The Music Industry: Demarcating Rhyme from Reason and the Fleecing of Consumer Culture
I. Introduction

The recording industry has a long history rooted deep in technological achievement and social undercurrents. In place to support such an infrastructure, is a lengthy list of technological advancements, political connections, lobbying efforts, marketing campaigns, and lawsuits. Ever since the early 20th century, record labels have embarked on a perpetual campaign to strengthen their control over recording artists and those technologies and distribution channels that fuel the success of such artists. As evident through the current draconian recording contracts currently foisted on artists, this campaign has often resulted in success. However, the rise of MTV, peer-to-peer file sharing networks, and even radio itself also proves that the labels have suffered numerous defeats.

Unfortunately, most music listeners in the world have remained oblivious to the business practices employed by the recording industry. As long as the appearance of artistic freedom exists, as reinforced through the media, most consumers have typically been content to let sleeping dogs lie. Such a relaxed viewpoint, however, has resulted in numerous policies that have boosted industry profits at the expense of consumer dollars. Only when blatant coercion has occurred, as evidenced through the payola scandals of the 1950s, does the general public react in opposition to such practices. Ironically though, such outbursts of conscience have only served to drive payola practices further underground—hidden behind co-operative advertising agreements and outside promotion consultants.

The advent of the Internet in the last decade, however, has thrown the dynamics of the recording industry into a state of disarray. The global reach of the network,
coupled with numerous easy-to-use distribution technologies, has helped shed some light on much of the industry’s restrictive business practices. Frustrated with paying more money for music despite the industry’s lower production costs, and bolstered by the support of numerous outspoken and “victimized” recording artists, the latest generation of music listeners has turned to the Internet for its audio needs. In turn, the record labels have turned to government regulators and even more oppressive technologies in order to maintain their stranglehold over the market.

The end-result of such social and legal wrangling is unknown at the present time. How these battles play out over the next few years will forever alter the recording industry and impact consumers for decades to come.
II. Historical Analysis

THE INDUSTRY FOOD CHAIN

The music industry is awash with categories and subcategories. An approximation of the complexity of the industry in the status quo is demonstrated in Exhibit A.

Exhibit A

The absence of live performances in the “food chain” listed above is particularly noteworthy given their prominence—sometimes exclusively so—in the earlier part of the twentieth century. Indeed, without the invention of electronically recorded and broadcasted music, it is highly likely that live performances would play a much larger role within the music industry in the present day. However, it is this very shift away from live performances that catalyzed the transformation of music into a product that
could literally be packaged, marketed, and distributed virtually anywhere and to anyone. A new industry was thus born.

SOCIAL UNDERCURRENTS

A plethora of societal conditions paved the way for the hugely successful emergence of the recorded music industry. Three of the most important circumstances, however, are the growth in American discretionary income in the latter half of the twentieth century, the invention of new recording and distribution technologies, and the increasing importance placed on intangible intellectual property.

- **Discretionary Income**: The prominence of the music industry in the status quo can be traced back to the discretionary income growth of American consumers following the end of World War II. Indeed, while virtually all domestic industries experienced post-war economic booms, the music industry (along with the airline and hotel industries) stood out as one of the largest beneficiaries. From 1939 to 1960, while the total value of U.S. goods and services rose by an estimated 433%, retail sales of music-related items exploded more than 640%. Moreover, while the growth rate of recorded music sales has slowed over the last two decades, such growth continues to keep pace with the ever-increasing amount of U.S. discretionary income.

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2 Ibid.
Further illustrating the point that recorded music sales are inexorably linked to the disposable income of consumers is the breakdown of 1997 global music sales by geographic market (see Exhibit B).  

![Exhibit B](chart.png)

As demonstrated in Exhibit B, recorded music markets comprised of less wealthy consumers only accounted for 22% of total music sales.

- **Advances in Technology**: While live performances initially fueled the music industry at the beginning of the twentieth century, technological advancements quickly resulted in the dominance of electronically recorded and broadcasted music. Indeed, technological progress served as the vehicle that drove, and continues to drive, the phenomenal growth of the music industry. In decreasing the importance placed on live performances and hence local contexts, technology-driven recorded music formats transformed the industry into one fueled by consumers goods from that of a service-based marketplace (e.g., performances rendered). In so doing,
technological innovation empowered the music industry with the ability to profit from the recycling of its music catalog across a variety of physical formats.

The last decade of the twentieth century illustrates the catalog recycling process in detail (see Exhibit C).

<table>
<thead>
<tr>
<th>Manufacturers’ Unit Shipments (In Millions)</th>
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<tbody>
<tr>
<td>1991</td>
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<tr>
<td><strong>CD</strong></td>
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<td><strong>CD Single</strong></td>
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<td><strong>LP/EP</strong></td>
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<td><strong>Vinyl Single</strong></td>
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<td><strong>Music Video</strong></td>
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<tr>
<td><strong>DVD</strong></td>
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Exhibit C

In examining the 1990s, the rise of the compact disc format can be traced as the number of CD album shipments nearly triples by the decade’s end. At the same time, the death of the cassette tape can be similarly charted as sales gradually shift away from the aging format. Of course, the introduction of each new format is accompanied by a fresh set of marketing campaigns, lobbying efforts, and consumer electronics tie-ins. The music industry’s profits and growth thus result from the disbursement of both new and recycled intellectual property (e.g., songs) across a variety of incremental mediums.

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Intellectual Property: While advances in technology actually made the commercialization of the music industry possible, it was also necessary for the industry to secure institutional safeguards for compensating song writers, artists, and their respective companies for the intellectual property being produced. In the wake of World War II, efforts were thus made by the music industry to further develop and leverage U.S. copyright laws. Exhibit D further depicts such efforts by illustrating the manner in which U.S. copyright registrations exploded during the latter half of the 1900s.

![Exhibit D](http://www.copyright.gov/reports/annual/2000/index.html)

Moreover, when cross-referencing the number of copyright registrations in a given time period to the number of patent registrations (in the fields of radio systems, sound equipment, and telecommunications) in a similar timeframe, a clear correlation emerges with respect to the evolution of intellectual property rights (e.g., copyrights) and advances in music technology (e.g., patents). The time period in between 1950

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and 1980 thus saw record annual registration filings at both the U.S. copyright and patent offices.  

**TRADE ASSOCIATIONS AND THE RISE OF THE MIDDLEMAN**

From 1948 to the early 1950s, two dueling vinyl LP formats battled for control of the record marketplace. Each format required a record player with a different playback speed and the ensuing consumer confusion resulted in a negative impact on record sales. In order to ensure that future format wars didn’t occur, the music industry banded together in 1952 to create the Recording Industry Association of America (RIAA). The RIAA’s goal was to facilitate the technical standardization of records by uniting engineers from member companies to develop a joint industry “curve” that would optimize the performance of all record playback systems. The RIAA’s initial collaboration on LPs was highly successful in bringing together the recording-side of the industry and future collaborations in the 1950s and 1960s resulted in the advent of stereo sound.

To summarize the RIAA’s efforts as altruistic and of clear benefit to consumers, however, is to overlook the long-term implications of the RIAA’s self-regulation. Indeed, most of the extortionary business practices that now permeate the music industry were conceived by the RIAA’s members. Undeniably, some of the RIAA’s achievements, such as format standardizations, have been a boon to consumers. At the

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10 Ibid.
same time, however, the RIAA relentlessly and maliciously pushes, through political, economic, and legal channels, the agenda of the record labels that comprise its membership base. Consequently, in order to combat marketplace encroachment on behalf of the RIAA, other industry participants, such as radio stations, songwriters, and artists, are forced to band together in like-minded groups with the end result being an industry full of middlemen – each participant jockeying for a portion of the marketplace; usually at the expense of the marketplace.

**CORRUPTION: PAST AND PRESENT**

Building upon the music industry’s reliance on middlemen, as well as on the antagonistic “divide and conquer” attitude endorsed by the record labels, is the growing reliance on independent record promoters in marketing new albums. These independent promoters currently sit in between the labels and the radio stations brokering “pay-for-play” arrangements in between the two parties in exchange for a percentage of the revenue.

Driven underground for decades by antiquated federal payola statutes, the independent promotion industry used to be a small, relationship-driven business that brought station disc jockeys, program directors, and label executives together in order to increase radio audience metrics and drive music sales. However, in the 1990s, fueled by intense lobbying efforts on behalf of the broadcast industry, the federal government removed most of the marketplace restrictions governing station ownership caps. Within the span of a few years, most of the United States’ broadcast stations had consolidated

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into three conglomerate holding companies that now control more than 60% of the stations in the country’s top 100 markets.\textsuperscript{12} Recognizing the importance of catering to the business practices of the new corporate broadcast giants that now controlled the airwaves, the independent promotion industry moved to legitimize its offerings. As a result, the independent promotion industry now accounts for well over $3 million in transactions each week.\textsuperscript{13} Thus, in reality, very little has changed since the payola scandals of the 1950s.

**THE RISE OF THE INTERNET**

The increasing importance of music technology in mixing, editing, and mastering new albums, coupled with the global reach and accessibility of the Internet, has produced an unprecedented series of challenges \textit{and opportunities} for the music industry in recent years. Although a great deal of time and money has been spent by the record labels in order to produce a secure set of online standards, all past, present, and future efforts are doomed to fail until the industry recognizes the following two points:

1. The record labels must stop trying to preserve the past. The business model embraced by the labels over the last few decades simply will not work in an increasingly interconnected online world. Thanks to inexpensive and increasingly more powerful computers, the barriers to entry that used to exist for artists are quickly being torn down. Garage bands can produce surprisingly professional material with COTS computers and software. The costs of actually producing an

\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
album, and hence the costs at which the labels can bill their stable of artists for similar services, are thus plummeting.

2. Increasingly, a culture of CD burning is emerging. By the RIAA’s own research, ownership of CD burners has nearly tripled since 1999 with two out of every five music consumers now owning a CD burner.\textsuperscript{14} Moreover, for the first time ever, more blank CDs were sold in 2001 than prerecorded CDs.\textsuperscript{15} Instead of fighting such an irreversible trend, the music industry should embrace it in order to introduce new artists and drive increased sales.

\textbf{All of these factors create an imminent need for change.}

\textsuperscript{15} Ibid.
III. The Solution

THE NEW INDUSTRY FOOD CHAIN

The premise that the music industry will readily embrace new methods of product distribution, such as CD burning and online file sharing, holds great promise. Undoubtedly, a large portion of the industry, including artists, retailers, and various promotional outlets (e.g., MTV, radio stations), has already expressed a desire to establish a new industry business model. However, the most significant obstacle to such a revamp of the industry is the outright refusal on behalf of the record labels to alter their existing business practices.

The record labels are fearful that any change to their existing business models has the potential to make their role in the industry obsolete. The labels don’t yet understand how to profit from the new and cheaper distribution outlets that technology and the Internet has made available to them over the last few years. As a result, the labels are determined to fight any and all modifications to the status quo. Any revolution in the industry must thus take place with the record labels removed from the process (see Exhibit E).
ARTISTS

The immediate winners, in removing the record labels from the industry equation, are the artists. In order to illustrate the excessive and unjust business terms that the record labels typically foist on their repertoire of artists, consider the fact that a debut artist will receive anywhere between 2% to 15% of his/her album’s gross sales. From this meager cut, the artist has to pay for recording costs, video production costs, touring costs, independent promotion costs, taxes, as well as music management, business management, legal, and accounting fees. Moreover, after paying off all of the aforementioned debts, the artist still would not own the intellectual property rights to the album. Indeed, unlike most literary authors, recording artists aren’t permitted to even own the copyrights to their works (see Exhibit F).

Exhibit F

Not content to play by the same rules as their corporate counterparts in other industries, the record labels also continuously lobby both state and federal legislatures in
order to ensure that they maintain complete control over, not only their artists’ albums, but also over the artists themselves. Central to this practice in California were the labels’ successful efforts to nullify recording contracts as a form of “personal service contract.” As a result, the music industry is the only business category that isn’t bound by Californian law to release artists from their contractual obligations after 7 years.\(^{16}\)

At the federal level, the labels successfully lobbied to have the 1978 Copyright Act amended in 1999 to categorize recorded music as “works for hire.” Consequently, even after the 35 years specified within the original Act have passed, the intellectual property rights of a given album would still remain the property of the record labels in perpetuity.\(^ {17}\) In order to sidestep any potentially damaging congressional hearings, the labels had their political allies attach the amendment, at the last moment, to the Satellite Home Viewing Act of 1999 – a bill that had absolutely nothing to do with the music industry.\(^ {18}\)

More recently, in an effort to insert themselves parasitically into the online file sharing industry, the record labels have attempted to use their online ventures, such as MusicNet and PressPlay, to set dangerous precedents with respect to online artist royalties. Under the guise of safeguarding online music copyrights, the labels are encouraging artists to agree to a 15% cut of online sales instead of the 50% rightfully owed to them.\(^ {19}\) Moreover, the labels are also attempting to deduct from the


\(^{18}\) Ibid.

The aforementioned 15%, “packaging and promotional expenses” – expenses that clearly don’t exist in a virtual marketplace.\(^\text{20}\)

By empowering artists with the ability to work directly with the various distribution channels (e.g., TV, radio, Internet, retail), and thus eliminating their relationships with the record labels, artists would stand to reap enormous cost savings – savings that could eventually be passed on to consumers.

**PROMOTION THROUGH FILE SHARING**

Regardless of the labels’ level of industry involvement, album sales will continue to be fueled by exposure and promotion. Fortunately, these are two virtues that are inherently intertwined with the business processes of all peer-to-peer file sharing networks. Supporting this assertion is a research study released by Jupiter Research in early May 2002 which reported that roughly 34% of veteran file swappers are now spending more money on album sales than they did before they started downloading music online.\(^\text{21}\) Furthermore, those artists that released their albums free-of-charge over the Internet, prior to their launch in stores, were able to attain record-breaking sales figures – even without the support of significant commercial radio airplay.\(^\text{22}\)

In addition to driving album sales, online file sharing services also serve to promote more diverse groups of artists. In dissecting the *Billboard* Top 200 charts over the last decade, researchers discovered a 31.5% increase in the number of new artists.\(^\text{23}\)

\(^{20}\) Ibid.
\(^{23}\) The State University of New York at Buffalo Website. [http://www.buffalo.edu/news/fast-execute.cgi/article-page.html?article=56420009]
What's more, the largest percentage increase occurred from 1998 to 2000 – exactly the same time period during which the number of Internet users exploded from 3 million to 116.7 million and file sharing networks began to emerge.

Analogous to the symbiotic relationship in between the “fair use” and commercial uses of the VCR, file sharing services will thus serve as a successful means of promotion in the wake of a post-label industry.

**DISTRIBUTION CHANNELS**

The disintermediation of the music industry will create a void in the marketplace for A&R (artists and repertoire) teams that can successfully weed out truly great artists from the vast number of online garage bands. To date, A&R groups within each label have served such a purpose. Again, however, the Internet is ideally suited to tackle such a problem.

With the labels removed from the industry, the various distribution channels will be required to step in and help cultivate new artists in addition to marketing and selling their albums. An MTV or Clear Channel “label” would thus emerge. However, unlike the “packaged” and “formulaic” model adopted by the original record labels (e.g., boy bands, teen pop artists), these new entities will leverage the vast reach and democratic-nature of the Internet to rank new artists and songs and establish valuable feedback from real consumers on how to improve their offerings (see Exhibit G).
Users of these new filter websites would thus be invited to listen to new artists and material, free-of-charge, and rate each song according to a predetermined set of criteria, as well as offer more specific feedback. Similar to the benefits provided by file sharing services, filter websites will thus serve to promote a diverse set of new artists while at the same time helping more experienced performers tailor their releases to better meet the tastes of their respective audiences and thus fuel album sales.

CONSUMERS

In the end, it is consumers that stand to benefit the most from the industry exclusion of the various record labels. For decades, the labels have attempted to dictate to consumers what they should listen to and when. The hundreds of millions of dollars that are spent each year by the labels, through independent promoters, on radio airtime ensure that the songs the labels want consumers to hear reach their target audience. And
eventually, the labels wear consumers down until they accept the packaged bands being promoted to them.

An even more egregious violation of consumer trust is apparent in the ever-increasing costs of purchasing music. Despite the decreasing cost of producing and manufacturing said music, the labels continue to raise album prices. Consider the fact that it costs the record labels roughly $1.80 to manufacture a CD today, including disc, booklet, insert, and jewel case. The labels then mark up this cost roughly 600% to retailers! Hence, while the cost of manufacturing a CD today is less than 50% of that when the format debuted (1984), the cost passed on to consumers has only dropped by roughly 12%.

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24 Caro, Mark. “Now that CDs are not so new, why do they cost so much?,” *Chicago Tribune*, 02 August 1992, p. 22.
25 Ibid.
IV. Conclusion

Digital technology is gradually altering the traditional relationships in the music industry between artists, record labels, promoters, distributors, and consumers. Moreover, the introduction of the Internet, and the ensuing widespread adoption of peer-to-peer file-sharing networks has forever revamped the manner in which music is bought and sold by consumers. Indeed, the backdrop of the industry is in such a state of disarray that a variety of new players are poised to overtake the industry’s old guard.

As evidenced by this paper, advances in music technology coupled with changes in U.S. copyright law comprised the cornerstones of the music industry throughout the twentieth century. With the metamorphosis of recorded music underway from a medium of intellectual property combined with a physical distribution format to one consisting solely of intellectual property, it will be interesting to watch the industry landscape evolve over the next decade. By focusing on the elimination of the record labels from the industry food chain, and hence removing the negative impact their future influence might produce, this paper has attempted to illustrate how the sociological and economic requirements of a mature industry might be altered and streamlined to leverage the more interconnected and democratic assets of the Internet.