

# FAIR MUSIC: TRANSPARENCY AND PAYMENT FLOWS IN THE MUSIC INDUSTRY

Recommendations to Increase  
Transparency, Reduce Friction, and  
Promote Fairness in the Music Industry

Rethink Music  
Initiative

A Project of Berklee  
Institute of Creative  
Entrepreneurship  
(BerkleeICE)

Boston,  
Massachusetts  
USA

AUTHORED BY

  
**RETHINK  
MUSIC**

AN INITIATIVE OF  
**BerkleeICE**  
Institute for Creative Entrepreneurship

EXECUTIVE SUMMARY

The unsurpassed reach of the Internet and the emergence of a range of new digital technologies have transformed virtually every corner of the music industry for fans and creators alike. While consumers enjoy vastly more options, these market disruptions are presenting a range of important challenges for creators, producers, and distributors of music. In our year-long study, the **Rethink Music Initiative at the Berklee Institute of Creative Entrepreneurship** has sought to identify the underlying barriers to progress and propose solutions to increase transparency, accelerate transactions and cash flows, and reduce inefficiencies in the \$45 billion global music industry (including live performances).

**EXECUTIVE SUMMARY (CONT.)**

**Musicians are struggling to balance their passion for music with the need to be knowledgeable and vigilant about the financial rewards for their talents. Of the \$15 billion in global recorded music revenue for sound recordings reported by the IFPI for 2014, only a small portion of the money beyond the initial recording advances ultimately makes its way to artists as ongoing revenue. Faster release cycles, proliferating online services, and creative licensing structures make finances and revenue even more complex to understand and manage. To strike the right balance, we must address a difficult question: Are the compensation structures fair?**

## **NEEDING GREATER TRANSPARENCY**

### **THE MODERN MUSIC BUSINESS**

inherently involves millions of daily micro-transactions, generating revenues—in fractions of pennies—from songs and albums. New technologies should make this process transparent.

In the digital market, for example, music creators' works are now available on a large number of different platforms in different models. It should be possible to give electronic access to real-time royalty information. Instead, artists typically receive a hefty stack of paper. How can the music industry move past outdated paradigms and barriers to achieve greater transparency?

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Music consumption is also shifting from ownership to access. A 2014 Nielsen study found that 164 billion on-demand tracks were streamed across audio and video platforms while sales of CDs and cassettes declined. ABI Research predicts that, by the end of 2018, we'll see 191 million streaming subscribers, generating a whopping \$46 billion in

a world where data is readily available and micro-payments can be tracked, accountability should be a foregone conclusion. However, the industry has yet to require services and intermediaries to provide complete, readable, up-to-date data about music sales and uses in an industry-standard format. As a result, although streaming services are on their way to becoming dominant players in the industry, artists remain deeply skeptical about the underlying business/revenue models.

## **REVENUE TRANSPARENCY AND PAYMENTS**

**DATA PROVIDED TO ARTISTS WITH royalty payments is often opaque and artists often don't understand the payments and accountings that they receive. This opacity may benefit intermediaries.**

Significant funds are often paid to the wrong party. Despite industry attempts at implementing unique identifiers such as the International Standard Recording Code (ISRC) for sound recordings and International Standard Work Code

*Despite streaming services paying the same percentage of their revenue (70%) to right holders as an iTunes download sale, low payouts and many intermediaries are creating concerns.*

cumulative revenue. Despite streaming services paying the same percentage of their revenue (70 percent) to rights holders as an iTunes download sale, low payouts and many intermediaries are creating concerns. Per-stream royalties can look dismally low compared to the sale of a recorded song, but these are two entirely different economic models. Some publishers like Kobalt now report that Spotify has overtaken iTunes in revenue numbers, but uptake of streaming services has also varied based on geography.

There are many worthy questions about the transparency of payouts. In

(ISWC) for music works, these identifiers are not often linked properly for music releases. Further, rights owners often persist in defining their own standards for data reporting from digital services, meaning there is still no common output standard and dozens of different services end up reporting in multiple formats, resulting in gross inefficiencies.

Once record labels receive their monies from streaming services, they pay artists based on recording contracts that usually have low royalty rates (designed for physical product) and multiple deductions, followed by

## EXECUTIVE SUMMARY (CONT.)

recoulement of costs. The net result: little or no royalties land in the artist's hands.

Conversely, in the U.S., some non-interactive services are achieving better transparency regarding their payouts because those royalties are routed through SoundExchange, which pays out statutory rates set by the Copyright Royalty Board, without flowing through intermediaries.

## THE BLACK BOX

**LARGE POOLS OF ROYALTY REVENUE END UP OUTSIDE** the artist's reach in a so-called "black box"—where rightful owners of royalty revenue cannot be accurately identified because of a lack of an industry-wide system for tying usage to ownership.

Major labels and publishers often receive advance payments from streaming services, and it is unclear what happens to any advance monies that are not earned out via streams during the advance period.

Major labels also have equity ownership shares in most streaming services—stakes they acquire by licensing their catalogues at sub-market rates. When those stakes become liquid, the proceeds fail to flow through to those catalogue artists.

In many instances, mechanical royalty payments, PRO payments, and other royalties similarly fail to reach rights owners for similar reasons—and there are few financial incentives for those holding the money to find the rightful owners. \*

## U.S. COPYRIGHT OFFICE RECOMMENDATIONS

The U.S. Copyright Office's "Copyright and the Music Marketplace," released earlier in 2015, outlines various recommendations to update U.S. law for the digital age, including:

Greater parity in the treatment of musical works and sound recordings to greatly reduce the influence of government in determining royalty rates across a wide variety of services and bring musical compositions and sound recordings onto a more level playing field.

Full federal protection for sound recordings made prior to Feb. 15, 1972, closing an unjustifiable loophole in copyright legislation.

A full performance right for sound recordings, to match the rest of the world.

Revising or eliminating decades-old consent decrees governing ASCAP and BMI.

Eliminating restrictions on sound-recording rates from being considered in musical works rate-setting.

Allowing for the bundling of rights, turning PROs into more broad music-rights organizations, such as those existing in Europe and elsewhere.

Changing the mechanical licensing system.

Expanding licensing to cover terrestrial radio licensing, assuming Congress grants a full performance right to sound recordings.

Encouraging the private sector to create a comprehensive database of music-rights ownership information with unique universal identifiers and messaging standards.

Adoption of greater transparency in royalty calculations and payment disbursements.

## CONCLUSIONS & RECOMMENDATIONS

While a step in the right direction, we believe the Copyright Office recommendations (*see inset box, above*) can be extended to help achieve a more transparent and fairer music industry. We therefore advocate for:

1

### The development of a "Creator's Bill of Rights."

- Every creator deserves to be fairly compensated for the use of his/her works.
- Every creator deserves to know exactly where and when his/her work is used or performed.
- Every creator deserves up-to-date reporting on the uses of his/her works (no more than 30 days in arrears for digital uses, 90 days for other uses).
- Every creator deserves to be recognized for the creation of his/her works via identification on digital performances or uses.
- Every creator deserves to know the entire payment stream for his/her royalties (e.g. which parties are taking a cut and how much).
- Every creator deserves the right to set the price for his/her works based on fair-market value.

2

### A "fair music" certification of transparency for digital services and labels.

3

### The creation of a decentralized, feasible rights database.

4

### The investigation of blockchain technology and cryptocurrencies to manage and track online payments through the value chain directly from fans to music creators.

5

### Educating all types of music creators regarding their rights and the operations of the music industry.

# Study Details

## MORE SONGS, MORE OPTIONS, MORE LISTENERS. WHERE IS THE MONEY?

**THE MUSIC INDUSTRY HAS HAD A TUMULTUOUS TIME** over the past 15 years. Press reports all but declare the industry dead, with revenues down substantially, although finally trending upward in the past couple of years. In general, in the music business in 2015, many would say it's the best of times and the worst of times. For casual consumers and devoted fans alike, it is nothing short of a music-lover's paradise. From iTunes to YouTube to video games to satellite radio, music—whether free or for a fee—is available in more places and in more forms than at any point in human history, via an array of licensed and legal choices and platforms that were virtually unthinkable just 10-15 years ago.

However, despite the exciting technological breakthroughs and consumer products available at our fingertips, the music industry continues to face serious challenges, as it has for decades, but particularly within the past 15 years. Foremost among these challenges is an enduring question that only grows louder: Why do music creators—the talented and passionate writers and performers—seem to continue to have problems earning fair financial returns on their efforts, even as more songs are played for more listeners than ever?

Unfortunately, the adage "follow the money" leads only to a dense thicket of micropayments and "black boxes" where relationships among rights, royalties, processes, and participants, in the eyes of many, are deliberately obscured or, at best, have become hopelessly complex and outdated. Payable events—performances, recordings, publications—occur, but the resulting payments that trickle back to recording artists, writers, and producers are based on a series of outdated frameworks, technologies, formulas, and methods that are demonstrably unable to keep pace with the state of music creation and consumption today. Technology and so-called "big data" theoretically should solve a lot of these problems, so why hasn't the music industry (and other creative industries) been more aggressive in adopting systems to accurately track purchases and plays and make payments to recording artists and songwriters?

Rethink Music has undertaken a year-long study to better understand what's really happening and how some of the problems might be solved. This paper explains

some of the key components of the music industry that never seem to change, what's evolving, and the barriers to progress. More importantly, while this paper makes recommendations to help increase transparency, minimize transactional friction, and reduce the accumulated market inefficiencies within the nearly \$25 billion market for copyrighted music (i.e., recorded and written/composed), we hope this work can help enable all stakeholders in the nearly \$45 billion global music industry (including live performances) to thrive to a far greater extent in this new and rapidly changing environment.<sup>1</sup>

## UNTANGLING THE INCREASING COMPLEXITY

**BY NECESSITY, MUSICIANS ARE ENTREPRENEURS,** starting their own businesses the first day they are paid for a performance, a song, or a recording. However, it's not easy to be a music creator while remaining vigilant about the financial aspects of the business. Many artists turn to intermediaries like labels, publishers, and managers for assistance as their "business" grows. However, today's creative brand partnerships, faster album- and single-release cycles, proliferating online services and sources, and inventive licensing structures are collectively transforming both the way artists interact with fans as well as the offerings of these intermediaries and other tertiary support industries (such as crowd-funding and data aggregation). The result is a remarkably complex web of millions of micro-transactions as musicians, fans, and consumers buy and sell music. For a growing number of musicians, these new and emerging opportunities to license and distribute content have rapidly evolved from nice add-on revenue streams into the core of their total income. An online presence is now a non-negotiable requirement for building a career, nationally or internationally, in the ears of fans and listeners—an imperative that only grows as younger listeners consume music entirely through online media.

While it's no secret that money is a serious motivator for some participants, it is by no means the sole driver. Most musicians tirelessly pursue their passion in the face of long odds, but only a small percentage skyrocket into the stratosphere of national and international fame. Other stakeholders—such as those in promotion, production, and distribution of recorded music as a product—are often driven less by passion than by profits, which is entirely justifiable. We believe it's essential for music creators to reject the false choice between art and finance and instead be empowered with greater control over their revenue streams. Art and commerce can and should coexist without apology in a synergis-

<sup>1</sup> Price, Waterhouse, Coopers, LLP & Ovum (2015) Global entertainment and Media Outlook, 2015-2019.

tic fashion in the music industry. If a truly great band doesn't have control of the business aspects of its effort, a tremendous opportunity is wasted. "We always said it would be pathetic to be good at the music and bad at the business," said Paul McGuinness, the man who managed U2 for more than three decades.<sup>2</sup>

To achieve this balance, the industry must address a difficult question: *Are the compensation structures across these stakeholder groups balanced?* For example, how much, exactly, do musicians make from their writing, performances, and recordings? And since so many creators focus on their music, who collects, accounts for, and distributes the resulting revenue—and how? As the complexity of the business increases (thanks to new

*The result of [an] uneven application of technology can be a spectacular mismatch, creating friction, opacity, and frustration.*

channels and media), there are more organizations and support industries working to make available to us the content we listen to and buy every day. But at what cost and for what benefits?

As a result of the many unique, and often legally private, financial relationships that exist between artists, authors, record labels, and publishers, our window into the revenue earned by musicians from their compositions, performances, and recordings is obscured. While that portion of the global recorded music sales, subscriptions, and synchronization fees that might be initially attributable as recording artist "revenue" could be as much as \$3 billion (using an admittedly rough method for approximation), of the \$15 billion in global, recorded music revenue reported by the IFPI for 2014, only a small portion of this money beyond the initial recording advances paid ultimately makes its way to the artist as ongoing revenue. The separate portion of revenue attributable to composers and lyricists—the less-visible authors involved in the creation of the musical compositions—might be \$3.5 billion, slightly greater than 50 percent of global receipts from the sale, performance, and other uses of musical works, or what are known colloquially as "songs" (i.e., the musical composition and the lyrics). Worldwide, a large portion of these dollars from musical works flow through collective rights organizations (such as ASCAP, BMI, and SESAC in the U.S.; SACEM in France; and GEMA in Germany). Smaller portions flow through direct licensing (e.g., mechanical payments from labels to publishers in the U.S.).

## TRANSPARENCY IN THE MUSIC INDUSTRY AND HOW THE MONEY FLOWS

### **LIKE FEW OTHER INDUSTRIES, THE MODERN MUSIC**

business inherently involves millions of daily micro-transactions generating revenues from songs and albums. In many instances, stakeholders are earning fractions of pennies spread across thousands or millions of transactions. New technologies should have the ability to create a high degree of transparency for this process. That transparency has been largely absent from the music business; instead, the industry has, in many ways, applied less transparent frameworks, technology, and processes that have evolved over decades in an era of music-as-a-product into a transformed, music-as-a-service landscape. The result of this uneven application of technology can be a spectacular mismatch, creating friction, opacity, and frustration.

Further, while the relationship between an artist and a label is often presented as an investment in music, with the label providing funds to help support recording, marketing, and touring, it is important to highlight that this relationship is quite different from the one between a technology entrepreneur and a venture investor. A venture investor acquires some portion of the outstanding equity in a startup company, the returns from which are finally earned if and when that company is acquired, goes public, or is otherwise liquidated. A music label, in contrast, often acquires, through an advance payment, an exclusive right to release and distribute the work of musicians. In so-called 360-degree deals, this right expands to include a portion of revenue from multiple channels (e.g., live performance, merchandise, etc.). Furthermore, the dollars paid to the artist for these rights, along with the costs of other services provided by the label (e.g., distribution, marketing, even mechanical royalties, etc.) can be treated as a recoupable account, akin to a loan, rather than an equity stake. And so, while few if any technology startups pay a share of their revenue directly to their venture investor, music artists pay back their investors solely via the artist's portion of the revenue earned, a portion which can range from as little as 5 percent to as much as 25 percent of recorded music sales (or a wider range of percentages for the additional channels covered under 360-degree deals). However, to highlight another dimension to the complexity, artists can earn other revenues from recorded music completely outside of this recoupable accounting, such as royalties collected from webcasting or satellite performances in the U.S.

<sup>2</sup> Carr, David. "Media Age Business Tips From U2." The New York Times, Nov. 28, 2005.

Today, recorded music revenue is spread across an array of channels, including at least a dozen major online streaming services, iTunes, Google Play, Amazon, and other download stores. We also have a variety of physical distributors, including online retailers and brick-and-mortar stores, each of which generates a certain amount of revenue for rights holders and creators. In the digital market, for example, music creators' works are now available on a large number of different platforms in different models:

- **Downloaded copies**, where the consumer purchases a license to his copy of the song, which is permanently downloaded to a computer or device. An example of this model is the iTunes Music Store.
- **Paid interactive or on-demand models** under which a consumer chooses what music to listen to and creates a copy on his device that exists as long as he is a paying subscriber. These models are typically referred to as "interactive" or "on-demand" services. An example of this model is Spotify's premium subscription service.
- **Advertising-supported models** in which a consumer chooses what music to listen to in exchange for viewing or listening to ads. These are also sometimes referred to as "interactive" services. Examples of this model are Spotify's free, ad-supported service, or YouTube.
- **Advertising or subscription-based models** in which music is provided to listeners based on genre or programmed recommendations. These services are typically called "non-interactive" because the user does not have control over exactly which songs will be played. An example of this type of streaming service is Pandora.

It should be fairly straightforward to give creators access to an app or Web page that electronically accesses real-time, in-depth, and comprehensible royalty information about their sales or plays on these platforms—data that can be reported to provide useful analytics, similar to an online banking platform—and that could conceivably offer a suite of banking services to creators if transparent revenue data was accessible. However, in most other cases, today's royalty statements still arrive in a manager's office in a hefty stack of papers. The data is either too scattered or complicated to be useful or lacks relevant details and useful presentation. And that's often because publishers or labels themselves don't have the information correctly and quickly.

Other businesses have long since committed to modern information systems, reporting, and analysis. How can the music industry move past outdated paradigms and barriers to achieve greater transparency?

## MONEY FLOW

**THE ACQUISITION AND CONSUMPTION OF MUSIC IS** rapidly becoming an almost entirely digital proposition. Networking and digital files changed the way most people view the acquisition of music, with the most substantive shift arriving with the launch of Napster in 1999. It conditioned listeners to seek and obtain songs online—and unfortunately, in the process, dropped the perceived value of music from around \$15 per album to nearly nothing, driving a massive hole in the industry's revenue model. Although iTunes launched a few years later and began selling singles for 99 cents as a paid alternative, it wasn't as attractive as the free model to which consumers had quickly become quickly accustomed. Furthermore, the "unbundling" of albums into 99-cent tracks may have had its own negative impact on topline revenue for the recorded music industry. As consumers purchased only those tracks they desired most, total spending on albums may have fallen disproportionately.<sup>3</sup>

In the past five years, another tremendous shift has occurred as consumers have moved from an ownership model to an access model. According to Nielsen's Music 360 2014 study, 164 billion on-demand tracks were streamed across audio and video platforms in 2014, skyrocketing from 106 billion in 2013.<sup>4</sup> Sales of CDs and cassettes declined. (Vinyl reported another year of modest sales growth as it continues its re-emergence as a fringe category for audiophiles.) This increasing popularity of streaming services is enabling providers to acquire millions of listeners, and their revenue streams are beginning to be substantial. Like radio, they often, but not always, give away free music to listeners who accept advertising in exchange. The streaming services hope to convert a substantial number of listeners to paid, ad-free subscriptions that generate more revenue than advertising. Subscriber rolls are growing quickly (despite much debate about whether the ad-supported model is driving this uptake) and the services pay about 70 percent of their total revenue to rights holders (the same percentage as an iTunes sale). ABI Research indicates that, by the end of 2018, these services will reach 191 million subscribers, generating a whopping \$46 billion in cumulative revenue since the launch of the services.<sup>5</sup> However, plenty of concerns and controversies remain.

For example, there has recently been a tide of negative publicity about low payouts from streaming services to artists and writers. However, streaming services are paying roughly the same percentage of their revenue

3  
Elberse, A. (2010). Bye-bye bundles: The unbundling of music in digital channels. *Journal of Marketing*, 74(3), 107-123.

4  
"Everyone Listens To Music, But How We Listen Is Changing." Nielsen: What People Watch, Listen To and Buy. 22 Jan. 22, 2015.

5  
"Spotify to Hold 32% of 29-Mil. Music Streaming Subscribers Forecasted for End-2013." ABI Research. Aug. 1, 2013.

(70 percent) to rights holders as iTunes has paid on download sales for the past 12 years. The stories report that few or no royalties are paid, but too often, this news coverage either incorrectly states the nature of the contractual terms or provides only the amount of the check but doesn't show the details of the payment flows, such who's paying who for what. Is it the label, a performing rights organization like ASCAP or BMI, a publisher, etc.? And who is taking a cut in the middle? Also often missing from these articles is information on the songwriter or artist splits and the royalty rates. "I've stopped paying attention to mainstream media on this topic," said Larry Kenswil, former head of Universal Music's eLabs (digital) division. "They often don't report the information correctly, leaving out key facts such as who paid and how many splits there were on a song."

Digital streaming services such as Spotify, Pandora, and Deezer have also faced a lot of criticism from those who claim that, by giving away music for free on ad-based services, they are devaluing the product and diminishing artists' shares of royalty revenues from these services. In November 2014, in a highly publicized move, Taylor Swift withdrew all her music from Spotify after the streaming service declined to limit her music to paid subscribers. She opted to completely withhold her latest album from all streaming services and sold more than 7 million digital and physical copies, with a part of that success conceivably attributable to the decision. However, Swift's fans can continue listening to her older songs on Beats Music, Rhapsody, TIDAL, and Rdio because there are agreements in place to stream her music only through their paid services. Ironically, virtually all of Swift's catalogue is available on demand on YouTube—for free. And more recently, her aggressive posture on royalties also led Apple to agree to make payments to rights owners, even during the period of free trials for new subscribers to the new Apple Music subscription service.

What is really happening here?

## A DIFFERENT MODEL

**AS WE BEGIN DISCUSSIONS ABOUT THESE NEW**  
models of monetization, it is important to keep in mind that, while per-stream royalty rates paid by streaming services can look dismally low compared to what is paid for a sale of that recorded song (e.g. a paid download for a single), *these are two entirely different economic models*. They are not comparable without adjusting the figures to reflect crucial differences. Downloads and sales of any kind should be thought of as an advance payment

on a future of unlimited listens. Under the sales model, the same amount of revenue is generated whether a user listens to the song once or 1,000 times. Conversely, streaming is based on a pay-as-you-listen model, in which payments to rights holders directly correspond to the number of times the song is listened to over time, such that a very different pool of revenue is generated if a song is listened to only once compared to 1,000 times. Under this model, a particularly active user of a song could very well end up generating more revenue for the rights holders than if he or she had simply purchased the song for a one-time fee, but royalties earned from each performance of the song are far less than the price of the purchased track.

Today, streaming services (with or without paid subscriptions) account for a smaller slice of the pie, but, as discussed, their use is at an all-time high and continues to grow tremendously—with some publishers like Kobalt now reporting that Spotify has overtaken iTunes in revenue numbers.<sup>6</sup> (In fact, reports in July 2015 indicate that sales of downloaded copies are now falling faster than the sales of physical product.)<sup>7</sup> For example, in 2014, webcasters and satellite-based providers combined with paid, ad-supported services accounted for approximately \$1.87 billion (26.7 percent) of the \$6.98 billion in total recorded music industry revenue in the US, as reported by the RIAA. YouTube has indicated that it alone has paid over \$1 billion to music rights holders in the past two years. These categories of revenue also grew by 25-34 percent compared to the prior year.

Uptake of streaming services has also varied based on territory, caused by variations in licensing regimes as well as cultural norms. In certain markets, physical formats still represent a significant percentage of sales. For example, physical formats dominate in countries like France (57 percent), South Africa (62 percent), Austria (65 percent), Germany (70 percent), Poland (71 percent), and Japan (78 percent).<sup>8</sup> In contrast, subscription revenues already make up 65-70 percent of total recorded music income in markets like in Sweden.<sup>9</sup> One must wonder if regimes like Extended Collective Licensing, in place in Nordic countries since the 1960s, have made the licensing and use of music easier, resulting in quicker changes to new business models.<sup>10</sup> (See Figure 1, page 9)

Along with the emergence of digital services and issues surrounding their business models have come numerous worthy questions about the transparency of payouts. In a world where data is readily available and micro-payments can be tracked, accountability should be a foregone conclusion. However, the industry has yet to require services and intermediaries to provide complete, readable, up-to-date data about music sales and uses in a standard format adopted throughout the value chain.

<sup>6</sup> Lunden, Ingrid. "In Europe, Spotify Royalties Overtake iTunes Earnings By 13%." Tech Crunch. Nov. 4, 2014.

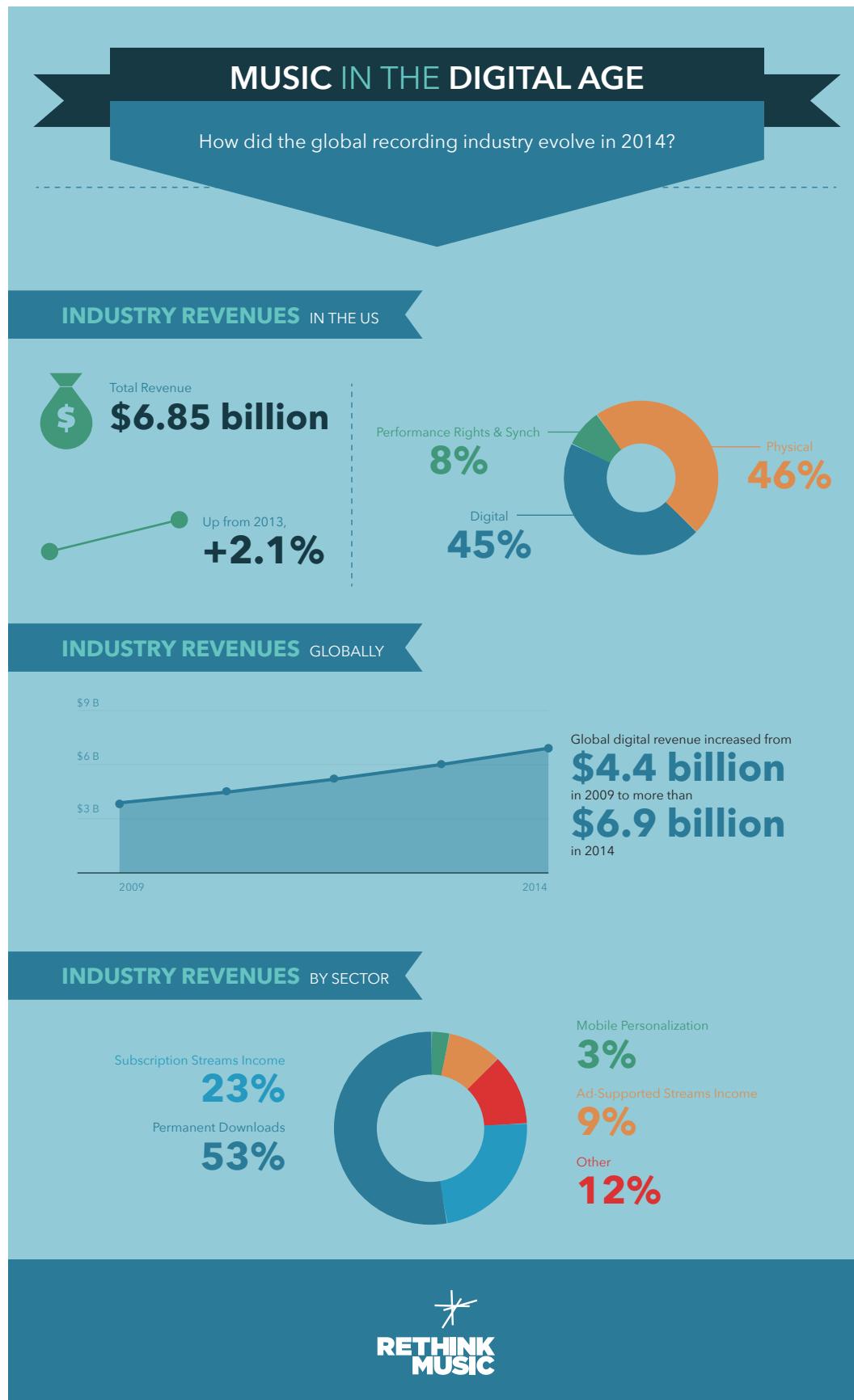
<sup>7</sup> Ingham, Tim. "Digital Album Sales Now Declining Faster Than CD In The UK." Music Business Worldwide. July 3, 2015.

<sup>8</sup> "IFPI Digital Music Report 2015." International Federation of the Phonographic Industry. April, 2015.

<sup>9</sup> "Sweden: A Market Transformed." International Federation of the Phonographic Industry. [www.ifpi.org/sweden.php](http://www.ifpi.org/sweden.php)

<sup>10</sup> "IFPI Digital Music Report 2015." International Federation of the Phonographic Industry. April, 2015.

Figure 1



Perhaps this is because the current lack of transparency appears to benefit middlemen, but creators, consumers, and others in the music industry value chain should no longer passively accept this.

## RIGHTS BASICS

**ONE PRIMARY REASON FOR THE EXTREME COMPLEXITY** in music accounting is the fact that there are two copyrights to be monetized: one for the sound recording (the recorded performance) and one for the musical work (the underlying words and music). The sound recording is created by the artist/performer and usually monetized by the record label, while the musical composition is created by songwriters and lyricists and monetized by music publishers. In general, sound-recording owners often end up with five or six times more revenue than the owner of the musical composition for a particular release. (YouTube, the number one destination for music online, estimates that, globally, its payments to sound recording copyright holders are approximately three

*The current lack of transparency appears to benefit middlemen, but creators, consumers, and others in the music industry value chain should no longer passively accept this.*

times higher than those to musical composition rights owners. These exact ratios vary greatly based on territory.) This is perhaps due to the higher level of regulatory involvement in publishing, such as royalty rates set by rate-setting courts and tribunals (compared to the less-regulated market where record labels negotiate their fees based on fair-market value). This means, as we'll see more clearly, that in the U.S., labels generally receive around 60 percent of the revenue of a subscription service (and pay a small fraction of that to artists), whereas publishers and writers receive 10 percent, with the streaming service keeping 30 percent for its operating costs.

Within these two copyrights exist a number of rights that must be licensed by digital services in order to provide music to the consumer. Services need two licenses to use the musical composition—a mechanical license (the right to create a copy of a song, which is relevant even in streaming for ephemeral copies) and a public performance license (the right to publicly perform the composition, usually licensed by a performing rights organization (PRO) like ASCAP or BMI in the U.S. or

PRS in the UK). Sound recordings require a master-use license from the record label to cover the ability to make copies and publicly perform those works through digital transmissions.

The infographics on page 11, 12, and 13 from Future of Music indicate the typical flows of money in the digital music industry today. (*See Figures 2, 3, and 4*)

## REVENUE TRANSPARENCY AND PAYMENTS

### AS THE INFOGRAPHICS SHOW, STREAMING SERVICES

do not distribute collected revenue directly from sound recordings to artists. Instead, they use record labels or digital aggregators as intermediaries. According to a joint study by Ernst & Young and the French trade group SNEP, whose members include Warner Music, Universal Music, and Sony Music, record labels receive a significantly greater share of licensing revenue from streaming services. By contrast, artists' shares are significantly smaller.<sup>11</sup> In the end, artists receive approximately 68 cents from a \$9.99 monthly subscription fee. Ten percent of the subscription fee is split among songwriters and publishers, while record labels keep 73 percent of the royalties paid to right owners by streaming services.<sup>12</sup>

Data provided to artists and writers with these royalty payments is often opaque. As a result, they often don't understand the payments and accountings that they receive (*see case study, page 15*). One reason for the opacity may be that it benefits intermediaries. "There is no incentive for anyone to build a system that is fully accountable," said Kenswil. "Major labels and publishers benefit from the currently complex and inaccurate system, and streaming services have no incentive to invest in transparent reporting and accounting systems, which are expensive."

However, implementation of such systems is neither impossible nor unprecedented. Technology can track every stream, in real-time, around the world—the issue is sharing that information effectively downstream. Of today's music companies, only Kobalt has been able to fully deploy such a system. Its portal "allows songwriters to view every single instance when their work is streamed on Deezer or Spotify, broadcast on radio, sold as a CD, featured in a film, played in a pub, pirated by a fan in a YouTube video, sampled in a TV show, or

<sup>11</sup> "Record Labels Reap 45 Percent of Royalties from Streaming Services, Study Finds; Artists Lucky to Pocket 7 Percent." TechHive. Feb. 6, 2015.

<sup>12</sup> Ibid.

Figure 2

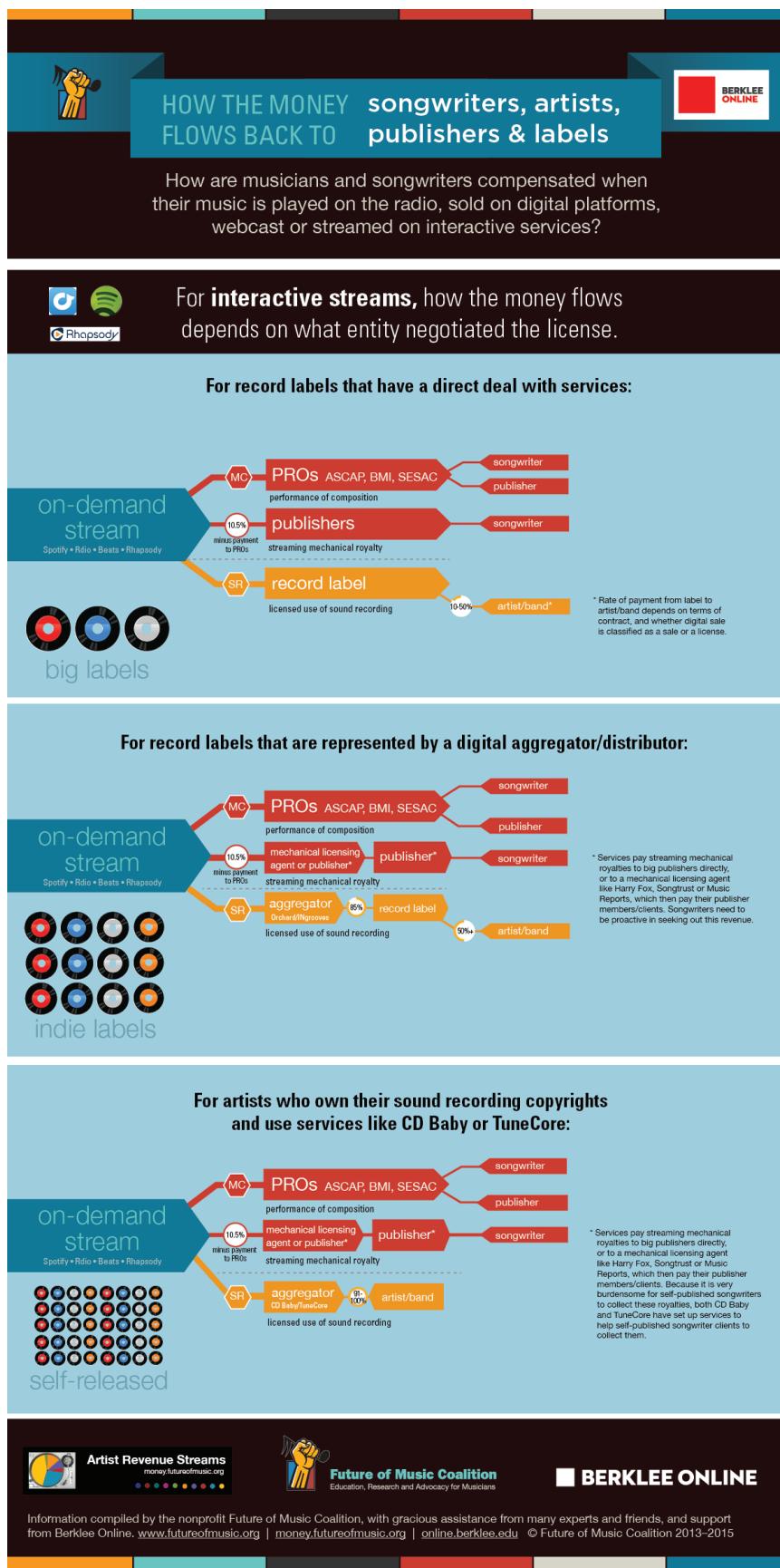


Figure 3

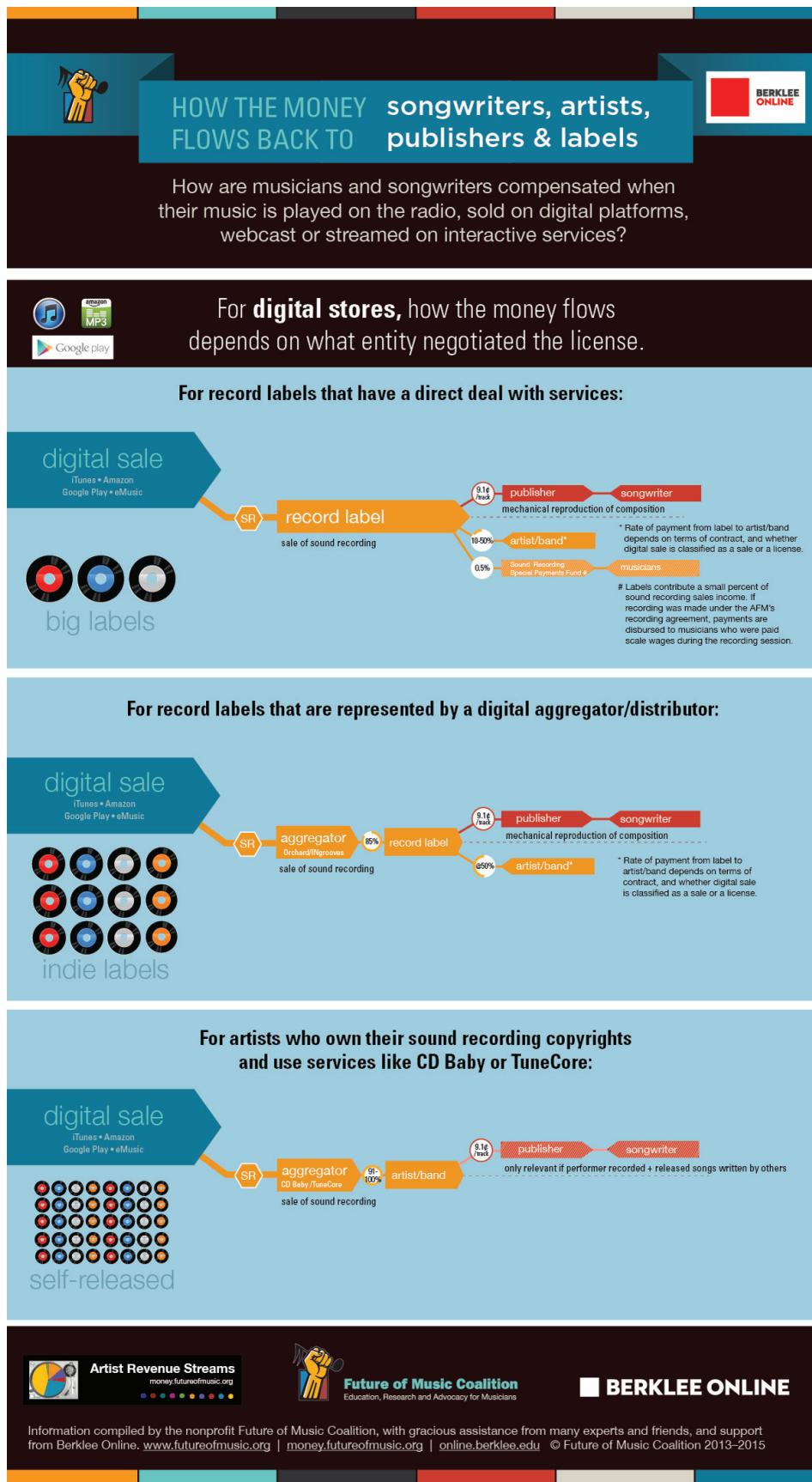
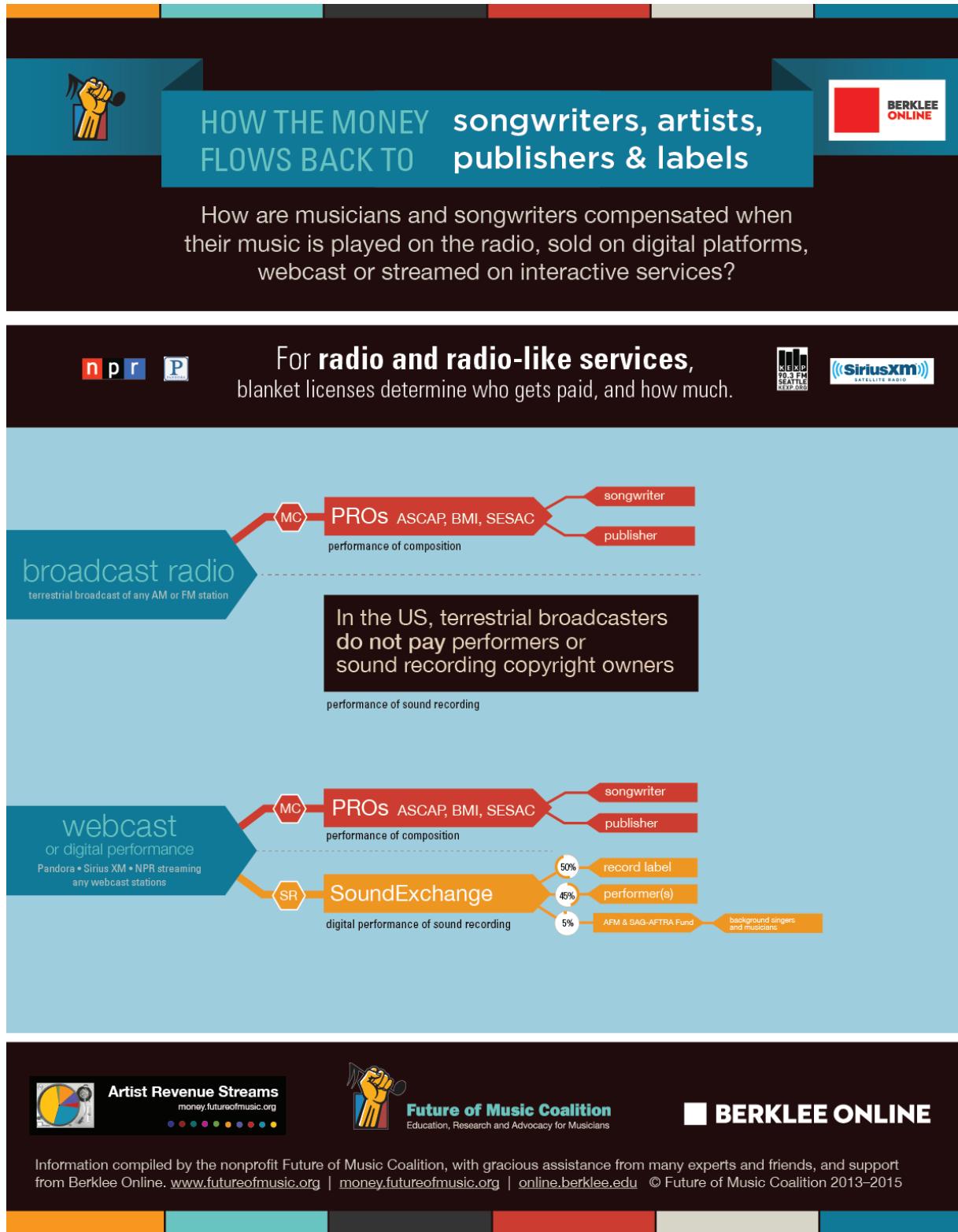


Figure 4



included in a Champions League ad. That's just about everywhere on the planet—totaling 700,000 separate revenue streams for a single song.<sup>13</sup> (Disclosure: Kobalt is a global underwriter of Berklee's Rethink Music events and activities. Our research remains objective.)

Further, significant funds are often paid to the wrong party. Despite some industry attempts at unique identifiers such as the International Standard Recording Code (ISRC) and International Standard Work Code (ISWC), record labels often persist in defining their own standards for data reporting from digital services, meaning there is still no common output standard and dozens of different services end up reporting in multiple formats, resulting in gross inefficiencies. A common output standard in addition to the ISRC and ISWC codes could partially help

### *Labels keep 73% of royalties collected from streaming services.*

to resolve this problem (see page 15).

As mentioned earlier, interactive streaming services such as Spotify, Rdio, Beats, and Rhapsody devote roughly 70 percent of their gross revenue to pay rights holders (both sound recordings and music compositions), the same percentage as an iTunes download sale. On the sound recording side, the amounts paid depend on the fair-market-value agreements negotiated with content owners, and major labels can flex their catalogue licensing power in those negotiations. However, since those deals are strictly confidential, governed by tight non-disclosure clauses, it is difficult to accurately evaluate the licensing fees. (A Sony-Spotify contract from 2011 was leaked in May 2015, which contained nearly four full pages of the description of the computation of streaming fees alone.) Labels receive payments and reporting from the services and then distribute royalties to the artists. Artists, when trying to audit payments received from digital services at their labels, are told they cannot access that information. Some could argue it's reminiscent of the rumored "third shifts" that labels once ran to manufacture non-attributable albums at night.

Once labels receive their monies from streaming services, they then pay artists based on recording contracts that usually have low royalty rates (designed for physical product) and multiple deductions, followed by recoupment of costs, resulting in little or no royalties landing in the artist's hands. Despite the recent press about this, the issue hasn't changed much over the decades—artists in the 1980s and 1990s regularly sold

hundreds of thousands of albums and never saw any royalties beyond the initial advance.

As a result, it is unfortunately unclear how, and more importantly, on what terms, record labels are entitled to hold such disproportionately high amounts of streaming revenue and why there's such a discrepancy between the artists' and record labels' revenue. Lawsuits have already been filed against major labels, including one by 19, the American-Idol entity who releases through Sony. In response to 19's claim that Sony unfairly attributes streaming income in a manner that best serves the interest of the corporation, court filings show that Sony believes this to be perfectly acceptable. "Sony says it isn't required "to structure its affairs in whatever way yields the greatest royalties for 19," the American Idol-affiliated outfit that manages such artists as Kelly Clarkson and Carrie Underwood. Citing the judge, it says it may 'act on its own interests in a way that may incidentally lessen

the other party's anticipated fruits from the contract.'<sup>14</sup> In addition to raising concerns about streaming payouts and royalties on digital uses, artists should also seek greater transparency from labels regarding revenue distribution, starting with their initial recording agreement negotiations.

On the other hand, in the U.S., non-interactive services are achieving better transparency regarding their payouts because those royalties are routed through SoundExchange, which pays out statutory rates set by the Copyright Royalty Board directly to musicians. SoundExchange allocates 50 percent of such revenue to the record labels, and 45 percent goes directly to performers—not to the labels, meaning they can't recoup artists' costs against that stream. Finally, 5 percent goes to AFM and SAG-AFTRA unions, which distribute royalties to background singers and musicians.

As mentioned earlier, labels keep 73 percent of royalties collected from streaming services.<sup>15</sup> How does a major label get payments from the streaming services? First, for "table stakes," the label receives upfront payments, or advances, from the streaming service to acquire licenses to the label's catalogue. Second, the label sometimes charges catalogue service payments. Third, not only does the label set the price for the service, it sometimes also receives an equity stake in the streaming company itself and becomes a minority owner. And finally, after all of these terms have been negotiated, the label sets a streaming rate.

Rather than blame the labels, artists have constantly

13 Gray, Kevin. "Kobalt Changed the Rules of the Music Industry Using Data—And Saved It." *Wired UK*, May 1, 2015.

14 Gardner, Eriq. "Sony Music Defends Spotify Payouts Process." *Billboard*, Jul 8, 2015.

15 "Record Labels Reap 45 Percent of Royalties from Streaming Services, Study Finds; Artists Lucky to Pocket 7 Percent." *TechHive*, Feb. 6, 2015.

CASE STUDY

## TECHNOLOGY FOR TRANSPARENCY IN MUSIC

*Technology and the music industry have a longstanding love/hate relationship. Each time a new medium for music has been introduced, ranging from the CD to the DAT to the minidisc to Napster to Spotify, the industry has cried foul. In the case of the CD, the new technology, so maligned in the beginning, ultimately led to the boom of the 1990's for the music industry, with a high-price-per-unit product and the public's desire to replace their prior vinyl/tape collection in the new format.*

*Today's music industry still lags behind in the deployment of cutting-edge technology (along with other industries, like air traffic control), but there should be no argument about the ways that technology can improve the back end of the music business. Many major music entities on the digital side are beginning to recognize this and begin their work to optimize listener experiences. Spotify bought The Echo Nest, a music intelligence platform that arose out of development at the MIT Media Lab, to assist with music recommendations and consumer analysis. Apple purchased MusicMetric, another data analytics firm for music, in January 2015, without a stated purpose—but likely for use in the Apple Music subscription service, since it focuses on streams and social uses. On the heels of that acquisition, Pandora purchased MusicMetric's largest competitor, Next Big Sound, in May 2015.*

*With respect to data reporting and greater transparency in payments, the subject of this report, in many cases the main issues for creators arise from the lack of implementation of appropriate technology to track listens and make payments at the intermediary level. "Yesterday's antiquated infrastructure, which much of the industry still employs, was not built to handle the enormous volume and complexity of data*

*that digital music requires today,"<sup>16</sup> said Kobalt CEO Willard Ahdritz, who leads a company that has pushed ahead with development of robust tracking and payment systems for creators. The company's focus on transparency has led it to grow from its launch in 2000 to the second-largest music publisher by market share in a short 15 years, representing 8,000 songwriters and artists who control around 40 percent of the Billboard Top 100 at any given time. Clients include Bob Dylan, Dave Grohl, Max Martin, Dr. Luke, Trent Reznor, and Gwen Stefani.*

*The Kobalt portal allows songwriters, and now artists and their managers who use Kobalt Label Services, to see real-time information about the uses of their music on a worldwide basis. "According to one prominent manager that has used the Kobalt portal, it is a unique, very transparent reporting tool for the label side of the business, where these types data and services are routinely offered to labels from distributors, but are not yet available at the more granular artist level."<sup>17</sup> Kobalt focuses its business on using data and technology to provide faster, more transparent, and larger payouts than many other intermediaries (more than 500 independent publishers now use Kobalt technology to power their own reporting to writers.) The company has refused to accept equity stakes in streaming services and instead focuses on achieving higher payouts per stream.*

*Another benefit—the quick data drive to creators—has also enabled them to better know their markets. Real-time reporting allows songwriters and artists to know where their music is being heard, and as a result they can direct their attention to markets with fans. "The [Kobalt] portal is insane," says Sonny Moore, the 27-year-old DJ and producer better known as Skrillex. "The activity feed gives me awesome feedback—I can see that in Scandinavia they love a hardcore sound of mine. Or 'Raise Your Weapon,' a song I wrote with deadmau5 five years ago, is suddenly huge in Australia."<sup>18</sup>*

pointed the finger at streaming services. However, the problem may not lie solely in the hands of Spotify and its peers, but rather in the lack of transparency from both sides. Streaming services promote themselves to investors as technology companies with the potential to cash out via an acquisition or an initial public offering (as Pandora did), and major publishers and record labels are already publicly traded companies. As long as these back-room deals between companies continue to favor only their shareholders, true transparency will be impossible to achieve. Artists and writers should be encouraged to seek total transparency when choosing a record label or publisher and require it in their contract.

16 Ahdritz, Willard. "Here Comes the Golden Age of Music." Medium. June 17, 2015. [www.medium.com/@WillardAhdritz/the-golden-age-of-music-340la2b7632a](http://www.medium.com/@WillardAhdritz/the-golden-age-of-music-340la2b7632a)

17 Christman, Ed. "Kobalt Unveils Label Services Portal, A Powerful New Set of Tools for Artists." Billboard. Dec. 2, 2014.

18 Gray, Kevin. "Kobalt Changed the Rules of the Music Industry Using Data—and Saved It." Wired UK. May 1, 2015.

## BACK-ROOM DEALS AND NDAs: WELCOME TO THE "BLACK BOX"

**AS MENTIONED EARLIER, WHEN ACQUIRING A LABEL'S** catalogue, a streaming service like Spotify negotiates direct licenses with major rights holders using nondisclosure agreements that leave artists out of the conversation entirely, which prevents any transparency. As

a result, although streaming services are on their way to becoming dominant players in the industry, artists remain deeply skeptical about the underlying business/revenue models.

Taylor Swift's public dispute with Spotify is only the most prominent example of an artist pulling her catalogue because she didn't think the service appropriately valued her work.<sup>19</sup> Many artists have already concluded that payouts from streaming services are too low. However, none of the major music-subscription services has yet turned a profit (which, in the case of publicly traded Pandora, may be due to charges for stock compensa-

Although this a small amount of revenue withheld from artists, the breakage problem has worsened because of the rapid increase in interactive streaming services. For example, if an advance of \$42.5 million is paid by each streaming service (Spotify, Rdio, TIDAL, etc.) to each of the three major labels, there's potentially a pool of hundreds of millions of dollars that labels are keeping and not sharing.<sup>21</sup>

Unattributable payments due to incorrect licensing information or a lack of knowledge of who to pay (we'll discuss this further later) also end up in an obscure "black box." Services and PROs that can't distinguish a rightful royalty recipient via an ISRC or ISWC or other identifier end up placing this money into escrow accounts and eventually distributing these unattributable monies to labels and publishers based on market share. Such monies are usually not shared with artists or composers signed to those labels or publishers, since they can't be attributed to any rightful creator.

*Services and PROs that can't distinguish a rightful royalty recipient via an ISRC or ISWC or other identifier end up placing this money into escrow accounts and eventually distributing these unattributable monies to labels and publishers based on market share. Such monies are usually not shared with artists or composers signed to those labels or publishers, since they can't be attributed to any rightful creator.*

tion to executives). The underlying problem with the confidentiality provisions is that Spotify could be paying the labels appropriately, but the artist has no idea of the underlying license or per-stream rate and can never be sure if sales are recorded correctly. Rather, large pools of royalty revenue end up outside the artist's reach in a so-called "black box." For instance, consider the so-called problem of "breakage," which, in this case, occurs not when a vinyl album is broken during shipment but rather when a streaming service pays an advance to a label for the right to use its catalogue. The label accepts the advance as part of the deal, but if total stream payouts don't add up to the advance, the labels usually keep the remainder without further distribution to their artists who built their catalogues. (All three major labels have recently released statements declaring they do share advance payments with artists, but it is unclear on what terms. Our analysis of Universal's accounting statements (*see Case Study, page 19*) shows no evidence of the payment of breakage to artists.) The 2011 Sony-Spotify contract called for \$42.5 million in advances over three years, in a period when streaming services were still in development. This seems to provide an attractive incentive to relicense the catalogues to the streaming services,<sup>20</sup> especially as the services grow and, consequently, so do the advances.

19  
Engel, Pamela.  
"Taylor Swift Explains Why She Left Spotify." Business Insider. Nov. 13, 2014.

20  
Messitte, Nick.  
"Inside The Black Box: A Deep Dive Into Music's Monetization Mystery." Forbes. April 15, 2015.

21  
*Ibid.*

An additional category of royalties paid for but not paid out emerges from a unique feature in U.S. copyright law: While nearly all other countries protect a right of performance in sound recordings (aka, the neighboring right), the U.S. did not establish such a right. In the U.S., only a *digital* performance right in sound recordings exists. As a result of this missing right, license fees are collected outside the U.S. that undoubtedly cover the performance of U.S. sound recordings (whether via television, radio, or other media). However, these fees are not paid out as royalties to U.S. rights holders—labels and artists, alike. Certain labels and artists have figured out ways to "relocate" their sound recording in order to capture these otherwise lost revenues, but most rights holders end up losing this revenue to foreign sources, who then pay it out to their local artists.

Ironically, independent artists—those stakeholders believed to have the least leverage in this global industry—likely have the clearest window into the underlying workings of the 21st century royalty payback machine. In many cases, a single distributor such as CDBaby or Believe Digital resides between the independent artist and online stores and services such as iTunes, Spotify, Deezer, Google Play, etc. That said, the underlying contracts between these distributors and these services may also be bound by a non-disclosure agreement, en-

abling the distributor to collect and pass along royalties while being prevented from sharing the details of just how those royalties were calculated.

## EQUITY STAKES AND SERVICE PAYMENTS

**MAJOR LABELS ALSO HAVE EQUITY OWNERSHIP SHARES** in most streaming services. Labels often license their catalogues at sub-market rates in exchange for a share of ownership in the company, based on the theory that streaming services need lower rates to grow and reach critical mass. This would be fine, except these ownership shares, when monetized, are never paid to the artists who receive lower stream rates in return for "supporting" the service in its infancy. Further, labels are also rumored to negotiate multimillion-dollar annual "service payments," charging streaming services for their catalogues as a whole, without attribution to individual works. This complicates things further, since it makes it impossible to determine fair per-stream rates in light of the other exchanges taking place, using artists' works as leverage.

### PRE-1972 SOUND RECORDINGS: LITTLE PROTECTION

Royalties in the digital age are further complicated by the fact that sound recordings created prior to 1972 do not currently enjoy federal copyright protection in the U.S. This means their protection may be governed by state copyright laws, which are often neglected by digital services. Since Aretha Franklin, Marvin Gaye, The Beatles, The Beach Boys, The Rolling Stones, and other high-profile acts recorded some of their most popular works in the 1960s, those works may be being streamed illegally. The Turtles recently won a lawsuit against SiriusXM for performing their sound recordings without a license.

Major labels currently own stakes in companies like Spotify and Rdio, although percentages may change with each company's round of funding. A 13 percent ownership stake in Beats Music<sup>22</sup>, resulted in a payoff to Universal Music's parent, Vivendi, of \$404 million in 2014 when Beats was acquired by Apple for \$3 billion.<sup>23</sup> It is highly doubtful that any of this \$404 million made its way back to artists, especially since the ownership was at the parent level, above Universal Music.

In a rather comical moment discovered in the Sony email hack, we see that when *Digital Music News* published an April Fool's hoax article on April 1, 2014, reporting that Google had acquired Spotify for \$4.1

billion, a thread of emails among Sony finance executives expressed their delight. "If this is true, they should notify us ASAP so we can exercise our rights under the Voting Undertaking Agreement," wrote Susan Meisel of Sony Music, with others asking, "What is our percentage interest?"<sup>24</sup>

Notwithstanding, Sony has at least considered how to move more solidly into the digital realm. Also released in the WikiLeaks emails was a memo requested by the Sony CEO from recently deceased Dave Goldberg, former head of Yahoo! Music, about how to pivot the company into a revamped all-digital enterprise. "The record company needs to act like a music publisher for new releases—putting up very little money but not trying to hold artists for long contract periods or to keep as much of the revenue. Advances would be \$50,000 with a 40 percent revenue share after the advance... Most fixed headcount in new releases will need to be eliminated, artists will need to be paid quickly and transparently, deals will need to be simple and fair and catalog replenishment is the only goal of the new release business. Artist contracts that have large fixed marketing costs will need to be restructured or sold off as there will no longer be headcount to do the work. New releases will be tested on consumers before added money is spent to ensure that it isn't wasted. In short, the new release business will become like an independent label."<sup>25</sup> To date, these recommendations have not been implemented.

In response to some of these issues, TIDAL has emerged as an alternative streaming service. Collectively owned by major artists like Daft Punk and Madonna, and headed by Jay-Z, the service is trying to show more of an artist-centric perspective, as opposed to the VC-backed "tech company" Spotify. Unlike Spotify, TIDAL does not offer a free ad-based tier and promises to pay double the standard royalties for streaming services (up to five times for hi-fi streams). This was verified by our data (*see page 19*).<sup>26</sup> Many have asked: What about smaller, independent musicians? Since such popular and wealthy musicians have a stake in TIDAL, how will that affect payouts? Perhaps the larger artists do have a more "artist-friendly" mentality than a tech entrepreneur like Daniel Ek, or perhaps they are just looking to enrich themselves, too. (TIDAL has already reportedly been seeking a merger partner.)<sup>27</sup> Apple also recently released its subscription music service in June 2015, but not without its own controversy about payouts and transparency. Its initial contracts called for no payments to rights holders during a subscriber's three-month trial period. Taylor Swift's "call-out" in a Tumblr blog post forced Apple to change this plan, but we still don't yet know exactly how much Apple will pay during this period.<sup>28</sup>

22 Resnikoff, Paul. "The Major Labels Are Trying to Sell Spotify for \$10 Billion, Sources Say - Digital Music News." *Digital Music News*. 11 June 11, 2014.

23 Chowdhry, Amit. "Apple Finalizes Beats Deal After Paying Vivendi \$404Million." *Forbes*. Aug. 1, 2014.

24 Ibid.

25 Popper, Ben. "Jay Z Relaunches TIDAL with Music's Biggest Artists as His Co-owners." *The Verge*. March 30, 2015.

27 Houghton, Bruce. "Apple Wants 90 Day Free Music Trial, Lyrics And Jay Z Seeks TIDAL Merger Partner." *Hyperbot*. June 1, 2015.

28 Luckerson, Victor. "The One Huge Thing We Still Don't Know About Taylor Swift's Apple Battle." *Time*. June 23, 2015.

## MECHANICAL ROYALTY PAYMENTS

**AS DISCUSSED, MECHANICAL ROYALTIES ARE PAID FOR** the right to reproduce a musical composition in a physical or digital medium (from a CD to digital download to Internet streaming). In the U.S., the Harry Fox Agency (HFA) provides services and issues mechanical licenses on behalf of its many music publishers. Mechanical royalty rates for streaming are set by the Copyright Royalty Board in the U.S. and other entities abroad, and are not negotiated on a fair-market basis, which is one reason for the large disparity between labels and publisher payments from streaming services. Currently, U.S. streaming services pay 10.5 percent of their revenue, minus their PRO fees, in mechanical licensing fees.

As an example, mechanical royalties owed by Spotify to the publishers for the use of their music are paid to HFA, which then distributes the monies to each publisher represented by HFA. If an artist's publisher (usually smaller publishers) is not represented by HFA, the only way to collect mechanical royalties from Spotify is to make an administrative agreement with HFA<sup>29</sup> or forge a direct agreement with Spotify, which could be a managerial nightmare.

Since organizations like HFA collect most of the mechanical revenues from streaming services on behalf of writers and publishers (and take a cut for their services), it's worrisome that some royalties may be withheld from songwriters simply because they do not have an administrative agreement with HFA. When a mechanical-payment check does arrive, there may be a lack of transparency in the breakdown of what a writer or published is owed, or it may end up in the black box, with the money never reaching its rightful owner. That can be particularly problematic for songwriters.

"I feel sorry for the writers in this mess," said Kenswil. "Their sole sources of music revenue are checks from their works. At least recording artists have other opportunities in the form of touring, merchandise, and public appearances."

"Songwriters aren't touring people," said U2's Bono. "Cole Porter wouldn't have sold T-shirts. Cole Porter wasn't coming to a stadium near you."<sup>30</sup>

## PRO PAYMENTS

**ANOTHER MAJOR ISSUE FOR SONGWRITERS IS A LACK** of

understanding regarding how payments from PROs are calculated for public performances of their works. The longstanding problem, which predates digital distribution, stems from a lack of viable data and tracking processes for public performances. PROs have at least two accounts for each song—one for the writer and one for the publisher. Most songwriters understand that the monies they receive account for half of the total performance royalties generated by their works. The other half goes directly to the publisher. But few, if any, understand how many performances it takes to generate their revenue, nor do they fully understand through which media their works were performed.

The primary reason songwriters and publishers don't receive a breakdown of the performances that contribute to their royalty payments is because the PROs themselves often do not have that information. Much of the tracking by PROs is based on samples of usage rather than actual and specific usage information from licensees. For a long time, technology did not exist for accurate reporting from the hundreds of thousands of sources of public-performance revenue. In the U.S., ASCAP tracks performances through both "census surveys," which are direct usage reporting from licensees, and "sample surveys" that determine the usages based on a hopefully representative sample.<sup>31</sup> For radio, in particular, ASCAP calculates royalty payments based entirely on sample surveys. For Internet-based performances, direct reporting comes from ASCAP-licensed Internet sites and ring-back tone licensees that provide complete data on music use, the names of which are not available.<sup>32</sup>

All PROs that employ survey-based monitoring systems insist they can create accurate breakdowns of music usage and can accurately distribute royalties accordingly. That may well be true. However, sampling is no longer necessary because technology can now monitor virtually any and every public performance of all works in a PRO's catalogue and subsequently distribute payments to writers and publishers based on a precise and exact number of performances. For example, MusicDNA has a system that tracks performances on more than 19,000 radio stations worldwide. Further, SoundExchange, the U.S. sound recording PRO, already utilizes a much more comprehensive and sophisticated digital tracking system, even though it does rely on sampling in some cases.<sup>33</sup> It is no longer acceptable for musical works PROs to rely on antiquated, inherently inaccurate guesstimates. We encourage these PROs to widely and quickly adopt better and fuller tracking technology to bring more transparency to songwriter and publisher payments and give rights owners confidence that they are being paid correctly.

Our research also uncovered issues with payments from

29  
"How Spotify Streams Turn Into Royalties." Songtrust. Oct. 24, 2011.

30  
Mayer, Catherine. "Exclusive: U2 and Apple Have Another Surprise for You." Catherine Mayer. Time. Sept. 18, 2014.

31  
"Payment System." ASCAP. [www.ascap.com/members/payment-systems.aspx](http://www.ascap.com/members/payment-systems.aspx)

32  
*Ibid.*

33  
"General FAQ." SoundExchange. [www.soundexchange.com/generalfaq/](http://www.soundexchange.com/generalfaq/)

34  
Sony Digital  
Audio/Video  
Distribution  
Agreement, 2011.

**CASE STUDY**

## A CLOSER LOOK AT ARTIST ROYALTIES

As noted, music industry practices have not always kept pace with the many possibilities of digital technologies. Perhaps no area of the music business is more ripe for reinvigorating change than royalty reporting, which has been trapped in outdated practices. To better illustrate the friction caused by old-fashioned royalty-reporting methods for digital uses of music, we analyzed the quarterly royalty report from late 2014 of an unnamed recording artist—an indie rock band signed with a major label that has earned multiple Grammy nominations, released several albums, and sold more than 3 million albums.

The first striking element of the quarterly report was its sheer size: 12 separate PDF files, including both royalty statements and artist summary statements that collectively totaled 119 pages. Assuming all quarterly reports are roughly the same size, this means an artist must digest nearly 500 pages of statements each year.

The artist summary statement shows little more than the total royalties earned for a type of use (audio, video, etc.), and what monies from an advance must be recouped before the artist begins to receive further royalty payouts. To derive any sort of insight into how total royalty amounts are derived, one must look to the individual royalty statements that provide data on various uses of each track across a number of platforms and countries. While it is wonderful that artists can reach fans from all over the world and have their music used in a variety of different ways on a multitude of platforms, these uses ultimately result in royalty statements that contain a tremendous amount of data. In our one illustration, the royalty statements accounted for 113 of the 119 pages, and contained more than 2,600 lines of data. Of course, since the data is paper-based, there's no way to productively analyze it unless you manually key it into an electronic format, which would require a significant time investment. While some artists can afford to have a third party enter this data into a more useful format, far more do not have such resources and would have to work through the data themselves or simply not analyze it at all.

While we were unable to determine whether the usage and payment amounts are accurate without the report sent from the services (iTunes, Spotify, YouTube, etc.), our analysis did uncover a number of mistakes and inconsistencies in the metadata in the royalty statements. Perhaps the most significant were errors in which a spelling mistake resulted in multiple reports for the same use of a work (same track, platform, country, royalty rate, etc.). For example, in one instance there were two reports for the same use of a track simply because there was a space between words in one report and no space between the words in the other report. When there were misspelled words in the royalty statements, the money did ultimately make it to the correct payee, but if the spelling errors had been slightly more substantial, it is entirely possible that the money would have been relegated to the black box of unpayable royalties. These sorts of errors are inherent in a reporting system based on names. A comprehensive, accurate, publicly accessible database of music rights ownership information that identifies works based on globally unique identifier codes, rather than track and artist names, would go a long way toward eliminating these types of errors (see page 26).

We also found several instances where data was inexplicably organized into monthly, rather than quarterly, periodicities or was from a completely different quarter than the rest of the data in the report. Additionally, we found many instances of negative uses of a work, which appeared to result in the artist owing the label a small amount of money. While these last two inconsistencies do not pose the same threat as misspellings, they are issues that will hamper proper analysis of a royalty statement and erode the artist's confidence in the accuracy and quality of the data.

Unfortunately, these long, error-riddled reports will continue until music companies invest in more robust digital royalty-reporting systems. While Spotify is required to provide Sony "access to dashboard data, including online, real-time access to additional detailed statistics and usage data concerning the use of Label Materials on the Services,"<sup>34</sup> artists are left with reams of paper-based royalty statements arriving months to years later. This is unacceptable, and labels should also provide artists with the same level of real-time access to data. Adopting these systems and

CONTINUED >

SERVICE	YOUTUBE	SPOTIFY	SPOTIFY PREMIUM	DEEZER	DEEZER-ORANGE*	WIMP (TIDAL)
FUNDING TYPE	AD-SUPPORTED	AD-SUPPORTED	SUBSCRIPTION	SUBSCRIPTION	SUBSCRIPTION	SUBSCRIPTION
AVERAGE PER-STREAM RATE (USD)	\$0.00111	\$0.00121	\$0.00653	\$0.015	\$0.01508	0.01573

\*Special service offered in conjunction with mobile ISP Orange, which now operates under the name of parent company EE Limited.

*flow-through information could allow artists to analyze their own data and drill down for granular details and further analyses, making them much more comprehensible and valuable. However, implementing a digital system has not been priority. Instead, many labels and publishers have been downsizing and cutting royalty-administration departments, which are viewed solely as cost centers, leaving fewer employees to work through the reports they receive from services, which can reach millions of lines of data per month. We believe the implementation of more robust analytics is critical for the music industry to continue its turnaround, and we encourage all royalty-paying companies to conduct a full review of their administration systems.*

## ROYALTY RATES

*In addition to analyzing the accuracy and simplicity of the royalty report, we also examined both the rates paid to the artist by the major labels and the rates paid to the label by services for use of the artist's works. The royalty rate paid to the artist by the label varied based on region and type of usage, but was generally somewhere between 13-22 percent for uses of a single track (downloads and streams), and between 8-22 percent for full album purchases, both of which fall within the normal range for a major label deal.*

*We learned a bit more by analyzing the rates paid to the label by streaming services. To illustrate the differences in per-stream royalties, we looked at the services where the artist's works were most used and took a sample of the per-stream rate paid by each service across a number of countries. Then we determined the average per-stream payout for each service. In per-stream royalties, we looked at the services where the artist's works were most used and took a sample of the per-stream rate paid by each service across a number of countries. Then we determined the average per-stream payout for each service. (See chart page 19)*

*Unsurprisingly, these numbers show that per-stream rates paid by subscription-based streaming services are far higher than those paid by ad-supported streaming services. However, the difference in rates paid by subscription services was surprising. Spotify paid an average of \$0.00653, which, while within the \$0.006-0.0084 range quoted on Spotify's website,<sup>35</sup> was less than half of the second-lowest rate for subscription streaming. Much of this difference is likely due to a difference in subscription prices. Spotify charges \$9.99 for its Premier service,<sup>36</sup> while Deezer and WiMP, which is now part of the hi-fi tier of Jay Z's TIDAL, each cost \$15-20 per month.<sup>37 38</sup>*

promoters to PROs for live performances, with some evidence of overcharging and skimming by promoters. Deductions for PRO payments from performance payouts were too high, with promoters benefitting by several percentage points. Again, performers and writers must be vigilant and seek total transparency in all dealings.

## INTERNATIONAL PERFORMANCES

**ANOTHER ISSUE FOR MUSIC CREATORS (PARTICULARLY songwriters)** seeking transparency and efficiency arises with the collection of royalties for international performances. American PROs are inherently limited to performances in the U.S., so the collection of royalties for international performances falls to local in-country PROs. (The same is mostly true in Europe, although recent EU directives for pan-European licensing are attempting to change this.) Assuming a PRO has a deal with a foreign local PRO, royalties are first collected in-country, then distributed to the songwriter's PRO (minus a local PRO fee), and then to the songwriter and their publisher (minus another PRO fee). The inherent friction and inefficiency in this are not insignificant.

Time is one major issue. *It can take years for royalties to finally reach rights owners.* First, the local PRO in another country must complete all of its tracking and royalty calculations before paying the relevant American PRO, which then goes through similarly bureaucratic administrative processes. It often takes at least a year—sometimes two or three—before the money finally reaches rights owners.<sup>39</sup> Additionally, by the time payments are issued, two (or more) PROs have deducted their full shares of administrative fees (i.e. twice as much as for a local in-country performance), leaving the rights holder with less money. An exception to this is SoundExchange, which does not take a fee for foreign performances.<sup>40</sup>

Again, these issues, particularly the payment delays, are largely due to antiquated performance-tracking techniques and a lack of a global database of rights ownership. Such a database, coupled with unique universal identifiers, would go a long way toward resolving issues stemming from an inability to determine who owns and administers a work. Further, a more comprehensive digital tracking mechanism would greatly expedite royalty-payment determinations.

35 "Spotify Explained" Spotify for Artists Spotify Explained Comments [www.spotifyartists.com/spotify-explained/](http://www.spotifyartists.com/spotify-explained/)

36 Ibid.

37 "What Is the Deezer Mobile Offer with EE?" Deezer Support support.deezer.com/hc/en-gb/articles/201332121-What-is-the-Deezer-Mobile-offer-with-EE-

38 TIDAL [www.tidal.com/us/try-now?utm\\_source=tidal&utm\\_medium=web\\_player&utm\\_content=left\\_menu&utm\\_campaign=na&utm\\_banner=na](http://www.tidal.com/us/try-now?utm_source=tidal&utm_medium=web_player&utm_content=left_menu&utm_campaign=na&utm_banner=na)

39 "FAQs: International." BMI. [www.bmi.com/faq/category/international](http://www.bmi.com/faq/category/international)

40 "International Partners." SoundExchange. [www.soundexchange.com/about/international-partners/](http://www.soundexchange.com/about/international-partners/)

## REPERTOIRE AND PAYMENT TRANSPARENCY

### MANY ARTISTS AND SONGWRITERS BELIEVE DIGITAL

services pay only a pittance for the rights to their music. With this in mind, it may be hard to imagine someone making thousands of phone calls trying to give money away, but this is what happens when musicians have earned, but not yet claimed, performance and other royalties. Why doesn't the money ever get to these artists or songwriters? There's simply a lack of information about who is owed that money. For example, in late 2009, Sonicbids partnered with SoundExchange to identify more than 10,000 Sonicbids members, particularly indie artists, who were owed around \$4 million in digital-performance royalties.<sup>41</sup> Many artists like these don't even know they are entitled to these royalties, which poses a huge problem as many remain unpaid. Better ownership and licensing data is needed to create a more streamlined process for gathering information about artists and songwriters for payment and attribution purposes.

"Correctly identifying rights is now more important

*"When the technology industry comes calling to ask what music needs to solve its data issues, the music industry doesn't often know. They are too busy fighting amongst themselves about their share of the pie."—Larry Kenswil.*

than ever in the music industry," stated Christophe Muller, head of music for YouTube. "The global licensing landscape is increasingly fragmented, but through robust technology already available, rights holders should be able to better identify and control works as well as maximize their value."

Inaccurate or unavailable ownership information also creates major friction in music licensing. It's particularly challenging to identify rights owners for a song for licensing purposes when those rights owners are based in multiple territories. It can sometimes take months, in some cases even a few years, to identify rights holders and negotiate licensing agreements. For instance, when the authors of this paper sought to identify all songwriters and publishers of a particular song and compare that information with the information from PRO databases, we encountered inconsistencies. For some reason, the numbers of songwriters and publishers listed in their databases didn't match.

Some songwriters were not based in the U.S. and were likely affiliated with different collective societies and different territories. With all data scattered over various databases, it is rather difficult to identify all relevant and legitimate parties, further complicating already convoluted rights environments. The following infographic indicates just how complex payments on a single Beyoncé song can be (for instance, imagine some services reporting the artist as *Beyonce* and others reporting as *Beyoncé*). (See Figure 6)

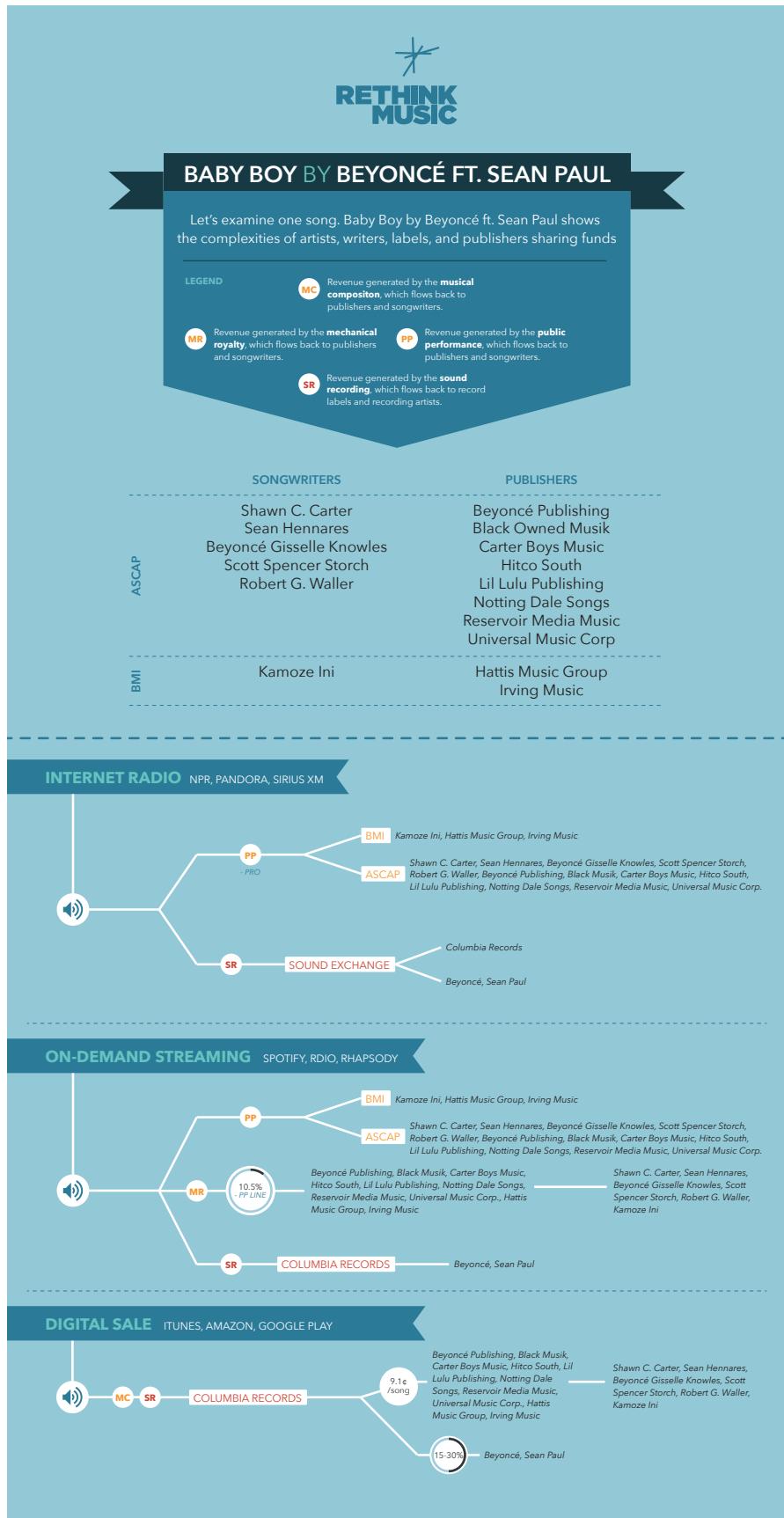
A lack of repertoire transparency can have a major negative impact on new services, particularly digital music services, seeking to develop and license deep catalogues. Jim Griffin, managing director of One-House, founder of the technology department at Geffen Records, and a former advisor to WIPO's Director of Copyright on the International Music Registry project, stated that "[these] services need fast, easy, simple licensing for de-risking, business planning, and speed to market." To avoid liability, these services must absolutely ensure they have permission from all controlling parties to use a work. When rights-ownership information is either unavailable or faulty, the licensing process can be dramatically slower. Consumers demand that streaming services provide the variety of a massive song catalogue, so this lack of repertoire transparency represents a major obstacle for both licensing and payment. Fortunately for the digital music services, most licensors offer blanket licenses that grant rights to an entire catalogue of

music. However providers may end up with material available on their services that is inadvertently not licensed properly. That can lead to improper payments or more money into the black box. For example, Pandora could obtain a blanket license from ASCAP, BMI, and SESAC that covers the public performance rights for the overwhelming majority of compositions performed on Pandora, but may not have the corresponding mechanical licenses from the appropriate publishers.

Some publishers have attempted to withdraw their digital rights from PROs in an effort to directly negotiate better rates on the open market, which could potentially benefit songwriters and publishers. But without well-cataloged rights-ownership information, digital music services would need to obtain many more licenses and would not necessarily know what each license covers, leading to higher costs and increased risk of infringement liability and payment errors. Further, these moves only shine a spotlight on the

41  
Cychosz, Tess.  
"Sonicbids  
Getting Artists  
Money With  
SoundExchange!"  
Sonicbids. Dec.  
16, 2009.

Figure 6



difficulties of corporate dealings in music. A directly negotiated Sony/ATV license with background music provider DMX in 2010 was made public. It charges DMX a royalty rate that was 30 percent lower than royalty rates negotiated by PROs, in exchange for a large "administration service fee" payment. Such withdrawals could also leave creators with a fractured system for public-performance royalty collection on the terrestrial radio and live performance side.

Technology companies have repeatedly attempted to solve the music identification problem, or at least pose the question of how they can help. However, "when the technology industry comes calling to ask what music needs to solve its data issues, the music industry doesn't often know. They are too busy fighting amongst themselves about their share of the pie," explained Larry Kenswil.

As discussed earlier, the industry does have existing standard identifiers: the ISWC and ISRC codes. However, there is currently no way to match an ISWC code with an ISRC code and link the musical composition correctly to the sound recording, meaning the payment process is not linked either. Further, while these identifiers are all mature and have been applied to a number of works, they await full-scale adoption. According to Griffin, the lack of adoption is not because these ID standards are not robust, but rather that we "lack [a] publicly accessible, comprehensive, authenticated database of them," which would be necessary if they were to be used to track the uses of musical creations. Licensees must also still report to numerous labels and publishers in a variety of different formats requested by each label or publisher, meaning wide adoption of the identifiers would help but would not necessarily solve the administrative headache for licensees that must manage many different outputs. Without standardized output reporting from digital services and a requirement to always use these codes, payment information is disjointed, inaccurate, and incomplete, as seen in our artist royalty statement analysis.

Initiatives like Digital Data Exchange (DDEX) have attempted to address these output issues. DDEX has worked to establish itself as a standards-setting organization for digital supply-chain communication,<sup>42</sup> and in this role has developed XML messaging standards for communications regarding electronic releases, digital sales, and music licensing, among others.<sup>43</sup> Unfortunately, the committees charged with solving this issue, comprised of employees at various commercial stakeholders, are not always able to reach agreements quickly enough to keep pace with technological development, and adoption by various stakeholders in the industry has been slow, at best.

## COPYRIGHT OFFICE RECOMMENDATIONS

**ON FEB. 5, 2015, THE U.S. COPYRIGHT OFFICE RELEASED** a report entitled *Copyright and the Music Marketplace*, the culmination of its comprehensive study of the music-licensing system. It contains recommendations for how U.S. copyright law could be updated to reflect the realities of the digital age. The study began in March 2014 with the release of a Notice of Inquiry (NOI) seeking comments from industry stakeholders on a variety of issues related to music licensing. The Copyright Office received responses from, among others, the NMPA, the RIAA, The Recording Academy, Spotify, DiMA, all three musical works PROs, SoundExchange, the NAB, The Future of Music Coalition, several music attorneys, and a number of artists and songwriters. The Copyright Office then invited representatives from a number of stakeholders to public roundtable events in Nashville, Los Angeles, and New York in June 2014, at which panelists discussed the issues mentioned in the NOI. Finally, there was a second window for comments when stakeholders could respond to claims made by other groups during the initial comment period. The Copyright Office then used these three sources, along with its internal expertise to develop its recommendations.

The 245-page report provides a great deal of background and suggests some changes to the current framework:

- 1. There should be greater parity in the treatment of musical works and sound recordings.**
  - 1.1 When sound-recording owners have the right to negotiate digital rates on the open market, musical-works owners should as well.
  - 1.2 All rate-setting activities should be administered by the Copyright Royalty Board.
  - 1.3 All government rate-setting should occur under one standard that strives to "achieve to the greatest extent possible the rates that would be negotiated in an unconstrained market."

These changes aim to greatly reduce the influence of government in determining royalty rates across a wide variety of services and bring musical compositions and sound recordings onto a more level playing field. Allowing musical-works owners to directly negotiate digital rates would theoretically help songwriters and publishers receive higher rates for certain digital uses, making payment for the two different types of works more equitable. Moving all rate-setting to the CRB under one

42  
"DDEX." DDEX.  
[www.ddex.net/  
about-ddex](http://www.ddex.net/about-ddex)

43  
"List of Standards Available from the DDEX Knowledge Base." DDEX. [https://  
kb.ddex.net/  
display/HBK/](https://kb.ddex.net/display/HBK/)

standard would eliminate disparities in relative royalty payments from different classes of music providers, such as the high rates paid by webcasters relative to satellite radio broadcasters. Further, it would eliminate differences in how sound-recording and musical-works rates are set, leading to more equitable payments. The focus on achieving rates that are close to what would be negotiated on the open market is aimed to be a form of "light-touch regulation" and would reduce the impact of adjudicator bias in rate-setting.

2. **Provide full federal protection for sound recordings made prior to Feb. 15, 1972.** This would close an unjustifiable loophole in copyright legislation (see page 17) and provide owners and creators of these works with the ability to control and derive income from them.
3. **Create a full performance right for sound recordings.** This would give sound-recording owners access to royalties generated by terrestrial radio play. With the decline of record sales, public-performance-related income has become a major factor for artists, and terrestrial-radio royalties for sound-recording owners could represent significant additional income. This move could again serve to bring sound recordings and musical works onto a more equitable playing field. Further, a full performance right would give sound-recording owners access to international royalties for terrestrial play (so-called "neighboring rights," royalties from which are currently held by their nation of origin and paid out to local artists and SR owners instead of their rightful owners due to the lack of reciprocity with the U.S.).
4. **Significantly revise or eliminate decades-old consent decrees governing ASCAP and BMI.**
  - 4.1 To separate antitrust monitoring from rate-setting procedures.
    - 4.1.1 Employ standard DOJ antitrust monitoring, rather than presuming anticompetitive behavior.
  - 4.2 Eliminate §114(i), which restricts sound-recording rates from being considered in musical works rate-setting procedures.

- 4.3 Allow for the bundling of rights, turning PROs into more broad music-rights organizations, such as those existing in Europe and elsewhere, which create one-stop shops for easier licensing of both sound recordings and musical compositions. (SESAC is taking one step toward becoming a broader U.S. MRO with its purchase of the Harry Fox Agency.<sup>44</sup>)

5. **Change the mechanical licensing system.**

- 5.1 Publishers should be able to opt out of compulsory mechanical licenses for all new-media uses of cover songs.
- 5.2 Allow blanket licensing of mechanical rights to create greater efficiency for digital services.
- 5.3 Set rates on an "as-needed" basis, rather than the current five-year timeline
- 5.4 Allow songwriters and publishers to audit a licensee's statements

6. **Expand licensing under §112 and §114, including coverage of terrestrial radio licensing,** assuming Congress grants a full performance right to sound recordings.

7. **The private sector should create a comprehensive database of music-rights ownership information.**

- 7.1 Employ unique universal identifiers and messaging standards.

8. **The private sector should adopt best practices for transparency in royalty calculations and payment disbursements to songwriters and musicians.**

(For more information on the abovementioned recommendations, as well as for the complete list of recommendations, refer to the Copyright Office's full report).

44  
Sisario, Ben.  
"Music Publishing Deal Driven by Shift From Sales to Streaming." The New York Times. July 6, 2015.

## OUR RECOMMENDATIONS AND CONCLUSION

**WHILE WE BELIEVE THE COPYRIGHT OFFICE** recommendations are a step in the right direction, there are further steps that can be taken to achieve a more transparent and fairer music industry. As we've seen, there are many impediments standing in the face of artists and writers today, and we therefore encourage:

- The development of a "Creator's Bill of Rights"
- A "fair music" certification of transparency for digital services and labels
- The creation of a decentralized, feasible rights database
- The investigation of blockchain technology and cryptocurrencies to manage and track online payments through the value chain directly from fans to music creators
- Educating all types of music creators regarding their rights and the operations of the music industry.



### **STANDARD IDENTIFIERS AND CERTIFICATION OF TRANSPARENCY**

All digital services and middlemen should provide adopt a minimum common set of data outputs for each song streamed or downloaded. While many services already provide some of the following outputs, we encourage the creation of an NGO, similar to a "certified organic" or "fair trade" seal. For example, the development of the fair-trade coffee movement began as an attempt to ensure coffee growers, who are abundant, are fairly compensated for their products through a series of agreements by retailers and middlemen aimed at stabilizing the coffee economy by promoting consumption, raising growers' standard of living by providing economic counseling, expanding to niche markets, and focusing on sustainability.

The new music NGO would promulgate a set of common standards, audit data reporting by services and middlemen, offer education to creators (See Recommendation No. 4) and issue certifications of verification of fair music. Fundamental to the implementation of this certification would be the required application of a unique GUID to every creative work according to the type of contribution and links between each (ISRC for sound recordings, ISWC for musical works, and ISNI for all other contributions). Widespread adoption and use of GUIDs would expedite data capture and eliminate the potential for spelling errors to create mistakes in reports and payment delays. As called for in the Creator's Bill of Rights, once certified accurate by the NGO, all creators involved in the work would receive the information contained in the report:



### **CREATOR'S BILL OF RIGHTS**

A Creator's Bill of Rights consists of a set of ethical standards for musicians, artists, writers, and other creators to protect their rights as creators. Our proposed Creator's Bill of Rights underscores the reality that creators are owed some fiduciary level of care for the proceeds of their art. This bill of rights would encompass standards for compensation and information on use or licensing of their creative works:

- Every creator deserves to be fairly compensated for the use of his/her works.
- Every creator deserves to know exactly where and when his/her work is used or performed.
- Every creator deserves up-to-date reporting on the uses of his/her works (no more than 30 days in arrears for digital uses, 90 days for other uses).
- Every creator deserves to be recognized for the creation of his/her works via identification on digital performances or uses.
- Every creator deserves to know the entire payment stream for his/her royalties (e.g. which parties are taking a cut and how much).
- Every creator deserves the right to set the price for his/her works based on fair-market value.

- Title of song played
- Album (if any)
- Artist
- Songwriter
- Musical composition copyright owner
- Sound recording copyright owner
- ISRC and ISWC code
- Duration of stream
- Type of stream (on-demand, radio)
- Year of release
- Any special unique work identifiers promulgated by the NGO

Reporting among services would be standardized, with certified labels and publishers required to accept a common set of data outputs. To earn the certification, labels and publishers would also be required to provide the same level of data in real-time and to meet a minimum

level of fiduciary duty. The NGO would also be responsible for ensuring fair payout rates by services and for encouraging market development, thus raising the value of recorded music.



### RIGHTS DATABASE

As previously discussed, it is estimated that anywhere from 20-50 percent of music payments don't make it to their rightful owners. Previous efforts toward establishing a comprehensive global database to facilitate the licensing and control of musical works have been unsuccessful. For example, an initiative to create a worldwide database resulted in the launch a Global Repertoire Database Working Group (GRD WG) in September 2008 by EU Commissioner Neelie Kroes.

The primary objective was to create a single, comprehensive, and authoritative representation of the global ownership and control of musical works. The GRD would have ensured greater transparency in music licensing. Not only would the licensing process have been faster, it would also have cost less to obtain a license because a global database with no intermediaries between licensee and owner would reduce operational and administrative costs below what intermediaries typically charge. Currently, the GRD remains on standby and inactive after several PROs pulled out and stopped funding the project after four years of work. Moreover, the suggested database would have provided data for musical works only, leaving no records for sound recordings. However, this first initiative toward a multi-territory rights-allocation database was an industry milestone and an immense step toward transparency in ownership and control over musical works.

GRD was not meant to be a public resource. It was the internal effort of a small group of publishers, all of whom eventually withdrew. However, to be helpful and increase fluidity, such a database must be open to all. In addition, such a global database is only sustainable if it is profitable and keeps all relevant parties motivated. A more recent effort to create a global music rights database was WIPO's International Music Registry (IMR), which would have been financed by transfer taxes between collective societies. This means that when money is transferred from one society to another, it would be taxed and the proceeds would pay for all registry work. The WIPO effort is also currently stalled.

One of the barriers to the creation of any database is that it must be voluntary—under the Berne Convention

copyright treaty, signatory countries may not require registration of international works in order to gain copyright protection. This removes any requirement to participate, meaning that any proposed database can potentially "offend" some constituent group, resulting in their withdrawal of support, as seen with the GRD. Thus, for a successful, openly accessible, comprehensive, and authoritative database, we should look at analogues from other industries. The movie industry established the Internet Movie Database (IMDB), a profitable company that registers claims related to audio-video production and generates revenue as a result. The database is structured so that anyone can contribute data, with the user base serving as a crowd-sourced authentication system. Music currently has a somewhat similar database with allmusic.com, now owned by Amazon, but it is not tremendously helpful to third parties.

Another analogue comes from the technology industry, which uses the Internet Corporation for Assigned Names and Numbers (ICANN), to register domain names. ICANN is a nonprofit organization that solved this registry problem by creating and managing the Domain Name System (DNS), which cannot work unless all computers on a network are registered and reveal such registrations. Jim Griffin believes that "the DNS system is an excellent example because it is a truly global, mission-critical database that is both centralized and distributed globally, private and public, and which has demonstrably for decades delivered single-digit millisecond responses to queries from across the world with little or no downtime."

However, all of these registries are structured as for-profit corporations, meaning that, at some level, participants are incentivized to make money and build a robust registry. This raises a problem: If a number of for-profit entities come together to build such a registry, antitrust concerns could emerge. Therefore we recommend that a registry operate through a combination of for-profit and nonprofit organizations. Griffin notes that, "the core of the [registry] endeavor, including standards-setting... responds well to an approach that brings academics, government, and commerce into coordination through nonprofit organizations."

Therefore, we propose a decentralized distributed registry in which a nonprofit (perhaps the Fair Music NGO) would be responsible for database administration. The entities accredited to register works and responsible for the promotion of the registry, on the other hand, would operate on a for-profit basis, which would incentivize organizations to become accredited registrars, thereby expanding the reach of the database. The approach means there would be more than one registry, just as we see in the computer DNS system, which distributes and

propagates information around the world. The relevant parties would each have separate servers, synchronized with a main database, where they enter information about musical works, which would then be propagated around the world. We intend to more fully explore this option in Phase Two of our Fair Music Project.

As discussed earlier, intermediaries benefit from today's black-box situation, sitting atop piles of unclaimed royalties due to the lack of knowledge of who to pay and a lack of transparency in the revenue flow. Currently, if the middlemen lose track of the money, it only benefits major recipients. This is the complete opposite of what we find in the banking industry, where all unclaimed money must go to the state's attorney general via escheatment. In the music industry, the major recipients can pocket unclaimed royalties and have no incentive to locate the owners of musical works. Solving this problem may require engaging government agencies and implementing new regulations under which all unclaimed money goes to the government instead of the intermediaries' pockets. With such a structure, intermediaries would be more motivated to support ways to track the creators of musical works.

Of course, solving this issue also means incentivizing authors to start registering their works. By knowing their identity, it becomes easier to track them down and consequently reduce the amount of unclaimed royalties. To optimize the number of registrations, the solution could be a global registry as a registry of claims, not as a registry of factual data. But what happens if someone registers a song they don't actually own? In this case, a registry could employ an Alternative Dispute Resolution (ADR) mechanism that Griffin describes as a system that "takes the edge off conflict, [and] provides a quicker, easier path to addressing conflicting claims." Claims could be registered but would be subject to ADR if there is a dispute over ownership of musical works, again similar to the ICANN model.

There are already some commercial efforts underway to create a global registry for copyrighted works both in music and other industries. We encourage these and believe the key is to create and support a profitable and flexible market that engages the registry activities. Ultimately, the efforts should focus on creators and incentivize them to register their works, because, as Griffin pointed out, "Creators have a motive to crow about their works. Middlemen do not [and] prefer to keep their cards close to their vest." Further, he pointed out that major players, like labels and publishers, have had years to develop a registry but have failed to do so. "Expecting a solution from them is contrary to reason," he said. Once a registry begins to become populated and viable, other respective parties will need to come along.



### CRYPTOCURRENCIES AND BLOCK CHAINS

In addition to the aforementioned benefits, a comprehensive, accurate database of music rights ownership information would provide a platform for new technologies to be applied in potentially game-changing ways. We encourage the investigation of the use of emerging crypto-currencies, such as Bitcoin, and their underlying technology, Blockchain, as new royalty-distribution mechanisms for the music industry.

Bitcoin is an online currency comprised of a network of a large number of computers all running the same version of the open-source Bitcoin software. To ensure there is enough processing power for the platform to function and remain highly secure, those who donate processing power (known as miners) are incentivized through a lottery for free Bitcoin, with the amount of "lottery tickets" a miner receives directly correlated to the processing power he/she contributes. The Bitcoin network is based on a blockchain, a public log that specifies how much Bitcoin each member owns and that records any transaction or transfer of funds occurring within the network. For example, say Person A and Person B each own 10 Bitcoin, and Person A wants to give 2 Bitcoin to Person B. The log would merely update to reflect that Person A now owns 8 Bitcoin, and Person B owns 12, and it would create a receipt of the transaction. This entire transaction would occur nearly instantaneously. Traditional bank transactions, on the other hand, go through several intermediaries, each of whom takes an administrative fee and delays the payment.

A database of accurate rights ownership information, like the one we have proposed, could form the foundation of a similar cryptocurrency log. In addition to rights ownership information, the royalty split for each work, as determined by a mixture of statute and contracts, could be added to the database. Each time a payment is generated for a given work, the money would be automatically split according to the set terms, and each party's account would instantly reflect the additional revenue. For example, suppose a song is purchased from a digital music store, such as iTunes. After the store takes its cut, for ease of demonstration, we will hypothetically assume the revenue generated by the purchase comes to US\$1.00. This money would be split between the two different works contained in the song, with a 9.1 cent mechanical royalty going to the musical work, and the remaining 90.9 cents going to the sound recording. Next, if the contract between the publisher and songwriter specifies a 75/25 split of revenue from downloads, the publisher would receive 6.825 cents and the songwriter

would receive 2.275 cents. With an identical split at the record label, The label would receive 68.175 cents, and the recording artist would get 22.725 cents. The blockchain network could also further divide this 22.725 cents between the members of a band, if applicable.

This entire process would take place in less than one second, allowing all parties to access their money immediately after it is generated. Further, this payment system is fully trackable and would ensure that royalties are not held by third parties, such as labels and publishers, before being passed to the artist and songwriter. This would eliminate concerns about accidental or intentional underpayment of royalties.



#### EDUCATION INITIATIVE

Unfortunately, many musicians are unaware of the many rights they have as creators, and an even greater percentage are unaware of the payout structures from various sources of revenue. In fact, if 100 musicians were asked if they knew how to register an Internet domain name to promote themselves, as many as 80-90 percent would say yes. However, if asked if they knew how to register their music with the Copyright Office or a PRO, far fewer would be able to answer the question correctly, and an even smaller percentage would be able to describe how monies flow from their works, or accurately describe the source of a royalty stream.

We therefore recommend an initiative that would, first and foremost, educate musicians about their rights and why they should care about these issues. We should also seek to equip them with the knowledge to understand their royalty streams and navigate the music industry successfully. Berklee has already taken steps in this regard, including a massive open online course (MOOC). We suggest incorporating the Creator's Bill of Rights and Fair Music certification into an education initiative to drive awareness among artists and writers about their music rights. We propose additional MOOCs, in conjunction with various stakeholders, and a series of global workshops concerning payment streams, transparency, and the operations of the music industry. These workshops should focus on the legal and money-flow realms of the industry, topics that are usually overlooked when educating musicians who aspire to full-time careers and who often find other topics such as

social media and touring far more intriguing. In addition, we recommend a Web-based short-video series that serves a resource for those unable to attend on-site workshops. Musicians of all ages would be able to explore workshops via the video series as it relates to their interests and needs.

## CONCLUSION

**THE ADVENT OF THE INTERNET AND THE DEVELOPMENT** of digital technologies have collectively created profound disruptions in the music industry. While these technologies did, in some ways, have some deleterious effects, they have also opened a world of new opportunities. Music creators of all sizes and ambitions are now more empowered and equipped to reach broader global audiences, and listeners have access to more songs at more times on more devices than ever before. Unfortunately, many key stakeholders have too often been hesitant to accept these new developments, fighting to preserve an incredibly lucrative, pre-digital industry, and along with it, the lack of transparency and common data standards, despite their availability. As a result, there has been only a partial implementation of digital technologies in the music industry, creating a tremendously mismatched ecosystem in which we have surface-level, profit-generating elements without the proper digital infrastructure to support them. The resulting opaque industry is one in which many artists can reach a wide number of fans, but only a few can truly make a living from their craft, and even fewer can understand the problems they are facing.

Full transparency and closer connections between consumers and creators are not impossible. The recommendations in this report, including adoption of appropriate technology by those throughout the value chain, along with a combination of certification through a Fair Music NGO, a registry database, adoption of the U.S. Copyright Office recommendations, exploration of a blockchain royalty log, and education projects for creators, could go a long way toward increasing the value of music and providing a fair level of compensation and protection for those who create the music we enjoy every day. All of these important initiatives will be explored by Rethink Music in Phase Two of this multi-year project, beginning in the fall of 2015. We value the input of any and all stakeholders in this second phase, and firmly believe a reinvented, sustainable, and innovative music industry is within the grasp of all.

## ACKNOWLEDGEMENTS

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## CONTACTS

### Allen Bargfrede

Founder and Executive Director  
Rethink Music  
[abargfrede@berklee.edu](mailto:abargfrede@berklee.edu)  
[@allenbarg](https://twitter.com/allenbarg)  
[www.linkedin.com/in/allenbargfrede](https://www.linkedin.com/in/allenbargfrede)

### Panos Panay

Founding Managing Director  
BerkleeICE  
[ppanay@berklee.edu](mailto:ppanay@berklee.edu)  
[@panaypanos](https://twitter.com/panaypanos)  
[www.linkedin.com/in/panospanay](https://www.linkedin.com/in/panospanay)

### Rethink Music

[www.rethink-music.com](http://www.rethink-music.com)

### BerkleeICE

[www.berklee.edu/ice](http://www.berklee.edu/ice)

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