCR track *Run Through The Jungle* that Jondora sued Fogerty for copyright infringement on his own song. The case went to trial during the fall of 1988. While the jury eventually found John not guilty, it took a lot of money to prepare his defense ("Frisco Jury clears John Fogerty of Charge He Copied CCR Song" 1988). After the case, he sued for legal costs. The courts initially found for Fantasy, owing to a legal tenet that only the plaintiff in the case could receive court costs, and only if they won. The defendant would receive court costs only if the plaintiff's case was found "frivolous" (Fantasy v. Fogerty 1996).

John was able to convince the U.S. Supreme Court that Fantasy's case was, in fact, frivolous. In March of 1994 it overturned the lower court's ruling, voting 9-0 in favor of Fogerty. John became part of a legal precedent (Greenhouse 1994).

Still, the anger rankled. John remained upset with the rest of the band members, so much so that he nearly did not visit his dying brother Tom in 1990. He certainly did not grant his dying brother's wish to play together one last time. Indeed, at the Hall of Fame event, John refused to play with Cook and Clifford. This led them to form their own version of CCR. While they had the majority needed to call the group Creedence Clearwater Revival, they decided, instead, to call it Creedence Clearwater Revisited. Even that name caused John to get a legal injunction against

his former bandmates—for several months, early in their new career, they were known as Cosmos Factory, after one of the band's most successful albums and Doug's long-standing nickname. Ironically, they have now been playing together as Creedence Clearwater Revisited for over a decade, twice as long as the original CCR existed.

Toward the end of November, 2004 Concord Records bought Fantasy's musical assets from Zaentz. In 2005 Fogerty re-signed with the Zaentz-less, under-new-management Fantasy Records. To celebrate, the new owners gave him the back royalties he gave up in the early 80s, about a quarter century's worth. They were not prepared, however, to give him back his publishing. "...We can't do that, because we just paid a lot of money for (it)," said one of the company's new owners, Glen Barros (DeCurtis 2005). The publisher's half of the songwriter royalties from the CCR catalog was still one of the company's biggest assets, and certainly one of the key reasons for purchasing the company.

When teaching about the music business, it's useful to go through an actual recording contract or two. Creedence Clearwater Revival's 1969 contract works as a cautionary document for any artist or manager who might be too anxious to sign a contract with a record company. In the four-and-a-half decades since the group signed it, this document has served as a catalyst to destroy a friendship that predated high school. Because of the contract, two brothers didn't talk to each other for many years. It caused one of the most prolific, exciting songwriters of the rock era to become a virtual hermit, going decades between album releases. In an era where bands that went through hurtful, seemingly irreparable splits reunite successfully, the upshot of this agreement makes John Fogerty, Stu Cook, and Doug Clifford the least likely to join that fray. While the contract has never been challenged in court, it has caused three musicians to spend years in court over other related matters. It pays to remember that artists might have to live with the terms of their contracts for the rest of their lives.

## Endnotes

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1. Modern Records was the Los Angeles based company with which James had her earliest hits, like *Roll With Me Henry*.
2. This was probably a publishing check. It was not unusual for DJs to become songwriters as incentive to play the records, as they got performance royalties ostensibly every time the song was played. This was a thorn in Berry's side until he started (with the help of attorney William "This Business of Music" Krasilovsky) to reclaim his copyrights during the 1970s.
3. The Wild West in music business legalities between the recording companies and *fans* would evolve sometime later.
4. Like many early independent record companies, The Weiss Brothers started out manufacturing plastic novelty items in the late 1940s, when plastic *was* a novelty.
5. While CCR's recordings were and are released via Fantasy, they were actually signed to Fantasy's Galaxy affiliate.
6. Creedence Nubal was a friend of Tom's and they liked the way it sounded—it played on credence, and they very much wanted to be believed. Clearwater came from a beer commercial, but also fit in with their ecological concerns. Revival was the most important word—the new contract and new name gave the band a chance to reboot.
7. Before the advent of vinyl, records were made of glass and lacquer. Being made of such fragile material, many broke during shipment, so in recording contracts the ten percent breakage allowance was, and often still is, passed on to the artist who receives ninety percent of the actual royalties based on units shipped. It has become so ingrained into the accounting practices of record companies that they often would rather increase the royalty rate than excise this clause from a contract.
8. The new corporation, King David Distributors was known as "King" in the contract.
9. In the U.S. these are distributed by ASCAP, BMI, and SESAC, the performing rights agencies of the United States.
10. Synchronization (or synch) licenses allow for the use of music in media that moves, i.e., television, video, and movies.
11. Italics are mine.

12. More on this anon.
13. Catalog music is generally regarded as any recordings that are not being actively promoted. These sound recordings include music that falls under the rubric of “Classic Rock,” “Classic Jazz,” or “Classic Pop,” often sold at a discount from “current” product.

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# Historical Changes in the Music Industry Supply Chain: A Perception of the Positioning of the Artist Musician

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## Abstract

The present study will explore the historical changes of the music industry supply chain. It will consider propositions such as the vertical integration of the historical music industry, the revolution in technology, and the positioning of the artist within the music industry supply chain.

Several questions will be tackled: What is the positioning of the artist in the new digital era? And given the changes of position of the major labels and the positioning of the artist, what are the descriptive and prescriptive possibilities should the majors disappear and be replaced by alternative elements in the music industry supply chain?

Social Network Analysis (SNA) will be utilized as a methodological tool in the creation of non-linear and adaptive models.

*Editor's note: the charts in this article are high resolution images that may be rotated and enlarged for detailed viewing on screen or for printing. The print edition of the MEIEA Journal contains monochrome versions of these same images.*

## Introduction

This study's primary focus is an historical analysis of the international music industry supply chain. It wishes to understand old business mod-

els to reflect upon new ones. The work presented builds upon the seminal work of Renard's (2010) doctoral dissertation entitled "Unbundling the Supply Chain for the International Music Industry."<sup>1</sup>

Let us consider that the physical distribution chain becomes less and less important. Also, as other players find it easier to enter the market, an inevitable shift in revenue streams forces the record labels into new directions and new strategic positioning. Finally, how does that affect the positioning of the social agent responsible for the value-added quality within the music supply chain: namely, the artist.

Hagel and Singer (1999) argue that when a vertically integrated industry goes through a major change such as the one experienced by the music industry with the digitization of music, it opens the door to the profitable creation of many new specialized companies. The more established generalist firms, the three "majors" (Sony Music Entertainment, Universal Music Group, and Warner Music Group) have advantages of size, reputation, and integration. Now, these advantages are beginning to wither. The new advantages—creativity, speed, flexibility—belong to the specialists (independent labels and the artist).<sup>2</sup> They explain that *interaction costs* represent the money and time that are expended whenever people and companies exchange goods, services, or ideas.<sup>3</sup>

Interaction costs have been popularly used in the development of a general network theory for social sciences. This approach has been used to illuminate the shaping of networks and the interactions within them. The same set of concepts can be applied to the world of outsourcing to illustrate the overheads associated with adding incremental supplier/vendor relationships to an existing set of dynamics for an organization.

Acemoglu, Aghion, Griffith, and Zilibotti (2004) affirm that many experts believe that recent technological developments and globalization are transforming the internal organization of the firm. They present two views which are of interest in the present study. First, they explain that new technologies, especially information technology, are creating a shift from the old integrated firms towards more delayered organizations and outsourcing. Second, they explain that, "it is often maintained that the greater competitive pressures by both globalization and advances in information technology favor smaller firms and more flexible organizations that are more conducive to innovation."<sup>4</sup> However, the economics profession is still far from a consensus on the empirical determinants of vertical integration in general, and about the relationship between technological

change and vertical integration in particular.

Why, then, would the majors also seek to horizontally integrate if they already own more than eighty percent of the industry? We have to consider that these large companies are also competing against each other. To do this, they must each find an unconquered niche within the music industry and try to secure it for themselves. They might do this by specializing in one genre of music such as country music or by conquering a new market in a new country.

Our social network analysis (SNA) confirms that by buying all the labels in a certain genre or by establishing another distribution channel in a rising market, these large companies can maintain a competitive advantage over their competitors. By owning more parts of the supply chain, they can make even more profits by narrowing the costs of production. SNA statistically analyzes social networks in a methodical way using graphical social network diagrams. It looks at social relationships using network theory where nodes (representing individual actors within the network) are represented as points and ties (representing relationships between the individual actors) are represented as lines.<sup>5</sup>

The “Property Right Theory” approach, on the other hand, focuses on the role of ownership of assets as a way of allocating residual rights of control, and emphasizes both the costs and the benefits of vertical integration in terms of *ex ante* investment incentives. Considering a relationship between a supplier (upstream firm) and a producer (downstream) and supposing that only two organizational forms are possible where vertical integration (backward) occurs when the downstream producer buys up the upstream supplier and has residual rights of control, and non-integration (outsourcing) which occurs when the producer and the supplier are different firms.

Over the last two decades the “Transaction Cost Theory” has emerged as a major paradigm in the academic literature. Williamson (1975,<sup>6</sup> 1985<sup>7</sup>) has made the most influential statements about this theory inspiring new research regarding the configuration of organizational form, diversification, vertical integration, foreign direct investment, joint ventures, and business-level activities.

However, bundling into a single corporation inevitably forces management to compromise the performance of each process in ways that no amount of re-engineering can overcome.<sup>8</sup> This has been the strategy carried out by the majors in the music industry.

There are other reasons for this vertical integration besides increased market share. These mammoth conglomerates in the music industry known as the majors have over the past one hundred years created a tightly secured network by purchasing forwards and backwards in the supply chain, buying new labels, manufacturing companies, and distributing companies. Their established distribution systems have become highly elaborate and expensive creating a barrier to entry within the industry. No small firms can enter and compete because it is too difficult and costly to get established to compete against the majors. Therefore, the majors maintain a competitive advantage by being able to dominate and control the industry due to economic barriers to entry.

Under the pressures of dealing with non-standardized copyright laws throughout the world, global competition, and advancing technology, many industries (and the music industry in particular) are already fracturing along the fault lines of customer relationship management, product innovation, and infrastructure management.

The major record companies are in the process of unbundling but are not ready for rebundling quite yet. As infomediaries<sup>9</sup> rise to power, many traditional companies will find themselves cut off from their customers. There is a serious threat that new technologies may bring to bear on existing music technologies through the process of substitution, creating a possible shift in power.

But what did the music industry look like before the major record labels existed?

## Methodology

### Social Network Analysis<sup>10</sup>

Social network analysis (SNA) is a methodological tool that belongs to the science of complexity. Mitchell Waldrop (1992) argues that complexity is

...a subject that is still so new and wide-ranging that nobody knows quite how to define it, or even where its boundaries lie. But then, that is the whole point. If the field seems poorly defined at the moment, it is because complexity research is trying to grapple with questions that defy all conventional categories.<sup>11</sup>

Social network analysis suggests new methods for coping with evolving technologies and the evolving complexity of a dynamic competitive landscape. In the social sciences, social network analysis has become a powerful methodological tool alongside statistics. Network concepts have been defined, tested, and applied in research traditions throughout the social sciences, ranging from anthropology and sociology to business administration and history.<sup>12</sup>

Social network analysis focuses on ties among, for example, people, groups of people, organizations, and countries. These ties combine to form networks, which are then analyzed. Social network analysts assume that interpersonal ties matter, as do ties among organizations and countries, because they transmit behavior, attitudes, information, or goods.<sup>13</sup> Therefore, social network analysis offers the methodology to analyze social relations as it tells us how to conceptualize social networks and how to analyze them. The main goal of social network analysis is detecting and interpreting patterns of social ties among actors.

The basis of social network visualization was laid by researchers who called themselves sociometrists. Their leader, J. L. Moreno, founded a social science called sociometry,<sup>14</sup> which studies interpersonal relations. Society, they argued, is not an aggregate of individuals and their characteristics, as statisticians assume, but a structure of interpersonal ties. Therefore, the individual is not the basic social unit. The social atom consists of an individual and his or her social, economic, or cultural ties. Social atoms are linked into groups, and, ultimately, society consists of inter-related groups.

Ten different SNAs are presented in this paper. SNA is an extension of graph theory. A graph is a set of vertices (also called points or nodes) and a set of lines where each line connects two vertices, therefore representing the structure of a network.

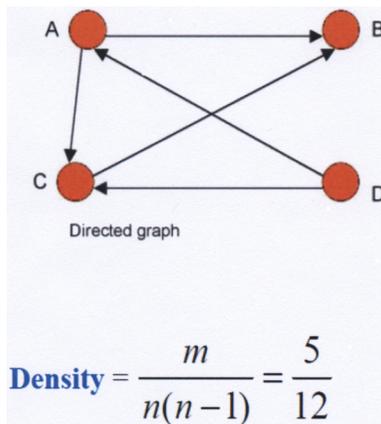
A vertex is the smallest unit in a network and represents an actor (record company, artist...) and is usually represented by a number.

A line which is a tie between two vertices in a network represents the social relation between those two vertices. That line may be directed or undirected. The SNAs presented below are all directed graphs where a directed line is also named an arc.

Formally, an arc is an ordered pair of vertices in which the first vertex is the sender and the second is the receiver (e.g., revenue flows). A network consists of a graph and additional information on the vertices or

the lines of the graph. In the SNAs presented in the following section, the names of the nodes represent the additional information on the vertices. The lines of our networks have all equal value (meaning a value of one) and have no preferential choice regarding which node to go to first. Line values usually indicate the strength of a relation. Again, the lines in our SNAs have all equal strength of relation.

Next, some of the most important definitions of measures regarding the statistical analysis of a network are explained. First of all, cohesion implies that a social network contains many ties, and as more ties between agents yield to a tighter structure, it therefore leads to more cohesiveness. In SNA this notion is captured in the density measure. The density is the number of lines in a network, expressed as a proportion of the maximum possible number of lines. A network in which all pairs of vertices are linked by two arcs, one in each direction is considered to be a network with maximum density, or a complete network (see Graph 1).



Graph 1. Example of a density measure based on the directed graph shown above.

According to Nooy, Mrvar and Batagelj (2005)<sup>15</sup> network density is not very useful because it depends on the size of the network:

Density is inversely related to network size: the larger the social network, the lower the density because the number of possible lines increases rapidly with the number of ver-

tices, whereas the number of ties which each agent can maintain is limited.<sup>16</sup>

They argue that it is better to look at the number of ties in which each vertex is involved. This is called the degree of a vertex. They explain that a higher degree of vertices yields a denser network, because vertices entertain more ties. Therefore, the average degree of all vertices can be used to measure the structural cohesiveness of a network. According to Nooy, Mrvar and Batagelj, this is a better measure of overall cohesion than density because it does not depend on network size, so average degree can be compared between networks of different sizes. Also the “indegree” of a vertex is the number of arcs it receives and the “outdegree” is the number of arcs it sends.

However, besides the useful analysis of the degree of various vertices, we believe that density measures are relevant in the present study because most of the networks presented are relatively of a comparable size.

Most social networks contain people or organizations that are central. Because of their position, they have better access to information and better opportunities to spread information. This is known as the ego-centered approach to centrality. Viewed from a socio-centered perspective, the network as a whole is more or less centralized. Centrality refers to the position of individual vertices within the network, whereas centralization characterizes an entire network.

Nooy, Mrvar, and Batagelj tell us that:

A network is highly centralized if there is a clear boundary between the center and the periphery. In a highly centralized network, information spreads easily but the center is indispensable for the transmission of information.

For example, the larger the number of sources accessible to a person, the easier it is to obtain information. The importance of a vertex to the circulation of information is captured by the concept of betweenness centrality. High betweenness centrality indicates that a person is an important intermediary in the communication network. Information chains are represented by geodesics (the shortest path between two vertices) and the betweenness centrality (the variation in the degrees of vertices divided by the maximum degree variation which is possible in a network of the same

size) of a vertex is simply the proportion of geodesics between pairs of other vertices that include the vertex.

The centralization of a network is higher if it contains very central vertices as well as very peripheral vertices. Network centralization can be computed from the centrality scores of the vertices within the network where more variation in centrality scores means a more centralized network.

## Scenario Planning

Chermack, Lynham, and Ruona (2001) tell us that:

Uncertainty has become an important factor for business leaders and planners to consider. In such a rapidly changing business environment, the ability to adapt quickly to major changes can mean the difference between a thriving business and bankruptcy. These changes are often external to the organization, and coping with them has forced managers and executives to adopt a systems view of business. With global complexities and changes likely to continue on the current path of growth, the future of the global business environment will require an even more thorough ability to examine the forces of change and anticipate possible solutions to potential problems. A well known method for coping with future changes in organizations has been strategic planning.<sup>17</sup>

According to Cummings and Worley (2001), because organizations are open systems, they must strive to achieve the best possible fit with the external environment.<sup>18</sup> As Schoemaker (1995) wrote, “Scenario planning is a disciplined method for imagining possible futures that companies have applied to a great range of issues.”<sup>19</sup>

Scenario planning has proven to be an effective tool for identifying critical future uncertainties and investigating “blind spots” in the organizational structure. It is in large part an adaptation and generalization of classic methods used by military intelligence.

According to Schoemaker (1995):

Scenarios are more than just the output of a complex simulation model. Instead they attempt to interpret such output by identifying patterns and clusters among the millions of possible outcomes a computer simulation might generate. They often include elements that were not or cannot be formally modeled, such as new regulations, value shifts, or innovations. Hence, scenarios go beyond objective analyses to include subjective interpretations.<sup>20</sup>

Scenario planning may involve aspects of complex systems thinking, specifically the recognition that many factors may combine in complex ways to create sometime surprising futures. Schoemaker (1995) explains that scenario planning tries to compensate for “underprediction and overprediction of change” as regard to decision making. He also supports that scenario planning helps expand the range of possibilities we can see, while avoiding a drift into “unbridled science fiction” by dividing our knowledge into three distinct areas:

1. Elements we know we know
2. Elements we know that we don't know
3. Elements that fit into the area of uncertainty (elements that we don't know that we don't know)

Systems thinking used in conjunction with scenario planning, leads to plausible scenario story lines because the causal relationship between factors can be demonstrated. In these cases when scenario planning is integrated with a systems thinking approach to scenario development, it is sometimes referred to as structural dynamics.

Schoemaker (1995) identifies ten steps for constructing scenario planning:

1. Definition of the scope
2. Identification of the different stakeholders
3. Identification of the basic trends
4. Identification of the basic uncertainties
5. Construction of the initial scenario theme
6. Checking for consistency and plausibility
7. Developing learning scenarios

8. Identification of research needs
9. Developing a quantitative model
10. Evolving towards decision scenarios

This study attempts to combine social network analysis and scenario planning to construct a fresh representation of the flows of information and revenues within the supply chain for the music industry in a future where 1) the majors are nonexistent, and 2) where black markets act as a substitute to the majors.

It explores the historical changes of the music industry supply chain. It considers propositions such as the vertical integration of the historical music industry, the revolution in technology, and the positioning of the artist within the music industry supply chain.

Several questions are tackled: What is the positioning of the artist in the new digital era? And given the changes of position of the major labels and the positioning of the artist, what are the descriptive and prescriptive hypothetical possibilities should the majors disappear and be replaced by alternative elements in the music industry supply chain?

Social network analysis (SNA) of historical data is utilized as a methodological tool in the creation of non-linear and adaptive models.

It must be noted that our approach does not negate nor compete with, but hopes to enhance the very valuable previous research on the unique nature of the music industry. Specifically, Georgina Born and David Hesmondhalgh have edited very valuable articles on differences in the music world from a musicological perspective.<sup>21</sup> Richard Caves has effectively analyzed music contracts between art and commerce from an economist's perspective. He focused on the importance of the economic properties of creative activities.<sup>22</sup> Finally Jonathan Gander, Adrian Haberberg, and Alison Rieple have written extensively on organizational linkages and alliances in the recorded music industry.<sup>23, 24</sup>

## Pre-Recording Business Models

Prior to the fifteenth century, the European music industry was mostly a live music industry and was present only in two different settings—in the church at the service of the liturgy and at celebrations in the street. Professional musicians were either street musicians serving as minstrels or church musicians. Book printing and music compilation was the tedious occupation of scribes who exclusively produced choir manuals for

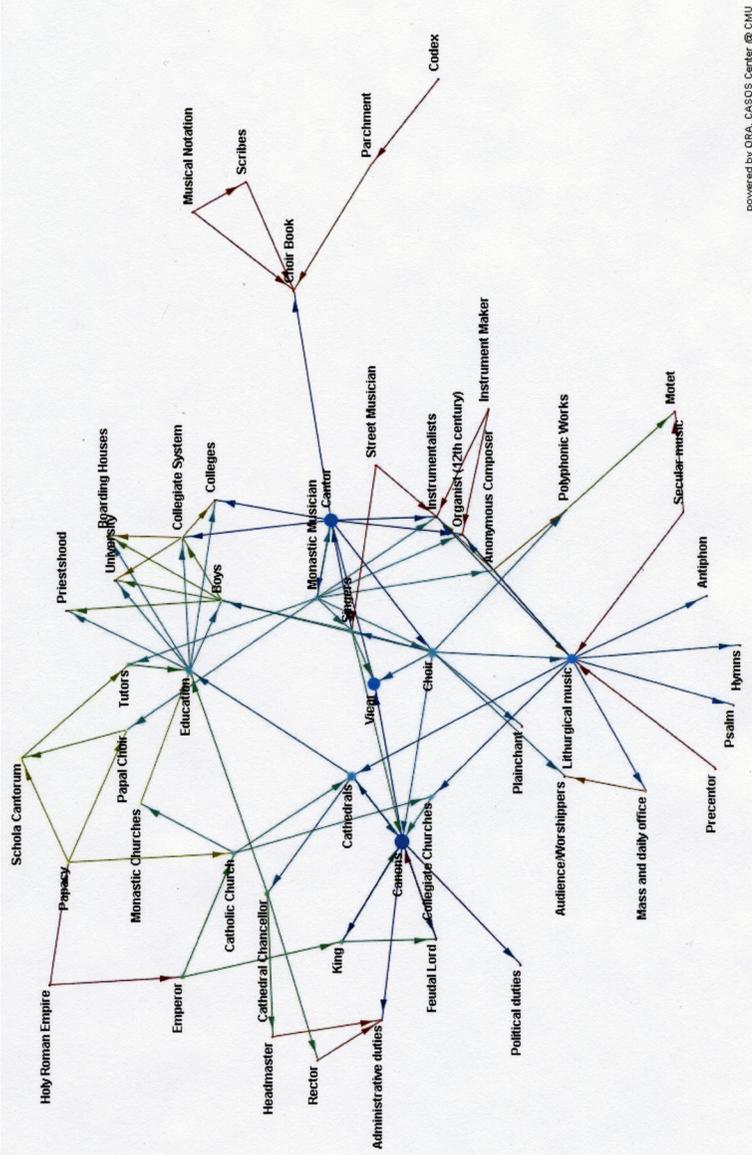
the cantor to teach his singers. Composers were anonymous and their work and music was mainly at the service of the liturgy. A few worked as court composers. The instrument making profession was also marginal and in its infancy stage. The organ was not used in the church until the twelfth century and other instruments were included subsequently. This is mostly because the church associated instrumental music with paganism and thus instruments were banned from church music-making. Minstrels often produced their own instruments amateurishly (see Figure 1 and Table 1).

Early business models emulated the expansion of the composer's work brought about by the invention of printing and the growth of amateur music-making organizations, the consequent development of music publishing, and the gradual creation of an international audience. The social and political results of the Napoleonic Wars turned the composer from a humble functionary whose one advantage was his close contact with an audience to a social necessity of a freelance life which was one of inevitable insecurity.<sup>25</sup>

Music printing as a successful commercial enterprise began at a particularly propitious moment in Venetian history, for the years from 1540 until 1570 marked an era of unbroken peace and prosperity for the Most Serene Republic.<sup>26</sup> Architectural projects multiplied, commissions for paintings and sculptures proliferated, and music and literature flourished in both the public and private spheres. The atmosphere of economic growth provided the ideal stimulus for the burgeoning of music printing. Girolamo Scotto and Antonio Gardano exemplified the new period of intense commercialism. Active as publishers, booksellers, and composers from the period around 1536 until 1572, they each issued more than four hundred music publications containing a huge repertory that ranged from masses and motets to madrigals, chansons, and instrumental music by all the leading composers of the day.

In the late fifteenth century Venetian entrepreneurs created a whole new industry, the production of books. Venice was an ideal center for the printing of books. It offered the most advanced distribution system in the world. And because its printers and publishers could not rely on the patronage of a ruler or the church but depended mainly on market forces in order to make a living, the Venetian printing industry from its inception, became a capitalistic enterprise, producing books in larger quantities and distributing them much further afield than any other European center.<sup>27</sup>

These capitalists were called *mercatori* or merchants. The Venetian



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Figure 1. The pre-printing supply chain (500-1400 A.C.). (The charts in this article are high resolution images that may be rotated and enlarged for detailed viewing on screen or for printing.)

Measures	Network
Number of Nodes	51
Number of Links	99
Density	0.04
Centrality-Betweenness	0.02

Table 1. SNA measures for Figure 1.

*mercatori* dealt with all facets of their trade. They directed a complex mechanized operation that employed a highly skilled workforce and used expensive equipment and materials. They oversaw every aspect of the production of their books, from the acquisition of manuscript to the setting of type, running of presses, and proofreading of copy. As “merchant-capitalists,” these men were responsible for all financial aspects of the business. They solicited other printers, publishers, and entrepreneurs to form syndicates or invest in their publications and, in turn, they underwrote the publication of books produced by other bookmen. They cultivated potential authors and clients who might commission books. Above all, these dynastic printers supervised a complex distribution network that extended throughout Europe. They retained book carriers, who hawked their publications from town to town, formed alliances with foreign presses to sell their books, and employed book agents to look after their interests abroad. They owned or invested in bookshops, and, in several cases, maintained satellite offices in other cities (see Figure 2 and Table 2).<sup>28</sup>

## Recent Perspectives on the Supply Chain for the Music Industry

The social network analysis in Figure 3 and Table 3 presents the intense mergers history of the majors over the past forty years. The SNA is not comprehensive, as it does not include all of the hundreds of record labels owned by each major. However, it is revealing as it represents each company’s unique history and merger strategy. Vivendi purchased three of the most powerful labels—MCA (former major), Seagram and Polygram (former major), as well the BMG publishing group. Each company acquired a music publishing company. Then, the BMG publishing company crossed over to become the number one publishing company, UMG publishing.

EMI and Warner, on the other hand, had a very different experience.



Measures	Network
Number of Nodes	60
Number of Links	206
Density	0.06
Centrality-Betweenness	0.01

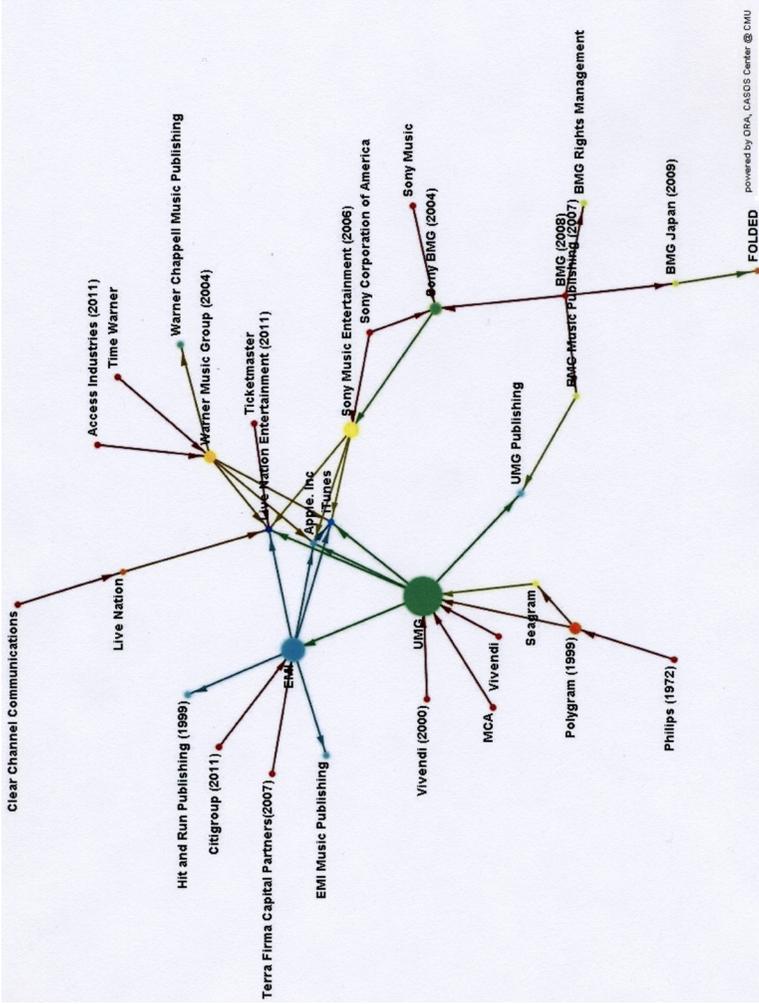
Table 2. SNA measures for Figure 2.

EMI was purchased by the conglomerate Terra Firma Capital Partners as of 2007 and became the only privately-owned major whereas Warner experienced the opposite process as it was divested by the conglomerate Time Warner in 2004, which does not hold any ownership anymore. They lie on opposite sides of the social network and seem to be a mirror representation of each other.

Finally, Sony seemed to have had a more complicated history as its joint venture with BMG in 2004 resulted in Sony acquiring 100% of its ownership over BMG as of 2008. However, Sony made a strategic mistake letting BMG publishing go to UMG, but Sony and UMG seem to have a particular relationship as seen in the SNA.

The next step depicts the Big Three's technology joint ventures and alliances with "new service companies" (see Figure 4 and Table 4). It shows how the majors are creating alliances with new service companies such as P2P service companies (Qtrax), supply chain management companies (Accenture, Microsoft IM Group), digital distribution companies (iTunes, Amazon.com, Tunecore), mobile phone companies (Verizon Wireless, Sprint, Nokia, AT&T), social networking sites (Myspace), and media and broadcasting companies (YouTube, AOL).

The key information in this SNA is the emergence of the most central nodes: iTunes and Live Nation Entertainment. As of January, 2009 the software-based online digital media store operated by Apple, Inc. accounted for seventy percent of worldwide online digital music sales, making the service the largest legal music retailer.<sup>29</sup> The Big Three cannot do without iTunes. It has become a necessity and the worst fear for the majors because it owns the leading technology for pushing online digital music sales. Note how all of the other "new service companies" are peripheral and act in isolation in comparison to iTunes. This also shows the dominance and the quasi monopolistic position of iTunes as well as the high level of competition and the lack of collaboration between the other tech-



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Figure 3. The mergers of the majors in the past forty years.

Measures	Network
Number of Nodes	32
Number of Links	42
Density	0.04

Table 3. SNA measures for Figure 3.



Measures	Network
Number of Nodes	26
Number of Links	35
Density	0.05

Table 4. SNA Measures for Figure 4.

nology companies. The low density (0.052) and centralization (0.0026) measures support the fact that there is no cooperation between iTunes and the other technology companies (see Table 4).

Will iTunes become one of the new majors? This is the key question. As artists now have the ability to sell their songs directly on iTunes by-passing record companies it would not be farfetched to suggest that iTunes could replace the majors. If iTunes would acquire and run a major publishing company, the majors would be placed in a very difficult position, as they would have no reason to exist anymore. Leyshon (2001) argues that a secure digitally distributed future, “would be seen in some quarters of the music industry as a highly effective measure to neutralize the power of the retailers.”<sup>30</sup>

Another interesting emerging alliance is the collaboration between Sony and UMG on the one hand, and YouTube and Google on the other, to create the online streaming video service Vevo. Would the number one and number two majors attempt to find a safe house within Vevo to survive the dominance of iTunes in the area of the online digital markets?

In terms of strategic alliances, EMI and Warner have adopted similar strategies forming alliances with similar companies and then competing against each other. UMG and Sony have chosen more collaborative strategies.

The SNA also highlights another important detail. Both Amazon.com (2007) and iTunes (2009) have recently been offering their digital products DRM-free. There has been no scholarly literature on this topic. It is an area of great interest for the future of the music industry and an open door for further research.

## The Positioning of the Artist Musician

In general the music industry’s supply chain has evolved drastically in the past twenty-five years from a traditional model to an online model. To be more accurate, the music industry’s supply chain has been recently in an early rebundling stage. Yet, it is more complex than solely an online

value chain. As discussed previously, physical product sales are rapidly declining while record companies try to reposition themselves forming alliances with new service companies. Therefore, the supply chain for the music industry is somewhat in a transitional stage forming a hybrid value chain. In this hybrid supply chain, the positioning of every agent involved in the music industry has been shaken.

Therefore, in this part of our analysis, building on the works of Leyshon (2001), Premkumar (2003) and Graham, Burnes, Lewis, and Langer (2004), we created two distinct sets of social network representations of the music industry's supply chain's information flows and revenue flows. Those SNAs offer a detailed visualization of where the agents involved in the music industry are positioned in the supply chain under different conditions. By combining scenario planning and social network analysis, we have simulated a total of six SNAs for the supply chain's information flows and revenue flows combined. The first two SNA representations in this section are the base scenario or in other words the actual virtual representation of what the music industry's supply chain looks like. The remaining four SNAs are alternate virtual representations of what the music industry's supply chain could become under various conditions.

Analytical measures for the networks as a whole are presented here as well as for five individual nodes (artist, record companies, promotion and distribution, legal services, and publishing companies).

Figure 5 reveals where every agent involved in the music industry is positioned in today's supply chain. The overall density of the network is quite high (0.3169) telling us that the network is cohesive and that every agent is closely intertwined which is also explained by a very high centrality-closeness measure (0.7316).

However, the key information exposed by this SNA is that the artist (content provider) is the most central and important agent in the supply chain. Without the artist, there would be no music industry. The artist has the most links (24) as well as a high centralization total degree measure (0.76). Therefore, the artist carries a high level of cohesiveness with the other agents within the supply chain.

Record companies (20 links, 0.62 centralization total degree) and legal services entertainment lawyers (15 links, 0.44 centralization total degree) are also central to the social network and key players transmitting information throughout the supply chain.

Finally, promotion and distribution companies (16 links, 0.34 cen-

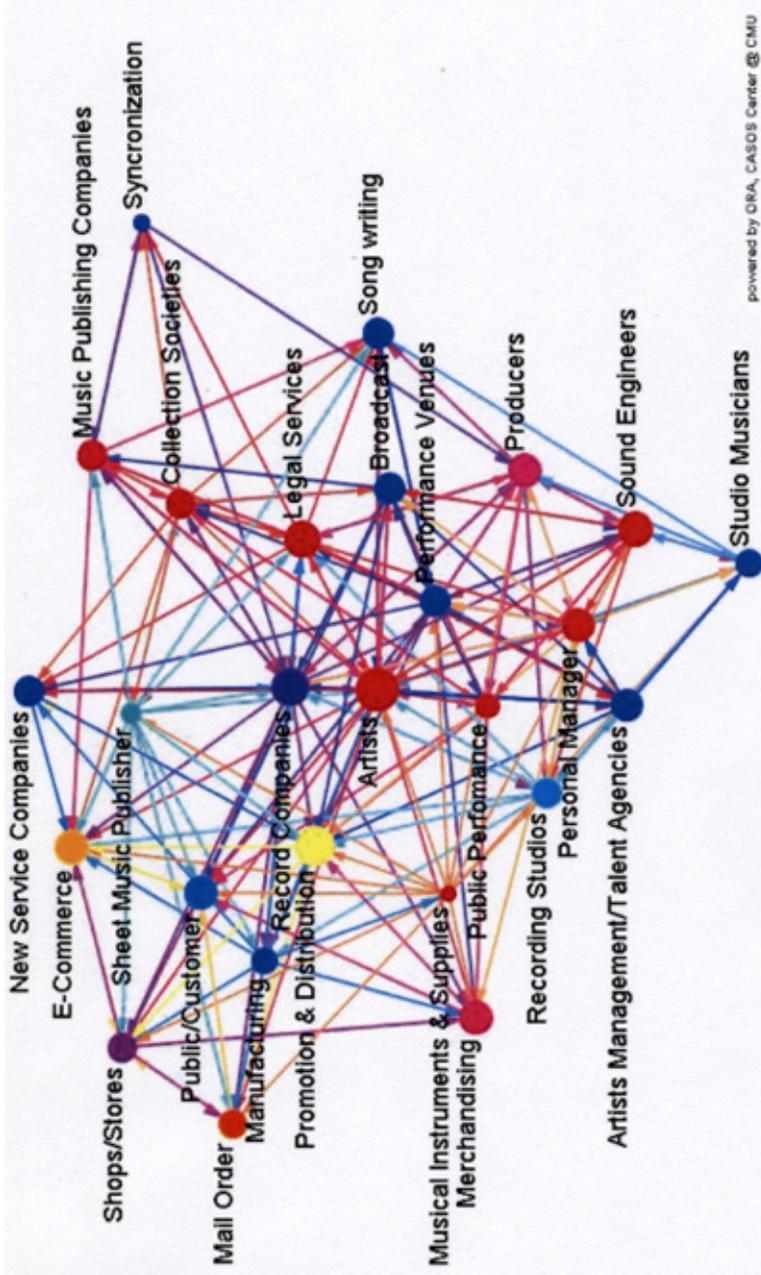


Figure 5. SNA music industry supply chain (information flows).

Important Vertices	Network	Artist	Record Companies	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	26	1	1	1	1	1
Number of Links	206	24	20	16	15	9
Density	0.3169	NA	NA	NA	NA	NA
Centralization Measures						
Total Degree	0.48	0.76	0.62	0.34	0.44	0.3
Indegree	0.3776	0.68	0.52	0.52	0.4	0.28
Outdegree	0.544	0.84	0.72	0.16	0.48	0.32
Centrality-Betweenness	0.2244	0.1654	0.264	0.1521	0.057	0.0243
Centrality-Closeness	0.7316	0.8621	0.7813	0.3521	0.641	0.5814

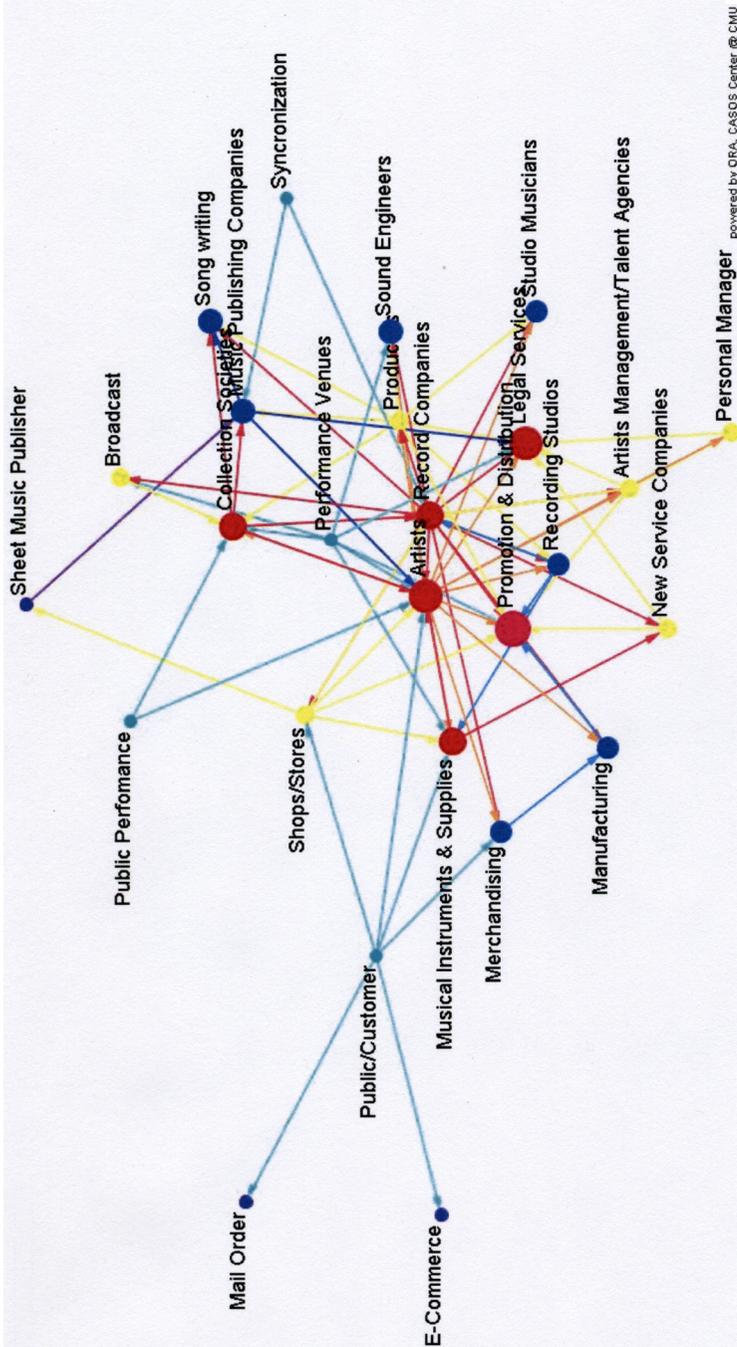
Table 5. SNA measures (information flows).

tralization total degree) and music publishing companies (9 links, 0.3 centralization total degree) also have important functions within the supply chain keeping the information flowing within the network and supporting the artist and the record companies.

Figure 6 represents the revenue flow in the music industry's supply chain. This network is much less cohesive as shown by a low level of density (0.1215) (see Table 6). Again, the artist is the most central vertex or agent within the supply chain (18 links, 0.4 total degree). The indegree measure (0.32) shows the variation of vertices that provide revenue to the artist whereas the outdegree measure (0.48) shows the variation of expenses that the artist provides to the other agents within the supply chain.

The record companies are in a similar position as the artist regarding revenue flow. The outdegree measure (0.56) shows us that the record companies greatly contribute economically to the music industry's supply chain. In fact, the SNA tells us that the record companies are the biggest contributors to the supply chain. Therefore many agents within the supply chain depend on the record companies to survive.

Note that the legal services (outdegree 0, indegree 0.32) and pro-



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Figure 6. SNA music industry supply chain (revenue streams).

Important Vertices	Network	Artist	Record Companies	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	26	1	1	1	1	1
Number of Links	79	18	16	9	8	7
Density	0.1215	NA	NA	NA	NA	NA
Centralization Measures						
Total Degree	0.3017	0.4	0.38	0.18	0.16	0.14
Indegree	0.248	0.32	0.2	0.36	0.32	0.16
Outdegree	0.456	0.48	0.56	0	0	0.12
Centrality-Betweenness	0.1556	0.1694	0.1504	0	0	0.0379
Centrality-Closeness	0.2427	0.1344	0.1389	0.0385	0.0385	0.125

Table 6. SNA measures (revenue streams).

motion and distribution (outdegree 0, and indegree 0.36) are only on the receiving end of the revenue flow. Therefore they do not contribute financially to the other agents within the supply chain.

### Scenario 1: “What If” Record Companies Disappeared?

Figure 7, the first alternate scenario, shows a supply chain where record companies are nonexistent. In the occurrence of such an event the supply chain would become much less cohesive as shown by an extremely low-density measure (0.933) (see Table 7). Visually this is obvious as the network becomes more stretched out exhibiting more outliers such as the synchronization or the talent agencies/agencies vertices.

The positioning of the artist is virtually unchanged. In fact, as record companies disappear, the artist must get more involved, take charge, and “self-manage.” This is partly shown by increased measures of total degree (0.77) and outdegree (0.875) as well as a slight increase in centrality-closeness (0.89).

Lawyers would also have increased responsibility as some of the tasks formerly performed by the record companies would be delegated to

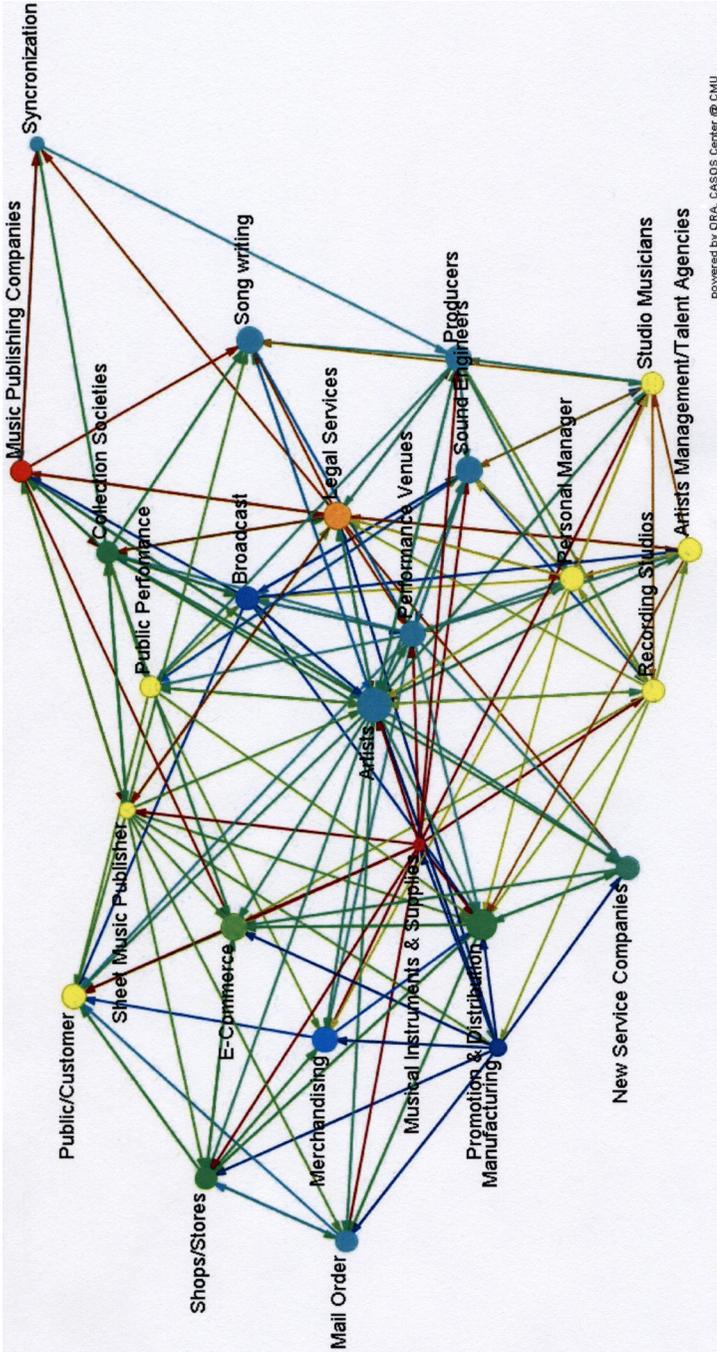


Figure 7. SNA music industry supply chain (information flows {minus} record companies).

Important Vertices	Network	Artist	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	25	1	1	1	1
Number of Links	176	23	15	14	8
Density	0.933	NA	NA	NA	NA
<b>Centralization Measures</b>					
Total Degree	0.519	0.7708	0.3333	0.4167	0.2708
Indegree	0.3889	0.6667	0.5	0.375	0.25
Outdegree	0.6059	0.875	0.1667	0.4583	0.2917
Centrality-Betweenness	0.1966	0.2127	0.0328	0.0533	0.0256
Centrality-Closeness	0.9414	0.8889	0.0524	0.6316	0.5714

Table 7. SNA measures (information flows {minus} record companies).

them. This is also the case for the artist as represented by an increase in total degree measure (0.4167), as well as outdegree (0.45) and centrality-closeness (0.63) measures.

However, the promotion and distribution companies and music publishing companies, as well as most of the other agents within the supply chain, would be impacted negatively as the flow of information and tasks would slow down as in a stage of recession. This is shown by lower measures across the board.

The first alternate scenario's revenue flow network (see Figure 8) is also impacted by a lower level of cohesiveness (density 0.1067 as compared to 0.1215 in the base model) (see Table 8). Surprisingly, all of the agents—including the artist and lawyers—within the revenue flow supply chain are worse off in this scenario. This information is provided by the lower values in the indegree measures for all the agents and the network as a whole.

Therefore, we would argue that the majors are the driving force behind the economic welfare of the music industry's supply chain. If the majors were to disappear, which is a likely possibility, the present social network analysis predicts that it would financially impact the whole supply chain including the artist.

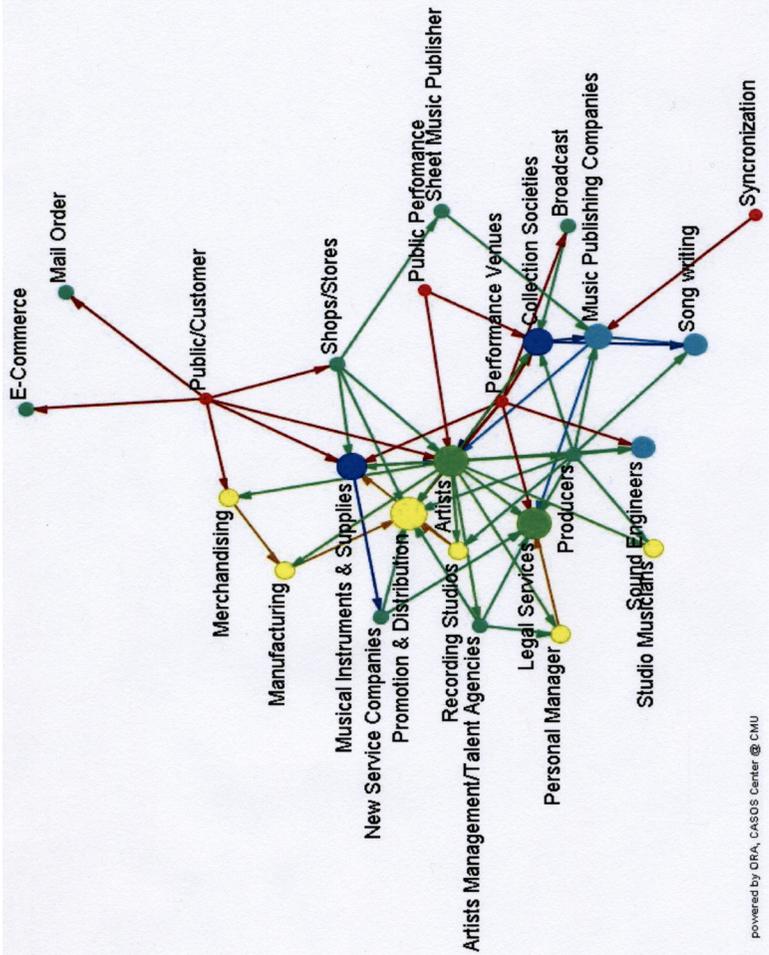


Figure 8. SNA music industry supply chain (revenue streams {minus} record companies).

Important Vertices	Network	Artist	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	25	1	1	1	1
Number of Links	64	20	8	7	7
Density	0.1067	NA	NA	NA	NA
Centralization Measures					
Total Degree	0.4049	0.4792	0.1667	0.1458	0.1458
Indegree	0.2361	0.2917	0.3333	0.2917	0.1667
Outdegree	0.5833	0.6667	0	0	0.125
Centrality-Betweenness	0.279	0.2868	0	0	0.0731
Centrality-Closeness	0.2605	0.1412	0.04	0.04	0.1304

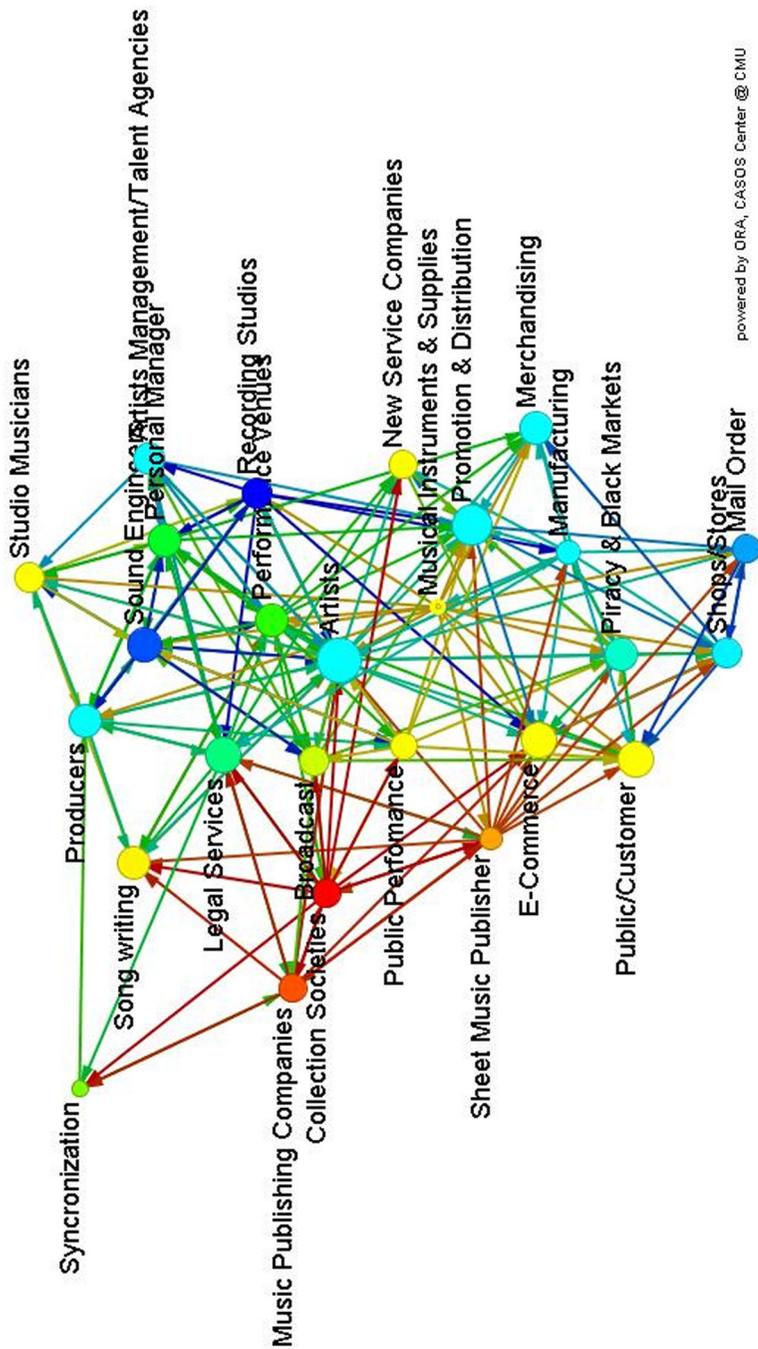
Table 8. SNA measures (revenue streams {minus} record companies).

## Scenario 2: “What If” Piracy and Black Markets Became a Substitute for The Record Companies?

The purpose of the second alternate scenario (Figure 9) is to test the impact of piracy and black markets on the music industry’s supply chain in a world where record companies do not exist. It has been previously discussed that record companies incur significant losses due to piracy and black markets. This second scenario builds upon previous models to pay particular attention to artist welfare.

The results are quite surprising as the overall network is much denser than in the previous scenario (0.2892) (see Table 9). However, it is slightly less dense than our base scenario (0.3169). Our most central agent is again the artist. The artist is here impacted by piracy as regard to the inflow of information (indegree 0.64). However, the outdegree and the centrality-closeness measures are hardly impacted at all. This can be explained by the fact that black markets and piracy also rely on the artist’s creative work in order to make a profit.

Also interesting, lawyers are slightly impacted (total degree 0.4, centrality closeness 0.625) by the advance of piracy and black markets because the latter does not require legal services. Similarly, music publishing



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Figure 9. SNA music industry supply chain (information flows {information flows {minus} record companies {plus} piracy & black markets}).

Important Vertices	Network	Artist	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	26	1	1	1	1
Number of Links	188	24	16	13	8
Density	0.2892	NA	NA	NA	NA
Centralization Measures					
Total Degree	0.4883	0.74	0.34	0.4	0.26
Indegree	0.3648	0.64	0.52	0.36	0.24
Outdegree	0.5728	0.84	0.16	0.44	0.28
Centrality-Betweenness	0.2334	0.2775	0.0304	0.1226	0.0258
Centrality-Closeness	0.7608	0.8621	0.2632	0.625	0.5682

Table 9. SNA measures (information flows {minus} record companies {plus} piracy & black markets).

companies (total degree 0.26) are further negatively impacted as piracy and black markets, marginal by definition, do not require their services.

In this last figure (see Figure 10), the impact of piracy and black markets on the revenue flow within the music industry's supply chain is quite clear. The density of this network is the lowest of the three (0.1) (Table 10). In this scenario the artist suffers a great deal shown by lower scores in total degree (0.36 as compared to 0.4 in the base scenario and 0.48 in the first alternate scenario) and in centrality-closeness (0.089 as compared to 0.134 in the base scenario and 0.141 for the first alternate scenario). Therefore, the artist's economic welfare greatly suffers from piracy and black markets. Let us mention that P2P file sharing could to some extent be affiliated to the category of the piracy and black market agent.

Legal services and music publishing companies are also slightly negatively affected by the piracy and black market but to a much lesser degree than the artist. Finally, we would like to add that as seen in the layout of this SNA it is obvious that if a vertex representing the record companies were to be added, it would suffer similar losses to the artist.

## Conclusion

Early business models present the central positioning of the artist

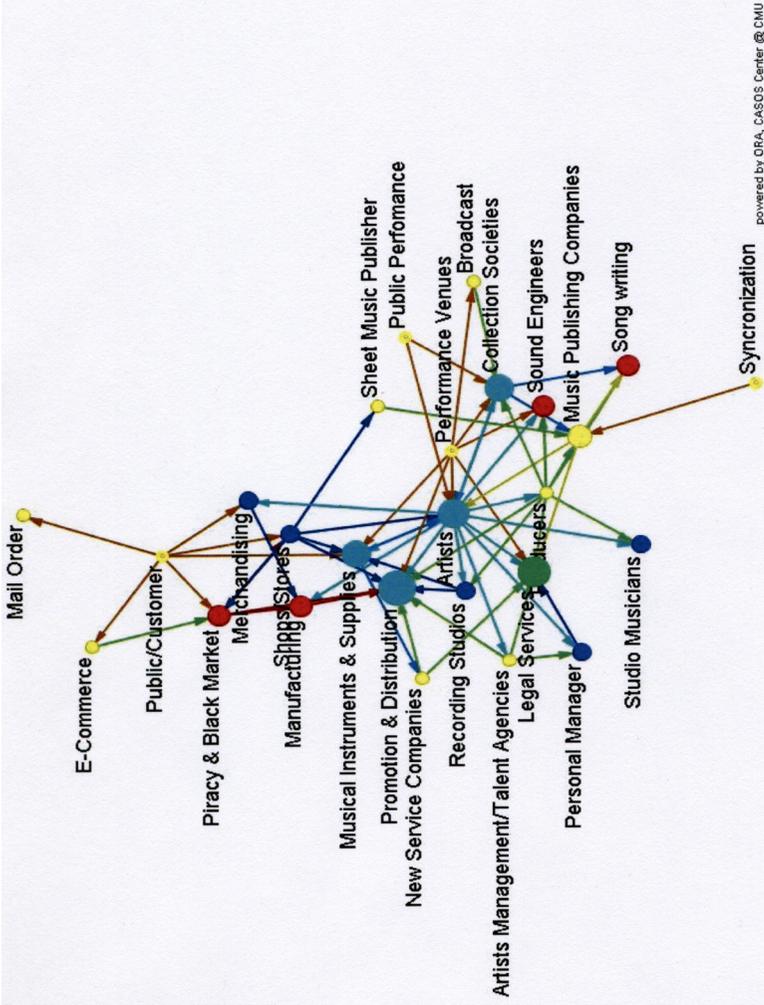


Figure 10. SNA music industry supply chain (revenue streams {minus} record companies {plus} piracy & black markets).

Important Vertices	Network	Artist	Promo & Distribution	Legal Services	Publishing Companies
Number of Nodes	26	1	1	1	1
Number of Links	65	16	9	7	7
Density	0.1	NA	NA	NA	NA
<b>Centralization Measures</b>					
Total Degree	0.2817	0.36	0.18	0.14	0.14
Indegree	0.2704	0.24	0.36	0.28	0.16
Outdegree	0.3952	0.48	0	0	0.12
Centrality-Betweenness	0.2265	0.2374	0	0	0.0578
Centrality-Closeness	0.1937	0.0899	0.0385	0.0385	0.0868

Table 10. SNA measures (revenue streams {minus} record companies {plus} piracy & black markets).

musician in a radically different function when compared to recent depictions. From 500 to 1400 A.C., the artist was anonymous and the body of work created was at the service of the liturgy in the case of religious music or used for celebrations in rural communities and considered to be part of the traditional music repertoire which was passed on in an aural tradition. Most of the printing and instrument-making industries were in a state of infancy due to the lack of means for mass production. The supply chain had essentially a social and educational function.

With the advent of the printing press (1500-1600), composers started to get their work published under their own names. The Venetian printing press was perhaps the first entrepreneurial business model in the history of the music industry. Capitalist merchants (*mercatori*) who also acted as composers, bookstores owners, investors, and managers controlled a vast and complex distribution trading system. This oligopoly and highly vertically integrated model was established in sixteenth-century Venice and laid out the initial framework used much later on by the recording industry.

However, the music industry's supply chain has evolved drastically in the past twenty-five years from a traditional model to an online model.

To be more precise, the music industry's supply chain has been recently in an early stage of rebundling. It is a bit more complex than purely an online value chain. As discussed previously, physical product (CD) sales are rapidly declining while record companies attempt to reposition themselves forming alliances with new service companies. Therefore, the supply chain for the music industry is somewhat in a transitional stage forming a hybrid value chain. In this hybrid supply chain, the positioning of every agent involved in the music industry has been shaken. The present study offers visual representations of the new positioning of those agents: the intense merger history of the majors over the past forty years and the creation of joint ventures and alliances with new service companies such as P2P service companies, supply chain management companies, digital distribution companies, mobile phone companies, social networking sites, and media and broadcasting companies.

The emergence of the central positioning of iTunes and Live Nation Entertainment as shown in the SNA(s) (Figures 4 and 5) is of great importance as these two conglomerates present a serious threat to the long-established dominance of the majors. Could one or both of them become the new Big Four and Five?

The supply chain SNA representations also depict the artist as the single most central and most important agent in the supply chain. Without the artist there would be no music industry. SNA also demonstrates that the record companies are currently the biggest contributors to the supply chain. Thus, many agents within the supply chain depend on record companies to survive.

The majors are still the driving force behind the economic welfare of the music industry's supply chain. In a hypothetical future where the majors would disappear, our alternative SNA (Figures 7 and 8) predicts it would financially impact the whole supply chain including the artist. Finally, our second scenario (Figures 9 and 10) clearly shows in a visualization format that the artist's economic welfare suffers greatly from piracy and black markets.

## Endnotes

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2. J. Hagel III and M. Singer, "Unbundling the Corporation," *Harvard Business Review* (1999).
3. The authors believe that the term *interaction costs* is more accurate than the common term *transaction costs*. Transaction costs, as economists have defined them, include the costs related to the formal exchange of goods and services between companies or between companies and customers. Interaction costs include not only those costs but also the costs for exchanging ideas and information. They thus cover the full range of costs involved in economic interactions. For more about the implications of falling interaction costs see Patrick Butler et al., "A Revolution in Interaction," *The McKinsey Quarterly* (1997, no. 1).
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9. The *Longman Dictionary of Contemporary English* defines intermediary as "a company that collects information from people about the type of products they buy, how often they buy a product etc., and pays them for this information. It then sells the information to other companies, but does not pass on private details such as someone's name or address etc." Accessed 14 September 2012. <http://>

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# What's Up with MXSup's?

## Interviews with the Purveyors of Cool

Andrea Johnson  
*Berklee College of Music*

I've just finished watching my favorite nighttime drama *Grey's Anatomy*<sup>1</sup> and am again astounded by the amount of amazingly cool independent music placed in the show. *Anyone's Ghost* by The National, *Abducted* by Cults, *Chameleon/Comedian* by Kathleen Edwards, *Hit It* by Miss Li, and *Echoes* by Mostar Diving Club.<sup>2</sup> My husband and I are rabid fans of indie music and consider ourselves tastemakers in locating barely broken indie artists on sites such as [www.gorillavsbear.net](http://www.gorillavsbear.net),<sup>3</sup> [www.newdust.com](http://www.newdust.com),<sup>4</sup> [www.stereogum.com](http://www.stereogum.com),<sup>5</sup> or [www.indierockcafe.com](http://www.indierockcafe.com),<sup>6</sup> but I have to say I am continually blown away by the selections music supervisors make in today's hit television shows.

Week after week these women seem to have the uncanny knack for selecting überhip, underground artists barely breaking the film of the jellied mass of independent music consciousness. Women like Alexandra Patsavas of Chop Shop Music<sup>7</sup> known for her work on *Grey's Anatomy*,<sup>8</sup> Andrea von Foerster of Firestarter Music<sup>9</sup> known for her work on *Modern Family*,<sup>10</sup> and Lindsay Wolfington of Lone Wolf,<sup>11</sup> known for her work on *One Tree Hill*<sup>12</sup> are not only outstanding entrepreneurs, they are purveyors of musical cool. How did they get to this coveted position—doling out delicious and delectable delights of divinely inspired discs?

I was lucky enough to interview several of these women and delve into the minds of these modern day musical mavens. These ladies know how to get their work done with finesse, and I wanted to share their expertise with those of us peeking in from outside the frosted glass.

MXSup is the slang industry term for Music Supervisor, a person who finds and licenses music for media vehicles such as films, television, video games, or advertisements. Music supervision began as early as the turn of the twentieth century when silent films were all the rage. At that time, organists accompanied the film and the supervisor indicated at various places on the score where traditional or classical themes were to be played. Today, music supervisors select music for critical points in film soundtracks to increase the drama of the content on the screen. Think about it, where would the movie *Jaws* be without its critical musical theme

“ba-dump, ba-dump, ba-dump...ahhhhhhhhhhh!!!.” The music leads the audience members down the rosy path and heightens their anticipation (and fear) before the critical action takes place. What would the shower scene be in *Psycho* without the stabbing violins? *Rocky*, without the theme song as he climbs the stairs in Philadelphia while preparing for the fight of his life? Most importantly, how would we know the villain is going to appear in *Star Wars* without the “dum dum dum-dum, dum, dum-dum dum-dum dum-dum?”

Music supervision licensing requires clearing two “sides” of the copyright (the recording, and the underlying composition). Although, a legal background is not a prerequisite for doing this work, it is necessary that one understand the rights of intellectual property holders and the terms of their copyrights. Music supervision and licensing is often a long process that takes careful consideration and attention to detail. An interview with Lindsay Wolfington,<sup>13</sup> music supervisor for *One Tree Hill* and the *Ghost Whisperer* outlined the following steps for clearing a license.

1. She begins licensing after the spotting session. A spotting session is when the music supervisor along with the producer, director, music producer (who generally picks the music), and music editor go through the script and highlight areas that require music,<sup>14</sup> e.g., in the script you may see Jim driving to Malibu to find his ex-girlfriend. On the radio he hears a song that reminds him of her. This song coming from a *source* (i.e., the radio) must be integrated into the scene with a synchronization license. She begins licensing at this time because the picture is now “locked” to the music in a final version—and thus she only has to do her paperwork once.
2. Next, she sends out the quote request to see if the publishers are willing to agree to the rate she suggests. She often places a signature line there for immediate and clear approval of the quote.
3. The publisher sends back the credit information indicating what percentage it controls and if it will agree to the rate.
4. She then sends back a confirmation agreement saying, “This is what we agreed on...” (it specifies the *Grant Of*

*Rights, The Term, The Fee, and Contact Information*), for payment. Many times this confirmation ends up as the final synchronization license with the final signature.

I interviewed Cindy Badell-Slaughter,<sup>15</sup> CEO of Heavy Hitters Music, a contemporary music library that has placed music for the television shows *CSI: NY* and *True Blood* among many others. She has an extensive process that outlines thirteen steps to clearing a license. Either way, it is a detailed process that requires the music supervisor to be very organized.

In both processes, the first person to contact is the publisher who holds the rights to the Performing Arts (PA) Copyright, which is the ownership of the music and the lyrics. Generally, this is done through a synchronization license, as the music property will be “synched” to the picture property. If a single company holds the property, one can write a combination request letter as follows. In the Sample License Request,<sup>16</sup> the terms are outlined, requested, negotiated, and approved before the final contract is drawn up.

#### SAMPLE LICENSE REQUEST

Your Name  
Your Company’s Name  
Your Company’s Address  
Your Phone Number  
Your Email Address

REF: Master & Composition Synchronization Request for “Movie Title”

Dear OWNER,  
The below referenced master recording and composition is in consideration for use in a PRODUCTION CO. NAME film entitled “NAME OF FILM.” The terms for the possible use in the production are as follows:

PROJECT: “TITLE OF FILM/PROJECT” is a romantic comedy that will be featured at U.S.A. film festivals. The film is relatively low budget with no theatrical release scheduled.

SYNOPSIS: Can a university computer scientist make a woman fall in love with his interactive computer before she succumbs to a well-known professor of love? In this comedy, the computer scientist gets caught up in this competition for love, has to disguise himself as a French character to remain incognito,

and finds himself falling in love with the subject of the test. Basically, a light hearted and fun “boy meets girl, boy loses girl, boy gets girl,” beating both the computer as well as his human competition for her love (Brad Hatfield, “Alchemy Sync License Request,” Berklee Music, 2011).

SONG:

SONG TITLE

PERFORMED BY

SONGWRITER (Performing Rights Organization)

PUBLISHER

[Please provide complete credit information with your approval – This is important in case you have misspelled something or the publisher names have changed.]

USAGE:

Visual Vocal

[Determine if it is background, visual vocal, etc. and describe the usage of the music in the scene, e.g., the human competition tries to woo the subject of the test while dancing at the wedding. A live band at the wedding will appear to be playing and singing the requested song. One will pay more for a visual vocal that is central to the action than if the music is just a part of the background and is only an instrumental. This may also include number of usages within the film.]

TIMING:

Up to 1 minute 50 seconds

[Important to state this specifically in seconds as longer or shorter takes will determine the value/cost of the license. The value of the music is usually weighted based on several key items. A publisher will give more value to a song that has had more commercial value; if it was in the top ten of the *Billboard* charts, or if it won a Grammy it would be more valuable. If the song or artist is highly recognizable or if the song has garnered high fees in the past for placement in other films it would be more valuable. Finally, if the music were integral to the scene (e.g., you can't tell the story without the music such that the character is singing a song he wrote and it is used to further the story line) it would make the song more valuable. Think where would the film *Titanic* be with out the theme song *My Heart Will Go On* by James Horner and Wilbur Jennings?]

RIGHTS:	Film Festival [This is also known as TYPE OF MEDIA. It outlines how the property will be used, e.g., film festivals, DVD, theatrical release.]
TERRITORY:	United States of America. [This explains where the property will be distributed. If a foreign release is an option, it will be outlined here and then included in the synchronization license as an option.]
TERM:	1 year [The term determines how long the license will last. If this were a theatrical release rather than a film festival, such as outlined in the option, the normative term would be in perpetuity as the music will need to stay “married” (embedded) in the film permanently. The only exception to this may be if the music would be licensed for U.S. release (domestic) but not for worldwide release. In that case, additional music may be substituted for the foreign release due to excessive costs in procuring the license for international release and that would be outlined in the option.]
FEE:	\$500 per side \$1,000 all in. [Per side pertains to each owner of the rights. \$500 per side means that the master owner will receive \$500 and the publisher will also receive \$500 for the usage. When one is just beginning negotiations, one may come across a party that returns the license with the terms as “MFN” or Most Favored Nations. MFN indicates that the publisher will not accept any fee less than any other publisher or record label is receiving on the film. If all the parties have agreed to MFN then everyone will be paid the same as the party who has negotiated the highest fee for the license. Unlike the United States statutory rate for mechanical licenses, there is no standard rate for synchronization licenses. The terms must be negotiated based on the value of the property. The MFN clauses is used to make sure that everyone is paid the same, or at the very least, if someone else negotiates a higher fee, all companies will receive that higher rate.]
OPTION:	All media now known or hereafter devised (including in-context promos for the scope of use granted herein only) excluding theatrical/worldwide/perpetuity. \$2,000 all in for master and publishing.

[This of course means that if the property is released via DVD the only other payment the owners will receive will be \$1,000 a side. Sometimes within this contract section, the NUMBER OF COPIES will be specified along with the WHOLESALE and RETAIL PRICE.)

[The request usually ends with the words, “reserve the right NOT to use the music,” if the director edits it out—so that one does not have to pay for music that isn’t used.

The terms “your approval of these terms does not guarantee inclusion in the production,” and “we reserve the right not to issue a license on the terms proposed even if we receive your consent to do so,” are also seen in these contracts. In some instances, licensees request licenses that they do not ultimately need.]

To approve this use, please reply via email as soon as possible. If you have any questions or would like to discuss, please do not hesitate to email me at [myname@coolnet.com](mailto:myname@coolnet.com) or call me at (818) 555.5555. I look forward to receiving your response.

Your name,  
Your company

Once the request has been approved, the formal synchronization license contract will be created. I recommend having an attorney draft your first synch license to ensure its legality. If you are just starting out try Volunteer Lawyers for the Arts at [www.vlany.org/legalservices/vladirectory.php](http://www.vlany.org/legalservices/vladirectory.php).<sup>17</sup>

For all final Synchronization Licenses, the following contract terms are a standard part of what will be negotiated.<sup>18</sup>

**GRANT OF RIGHTS:** The Licensor (entity that owns the music) grants to Licensee (company that will use the music in a production) the right to synchronize the music to the film.

**TYPE OF MEDIA:** Cable, Television, DVD, Network, Broadcast, Internet, etc. The Licensor grants to licensee the right to perform the musical work within the exhibition of the video work.

**TERRITORY:** Where the product will be distributed (for example, the U.S. and Canada, or Worldwide).

**FOREIGN PRO:** How payment of performance fees through the foreign Performing Rights Societies (PROs) will be made.

**FEE:** How much the publisher will be paid for the use. (The Most Favored Nations clause previously described is often found here.)

**WARRANTY:** Owner warrants (guarantees) that it is the owner of the property being licensed and that there are no samples embedded in the composition or master.

**TERM:** How long the license will run. The normative length is in perpetuity, as the music will need to stay “married” (embedded) in the film permanently. (Additional information may be found in the sample license request above.)

Authors of the book *Music Supervision* emphasize the need to maintain a database of information for each project, specifically song title, composer, publisher, record label, phone number, email address, mailing address, and a record of all correspondence.<sup>19</sup>

Music Supervisors must be chameleon-like in their business dealings, with the ability to adapt their methods and behavior to the needs of every new production environment or executive office. If you have all of the necessary information at your fingertips, you can expect to be successful in providing quick answers to anyone who needs them, at any stage in the production.<sup>20</sup>

Music Supervisors may have to report to a creative director in the corporate environment, to a producer or director on a film, and the original designer for a video game so it’s important to have great communication

and organizational skills.

## Licensing Tools

To stay organized, many MXSup's use Excel spreadsheets and license request templates they create in Microsoft Word, but the real pros use specialized software. [www.musicsupervisioncentral.com](http://www.musicsupervisioncentral.com) is a fantastic website that accompanies the text *Music Supervision: The Complete Guide for Licensing Music* by Ramsay Adams, David Hnatiuk, and David Weiss and offers downloadable templates to save time and keep one organized. The most important form is the cue sheet. The cue sheet tracks all of the cues that the music supervisor has been asked to provide music for in the film and becomes a source of payment information to the licensors and performance royalty information for the performing rights societies who will pay the songwriters and publishers. As the authors of *Music Supervision* write, "Cue sheet generation and maintenance are possibly the most important tasks in a music supervisor's job."<sup>21</sup> BMI, ASCAP, and SESAC log music composed for film and television so it's important for music supervisors to maintain accurate cue sheets and submit them to the PROs as quickly as possible. Here are the items generally recorded on a cue sheet:<sup>22</sup>

SEQUENCE #:	Where the song appears in the film
CUE#:	1m1 (Reel 1, Music, Cue Number 1)
CUE NAME:	Title of the song
COMPOSER:	Lucky Joe Smith
PUBLISHER:	Pots of Gold Publishing
SPLIT:	The percentage that this publisher owns
SOCIETY:	Which PRO is affiliated with each publisher
TYPE OF USE:	Background, visual vocal
TIMING:	01m:30s

Figure 1 is an example of a cue sheet for a fictitious show on *Animal Planet*.<sup>23</sup> The professionals use the program RapidCue, which is "an integrated cue sheet management system available to cue sheet suppliers such as film and television production companies and networks."<sup>24</sup> It is a web database that interfaces with the ASCAP and BMI performing rights societies for the payment of performance royalties from television and film productions. Multiple users at the production companies can track the music cues and ownership of the music for each production. The users can create and edit cue sheets, search for information and print out



**Music Cue Sheet - Animal Planet C.A.T.S. (Boston's Bad Street Cats)  
North American Territory (U.S. and Canada)**

REVISED 03/21/11 CUE 1 USAGE (MM)

<b>Production Company Name:</b> Yakking Meow Productions		<b>Street Address:</b> 2 Sheldon Street, Suite 1	
<b>Production Number/Year:</b> S234796 (7/2011)		<b>City:</b> Boston	
<b>Production Title:</b> Animal Planet: C.A.T.S. (Boston's Bad Street		<b>State:</b> MA	
<b>Episode Title:</b> Hairball Unknown		<b>Zip Code:</b> 02131	
<b>Episode Number:</b> 305		<b>Phone Number:</b> 555.690.9161	
<b>Season:</b> 3		<b>Fax:</b> 555.690.9162	
<b>Airdate:</b> 1/15/11		<b>Email Address:</b> <a href="mailto:ajohnson@yakkingmeow.com">ajohnson@yakkingmeow.com</a>	
<b>Release Date:</b> N/A		<b>Prepared by:</b> Ani Johnson	
<b>Program Type:</b> Network Series		<b>Network Station:</b> Cable - Discovery Channel	
<b>Program Length:</b> 60:00		<b>Distributor:</b> Discovery Communications, Inc.	
<b>Territory:</b> North America (US & Canada)		<b>Version:</b> Television	
		<b>SUBMIT DATE:</b> 03/21/11	

Turn Key for Type of Usage			
BI - Background Instrumental (Dramatic underscore, not focus of attention)	PD - Public Domain (Song is in the Public Domain)		
BV - Background Vocal (Voicels audible though not foreground of scene)	VI - Visual Instrumental (Instrumentalist on camera performing the song)		
CT - Closing Theme (Closer used in multiple episodes of a TV program)	VV - Visual Vocal (Vocalist on camera singing the song)		
EE - Logo (Identification of a production co. or program distributor)	VS - Visual Source (You can see the source of the music cue)		
OT - Opening Theme (Opener used in multiple episodes of a TV program)			

Roles:			
C - Composer E - Publisher AM - Administrator SE - Sub Publisher SR - SubArranger A - Author			
AD - Adapter AR - Arranger CA - Composer/Author SA - SubAuthor TR - Translator			

SEQ#	CUE#	CUE NAME	COMPOSER / PUBLISHER	%	SOCIETY	TYPE OF USE	TIMING
1	1m1	Brocktoon's Wake	C Dan Golin	33.33	ASCAP	BI-OT	01m : 30s
			C Lou Gorra	33.33	ASCAP		
			C Lee Stuart Golin	33.34	ASCAP		
			E Rumblefish, Inc. Music Library	100.00	ASCAP		
2	1m2	You Said That We Were Through	C Phillip Klein	100.00	ASCAP	V V	00m : 52s
			E Heavy Hitters Music Library	100.00	ASCAP		
3	1m3	Let's Do It	C Cole Porter	100.00	ASCAP	VS	00m : 18s
			E Warner Bros. Inc. c/o Warner Chappell Music	100.00	ASCAP		
			Artist - Billie Holiday	A Sony Music Entertainment O/B/O Columbia Records	100.00	MASTER	

Figure 1. Example of a cue sheet.

reports on all the music in a production. Once the information is verified by RapidCue, it is sent to the PROs. The PRO then verifies the cue sheets and makes payments to the proper parties.

## Production Relationships

Everyone I interviewed emphasized the need for great communication. Brad Hatfield,<sup>25</sup> Emmy award winner and music supervisor for TV's *Rescue Me*, stresses the benefits of the book *Getting to Yes: Negotiating Agreement Without Giving In* by Roger Fisher and William Ury. He suggests using the BATNA<sup>26</sup> technique when entering a negotiation. The BATNA or (Best Alternative to a Negotiated Agreement) advises finding a way for *both* parties to win in the negotiation and thus save face with their higher ups. How is this done?

1. Protect Yourself with a "Bottom Line"<sup>27</sup>—the worst possible outcome you would accept in the negotiation to

help you resist pressure from the other side. It is either the highest price you are willing to pay (if you are the music supervisor) or the lowest price you are willing to sell for (if you are the songwriter/publisher, artist/record label). It's a great start, but it doesn't allow you any creativity to make adjustments to your offer as the negotiation develops and realistically, if you've never negotiated in this marketplace before, your offer, if unresearched, may be set too high.

2. Make the most of your assets.<sup>28</sup> Negotiation is not only about who has the most influence, political power, or money, it is really about what *you* bring to the table that the other person wants. If you are the artist, do you have the coolest music? If you are the production company, do you offer exposure for an unknown artist?
3. What do you really want? As the songwriter is it a big placement fee or exposure to a new consumer demographic. As a production company, will associating with this artist/songwriter make your production hipper, more marketable to your target audience?
4. Know the other person's BATNA too. What is it that you have that the other party wants? What are they negotiating for on behalf of their client besides money? Exposure on a national television show? Future placements with your company? Long-term income? Guessing what the "opponent" may be striving for will help you create a list of creative options for a successful negotiation.
5. Now create your BATNA (Best Alternative to a Negotiated Agreement).<sup>29</sup> How can you both win? Devise a list of creative options you would be willing to consider, e.g., as the publisher, would you be willing to take less money up front for domestic release, but additional royalties when the product is distributed in foreign territories? As a production company, would you be willing to pay a larger fee up front to secure a relationship with this publisher for future placements at a lower fee? It is a good starting place so that both parties win. Select

which one of these options seems best for you, and work with it in the negotiation.

6. Now you have to figure out how to walk away from the table if the negotiation doesn't go well. What are your options? If you are the music supervisor and the major record label won't agree to your rate offer for a master use what can you do? Find an up-and-coming artist who would be happy with a lower fee? Find a similar sounding piece of music from a contemporary music library? Find a cover of the song from a lesser-known artist? Any of these options give you power to negotiate instead of locking you into paying too high of a price for the music you want.

In an interview with Ward Hake, Vice President of 20<sup>th</sup> Century Fox TV, he talks about fees sometimes changing when the final production is complete.<sup>30</sup> He says that in a pilot, they place music and talk to publishers about the budget, e.g., \$15,000, but it is not licensed at the time. It is only when the television show is picked up for airing that they go back and license the music, and it is at that point that sometimes the budget has changed and they only have \$12,000 left to license the music. They go back to the publisher and ask if they will agree to the new rate, or if not, they will have to find original music from a lesser known source to replace it.

Lindsay Wolfington spoke in her interview about how fees often change when unknown parties are not registered with the major PROs and are therefore difficult to find. She says that she often starts her search on ASCAP.com to locate information about publishers. Oftentimes she will find songs where there will be two main publishers and a third, unlisted publisher; the licensing difficulty comes in when nobody can locate the last publisher on the song.

She explained how on a production of *One Tree Hill* she used a Black Eyed Peas song and couldn't find the person who owned 2.5% of the song. She contacted the label, the other publishers, and the manager, but still couldn't find the missing owner. She told the producers and the other publishers that unless it was all cleared she would be unable to use the song. She said she thought that maybe studio heads might make that call, but Lindsay wouldn't take that chance.<sup>31</sup>

In another example Lindsay described her workload on *Ghost Whisperer*. She had a song with three writers and asked one of them if he could sign off for the other two for the master and the publishing rights. He said no, and what Lindsay thought would be one license turned into six (three master licenses and three synchronization licenses). When she turned in the contracts, the studio said, “No way, you tell them that one guy will have to sign off on all of this.”<sup>32</sup> She had to go back to the three songwriters and get their approval for one license request. The problem was not only the amount of time it took to get the approvals, but the music wasn’t even a big part of the scene. It was only the background music for an antique store scene. Needless to say, she hasn’t worked with that guy since because he made her life harder. She advises songwriters to “have a business head”<sup>33</sup> so that paperwork goes quickly and efficiently.

In another situation, she had licensed a work for under \$10,000 before with a publisher and indie artist and when she used another song by this artist it had two co-writers. She went to one co-writer with \$8,000 total (\$4,000 a side) and the co-writer refused, quoting a desired rate of \$15,000. She had to say to the co-publisher that she was only placing this song because the artist (another co-writer) had come to her with the work. Because he was refusing to grant the license for a lower rate, he was going to blow it for them all. They finally agreed but the co-writer said, “Don’t expect this to happen again.” Sadly, she has not been able to work with that writer again because it was so difficult to get the license cleared for a reasonable rate. Lindsay stresses that these days most people want quantity (several placements) rather than one big one because it generates more performance income.

Therefore, how does one find the balance necessary to license popular works at a reasonable price? Consider this scenario:

An independent action film with a total budget of \$100,000 has exhausted most its funds on actors, filming, editing, location expenses, etc. The director has given you \$15,000 (\$3,000 for your time plus four points—a percentage of ownership that acts like shares on the back-end income from the movie)<sup>34</sup> and \$12,000 to license six pieces of music for the film—essentially \$2,000 per song (or \$1,000 a side). The film is done and the director has placed six temporary tracks (popular music that the director has temporarily placed in the film) to give it the “feel” that she wants for the scenes. These tracks are all from her personal iPod collection and include Foo Fighters’ *Rope*,<sup>35</sup> Aerosmith’s *Love In An Elevator*,<sup>36</sup>

Broken Bells' *The Ghost Inside*,<sup>37</sup> Chris Cornell's *Ground Zero*,<sup>38</sup> Radiohead's *Paranoid Android*,<sup>39</sup> and Muse's *Time is Running Out*.<sup>40</sup> Al and Bob Kohn, authors of *Kohn on Music Licensing* state the going rate to individually license one of these tracks for the life of the copyright in worldwide release would be \$5,000 to \$25,000 for background use, \$7,500 to \$50,000 for visual/vocal use, or \$15,000 to \$100,000 for featured use.<sup>41</sup> Use of the title of the song as the title of the motion picture would add an additional \$50,000 to \$100,000 to these fees. Use of the music for opening credits might double the synch fee with closing credits slightly lower. Historically (2002), these fees would not include any royalties for the DVD distribution, so that would be additional fees the production company would pay under a videogram License. Nowadays, most films are licensed under *broad rights*, which cover all media including overseas theatrical release, home video, and internet and streaming for *in context use*.<sup>42</sup>

Clearly, these major label songs will be too expensive to clear. It is up to the music supervisor to find songs that fit the scenes with a similar feel, mood, tempo, and genre as the original. This can be a daunting task when everyone from the producer to the music editor has fallen in love with how "perfectly" the temp track songs fit into the film score. In the industry, this is called "temp love"<sup>43</sup> and it's sometimes just as difficult to separate these tracks from the movie, as it is to break up with someone!

So, you've tried your best to negotiate with the major label and they are not willing to reduce their licensing rate. What do you do? You either are tapped in to the indie music scene and have long-established relationships with these bands and have the time (which is always on short supply) to contact their indie publishers *and* record labels in time and get clearances for your film in a couple of months or...

You contact one of the many fantastic television and film music libraries to get pre-cleared (for both sides—publisher and master) music overnight. Sounds like a great solution! Many production companies use television and film music libraries to reduce their costs of production music. These pre-cleared and professionally recorded tracks provide an easy way to get music into your production in a very fast and efficient way. Cindy Badell-Slaughter, CEO of Heavy Hitters ([www.heavyhittersmusic.com](http://www.heavyhittersmusic.com))<sup>44</sup>, one of the top music libraries in the United States has licensed music for the last thirty years for many shows including *True Blood*, *CSI*, *The X Files*, *Friends*, and *It's Always Sunny in Philadelphia*.

When a director places music in a film it is usually because the music

has lyrical content that advances the storyline, or because the music creates the right kind of energy for the scene—creating a mood for the characters to tell their stories. Think about the love scene in *Top Gun* with the song *Take My Breath Away* by Berlin<sup>45</sup> playing in the background as Tom Cruise and Kelly McGillis make out, or the final scene of *The Matrix* when Neo flies into the future with Rage Against The Machine playing *Wake Up*.<sup>46</sup> Each song lends a different type of energy to a scene, advancing the storyline in a unique way. Heavy Hitters has an online “jukebox” which allows the music supervisor to search by lyric, male or female vocal, instrumental, sound-alike, genre, mood, topic, instrumentation, tempo, writer, performer, song title, and new songs. It has many options to help the music supervisor find a suitable replacement for its major label song (see Figure 2).



Figure 2. “Jukebox” from Heavy Hitters.

I searched for a replacement of Muse’s *Time Is Running Out*. I typed the word “rock” into the quick search, checked Vocal Male, and over 2,200 songs came up. Whew! I refined my search by selecting a genre, then the subgenre “rock,” and then checked off all of the rock styles I thought sounded like Muse. As one can see in Figure 3, Heavy Hitters covers many styles of rock so this allowed me to make my search more specific—anything from 50s rock to post punk.<sup>47</sup> Pretty cool.



Figure 3. Searching for a replacement of Muse's *Time Is Running Out*.

Still, I ended up with a lot of songs. So I refined my search to include song lyrical topics. I settled on lyrics dealing with “bad times”<sup>48</sup> since our original Muse title was *Time Is Running Out* (see Figure 4).

Nine songs appeared (see Figure 5), one entitled *Wrong Way Down*<sup>49</sup> a hard rock song with distorted vocals, heavy guitars, and with a similar tempo (111 BPM, beats per minute, vs. Muse's 118 BPM). A good fit!

By the way, iTunes can be configured to show the BPM for any song by selecting View, Options, Beats Per Minute. If the BPM is not available for the song, use the program BPM Analyzer, a free computer-based program by MixMeister ([www.mixmeister.com](http://www.mixmeister.com)).<sup>50</sup> I also found an iPhone app, Cadence Run DJ,<sup>51</sup> from EchoNest<sup>52</sup> for \$1.99 that will detect the

Find a Topic to use in your search

**Find**

Choose your Topics and when finished hit "Return to Search"

Or browse the list of popular Topics below. **Return**

Total Topics: 934 Page: 1 of 10 View 20 50 100 On Page First Prev 2 3 4 5 Next Last

<input type="checkbox"/> Abstract	<input type="checkbox"/> Anticipation	<input type="checkbox"/> Be Friends	<input type="checkbox"/> Breaking My Heart
<input type="checkbox"/> Absurdity Of Love	<input type="checkbox"/> Anxiety	<input type="checkbox"/> Beauty	<input type="checkbox"/> Breaking The Law
<input type="checkbox"/> Abuse	<input type="checkbox"/> Anything Can Happen	<input type="checkbox"/> Beauty Comes From Within	<input type="checkbox"/> Breaking Up
<input type="checkbox"/> Abusive Love	<input type="checkbox"/> Anywhere But Here	<input type="checkbox"/> Behavior Affecting-Love	<input type="checkbox"/> Breakthrough
<input type="checkbox"/> Abusive Past	<input type="checkbox"/> Apology	<input type="checkbox"/> Being an outcast	<input type="checkbox"/> Broken Heart
<input type="checkbox"/> Acceptance	<input type="checkbox"/> Appreciation Of Family	<input type="checkbox"/> Believing in Yourself	<input type="checkbox"/> Broken Marriage
<input type="checkbox"/> Accountability	<input type="checkbox"/> Appreciation Of Life	<input type="checkbox"/> Betrayal	<input type="checkbox"/> Brother In Jail
<input type="checkbox"/> Accusation	<input type="checkbox"/> Are You The One?	<input type="checkbox"/> Better Life	<input type="checkbox"/> Brotherhood
<input type="checkbox"/> Act Now	<input type="checkbox"/> Armageddon	<input type="checkbox"/> Billy The Kid	<input type="checkbox"/> Bumble Bees
<input type="checkbox"/> Addiction	<input type="checkbox"/> Arrogance	<input type="checkbox"/> Bipolar	<input type="checkbox"/> Burning
<input type="checkbox"/> Admiration	<input type="checkbox"/> Assessment	<input type="checkbox"/> Bitter	<input type="checkbox"/> Burning Love
<input type="checkbox"/> Adrenalin	<input type="checkbox"/> Atlantic City	<input type="checkbox"/> Bitterness Of Rejection	<input type="checkbox"/> Buying Love
<input type="checkbox"/> Adventure	<input type="checkbox"/> Attitude	<input type="checkbox"/> Bittersweet Love	<input type="checkbox"/> California
<input type="checkbox"/> Advice	<input type="checkbox"/> Attraction	<input type="checkbox"/> Blame	<input type="checkbox"/> Calm Down
<input type="checkbox"/> After Party	<input type="checkbox"/> Authentic Mariachi	<input type="checkbox"/> Blessing	<input type="checkbox"/> Can't Get Enough Of Your Love
<input type="checkbox"/> Afterlife	<input type="checkbox"/> Baby	<input type="checkbox"/> Bias	<input type="checkbox"/> Capitalism
<input type="checkbox"/> Aggressive Love	<input type="checkbox"/> Back To School	<input type="checkbox"/> Blues	<input type="checkbox"/> Carol
<input type="checkbox"/> Agony Of Lost Love	<input type="checkbox"/> Bad Day	<input type="checkbox"/> Blues Lifestyle	<input type="checkbox"/> Carrying On
<input type="checkbox"/> Alcohol	<input type="checkbox"/> Bad Girl	<input type="checkbox"/> Bob Dylan	<input type="checkbox"/> Cars
<input type="checkbox"/> Ambition	<input type="checkbox"/> Bad Love	<input type="checkbox"/> Bombs	<input type="checkbox"/> Cassanova
<input type="checkbox"/> Ambivalence	<input type="checkbox"/> Bad Love Decisions	<input type="checkbox"/> Books	<input type="checkbox"/> Casual Sex
<input type="checkbox"/> Anatomy For Children	<input type="checkbox"/> Bad Relationship	<input type="checkbox"/> Boxing	<input type="checkbox"/> Caterpillar
<input type="checkbox"/> Angels	<input checked="" type="checkbox"/> Bad Times	<input type="checkbox"/> Bragging	<input type="checkbox"/> Cautious Love
<input type="checkbox"/> Anger	<input type="checkbox"/> Band Practice	<input type="checkbox"/> Break Through	<input type="checkbox"/> Celebration
<input type="checkbox"/> Annoying Relationship	<input type="checkbox"/> Basketball	<input type="checkbox"/> Break Up	<input type="checkbox"/> Censure

Total Topics: 934 Page: 1 of 10 First Prev 2 3 4 5 Next Last

Figure 4. Refining the search.

**Modify Search** Refine your existing search criteria.

**Create List** Create a list from your selected titles.

Add titles to existing list  
 Select List

To download & ZIP multiple songs check box to left of each song, then choose format below.  
 MP3 Or AIFF

NEED HELP OR HAVE A QUESTION?  
 GIVE US A CALL OR EMAIL US  
 (818) 246-1250 cindy@thanybittersmusic.com

00:00 00:00

Title	Type	BPM	Genre	Performer	CD	Listen	Download
<input type="checkbox"/> <b>SOVEREIGN</b> TV Mix, Minimal Vocals, Haunting, Reflective, Alt Rock	Vocal Male	76	Contemporary, Rock	<a href="#">Raul Molina</a>		0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>GAVING IN</b> Vocal Down, Deep Thought Alt Rock	Vocal Male	78	Adult Contemporary, Rock	<a href="#">Raul Molina</a>		0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>IM ALREADY GONE</b> Bare & Melancholic Alt Rock w/ Painful, Wall-Like Vocal	Vocal Male	88	Adult Contemporary, Rock	<a href="#">The Kraamdens</a>	Multiple CDs	0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>ILLEGAL STREET CROSSER</b> Comical, Tongue-In-Cheek Rock Song about J-Walking	Vocal Male	140	Pop, Rock	<a href="#">Larry Mav</a>	Male Variety Compilation V.7	0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>THE SCENE OF THE CRIME</b>	Vocal Male	108	Rock	<a href="#">Michael Kisur</a>		0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>THE SCENE OF THE CRIME</b> Minimal Vocal	Vocal Male	108	Rock	<a href="#">Michael Kisur</a>	ELECTRONICA-GOTH v.2	0:30 FULL	MP3 AIFF
<input type="checkbox"/> <b>WRONG WAY DOWN</b> Aggressive Alt. Metal: Energetic, Heavy	Vocal Male	111	Rock	<a href="#">Michael Kisur</a>	Multiple CDs	0:30 FULL	MP3 AIFF

Total Titles: 9 Page: 1 of 1

Figure 5. Finding just the right song.

BPM for a song. (It was originally made to help put together a list of songs with similar BPMs for a workout.) At the very least, but not as accurate, use the free iPhone app Tap Metronome<sup>53</sup> and tap along with the song as it plays to get the BPM.

Additional sources for pre-cleared music may be found at these great music libraries:

615 Music: [www.615music.com](http://www.615music.com)<sup>54</sup>  
APM: [www.apmmusic.com](http://www.apmmusic.com)<sup>55</sup>  
Pump Audio: [www.pumpaudio.com](http://www.pumpaudio.com)<sup>56</sup>  
Rumblefish: [www.rumblefish.com](http://www.rumblefish.com)<sup>57</sup>  
Sonoton: [www.sonoton.com](http://www.sonoton.com)<sup>58</sup>  
Universal Music Publishing  
Killer Tracks: [www.killertracks.com](http://www.killertracks.com)<sup>59</sup>  
Firstcom: [www.firstcom.com](http://www.firstcom.com)<sup>60</sup>

When you do have a budget that can support using music from major labels and publishers, the first place to locate the owners of songs is at the performing rights societies. These databases have detailed contact information for all major and many independent music publishers.

In the United States use ASCAP ([www.ascap.com](http://www.ascap.com)) for the ACE Repertory Search.<sup>61</sup> On SESAC's site ([www.sesac.com](http://www.sesac.com)) click the Repertory button.<sup>62</sup> BMI's Search button ([www.bmi.com](http://www.bmi.com)) allows one to search for repertoire.<sup>63</sup> The Harry Fox Agency<sup>64</sup> ([www.harryfox.com](http://www.harryfox.com)) clears only mechanical licenses and therefore cannot be used for synchronization or master clearances. It is a great source for publisher contact information, especially when you come across the words "copyright controlled" in the other databases, which generally means that the publisher in question is outside of the United States, or is a small independent publisher not registered with the U.S. PROs.

To clear the master use for the synchronization, one must contact the record label that owns the sound recording. Search [www.copyright.gov](http://www.copyright.gov)<sup>65</sup> to find the original owner of the SR (sound recording) copyright registration, but it can be a daunting task. For example, a search for *Roxanne* will reveal hundreds of similar selections (see Figure 6).<sup>66</sup>

Listing number 13 is the original master, you can tell this by the registration date of 1986. The copyright number, preceded by "SR," indicates it is a registration for a sound recording. I was a teenager then and

## Public Catalog

Copyright Catalog (1978 to present)  
 Search Request: Left Anchored Title = roxanne  
 Search Results: Displaying 1 through 25 of 342 entries.

◀ previous 1 26 51 76 101 126 ... 326 next ▶

Resort results by: [ ]

[ Set Search Limits ]

#	Title <	Full Title	Copyright Number	Date
[ 1.1 ]	Roxanne.	<a href="#">Alexander's wife.</a>	TXa000788009	1997
[ 1.2 ]	Roxanne --	<a href="#">All this time / Sing.</a>	SR0000303802	2001
[ 1.3 ]	Roxanne --	<a href="#">Amber-Implied et al.</a>	VAa001016962	2010
[ 1.4 ]	Roxanne --	<a href="#">Bill up / Awwai.</a>	SR0000251762	1997
[ 1.5 ]	Roxanne	<a href="#">Calling her a emb.: Roxanne - pg. 2.</a>	PAa000747651	1985
[ 1.6 ]	Roxanne.	<a href="#">Can't stop thinking / J. Brown.</a>	PA0000359891	1988
[ 1.7 ]	Roxanne.	<a href="#">Cherry Bay / J. Brown, J. Infante.</a>	PA0000359887	1988
[ 1.8 ]	Roxanne.	<a href="#">Coming for you / J. Brown, J. Infante.</a>	PA0000359889	1988
[ 1.9 ]	Roxanne --	<a href="#">Country Compilation 1.</a>	PAa003566870	2011
[ 1.10 ]	roxanne --	<a href="#">Creations by matthew h. armington.</a>	VAa001031375	2010
[ 1.11 ]	Roxanne.	<a href="#">Do it all / J. Brown, J. Infante.</a>	PA0000359885	1988
[ 1.12 ]	Roxanne.	<a href="#">Ever after love.</a>	PA0000791762	1994
[ 1.13 ]	Roxanne --	<a href="#">Every breath you take - the singles / (performed by) the Police.</a>	SR0000085676	1986

Figure 6. A search for *Roxanne* will reveal hundreds of similar selections (www.copyright.gov).

remember when The Police released it. For readers not alive in 1986, and therefore not familiar with when this track was created, they might have selected item number 2, which is also an SR copyright registration, but it was registered in 2001. In that case, one would need to select each item to get a better idea of the original master. Figure 7 shows the 1986 registration. It is registered to A&M Records as a work for hire<sup>67</sup> (The Police therefore, transferring their rights to the ownership of the master).

## Public Catalog

Copyright Catalog (1978 to present)  
 Search Request: Left Anchored Title = roxanne  
 Search Results: Displaying 13 of 342 entries

◀ previous next ▶

Labelled View

*Every breath you take - the singles / (performed by) the Police.*

Type of Work: Sound Recording  
 Registration Number / Date: SR0000085676 / 1987-11-10  
 Title: Every breath you take : the singles / (performed by) the Police.  
 Imprint: c1986.  
 Publisher Number: A&M Records CD 3902  
 Description: 1 sound disc : digital ; 5 in.  
 Notes: Photography: Janette Beckman, Tim O'Sullivan.  
 Compact disc.  
 Copyright Claimant: © A & M Records, Inc.  
 Date of Creation: 1986  
 Date of Publication: 1986-12-01  
 Authorship on Application: sound recording, artwork: A & M Records, Inc., employer for hire.  
 Contents: Roxanne -- Can't stand losing you -- Message in a bottle -- Don't stand so close to me -- De do do do do, de da da da -- Every little thing she does is magic -- Invisible man -- Spirits in the material world -- Every breath you take -- King of pain -- Wrapped around your finger.  
 Names: [Beckman, Janette](#)  
[O'Sullivan, Tim](#)  
[Police.](#)  
[A&M Records, Inc.](#)

Figure 7. *Roxanne* copyright registration information.

At the bottom of the page, you can click on the A&M Records link and see a list of all of their registrations, but it still doesn't give you a con-

tact address. Many of the newer registrations give the company address, such as this A&M Records SR Copyright for Sheryl Crow<sup>68</sup> (Figure 8), but for a quick fix, I have had luck with [www.discogs.com](http://www.discogs.com).<sup>69</sup> A search by song title and performer will give a list of all the configurations of the song, the record label, the country of release, and the year of release. As you can see in Figure 9, the original recording of *Roxanne* came out in 1978.<sup>70</sup> When you click on the record label name, the address appears (see Figure 10).<sup>71</sup>

**Public Catalog**

Copyright Catalog (1978 to present)  
 Search Request: Left Anchored Name = A&M Records  
 Search Results: Displaying 1 of 7184 entries

◀ previous   next ▶  
Labeled View  
*100 Miles From Memphis.*

Type of Work: Sound Recording  
 Registration Number / Date: SR0000656645 / 2010-08-06  
 Application Title: 100 Miles From Memphis (Barnes & Noble Version), Artist: Sheryl Crow, 00602527457796 (compact disc)  
 Title: 100 Miles From Memphis.  
 Publisher Number: B0014603-02 A&M Records  
 Description: Compact Disc.  
 Copyright Claimant: A&M Records, A Div. of UMG Recordings, Inc. Address: 2220 Colorado Ave., Santa Monica, CA, 90404.  
 Date of Creation: 2010  
 Date of Publication: 2010-07-20  
 Nation of First Publication: United States  
 Authorship on Application: A&M Records, A Div. of UMG Recordings, Inc., employer for hire; Domicile: United States. Authorship: Most Sound Recordings / Pictorial Matter.  
 Pre-existing Material: Two Sound Recordings: "Summer Day" (00602527445403) & "Our Love Is Fading" (00602527435947)  
 Basis of Claim: All Other Sound Recordings (including 2 bonus tracks: "Summer Day" (acoustic) & "Say What You Want" (acoustic)) / Pictorial Matter.  
 Rights and Permissions: Universal Music Group  
 Names: [A&M Records](#), [A Div. of UMG Recordings, Inc.](#), [UMG Recordings, Inc.](#), [A&M Records](#)

Figure 8. Sound recording copyright registration: Sheryl Crow.

**Discogs**™ Search artists, albums and more... Explore Buy Music Sell Music Community

**Police, The – Roxanne**  
 Genre: Rock  
 Style: Pop Rock  
 Year: 1978

more images

**Tracklist**

Roxanne	3:00
Peanuts	2:52

**Versions**

Title	Label	Cat#	Country	Year
Roxanne (12")	A&M Records	AMS 7348	UK	1978
Roxanne / Dead End Job (7")	A&M Records	2096-S	US	1978
Roxanne (7")	A&M Records	AMS 9211	Netherlands	1978
Roxanne (7")	A&M Records	AMS 7348	UK	1978
Roxanne (7")	Festival Records, A&M Records	K 7376, AMS 7348	Australia	1978
Roxanne (7")	A&M Records	AMS 6603	Netherlands	1978
Roxanne (7", Mono, Promo)	A&M Records, A&M Records	2096-S, 2096	US	1978
Roxanne (7", Single)	A&M Records	AMS 7348	UK	1978
Roxanne (7", Single)	A&M Records	AMS 7348	UK	1978
Roxanne (7", Single)	A&M Records	AMS 6603	Germany	1978

Figure 9. [www.discogs.com](http://www.discogs.com).



**A&M Records**

**Profile:**  
 A&M Records was started in 1962 by partners Herb Alpert and Jerry Moss. Their first release (following two singles released under the label name Carnival Records) was "The Lonely Bull" by Herb Alpert & The Tijuana Brass, which sold around 700,000 copies. Sixteen of the first 25 albums were certified gold by the RIAA and helped A&M become a major label and ultimately the world's largest independent record company.

Some notable events over the years, courtesy of On A&M Records.com:

**Sublabels:** A&M (UK) Ltd., A&M Disco, A&M Records Of Canada Limited, A&M Video, AM-PM, Anada Records, Antra Records, Audio Master Plus Series, Breakout, DVB Records, Generic, Gold Mountain, Hamlet, Horizon Records & Tapes, Planetone Records (UK), Superior Quality Recordings, Tuff Break Records, Vendetta Records (2)

**Parent Label:** Interscope Records

**Contact Info:** Interscope Records  
 2220 Colorado Avenue  
 Santa Monica  
 CA 90404  
 USA

**Sites:** interscope.com, onamrecords.com, amcorner.com, bsnpubs.com/laandn, Wikpedia

**Discogs Marketplace**

Vinyl and CD 49,862 For Sale

Like 5 100%

Label history / edit

Add to List  
 Data Quality Rating: Correct  
 15396 submissions pending

Jump To  
 reviews lists

**Discography**

**Releases:**

Dinner Is Ruined*	Love Songs From The Lubritorium (CD, Album)	1993
Big Hate	You're Soaking In It (CD, Album)	1998
Phil Keaggy	The Wind And The Wheat (LP)	1987

Figure 10. Record label contact information (www.discogs.com).

Another great source of information for music supervisors is the Internet Movie Database (www.imdb.com).<sup>72</sup> Here one can search any television show or film to learn the name of the songs in the soundtracks, the music supervisors, etc. Contact information can be accessed through a subscription to IMDbPro for \$15.95 a month.

Finally, the major publishers and record labels are getting into the act and making music available online for easy access clearances. Below are the publisher gateways for synch license clearance.

### Publisher Gateways for Synchronization License Clearance

EMI

Song Selection, no online licensing:

<http://emimusicpub.com/licensing/index.php><sup>73</sup>

Contact: <http://emimusicpub.com/global-offices/usa/home.php><sup>74</sup>

EMI/CMG

Mechanical Licensing or online video stream: <http://emicmglicensing.com/><sup>75</sup>

Synch Licensing requests must be made in writing to: [licensing@emicmg.com](mailto:licensing@emicmg.com)

Sony/ATV

Search & License Synch/Master:

<http://www.sonyatv.com/search/index.php/search><sup>76</sup>

To get an account: <http://www.sonyatv.com/en-us-na/index.php/contact><sup>77</sup>

Universal Music Publishing (USA)

Synch/Master: <http://www.umusicpub.com><sup>78</sup>

Warner/Chappell

Synch/Master: [http://www.warnerchappell.com/TemplateAction?system\\_action=getsync\\_departments&currenttab=licensing](http://www.warnerchappell.com/TemplateAction?system_action=getsync_departments&currenttab=licensing)<sup>79</sup>

## Record Label Gateways for Master License Clearance

Sony Music: <http://hub.sonymusic.com/licensing/contact/><sup>80</sup>

Universal Music: <http://www.umusicpub.com><sup>81</sup>

Warner Music USA:

<https://www.wmgmusiclicensing.com/WMGML/login.aspx><sup>82</sup>

Warner Music UK: <http://wmgcreativelicensing.com/><sup>83</sup>

All in all it's important to remember that being a music supervisor involves a lot of research, tons of paperwork, and massive organization. It's also about facilitating great relationships and negotiating a win for everyone, especially the producer who has put her faith in the music supervisor to create a positive working environment with clients and to build a successful licensing strategy for the business.

## Endnotes

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Previously, she consulted for Chris Blackwell at Palm Pictures/Rykodisc and licensed over thirty albums for artists such as Elton John, Parliament-Funkadelic, and Fleetwood Mac. As Accounting Manager for Gloria Estefan, she restructured their financial systems and supervised production budgets, licenses, and royalties for their Sony Music venture.

Johnson recently developed a master’s curriculum in International Licensing for Global Entertainment Studies at Berklee Valencia. She owns MonoMyth Media, a music supervision company in the Boston (Hollywood East) market. Follow Ani at [www.twitter.com/recdmavn](http://www.twitter.com/recdmavn) or <http://www.linkedin.com/in/recdmavn>.

# Artists' Chart Careers: A Study of How They've Changed Through the Years

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## Introduction

On May 2, 2012, it was reported that pop music stars the Jonas Brothers, a family trio who gained immense exposure on the Disney Channel, were leaving their record label, Hollywood Records.<sup>1</sup> Artists choose to leave record labels for many reasons, and sometimes they're involuntarily dropped from their contracts by the company. The situation can be spun in many ways to the press—or hardly mentioned. One might assume, though, that Hollywood Records did the pre-negotiation math and other due diligence before letting go a band that had already sold seventeen million records.<sup>2</sup> One can only speculate as to the discussions. Nonetheless, it is interesting to note that the band, whose most recent widely available studio album was at one point the top-selling record in the United States, could be parting with its label so soon after such success.

The Jonas Brothers' first album to make the national pop charts debuted in August of 2006.<sup>3</sup> Their last appearance on the charts prior to leaving Hollywood Records was in September, 2010.<sup>4</sup> One can only speculate how much that 4.08-year chart career might extend as they release albums in the future. A little more than four years doesn't seem like a long time. However, research shows if the pop trio never had another top-selling album that amount of time on the charts would be within an average range. A study focused specifically on *Billboard* album chart data from previous decades found the length of time between an artist's entry and exit from those syndicated rankings to be on average between 3.39 and 6.16 years, depending on the time frame utilized.<sup>5</sup> Those figures are based on data for nearly 1,500 sample artists gathered from more than fifty years of popular music.

Over that long period of time, though, those particular measurements of artists' success could have varied. So further analysis was conducted to take a deeper look from various perspectives regarding artists' chart careers and their ability to remain commercially popular among their con-

temporaries. This particular investigation focused on annual data from 1955-2010 to identify trends relating to the national album charts. Have artists' length of time on those charts generally increased or decreased over the last fifty-plus years?

## The Charts as Measurement

There are many ways one might define success in the music business, particularly as an artist. How musicians perceive success is entirely up to them, as is identifying the moment at which they believe they have attained success. This research, however, is focused only on data that are actually measurable and which describe one particular achievement as an artist: appearing on syndicated music ranking reports also known as "the charts." These reports indicate how artists' recordings have performed commercially compared to those released by their peers.

Essentially, this study is a macro-analysis of artists' chart careers. There was no assumption that placing an album on the charts is required for a successful long-term career as an artist. The research focused only on this particular perspective of one's recording career because chart positions are objective measurements that can be comparatively trended over time, as opposed to other more subjective measures of musical achievement (Grammy awards, for example). It was assumed that an artist's first appearance on the national charts was preceded by some amount of time dedicated to practice and hard work to earn local or regional notoriety. Moreover, once an artist's presence on the national charts had ceased there certainly could have been a period of time during which he or she continued to generate income or some measure of additional achievement as an artist or public figure.

The most recognized publisher of popular music charts has for decades been the music industry trade publication *Billboard*.<sup>6</sup> Along with its coverage of the music industry, *Billboard* has published weekly rankings of commercially available music based on sales and popularity, determined through various means. Sales of most all configurations of music releases, including LP records, 45 rpm "singles," compact discs, and digital downloads have been measured through various means by *Billboard* and its data providers in order to generate these syndicated reports.<sup>7</sup> Other metrics besides sales have also been utilized. The amount of radio airplay for recordings, for example, has also affected the rankings for some of the reports.<sup>8</sup> The amount of on-demand streaming for a song through internet

music services has even been added as a variable for rankings on some charts.<sup>9</sup> Nielsen SoundScan and Nielsen Broadcast Data Systems have been the primary sources of data for *Billboard's* best known charts since 1991; prior to that the magazine used ranked reports from large panels of music merchants and radio stations.<sup>10</sup> Methodologies have changed as music consumption trends, product lines, and information needs have shifted.

Though *Billboard* has produced weekly charts focused on most every genre, the Billboard Hot 100 and the Billboard Top Albums charts have included recordings from all genres. For this study, the analysis was focused only on *Billboard's* weekly album charts, which have since the mid-1950s listed the most popular albums in the United States.<sup>11</sup>

## Methodology

For the research, the album chart data for 2,493 artists were analyzed. That population represented approximately 33% of all recording artists who placed at least one recording on *Billboard's* popular album charts published from January of 1955 through December of 2009. The sample was drawn from a listing of all such artists included in the seventh edition of author Joel Whitburn's compendium *Top Pop Albums. Billboard's* archive of chart information was also used for the analysis.

*Billboard's* first Best Selling Popular Albums charts included only fifteen positions.<sup>12</sup> By 1963 there were 150 titles ranked on the chart.<sup>13</sup> In 1967 the number was increased to 200 titles, where it remains today, though from 1971 to 1985 there were additional weekly rankings of up to 35 more (201-235) "Bubbling Under" albums that might soon land on the top 200.<sup>14</sup> Prior to 1991 the rankings were determined from sales reports gathered manually from a large sampling of music retailers.<sup>15</sup> Since 1991, however, positioning of albums on the chart has been determined entirely by the number of units sold, including the sales of CD, vinyl, and digital download versions.<sup>16</sup>

These variations in the number of chart positions, and the data that determined them through the years, make precise comparable analysis more challenging. Any of the sample artists could of course have had albums chart in more than one of those periods, for example. Chart information was still, nevertheless, accumulated uniquely under each sample artist's name for the analysis, regardless of how many chart positions there were or which chart methodologies existed during the time frame(s) in which the albums charted. There are obvious implications to comparing

chart rankings of music through the years, and that should certainly be noted. However, each weekly ranking was still the best available relative measure of the performance of an album compared to other albums available at the same time.

Another challenge with this research was the reality that artists' chart histories are always in progress. Only those artists who placed an album on the applicable charts prior to December 31, 2009 were considered for this research. Some of them could have continued to place albums on the charts beyond that cutoff date. Several artists from the sample population, including teen sensation Justin Bieber and British vocalist Adele, have likely maintained a presence on the charts since that time and after the publication of this research. They, and a handful of other artists, were absolutely extending their chart career beyond what was enumerated at the outset of the analysis. Thus the research results could not by their nature be entirely and precisely current, since current artists were extending their chart careers with each week that passed. The results, particularly from more recent data, were only a snapshot at best and presumed to be changing while analysis occurred.

The length of an artist's chart career was defined as the period of time from the month of their first appearance on the charts to the month of their last appearance, regardless of which weeks during the month either occurred. The artist could certainly have released non-charting albums prior to or after the titles that constituted those beginning and end points. Also, there could have been albums they released *during* the documented time frame that failed to make the Billboard Top Albums chart, in which case those releases were in no way factored into the analysis.

In some cases ten or more years passed between an artist's disappearance and re-appearance on the chart. This return could have been due to any number of circumstances, including the discovery of the artist by a new generation of music fans, the re-uniting of a band long after its breakup, or even the unfortunate passing of artists, which can suddenly reinvigorate their music sales.<sup>17</sup> Where artists experienced this absence of more than ten years from the chart, they were classified as outliers and were excluded from some calculations. There were 83 such artists, representing 3.3 percent of the population. The 105 artists who placed albums on the "Bubbling Under" portion of the charts but never actually made the "big chart" were also excluded in some cases.

Artists were placed into datasets by the year they debuted, i.e., made

their first appearance on the album charts. With this method the data for all artists making their first appearance in relatively similar economic and cultural periods were aggregated together. It could be argued that an artist’s debut year might have been somewhat less relevant when looking at an entire career. Subsequent years of releasing music were subject to varying market and competitive conditions that might have had no bearing or causal relationship to the debut year. However, this was found to be the most effective and efficient method of grouping the artists.

### Findings: The Average Lengths of Artist’s “Chart Careers” Through the Years

Table 1 summarizes initial findings for each year’s cohort of sample debut artists:

Year	Number of Artists	Average Chart Career Length (Years)
1955	12	4.4
1956	8	7.4
1957	7	3.1
1958	3	1.1
1959	7	3.0
1960	14	7.8
1961	19	4.5
1962	36	9.2
1963	34	3.2
1964	21	9.1
1965	29	4.3
1966	29	2.8
1967	33	8.8
1968	37	7.1
1969	60	5.2
1970	37	8.3
1971	43	10.1
1972	52	7.5
1973	45	6.9
1974	33	7.4

Year	Number of Artists	Average Chart Career Length (Years)
1975	49	6.1
1976	43	5.0
1977	42	6.2
1978	35	4.9
1979	48	4.0
1980	41	4.8
1981	31	5.8
1982	39	3.8
1983	45	6.1
1984	41	4.7
1985	29	3.1
1986	32	5.0
1987	39	4.2
1988	64	4.1
1989	46	3.2
1990	46	3.6
1991	32	6.4
1992	30	5.4
1993	53	5.5
1994	40	7.8
1995	40	4.3
1996	55	5.3
1997	47	6.6
1998	47	4.3
1999	41	4.7
2000	42	4.0
2001	70	3.7
2002	56	3.9
2003	66	4.3
2004	62	3.4

Table 1 (continued). Average length of sample artists' chart careers by debut year, n=2,305 (outliers and "bubbling unders" removed).

Year	Number of Artists	Average Chart Career Length (Years)
2005	83	3.3
2006	60	2.8
2007	65	1.7
2008	87	1.7
2009	100	0.1

Table 1 (continued). Average length of sample artists' chart careers by debut year, n=2,305 (outliers and "bubbling unders" removed).

Table 1 lists the number of debut artists each year and the average length of those artists' chart careers. The 37 artists in the sample who placed an album on the charts for the first time in 1970, for example, eventually enjoyed an average of 8.3 years on the album charts. The 48 artists who debuted in 1979, on the other hand, averaged 4.0 years. Averages after 2006 needed to be considered carefully though, with the understanding that there was the potential for those artists continuing to chart after the analysis period. The overall average for all sample artists, excluding outliers, was 4.49 years. With the outliers included the result was 5.35 years.

The findings indicate that the lengths of artists' chart careers have decreased markedly. Further analysis indicates that the general downward trend began in the 1970s, after the peak period of 1970-1974. In fact, the most significant five-year decrease was during the period 1975-1979. Another sharp reduction occurred between approximately 1999 and 2009.

During more recent years there was a noticeable increase in the number of debut artists, a figure that would definitely not be changed or affected by the cutoff point. In terms of debut artists, some prior years had experienced spikes that were not necessarily associated with longer term trends. In 1969, 1988, and 1993, for example, the number of debut artists grew significantly compared to the prior year, with increases of 62, 64, and 77 percent respectively. During the 2000s, though, there was a relative explosion in the number of new artists landing on the survey each year. The data suggests that in 2008 and 2009 the numbers appear to markedly increase. In 2008 there were 87 new artists, the highest total for any observed year to that point. In 2009 the number grew to 100, yet another new mark.

Viewed from another perspective the number of debut artists was also higher as a percentage of all of the artists that charted at any time during those years, with the second and third highest percentages of all of the years analyzed. 2005 had the highest percentage of artists (32%) that were new to the charts that year. Table 2 compares the number of debut artists each year with the total number of sample artists that were present on the charts at any time during each respective year.

Year	Number of Debuts	Number of Charting Artists	Percent
1955	12	67	18
1956	8	70	11
1957	7	73	10
1958	3	67	4
1959	7	70	10
1960	14	84	17
1961	19	100	19
1962	36	127	28
1963	34	139	24
1964	21	133	16
1965	29	135	21
1966	29	144	20
1967	33	158	21
1968	37	163	23
1969	60	209	29
1970	37	196	19
1971	43	217	20
1972	52	233	22
1973	45	246	18
1974	33	230	14
1975	49	267	18
1976	43	280	15
1977	42	278	15

Table 2. Percent of sample charting artists that were debut artists, by year, n=2,305 (outliers and “bubbling unders” removed).

Year	Number of Debuts	Number of Charting Artists	Percent
1978	35	276	13
1979	48	296	16
1980	41	277	15
1981	31	279	11
1982	39	256	15
1983	45	264	17
1984	41	256	16
1985	29	256	11
1986	32	242	13
1987	39	251	16
1988	64	266	24
1989	46	263	17
1990	46	260	18
1991	32	231	14
1992	30	218	14
1993	53	250	21
1994	40	246	16
1995	40	254	16
1996	55	263	21
1997	47	263	18
1998	47	275	17
1999	41	272	15
2000	42	191	22
2001	70	215	33
2002	56	204	27
2003	66	242	27
2004	62	243	26
2005	83	260	32
2006	60	281	21

Table 2 (continued). Percent of sample charting artists that were debut artists, by year, n=2,305 (outliers and “bubbling unders” removed).

Year	Number of Debuts	Number of Charting Artists	Percent
2007	65	301	22
2008	87	293	30
2009	100	347	29

Table 2 (continued). Percent of sample charting artists that were debut artists, by year, n=2,305 (outliers and “bubbling unders” removed).

The average annual percentage of debut artists among the sample artists that charted each year is 19%. From 2000-2009, though, the percentage has never dropped below 20. An increase in the number of new artists making the charts during that time frame might seem to be encouraging news. However, that was also a period of decreasing chart careers, as the findings indicate.

Other statistics that could also offer perspectives on trends regarding the lengths of artists’ time on the charts were also calculated. Recall that the defined length of chart careers for the research was based on the month artists first debuted and the last month they appeared in the rankings. The number of successive weeks their final charting album spent on the charts had the effect of potentially increasing the numeric value of the length of their presence. How many weeks prior releases occupied the charts, however, was irrelevant to that particular calculation. In other words, consider two hypothetical artists. One of them debuted in March of 1968 with an album that spent one week on the charts. His last album to make the charts, in March of 1975, was present for only one week. The other artist, however, debuted in March of 1998 with an album that spent thirty weeks in the tally, and her last charting album spent twenty weeks on the charts before falling off in March of 1995. The lengths of the two artists’ chart careers are the same. But their level of success and impact on those charts is clearly different. In Table 3, the average number of calculated *total weeks* spent on the charts during artists’ careers is displayed by dataset. The average number of weeks per charting album is also included. Years including artists debuting prior to 1967, when there were fewer than 200 positions, were not included, for a more accurate comparison.

Year	Number of Artists	Avg. Total Weeks All Albums	Avg. Weeks Each Album
1967	36	168	12
1968	38	100	12
1969	66	84	10
1970	40	149	11
1971	42	104	11
1972	56	126	14
1973	47	73	11
1974	35	85	12
1975	53	74	12
1976	43	46	9
1977	44	76	13
1978	37	74	15
1979	49	51	10
1980	45	78	14
1981	32	56	11
1982	41	61	17
1983	46	61	14
1984	41	60	16
1985	30	48	16
1986	33	63	18
1987	41	47	15
1988	69	48	16
1989	49	53	19
1990	47	75	18
1991	32	112	21
1992	31	78	18
1993	56	49	14
1994	40	114	20
1995	41	39	13

Table 3. Weeks on album charts of album releases by sample artists, n=2,145 (artists debuting after 1966 and before 2010, excluding “bubbling unders”).

Year	Number of Artists	Avg. Total Weeks All Albums	Avg. Weeks Each Album
1996	55	52	14
1997	48	74	15
1998	49	41	13
1999	42	66	17
2000	42	35	12
2001	70	32	10
2002	56	44	16
2003	66	44	17
2004	62	31	10
2005	83	35	13
2006	60	20	10
2007	65	12	7
2008	87	10	7
2009	100	4	4

Table 3 (continued). Weeks on album charts of album releases by sample artists, n=2,145 (artists debuting after 1966 and before 2010, excluding “bubbling unders”).

The “Average Total Weeks All Albums” figures essentially identify how many weeks, on average, the artists were present on the *Billboard* album charts during their careers. So, for example, artists who debuted in 1992 spent an average of 78 total weeks (for all of their charting album releases) on the charts before their last charting album exited. Though they averaged 5.4 years (from Table 1) between their first appearance and that exit, the total weeks their albums occupied the charts during that window averaged 78 weeks (1.39 years out of that 5.4). The “Average Weeks Each Album” figures factor in the number of albums they charted with during that time. For example, charting albums by artists who debuted in 1992 spent an average of 18 weeks there, compared to 1982, when the average was 16 weeks.

In 2007 and 2008, the average time albums released by those artists spent on the charts was seven weeks, seeming to indicate a high level of turnover for those albums. The numbers for more recent years, however, were considered with caution, since a large majority of the artists would

only have one album, their first to chart, factored into the figures. Moreover, the calculation for 2009 was surely understated to an indeterminable degree, since those albums could have stayed on or returned to the charts beyond the cutoff period.

Other statistics that offer a perspective on artists' chart careers, particularly the extremes relating to very short careers, were also calculated by debut year in order to gain a long-term empirical perspective. In some cases an album represented an artist's only placement in an entire career. Table 4 outlines findings regarding three versions of extremely short "one and done" types of chart careers observed in the sample population. Along with the number of debut artists each year, the amount and percentage of those that charted with only one album are included as well. The amount of those albums that were on the charts for less than one month and/or only one week is also listed.

Year	Number of Artists	Artists With Only One Album	Percent Only One Album	One Month or Less on Charts	Percent Only One Month	One Week on Charts	Percent Only One Week
1967	36	14	38.9	9	25.0	1	2.8
1968	38	17	44.7	10	26.3	1	2.6
1969	66	26	39.4	13	19.7	0	0.0
1970	40	16	40.0	9	22.5	1	2.5
1971	42	18	42.9	3	7.1	0	0.0
1972	56	25	44.6	5	8.9	0	0.0
1973	47	25	53.2	1	2.1	0	0.0
1974	35	12	34.3	3	8.6	0	0.0
1975	53	19	35.8	8	15.1	0	0.0
1976	43	24	55.8	6	14.0	0	0.0
1977	44	18	40.9	5	11.4	0	0.0
1978	37	22	59.5	0	0.0	0	0.0
1979	49	24	49.0	9	18.4	0	0.0

Table 4. "One and Done" album chart performances. The number of debut artists each year whose chart career was..., n=2,145 (artists debuting after 1966 and before 2010, excluding "bubbling unders").

Year	Number of Artists	Artists With Only One Album	Percent Only One Album	One Month or Less on Charts	Percent Only One Month	One Week on Charts	Percent Only One Week
1980	45	17	37.8	2	4.4	0	0.0
1981	32	14	43.8	3	9.4	0	0.0
1982	41	14	34.1	2	4.9	0	0.0
1983	46	17	37.0	5	10.9	0	0.0
1984	41	21	51.2	4	9.8	0	0.0
1985	30	13	43.3	4	13.3	1	3.3
1986	33	17	51.5	2	6.1	1	3.0
1987	41	21	51.2	8	19.5	1	2.4
1988	69	31	44.9	15	21.7	0	0.0
1989	49	26	53.1	3	6.1	1	2.0
1990	47	31	66.0	9	19.1	1	2.1
1991	32	11	34.4	2	6.3	0	0.0
1992	31	13	41.9	2	6.5	1	3.2
1993	56	12	21.4	5	8.9	3	5.4
1994	40	7	17.5	4	10.0	3	7.5
1995	41	19	46.3	8	19.5	1	2.4
1996	55	22	40.0	10	18.2	3	5.5
1997	48	14	29.2	8	16.7	2	4.2
1998	49	17	34.7	11	22.4	6	12.2
1999	42	17	40.5	9	21.4	2	4.8
2000	42	15	35.7	9	21.4	3	7.1
2001	70	29	41.4	20	28.6	13	18.6
2002	56	18	32.1	8	14.3	4	7.1
2003	66	18	27.3	12	18.2	8	12.1
2004	62	19	30.6	17	27.4	11	17.7
2005	83	25	30.1	21	25.3	12	14.5
2006	60	24	40.0	15	25.0	6	10.0

Table 4 (continued). "One and Done" album chart performances. The number of debut artists each year whose chart career was..., n=2,145 (artists debuting after 1966 and before 2010, excluding "bubbling unders").

Year	Number of Artists	Artists With Only One Album	Percent Only One Album	One Month or Less on Charts	Percent Only One Month	One Week on Charts	Percent Only One Week
2007	65	31	47.7	26	40.0	17	26.2
2008	87	66	75.9	49	56.3	25	28.7
2009	100	99	99.0	81	81.0	61	61.0
Totals	2,145	958	43.2% average per year	455	17.9% average per year	189	6.3% average per year

Table 4 (continued). “One and Done” album chart performances. The number of debut artists each year whose chart career was..., n=2,145 (artists debuting after 1966 and before 2010, excluding “bubbling unders”).

Averaging the annual figures, the overall percentage of artists each year who charted with only one album in their chart career thus far was 43.2%. The percentage for 2009, at 99%, was naturally enormously higher, since artists debuting that year would have had to chart with two albums in that same year to not be included. 1993 and 1994 were found to be especially low-percentage years, indicating that a larger share of those artists managed to chart more than once. Four of the six lowest annual figures, however, were from the years 2002-2005, which suggested that in more recent years a higher percentage of debut artists were able to return to the charts at least one more time, a promising trend. As time passes and chart activity continues, the 2006-2009 percentages will likely improve to some degree and provide a better indication of just how promising.

The frequency of artists charting for only one month or less during their careers clearly increased over the last decade. The number of those artists charting for only one week during their careers also increased. Both of these statistics, though, were understood to be subject to change to a degree. Artists who debuted 2007-2009 have a higher probability of placing another album on the survey after the cutoff period, and there is certainly the possibility that those from several years prior could as well.

### Additional Research Possibilities

Further research could analyze correlations of significant trends in the industry to the figures calculated in the research in order to better un-

derstand their implications. A myriad of potential causes might explain the findings. It's also doubtful there is but one explanation. But there are a few possibilities that could warrant detailed investigation. For example, various factors relating to changes in the music business and the practices within it, the effects of technology on the music industry, and even the nature of the charts themselves—given the shifting economics of recorded music—could have affected changes to artists' time spent on the charts.

U.S. annual sales of recorded music fell from \$14.6 billion to \$6.3 billion between 1999 and 2009.<sup>18</sup> One result of the drastic decreases was downsizing by record companies.<sup>19</sup> Some record labels have shuttered and large distribution companies have consolidated.<sup>20</sup> Changes to business practices and actions taken in light of those conditions might have had an effect on the lengths of artists' chart careers. This might include the reduction of artist rosters, taking less risk with new artists, or a reduction of resources dedicated to artist development.

The shift to music discovery and consumption via digital delivery might have had an effect as well. File-sharing and free streaming options, for example, have given consumers the ability to own or listen to music without buying it.<sup>21</sup> The ability to purchase or acquire single tracks rather than entire albums, an ability made more possible by digital delivery, might have played a role and might be worth separate investigation.<sup>22</sup> That shift may have reduced the dollar amount of sales and also affected consumers' and music tastemakers' loyalty to songs as opposed to artists.<sup>23</sup>

Sales charts reflect activity in the marketplace. But the shifting economics of recorded music can affect the nature of those charts. As an example, for years the minimum amount of unit sales required to land among the Top 200 albums was five to six thousand copies in one week, whereas more recently it's less than three thousand copies.<sup>24</sup> During one week in May of 2012 the 200<sup>th</sup>-ranked title sold 2,467 units.<sup>25</sup> This lower threshold could have affected the lengths of chart careers, but might also have been a significant factor in the observed increases in the number of debut artists.<sup>26</sup> Despite the downturn in sales between 1999 and 2009, the number of albums released each year has grown compared to the prior decade, so competition for those chart positions has increased as well, potentially increasing the turnover for new artists. In 2008, the number of new albums released was approximately 105,000, a “fourfold gain from the earlier 2000s.”<sup>27</sup> By 2011, that number had fallen to almost 77,000, which is still a hefty number.<sup>28</sup>

A trend toward artists being less present on the popular album charts might be, in a sense, voluntary. Some artists have given away their recordings, charged a nominal price, or let consumers name the price.<sup>29</sup> British band Radiohead famously took that route in October of 2007.<sup>30</sup> Artists and their handlers may have de-emphasized recordings as part of their overall strategy, focusing less on record sales, which could have affected their presence on the charts. Or they may have explored alternatives for releasing recordings. Country entertainer Blake Shelton, for example, released two six-track EPs over a couple of years rather than releasing just one full-length album.<sup>31</sup>

## Conclusion

This research focused on the question of whether artists' length of time on national album charts increased or decreased over the past fifty-plus years. The findings indicate that it has decreased. Additional analysis, including the longevity of album releases within chart careers and the frequency of an extremely short presence on the charts, provided observations of artists' chart careers from other perspectives. Slower sales in recent years and lowered thresholds for making the charts are among several potential causes related to the additional findings.<sup>32</sup> Further research might help determine the most significant factors affecting these results.

Shorter chart careers might suggest that it's even more imperative for artists to more fully and quickly capitalize on their time on the charts and in the national spotlight. Record sales provide a platform from which to promote the artist's brand and to build a large audience that will potentially attend live shows, buy merchandise, etc. for many years, even after chart activity has peaked or ceased altogether. Though there's certainly a chance their future album sales will approximate prior levels, hopefully the Jonas Brothers will take full advantage of their time as commercial superstars and exploit it in their marketing efforts going forward.

While it may not be as important to a career as it once was, the appearance of an artist's recordings on the national album charts is an achievement in itself. Moreover, the notoriety it brings can help develop and extend a career far beyond the time spent there if it's fully and intelligently cultivated. Artists should take full advantage of the possibility for additional commercial success offered by their presence on those charts, though. Apparently it can be more fleeting than it once was.

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# **EntertainmentManagementOnline.com: Integrating an Online Publication into the Entertainment Management Curriculum**

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## **Abstract**

Effective writing within music and entertainment courses is important for students aspiring to become successful entertainment business professionals. This article describes an integrated writing project used to enhance student writing and industry knowledge in the entertainment management curriculum at Missouri State University. Rationale for starting a student-generated publication will be discussed, along with the complete editorial process used to publish a weekly online magazine. It will also reveal preliminary student feedback about the integrated writing project, and make recommendations for improvements. After reading this article, educators should be able to launch a similar online publication using the editorial model described.

## **Introduction**

It is commonly regarded that good writing skills are critical for maximized productivity and success within the workplace, regardless of industry. Appleman (2009) suggests that studies have shown poor writing in the workplace leads to hours of wasted time and money. It can also lead to negative impressions from co-workers (Beason 2001). Beason found that grammar errors in workplace writings, regardless of severity, provoke negative responses from co-workers. Although “to err is human,” and, therefore, a stray writing error should not provoke judgment of a professional’s competence, the negative reaction still remains. This is not surprising, considering over ninety-six percent of those polled believe writing skills are still important in the corporate world (*Wall Street Journal* 2011).

The importance of good writing is equally paramount for professionals within the entertainment industry. Individuals who work within entertainment management must write effectively over a variety of mediums

for a variety of audiences. These written pieces may include press releases, press kits, contracts, show announcements, blogs, websites, general email correspondence, sponsorship proposals, show reviews, etc. The ability to clearly communicate key points about an artist, a tour, or a show is important in creating the intended appeal to media, fans, and sponsors. Smith (2011, 46) claims effective writing skills are critical for successful progression from student to professional, to manager, or to executive within any career path. Students in academic entertainment programs may avoid negative generalizations from future coworkers (Beason 2001), and move further along their career paths if they can write more effectively.

Academic programs in music and entertainment have taken notice, and have responded with innovative approaches to improve the writing skills of their students. The University of the Pacific uses seminars to place emphasis on effective writing skills by having students conduct research and information synthesis (Chase and Hatschek 2010, 134). Emphasis on teaching writing skills was implemented into Pacific's seminars after a 2001 survey of alumni from the university's Music Management Program identified "written communication skills" as a key attribute to attaining success in the music industry (Chase and Hatschek 2010, 141). Full Sail University highlights the emergence of a variety of information delivery channels within the entertainment industry and teaches students a "trans-media approach to writing" (*Creative Writing for Entertainment* 2012). This approach recognizes the role of effective writing across multiple platforms, including social networking, mobile devices, and emerging platforms. Students at the Berklee College of Music write for an online publication, the *Music Business Journal*. The *Music Business Journal* publishes seven issues per year—three in the fall, three in the spring, and one in the summer (*Music Business Journal* 2011). The *Music Business Journal* is similar in content to the publication that will be outlined in this article, *EntertainmentManagementOnline.com*. These integrated writing programs are examples of how educators are recognizing the importance of strong writing skills across a variety of platforms for a successful career in the entertainment industry.

### A Student-Generated Publication: A Means and an End

While it is accurate to say that publishing an online magazine can be the end-goal of an integrated writing project within the entertainment business curriculum, it is also accurate to say publishing an online magazine

can be the means to creating better writers who are also more knowledgeable about the entertainment industry. And, just as there are benefits and challenges associated with incorporating a student-run music label (Butler 2007), launching a student-generated online publication has its own set of hurdles and rewards.

The initial idea for creating a student-generated online publication came as a result of a micro-grant program that Missouri State University offered to professors who wanted to implement innovative teaching methods in the classroom. As a result of receiving approximately US\$4,500 in seed money from the micro-grant program, an online magazine called *EntertainmentManagementOnline.com* was launched in 2001. (The terms “magazine,” “publication,” and “portal” will be used interchangeably throughout this article.)

Two primary goals and two secondary goals were identified that related to the integrated writing project.

The two primary goals were to 1) improve student writing, and 2) increase the students’ industry knowledge by having students create informative content through classroom assignments to serve an audience of “aspiring and seasoned entertainment professionals” (Rothschild 2012).

There is support in favor of reaching these goals. Smith insists, “Poor student writing can be dramatically improved when business professors devote small portions of class time to helping students learn to spot and eliminate common errors in composition” (Smith 2011, 42).

Lapp, Shea, and Wosley (2011) assert writing skills are enhanced when students understand their writing is utilized in a purposeful manner. Students may revise writing more carefully because a larger audience than just the professor will view their work. Further, Stout (2010) maintains that any kind of writing can clarify thinking, but we tend to spend more time and care when we intend to publish.

Heitin (2011) points out that writing for an online platform can spur engagement among, and creativity within, students in ways that conventional writing cannot. She claims that writing in the workplace has shifted from lengthy reports to concise articles that integrate text, audio, images, and outside links. She references online job and school applications, stating digital written assignments “match the real world” (Heitin 2011, 34).

Finally, properly constructed writing assignments can also help students connect with the discipline (Stout 2010) and increase their motivation and learning (Hulleman and Harackiewicz 2009).

As technology inevitably evolves, digital writing will become more and more prevalent, and skills surrounding online publications, email writing, synthesizing, and creating short reports will be critical in the workplace (Heitin 2011). Heitin encourages educators to implement digital writing components into their curriculum to better prepare students for career writing.

Secondary goals have been to 1) inspire students to contribute to their industry, and 2) enhance the visibility of the academic program. Even though this paper focuses on how the integrated writing project goes about achieving the two primary goals, these secondary goals deserve a brief explanation.

On June 15, 1995, Missouri legislators signed into law Senate Bill 340 (Public Affairs Mission) which gave Missouri State University a state-wide mission in public affairs. This mission defines a “primary way in which a Missouri State education is different from that of other universities and one way by which we educate our students to imagine the future.” Among several goals of this public affairs mission is for students to “recognize the importance of contributing their knowledge and experiences to their own community and the broader society.” As such, one of the secondary goals of the integrated writing project has been for students to view their writing for an audience of “aspiring and seasoned entertainment professionals” as a form of public service—a way of giving back to the community.

The other secondary goal is increasing the visibility of our institution’s entertainment management curriculum. This goal is accomplished by increasing our online footprint through search engine-optimized postings. Consequently, this increases website unique visits and email subscriptions by entertainment students and industry professionals seeking the kind of content provided on our website.

The following describes the model used to achieve the primary goals of improving student writing and increasing student industry knowledge in hopes that other educators may borrow from the editorial process and launch their own online publications.

### **Content of EntertainmentManagementOnline.com**

The primary content of the online magazine includes three sections: 1) weekly news summaries, 2) career profiles, and 3) interview transcripts. All three sections are graded classroom assignments. Weekly news sum-

maries are summarized articles from approved entertainment industry trade publications. These summarized news stories are posted weekly on the web portal *EntertainmentManagementOnline.com*, and sent by email to subscribers in the form of an eNewsletter during the fall and spring semesters. Career profiles are larger assignments in which students create extensive reports outlining the specific careers they are interested in pursuing within the industry. The profile includes a description of the career position, responsibilities, employment opportunities, earnings, essential skills, experience, and qualifications. The career profile also requires students to conduct a recorded interview with a professional in the position of interest. This interview is typed verbatim, and included within the career profile. The interview is also repurposed as a separate type of primary content, interview transcripts. The career profiles and interview transcripts are prepared once per course with the intended audience being aspiring entertainment professionals. News summaries, on the other hand, are prepared for weekly distribution and intended for both aspiring and seasoned industry professionals.

Secondary content found on *EntertainmentManagementOnline.com* includes book reviews, how-to excerpts, polls and surveys, internship announcements, a directory of resources, links to trade associations, and information about the Entertainment Management Program at Missouri State University (Rothschild 2012). Although this material was intended to be a prominent part of the online publication during the model's development stages, this content is a lower priority and is not regularly updated.

The news summaries constitute the most frequently updated content on *EntertainmentManagementOnline.com*. The editorial process used to produce this weekly publication follows.

### The Editorial Team and Content Management System (CMS)

The editorial team is comprised of many contributors (students), an editor (graduate assistant), and the publisher (professor).

Each fall and spring semester, students from two sections of the same course are assigned the role of contributor. In our case, there are approximately sixty students that are split into two groups (Group A and Group B). Group A is assigned to submit news summaries one week, while Group B is assigned to submit news summaries the following week. In all, each student will submit five to six news summaries every two weeks over a sixteen-week semester. A graduate student who has the ability to read

quickly and identify grammar and spelling errors is carefully selected for the role of editor. The editor spends approximately ten hours per week editing and publishing the news summaries. The publisher/manager (i.e., the professor) spends two hours per week outside of class grading the news summaries, giving written feedback to the students and answering questions from the editor about fit and style. To maintain quality and consistency, the professor and graduate student editor must agree on the standards for publication. The publisher/manager uses approximately three class periods reviewing writing guidelines and providing instructions on how to use the web-based content management system (CMS).

*EntertainmentManagementOnline.com* uses a CMS called New Digital Group Online Publishing Solution. This platform allows students to log on to a website as correspondents (contributors) for their assigned writing group. From there, students claim, write, and edit news summaries. The graduate student editor receives email notices of the submissions, edits the submissions in the CMS, and cues the news summaries for posting. Approved news summaries are automatically distilled into a weekly email sent to subscribers by a click of a button. A variety of low-cost content management systems are available that would effectively serve the purpose of an online publication and a distributed email newsletter. We recommend the highly regarded WordPress platform, as this ubiquitous blogging software is free to download, requires minimal design and coding knowledge, and allows for a variety of functions (or widgets) to be added including email utilities, RSS capabilities, commenting, and integration of social media, among others. At the time of this writing, we are currently migrating to the WordPress platform.

Important considerations when choosing a CMS include selecting a system that is internet-based (not desktop-based software) and web browser agnostic; this ensures the CMS platform is easily accessible from any home or public computer. The system should also contain varying administrator statuses with differing permissions. These permissions should vary for a correspondent, the student who may claim, write, and edit articles; an editor, the graduate student who may edit and publish submissions; and publisher/manager, the professor who may oversee and manage all roles, submissions, and other published work. The system should also have capacity for email or RSS (real simple syndication) distribution of published content. Through email or RSS distribution, the publication should result in more visits to the online publication portal because it will automati-

cally push content to subscribers who may not regularly visit the site. In addition, the CMS should have a commenting function so readers may add feedback directly to news summaries. A major advantage of using online publications within academia is the comment function, as this type of feedback allows for “social construction of knowledge and meaning making” (Hashemi and Najafi 2011, 600). Immediate feedback, especially when it is from the intended readers of an article, is more helpful in shaping writing abilities than even slightly delayed feedback from a professor (Lapp, Shea, and Wosley 2011). To track website traffic, the CMS should have Google Analytics enabled, a code that tracks the number of page views, site visitors (new and returning), and the manner in which visitors access content.

## Student Training and Resources

At the outset of each semester, students are provided with training and job aids to assist in the writing and submission process. Student training includes detailed feedback on a “practice” article all students must summarize, and continuous feedback on biweekly written news summaries throughout the course. All students are required to summarize the same practice article to understand how to synthesize relevant information from an article. The practice article is necessary for students, as many have not previously written for an online publication. The resulting “practice” news summary allows a student to understand the online submission process and clarify the professor’s instructions. During the class period after the practice news summary is due, the professor reviews the edited summaries with all students, and explains what relevant information should have been synthesized from the original article, and reviews commonly-made writing and formatting errors. As students write biweekly news summaries throughout the semester, immediate feedback is given to students the class period following the due date, in the form of a printed and corrected version of the submission.

To reinforce the above-mentioned training, students are provided resources to improve their writing throughout the semester. These resources include a detailed writing guidelines document, a how-to-submit reminder card, and access to the graduate student editor.

The writing guidelines document is critical to student success. The document serves as an in-depth explanation of *EntertainmentManagementOnline.com* and a point of reference for student correspondents.

The writing guidelines are explained to students in a single class period and divided into the following sections: purpose, news summaries overview, choosing an article, claiming an article, formatting and submitting, grading, extra points, successful writing tips, and a plagiarism statement (Rothschild 2012).

The successful writing tips section of the guidelines aids students in drafting news summaries. Because contributing writers are upper-level students, it is expected that correspondents have received previous writing instruction, and a full course in effective writing is not necessary. Due to varying levels of proficiency, however, the tips within the writing guidelines provide a reference of common writing errors to avoid, i.e., semicolon usage, active/passive voice, capitalization rules, etc. (Rothschild 2012, 7-11). The writing guidelines also contain style guidelines. Style guidelines differ from what are commonly referred to as grammar rules. Whereas most publications follow generally accepted grammar rules such as those found in William Strunk, Jr.'s classic writing guide, *The Elements of Style*, publications may adopt various style guidelines. These variances in style and formatting may include the capitalization of titles, the format of dates, and whether percentages are written in numerical form or not. For example, the *Hollywood Reporter* and *Billboard* capitalize nearly every word in article titles, whereas *USA Today* capitalizes only the first. By defining a publication style, the online magazine maintains a consistent format.

The plagiarism statement found at the conclusion of the writing guidelines is a contract signed by students as a commitment to original writing (Rothschild 2012, 12). Though every article is not individually scanned for plagiarism, a spot audit is conducted if submissions appear plagiarized. Given the availability of online articles, it is important to guard against shortcuts such as copying, pasting, changing a few words, and submitting as original work.

The reminder card is a business card-size reference for student correspondents to use while drafting biweekly news summaries. The card contains basic information including the URL of the CMS, log-in information, the procedure to claim an article, and the procedure to submit a news summary.

The graduate student editor, who is responsible for the majority of the weekly publication process, is available to students via email and scheduled office hours. Students may contact the editor about any ques-

tions or issues regarding the CMS or their submissions.

### The Article Selection Process

Students must choose to summarize articles from pre-approved sources only, and the original article must have been published within the nine days prior to the submission deadline (Rothschild 2012). This is important to ensure current news is covered. A pre-approved list of ten sources is outlined within the writing guidelines, including trade publications such as *Billboard*, *Sports Business Journal*, the *Wall Street Journal*, *USA Today*, and others. These approved news sources are predetermined by the publisher to avoid students turning to less credible and often biased blogs, company websites, etc.

Students must choose an article that will be of interest to the target audience of “aspiring and seasoned industry professionals,” is not an opinion piece, and must not have been previously summarized or “claimed” by any other student (Rothschild 2012). To ensure an article has not been previously summarized, and another student has not already placed a claim to summarize a given article, a decision tree is helpful. Figure 1 outlines the article claiming process.

The step-by-step process students must follow to claim an article is important to ensure only one summary is written per article. Students may not claim their article until after the weekly email is delivered to subscribers for the week (Rothschild 2012). By enforcing this policy, the editor

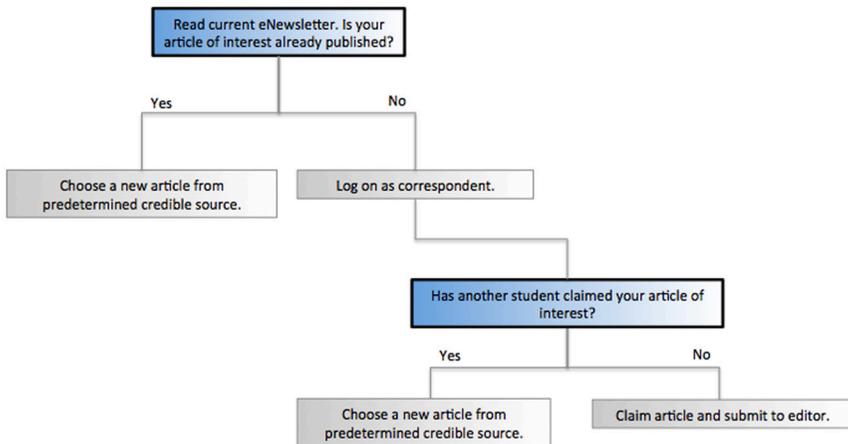


Figure 1. Selecting an appropriate article.

will receive submissions that are current and not redundant.

The claiming an article section of the writing guidelines walks the student through the click-by-click process of claiming an article within the CMS using screenshots (Rothschild 2012, 3-4). In the formatting and submitting section of the writing guidelines, the process of uploading images and providing references, a tagline, and an alternative title for images is explained (Rothschild 2012, 5-6). The grading section outlines precisely what errors students will lose points for (i.e., not writing within the 300-350 word count, misspellings, grammatical errors) and extra points students can earn (Rothschild 2012, 7).

## Acceptance Rate and Grading Process

As a rule of thumb, only about sixty percent of all submissions will be published. To appeal to students' interests and to publish a variety of content, the model allows all students to initially request to summarize news articles on one of four topics: events, music, sports, or venues. In addition to a variety of topics, students are split into two groups; these two groups alternate writing news summaries for *EntertainmentManagementOnline.com* each week. Two smaller groups of thirty students submitting every other week is also much more manageable than a larger group of sixty students submitting every week. This schedule allows the graduate student editor and professor to edit and grade thirty news summaries within twenty-four hours of submission, and provide detailed feedback on student writing within a few days of submission. The weekly editorial and publication process is displayed in Figure 2.

## Student Perceptions

We are able to glean some student reactions to writing for *EntertainmentManagementOnline.com* from student opinion surveys. The end-of-course surveys provide quantitative and qualitative data. Quantitative data is drawn from questions utilizing a four-point Likert scale (see Table 1); qualitative data is drawn from questions soliciting open-ended written responses.

Although sample size precludes us from making any statistically significant claims about the data, students generally expressed positive feedback in response to the survey questions and more negative feedback when responding to open-ended questions. Themes drawn from the quantitative and qualitative data include generally positive feedback toward an

increase in knowledge of current events, specific career paths, the industry as a whole, and an improvement in writing ability (Survey Results 2003, 2012). Negative feedback includes dislike of written coursework within a non-writing course, feelings of an overabundance of significant writing assignments, and a lack of seeing the assignments as directly benefiting

	Wednesday	Thursday	Friday
Student Correspondent	News summary submissions due by 1:00 pm	May claim article for following week after reviewing publication at 1:00 pm	
Editor	Editorial review process* begins after submissions received at 1:00 pm	Publishes news summaries by 1:00 pm	
Professor			Reviews edits and grades to return to students by following class period

**\*Editorial Review Process (24 hours)**

- 1) Editor prints unedited summaries submitted through content management system (CMS).
- 2) Editor marks grammatical and spelling errors.
- 3) Editor makes decision on whether topic has been covered in prior week;
  - a) If the topic has been thoroughly covered previously, the article will not be published, regardless of errors or writing quality. Student will receive full credit for completing the assignment.
  - b) If the topic has not been thoroughly covered, the article will be considered against other submissions for publication.
- 4) Editor chooses ten to fifteen articles to publish with varying topics and high quality writing.
- 5) Editor edits selected articles using CMS and presses “approve.” Approval publishes selected articles and sends series of excerpts through email to subscribers and automatically posts to online publication.
- 6) Editor provides printed copies with corrections to professor for grading and for return to students the following class period.

Figure 2. Weekly editing and publishing process.

industry professionals (Survey Results 2003, 2012).

Although student feedback is generally positive, future steps can be taken to improve the experience for students. First, students need to understand how vital writing skills are to succeed in a professional role in the entertainment business. The professor can express this importance to students with evidence from professionals within the entertainment industry regarding the need for strong writing skills. If this evidence is seen as credible by students, effort toward building strong writing skills may be pursued. To better provide feedback for students, a “comment” function needs to be added to all news summaries so individual students can receive feedback from readers. To illustrate the public service students are putting forth, the professor should announce figures about site visits and the number of subscribers regularly added, easily drawn from Google Analytics. Reader feedback should be passed directly along to students. Feedback from industry professionals regarding *EntertainmentManagementOnline.com* has not been regularly gathered, though email feedback from subscribers has been intermittently received. Reader surveys could also be implemented as a means of assessing the value of the publication.

## Recommendations for the Future

Over the past twelve years, the model has evolved from including a variety of different student assignments to focusing nearly solely on

Question	Agreed	Disagreed
Increased knowledge of current issues within entertainment industry	97%	3%
Increased ability to write for an online publication	86%	14%
Felt assignments aided in career preparation	84%	16%
Would recommend assignments to future students	78%	22%
Felt assignments were a service to professionals	68%	32%
Written feedback aided in improving writing skills	66%	34%
Assignments improved writing skills	64%	36%

Table 1. Student perceptions.

weekly news summaries. We would recommend any department seeking to implement an online publication into its curriculum begin with a narrow focus to better serve readers, and to extract higher quality work from student writers. Additionally, we recommend the implementation of webcasts as resources for the online publication, in addition to written resources. For example, a video and audio webcast of the process of using the online platform would be more effective and accessible for students learning to navigate the content management system. A webcast or slideshow of common writing mistakes may also be more accessible for students than a written document.

Any innovative method to enhance the writing skills of future leaders in the entertainment industry will only strengthen the professionalism of our industry. Integrating publishable writing into the curriculum is not obstacle-free, but it is an important part of preparing students for a successful career within the entertainment business. Though current students may not be fully receptive to writing across the curriculum, many see the vast benefits drawn from regular writing upon entering their professions. Young professionals with sufficient writing skills and a deeper understanding of the entertainment industry will see greater opportunity for early advancement within their careers.

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# **Slaying the Starving Artist Paradigm and Teaching Professionalism in the Entertainment Business: The Entertainment Law and Professionalism Clinic**

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## **Introduction**

This article describes the Entertainment Law and Professionalism Clinic (hereafter “ELP Clinic” or “Clinic”<sup>1</sup>), an initiative designed to expose students to the practice of professionalism while serving their entertainment industry legal needs. The Clinic moves instruction outside the boundaries of the classroom by requiring students to exercise self-directed judgments about the use of business advisors. The first part of the article discusses general notions of professionalism and proposes a definition that may be applicable to training a corps of entertainment business professionals through a service project approach. Part two describes how the ELP Clinic, currently in use at Belmont University, was developed from my observations and student interactions as a teaching practitioner of law to: (a) serve student business and legal needs by providing cost-free legal advice; (b) teach students how, when, and whether to seek professional advisors and use the members of an advisory team; and, (c) teach and promote professionalism in the entertainment industry outside the classroom. An exhaustive study of professionalism is outside the scope of this article; rather, my objective is to examine the contours of professionalism within the framework of the Clinic, and to summarize insights from its implementation and underlying principles.

## **Defining Professionalism**

Plying one’s trade in the arts can be both rewarding and unsympathetic, invoking images of starving artists and ruthless “jungles,” language coined to depict an exploitative industry that preys upon the martyrdom associated with artists whose preoccupation with producing art appears to supersede business judgment. The starving artist paradigm finds its roots in the realm of the visual arts, which has yielded some of our most inspiring

cultural contributions, yet many of the artists who gave us these treasures often died in ignominy, recognized posthumously as cultural icons whose achievements often failed to reflect financial success during their lives. For example, Van Gogh, the preeminent Dutch master, relied heavily on his family for ongoing support during his lifetime, though his *Sunflowers* painting sold for \$39 million in 1987, and others have fetched similar sums.<sup>2</sup> Though the types of transactions that drive the entertainment industry distinguish it from the fine arts, the entertainment business likewise boasts accounts of artists and composers mired in archetypal penury.

However, it is an archetype that entertainment and music business programs are poised to deem as little more than a caricature of the unwary, or germane to this discussion, the unprofessional. There are stories we celebrate, in which the scales are tipped to reverse the usual leverage scenarios that would otherwise beget inequities. In the area of copyright ownership of audio recordings, Ray Charles' business judgments resulted in calculated label affiliations and unprecedented (at the time) ownership of his masters as an example of what can properly be characterized as professionalism.

While I do not purport to suggest that dying penniless is the hallmark of a lack of professionalism, or that financial solvency is the penultimate measure of professional success,<sup>3</sup> deriving a livelihood from performing a set of activities is fundamental to delineating the minimal parameters of professional behavior. Indeed, I would argue that endeavoring to produce more Ray Charles-like conduct (in terms of business acumen) is a legitimate driver in designing the entertainment business curriculum, i.e., to train a cadre of professionals. Webster's dictionary defines "professional" as "participating for gain or livelihood in an activity or field of endeavor often engaged in by amateurs;" and, "engaged in by persons receiving a financial return."<sup>4</sup> This definition comports with entertainment business course offerings that develop core knowledge in accounting, finance, economics, marketing, artist management, intellectual property, contract law, and related courses—all fields that engage monetary outcomes founded on theories for developing not mere economic viability, but profitability as well. By teaching these principles we stipulate their necessity and significance, and may tacitly assume students will know how to use them.

The ELP Clinic represents the necessary intersection of two curricular objectives—imparting knowledge, and creating a laboratory for developing the acumen of professionalism;<sup>5</sup> it is therefore the primary focus

here for advancing a contextual definition of professionalism. There are standards at work in other contexts that are worth a brief mention, as they are valuable to a discourse on professionalism. For example, principles embedded in professional codes of conduct like those used in law, medicine, and accounting, are also relevant for the entertainment industry.<sup>6</sup> Accountability, the exercise of sound judgment, and personal integrity all apply to professionalism standards across the board.<sup>7</sup> In an era marked by rampant piracy of creative products (a menacing example of an ethical and legal dilemma), teaching a code of ethics is clearly pertinent. A common theme for law and medicine is that “adherence to an ethical code of practice and its complexity has granted... the privilege of self-regulation.”<sup>8</sup> Self-regulation is at the heart of ethical behavior, which is an important aspect of professionalism. Yet even for those professions which regulate ethical conduct, there is a personal dimension of professionalism that includes responsibility for oneself,<sup>9</sup> along with other professional ideals. Likewise, professionalism issues within the entertainment industry are not limited to an ethics code.

Alternative to the code of conduct approach, professionalism has also been defined in terms of competence and skills mastery, particularly in terms of artistic performance.<sup>10</sup> This definition is effective for building vocational excellence, but may do little to secure adequate remuneration.

The definition offered here is intended to augment, rather than replace, these definitions, to satisfy vital gaps that they do not address. Likewise, the Clinic facilitates professional conduct that lies outside these traditional definitions. Accordingly, professionalism is herein defined as:

*The exercise of informed judgment about how best to manage business affairs (including career management); and, commitment to taking initiatives to actualize such judgments responsibly, to facilitate earning a livelihood that supports personal goals and needs.*

Implicit in the definition is the need to become informed, either independently, or through the use of business advisors, and to be self-directed in the pursuit of information. An example of unprofessional conduct in entertainment that the proposed definition addresses—which the other definitions do not address—is the problem of unclaimed royalties. SoundExchange, the non-profit performing rights organization designated to col-

lect and distribute digital performance royalties, possesses approximately one million dollars of unclaimed royalties that are owed to both artists and record labels.<sup>11</sup> This predicament has existed for several years, despite information campaigns launched by SoundExchange,<sup>12</sup> the American Federation of Television and Radio Artists, industry conferences like South-by-Southwest, and articles by the popular and trade press. In applying the proposed definition to this issue, these monies likely remain unclaimed in part because of a lack of understanding about the scope of rights associated with intellectual property, or a lack of information about SoundExchange and its role. Another possibility is that the artists and labels in question spend more time on the business of creating than the business of collecting compensation. For any of these scenarios, adhering to the mode of professionalism described here would spawn the necessary vigilance to address these issues or engage an advisor to assist. Vehicles like the ELP Clinic encourage the practice of such vigilance by encouraging students to seek out this kind of information through business advisors.

### The Entertainment Law and Professionalism Clinic: Responding to a Need

As an attorney faculty member providing instruction in courses on law,<sup>13</sup> I am routinely approached after class sessions by students seeking legal advice for their private endeavors. This is likely a common occurrence for other attorney faculty teaching law, and schools may differ concerning conflict of interest policies governing the appropriateness of acting as counsel for enrolled students. Yet even if a university permits attorney faculty to advise enrolled students, complexities may make it impractical to do so, including managing the sheer number of requests that would possibly increase with spread word of a faculty member who provides free or low cost legal advice to his or her students. While it is sometimes possible to respond to requests for legal advice by transforming a private inquiry into a teachable moment, and reframing the student's question in terms of general concepts being taught in the course, there are many students whose queries require the attention of an attorney acting as advisor, not teacher, who can entertain the peculiarities of the student's circumstances and render the assistance every client seeks.

After declining a number of student requests for legal advice (in the interest of avoiding potential conflicts of interest), I observed two patterns: (1) our students were assiduously entrepreneurial, and desirous of making

good business decisions, which was their motivation for seeking my assistance. Many questions grew out of their involvement as artists, performers, writers, etc., while other students sought advice for web-based businesses or other enterprises for delivering entertainment products and services as non-artists; (2) inquiries generally confirmed that students were learning to apply the legal concepts being taught in my classes to their own situations but they still needed individual, client-centered (rather than purely academic) attention for their business activities.

As encouraging as these patterns are, they signaled a common need for legal representation that, while not directly related to the curriculum, fully supports it. The breadth of the need was not feasible for me to single-handedly satisfy, nor to comfortably disregard. As a practitioner with an experiential understanding of the importance of sound legal advice I was compelled to hearten—in a concrete way—the business initiative these students displayed and that our curriculum seeks to instill. As an academic witnessing this void almost daily, I regarded this call to action as simply consistent with my charge to seize the intersection between instruction and the real world. On this basis I began to contemplate the best vehicle for obviating the need for legal advice among our entertainment business students, and proposed the concept described in the following sections, which was fully implemented.

## Underlying Principles

Four theses underlie the Clinic and inform the definition of professionalism advocated here:

1. *Obtaining constructive advice is a skill.* Unfortunately, not all clients feel well-served by their business advisors. Litigation between managers/agents and their clients abounds. Therefore knowing when, whether, and how to meet with an advisor is important. For many students this is not common knowledge.
2. *Exercising informed judgment is preferable to reliance on hearsay or industry customs.* Knowledge is, indeed, power but incomplete or inaccurate information is its antithesis. While it may not be necessary to consult with an attorney on all matters, having a game plan for determining when such consultation will be pursued is

important, particularly in this era of DIY (do-it-yourself) that has, on the one hand, created extraordinary opportunities in entertainment and, on the other, left some participants struggling to do it *all* themselves without the benefit of advisors or good judgment.

3. *Managing business affairs requires strategy.* A classic scenario that cries out for advisory assistance is the David-Goliath situation in which the playing field between the parties to a transaction is not a level one. Strategizing with an advisor helps to balance the inequities. However, professionalism also requires adoption of a personal strategy that helps to establish a framework for what is acceptable in a transaction.
4. *Dealmaking is preferable to deal taking.* Another classic scenario ripe for displaying professionalism is one in which an industry participant is presented with a deal that is deemed acceptable simply because no other deal exists at the time. Professional judgment is often suspended, as is the exercise of initiative to evaluate the extent of financial or other benefits presented.

The ELP Clinic seeks to teach these principles through reflective seminars and clinical service.

### Designing and Operating the Clinic

To maximize student benefit and participation, a foundational criterion for the clinic was to provide legal advice to our students at no cost, i.e., on a *pro bono* basis. To do so I adopted the legal clinic model, a traditional vehicle for *pro bono* representation.<sup>14</sup> The one-day clinic is offered annually to students who sign up in advance to meet with a lawyer for a thirty-minute in-person consultation. Consultations are conducted in a single room where other consultations are occurring simultaneously; this format facilitates serving multiple students at one time.<sup>15</sup> If the student's legal issue requires representation beyond the consultation, follow-up options are offered that may involve additional *pro bono* representation, or the student may need to pay to retain an attorney, depending on the circumstances.<sup>16</sup>

A three-way partnership supports the clinic's operation:

1. The state bar association's entertainment and sports law committee furnishes a pool of volunteer attorneys with the requisite expertise to staff the clinic. Although *pro bono* service is voluntary, many states have requirements for reporting the amount of *pro bono* service licensed attorneys provide, and *pro bono* service is nationally encouraged through state bar associations and the American Bar Association.<sup>17</sup> By helping attorneys meet their state *pro bono* obligations the clinic creates a win-win, both for the university and for attorneys volunteering to staff the clinic. Faculty attorneys also volunteer to staff the clinic;<sup>18</sup>
2. The local Volunteer Lawyers for the Arts (VLA) organization provides administrative support that includes liaising with the bar association, scheduling appointments, performing intake tasks on the day of the clinic, covering volunteer attorneys on their professional liability insurance policy, compiling statistics on clients served, and supplying referral options for students requiring legal representation beyond the clinic appointment;
3. The university arranges for campus facilities to serve as the clinic's location, selects the clinic date in concert with the academic calendar, publicizes the clinic within the university community and to external entities, supplies the student client base, coordinates with the VLA, identifies statistics needed, apprises college and university administrators of the clinic's work, and has general oversight responsibility for the clinic to ensure that college objectives are met. As indicated in the clinic's underlying theses, those objectives are not limited to the provision of legal services.

### Expanding the Clinic's Reach

Further examination of the Clinic's origins elucidates additional goals which extend beyond an interest in developing a mechanism for serving legal needs, as constructive as that is. However, my impetus to act also emerged from continuously teaching students how an understanding

of the law can preclude ill-fated business deals. In doing so the magnitude of not only imparting that information, but of challenging students to conscientiously adopt a sense of responsibility, i.e., professionalism, toward it, dawned. The clinic is essential as a laboratory in this regard. However, professional conduct is like the proverbial elixir to which a student can be led, but cannot be compelled to drink—unless a clear, persuasive picture can be painted to induce thirst.

With this in view, I developed a companion seminar on professionalism. The seminar was created in the clinic's inaugural year to emphasize the value of consulting business advisors, and to publicize the clinic as an immediate occasion to exercise professionalism.<sup>19</sup> The seminar's purpose is to motivate students to reflect on past, current, or future entertainment endeavors, and to consider whether their approach to planning and conducting business transactions is strategic, informed, and intentional. In explaining that the expertise of lawyers, managers, agents, accountants, and other advisors should provide such assistance, I incorporate recommendations on criteria for selecting an advisor, how to maximize the advisor's expertise, when to seek it, and deciding how to use it. For example, in providing tips on when to seek legal counsel I recommend doing so before beginning a collaboration, before submitting creative products (whether a demo, manuscript, or film treatment), before the submission of ideas, before signing documentation, upon being offered a deal or contract, and in connection with other events. Consistent with the definition of professionalism proposed here, the seminar also seeks to heighten awareness of the negative, starving artist-like consequences that may attend to uninformed business decisions.<sup>20</sup> One benefit of offering the seminar outside the curriculum is the opportunity to speak candidly about the lack of professionalism that often pervades the entertainment industry, openly challenging the starving artist paradigm as an appropriate focus for examination, while offering an immediate solution via the clinic.

During the second year of implementation we further expanded the clinic's reach by granting the opportunity for students with a vocational interest in law to serve as clinic observers, to shadow a volunteer attorney during the consultation, and to discuss the practice of law with the volunteer. This addition was also in response to my interactions with aspiring lawyers enrolled in our undergraduate program<sup>21</sup> who wanted to participate in the clinic despite the absence of any legal issue for which they needed to seek advice. The opportunity was extended to a small number of

students and is not a primary feature of the clinic. However, it is a fitting enlargement of the clinic's scope with respect to contemplating professional conduct, and shaping student perspective on the value of seeking and providing expertise from the viewpoint of the advisor.<sup>22</sup>

## Outcomes

Originally implemented in 2009, the Clinic completed its third year of operation in April 2012. The number of students attending the professionalism seminar is estimated at over one hundred per seminar. However, the number of clients served through the clinic represents a small segment of the student population.<sup>23</sup> Factors that may account for clinic participation levels may range from the need to expand publicity efforts, to the limited number of students that can be accommodated during a three-hour clinic held once per year. A salient factor is the fact that student participation is voluntary and entirely self-directed. It is plausible that even when students are aware of the opportunity to receive cost-free legal advice, have a need to do so, and have been given information about methods and reasons for doing so, they may elect to forego the use of a business advisor. Without collecting data from non-participants, any conclusions to be drawn about their exercise of judgment would obviously be based on conjecture. Nevertheless, with that acknowledgement it is reasonable to observe that business advice is not always sought by the general population. Likewise, it is reasonable to note that similar norms may exist within our student body. If I were to extrapolate the clinic data to the larger entertainment industry, I would suggest that if the number of entertainment professionals who have the resources to use business advisors (as students do through the clinic) but who choose not to is similar to the clinic results, the data may provide some insight into levels of professionalism within the entertainment industry that helps to explain the prevalence of the starving artist phenomenon. Students who participated in the clinic adhered to the proposed definition of professionalism and thereby positioned themselves to receive both the benefits of such conduct, and the intended benefits of the clinic.

## Conclusion

Through the ELP Clinic we render a service to students who elect to receive it. Its implementation is predicated on recognized legal needs, specific theories concerning professionalism, and a desire to expand class-

room learning to encompass opportunities to practice professionalism. Students benefit on at least two levels: the clearest benefit is the receipt of high quality legal advice on pertinent matters related to the curriculum. The second is that students are being trained to conduct themselves as professionals. It would be overly simplistic to assert that professional conduct alone can eradicate the starving artist (or other arts entity) paradigm. However, if it is an archetype that entertainment and music business programs are poised to address at all, I consider the following insights from the ELP Clinic as exhortations to that end.

Impacting professionalism in the entertainment industry through the entertainment business curriculum is not automatic; it requires intentionality. The first step in building a program requires adopting a definition of professionalism, like the one proposed here, that applies to the entertainment industry and can be appropriately supplemented by definitions from other contexts. Further steps toward encouraging professionalism include an experimental approach that provides a laboratory for *practicing* professionalism. A bifurcated approach like that of the ELP Clinic facilitates both an instructional component designed to stir the professional sensibilities of students without the grade incentives of traditional coursework, as well as a clinical component wherein students are called to action—on their initiative alone—to develop the skills involved in making informed business judgments through strategic planning and business consultation. This kind of self-regulation is consistent with the definition of professionalism advanced here.

The ELP Clinic's success may be attributed to the underlying theses previously described, which are its guiding principles. The Clinic challenges the starving artist paradigm by recognizing that professionalism is an important aspect of entertainment business acumen, and offers a construct for refining and building upon academic knowledge with self-directed action. Projects like the ELP Clinic are beneficial not only for students, but for faculty who wish to seize the intersection between instruction and the real world, and can be achieved through organizational partnerships designed to work toward pedagogical goals and possibilities that have implications beyond the classroom for the entertainment industry as a whole.

## Endnotes

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1. The clinic is a project comprised of two parts: a legal clinic for providing counsel, and a professionalism seminar and reflective component. Together, both comprise the ELP Clinic.
2. Rita Reif, "Van Gogh 'Iris' to Be Sold," *New York Times*, September 3, 1987.
3. Some musicians may choose authentic expression of their own message and style over immediate monetary reward early in their careers. This can be an effective tactic if it is self-directed, deliberate, and strategic. When this kind of strategic impoverishment occurs, professionalism may be at work. However, I would suggest that this is not the average starving artist. Consequently, this article discusses the need for strategic options.
4. *Webster's Dictionary*.
5. In the context of teaching ethics through simulation as part of a professionalism curriculum, Robert Burns states: "Meaning is use. Knowing that and knowing how are deeply intertwined" to suggest that action builds on knowledge. See Robert P. Burns, "Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism," *Law and Contemporary Problems* 58, nos. 3 & 4 (1996): 38.
6. In non-entertainment spheres like securities, law, and health care, the stakes for professional misconduct are very high. In these disciplines a lack of "professionalism" may cost a patient her life, or land an executive in prison for manipulating the stock market or private funds (a la Enron) to his own advantage. Additionally, these are professions which are regulated by codes of professional conduct that are essential for providing guidance to practitioners. See Bill Wiersma, "Fixing the Trust Deficit: Creating a Culture of Professionals," *Leader to Leader* (Fall 2011): 45-50; See Diane Borders and James Benshoff, "The Mini-Conference: Teaching Professionalism Through Student Involvement," *Journal of Counseling & Development* (Sept./Oct. 1992): 39-40. See also Andrew Garman and Ru Pert Evans, et al, "Professionalism," *Journal of Healthcare Management* (July/August 2006): 219-222.
7. See Wiersma, p. 47-48, discussing professional mindsets in the context of securities, but drawing generally from his book *The*

*Power of Professionalism.*

8. See Charlotte Tulinius and Bibi Holge-Hazelton, "Continuing Professional Development for General Practitioners: Supporting the Development of Professionalism," *Medical Education* 44 (2010): 44. See also Burns, *supra*, p. 38, concerning "self-imposed restrictions."
9. Susan Dorr Goold and David T. Stern, "Ethics and Professionalism: What Does a Resident Need to Learn?" *The American Journal of Bioethics* 6, no. 4, (2006): 11.
10. See Wiersma, p. 47 concerning the professional's bias for results.
11. A lack of professionalism is not limited to the creative personality, but includes business entities like record labels as well. To be clear, the reference here to starving "artists" is not meant to exclude record labels or other entertainment business professionals.
12. See <http://www.soundexchange.com/2011/10/21/soundexchange-and-cd-baby-to-artists-labels-come-claim-your-cash/>.
13. Copyright law, intellectual property, entertainment contracts, licensing, and entertainment law are topics typically covered by law faculty teaching in entertainment business programs.
14. One of the defining moments of my tenure as a law student was participating as a student attorney in one of the law clinics offered by my alma mater. After law school, I participated in entertainment law clinics and eventually served on the board of directors for Maryland Volunteer Lawyers for the Arts.
15. This setup is common for community clinics. The din of multiple conversations creates some privacy, however, confidentiality matters are discussed with clients, and any student uncomfortable with the format may opt out.
16. The thirty-minute consultation time frame is used for planning purposes—to set the student's expectation, and to estimate the number of volunteer attorneys needed. However, as a practical matter, depending on the total number of students being served, it is not uncommon for students to receive more consultative time when time permits.
17. See [http://www.americanbar.org/groups/probono\\_public\\_service.html](http://www.americanbar.org/groups/probono_public_service.html) for a state-by-state analysis of pro bono policies.
18. Conflict of interest issues are less critical in the clinic environment since the representation is very short-term, and faculty may easily recuse themselves from serving clinic students enrolled in courses

- taught by the faculty member, knowing the student can still have her needs met by a different clinic attorney.
19. To incentivize participation in the seminar, students were permitted to earn seminar and convocation credit for attending. The number of students signing up for clinic appointments increases in response to the seminar, though we have not tracked the numbers closely.
  20. For example, I describe the circumstances surrounding Frankie Lymon's loss of songwriting credits, and the obscurity of the Funk Brothers (session musicians for "the Motown sound" at the height of Motown's success) who seemed to typify aspects of starving artist status until recent years, after production of the documentary *Standing In the Shadows of Motown* in 2002, directed by Paul Justman. See also the book of the same title by Allan Slutsky (the book focuses on bassist James Jamerson).
  21. Serving as a faculty advisor for student law organizations broadens my interactions with students around legal issues.
  22. Academic clinics are typically run by law schools to provide a practicum experience for law students. The ELP Clinic represents a different academic use for a clinical law program, though objectives can be combined for undergraduate institutions that have law school affiliates. For example, in April 2012 we extended the opportunity for students from the university's law school to serve the clinic by observing consultations to assist with the administrative tasks of the clinic.
  23. The number of student clients served in 2009 totaled 14; the total number served in 2010 was 9; total served in 2012 was 10. The clinic was staffed by 8 volunteer attorneys in 2009 and 2010, and that number was reduced by half in 2012 to more closely match the number of scheduled appointments. These numbers have worked well in managing clinic operations.

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# A Focus on Robert Gagné's Instructional Theories: Application to Teaching Audio Engineering

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## Introduction

The learning theories of Robert M. Gagné have made a lasting impression on the field of education, especially in terms of efforts in curriculum design. His contributions are now widely recognized and have been integrated into the education discipline's broad conception of ideas important to learning and instruction in several fields including the military, instructional design, the medical field, engineering, and leadership (Smith and Ragan 1996).

Gagné's major theories include his taxonomy of learning outcomes, conditions of learning, and his nine events of instruction. These theories are known more as instructional theories, as traditional learning theory is more behaviorist in nature. It is the job of instructional theory to elicit a set of rules on how changes in human performance come about. Gagné's instructional theories seek to arrange conditions of learning to provide for specific performance outcomes, which makes them more related to the field of curriculum design (see Figure 1) (Driscoll 2000).

This paper will apply Gagné's instructional theories, as well as other related theories, to a simple series of steps in teaching audio engineering in the college classroom.

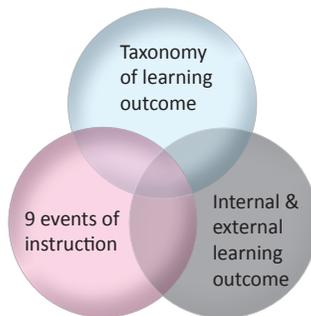


Figure 1. Relationship between Robert Gagne's instructional theories and models (Azahari 2010).

## Background

The biographical information available on Gagné makes it clear that he was a focused scholar; as a teenager, he already knew he wanted to study psychology (Richey 2000). He grew up in Massachusetts and eventually attended Yale University on scholarship, pursuing the study of psychology (Richey 2000). After receiving his bachelor's degree there, he continued on to do his graduate work at Brown University and eventually received a Ph.D. in experimental psychology (Richey 2000).

In 1941, Gagné's work as a professor in Connecticut was halted due to World War II. He served in the military in a research capacity, gradually working his way up the ranks to become a second lieutenant (Richey 2000). He eventually went back to Connecticut and continued research there through a grant from the military, then took a position at the United States Air Force's Human Resources Research Center in 1949. After continuing to work in this and other military-affiliated research facilities, he became a psychology professor at Princeton University in 1958, with a focus on researching skills related to mathematics and problem-solving. Later he would be appointed to a position at the University of California Berkeley and author several books, including his collaboration with L. J. Briggs (Richey 2000). After a lifetime of contributing through research, publishing, and scholarship, Robert Gagné died in 2002 (Cooper 2005).

## The Nine Events of Instruction

Gagné's contributions to education include several major theories of learning. One such theory is his "events of learning," or events of instruction, in which he stipulates the existence of nine learning events that are part of almost every learning outcome (Gagné 1985). These events, according to Gagné, can be used to guide the instructional efforts through a pre-ordained set of steps that meet learning initiatives (Gagné 1985). Put more simply, the instructor should be able to develop an effective lesson plan based on these nine steps. It is important to note that Gagné's theories focus on outcomes and behaviors in the instructional process and therefore have a tendency to side with a behaviorist-centered classroom approach.

The nine events of instruction begin with the event of *gaining the learners' attention* so that interest and curiosity can be sparked (Gagné, Briggs, and Wager 1992). Next, the instructor *states the objectives of the instructional effort* so that expectations of learning can be clarified and the importance of the lesson can be stipulated. The third learning event

is to *stimulate the learners' memories of previous related learning* so that meaning can be connected with the current efforts. Next, the instructor *sets out the new information* and describes the material, then *guides the learners through examples, demonstrations, and efforts of discovery*. The sixth learning event involves the instructors' *eliciting of performance* in which learners demonstrate that they have gained and assimilated new information. After this the instructor *provides feedback* both to affirm correct interpretations of knowledge and to provide assistance in the case of misunderstanding. In the eighth event of instruction the educator *provides an assessment of learners' performance* to determine whether achievement of the goals has occurred, and finally the instructor *provides reinforcement of the learners' memories of new knowledge* through helping the students apply new information to concrete scenarios (Gagné, Briggs, and Wager 1992). The exact incarnation of these events is not something that can be specified in general for all lessons, but rather must be determined for each learning objective. The events of instruction must be deliberately arranged by the teacher to support learning processes (Gagné, Briggs, and Wager 1992).

## Taxonomy and Conditions of Learning

Whereas the nine events of instruction are *externally* created by the instructor, Gagné's taxonomy and conditions of learning are the *internal* processes occurring in the student's mind. Each method of learning responds to a different external modality presented by the instructor and each signifies a unique manner of encoding information into long-term storage as well as retrieval and transfer to new situations (Gagné 1970, Ch. 4). To further clarify, the external conditions are the environment that the teacher arranges during instruction, while internal conditions are the competencies that the learner has already mastered or has the capability to master. Obviously, internal conditions of learning vary somewhat by the learning aptitude of the individual (Driscoll 2000).

The taxonomies of learning listed by Gagné (1970) include:

*Signal Learning* – Here the individual learns to make a general, diffuse response to a signal. This is a type of associative learning that has been initially studied by Ivan Pavlov who has called it the “conditioned reflex.” Much of the initial learning of early childhood is signal learning.

However, as adults most of this type of learning occurs unconsciously.

*Stimulus-Response Learning* – The learner acquires a precise response to a discriminated stimulus. This learning was called “trial and error” learning by Edward Thorndike. Initial solutions to a problem are random, but subjects modify their approach in every attempt. Success is achieved with multiple attempts. In audio engineering, this would be akin to “pushing buttons” until one finds the correct button to accomplish the task.

*Chaining* – A chain of two or more stimulus-response connections is acquired. For example, in audio engineering, getting appropriate signal flow from the microphone to the tape recorder is a series of small steps that add up to a larger objective.

*Verbal Association* – Learning definitions of objects and concepts and then learning to chain those associations. What is a transducer? What is a microphone? What is a speaker?

*Multiple Discrimination* – Learning to distinguish between two or more stimulus objects or events.

*Concept Learning* – Learners acquire a capability of making a common response to a class of stimuli. They make several direct observations until the concept is reached. A concept category can be tested by a question such as “What type of mic is an SM57...dynamic or capacitor?”

*Rule Learning* – A rule is a chain of two or more concepts. For example,  $V = I \times R$  is meaningless unless the student understands what the symbols V, I, and R stand for, and the concepts of volts, current, and resistance.

*Problem Solving* – the process of problem solving is one in which the learner discovers a combination of previously learned rules that can be applied to achieve a solution for a novel situation. Most of us call this “critical thinking.”

In this theoretical hierarchy, Gagné visualizes the start at signal learning, or prerequisite knowledge, which is required as a foundation for the second learning type of stimulus-response connections (Lawson 1974). Then, chains and verbal associations can occur, progressing through to discriminations and concepts, and finally arriving at rules and problem solving. For one to achieve any of the levels in the learning hierarchy, the level before it must have been mastered (Lawson 1974). The process of concept formation involves all eight processes and if learning has been skipped or not mastered at any previous level, there is perceptible deterioration at all higher levels (Gagné and Wigand 1970).

### Applications – Teaching Audio Engineering

Gagné believed external learning environments could be constructed by working backwards from the final learning objective. The instructional goal is a combination of several individual objectives that are to be integrated into a comprehensive purposeful activity. When designing any type of curriculum instructors must constantly ask themselves, “What are the intellectual skills one needs to have mastered in order to learn the new objectives?” Answering this question will then facilitate the hierarchy of design, i.e., instructional sequencing (Driscoll 2000).

Gagné realized that learning is a co-creation between the learner and the learning experiences. The instructor must create an environment where learners have a good chance of creating new pathways in their brains (Graff 2006). It is widely known that lecturing is the dominant method of teaching on college campuses (McKeachie 2002). However, McKeachie (1986) found on average a student can recall 70% of the information presented in the first ten minutes of a lecture and only 20% of the information presented in the final ten minutes. Griffiths, Oates, and Lockyer (2007) suggest that the retention rate is much higher when the engagement and involvement in learning is high. An example of this would be to engage learners in a practical task rather than simply reading the task procedures. In this type of classroom, the instructor acts as a facilitator who increases student motivation and learning through sharing and self-development.

The incorporation of Gagné’s nine learning events allows the college-level instructor to do just this—develop a curriculum design that is instructor-facilitated and uses multiple modalities for effective retention. This lesson design should provide an effective external learning environment (stimuli that is presented externally to the learner) as well as touch on the internal taxonomies of learning (cognitive capabilities of learner) mentioned above.

The example used for this scenario will be my instruction of sophomore students in a basic college audio engineering course (see Table 1). My goal for the students in this exercise is to apply basic studio microphone techniques to record an acoustic instrument.

The first learning event in Gagné’s theory is to *gain the learner’s attention*. In a recording education setting, I typically begin with a humorous photo. I sometimes use the “more cowbell” Will Ferrell photo from the famous *Saturday Night Live* skit. Most students are familiar with this pop culture skit and begin laughing. This type of tool echoes the research of those such as Allan Paivio, who showed that visuals can provide the brain with much more than simple words can (Graff 2006). The most important point is that I have and maintain their attention. I then show quick visuals of several different miking techniques used by famous bands and engineers. The students realize that professional audio engineers have been trained in the techniques on which they are about to be taught. They now feel that they must know this equipment in order to gain professional status and ultimately, employment. Gagné realized that if the learning content isn’t personally motivating to the learners, the audience’s attention cannot be kept, even if the learners are personally motivated. The instructor in a recording technology environment curriculum should give the students reason for why they should care about learning the topic.

After the laughter and awareness has diminished, I quickly cover step two, *identify the objective*, by giving students a one-page handout showing the instructional goals of the assignment as well as the specific steps needed to achieve these goals. The handout states, “After completing this lesson the students will be able to understand the steps required for choosing the right type of microphone, how to place microphones in a studio setting, and how to properly document the results.” They now know what the focus of their learning will be for this class.

Gagné’s third event of instruction is to *stimulate prior learning memories*. For this, I refer back to concepts related to the differences between

Event of Instruction	Purpose	Classroom Activities
1. Gain attention	Activates the receptors with the use of stimuli	Humorous or interesting visual shown to capture student's attention. Then show quick visuals of several different miking techniques used by famous bands and engineers.
2. Inform learners of objectives	Create the sense of expectation for learning	Give a handout at beginning of class summarizing activities and goals for this class.
3. Stimulate recall of prior learning	Retrieve and activate the information stored in short-term memory	Question students on learning from their prior courses and experiences to stimulate prior knowledge.
4. Present the content	Create or increase the selective perception of content	Instructor shows his or her technique to class.
5. Provide learner guidance	Encode the information semantically into the storage of long-term memory.	Instructions written on whiteboard and materials are laid out to clarify and organize the information.
6. Elicit performance	Respond to questions to further enhance encoding and ensure verification.	Students setup microphone in tracking room without the help of instructor. They also record microphone in control room on multi-track and listen to performance, making adjustments as they go along. All practices are tied to learning objectives laid out at beginning of class.
7. Provide feedback	Reinforce and assess the correct performance.	Instructor provides feedback on completion of the exercises within the tutorial. Also shows correct answer for incorrect attempts as learning reinforcement.
8. Assess performance	Retrieve and reinforce the knowledge or skills as the final evaluation.	Individual practical exam given to measure student retention and teaching effectiveness.
9. Enhance retention and transfer to the job	Retrieve and generalize the learned knowledge or skills to new situation or real environment.	Instructor reviews at end of class time. Shows classes variations on techniques learned to encourage further application exploration and interest in content.

Table 1. Gagné's (1977) nine events of instruction: teaching an audio engineering course.

types of microphones and how they are used. This information could have come from their previous recording classes or simply through their personal listening experiences. I may play auditory examples of miking techniques (i.e., popular records) the students have previously stored in their memory. I may also show pictures of miking techniques and ask the students questions about each technique based on their own experience.

For the fourth instructional event, *the presentation of content*, I go with the students into the tracking room and show them the microphone setup I chose for a particular instrument (most likely set up before class). The students may then ask me questions regarding the setup I chose. This provides an opportunity to fulfill Gagné's fifth event of *providing learning guidance*. I answer questions and more importantly, let them mirror the microphone setup on a new instrument (step 6, application).

During the *application* phase learners must be allowed to make mistakes. Gagné's theories state that when a learner figures out why certain techniques do not work it may be more effective than the instructor showing how things actually work. In other words, learners need to fail. Learners must have the hands-on experience by letting them *experience*—not just showing them or describing it to them (Graff 2006). It is important to note during these practical stages of learning that emotion, or affective learning, plays an important role. Most learners cue off that which they feel. In Gagné's model, emotional attachment is the key for transfer of the content to long-term memory. Personal stories related by the instructor can also increase emotional context and allow the learner to change the pacing from technical to emotional (like recording education) (Graff 2006). This is one of the reasons face-to-face instruction still has its place in music industry education.

At this point I attempt to fulfill Gagné's seventh learning event of *giving feedback*. From the tracking room I provide feedback, correcting students who improperly perform the procedure. Finally, I give a practical exam so that I can *assess student performance and learning*, which is Gagné's eighth event. Ultimately, it would be better for this to happen immediately after application, but I have found it impossible to test multiple students on the same day of instruction. Finally, I try to quickly and succinctly *review the information* that has been learned during that class period so that memory retention is enhanced. This is Gagné's ninth and final event of instruction. Each iteration of this nine-step ladder is designed to give students a meaningful payoff of learning and goal achievement.

Ideally, the “meaningful payoff” leads right into the next motivating goal (Graff 2006).

## Conclusion

Robert Gagné’s theories have greatly influenced contemporary efforts of curriculum design and more educators are moving towards frameworks such as his to develop student-centered learning modules. This can only lead to more effective instruction in disciplines where the curriculum and lesson plans are still developing such as music business and audio engineering. Further research should be done on the effectiveness of implementing these models in classroom.

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Tough is an active voting member of the Recording Academy and a member of AES.



# **Music Entrepreneurs in the Twenty-First Century: A Case Study on the Career of Jay-Z**

Leanne Perice

*The MEIEA Journal occasionally features outstanding student papers. This undergraduate research paper was written by Leanne Perice, a recent graduate of Indiana University.*

## **Introduction**

A music mentor of mine once told me “overnight success” takes about seven years to transpire. While he may have been misguided a decade ago, to achieve artistic stardom today means breaking the norms and the boundaries of the past. The make-up of a contemporary music career has undergone fundamental changes over the past fifteen years. These changes are linked to the tremendous technological advancements that have shaped the music industry in recent decades. The main impacts can be observed in the new ways artists create, market, and brand themselves as well as the altered infrastructure of the record labels and the models they employ.

To obtain success in the twenty-first century, artists need to acquire additional skills beyond creating art. When examining the careers of the top artists today, it is clear that entrepreneurship and artistry complement each other and are essential to building successful careers. Making albums and selling records is simply not enough.

This thesis will examine the career path of Shawn Carter, better known as Jay-Z, one of the most successful hip-hop moguls and entrepreneurs in the world. The successful lifestyle brand that Jay-Z has created results from a combination of artistry and entrepreneurship termed strategic brand management. This case study will trace the career of Jay-Z while extracting lessons on how to help emerging artists establish successful brand partnerships and careers. Lastly, I will use my research to forecast the direction the music industry is moving in and how artists can adapt by entering and dominating in other industries as well.

## Historical Background

Music has and will always be fundamental to human life. While the media have cast a negative shadow on the industry as being on the “verge of collapse,” to build new beginnings we must understand its current foundation. In the past thirty years the music industry has experienced drastic changes. The format of recorded music has evolved from vinyl records, to 8-track, from cassette, to CD, to MP3 digital downloads and now AAC file technology (Costello, 1). Each of these technological changes over the past three decades directly altered the industry as it stands today. While the listening formats and the devices have evolved, the distributors and record labels were forced to adapt to the changes as well.

In 1978 Philips and Sony worked together to create a uniform standard for a Compact Disc that made LPs irrelevant and outdated. In 1982 record companies put forth a worldwide statement to ensure that all CDs would be able to play on all CD players. Next came the birth of the MP3 format in 1990 (Taintor, 1). The MP3 compresses digital audio files by a factor of twelve to a size that can easily be shared between computers with minimal degradation to sound quality. Lawsuits started to appear in the mid-1990s when technology allowed people to easily pirate digital music. In 1995 people started streaming audio across the internet and in 1997 the first attempts to sell music on the internet surfaced. In 1998 the RIAA decided to take legal action against those downloading copyrighted songs by suing 1, 977 individuals for sharing music illegally on file-sharing sites (Menta, 1).

In 1999 Napster was created and changed the music industry always and forever with the debut of peer-to-peer file sharing. Shawn Fanning and Sean Parker launched Napster and were the first to offer extensive lists of popular music in a comprehensive online database. Napster was forced to shut down in July of 2001 and pay millions for damages and future royalties. However, other peer-to-peer file sharing services appeared in its place, altering how everyone accessed new music and still directly affected sales of CDs (Taintor, 1). After Napster the music industry waged a losing war against digital piracy. Although similar legal battles were won, the current demand for pirated content remains at an all-time high (Taintor, 1).

The changes in technology that altered the format and platforms by which people accessed and listened to music also had a direct effect on the infrastructure of the record industry. While most record companies did not survive the initial changes of the industry, by the end of the 1980s the ones

that did were referred to as the “Big 6” and then in 1998 the “Big 5.” The larger labels over time consolidated further and with a recent merger of EMI with UMG it has reduced the major labels to the “Big 3” to include, Universal Music Group, Sony Music Entertainment, and Warner Music Group.

All of the advancements in digital technology created difficult conditions for the record labels. The progress in technology has enabled new artists to build their own careers and rely less on major labels to create sophisticated recordings. General manager of Octone Records, David Boxenbaum, makes an interesting statement, “No one makes illegal copies of albums that nobody wants to hear.” Boxenbaum continues to explain that even when artists are succeeding in the marketplace today, they are still selling a fraction of previous hit records. In response to music piracy, both the major and independent record labels have been attempting to compensate for falling CD sales by actively pursuing alternative models and techniques.

Record labels continue to test new ways of perfecting alternative models by engaging in various agreements with social networks like YouTube’s Vevo and MySpace. These agreements are based mostly on licensing agreements in streaming music videos for a share of advertising revenue (Africa Music Law, 1). Other models that generate great success for labels are 360 deals. The 360 deals, also referred to as “multiple rights,” are a pact that emerged in an early iteration of the deal British pop singer Robbie Williams signed with EMI in 2002 (Leeds, 1). All major record labels, and even a few independents, now use 360 deals. In this model for developing talent, the artist shares not only his or her revenue from album sales but also concert, merchandise, and other earnings with the label in exchange for more inclusive career support. For example, The Pussycat Dolls, who are signed to Interscope Records with a 360 deal, shares income from the group’s marketing spinoff Dolls-themed nightclub presently in Las Vegas with the label. Previous to this new deal, Interscope would not have been able to receive a percentage from this income source (Leeds, 1). The potential of a 360 deal grows with the popularity of an act, as they attract either loyal fans who will buy tickets, or attention from business partners who might help market spinoffs, like a fragrance.

Now labels require that they own and control the artist’s “official” website and may generate revenue from those websites by selling advertising. Many contracts in this new model also permit the sale of merchandise

created by the label using album artwork or other label-owned materials (Hussey, 1). Neither of these activities would have been included in most recording contracts a decade ago, and if artists want to benefit from such revenue, they must negotiate those terms in their contracts. This new model also requires that artists pay a portion of their touring and merchandise revenue to the record company (Hussey, 1). In the earlier years of the music industry, touring and merchandising revenue was very important to artists as their main source of income. Artists are also receiving lower benefits from digital sales and streaming than they did from CD sales. Such changes are the most prevalent new terms in current record contracts.

As traditional revenue streams and marketing tactics are proving to be less effective, “Strategic Artists Brand Partnerships” are becoming more important and beneficial. If coupled correctly, brand partnerships will complement and enhance 360 deals for both the artists and labels. While general music consumption has increased over time, physical music consumption has been in decline. Live music costs have significantly increased, forcing music owners to seek new revenue models and partnerships to subsidize costs (Pantoja, 1). The Music Marketing Forum is part of the MIDEM conference. It studies effective and currently-practiced methods for partnerships between music owners and brands. The MIDEM conference and debate consists of the leading music and brand leaders who attempt to establish common criteria for the creation of profitable partnerships. While partnerships between music owners and brands are still relatively new, the success of past and recent partnerships allow for general guidelines to emerge and for predictions about its future impact on the industry to be made. While Jay-Z is a prime example of an artist who has had success with partnerships, his were initiated due to his entrepreneurial instinct before branding became a trend. By outlining his extensive business career decisions with branding, I was able to draw several similarities on how he operated his own ventures with the criteria for branding defined by MIDEM.

Further, the concept of strategic artist branding is a revolutionary tool and model that can help guide musicians’ careers in the twenty-first century. I will use Jay-Z’s career as an example of how an artist uses brands in tandem with his or her music to create partnerships that are able to transpire into a musician-turned-mogul with a tangible lifestyle fans could “buy into.” By highlighting his noteworthy career decisions along with his partnership choices, I will be able to provide an exemplary case

study on the combination of entrepreneurship and artistry needed for artists to succeed in the contemporary music industry. Further, by tracing his exceptional career it will become evident that what made him successful can be used as a model for emerging artists.

## Jay-Z's Career

Shawn Carter, known as “Jazzy” in his neighborhood growing up, shortened his nickname to Jay-Z while trying to break into the music world. Before Jay-Z tried to secure a record deal, he was a member of a rap group named “Original Flavor,” which helped develop his skill, technique, and sound. Then in 1995 Jay-Z made his first notable decision as an artist: rather than waiting to sign with a major record label like other aspiring rappers, he created his own independent label called Roc-A-Fella Records with Damon Dash and Kareem Biggs. While this was an extremely risky strategy, Jay-Z knew if he cut out the middleman he could ultimately make more money for himself (*Biography of Jay-Z*, 1). Jay-Z believed he had a gift that was worth sharing with the world. He knew he had the ability to sell millions of records and his confidence was supported in 1995 when he landed a distribution deal with Priority Records, which was owned at the time by EMI Group. With the backing of a major distributor, Shawn Carter released his first album *Reasonable Doubt* in 1996. *Reasonable Doubt* reached number 23 on *Billboard's* album chart and is considered by many fans “an undisputed classic and a crowning achievement” (*Biography of Jay-Z*, 1). Shawn Carter released his second album titled *In My Lifetime, Vol. 1* in 1997 which peaked at number three on the *Billboard* album chart, significantly selling more units than his prior album.

The first lesson that can be learned here is that as an artist one must believe in one's talent even when others fail to recognize or support it. Jay-Z believed in himself and was able to produce his first album with a distribution deal that he landed from his belief and pursuit in his abilities. Further, networking and the ability to connect with others is also a desirable trait to create a successful career.

When analyzing the release of his second album, several business decisions made on behalf of Jay-Z explains his growing success. First, Jay-Z brought on a new team of individuals to help produce and market his album, which included Puff Daddy and Teddy Riley. Both Puff and Teddy were industry leaders, which helped build Jay-Z's credibility in the music scene and elevate his production quality. The lesson here is that artists

should experiment with new and different producers to enhance their work and to gain credibility. It is also important for artists to absorb information from mentors and surround themselves with talented team members.

Next, Jay-Z understood that while rap was extremely popular and profitable, his style of “gangsta-rap” only reached and interested a rather small portion of the fans listening to rap. Thus, Jay-Z took his same message but altered his sound to become more “pop-rap.” This decision doubled the size of his audience. Many lessons can be learned from this stage of his career. Jay-Z saw a trend and an opportunity and rather than conform, he adapted. Emerging artists need to understand the message of their music and the demographic it will appeal to. Jay-Z was able to recognize a trend and was able to expand his audience by altering his sound. It is important for artists to understand themselves, their music, and their audience from the start and keep track of how it changes as their careers progress.

A year later, Jay-Z put out another album marking his shift further into pop-rap with *Vol. 2: Hard Knock Life* in 1998. This album separated Jay-Z from other rappers at the time, driving him into superstar status as his album debuted at number one on the Billboard 200 chart, went to number one on the R&B/Hip-Hop Albums chart, and received a Grammy Award for best Rap Album in 1999 (*Biography of Jay-Z*, 1).

That same year, Shawn Carter spotted another trend that expanded his brand into a lifestyle. In Jay-Z songs he would often give shout-outs to Iceberg Apparel; Carter noticed that sales of Iceberg products increased significantly because of this. Carter approached the executives of the company, explained his influence on their brand, and offered to formalize an endorsement deal or equity stake to further their relationship. Not understanding the big picture of Carter’s request and the possible impact of this artist/brand partnership deal, the executives declined. Carter saw this as an opportunity. Instead of giving shouts out to other brands and drive their business he decided to create his own clothing line called Rocawear (*Biography of Jay-Z*, 1). Rocawear became an extension of Jay-Z as he created and designed the clothes, which intrigued his fans and attracted others interested in fashion to become a part of the Jay-Z world. This business decision allowed fans to embrace Jay-Z’s lifestyle for the first time, a lifestyle that was previously only accessible to them through his music.

In 2007, Jay-Z made another smart business decision and sold Rocawear for \$204 million dollars to the Iconix Brand Group. Iconix is a

company that markets brands with a pioneering new brand management model focused on design and lifestyle marketing. CEO of Iconix Brand Group Neil Cole commented on the deal explaining, “This is the largest acquisition Iconix has made and Rocawear is a brand that is increasing in market share and has extraordinary potential for growth. The leadership team is already in place to fulfill our mission and we will maintain complete continuity within the business by having Jay and his team in charge of all product development, licensing, and marketing” (Rhett, Starrene). By selling his brand, Jay-Z was able to make a significant amount of money, and by staying in control of the marketing and final products, Jay-Z’s pioneering leadership strategies and his loyalty to his creations are exemplified.

When Jay-Z decided to create his own clothing line in 1999, it was the same year that marked the recorded music industry’s peak in terms of CD sales (Nettwerk, 3). Whether this was a coincidence or not, Jay-Z expanded his name into a brand right as the industry for CDs was plummeting and major CD retailers such as Tower Records and Virgin Megastores were forced to shut down. Carter’s decision to venture into the clothing industry occurred at the perfect time.

This stage of Shawn Carter’s career further builds on the model I am describing. It is often said among tastemakers and managers that artists who succeed in the industry are the ones that rap or sing about what they know and have experienced. At this point, Jay-Z knew clothes and knew what his fans would like as well. By spotting this trend, and watching the sales of Iceberg apparel increase, he knew he had the ability to increase his income and expand his brand. It is important to note, that when the executives of the clothing label turned down Jay-Z, he had the confidence in himself to pursue his idea. His label was successful because it was an extension of his life, taste, and music. If emerging artists are able to communicate to their fans their true interests and beliefs, it sets them up for potential partnerships later in their careers.

Further, while working on his clothing brand, Carter did not stop making music, he understood that his music would only enhance Rocawear and in 2001 he released *The Blueprint*. *The Blueprint* solidified Shawn Carter’s position as a leader in the rap scene, especially the debut of the song *Takeover*. This song, which was directed at Nas and Prodigy, ignited one of rap’s most famous feuds. This feud caused several back and forth attack songs on each side and created massive publicity for both

Jay-Z and Nas as they both were rapping for the imagery and title, “King of New York.” Whether this feud was real or not, it engaged fans and kept the culture of hip-hop thriving. In 2005 after five years of the rap feud, at Jay-Z’s concert titled “I Declare War” he instead shocked his fans and declared peace with Nas. The two hip-hop stars took the stage together at the Continental Airlines Arena and embraced the audience together ending their battle. This decision to declare peace instead of war is a prime example of Jay-Z’s ability to be a leader and even more a metaphor on his life. The Jay-Z from the projects in Brooklyn declared the war, however the sophisticated businessman and entrepreneur declared peace, showing that change and forgiveness is essential in life to fans, extending his brand beyond music.

The lesson at this point is a willingness to embrace change. People are often quick to label an artist as a sell-out. However, change is what keeps the industry alive and artist careers thriving. It is important how artists accept, understand, and internalize their progress for it will affect the longevity of their careers. Jay-Z was able to stay focused on his chosen concept. Understanding his affect on his fans, he demonstrated maturity when he decided to declare peace with Nas. He became a role model for his fans by directing them in positive ways. This decision was extremely helpful to Jay-Z as it gave him the credibility to move forward in his career and to continue to rap about his life and his experiences as they changed, keeping his fans interested and his music fresh.

Following his collaborative path, Jay-Z partnered with the Roots for an unplugged album in 2001 and with R. Kelly in 2002. He then went on to release *The Blueprint 2: The Gift & The Curse* in 2002 and *The Black Album* in 2003. Later in 2003, Jay-Z branded himself again. He took one of his passions—sports—and made it part of his life and revenue stream. Jay-Z who is a proud Yankees fan and has courtside tickets for The Cavaliers, Knicks, and Lakers, decided to assemble a basketball team. His team, which included LeBron James, played in the Entertainers Basketball Classic (EBC), and he then became a co-owner of the New Jersey Nets. This is noteworthy as it demonstrates the importance of creating meaningful partnerships based on personal interests. While assembling a basketball team, Jay-Z also became the first non-athlete to acquire an endorsement deal for Reebok. According to NPD group, the \$13.5 billion athletic shoe industry grew by 2.6% in 2003 with the majority of growth in consumers aged eighteen to twenty-nine after the release of Reebok’s S. Carter line,

Jay-Z's birth name (Rafalko, 1). Further, in 2003 Jay-Z extended his career and brand by opening a nightclub called the 40/40 Club. He borrowed the term 40/40 from baseball; it is used to describe players who achieve forty home runs and forty stolen bases in a season. Jay-Z partnered with Desiree Gonzalez and Juan Perez, and built clubs located in New York City, Atlantic City, and Las Vegas.

It is interesting to observe how Jay-Z expands on his successful initiatives, proving that the limits to engaging in your passions are only the ones you create. This business decision exemplifies that you can never own too much of what you love.

With many simultaneous projects occurring in 2003, Jay-Z made his next smart business decision by marketing his brand to the fullest extent. When Jay-Z assembled a basketball team, he rented a bus for them to tour in, branded the bus with an image of his recently designed shoe for Reebok, while playing his music at the games and on their way to his club to celebrate after their games (Balderama, 3). Furthermore, in 2004 Jay-Z announced to the world he was retiring from recording music and accepted the offer to become president of the hip-hop label Def Jam. As the label's president, Jay-Z used his knowledge to build other emerging artists' careers. He was responsible for launching the careers of Young Jeezy, Ne-Yo, Rihanna, J. Cole, and several others. Jay-Z is also responsible for revitalizing Mariah Carey's career with her Grammy-winning Def Jam release of *The Emancipation of Mimi* (Adaso, 2). By Jay-Z taking this role as president, he was able to shape the talent entering the industry. With Jay-Z's loyal fan base he knew that his fans would also support anything or anyone he approved of, providing him and his label extra credibility. An emerging artist should understand that by helping others, you in turn keep building your fan base and continue to expand your brand.

Another notable career choice made by Jay-Z was when he resigned as Def Jam President in 2008 and signed a \$150 million deal with Live Nation, one of the biggest deals in the music industry and in his life, according to Billboard.com. Live Nation will contribute \$5 million each year to his overhead costs for five years while giving him \$25 million to finance his external investments and acquisitions, plus \$10 million per album for a minimum of three albums. The deal also includes \$20 million for associated rights that include publishing and licensing. Other artists who signed similar 360 contracts include superstars Madonna and U2 (McCarthy, 1). In Jay-Z's hit single *On To The Next One* he raps, "I don't get dropped, I

drop the label.” This lyric is in reference to him leaving Def Jam to form the venture Roc Nation with Live Nation. Live Nation Entertainment, originally a spin-off of Clear Channel, was formed from the Ticketmaster and Live Nation merger and is the leading concert promotion company controlling promoting, selling tickets, food and drinks, parking, releasing albums and managing artists (Leeds, 1). Live Nation’s deal with Jay-Z reflects and cements their beliefs that Jay-Z is a marketable and profitable brand. While Jay-Z closed an important chapter of his career, he took an opportunity that afforded him more success and more opportunities to open the next one.

Jay-Z announced on May 14, 2012 in Philadelphia that he will be headlining and curating the line-up for Budweiser’s “Made in America” festival that will take place on September 1 and 2, 2012. When he announced this festival, he said that before he agreed to this commitment he posed two questions to himself, the first, “Will this be great?” And second, “Will this help push the culture forward?” (Kaufman, 1). With festivals becoming extremely popular and profitable, Jay-Z is tapping into a market that he knows will be successful and curated a line-up based on the markets he wishes to target. He is one of the first artists to headline and curate the line-up of his own festival. Jay-Z chose artists he has worked with, artists he manages, and other talented musicians, mixing many genres for crossover appeal.

The lesson that can be learned here is entrepreneurship. With festivals being extremely popular, Jay-Z knew he had the resources, connections, and ability to curate and headline a festival that would appeal and as he said, “push the culture forward.” By integrating the top acts from all genres into one festival, Jay-Z will now be able to extend his brand to music festivals. Artists need to understand that when they have the ability to be proactive in the industry, they should utilize their connections to keep fans and the culture moving forward.

While Jay-Z’s career is still far from over, his ascent to being one of the most recognizable artists and entrepreneurs can be replicated by future artists. While many decisions at each stage of his career were extremely risky what prevails is an effective model and story of success. And while his career of superstardom can never be replicated exactly, generalized methods emerge that can help emerging artists shape their careers.

## Brand Partnerships

While artist/brand partnerships were once considered evil by many, and even viewed by some as an artist selling out, the contrary views towards such relationships exist today. Brand partnerships not only benefit the artist but branding is also used to offset costs for albums, videos, and tours (Pinchevsky, 1). According to Matt Kurb, a researcher on music management, “A brand is the perceived experience associated with any entity or the sum total of an entity’s marketing efforts” (Kurb, 1). Thus every professional musician is, or has, a brand. Since artists are in fact themselves a brand, it is how they build and manage their image that creates longevity.

As the music industry continues to change, artists and label executives are seeking new and more innovative ways to generate profits. Artist/brand partnerships have proven, when executed properly, to be extremely beneficial for all parties involved. At the advertising festival in Cannes this past summer, acclaimed artist and producer Pharrell Williams said he believes, “Brands are necessary for today’s acts. Brands have gravitated towards the internet’s accessibility much quicker than the recording industry has. So it makes sense. Music is a part of everyone’s senses, memory. What’s a commercial without a song?” (James Midemblog, 2). Laura Lang, from the ad agency Digitas, who was also present at the festival explained, “The future of those partnerships is about using music as a way to connect passions: not just putting music on a thirty-second spot.” Lang also added, “Half of the music industry’s revenue in a few years time could come from brands.” However she adds the role needs to be further defined, for we are at the beginning of a road that can take many directions (James Midemblog, 2). Since the road for artist partnerships is still being paved, it is important that partnerships are fostered strategically and that record label executives understand their artists so they can pair them successfully.

Consciously or not, talented artists have always had strong brands within their music, meaning the messages they communicate with their fans. Fans buy albums because they believe that the artists have something worthy for them to believe in, listen to, and invest their money and time in. Matt Kurb finished his article by posing the question, “Is branding people necessary to be successful?” Matt answered his question by explaining, without creating a brand, the consumer has no experience with which to understand and engage with an artist, or the commercial interests that artist represents. Record labels’ brand partnerships divisions are growing in staff

and in importance because artist branding is more crucial than ever. Living in a society that continuously markets and tries to engage us, music has a powerful advantage in seeking consumer attention. Pharrell also continues his thoughts regarding partnerships by adding, “It’s not about marketing to people, but understanding human psyche” (James Midemblog, 2). Pharrell used the company Apple to reflect the idea of trust when he said, “Steve Jobs could make macaroni and [consumers] would trust him.” While this article was published before Steve Jobs passed, Pharrell hit upon an interesting and important factor in any partnership: trust. When trust is established with a fan base, as Jay-Z has done, the consumers will pay attention to their creations.

Since branding is an essential career element for a talented artist, music labels have designed teams within their companies to help create and execute strategic brand partnerships. These partnerships are developed with artists who are ready to expand their name into a branded lifestyle. While there are many benefits to creating a successful partnership, if poorly created the opposite can emerge. However, when executed correctly, partnerships provide a gratifying experience for all parties involved, allowing target markets to enjoy and feel compelled to support the content being produced. Contrary, poorly designed partnerships can evoke negative reactions from consumers compelling them to react negatively or to quickly forget the weak association of the artists and brands. As seen in Shawn Carter’s career, he first built a solid, loyal fan base and when it grew large enough he simultaneously fostered its growth by partnering with brands and individuals to create content that reflected his interests outside of music. The results were extraordinary as he created a lifestyle with partnerships that were extremely successful.

Fabien Moreau is co-founder of The Hours, an international luxury brand that focuses on marketing collaborations between music and art with major brands to create compelling experiences that sustain lifestyle brand development. According to Fabian Moreau, when musicians partner with luxury brands they help raise their profiles and bring them exposure to an entirely new audience. Fabian continues to explain that similar to lifelong marriage, a musician-brand relationship requires the ultimate pairing. This is why partnerships must be strategically implemented and record labels have more leverage to create such “marriages” for their artists. Labels and companies such as The Hours that have successfully launched partnerships follow a general criterion. From numerous resources such as the MI-

DEM music marketing conference along with analyzing Shawn Carter's various successes with branding, the following is a guide on how to create the ultimate successful artist/brand partnership with an artist.

Initially, brands and music owners usually form partnerships with differentiating approaches, cultures, aims, and expectations. During the process, brands typically seek to realign their values, while musicians usually seek financial, media, and distribution channels. Although each side expects different gains, strategic partnerships will offer both sides five mutually exclusive objectives. The shared objectives include, exposure, market, image, distribution, and revenue (Pantoja, 3).

Based on successful partnership examples, participants at the MIDEM conference have established specific conditions they consider essential to success, all of which can be observed in Jay-Z's partnerships. The first requirement necessitates that the values of the brand, the artists, and the fan base are aligned. When Jay-Z and Reebok decided to design a shoe collection, the partnership made sense for both parties. Next, there needs to be a commitment to the project from all parties involved and a willingness to be flexible along the way. Long-term relationships provide both sides with greater opportunities and sustained benefits while short-term relationships might result in spiked revenue. While Jay-Z did not engage in a long-term partnership, he set up the precedent and model for Reebok to seek other musicians for different campaigns. For example, Reebok just signed deals with musician/rappers, Mike Posner, Rick Ross, and Tyga for their "Icons" collection new campaign, "It Takes A Lot to Make a Classic." The campaign tells the story of each musician as they travel on their journeys to become "a classic in their own right" like a Reebok shoe. The press release by Reebok explains the campaign in further detail:

Through the campaign, Reebok explains to be a Classic takes ambition and relentless hard work to earn respect. Overcoming obstacles, challenges and tackling adversity face on—it's these moments that shape one's life and create the story that defines them. Reebok Classics is celebrating that journey and seeks to inspire the work of creators everywhere through this campaign—passing the torch to all the artists and innovators who have an unwavering hunger and persistence to achieve Classic status. (Martinez, 1)

Further, it is essential to establish ongoing communication between both parties to allow for a well-executed and creative partnership to emerge. A creative campaign should utilize effective marketing techniques and tools that influence consumers and start a dialogue with them. To do so, experiential marketing should be employed so consumers feel part of the project.

Finally, both parties should continuously evaluate the partnership based on their predetermined objectives from the beginning and other assessment tools. Often simple questions such as, “Is the artist’s career worth more after the campaign than before?” and “Would both parties do it again?” are helpful. While these questions are beneficial, it is difficult to measure success and results when quantitative methods cannot measure consumer feelings and reactions. However, with interactive tools such as Facebook and Twitter companies are better equipped to judge consumers’ thoughts, advice, and feedback (Pantoja, 5).

After analyzing Jay-Z’s career it is clear that building a durable, timeless brand will translate into success and sustainability for an artist. He created a blueprint for evolving strategic brand partnerships divisions at major record labels to become familiar with and study. Strategic brand management is now the cornerstone of a lot of successful careers in the music industry. Jay-Z is one of the pioneers in creating one of the world’s most recognizable lifestyle brands. He has the ability to spot trends before they surface and then capitalize on them while increasing value to his brand. By staying focused on his dreams, music, and partnerships he has shown that Shawn Carter is the businessman while Jay-Z is the artist. In Kanye West’s song *Diamonds Are forever*, featuring Jay-Z, he sums up his career in one phrase, “I’m not a businessman, I’m a business, man.”

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**LEANNE PERICE**, 22 years old, is originally from New Jersey but currently lives in Los Angeles, California. She graduated with honors from Indiana University in May, 2012 receiving her Bachelor of Science in Public Affairs with a degree in Management and a certificate in Arts Administration. Perice also studied abroad at Oxford University's Said Business School in England and Lorenzo De'Medici University in Florence, Italy focusing on international business affairs. Her passion for the music business developed as she grew up but was confirmed when she interned for Interscope Records, Strategic Brand Partnership division.



During her time at Interscope she learned the importance of brand management and artist partnerships, which led her to write her senior thesis on this topic. Perice is also socially active and has been able to combine her passion for charity with music creating fundraisers for RSD/CPRS research and Children of Bungoma a charity in Africa. She hopes to cultivate the next generation of talented musicians by employing her research and beliefs.

## Reviews

**Will Hermes. *Love Goes to Buildings on Fire: Five Years in New York That Changed Music Forever*. New York: Faber and Faber, Inc., 2011. [www.fsgbooks.com](http://www.fsgbooks.com).**

Music scenes have played a major part in the development of popular music and the music industry for decades. *Rolling Stone* critic Will Hermes' book *Love Goes to Buildings on Fire*, whose title refers to an early Talking Heads song, documents the rich tapestry of music scenes happening in New York City from 1973 to 1978. The author was in high school in Queens during the time, and uses meticulously researched anecdotes and interviews along with personal experiences to give the reader an insider's view of both the music and its relationship to the city. The description is presented in a precisely chronological sequence, constantly switching between multiple narratives in a way that is very contemporary yet still cohesive. This technique emphasizes the simultaneity of the different musical movements growing up at the time, and also helps to describe the interaction between them. Creative hybrids and mixing of musical scenes and styles, which were common, are prominent themes throughout the book. In addition to the artists, Hermes documents in detail the contributions of labels, studios, radio stations, venues, managers, promoters, and music journalists who helped fuel and fund the musical creativity of the time.

New York was teetering on the edge of bankruptcy and riddled with crime and drugs during these years, and there is a strong focus on how music related to broader social and economic factors. The dangerous, edgy atmosphere that is described is difficult to imagine now, but one of the themes that emerges from the amalgam of interviews and stories is how such far-reaching creativity emanated during a time in which New York was deeply troubled. Many subcultures and alternative lifestyles flourished in the city during this era, and they were strongly connected with the various music scenes. Hermes skillfully analyzes how the city's economically challenged, unruly nature contributed to these movements.

The diversity and richness of music happening in New York during this time is astonishing; rock, disco, punk, hip-hop, minimalism, and free jazz were being defined and explored, and all influenced each other

in myriad ways. In the epilogue Hermes describes how the “concentrated vitality” of the 1970s music scene in New York could not be sustained as the city was revived economically. However, many of the artists, musical genres, and styles that emerged from this era are still important today, and the creative hybrids that were pioneered continue to evolve. *Love Goes to Buildings on Fire* offers great insights into how and why this unique set of musical and cultural scenes developed. It is an engaging and entertaining read that demonstrates how the creative, business, and social aspects of contemporary musical culture intertwined in a way that created a lasting impact for years to come.

Ben Neill



**BEN NEILL** is a composer, performer, producer, and inventor of the mutantrumpet, a hybrid electro-acoustic instrument. Neill’s music blends influences from electronica, jazz, and contemporary classical music, blurring the lines between DJ culture and acoustic instrument performance. He has recorded nine CDs of his music on labels including

Universal/Verve, Astralwerks, Six Degrees, Thirsty Ear, and Ramseur. In 2010 his music theater work *Persephone*, created with vocalist Mimi Gose and Ridge Theater, was presented at the Brooklyn Academy of Music Next Wave Festival. Other recent performances include Lincoln Center and Moogfest. As a concert presenter, Neill has organized shows for the River to River Festival and curated music for seven years at The Kitchen, both in New York City. He has also written and produced music for films, television, art installations and theater. Neill is an Associate Professor of Music Industry and Production at Ramapo College of New Jersey.

**Kathy Sloane. *Keystone Korner: Portrait of a Jazz Club*. Bloomington, Indiana: Indiana University Press, 2012. [iupress.indiana.edu](http://iupress.indiana.edu).**

I first met Todd Barkan at Dizzy's Coca-Cola Club in New York City, October, 2011. I was there in an official capacity, as manager/agent for jazz trombonist Wycliffe Gordon. We had booked a week at Dizzy's Club through Todd, who is programming director for Dizzy's, to celebrate Wycliffe's latest CD release *Hello Pops! A Tribute to Louis Armstrong*. Todd was there, working the room, introducing the band, and running the show. He spoke to me, and we made polite conversation. Although I found him to be a bit gruff, I knew instantly that he genuinely cared for Wycliffe, the show, and all the people in the room that came to hear jazz that night. What I didn't know (but would soon find out upon reading this collection of interviews), is that Todd is an actual veteran of this industry, a true jazz visionary with a passion for, and knowledge of, a rich musical heritage that otherwise could be lost except for people like him.

*Keystone Korner: Portrait of a Jazz Club* is a collection of images and interviews brought to life by photographer Kathy Sloane with editing of the interviews compiled by Sascha Feinstein. Luckily for us, Ms. Sloane was there during the bright moments of Keystone Korner. She always had her camera in tow with the good sense to capture the images of folks like the cook, Ora Harris, and waitresses, Helen Wray and Flicka McGurrin. Frozen in time are the incredible musicians who graced the stage night after night like trumpeter Eddie Henderson, pianist George Cables, saxophonist Dave Liebman, trombonists Steve Turre, Laurie Antonioli, Carl Burnett, Billy Harper, Calvin Keys, Eddie Marshall, Ronnie Matthews, and Bob Stewart and bassist David Williams. She continued snapping photos of people like sound man Stuart Kremsky, record producer Orrin Keepnews, publicist Terri Hinte, writers Jack Hirschman and Devorah Major, John Ross and Al Young, teacher Maria Rosa Keys, and of course Todd Barkan himself. These are faces of Keystone whose now archived images tell the story of its colorful and exciting twelve-year history.

The book is divided into seventeen short chapters, each highlighting a different aspect of the club and each told by various storytellers. The preface is told by writer, teacher, and California Poet Laureate Al Young. Mr. Young takes the reader on an historical journey of San Francisco's jazz clubs from before the Prohibition era to modern day, and helps tell the story of what it was like to experience live jazz during these various times.

He sheds light on how Keystone Korner might have gotten its name:

I enjoy imagining how Freddie Herrera, the original owner and anointer of Keystone Korner, contemplated the club's name: "Okay, so there's a police precinct next door. Why not let's make the best of this? Keystone, that's what we'll call it. We'll name it after the Keystone Kops!" (p. xxi)

A jazz club jammed up next to a police station—that was the reality of Keystone Korner. Mr. Young goes on to elaborate that having the word "stone" in the name of the business might also be *good* for business, especially during the 1970s. We learn that when Todd Barkan bought the club (for \$12,500 in July, 1972), and before he decided to feature jazz, it was featuring such acts as Jerry Garcia, Merl Saunders, and Elvin Bishop (p. xxii). Rock 'n' roll was becoming a big influence on jazz, and artists were succumbing to playing electronic instruments and music of the Beatles. Todd knew he wanted something different—a throwback to the bygone era when jazz was pure. And, so, it was reborn. At a time in San Francisco when virtually all the other jazz clubs had closed, Keystone Korner thrived and became a mecca for thirsty jazz musicians and audiences everywhere.

The next seventeen chapters are told by the various storytellers I mentioned above, each professing their love and respect for this iconic jazz club and sharing their fondness for its owner, Todd Barkan. Interspersed between these intimate stories are black and white photographs taken at Keystone Korner over its life span as a jazz club. Beautiful images of performing artists and poignant backstage moments are caught on film. These incredible images provide a rare glimpse into a world that doesn't really exist anymore. There are countless shots of musicians like Bobby Hutcherson and Dexter Gordon, and even a young Wynton Marsalis. There's Ahmad Jamal and the acclaimed Mary Lou Williams, Toots Thielemans, and Art Blakey, and even McCoy Tyner and Betty Carter. Candid shots of the appreciative Keystone audiences are interspersed between images of Todd and of the club itself with its small, intimate stage and its very large, psychedelic mural leading to the downstairs lounge where the artists would hang out.

Perhaps the best addition to the images and the interviews is a compilation recording that accompanies the text. The CD includes some of the most important musicians in the history of modern jazz and starts appro-

priately with one of Todd Barkan's guiding spirits: Rahsaan Roland Kirk, whose concerts became legendary for their transformative effervescence (p. 217).

There has been much talk about the recordings that took place at Keystone, and the way the recordings were handled, sold, and marketed. Most artists were never paid a dime for the recordings and many are still available today. Perhaps that is another topic entirely, and one that doesn't really get a lot of attention in this book. I will say, that listening to the recording while reading this book is almost transformative. Reading these stories and looking at the photos of the musicians while hearing the music coming from that very stage is remarkable. It's truly inspiring, yet nostalgic—sentimental, yet ground breaking.

Beginning with *Todd's Tune*, we learn of the young man, Todd Barkan himself, who purchased Keystone and turned it into one of the best jazz clubs San Francisco has ever known. We read of his humble beginnings growing up in Columbus, Ohio, becoming a jazz fanatic by the time he was eight years old (p. 1), and spending every penny on jazz records and concert tickets. He took his hippie self to Haight-Ashbury, playing blues gigs at Keystone Korner before he ever had the dream to purchase it and turn it into a jazz club. He was told that jazz music didn't sell well. However, if he wanted to purchase the club and book jazz musicians then he should give it a try. And try, he did. The next twelve years were full of triumphs and tribulations with Todd commenting that his greatest triumph in the world was just paying the rent (p. 3). We read about Todd's relationships with artists, how he was able to scrape enough money together to feature them for multiple week runs, and how he double-billed certain acts for the first time. We learn how his unique vision for presenting jazz enabled him to have sold-out audiences each night despite his weak business sense. There existed a permeating effort among those who brought life to Keystone. From Ora Harris agreeing to set up a kitchen in a closet so patrons and musicians could have a good home-cooked meal, to saxophonist Rahsaan Roland Kirk eventually moving to San Francisco just so he could play there on a regular basis, we are made aware of how each person who worked and performed at Keystone had a part in that cooperative spirit that made Keystone so very special.

The exposé continues with stories about the venue itself with chapter three, *The Space is the Place*, and chapter four, *The Backroom*. Chapter five, *Ora's Kitchen*, is told by Ora Harris, the club's cook.

The backroom was where musicians hung out after the concert. It was between the main room and Todd's office. And it was covered in incredible photographs of everybody who played there. You'd go back and talk to people, catch up with them. It was like the private part of the club. (Helen Wray, waitress at Keystone, p. 41)

...[T]here was something about the walls. I'd just walk around in a daze, looking at the walls in the backroom. (David Williams, p. 42)

The next stories talk about the business, or lack thereof, as told by some of the musicians who worked there. Chapter six is entitled *Taking Care of Business* and shines a light on how a lot of music organizations function, or unfortunately don't function, all that well. Things like ticket prices being set too low (they were only \$3.50 a show at Keystone), not having a liquor license in place, low pay or no pay for musicians and staff, and no contracts in place. Chapters seven, eight, and nine shed light on how Keystone was more than just a jazz club. It was a school—a place to learn about jazz and the musicians who brought it to life and to hear artists play together for the first time, experiencing the musical dialogues that would take place between the musicians. It was the ultimate pool of improvisational genius known only as jazz. There is a chapter on the great Dexter Gordon that provides the reader a rare glimpse into this man's personal space—what he liked to drink, and his stage habits. And then there are several chapters comparing the Keystone Korner to jazz clubs on the East Coast. There is a chapter from Orrin Keepnews, a record label executive from Fantasy Records who frequented the club and recorded within that space several artists with whom he worked. (This chapter by Orrin helps us understand the club from a more moderate viewpoint—he was neither a musician at the club nor a big fan of Todd's.) Chapter 14 is entitled *Bright Moments* and is a litany of who's who that graced the stage at Keystone, as well as a remembrance of everything that was great during those twelve years, shining a light on artists such as Miles Davis, Ornette Coleman, McCoy Tyner, and even Bill Cosby. Chapter 15 is aptly entitled *Rifficals* and is told by Jack Hirschman, a writer and visual artist who would come to the club and create politically inspired posters. Chapter 16, *Then and Now* looks back at the days of Keystone as compared to the

jazz scene today—not just in the Bay Area, but across America. And lastly, Chapter 17, *The End of Keystone*, a chapter that is somewhat speculative in nature as told by several of the storytellers, is a tale of why the club closed and how it was believed to have encountered its current fate with some blaming Todd's poor business regimen and others blaming the jazz fans' fickle attitudes.

Whatever the reader's decision is about Keystone Korner after reading this text, whether you loved it, believed in it, supported it, are saddened by it, or are energized by it, one thing is certain: "Keystone Korner was the quintessential jazz club" as is best confirmed by jazz musician Wynton Marsalis who appeared at Keystone with Art Blakey before anyone knew who he was, "With the down home feeling of your favorite neighborhood watering hole and with the special spark of international artistic charisma that a knowledgeable jazz audience brings to any environment, the Keystone was a happy home to people of all persuasions."

April Brumfield

**APRIL BRUMFIELD** is Coordinator of the Music Industry Studies Program and Associate Professor at Eastern Kentucky University and serves as Assistant Chair in marketing for the music department. She handles the careers and touring of a select group of artists including world-renowned jazz trombonist Wycliffe Gordon and trumpeter Rex Richardson. Brumfield has twenty years of experience in artist management, programming, fundraising, and special events management, and has a Masters in Arts Administration from the Cincinnati College-Conservatory of Music. She is a Kentucky Peer Advisory Consultant for the Kentucky Arts Council and presents yearly professional development workshops for Kentucky Artists. She is an active member of Jazz Educator's Network and enjoys playing the trumpet.



**Stephen Marcone. *Managing Your Band: The Ultimate Responsibility* (5<sup>th</sup> edition). Wayne, New Jersey: HiMarks Publishing, 2010. [www.halleonard.com](http://www.halleonard.com).**

Now in its fifth edition, *Managing Your Band* continues to be the “go to” book for anyone pursuing the multifaceted career of artist management. Completed in 2010, the book contains the latest information on 360 deals, branding, and DIY without securing a deal with a major. It also takes a look at how to handle the quirky psychological traits of creative personalities. And for me, maybe that’s why I continue to be so high on this book; Marcone offers up-to-date standard information needed for the job, as well as “stuff” that fills in the cracks that other books don’t offer. As an industry vet for almost thirty-five years I still use this book as a resource.

Written in a minimalist style, the chapters are straightforward with, at times, meticulous citations, details, and explanations not offered elsewhere. For example, chapter one contains the classic project management model with examples of how to use it as a guide to complete tasks successfully. The marketing chapter offers examples of several successful branding campaigns, and statistical information concerning live performance revenues as well as the selling of recordings (“In 2008, only .10% of the new releases sold at least 250,000 copies”). Chapter six, “The Entertainment Company,” includes examples of several types of 360 deals with computations of the various clauses. (The author consulted with the CPA for Kiss, Three Doors Down, etc. for the details.) The touring chapter offers actual examples of the various models employed in the paying of artists by concert promoters, including split point deals and computing overages (Marcone consulted a leading booking agent). The job of the business manager (CPA) is detailed in its own chapter with an example of a funding proposal.

Two of the “left field” chapters are: Seven, “The Care and Feeding of the Creative” and Twelve, “Legal Battles.” Seven offers several psychological theories on the behavior and personality of the creative, and how to manage the business of their products (“‘Creativity itself is a quicksilver thing: an intangible, subjectively evaluated property, often purchased in commercial circles by the slightest whim or fancy.’ Edward Buxton”). In Twelve, two dozen examples of artist-manager lawsuits are described in a quasi-case-study format.

Whether trying your luck at entrepreneurship or teaching a course on it (each chapter contains objectives, a summary, and suggested projects plus a complimentary instructor's companion is available) this book is *the* guide to personal management.

Steve Leeds



Steven Leeds has worked for over thirty-five years in the industry starting as a radio producer, then doing radio promotion for Atlantic Records, moving into video and MTV in the 80s then working for Universal and Virgin/EMI. He holds a M.A. from S. I. Newhouse/Syracuse University and a B.A. from American University, and blogs/curates at [www.steveleeds.wordpress.com](http://www.steveleeds.wordpress.com). He is currently V.P. Talent and Industry Affairs at SiriusXM. Leeds is also an adjunct faculty member at Belmont University and William Paterson University.

**Simon Cann. *Jumpstart Your Music Career*. Boston: Course Technology/Cengage Learning, 2011. [www.cengage.com](http://www.cengage.com).**

It seems there is a market for an ever-expanding number of books about the music business. Cann is at his best when describing how a musician can maximize opportunities by dealing with the internet. He describes various social media services, and a number of channels to distribute one's music. The only obvious omission that I see is the Kickstarter platform, that has become the rage for fundraising.

A great deal of the book discusses business strategy, and although most of this discussion utilizes reasonable common sense, sometimes the generalities and clichés overtake the information. Another problem for the American reader is that many details of the book are useful if you are British, but for Americans the issue of value added tax, for example, is a non-existent one. When Cann moves over to a description of the "team" that assists artists he is at his weakest. All of this material is available in more sophisticated detail and accuracy in other books.

In general, I think this book is most useful not for students, but for do-it-yourselfers who are trying to get a handle on how to function in the music industry.

**Bernie Finkelstein. *True North: A Life In The Music Business*. Toronto: McClelland & Stewart Ltd., 2012. [www.mcclelland.com](http://www.mcclelland.com).**

I always marvel at how little Americans know about Canada. Finkelstein himself is low-key on this subject. One of his amusing comments in the book, discussing the Bruce Cockburn song *Call It Democracy* that was banned on U.S. radio, Finkelstein says "I have always said that when a song is banned in the U.S. it gets noticed, but when it's banned in Canada, it stays unknown. Another way to put this is to say that Canadians are very good at sweeping things under the carpet, while Americans are very good at selling the carpets."

Finkelstein is high school dropout who has had a long career as a personal manager, and owner of the Canadian label True North. Along the way he bluffed his way into major label record deals in America for his artist, co-managed a Canadian band called the Paupers with the fabled Albert

Grossman, and has managed innovative Canadian artist Bruce Cockburn (a relationship that has lasted over forty years, without a written contract).

The book offers a useful and lengthy description of how he and other Canadian entrepreneurs convinced the Canadian government to implement Canadian content radio laws, and then to establish FACTOR, the grant program that offers tour support, and funding for video and recording projects. Along the way there are the typically rock and roll lifestyle descriptions of Bernie's madcap workaholic life, concluding with his bypass surgery, weight loss, and the adoption of a more refined lifestyle. Not too refined, we infer.

**Milton Okun, as told to Richard Sparks. *Along the Cherry Lane: Tales from the Life of Music Industry Legend Milton Okun*. Beverly Hills, California: Classical Music Today, 2011.**

This is truly a remarkable book. Most music business biographies or autobiographies are either exercises in whipped cream and apple pie, "everyone has been wonderful to me," or they leave no stone unturned in describing thievery, double-dealing, and lies. Okun calls them as he sees them. When working with someone was a dream, as was the case with John Denver and Placido Domingo, he is complimentary and positive. When he feels someone has behaved unethically, he has no compunctions about naming names. For example, at the peak of Peter, Paul & Mary's popularity, Milt's royalties were 3.5%. Not of wholesale or retail, but of Peter's, Paul's, and Mary's royalties! So, if they were receiving a 10% of retail royalty, a pretty good deal in 1963, he would have been getting about 1/30<sup>th</sup> of 10%, or three tenths of one per cent!

In addition to detailing Milt's life as an arranger and producer, he goes into considerable and fascinating detail about Cherry Lane Music, his music publishing company. I was fascinated to discover that it took the company two years to figure out why they were not receiving any performance royalties from European television. What they uncovered was that each country in Europe has its own version of the necessary paperwork that must be filed with a cue sheet. Unfortunately the requirements are not uniform, and must be met precisely in order to receive proper payment. My favorite example is Portugal, where Milt reports that all cue sheets

must be filed in Portuguese.

Unlike Bernie Finkelstein, Milt Okun has led a relatively placid existence. The book details his career, and as I have already mentioned, names names and offers details about the many recording projects that Milt's name has been associated with. This is the most outstanding book I have read about the music industry in a number of years. Very few autobiographical works are truthful, informative, and relatively ego-less.

Dick Weissman

**DICK WEISSMAN** is a musician and composer who has written numerous recorded songs and instrumentals, and is now concentrating on placing music in film and television. He is the author or co-author of nineteen books about music and the music business, including *Understanding The Music Business*, and *Talkin' 'Bout A Revolution: Music and Social Change in America*.

