



University of Southern California
Journal of Music Industry
Issue 1

OUR MISSION

The USC Journal of Music Industry provides an interdisciplinary analysis of the music business by shedding light on contemporary topics, perspectives, and innovations. Through our platform, we elevate diverse voices to create academic discourse in the music industry.

PERSONNEL

Founders

Aidan McIntyre

Chandler Lawn

Rebecca Clemmons

Editor-In-Chief

Chandler Lawn

Executive Director

Aidan McIntyre

Chief Technical Officer

Rebecca Clemmons

Logo Designer

Julia Barton

Research and Quality Control

Chloe Middler

Olivia Wendland

Public Relations

Allana Taghioff

Anna Rhee

Ronald Boras

Special Thanks To

Andrae Alexander

Jeff Brabec

Todd Brabec

and our External Peer Reviewers

Contributing Authors

Aidan McIntyre

Ashley Chainani

Matias Pachalian

Miranda Jackson

Faculty Advisor

Andrew Leff

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LETTER FROM THE EDITOR

Dear Reader,

We are excited to present to you the debut edition of the USC Journal of Music Industry (JMI). As undergraduates at the Thornton School of Music, we found ourselves consistently inspired by the novel ideas of our peers and wanted to create a comprehensive platform in which to feature some of the phenomenal scholarship happening within our program. The JMI is run entirely by undergraduate students and features pieces by students, professors, and alumni of the University of Southern California.

Our first issue includes interviews with USC Professors Jeff Brabec, Todd Brabec, and Andrae Alexander as well as features by alumna of the Music Industry Master's program Miranda Jackson, current Music Industry and Economics undergraduate Aidan McIntyre, and current Law, History, and Culture student Matias Pachalian. Additionally, we present a note from Ashley Chainani, an alumna of the Marshall School of Business. This edition covers topics ranging from amending copyright protocols and dismantling monopolies to evaluating K-pop fan behavior and analyzing the demise of punk. All features were peer-reviewed by third-party music industry professionals.

I am incredibly proud of this team for the work they have conducted, start to finish, in an entirely virtual setting. With members coordinating remotely from Texas, London, New York, and Los Angeles, this journal made the best of unprecedented circumstances and united USC students across both time zones and disciplines. I am eager for the JMI to continue showcasing the academic caliber within Thornton and I hope that it will foster the same inspiration and creativity in its readers as was fostered in us during our time as USC undergraduates.



Sincerely,
Chandler Lawn '21
Editor-in-Chief

INTERVIEWS

On Diversity in the Music Industry with USC Professor Andrae Alexander

Conducted by Aidan McIntyre

As a musician, composer, and consultant, Andrae Alexander has worked on projects such as Empire, the film Detroit and The Birth of a Nation soundtrack. Some of the artists he has worked with include NeYo, BlackBear, George Drakoulias, Swae Lee, Mellissa Ethridge, Allee Willis, Meek Mills, Pusha-T, Kanye West, Jesse J., Rodney Jerkins, Lamont Dozier, No I.D. and more. Being a proponent of philanthropy, Alexander has worked with non-profits such as AGC and Urban Possibilities to use music as a tool for social rehabilitation in the homeless community and to serve underserved grade-school children where music has been removed from their schools' curriculum.

In this interview, JMI Executive Director Aidan McIntyre sat down with Alexander, a Grammy-nominated professor in the USC Thornton School of Music's department of Music Industry. Alexander and McIntyre spoke about the concept of diversity in the music industry as a mechanism for control and identity-building, surveying trends past, present, and future, through discussions of the history of genre stratification, current technological change supporting independent artists, and the coming reckoning the music industry is facing between its potentially conflicting elements of business and creativity.

On the Value of Legal Education in the Music Industry with USC Professors Jeff and Todd Brabec

Conducted by Chandler Lawn

Jeff and Todd Brabec are USC professors, twin brothers, and co-authors of the book *Music, Money and Success: The Insider's Guide To Making Money In The Music Industry* which has been awarded the Deems Taylor Award for excellence in music journalism and is currently in its 8th edition. Jeff Brabec is Vice President of Business Affairs for BMG Chrysalis, representing the catalogues of popular artists such as: David Bowie, My Morning Jacket, Sheryl Crow, John Denver, Blondie, Billy Idol, The Yeah Yeah Yeahs, A3 ("The Sopranos" theme), Dan Wilson, TV on the Radio, Ray LaMontagne, Danger Mouse, and Cee-Lo Green. Todd Brabec is the former Executive Vice President and Director of Worldwide Membership for the American Society of Composers, Authors and Publishers (ASCAP) as well as an Entertainment Law attorney, a music licensing, royalty and business management consultant, and a Governing Committee Member as well as former Music and Budget Chair of the American Bar Association's Forum on the Entertainment and Sports Industries.

In this interview, JMI Editor-in-Chief Chandler Lawn sat down with the Brabec twins to discuss how their legal studies impacted their careers as musicians, publishers, and attorneys and how studying the law can serve music students today. The Brabecs and Lawn discuss the implications of the changing demographics of the historically male-dominated industry, the importance of defining music as not just a creative industry, but both a business and a legal one, and the necessity for integrity throughout one's career in music.

ON DIVERSITY IN THE MUSIC INDUSTRY

WITH USC PROFESSOR ANDRAE ALEXANDER
CONDUCTED BY AIDAN MCINTYRE

Note: This interview was conducted in Dec. 2021, and specifically adapted for publication in Issue I of the JMI.

AM: Diversity in the music industry: what is it? Why do we care about it? What's our situation?

AA: Lack of diversity deals with control. It's the same thing when they say, "history is written by the victors." If you do not control your own narrative, whoever controls that narrative controls how people outside of your group view you and how you, and future generations of people who are like you, view themselves.

The example I love to use is Kendrick Lamar. Everyone knows about the story of a rapper living in the hood, but for some reason, when Kendrick wrote about it, he was able to control the narrative. People saw it in such a different way that he won a Pulitzer Prize. Additionally, this relates to Behavioral Theory and the psychological concept of observational learning – learning by observing the actions of others. Musicians, artists, and songwriters are directly responsible for creating narratives that encompass how listeners will view the world. A simple example of this can be observed in regions that have less ethnic diversity. Their only perceptions of outside cultures are learned through watching television or listening to music. This can be dangerous if someone else is controlling the narrative.

To this very day, men are writing women's stories. One of my friends, Autumn Rose, was just nominated for four Grammy Awards. For female producers, this is an absolute anomaly. It is not that women are not producing and writing, they

have been doing these activities the entire time. We as a society are finally realizing that giving credit to them is absolutely long overdue. More women in positions of power are needed, and those of us who are allies need to be willing to stand with them, and other marginalized groups, to let them control their own stories.

AM: The element of control is important for musical artists to be able to represent themselves, and then people who look like those musical artists or identify with those musical artists to view themselves personally. If music can be such a great source of that expression, that inclusivity, that definition of identity, why is the music industry not willing to, or has historically not been able to, adequately grapple with that? Why are we still missing diversity, if music could be such a big driver of that diversity?

AA: Music is still a business. Historically, the music industry is a white, male-dominated industry. Many of the conversations that I heard about this topic are performative at best. If people want to see change, conversations and actions around equity need to happen. Note that I said "equity" and not "equality." The latter does not account for the years of disparaging circumstances African Americans, women, the LGBTQ+ community, and others have endured.

Saying that, I do not believe in victimhood. I am solutions-oriented in my approach to everything.

My solution to this issue is simple – innovation. Everyone wants to be aligned with success. Anyone who is forward-thinking, innovative, and entrepreneurial will be successful. Figure out how the industry works, look for issues that need to be solved that help the most people possible, and create a product or service that solves that issue. Rinse and repeat.

AM: If the music industry being a business has historically been a barrier to diversity, how do we reconcile continuing the music industry as a business while expanding diversity? Are those things compatible?

AA: Right now, more musicians are choosing to remain independent. They wake up and think, “I want to be a musician.” They go on YouTube and look up how to record a song, create a music video, etc. They realize that everything that is needed is literally at their fingertips – laptops, cellphones, etc. This is so spectacular for the concept of diversity, equity, and inclusion, because technology itself has leveled the playing field.

Anyone who is consistent in putting out content that enough people like can be famous. You can jump on TikTok and go viral. Currently, the issue of diversity in the music industry deals with education. How do we educate this generation of musicians in knowing how to monetize, how to properly protect intellectual property, and how to market themselves and their music? How do we teach this generation

of music managers to develop an artist in their living room? What are the members of an artist’s team that are absolutely essential in building a career in the music industry that accounts for new technologies and trends? Any artist with this knowledge, no matter the race, gender, sex, social class, etc. has the same potential for success as anyone else.

AM: Technology has really lowered the barriers of entry to the music industry, making it easier for people to operate as independent musicians. If you have artists able to become famous by themselves and that’s increasing diversity, how are the main institutions of the music industry dealing with that or adapting to it?

AA: Let’s talk about nominations. The voting members of the Grammys are members of the music industry. We are peers, we vote for each other. If white males who mainly make pop music are voting, how can we expect them to know the intricacies of hip hop and soul and R&B? If we want to see more diversity in the main institutions, members of diverse groups have to join these organizations, they have to become board members, they have to start successful businesses that compete in the market.

The same concept is true with independent musicians. If I’m not mistaken, I’ve seen some major changes in how we tally up Billboard nominations and Billboard number ones, with

the addition of social media and YouTube views. The world is changing, the music industry is changing, everything is changing and shifting. Most songs that are topping the charts now have to go through TikTok. TikTok is a gatekeeper of success in the music industry. That means 13-year-olds are controlling the music industry at this point. It's really spectacular.

AM: TikTok is this very egalitarian thing, anybody can use it, anybody can put themselves on it. And as you said, 13-year-olds are gatekeeping the music industry. To institutions like the major record labels, like the Grammy Awards, that have defined the music industry for so long, is this expansion of technology threatening, or is it promising? Is it something that provides some new opportunities? Or is it something that could potentially seek change and reshape the system that we're working in?

AA: Well, the music industry will be fine. There's not a moment of fear for them. Because of money. I think that they have seen the ability that technology has to mess up the music industry, with their late adoption of streaming and digital music. They don't ever want to get to that place again, that place of being late to the party. There's literature that discusses their use of AI, and how to do it legally, the use of predictive software for hit songs, NFT technology. They are already embracing all these things they would have historically seen

and said, "What is that? We'll see." They are now on par with indie artists. For the first time in history, the music industry is doing their best to keep up.

I hope that independent artists understand the ability they have, at this very second, to own their own intellectual property. While the music industry has to grapple with the concepts of who gets what percentage from the publishing side, and what percentage is regulatable, independent artists own 100% of everything. They can do what they want to do, and they have the ability to make a lot of money if they focus.

AM: Is this increasing concentration of independent artists threatening to the business model of record labels, if we see independent artists with the ability to monopolize their own intellectual property, on their own copyrights? If record labels aren't necessarily scared of the new technology, are they scared of the people that are using it?

AA: I do not believe they're afraid of the people who are using the technology. I really believe one of the next battles we're going to see is between the record labels and DSPs.

Imagine what would happen if Apple Music signed artists directly, if Spotify started signing musicians directly. It's the equivalent of when Live Nation started signing deals, an amazing shift. That's what I think the next frontier of

threat is for major labels, not independent artists. There's no single entity unifying independent musicians, even though they make over 40% of the income generated in the music industry. That's different from DSPs who have their own marketers, their own researchers, billions of dollars, etc. I'm interested to see how they maneuver that. Independent artists are absolutely a threat, but they are secondary to DSPs.

For independent artists, they could become an increased threat to labels having a smaller fan focus.

It is not possible to have one billion Beyonces on Earth at one time. Imagine if each independent artist had the ability to affect 1,000 to 100,000 people that felt like, "this is someone, who looks like me and thinks like me, and I love the way they are." With the use of NFT technology to monetize, every independent musician on earth could have a decent living. That would decrease the number of artists who want to sign a deal with a major – that would be threatening to labels. I don't know if most artists will do that because they would have to attract their own fans instead of relying on an algorithm that most can't afford to manipulate in their favor.

AM: In that sense, if you have independent artists that are using technology to enter the music industry, and those independent artists are more diverse than the typical concentration of the music industry, you begin

to break some of those stereotypes. And it allows for a more proper representation of the general consumer class of musicians because you have greater representation of actual musicians themselves?

AA: Yes! We can look at the recent TikTok strike where black content creators stopped creating on the platform because the algorithm and major brands were featuring white influencers who copied them instead of the originators of the viral dances. This sent a major shockwave through social media and showed the power of organization. More organization from marginalized groups will allow for the redistribution of narrative power and be a great example of the consumer class rising to the ranks of the creator class, if they choose.

AM: Let's shift gears and talk a little bit about musical product itself. When we think of diversity from a cultural standpoint, and less from a business or financial one, we can talk a little bit about one of the most segmented things in the music industry: genres. How did genres come to be? What are they? What are the consequences of them, or how have they sort of contributed to this problem of lack of diversity in the music industry?

AA: It's really hard to answer that question concisely, but I'll say one of my favorite stories about Bessie Smith, a phenomenal blues musician; she was killing it. She was like the Beyonce of the day, very wealthy. I think she

was making like \$7,000 a week in the early 1900s. Instead of having to deal with segregation, she would drive a train to any city she wanted and stay on her train that was laced with gold with her band.

Then a record executive, Ralph Peer, wanted to find an artist to compete. He found a white fiddler and had him sing about a slave living in a log cabin. He took black stories, put them on white artists, and then he called that style of music “hillbilly music” and then called what Bessie Smith did “race music.” White people did not want to be associated with race music and thus bought “hillbilly music.” In order to market black people at that point, they had to remove faces from albums. Even though they were listening to black stories, white listeners felt better about supporting that music. From that standpoint, Peer’s idea was successful and we still deal with this today.

When music is labeled “urban,” which is another way to say “black,” you now have everyone in that category competing, and can now place everyone else in other categories that are less crowded. Another example is Hispanic or Latinx music being labeled “urbano,” same exact concept. When you say “pop,” you think of Katy Perry, Taylor Swift, etc. Removing or controlling the competition at will by changing the definitions and the labels, that is the power of genres.

It makes sense to want to organize music in a

categorical way, but ultimately, what is genre in this day and age? If Beyonce sings a country song, which she has done, is it competing in the country genre? No, it’s pop because it’s Beyonce. I do not believe that we should focus so aggressively on the actual musical genre, focus on individual artists. A possibility would be to allow artists to choose based on the individual album or song. Lil Nas X is a great example. He came out with a song that everyone knew was country. It wasn’t until a country artist collaborated with him that he was allowed to release the song in the country genre.

AM: There’s a quote from, I believe, a Rolling Stone article that said genre stratification was a way for “rich white executives to profit off of black art.”

AA: Yes, and it has been like that from the very beginning. The great thing is, black people and other POC are learning to profit from their own art. This generation of creatives are more tech savvy than ever.

AM: There’s a complicated relationship between the genres that we still have in our increasingly diversifying music industry in the 2020s and race. There has to be a reckoning between how we support diversity, and how we continue to classify music in whatever way.

AA: If you look at the origins of country music, the banjo was one of the major instruments. The banjo is a derivative of the banjar, which is

a West African instrument. If you look at how country music started, it was literally slave music that was appropriated. It then went to the Appalachian Mountains and to Louisiana. Without question, the music industry started with black music. For some reason, that's a hard pill to swallow.

And now, country music artists that are black are getting death threats for singing country music, which came from black people in the first place. But R&B and soul are accepted for black artists.

AM: Even the term “rhythm and blues,” which became R&B, was made to replace the term “race music.” It just referred to all African American music, right?

AA: Yes. So, think about that. Why do you need that? Why do we need the signifiers? Why can't a classical musician be a great musician who just happens to be African American? And of course, it's not just about black and white. Other cultures are missing from the conversation all together. Native American music, most of the industry has no idea what is happening with them.

AM: They have their own Hall of Fame, they have their own award system, they create music in their native languages.

Exactly, and one of my favorite things is that 98% of them own 100% of their intellectual

property. We could learn a lot from their system. But operating this way has its own limitations. How famous do you want to be? Do you want to be Rihanna? Or are you fine with serving a community, your fans, your small group of people that will support you to make a living?

AM: We can look at genres along the lines of consumption, too. You were talking about how country music came very much from black music. And now when you have modern country artists who are black and they're getting death threats because the audience of country music could be predominantly white now. How did we get to where these genres are, by listenership, stratified so heavily?

We learn through social interactions, from our parents, etc. – it's passed down. If you grew up and you never saw an artist singing country other than a white artist, anything else would be a change to your learned and loved tradition. Saying that, just as we learned it, we are able to unlearn our biases.

AM: We've been talking about a very western-centric perspective, and when we're talking about all these things in relation to the Western music industry what we're forgetting are the genres that are not from here. In what ways does the music industry, for purposes of cultural preservation, or recognition or respect, need to uplift the parts of the global

music industry that have historically been suppressed by these Western designations and decisions?

AA: Now we're back to observational learning. Where do you learn that you love your favorite music? I learned that I loved R&B because of my upbringing. Every Saturday morning, my mother would play R&B when it was time to clean the house. Or, we would go to family functions where my favorite older cousins, aunts and uncles, and grandparents would dance to this type of music. This is an example of me associating those good feelings of being with family with music.

This is a hard question to answer. How do we accept everyone while still maintaining our own identity? This is the root fear of America. This year, the name changed from "world music" to "global music" which is a great thing because we realized that the concept of world music had a racial connotation.

Looking at how fast Latinx music is growing in America, we can see that America loves global music. However, we love global music that has an American flair to it. If U.S. artists were to use the musical stylings of other countries, collaborate with artists from those countries, and educate fans on where the style originated – as Beyonce has done multiple times – this would be the perfect formula for respecting global music.

AM: In one sentence: What is the importance of diversity in the music industry?

AA: Identity control is why diversity is important, you wouldn't want someone to steal your personal identity, so it should be really easy to grasp that we all want to control our cultural identities as well.

ON THE VALUE OF LEGAL EDUCATION IN THE MUSIC INDUSTRY

WITH USC PROFESSORS JEFF AND TODD BRABEC
CONDUCTED BY CHANDLER LAWN

Note: This interview was conducted in Mar. 2021, and specifically adapted for publication in Issue I of the JMI.

CL: Tell me more about your respective journeys through law school and how music coincided with your legal studies, or vice versa.

JB: Basically Todd and I had been in bands in high school and our father had got us our guitars when we were young so, y'know, we were into music. He was an agent in the entertainment business and my mother was a singer so it was natural Todd and I would go into the direction of music.

TB: In high school we were always drawn to music, obviously – loved playing guitar, loved playing in bands... then we went to Boston College. We were English majors and didn't do very much music while in college, which was a different kind of experience. Then we came back to New York and got accepted into NYU law school and it was either that or going to business school. We felt, and our father felt the same way, that law school would be much more important to us in the future – whether or not we would be lawyers. He just felt that the discipline in thinking... made it more of a special occupation at the time. So we felt that it was a good idea, and while we were in law school we picked up our guitars again and started writing songs and established a band which we played in around Greenwich village quite a bit.

JB: We started our second year and had most of our performances in the third year of law school. So obviously we were [still] into music and we ended up playing in Connecticut,

upstate New York, the Village with a number of gigs and it was fun. Then we graduated from law school, and there was only one copyright class during that period of time, which we were both interested in. For obvious reasons we took that and did very well in the course because it was something both of us felt that we wanted to stay involved in. After law school, we went to Chicago and we found ourselves doing legal service work... But we always had music in the back of our minds so we went back to New York, got a cheap apartment, and got a job at ASCAP.

TB: When our time in Chicago was over we just wanted to get back in the music business in New York and the first thing we did actually was represent a show that was wanting to go to Broadway. It never did get to Broadway, but it made it to this famous actors club in Manhattan called "The Lamb's Club" and at the performance our names were listed as both "lawyers Jeff and Todd Brabec" and "spotlights Jeff and Todd Brabec." Did some double duty there!

CL: In regards to publishing, how frequently do you find yourself referencing your legal background in day-to-day work? How useful have you found your law degrees in regards to your work in the music industry as a whole?

JB: The interesting thing about our job at ASCAP is that we didn't go in as lawyers.

TB: You know one thing Jeff remembers, we

had interviews with ASCAP but they were very heavily governed by consent decrees so they were already heavily lawyer-oriented as a business – which was practically unheard of in those days. We initially had interviews with Herman Finklestein, who was one of the famous lawyers of that entertainment era. We told him we were interested in the legal area, which led to another interview with the managing director who liked our backgrounds and hired us both at the same time. He actually hired each of us part time, since we both knew law and music, but there was only one job and we said “we’ll take it!” Jeff got half and I got half and we both did really well.

JB: They were definitely impressed that we had a legal background, even though the job we were going into was more of a creative job, they felt very comfortable with us since we had a perspective different than just a purely creative person.

TB: In other words, we wouldn’t do anything to upset the Department of Justice!

CL: Do you still think that need to supplement a creative perspective still applies to students entering the music business today? Do you think a graduate degree such as law could help supplement some of these skills and their eventual careers in music?

JB: Totally, because you can’t just be a creative these days. You’ve got to look at things from

another perspective, business-wise, legal-wise. It definitely is something that is admired and preferred, you’ve got to have both. If you do have both, you’re far ahead of other people... that’s for sure.

TB: As you know, the whole entertainment business is built on contracts that are very complex and that cover every aspect. So if you’re better prepared to have an idea of what contracts mean you’re in a better position, even putting aside the legal positions, than business positions since you won’t be running to the legal department for everything that comes up.

JB: You definitely need both. Looking at some of the creative people I know that have been in companies, the legal department is always surprised by the promises that get made that can’t be fulfilled. They often want to please writers, which is understandable, but giving someone [creative] like that a better idea of the parameters of what the business aspects of the business look like can give them a huge advantage. From my experience working with interns at BMG those students who do go to good music business schools aren’t lacking this, because they’re exposed to the most important parts of the industry.

TB: I’ve done an awful lot of teaching at a lot of these music schools, but sometimes the lack of preparedness and lack of current information being taught to students, I think, puts them at a

disadvantage when they come out as graduates. In our course at USC, we really focus on teaching what is essential for them to know – whether or not they appreciate it now or later. At just ASCAP alone, three out of the four CEO's came from the legal department and two of them were women. These are business positions, but being legal counsel before really gave them appreciation and understanding of the music world... the same understanding we work to convey in our class.

JB: It's about more than just a legal degree. You need business acumen so that both can go hand in hand to make you valuable to a company. Just because someone can write a great contract doesn't necessarily mean they understand its implications financially and business-wise in a certain industry. The good lawyers are the ones who know not only how to use language and what words really mean, but also know the impact financially.

TB: At USC, which we know is a very highly rated program, you guys have a lot of great professors. Not only that, but the program has a lot of adjunct professors actually working in the music industry which is very unusual in any music business program – that's a real positive.

JB: USC in particular has both the film scoring and video game departments in schools across campus and that combination of all those schools in one place really makes it ideal for anybody. Anyone can use that and meet people

in those other businesses, an opportunity that I think is far superior to any other university.

CL: You've mentioned that your graduating law class at NYU had about 1/3 women in the class. How have you seen the role of women evolve in both the legal and music industry?

TB: You've got a lot more women lawyers now in this industry, that's for sure. It was at one time an all boys' club and women had to be really aggressive to get anyplace, because they had to appear tougher and better than the men.

Thankfully, people don't look at the gender situation as much as they used to. There's a lot more younger and female lawyers coming out of law school.

JB: Being historically male-dominated, it's still common for women to have to start working in smaller firms, and rise up through the legal industry. I think Dina LaPolt is someone who is just an extraordinary example of rising above as a female lawyer because she's really done it all on her own. She's done it from scratch and I've got to hand it to her, she's really good.

CL: If you could go back and give yourself a piece of advice after finishing school, what would it be?

TB: Honestly I would just tell myself to continue with whatever happens.

JB: You know it's about believing in yourself and learning as much as you can in every situation that you're in. When starting relationships with people it's okay if they know that you're a little raw in the business, as long as you're honest. Once you have the basics, then it's all going forward from there. Learn as much as you can in every single area that you touch, because you're going to use it!

TB: When we started writing our book, we were just confident that we could do it and we kept updating it as we went along.

JB: The funny thing is, Todd and I had no business thinking we could write a book about the music industry, but we felt there was so little information out there and we said "we've got to do something!" It was very important that there were two of us, because when things weren't going well we could always prop each other up. Perseverance is so important to Todd and myself. Why we felt we were able to write a book and be authors was because we felt like we had something to offer. The more experience we got, the better the book got.

TB: For Jeff and I always too, people trusted us. We had integrity that showed people they could count on something we said.

JB: And if I didn't have that quality I think I might be a multimillionaire!

CL: What is the most unique opportunity your law degree has opened up for you in the music industry?

TB: It's not really a funny story, but oftentimes as a lawyer people will assume you just know everything about the business, so you have to be very careful about what information you give out and who you do it for. It's definitely a gut feeling based on experience. That comes naturally for a lot of people, but once you're experienced you get a feel for it.

JB: You've got to trust your instincts. If you've got good judgement and decent perspective it becomes pretty consistent that your first reaction to situations will be correct. You can't get too prejudicial, but after enough experience you'll develop a sense and trust your own judgment.

FEATURES

How East Meets West

An Analysis of the Cross-Cultural Transferability of Western K-pop Fans' Consumer Behavior

by Miranda Jackson

A project was undertaken to determine which components of the Western K-pop fan's consumer behavior is uniquely applicable to K-pop acts and which are transferable to acts in the Western music industry. This was assessed through a series of surveys and interviews conducted with Western music fans who presently or previously enjoy both Western and Korean pop music simultaneously. The findings of these survey responses and subsequent interviews demonstrate that there are some elements of K-pop business strategies used to create and market three key purchases in the K-pop fan ecosystem that could be applied to Western pop acts successfully, given the correct circumstances. However, these results are met with a caveat that what is expected of Western pop acts versus K-pop acts by their concurrent fans is inherently and culturally different and may hinder the success, or demand in general, of these strategies in the West.

Curtailing Infringement

Linking the Values of Creator and Consumer in Copyright Adjudication

by Matias Pachalian

We need a better way to assess the value that the legal world ascribes to different pieces of music. Pointing out inadequacies within the existing regimen, this paper presents an alternative approach that would benefit the music industry by clarifying the basis for legitimate copyright infringement claims through a more accurate capture of song value. Adding another dimension to infringement analysis, a "value-added" approach, can help provide insight into the author's process and better determine whether there was ill-intention or negative impact on the claimant. In the same way that the likelihood of confusion standard in trademark exercises a reflection on consumer perceptions to help evaluate the degree of infringement, the value-added approach would place more emphasis on authorial intent and further prevent courts or expert witnesses from arbitrarily assigning value to compositions. To justify this approach, the piece revisits the original purpose of copyright in the arts, culminating in an analysis of subsequent implementation within courts and an evaluation of the various tests currently in place.

Mitigating Monopoly

Identifying and Addressing Anticompetitive Behavior in the Music Industry

by Aidan McIntyre

The modern music industry is dominated by a small concentration of corporations that actively prioritize profits over industry longevity, artist well-being, and consumer integrity. These companies often engage in anticompetitive behavior to capture market share and maintain financial relevance, at the expense of musicians and listeners. Historical and contemporary instances of this anticompetitive behavior identified in this paper establish a clear trend of malicious market actions that harm the recording, live event, streaming, and licensing sectors of the music industry. This paper presents possible solutions to address this anticompetitive behavior, while rebalancing the financial system of the music business to protect the rights and livelihoods of artists, restoring cultural valuation of music, and maintaining the crucial relationship between creators, consumers, and professionals.

HOW EAST MEETS WEST

AN ANALYSIS OF THE CROSS-CULTURAL
TRANSFERABILITY OF WESTERN K-POP FANS'
CONSUMER BEHAVIOR
BY MIRANDA JACKSON

Note: This work was originally written in Dec. 2020, and specifically adapted for publication in Issue I of the USC JMI.

Purpose of Research

The Korean peninsula was mostly isolated from the Western world for centuries, with little to no ability to influence countries like the United States economically, socially, or politically. After the Korean War, South Korea's economy experienced numerous financial crises through to the late 1990s.¹ When the economy began to recover at the turn of the century,² South Korea needed a way to rebuild its national identity and demonstrate its soft power around the world. Korea's renewed financial stability, lift of their travel ban, and loosening of censorship laws in the aftermath of the war enabled new industries to aid in this process,³ turning one of the most impoverished nations into the 11th largest global economy by 2016.⁴ Among these industries was Korean pop music (more commonly referred to as "K-pop").

The beginnings of K-pop can be traced to a single night in 1992. Seo Taiji & Boys, a rock-pop band, debuted on one of the nation's biggest music television shows with their song "I Know."⁵ In a country where traditional music was still the most popular genre at the time, the clamorous and raw nature of Seo Taiji & Boys disrupted all aspects of the Korean music industry. That night, the group laid the groundwork for a new genre called K-pop and shot to domestic fame.⁶

The three largest Korean entertainment companies were born shortly after the band's formation. Producer Lee Soo-man founded SM Entertainment in 1995; Yang Hyun-suk, a former member of Seo Taiji & Boys, established YG entertainment in 1996; and singer Park Jin-young created JYP Entertainment in 1997⁷ (K-pop entertainment companies are not just record labels; they are fully inclusive of talent agencies, management services, producers, publishers, distributors, and event managers).

K-pop has enjoyed nearly 20 years of continuous growth through the work of the groups that debuted under these three major entertainment companies. Four "Generations" of bands have forged over the years and dominated domestic music charts. Even in their earliest era, K-pop acts began to do exactly what they were designed to: globalize the Korean wave of culture, known as Hallyu.⁸ This globalization was initially seen in surrounding territories such as China, Japan, and Hong Kong.

Then, in 2009, K-pop reached the borders of the United States for the first time, albeit rather quietly. Korean girl group Wonder Girls, one of the best-selling acts from JYP Entertainment, peaked at Number seven⁹ on the Billboard Hot 100 chart with their song "Nobody," which was rereleased in three more languages due to its popularity.¹⁰ Three years later, solo act Psy, who at the time was under YG Entertainment, released his outlandishly

successful single “Gangnam Style,” which for five years remained the most viewed video on YouTube.¹¹ For a while, the K-pop acts whose names made it into mainstream attention in the West were from the top three major labels, due in no small part to the size of the marketing budgets for their acts’ album releases.

Eight years later, a seven piece band from a once nearly bankrupted Korean label began to chart in the United States, and that same year, beat out Justin Bieber for Top Social Artist at the Billboard Music Awards (an award Bieber won six years in a row).¹² BTS (an acronym for the Korean name Bangtan Sonyeondan) were formed under Big Hit Entertainment (now Big Hit Music) in 2010 and debuted as an act in 2013.¹³ In seven short years, BTS transformed from a group that once handed out their concert flyers themselves on the streets of Los Angeles, to the first K-pop act to ever sell out the Rose Bowl in Pasadena, California.¹⁴

BTS is the undeniable face of K-pop today, and their rapid economic impact cannot be understated. In fact, BTS’s revenue went from 92.4 billion KRW (\$80 million USD) in 2017 (the year they notably reached the United States)¹⁵ to 587.2 billion KRW (\$508 million USD) in 2019.¹⁶ In 2019, BTS’s physical albums, branded merchandise, and ticket sales brought in more than \$4 billion USD to the South Korean economy alone.¹⁷ By 2020, the group broke several financial records, including the largest ever virtual concert audience (756,600 concurrent viewers) for their Bang Bang Con: The Live concert on June 14, which amassed at least \$20 million USD in ticket sales in a single night.¹⁸ According to a study by South Korea’s Ministry of Culture, Sports, and Tourism and the Korea Culture and Tourism Institute, BTS’s new English-language record-breaking single “Dynamite” could create more than \$1.4 billion USD in revenue for the Korean economy¹⁹ – from just one song. In October of 2020, Big Hit Music’s parent company Hybe Corporation filed for an IPO with a valuation of over \$4 billion USD, and shares were reportedly oversubscribed nearly 1,000 times.²⁰ BTS are currently on track to create a bigger economic impact in Korea in 10 years (by 2023) than the 2018 PyeongChang Olympics, according to the Hyundai Research Institute.²¹

K-pop has never been bigger than it is now. In 2019, The Hollywood Reporter claimed, “The global audience for Hallyu ... is expected to hit 100 million in 2020. For context, the population of South Korea is 51 million.”²² The publication also stated that as of 2019, “K-pop is now the seventh-most-popular genre in the world, ahead of metal, R&B, and classical, according to the International Federation of the Phonographic Industry.”²³ If there was ever a time to pay attention to what K-pop is doing correctly – especially Big Hit Music – it’s now.

Big Hit Music seems to understand the phenomenon of K-pop fandom consumer behavior the best. The company appears to use key merchandise purchases in the K-pop fan ecosystem to flesh out a comprehensive and tangible relationship between artist and fan. These specific purchases exhibit such high return value for the K-pop fan's investment in the merchandise that the K-pop fans are incentivized to continue purchasing into this artist-to-fan relationship for years to come.

These key purchases include the following consumer behavior of a K-pop fan:

1. Buying large amounts of physical albums for collectible content in the album packaging;
2. Buying multiple variations of the same physical album for collectible content and access to more elements of the fan ecosystem (i.e., fansigns, etc.); and/or
3. Buying merchandise that was made using licensed Intellectual Property (IP) of the artist in lieu of the artist's direct involvement in its creation.

These types of purchases are known to be leaders in revenue for K-pop groups, especially for BTS, whose entertainment company has recently popularized the business model for indirect artist involvement in IP-licensed merchandise because of the group members' intense schedules.

Naturally, Western music companies are beginning to take notice of the revenue K-pop brings in and are discovering ways to capitalize on the genre themselves.²⁴ In January of 2019, Peermusic acquired the Korean publisher Music Cube, home to works by BTS, AOA, and Red Velvet, in order to help meet the Western film and television industry's demand for K-pop music placement.²⁵ In the same year, Creative Artists Agency (CAA) signed a deal with SM Entertainment, one of Korea's three largest entertainment companies, for representation in all areas to create promotional opportunities in America for its acts.²⁶ This came three months after Capitol Music Group and Caroline Distribution signed a distribution, marketing, and publicity deal with SM Entertainment's supergroup SuperM.²⁷

Therefore, this article will demonstrate that the standard conception of a Western K-pop fan is not necessarily incorrect, but that it is only a part of a much bigger story being told. With this shift in perspective, decision-makers in the Western music industry will confidently be able to identify whether Western music fans who classify under the same demographics as K-pop fans are willing to exhibit the same consumer behavior for Western artists that they do for K-pop acts, or if their consumer behavior only applies to K-pop acts. With a review of three key components of the K-pop fan merchandise ecosystem – physical albums, variant physical albums, and IP-licensed merchandise – this article will present what is culturally unique about the way K-pop fans desire and consume these products, and

whether any facet of this fandom's consumer behavior is potentially transferable to the Western music industry in years to come.

Methodology & Initial Findings

The data introduced in this article was collected from three Google surveys, identical in content, from August 7, 2020, to August 28, 2020. The surveys collected exactly 100 unique responses together. However, the following article will only use data collected from the 88 survey respondents who were from the "West." All references to "The West" and its variations (i.e. "The Western World," "The Western music industry," "The Western K-pop Fan," etc.) are defined as the organizations, companies, and people from or located in the United States, Canada, and Europe (including all territories in the EU and the United Kingdom). It does not include Australia, New Zealand, or any territory in Latin America, Central America, Africa, or Asia. Following the surveys, a series of follow-up interviews among the Western respondents was conducted, and several trends could plainly be seen.

Firstly, 75 of the 88 respondents (85%) have purchased at least one piece of official merchandise from their favorite artist.²⁸ These pieces of official merchandise included physical copies of albums, light sticks (a light-up device that synchronizes to music performed at concerts), clothing, and many other types of artist-involved merchandise, including items from BTS's popular collaboration with Line Friends (a collection of characters designed by messaging app Line, a Japanese subsidiary of Korea's search engine Naver).

Secondly, Western K-pop fans have notable purchasing power. A significant number of the survey respondents (45%) said that they would be willing to spend anywhere between \$50 and \$100 on just one single piece of official merchandise from their favorite K-pop act.²⁹ Despite a close following of those only willing to spend less than \$50 on a single piece of official merchandise, it is worth noting that four respondents stated they would be willing to spend between \$100 to \$250 on one piece of merchandise, and six respondents said they are willing to spend more than \$250 on one piece.³⁰ Again, this includes physical albums.

Thirdly, of the Western fans interviewed, the majority stated that they also listen to mostly Western pop acts or "Top 10 acts," as one interviewee explicitly said.³¹ Acts they mentioned by name included Troye Sivan, Shawn Mendes, and, most frequently, Taylor Swift. It can likely be assumed that on average most Western K-pop fans surveyed do (or did at some point) demonstrate interest in some scope of Western pop acts. Despite this idea,

some important sociocultural differences between how fans generally perceive K-pop acts versus Western pop acts arose in these interviews.

Consequently, the first obstacle for the transferability of K-pop fan consumer behavior presents itself here. The interviewees said that what is expected from a K-pop act by Western fans is different from what is expected from the average Western pop act by the same Western fans. It cannot be assumed that fans who simultaneously enjoy Western and Korean pop acts would respond *identically* to Western music acts adapting the same marketing strategies for their content. As this article will show, Western K-pop fans simply do not expect nor desire this from Western pop acts. Still, it is possible that elements of their consumer behavior can be replicated for Western pop acts who find unique ways to exemplify K-pop-style marketing tactics, which this article will explore through physical albums, variant physical albums, and IP-licensed/indirect artist involved merchandise.

Finally, the author was able to derive the following working definition of a Western K-pop fan to be used throughout this article: A likely female, college-aged individual. However, as previously stated, this definition, just like the functioning one that currently exists in the Western music industry, is not inclusive of individuals who exist outside the statistical majority.

As a final note: Due to the limited sample size of the survey data as well as the restrictions on society caused by the COVID-19 pandemic that prevented a more traditional form of survey-taking from occurring, the sample population used in this article is not intended to represent 100 percent of the entire Western K-pop fan population. Given the immeasurable size of the Western K-pop fan population, this data still serves its primary purpose of demonstrating that there is no perfect statistical representation of the population. It is unlikely that even in perfect conditions without any limitations, any survey would be able to create a data set that is 100 percent inclusive of the entire Western K-pop fan population.

The Transferability of CD Purchasing Behavior

K-pop fans often exhibit incredible knowledge and organization with a thorough understanding of the formulas behind making an album a commercial success. From breaking an album onto Billboard charts to winning annual music awards, they know the album equivalent for YouTube streams, ad-supported streams, Premium streams, physical album purchases, radio plays and more. There are entire fan-run websites and social media

accounts dedicated to disseminating this information, alongside real time data that demonstrates where fans can contribute more to continuing the charting rise of an album.³² As a result, many K-pop fans opt to purchase one or more physical copies of an album, as well as stream that album across multiple different platforms to support their favorite K-pop artist.³³

Opportunities for album purchases arise often in the genre: K-pop acts are expected to release at least one EP or LP per year, but often release many more.³⁴ The prolific quality of K-pop artists helps them remain afloat in a highly saturated industry where better trained, more attractive, or simply better promoted acts are debuting every week to vie for a spot at the top. Unlike the Western pop industry, K-pop artists are not afforded many opportunities to simply disappear and create for long lengths of time. Consequently, album cycles begin frequently, presenting both the new and the experienced K-pop fan with the opportunity to purchase into the fan ecosystem and support their favorite artist. Purchasing a physical album is one of the most common ways for a Western K-pop fan to show their support, and the return value for the fan is tremendous as a result.

In K-pop, the physical album represents access to numerous other facets of the fan ecosystem. First, it offers the fan exclusive access to memorabilia such as an autographed photo card of a specific member (with Pokémon-like tradability), photo albums, posters, stickers, and more, which are all included in the physical package. These elements are akin to the booklet that holds the liner notes that are inserted in the front panel of every CD case. Except in the case of K-pop, the inclusion of this level of memorabilia is treated as a means of continuing the story already being told by the artists' branding, music, and music videos for this album cycle, and there is far more of it. Tamar Herman, a writer for *Billboard* and author of *BTS: Blood, Sweat and Tears*, spoke with the CEO of SM Entertainment, Chris Lee, who told Herman that "Each album comes out with different merchandise, and we consider this an opportunity for us to express the storytelling that we couldn't really include in the music or the music video."³⁵

In a personal interview, Herman elaborated, "We don't consider artists in the U.S. a narrative platform. We think of them as people, as artists who are telling their story and that's it." She said that K-pop artists are instead expected to create a whole new story, as groups such as EXO, BTS, and countless others are known to do. When artists such as Lady Gaga or David Bowie do something like this, and attempt to world-build with their music, Herman said it is always depicted as performance art, not just music.³⁶

This idea is echoed by Gyu Tag Lee, an assistant professor of Korean studies courses at George Mason University, Korea, who in a personal interview said, "You cannot enjoy

K-pop fully by just listening to the music. It's a full sensory experience that has to be combined with merchandise and colors and symbols and visual assets."³⁷ The physical album is just a fraction of this effort.

Furthermore, physical K-pop albums offer the possibility of access to exclusive fan experiences. All K-pop physical albums are sold with unique barcodes that the owner of the album registers online – typically on the company's website but in some cases on an app such as beNX's Weverse – to enter a lottery system that will pull invitees for meet-and-greet ("fansign") events with the artist as part of the tour schedule.³⁸ However, these types of promotional events are so popular among fans that the average fan must purchase up to hundreds (even up to a thousand)³⁹ of the same album just to have even a small chance at being a lottery winner, especially for a group as popular as BTS. As a result, the average K-pop fan tends to own many of the same albums. Of the 88 survey respondents, 36 respondents (40%) own more than one copy of the same album, all from different K-pop acts.⁴⁰ The silver lining is that if a fan gets into that artist's fansign event, they now have copies of the albums to take with them to have signed. Fans will continue to buy physical albums just for a shot at an experience like that.

For K-pop, a physical album without collectible content is essentially incomplete. Of the 69 survey respondents who stated they own a physical copy of a K-pop album, 62 (89%) said they purchased that physical album for memorabilia and/or to collect the exclusive content inside.⁴¹ Moreover, the physical album doesn't just present tangible incentives for the fan. Of the Western K-pop fans surveyed, the majority of respondents said that owning a physical copy of an album made them feel more connected to and more loyal or dedicated to that artist.⁴² This is an important part of why physical albums are successful in this genre – they aren't just incentives for merchandise, but they also feed into the unique depth of connection a fan has with their favorite K-pop artist.

The difference between the West and Korea is that these extra pieces of content are not standard in the Western album. It is only in the deluxe versions of albums or the repackaging of albums that they are typically included. However, even if the Western music market were to finally take collectible content seriously and implement it into the marketing schemes for pop acts' album releases, there is a chance that this would not be enough to pull a Western fan's purchasing power away from K-pop. Of the Western K-pop fans interviewed, a few articulated that this comes down to differences in societal expectations.

In her personal interview, Kourtney, 29, stated that unlike Western pop acts, K-pop artists are "manufactured," and with that process of manufacturing, a fan is "supposed to know who they are as a person, by selling you an image of themselves."⁴³ Contrarily,

Western artists are not supposed to be “your boyfriend,” she said. The approach of who they are presented to be as both people and artists by their entertainment companies is so different that using a BTS-style marketing scheme for Justin Bieber would likely not work to reach fans who enjoy the two acts concurrently.

Malia, 21, stated that she actually would like to see Western pop acts marketed to the same extent as a K-pop act. However, she also said that this isn’t likely to happen, because “fan culture isn’t there [for Western pop acts] in the same way.”⁴⁴ By this, she means that demand for Western pop acts to release content, particularly albums, in the same way that K-pop acts do is not there – the fans simply don’t have those expectations.

Another of the survey respondents, Alice, 22, does not own albums from any artist who is not a K-pop act. She put it simply by saying that as a concurrent fan of more than one kind of music, “I adapt myself to the industry, not the other way around.”⁴⁵

The closest thing to K-pop’s style of physical album release in Western music is album bundling, where physical albums are sold with standard merchandise such as a T-shirt or sometimes even a concert ticket. Technically, K-pop acts are not bundling their albums by including exclusive memorabilia and the possibility of access to other experiences. Bundling is reserved for the act of including merchandise with the physical album.⁴⁶ Top Western pop acts, and even many rappers, are known to depend on bundling to boost album sales in general and move them up in charts, as the bundle effectively serves as a piece of merchandise that happens to come with a CD.⁴⁷

This concept has lasting potential in the West to move physical albums, if approached properly. The biggest hurdle it faces is the type of deal an artist signs with a record label. In order for album bundles to bring genuine value back to the company, the artist would need to sign a 360 deal, in which the company is able to receive a percentage of revenue accumulated from all of the artist’s revenue streams, including records, merchandise, touring and more, in return for providing the artist with a vast network of resources to move them up in the industry.⁴⁸ In this type of deal, the company is effectively allowed to control an artist’s image – a concept that is considerably standard in K-pop.

However, with the growing disdain for the 360 deal and increased industry knowledge among rising artists, fewer Western pop acts are willing to sign these kinds of deals. Without the level of control over merchandise that would allow record labels to profit from bundles, and thus many of the physical album sales in general, there really presents no need for the average Western record label to focus their attention on rebranding the purpose of the traditional physical album for the fan to meet that of a K-pop album. Western record labels would essentially be feeding a demand that is not there, only to

realize no profit from it. This element of the K-pop fan ecosystem's fan consumer behavior is thus not likely to ever be translatable in an effective way.

The Transferability of Variant Physical Album Purchasing Behavior

With the release of every K-pop full-length album, it is typical for the artist's entertainment company to arrange for and release an infinite number of physical variations of that same album. It is true that the standard version of a physical K-pop album is already diverse in its collectible content. A fan can purchase two of the exact same standard versions of a K-pop album (often referred to as "the group version" of the album, as it includes content featuring the entire group) and potentially receive one or more items in one copy (often the member-specific photo card) that is randomly different from another, depending on the components of the album packaging. Thus, even the standard version of the album has collectible value that invites fans to purchase more copies of it. However, the variant albums present even more opportunities for collectability, as a variant album is often member-specific in its included memorabilia. Instead of just group-inclusive photos, posters, stickers, etc., the fan can receive additional content featuring just their favorite member, who typically graces the front cover of the album copy.

The purchase of variant albums falls deeper into the fan ecosystem's cycle in a stage accompanied by other artist-involved merchandise (i.e., concert apparel, light sticks, reality TV series on DVD, stuffed animals, etc.). This is because the average new fan is not likely to purchase these items straight away. These types of purchases are reserved for more seasoned fans, who have had more time with their favorite artist, and are thus in a position to demonstrate more of their gratitude for the hard work of their favorite idol through more tangible support. They are also more likely to want to collect things associated with their favorite act. These items also require more purchasing power of the fan due to the higher price point of the items or the simple fact that a fan is purchasing more than one of the same item. New versions of these types of products are produced cyclically within each album cycle, making the purchase of them a renewable experience as well. Variant physical albums are therefore an essential component of the K-pop fan ecosystem.

In examining the transferability of the variant album's place in the fan ecosystem, it is important to note the obvious hurdle of the fact that K-pop acts tend to be groups of three or more people, which gives purpose to the variant album in the first place. Alternatively,

most, if not all, top Western pop acts are solo acts. In the case of K-pop, solo acts might elect to re-release their album in another language instead of focusing on variant albums for the initial album release.

One of the only Western pop acts who has handled the variant album approach well as a solo act is Taylor Swift. For Swift's release of *Lover*, there were four deluxe versions of the album, which came with content such as Swift's diary entries, a poster, photos, and a blank journal for the fan to use, all on top of the CD itself. Then, with *Folklore* in 2020, Swift released 16 different initial versions of the physical album.⁴⁹ As part of the marketing scheme to celebrate that this was Swift's eighth studio album, there were eight deluxe CD editions and eight vinyl editions available for purchase through her website, all inclusive of exclusive photos and artwork, and of course, variant covers. She later released an exclusive cassette version, and another version of the CD that was autographed on the case, bringing the grand total of variations for *Folklore* to 18. This is a tactic that resonates with her fans. At the time of writing, *Folklore* is still the only album to pass one million pure sales in 2020, a benchmark that only her album *Lover* reached in 2019, as well.⁵⁰

Thus, the ability for this tactic to work for Western pop acts – even solo acts – does exist and presents itself in the case of Taylor Swift. But not every Western pop act is Taylor Swift – they do not all have her identical fanbase or her societal stature built up over her nearly 15 years in the industry. Swift historically offers her fans an experience incredibly similar to that of a K-pop fan, even selling light up wristbands at concerts which sync with the music being performed just like a K-pop light stick (which is unique for every fan base in K-pop in color and design).⁵¹ The same cannot be said about any other Western pop acts.

This is where the transferability of the variant album to Western music really hits a barrier. Not only is this marketing tactic more applicable to groups than solo acts, but the average Western pop solo act does not have the social standing and fan connection needed to illustrate purpose for the variant album in the fan ecosystem. As for artists that the Western K-pop fan interviewees would want to see attempt this method, the only other Western pop act mentioned by name was Ariana Grande, whose basic fan demographics compare fairly evenly with Swift's. It is possible that any act whose fanbase is outside of these similar demographics, such as Adele, whose majority of fans are actually mothers, would not see significant financial gain from using the variant album marketing method.⁵²

However, there may be hope for the physical album in a different shape for the West. Despite the indication that the physical album has a solid, unwavering place in the K-pop industry for years to come, some industry experts have theorized that another kind of product will take the place of the CD in an album's physical package in the next decade.

Technology is continuing to move away from CD-applicable machinery and Western fans are already stating they do not buy physical albums to play the CD in the first place. In fact, of the 69 Western K-pop fans surveyed who said they own a physical copy of a K-pop album, only 21 (30%) of them said that they buy an album with the intent to listen to the CD included.⁵³

In place of a CD, there are ideas of a concept book, which would effectively combine all of the exclusive content that already comes with a physical album. In an article for *Billboard*, Jiyeon Lee, the head of Studio XXX which created physical album packages, layout designs, and ad content for acts like BTS, EXO, and more, describes the concept album as equal parts photo album, perforated pages containing posters and photo cards, and messages from the members themselves about the lyrics and their acknowledgements for the album.⁵⁴ The concept book could also be printed in various versions just as the physical album is now.

The CD itself would be replaced by the concept book's barcode, which could be registered online, as physical albums already are, to redeem digital downloads of the album and more exclusive content (such as being entered into the lottery for a fansign event). The concept book would allow for the K-pop artist to still wield their fan loyalty to build capital for themselves, and for fans to still have something physical to collect with each album cycle as they currently desire. The concept book presents a unique opportunity for Western acts, a sector of the industry where the CD is already no longer favored. Instead of fighting to increase physical album sales that are inclusive of CD's, Western labels could instead shift their attention to creating something that transcends the need for the CD at all, while still delivering the digital-focused quality of music that fans of Western acts have learned to demand.

Something along the lines of Taylor Swift's journal entries that she released with *Lover* fits smoothly into this category, if they were bound and sold as books with barcodes to register somewhere online to receive the digital downloads of the album included. The price of the item could be worth twice as much as it was originally being sold for, and both the artist and the fan benefits. However, this means that all sales of these kinds of "physical albums" would actually not count as "physical album sales" for Billboard charts or any other charts for that matter and would instead classify as TEA (track-equivalent albums). According to Nielsen, 10 TEA sales equals a single album, which means that any LP shorter than 10 songs would require more than one purchase of the same concept book for the purchases to count as at least one single album sale.⁵⁵ This may be something that Western K-pop fans are already willing to do to support their K-pop favorites, but it's not as obvious if that same level of commitment applies for the same fans towards Western pop acts.

Instead, perhaps an entirely new formula would be created to count the concept book as a single album. It's unclear if the concept book will ever work well to replace the physical album, let alone actually exist. Still, its ideation reflects the true nature of the K-pop industry and music in general – no matter how unwavering fan support may be, their demands will eventually evolve.

The Transferability of IP-Licensed Merchandise Purchasing Behavior

The deepest stage in the K-pop fan ecosystem's cycle includes Intellectual Property-licensed and indirect artist involvement merchandise (e.g., Samsung phones, Korean-language textbooks, fish sticks, etc.). In the case of BTS, this stage also includes shares in Big Hit Music's parent company, Hybe. The corporation's IPO filing occurred during the pre-release promotion of their fifth Korean-language album *BE*.⁵⁶ This stage includes these items not just because a new fan is less likely to buy them before the cycle renews, but also because these items are among the most collectible, with a very limited purchase window.

Moreover, these items are among the most expensive in the fan ecosystem, and only a select group of fans is typically able to afford items from this stage as they are released. For example, the Samsung Galaxy S20 Plus BTS Edition phone hit the market in 2020 at \$1,249 USD.⁵⁷ The box included exclusive memorabilia such as photos and stickers of the BTS members, and was preloaded with a copy of Weverse, Big Hit Music's all-encompassing fan community app. Still, despite its price, the phone sold out in one hour.⁵⁸ This is because at the end of the day, as previously mentioned, there is still a portion of the immense population of Western K-pop fans who are willing to spend more than \$250 USD on a single piece of merchandise for their favorite artist – the limit of that purchasing power could be infinite.

Items such as the BTS version of the Samsung phone are typically created without the artist's involvement, and instead use the licensed Intellectual Property of the artist (including anything from their name to a specific shade of purple used to brand them) to be brought to life. In these cases, the artist's entertainment company is often acting as an executor on the decisions made for the item in place of the artists themselves. In a deal struck between the two companies, BTS will still continue to profit from the phone's creation despite not being involved in the product's development. This is only made possible because of the type of contract BTS is signed to under Big Hit Music, a type of contract that most K-pop idols are

typically signed to: the 360 deal.⁵⁹

The 360 deal allows for a label to receive a percentage from all revenue streams of an artist, including recording, merchandise, touring, partnerships, etc. In K-pop, the 360 deal is standard,⁶⁰ as most entertainment companies are fully inclusive of sectors that function as the talent agencies that discover acts, production companies that develop artists, and management companies that manage the acts.⁶¹ The main goal of the 360 contract in K-pop is to recoup the costs the company endures when they develop an individual as a trainee, which is where all K-pop acts begin. When an individual becomes a trainee, they sign an initial trainee contract, but are not promised the chance to debut as an act. In the typical four-to-five-year training period, trainees record demos, take dance and voice lessons, even learn a new language in some cases, all the hope that the company will deem them ready for debut someday.

In that time, the label has usually supported the trainee's living costs by providing food and housing with the other trainees. This "head-to-toe" management style was adopted from Bae Byeong-soo, manager of late actress Choi Jin-shil in the 1990's, and has been standard ever since with even the smallest labels.⁶² By the time an act debuts, the label may have already incurred up to \$1 million USD in costs for all of the members.⁶³ Even a soloist's debut release, not including any of the previously incurred trainee debt, can cost the company upwards of \$300,000 USD, as was the case for soloist AleXa from ZB Label.⁶⁴ To make up for this debt, the label designs a contract that requires the K-pop artist to recoup all of the costs through as many revenue streams as possible, which are typically cross-collateralized, thus presenting the requirement for a 360 deal.⁶⁵

A key component of these 360 deals includes the label's rights to use and license the act's intellectual property. As a result, most K-pop entertainment companies are able to profit tremendously from the merchandise they create from an act's licensed trademarks, including their group's name, brand color, logo, fan club name, etc. In fact, according to the Korean Intellectual Property Office (KIPO), trademark applications filed by all of the major K-pop labels since 2015 have gone up by 71 percent.⁶⁶ Moreover, the KIPO reported that of the 4,794 trademark applications filed in Korea over the last two decades, SM Entertainment accounted for 48% of them.⁶⁷

Despite these staggering numbers, the company that appears to understand the power of IP-licensing the best is Big Hit. When BTS debuted, the company initially oriented their strategies on releasing music and holding concerts, all things which involved the members directly. In Big Hit's Corporate Briefing for H2 2020, Lenzo Yoon, Global CEO of Big Hit Music, stated that in BTS's early years, "almost 80% of [Big Hit's] profits came from

advertisement and album sales directly driven by artists activities.”⁶⁸ In the last few years, Big Hit reinvented their business model to prioritize IP development and licensing so that even when the artists aren’t actively recording and releasing music for any reason, the company is still able to generate substantial profit.⁶⁹ Their strategy of “indirect artist involvement” in merchandise creation is an absolutely brilliant way to maintain year-on-year profit climbs when the members inevitably have to fulfill their Korean army service requirement, during which time they cannot produce any new music as a complete group. Given the age discrepancies of the group, it could take anywhere from two to seven years before the members will be able to promote as an entire group again once they begin to enlist, which could start at any moment.

Big Hit uses IP licensing and indirect artist involvement to create content such as TinyTan, a series of animated characters that were included in their record-setting online concert Bang Bang Con: The Live and are now in a partnership deal for Downy detergent. The distinction here is important: TinyTan is the face of the Downy brand, not BTS themselves. The human members are not involved in the filming, creation, or release of the Downy commercials that feature their likeness. TinyTan represents an exciting future for the group as they begin to enlist in the military – even though the seven members cannot be together in real life, they can be together as seven virtually. This not only helps the label continue to profit on their group value, but it helps meet the fan needs of seeing them all together in one place. Similarly, in circumstances like the COVID-19 pandemic, when production of commercials and other content must be halted to comply with safety measures against group gatherings, TinyTan is a perfect solution for including BTS without literally including them at all.

Moreover, IP-licensing and indirect artist involvement allows for the group to tap into new industries. For example, BTS released five volumes of graphic lyrics books for a few of their biggest songs, which BTS was not involved in creating. Music Business Worldwide reported that “all five volumes in the series hit the Top 10 weekly bestseller list within a week both online and offline in the Kyobo Book store chain in Korea.”⁷⁰ This is not the only time Big Hit has tapped into literature. Following the success of their video-based “Learn! Korean with BTS” educational series that took part on Weverse in early 2020,⁷¹ Big Hit’s education division announced in their Corporate Briefing for H2 2020 that BTS’s IP would be licensed to create a series of Korean language textbooks by the same name in a partnership with Korea Foundation (KF) and the Hankuk University of Foreign Studies (HUFS).⁷² Yonhap News reported that Middlebury College in the U.S., Ecole Normale Supérieure and EDHEC Business School of France, Ain Shams University in Egypt and

Vietnam's University of Languages & International Studies and Thang Long University have all agreed to create Korean-language courses that will use the BTS textbooks as the primary learning material.⁷³ There is endless potential in IP-licensed merchandise for the group – they have become a product so pristinely and uniquely crafted that they can be built upon perpetually.

Artist indirect-involvement profit margins for the company have thus doubled from 22.3% in 2017 to 45.4% in 2019.⁷⁴ In just the first half of 2020, the company produced and sold 458 different official IP products.⁷⁵ Big Hit reported that most of these products were created without direct artist involvement, including BTS's successful collaboration with Starbucks that sold 90% of its entire stock on its day of launch despite the economic hardships brought on worldwide by the COVID-19 pandemic.⁷⁶ This is not unusual behavior for Western K-pop fans. In fact, of the 88 Western fans surveyed, 62 of the respondents (70%) said that they are still willing to buy K-pop merchandise during the pandemic.⁷⁷ When artist indirect involvement merchandise is created with the fans' needs in mind, not even a global pandemic can keep them from purchasing into the deepest sector of the fan ecosystem to support their favorite group.

The most likely reason that IP-licensed and indirect artist involvement merchandise is not currently as widespread in the Western music industry is that Western artists are increasingly less likely to sign onto 360 deals with labels. In recent years, there has been a surge in public knowledge about the rights being signed over in contracts with labels. Headline copyright cases like the one fought between Taylor Swift and Scooter Braun,⁷⁸ as well as public outcries against large label contracts from artists such as Prince⁷⁹ and Kanye West⁸⁰ have demonstrated the legal consequences that can come from signing certain kinds of deals. Consequently, it is becoming more common for Western artists to fight to retain their copyrights and their IP in general, and to not authorize the use of them for anything, much less for merchandise that they are not actively involved in creating. Even more so, acts in the West are opting to remain independent from labels just to avoid legal pitfalls in contracts.

Still, many seasoned Western artists are signed to (or were recently released from) a 360-style deal with their label or promoter, including acts such as Madonna, who famously signed a \$120 million, 10-years long 360 deal with Live Nation in 2007.⁸¹ As previously mentioned, the 360 deal is still strikingly common in the rap genre; artists such as Travis Scott, Young Thug, Migos, and Fetty Wap are currently or were recently locked into 360 deals with their labels. This type of deal was created nearly 20 years ago for the same reason that the CD is now defunct for the Western music industry's profit margins. Napster and its

rivals such as iTunes made it easier than ever for listeners to obtain music for little to absolutely no cost, so profits in recorded music began to plummet. Practically no one was buying CDs, and premium streaming had not yet taken off. Record labels had to find a resolution for the immense loss of revenue, and they knew relying on digital sales wasn't going to be the answer.⁸²

The easiest solution was to take advantage of other revenue-creating sectors of an artist's career. In return, the label would provide the artist with all of the resources and funding they needed to develop, record, and market them in the industry. The idea was to give smaller, newer acts remarkable leverage, but these kinds of deals are increasingly being reserved for acts that can be proven to deliver large revenue in return for the substantial advances provided, as labels believe that they are taking on all of the risk of an act failing.⁸³ Nonetheless, in 2007, Warner Music Group made it their policy that all future record deals would be 360 deals, and Universal Music Group and Sony Music opened full-service merchandise, management, and licensing agencies.⁸⁴ With the standardization of the 360 deal, they became music companies, not just labels, just like K-pop entertainment companies.⁸⁵

Most 360 deals include "active" interest in not just profits over publishing and merchandise rights, but also the rights themselves.⁸⁶ This means that by signing the contract, the label now owns the rights to create and sell the artist's merchandise through their own company. Part of this clause typically includes language that allows for the act's likeness to be licensed for the creation of merchandise, and in some cases, for the artist's trademarks to be licensed, as well. Moreover, a 360 deal typically includes language that states that the record label is entitled to a percentage of revenue accumulated from any of the "collateral" or "ancillary" entertainment activities that an artist participates in. These types of activities could be anything – film appearances, fan club profits, ring-back tones.⁸⁷ They could thus also include IP-licensed merchandise that exists outside of the stretch of the imagination of an artist, including language textbooks and video games. Thus, for Western acts still signed to 360 deals, creating a similar model for producing artist merchandise without artist involvement as Big Hit does is still possible, provided that the contract allows for it.

The current disuse of the indirect artist involvement business model is also possibly a result of cultural differences, and the way that they impact fans of Western pop who concurrently enjoy K-pop. When asked in their interviews if they would buy these kinds of products from Western artists if they were linked to the artist's brand identity, most of the Western K-pop fans gave a resounding "maybe." The interviewees stated that their willingness to purchase really depends on who the artist is and what item they created.

Essentially, no generalization can be made for the willingness of fans to purchase just any indirect artist involvement merchandise from just any Western music artist. With no substantial or clear-cut fan demand, there is little reason for Western music companies to focus their attention on creating this style of merchandise, even if their contracts predispose them to do so.

Conclusion

K-pop presents one of the most dynamic and interesting phenomena to come out of the global music industry in years. The highly performative mix of music styles is sonically and visually captivating, and its fans are not only obsessed with it, but are willing to financially uphold its purpose to feed them the content they want. In a convoluted cycle of album-related content that renews with each studio release, a K-pop fan is presented with infinite ways to demonstrate their support for the artist. Of these opportunities, some of the most crucial are the physical album, the variant physical album, and the indirect artist involvement merchandise, all of which are uniquely profitable components of K-pop. With the global rise of acts such as BTS, the Western music industry is beginning to take notice of the capital that these K-pop acts can possess and wield in their fan ecosystems. Naturally, they have begun making moves to either extrapolate marketing and business strategies from K-pop to apply to their own Western acts, or even go as far as to purchase a stake in the preexisting K-pop acts themselves by signing them to talent and co-publishing deals.

However, in doing this, very little is being considered about the cultural middle ground that the fan who simultaneously enjoys Western pop and K-pop actually occupies. That fan is the target audience for the new adaptation of K-pop strategies in Western music, and yet so little about who they are as people and what they desire as well-educated consumers is factored into the decisions made for them by music companies. Based on the findings of this article, it is in fact possible to apply some elements of the popular K-pop marketing and business strategies in the Western music industry, given the right circumstances for the right artist.

However, based on additional findings of this article, the majority of Western K-pop fans are not interested in seeing the Western music industry become more like K-pop in the adaptation of strategies used to push physical albums, variant physical albums, and indirect artist involvement merchandise. They believe that these components are and will remain unique to the life cycle of K-pop, and that there are very few Western pop acts that could

manage to pull off these strategies successfully who are not already using them. A Western act would have to reach the popularity threshold of someone such as Taylor Swift to even be considered a successful realization of these strategies.

Most importantly, it is unclear how long K-pop – and BTS in particular – will remain popular and continue to grow in Western markets. While the genre’s growth has been exponential in the last three to four years, its success under BTS’s reign is unprecedented. Thus, it is also uncertain if the success of their marketing and business strategies have the same expiration date as the bands themselves. The lasting power of how K-pop feeds content to its fans in return for their financial support is not yet known. For now, K-pop remains an incredibly profitable genre, from which there are many things to learn and observe, but not necessarily to extract to be applied elsewhere in the music industry.

Bibliography

1. Heo, Uk, and Sunwoong Kim. "Financial Crisis in South Korea: Failure of the Government-Led Development Paradigm." *Asian Survey*, vol. 40, no. 3, University of California Press, 2000, pp. 492–507, doi.org/10.2307/3021158.
2. Beja, Edsel. "The Tenth Anniversary of the Asian Financial Crisis: A Retrospective on East Asian Economic Performance." *Challenge*, vol. 50, no. 5, Taylor & Francis, Ltd., 2007, pp. 57–72, www.jstor.org/stable/40722472.
3. Ro, Christine. "BTS and EXO: The Soft Power Roots of K-Pop." *BBC Culture*, 9 Mar. 2020, www.bbc.com/culture/article/20200309-the-soft-power-roots-of-k-pop.
4. "South Korea Ranks Among the World's Best Countries." *U.S. News & World Report*, www.usnews.com/news/best-countries/south-korea.
5. Cho, Chung-un. "K-Pop Still Feels Impact of Seo Taiji & Boys." *The Korea Herald*, 23 Mar. 2012, www.koreaherald.com/view.php?ud=20120323001104.
6. Méndez, Blanca. "Seo Taiji & Boys Pioneered Socially Conscious K-Pop for Groups Like BTS." *Vice*, 1 Aug. 2017, www.vice.com/en/article/7x95gz/seo-taiji-and-boys-pioneered-socially-conscious-k-pop-for-groups-like-bts.
7. Sumampow, Gabriela Caeli. "The Guide to Getting Into K-Pop, South Korea's Record-Breaking Pop Music." *Vice*, 23 Feb. 2021, www.vice.com/en/article/z3v7gj/guide-getting-into-k-pop-spotify-playlists.
8. Herman, Tamar. "Looking Back at How 'K-Pop' Came to Billboard 20 Years Ago." *Billboard*, 11 Oct. 2019, www.billboard.com/music/music-news/k-pop-billboard-20-years-8532755.
9. See reference 3.
10. Herman, Tamar. "Looking Back On Wonder Girls' 'Nobody,' A Decade Later." *Billboard*, 23 Sept. 2018, www.billboard.com/articles/columns/k-town/8476481/wonder-girls-nobody-10-year-anniversary-k-pop-hot-100-chart.
11. Flanagan, Andrew. "'Gangnam Style' Is No Longer The King Of YouTube Views." *NPR*, 11 July 2017, www.npr.org/sections/therecord/2017/07/11/536668657/gangnam-style-is-no-longer-the-king-of-youtube-views.
12. Aliaga, George. "BTS Wins 'Top Social Artist' Award At 2017 Billboard Music Awards." *iHeartRadio*, 21 May 2017, www.iheart.com/content/2017-05-21-bts-wins-top-social-artist-award-at-2017-billboard-music-awards/.

-
13. Choi, Inyoung. "BTS Is One of the Biggest Music Sensations in History. Here's a Look Back on Their Meteoric Rise to Stardom." *Insider*, 28 July 2020, www.insider.com/how-bts-became-global-sensation-popular-timeline.
 14. Ahmed, Trisha, and Nadeem Muaddi. "BTS Brings Glamour to Sold-out Show at Rose Bowl Stadium." *CNN*, Cable News Network, 5 May 2019, www.cnn.com/2019/05/05/entertainment/bts-rose-bowl-kickoff-trnd/index.html.
 15. Yoon, So-Yeon. "Big Hit Entertainment Gets Innovative: Agency behind BTS Looks to Revolutionize the Music Industry at Home and Abroad." *Korea JoongAng Daily*, Korea JoongAng Daily, 21 Aug. 2019, koreajoongangdaily.joins.com/news/article/article.aspx?aid=3067015.
 16. Stassen, Murray. "BTS Label Big Hit Entertainment Generated over \$500m in Revenue Last Year." *Music Business Worldwide*, 1 Apr. 2020, www.musicbusinessworldwide.com/bts-label-big-hit-entertainment-generated-over-500m-in-revenue-last-year/.
 17. Nguyen, Terry. "The Big Business of BTS, the K-Pop Band That's Changed Music." *Vox*, Vox Media LLC, 20 Feb. 2020, www.vox.com/the-goods/2020/2/20/21136529/bts-billion-dollar-fandom.
 18. Stassen, Murray. "BTS Bank Close to \$20m for Their 'Bang Bang Con: The Live' Virtual Concert." *Music Business Worldwide*, 15 June 2020, www.musicbusinessworldwide.com/bts-bank-close-to-20m-from-virtual-pay-per-view-concert/.
 19. Arun, Thanmay. "BTS' 'Dynamite' Likely To Rake In A Whopping \$1.43 Billion Into South Korea's Economy." *International Business Times*, 9 Sept. 2020, www.ibtimes.com/bts-dynamite-likely-rake-whopping-143-billion-south-koreas-economy-3042679.
 20. Tully, Shawn. "By This Measure, K-Pop Mega-Stars BTS Struck the Wrong Note with Their IPO." *Fortune*, 16 Oct. 2020, www.fortune.com/2020/10/16/bts-ipo-k-pop-going-public-bhe-big-hit-entertainment/.
 21. See reference 17.
 22. Sun, Rebecca. "Amid BTS' Global Fame, K-Pop 'Could Still Get Bigger.'" *The Hollywood Reporter*, 2 Oct. 2019, www.hollywoodreporter.com/news/bts-global-fame-k-pop-could-still-get-bigger-1244581.
 23. See reference 22.
 24. Knopper, Steve. "How Western Pop Acts Can Use K-Pop's Marketing Playbook." *Billboard*, 16 Mar. 2020, www.billboard.com/articles/deep-dive/9332871/how-western-pop-acts-can-use-k-pops-marketing-playbook.
-

-
25. Sanchez, Daniel. "Peermusic Acquires South Korea's Music Cube - Which Includes BTS Copyrights." *Digital Music News*, 11 Jan. 2019, www.digitalmusicnews.com/2019/01/10/peermusic-acquires-music-cube/.
 26. Kim, Jae-Ha. "K-Pop Powerhouse SM Entertainment, Home to NCT 127, SuperM and EXO, Inks With CAA." *Variety*, 4 Nov. 2019, www.variety.com/2019/biz/news/k-pop-powerhouse-sm-entertainment-home-to-nct-127-superm-and-exo-inks-with-caa-1203392415/.
 27. Stassen, Murray. "Capitol Music Group and Caroline Partner with SM Entertainment to Launch New K-Pop Supergroup SuperM." *Music Business Worldwide*, 8 Aug. 2019, www.musicbusinessworldwide.com/capitol-music-group-and-caroline-partner-with-sm-entertainment-to-launch-new-k-pop-supergroup-superm/.
 28. Personal Research.
 29. Personal Research.
 30. Personal Research.
 31. Alexander. Personal Zoom interview. Conducted by Miranda Jackson, 9 Sept. 2020.
 32. There are many of these types of accounts. For an example of an account related to BTS, see the BTS Charts account, available at www.twitter.com/btschartdata.
 33. Herman, Tamar, and Raphael Rashid. "Why K-Pop Fans Still Buy CDs (Even When They Can't Play Them)." *Billboard*, 16 Mar. 2020, www.billboard.com/articles/deep-dive/9332831/why-k-pop-fans-still-buy-cds-even-when-they-cant-play-them.
 34. Moon, Kat. "Everything to Know About K-Pop Group Twice." *Time*, 20 Sept. 2019, www.time.com/5671342/twice-k-pop-everything-to-know.
 35. See reference 33.
 36. Herman, Tamar. Personal Zoom interview. Conducted by Miranda Jackson, 14 Sept. 2020.
 37. Lee, Gyu Tag. Personal Zoom interview. Conducted by Miranda Jackson, 23 Sept. 2020.
 38. This process for each group varies, but for nearly all groups, the first step is usually to join their official fan café. For more information on how to join BTS's, for example, see www.usbtsarmy.com/tutorials/bts-fancafe.
 39. There are many resources to explain how the process for entering fansign works for each group, but for an example, see this Twitter thread: twitter.com/nyubebes/status/989748071847247875?lang=en.
 40. Personal Research.
 41. Personal Research.
 42. Personal Research.
-

-
43. Kourtney. Personal Zoom interview. Conducted by Miranda Jackson, 16 Sept. 2020.
 44. Malia. Personal Zoom interview. Conducted by Miranda Jackson, 14 Sept. 2020.
 45. Alice. Personal Zoom interview. Conducted by Miranda Jackson, 2 Sept. 2020.
 46. See reference 17.
 47. Leight, Elias. "Album-Merch Bundles Don't Make Much Money, But Rappers Like Them Anyway." *Rolling Stone*, 21 Jan. 2019, www.rollingstone.com/music/music-features/album-merch-bundles-dont-make-much-money-but-rappers-like-them-anyway-776067/.
 48. Gordon, Steve. "How to Avoid Getting Completely Screwed by a 360 Degree Deal." *Digital Music News*, 2 July 2013, www.digitalmusicnews.com/2013/07/02/threesixty/.
 49. Haylock, Zoe. "Which of Taylor Swift's 8 Folklore Covers Are You?" *Vulture*, 23 July 2020, www.vulture.com/2020/07/taylor-swift-folklore-8-deluxe-album-covers.html.
 50. Sisario, Ben. "Taylor Swift Returns to No. 1 as 'Folklore' Sales Pass 1 Million." *The New York Times*, The New York Times, 26 Oct. 2020, www.nytimes.com/2020/10/26/arts/music/taylor-swift-folklore-million-sales.html.
 51. Hartlaub, Peter. "Taylor Swift Feels the Love, across Many Demographics." *SFGATE*, San Francisco Chronicle, 17 Aug. 2015, www.sfgate.com/music/article/Taylor-Swift-feels-the-love-across-many-6446293.php.
 52. Karp, Hannah. "Adele's Most Fervent Fans? Soccer Moms." *The Wall Street Journal*, 19 Nov. 2015, www.wsj.com/articles/adeles-most-fervent-fans-soccer-moms-1447963361.
 53. Personal Research.
 54. See reference 33.
 55. Midyear Report U.S. 2020. *Nielsen Music/MRC Data*, July 2020, static.billboard.com/files/2020/07/NielsenMID-YEAR-2020-us-1594300786.pdf.
 58. He, Laura, and Jake Kwon. "BTS Label Big Hit IPO Makes Band Members Millionaires." *CNN*, 15 Oct. 2020, edition.cnn.com/2020/09/28/investing/bts-big-hit-entertainment-ipo/index.html.
 57. Gartenberg, Chaim. "Samsung's Latest Special Edition Phone Is a BTS-Branded Galaxy S20 Plus." *The Verge*, 14 June 2020, www.theverge.com/circuitbreaker/2020/6/14/21289705/samsung-galaxy-s20-plus-5g-bts-edition-buds-k-pop-purple-heart.
 58. Jeong-Yeo, Lim. "Galaxy S20+ BTS Edition Preorders Close in 1 Hour." *The Korea Herald*, 19 June 2020, www.koreaherald.com/view.php?ud=20200619000592.
 59. Tsai, Patricia. "Discovering the Full Potential of the 360 Deal: An Analysis of the Korean Pop Industry, Seven-Year Statute, and Talent Agencies Act of California." *UCLA*
-

Entertainment Law Review, vol. 20:2, 2013, retrieved at
www.escholarship.org/uc/item/88z2z7wm.

60. See reference 23.

61. Park, Sun-young. "An Idol's Life: Sweat and Sleepless Nights." *Korea JoongAng Daily*, 17 Feb. 2010, koreajoongangdaily.joins.com/2010/02/17/features/An-idols-life-sweat-and-sleepless-nights/2916729.html.

62. Dong, Sun-hwa. "[INTERVIEW] Profit Sharing Pits K-Pop Singers against Agencies." *The Korea Times*, 27 Dec. 2019, www.koreatimes.co.kr/www/art/2020/08/732_280972.html.

63. Williamson, Lucy. "The Dark Side of South Korean Pop Music." *BBC News*, 14 June 2011, www.bbc.com/news/world-asia-pacific-13760064.

64. Herman, Tamar. "How Much Does It Cost To Debut A K-Pop Star? Zanybros CEO Discusses Alexa's Debut." *Forbes*, 13 Jan. 2020, www.forbes.com/sites/tamarherman/2020/01/13/how-much-does-it-cost-to-debut-a-k-pop-star-zanybros-ceo-discusses-alexas-debut/?sh=2ab6897645ae.

65. See reference 59.

66. Herman, Tamar, and Raphael Rashid. "For the K-Pop Industry, Merch Is As Important As the Music." *Billboard*, 16 Mar. 2020, www.billboard.com/articles/deep-dive/k-pops-merch-madness/9331910/for-the-k-pop-industry-merch-is-as-important-as-the-music.

67. See reference 23.

68. "Big Hit Corporate Briefing with the Community (2H 2020)." *Big Hit Labels*, YouTube, 13 Aug. 2020, www.youtube.com/watch?v=MyGF8mFDMeI&t=1796s.

69. Stassen, Murray. "3 Things the Major Labels Can Learn from Big Hit, Home of BTS." *Music Business Worldwide*, 20 Aug. 2020, www.musicbusinessworldwide.com/3-things-the-major-labels-can-learn-from-big-hit-home-of-bts/.

70. See reference 23.

71. Delgado, Sara. "Are You Ready to Learn Korean With BTS?" *Teen Vogue*, 23 Mar. 2020, www.teenvogue.com/story/bts-fans-will-soon-will-officially-learn-korean-with-bangtan.

72. See reference 68.

73. 장동우 . "BTS Content to Be Featured in Overseas Korean Education Course." *Yonhap News Agency*, 11 Aug. 2020, en.yna.co.kr/view/AEN20200811004100315.

74. See reference 72.

75. See reference 23.

76. See reference 23.

77. Personal Research

78. Rowley, Glenn. "Taylor Is Free': Taylor Swift Can Officially Re-Record Her First Five Albums & Fans Are Celebrating." *Billboard*, 2 Nov. 2020, www.billboard.com/articles/columns/pop/9476894/taylor-is-free-trends-swifties-celebrate.

79. Newman, Melinda. "Inside Prince's Career-Long Battle to Master His Artistic Destiny." *Billboard*, 28 Apr. 2016, www.billboard.com/articles/news/cover-story/7348551/prince-battle-to-control-career-artist-rights.

80. Woods, Aleia, et al. "Here's Everything We Learned From Kanye West's Record Label Contracts." *XXL*, Mag, 17 Sept. 2020, www.xxlmag.com/kanye-west-record-label-contracts-details/.

81. Smith, Ethan. "Madonna Heads for Virgin Territory." *The Wall Street Journal*, 11 Oct. 2007, www.wsj.com/articles/SB119205443638155166.

82. Marshall, Lee. "The 360 Deal and the 'New' Music Industry." *European Journal of Cultural Studies*, vol. 16, no. 1, 2013, pp. 77–99., doi:10.1177/1367549412457478.

83. See reference 82.

84. See reference 82.

85. See reference 23.

86. Jacobson, Justin M. "A Look At 360 Agreements: 'Multiple Rights Deals.'" *The Jacobson Firm, P.C.*, 1 May 2020, www.thejacobsonfirm.com/a-look-at-360-agreements-multiple-rights-deals/.

87. Schwartz, Drew. "Bad Deals Are Baked Into the Way the Music Industry Operates." *Vice*, 21 Oct. 2020, www.vice.com/en/article/y3gmjw/bad-deals-are-baked-into-the-way-the-music-industry-operates.

CURTAILING INFRINGEMENT

LINKING THE VALUES OF CREATOR AND CONSUMER IN
COPYRIGHT ADJUDICATION
BY MATIAS PACHALIAN

Note: This work was originally written in Nov. 2020, and specifically adapted for publication in Issue I of the USC JMI.

Reconceptualizing Copyright

The founding fathers of the United States explicitly mention the purpose of copyright protection: Article I Section 8 Clause 8 – Patent and Copyright Clause of the Constitution. “[The Congress shall have power] *To promote the progress of science and useful arts*, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”¹ Though the drafters somewhat contemplated the concept of copyright, there was no possibility to foresee all the nuances that the music industry would experience today with the issue of protected works. Whether this was intended or not, the phrase “to promote the progress of [...] useful arts” remains ambiguous, and this concern seems to have escaped the minds of those who developed the current copyright scheme.² Music copyright is distinct from other types of copyright protection, namely in the amount of subjectivity involved, and this should be a point of emphasis in any subsequent test for determining infringement.

Musical compositions serve a purpose in society that is unique from any other creative work. Congress enacted legislation to bolster what the founders set forth, through “the first Copyright Act of 1790 [which] explicitly covered books, maps, and charts,” though in practice, it also covered compositions.³ Books, maps, and charts are structurally and interpretively dissimilar from musical compositions, so to initially hold them to similar standards was a formative mistake. Of course, the law has developed since then, with some subsequent revisions and specifications for music, but to begin with a shaky foundation lacking specificity indicated that there was some confusion on how to deal with this issue from its inception. Furthermore, protecting a copyright for music only in a fixed, tangible form is a similarly suspect premise. Given the performative, aural nature of compositions, it is counterintuitive to treat them like other creative works. A book, map, or a chart would stay fixated within the medium, with a possibility for slight modifications, but a piece of music relies greatly on intangibles, since it may lose meaning without subjective performance.

This fixation on objectivity has led to disunity in adjudication for music copyright claims, which is counterproductive and in need of clarification. Currently, circuit courts analyze these composition infringement claims with slightly different tests to determine “substantial similarity” between two musical works. However, the “ordinary observer” test, the “extrinsic/intrinsic test,” and the “abstraction-filtration-comparison” test arguably “[engage] in [...] the same [...] analysis,” since the only apparent difference is that they are

“framed using different language.”⁴ Purely through an abstract, theoretical understanding, courts might engage in similar types of analysis, but this does not help resolve lawsuits. Inconsistency in the wording of decisions can set precedent which can harm well-intentioned creators in the future. Guidelines containing differing, convoluted verbiage necessitates a more pragmatic representation of the issue within the legal world. Rather than sift through the nuances of the law, songwriters would likely appreciate a simpler approach to avoid infringing on existing works. Copyright claims have steadily increased after various judicial decisions, leading to the plethora of cases courts are hearing today and thus forcing “artists and songwriters [to spend] tens of thousands of dollars on insurance policies.”⁵ It is crucial to unify the components of these tests because judges should not only satisfy the requirements of the legal world, but also work to clarify what constitutes infringement - and what does not - on behalf of composers and musicians. Although an entirely objective approach would be consistent with ideas of fairness under the law, musical compositions should be an exception, given that their value lies, at least in part, within the subjective elements of auditory perception.

In an inherently subjective field, objective analysis of songs undermines the nature of expressive works and should not hold greater weight in tests for determining copyright infringement. Courts have attempted to clarify what objective analysis encompasses through various cases, though an inconsistent implementation of such standards has proven problematic. A higher court must unify jurisprudence to promote a less rigid comparison of works, since traditional rules and methods currently stifle fair determinations of copyright claims. Guiding bodies should move to provide more of a solid foundation for subjective analysis, such as the use of contextualization to factor in the effect of a song, reinforcing the idea that copyright value should not merely reflect on the written notes on a page. Music is much more than that, but courts have placed undue limitations on expressive works and inadvertently stifled innovation. Excluding the auditory, subjective aspects from infringement analysis strips a song of its expression, deeming it practically meaningless. Since the primary consumers and creators may take a more subjective approach to valuing music, it is necessary for copyright adjudication to integrate further elements.

Amending Registration

Recognizing the importance of subjectivity in music, a consideration of authorial intent needs to become an element of the infringement analysis. One possibility for this may come through requiring more information to prevail in lawsuits. There are historically

three elements that a plaintiff must prove to acknowledge infringement by the legal standard of "more likely than not."

1. The plaintiff must prove ownership of a valid copyright that was registered with the copyright office prior to bringing the suit;
2. The defendant must have copied protected material, which can either be proved by the defendant's admission or through circumstantial evidence, consisting of the substantial similarity tests and some nexus of access to the protected work; and
3. The defendant's copying must constitute improper appropriation or illicit copying.⁶

The first element might seem like simple due diligence, but a more thorough registration process can help make the other elements clearer.

One area that is rarely discussed but deserves more attention as a potential infringement preventative is the copyright registration process. Hypothetically, a more comprehensive registration process could prevent issues arising before they even begin. If a songwriter were able to somehow indicate intent upon conception of the song, this description could act as an additional layer to defer accusations of willful infringement. As a pre-trial occurrence, a concession from the songwriter embedded in the song's registration does present evidentiary and admissibility issues, however those do not undermine the possibility for improvement upon the current system. Some art exhibitions include this kind of description to improve audience engagement, proving that this is feasible within the context of other copyrighted works. Not only could something like this help facilitate music adjudication, but fans could also further appreciate specific aspects of a song, such as the homage it pays to other works. Potentially, a more informed public could develop more awareness in consumption habits, increasing the correspondence between value and copyright claims in the courtroom. Most importantly, this element would encourage good-faith protection of works, in that initial intentions can play a role in getting closer to the truth. With the subconscious copying doctrine the question remains of "how [one] disprove[s] an alleged act of [the] unconscious mind."⁷ A possible answer to that question, and the goal of the above proposal, would be to somehow externalize the acts of the conscious mind, which a more comprehensive registration may facilitate.

Like the other presented modifications to the copyright regime, by no means would this single additional factor be wholly determinative. More rigorous registration would not unfairly shift the burden of proof but would simply provide a more complete picture for judges and juries. Further, a meticulous affidavit during registration may quell fears of dishonesty. Offering an additional section of intent would not advance impropriety, since it would be required before any lawsuit would be commenced, rather than the extant inconsistent regime. Explicating the purpose of a creative work can function to strengthen

infringement claims, increasing genuine concerns of illicit copying while weeding out frivolous suits. Current copyright infringement litigation affords a minimal role to songwriters' agency, which seems counterintuitive to managing the balance between rightsholders and public interest concerns. An afterthought in the current process, songwriters merely provide a name for a trial; courts should shift more of their focus to the songwriters themselves. They certainly hold stakes in the outcome of their trials and should be allowed to provide a good-faith explanation of their song, rather than have an expert witness parse through their piece. By somehow noting which elements of the song deserve the most stringent protection an artist may potentially avoid leaving judges and juries guessing as to which differentiating factors are significant. For example, it has been noted that "tone color and complex harmonies are not the only details brought into the aesthetic foreground by recording; so are notes outside of the traditional 12-note Western scale."⁸ Without an understanding of the full array of possibilities which can make up a song, these sorts of attributes often go unnoticed and therefore remain unevaluated in regards to potential infringement. Expanding the range of elements to what songwriters consider valuable could lessen the frequency of bad-faith copyright infringement claims, since the songwriter's statement would be integrated before litigation.

The practicability of this aspect may face some complications. For example, if a songwriter claims they were under the influence when writing the composition, it would be difficult to determine whether this was a mitigating factor. Courts currently have no concern or insight into the mental state of songwriters at the time of composition, so once again, this would only serve as a helpful tool to provide a more complete picture. Moreover, this does not serve as a complete defense for copying. The analysis should continue to encompass many factors, the idea of intent or purpose merely being an additional consideration. A goal of this stipulation is to increase consciousness and thoughtfulness behind these claims, where the meaning of songs deserves to play some sort of role.

Multi-Faceted Considerations

Upon adoption of these expanded claims to originality, providing different paths to proceed should also be helpful for incentivizing novel creations. Given that the transformative use defense already exists, in which courts consider whether defendants "add something new, with a further purpose or different character, and do not substitute for the original use of the work,"⁹ this should play a more encompassing role in adjudication. The extension of this can improve the terrain in which infringement claims operate, since adding a novel meaning can already justify a certain amount of borrowing. For example,

George Harrison should not have been liable for allegedly misappropriating “He’s so Fine” by The Chiffons in his song “My Sweet Lord.”¹⁰ Though the pieces may have held similar chord structures and melodies, the operational capacity of the notes had completely shifted. Genre plays a role here, in that Harrison probably did not mean to function in the realm of popular doo-wop, instead adding a realm of new textures in the folksy country rock environment, providing a distinct effect with its improvisatory nature. Written for a different age group, era, and genre, it is unclear how the enforcement of this copyright could incentivize innovation. The judge claimed that “I do not believe he did [infringe] deliberately.”¹¹ If Harrison had the chance to provide a statement of intent, this could have perhaps been factual evidence rather than mere speculation from the judge, bolstering the defense argument’s position. Failing to consider the nuances of a new, altered meaning from similar music partially led to this incorrect decision. Maybe a substantial number of notes were the same on paper, but their surroundings were quite different. They are not necessarily substitutable. Perhaps courts should consider the market effects of copying, to ensure the optimization of creations.

When comparing the copyright regime to trademark law, even the likelihood of confusion standard (parallel to substantial similarity tests in copyright) offers some allowance for altered meaning as part of the comparison. The substantial similarity analysis should also include a similar stipulation. Regardless of some shared elements, there should be more flexibility with verdicts if a song does not necessarily contribute to consumer confusion. If there is a substantial amount of borrowing between two parties competing against the same target audience, the likelihood of consumer confusion would likely increase, and marketability is what determines consumption. Foregone consumption is, in theory, what copyright is protecting. Consumer analytics today could help shed light onto this phenomenon, and although genre is an ever-changing concept, this is where musicologists can help serve as expert witnesses, by clarifying how consumption can potentially change from two similar compositions.

The idea of genre can be complicated but could be another factor worth considering in the infringement analysis. Approximating the domain of consumers may be key to adapting this “likelihood of consumer confusion” standard to copyright. Music can be a universal language spanning temporality and locality, or it can also be a regional phenomenon, confined to a certain time and space. Songwriters may choose to target certain audiences when creating their compositions, as directed by labels and publishers, or they may be attempting to generate broad demand. If a niche song claims that a popular song is infringing upon them, or vice versa, it may be worth considering whether their respective market value changes. While expert witness analysis from trained musicologists can help approximate this effect, the primary consumer of the general public represents the

significant monetary effect accrued from the alleged infringement, so a potential disconnect must be taken into consideration when considering this sort of testimony. Nevertheless, to optimize litigation, this should become another factor of analysis.

Song copyright is a source of revenue in the music industry, in which songwriters and publishing companies attempt to capture as much value as possible from their creations. For rightsholders to fully retain profits, the public plays a role in achieving such goals. As such, it may be useful for courts to attempt at devising a quantitative and qualitative analysis regarding the effect that a defendant's allegedly infringing song has on the plaintiff. Power-hungry claims may devise unreasonable connections between compositions simply for clout, and similarly labels may try to revive former hits or uplift failed investments through ill-founded allegations. Rather than feed the beast of litigation, courts should discourage claims that have minimal impact on the market. Allegations that do not affect the consumer merely overburden the courts and creators alike. As such, if one cannot distinguish the compositions in the marketplace to the point of consumer confusion, certainly this must help in determining more accurate adjudication.

Addressing Potential Biases

For music to receive meaningful copyright protection, an additional value-added effect can interplay with the initially stated purpose. This would be a sort of dynamic version of a copyright, taking into consideration operational capacity and context around a song. Although all tangible fixed works are afforded protections, some may informally receive unique recognition. It is difficult to strip a trial jury, or even a judge, of all biases since they surely consume music in some capacity. As a result, the decision-makers may inevitably grant more weight to certain copyrights as opposed to others. Unless voir dire (jury selection) processes somehow occur within a vacuum and are airtight against the effects that a particular piece of music has had on society, a jury may be swayed, and their personal consumption habits could serve as a conflict. It is unlikely that members of a jury or a judge themselves have never had exposure to popular songs that may be on trial. In *Williams v Gaye*,¹² Marvin Gaye, an R&B legend, would thus be more likely to prevail than Robin Thicke, arguably a modern appropriator of the socially impactful artist. As such, the copyright protection of "Got to Give It Up" (Gaye's piece) may have held more significance in the eyes of the public/jury than "Blurred Lines" (Williams' piece, sung by Robin Thicke), granting it elevated status to transcend standard copyright analysis. A more honest recognition of this bias could help guide the process for adjudication, moving towards more advanced questions, like whether there was a detraction of value.

A value-added approach can help scrutinize the copying of those songs which have had lasting change, in that pioneers may warrant some special credit for their contributions to the craft, lowering claims through a comparison of their initially stated purposes. The Gaye case, “identified how certain elements were original to composer[...], and not merely standard, rote ingredients of a particular genre,” and that despite many fears that arose from the case, “testimony identified original creative elements particular to the song[...], and not merely general conventions of a genre, era, or style.”¹³ Certain songs have had lasting changes that affect the understanding of compositions. Recognizing that some pieces are susceptible to some sort of recognition could serve a similar effect as designating historical landmarks. Perhaps a certain number of awards or milestones can help place certain high achieving works as unique to juries, facilitating their analysis and marking awareness of their potentially skewed perceptions. The value that a piece holds within the initial years of release versus at the time of alleged infringement may serve as more guidance to analyze the effects of protected elements. This may be helpful to distinguish those compositions which have drawn from general existing elements, versus works that have introduced new styles, namely in more improvisational pieces that are difficult to assess otherwise.

Moreover, classifying different works through their societal impact might help facilitate processes for courts, operating with more information particular to the works involved. Songwriters can potentially explain the context under which they wrote the song, pursuant to the constitutional basis for government regulation, namely “to promote the useful progress of the arts.”¹⁴ If they tie their piece to a specific social movement, further evidence can enhance the idea that they are providing novel creativity that achieves a distinct, valuable purpose. This may either be a defense or a basis for another claim, in which appropriation of racial justice initiatives through music, or a twisting of values can indicate some more illicit copying. Of course, one can still find inspiration in such works; they would not be untouchable, but the idea is to encourage inventiveness that reflects the creativity in such inspiring works. The value-added approach would provide useful questions for consideration. Beyond the substantial similarity findings, this would determine whether the alleged infringement added or detracted from the claimant’s value. Surely it is a complex question, but worth considering as an additional factor. To reiterate, part of the value-added analysis includes a step to admit or recognize that some songs hold more weight than others due to historical developments. The meaning and value of a song may change over time, depending on the context in which it operates. This may be a practical method to understand why some copyright claims turn out the way they do, as it may be part of the subconscious analysis.

Further Research and Action

Reestablishing the original purpose of copyright and updating its application to fit the modern world of songwriting is essential to a healthy music industry. This beckons a more practical method of adjudication. Widespread access to songs is now commonplace through the free model of streaming, deeming the “nexus of access” requirement null and impracticable.¹⁵ As a result, more accurately determining where value lies in an original creation is more than warranted. Revisiting the initial premise of copyright is necessary for the sake of clarity, and this should stem from creatives and consumers themselves. The music industry needs to further specialize its copyright regime to promote originality and innovation. After all, copyright protection laws are meant to serve the public and creatives alike, so copyright infringement adjudication would greatly benefit from a value-added approach to better approximate creative contributions. Borrowing from the transformative fair use defense and some trademark stipulations, the meaning within a song should be an important consideration in all music copyright cases, to bolster more significance to the songwriter’s intent.

Change is desperately necessary in the realm of copyright, and something as simple as an extra text box required for registration can help settle some of the confusion over what it means to copy a protected musical work. Unless some more guidance exists, copyright infringement claims will continue to run rampant, because of many bad-faith allegations burdening the system. If the goal of copyright protections are so “one should protect works and parts of works only to the extent necessary to provide an incentive for their creation,”¹⁶ then this further necessitates higher courts to uphold their role in clarifying the law for copyright infringement. A limitation that may be holding them back is the idea that the issue seems intractable, wherein they cannot determine a proper resolution. However, due to the complexity of the issue, scholars must work to find a solution and submit amicus briefs to advance perspectives that the high court may not have considered but needs to address. Reimagining the role of copyright in music should start with the connection between creator and consumer.

Bibliography

1. U.S. Constitution. *The Constitution of the United States: A Transcription*. National Archives, U.S. National Archives and Records Administration, 24 Jan 2022, www.archives.gov/founding-docs/constitution-transcript.
2. See reference 1.
3. Demers, Joanna. "Chapter 33- Music, Copies and Essences." *The SAGE Handbook of Popular Music*, by Andy Bennett and Steve Waksman, SAGE Reference, Los Angeles, California, 2015, pp. 582–595.
4. Godoy-Dalmau, Gabriel. "Substantial Similarity: Kohus Got It Right." *Michigan Business and Entrepreneurial Law Review*, vol. 6, no. 2, 2017, pp. 231–261. Spring, repository.law.umich.edu/cgi/viewcontent.cgi?article=1060&context=mbelr.
5. Wang, Amy X. "How Music Copyright Lawsuits Are Scaring Away New Hits." *Rolling Stone*, Rolling Stone, 9 Jan. 2020, www.rollingstone.com/pro/features/music-copyright-lawsuits-chilling-effect-935310/.
6. *Arnstein v. Porter*, 154 F.2d 464, 68 U.S.P.Q. (BNA) 288 (2d Cir. N.Y. Feb. 11, 1946).
7. Walker, Robert Kirk. "Ghosts in the Hit Machine: Musical Creation and the Doctrine of Subconscious Copying." *Landslide*, vol. 9, no. 4, American Bar Association, 1 Mar. 2017, www.americanbar.org/groups/intellectual_property_law/publications/landslide/2016-17/march-april/ghosts-hit-machine-musical-creation-doctrine-subconscious-copying/.
8. Brauneis, Robert. "Musical Work Copyright for the Era of Digital Sound Technology: Looking Beyond Composition and Performance." GW Law Faculty Publications & Other Works - Faculty Scholarship at Scholarly Commons, 2014, scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2360&context=faculty_publication.
9. U.S. Copyright Office. "More Information on Fair Use." *U.S. Copyright Office*, May 2021, www.copyright.gov/fair-use/more-info.html#
10. *Bright Tunes Music v. Harrisongs Music*, 420 F. Supp. 177, S.D.N.Y., 1976.
11. See reference 10.
12. *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018).

13. Mtima, Lateef, et al. “Brief Amicus Curae of the Institute for Intellectual Property and Social Justice for Musicians and Composers and Law, Music, and Business Professors in Support of Appellees.” Pharrell Williams et al. Plaintiffs, Appellants, and Cross-Appellees v. Frankie Christian Gaye et al., Defendants, Appellees, Cross-Appellants on Appeal From The United States District Court For The Central District of California, Hon. John A. Kronstadt, District Judge, No. 13-cv-06004 JAK (AGRx). IIP SJ, www.illusionofmore.com/wp-content/uploads/2018/04/HCH-Blurred-Lines-Amicus-Brief-9th-Cir.pdf.
14. See reference 13.
15. See reference 6.
16. Jamar, Steven D. “Crafting Copyright Law to Encourage and Protect Usergenerated Content in the Internet Social Networking Context.” *Widener Law Journal*, vol. 19, 2010, pp. 843–873, www.iipsj.org/wp-content/uploads/2019/06/IIP SJ-Jamar-2010CopyrightIssuesSocialNetworking-1.pdf.

MITIGATING MONOPOLY

IDENTIFYING AND ADDRESSING ANTICOMPETITIVE
BEHAVIOR IN THE MUSIC INDUSTRY
BY AIDAN MCINTYRE

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Introduction

The music industry is a unique creature, relying on the symbiosis of artists and businesspeople to flourish. At its core, the music industry is about creation, the statement an artist makes with their music, and the effect this work has on their audience. However, like any other industry, music is not immune to the profit-seeking corruptions of capitalism and the economic imbalances created through corporate dominance. As the ability to record music developed throughout the 20th century, the song transformed from a momentary capture of human expression to an exchangeable commodity. This commodification distorted the priorities of the music industry. Individuals became the marketable product and superstars became icons, while private companies controlled copyrighted assets and significantly influenced broadcasts and distribution.

Unlike other industries – where the lines between producer and consumer are more distinct – those lines in the music industry are less clear. Artists are trapped somewhere between producers of actual musical works, and consumers of the services provided by larger companies. The controlling interests in the music industry rely on artists' work product – music – to survive; without artists to create music, there would be nothing new to commercialize, and no need for record labels, concert promoters, distribution services, or licensing agencies. The economic structure of the modern music industry communicates that music industry companies have either forgotten who generates the body of work and are oblivious to the fact that artists are so integral to their business model, or companies have willfully rejected the well-being of artists in favor of corporate leveraging.

In either case, the priorities of the music industry are askew. Profit and control are seemingly placed above musical integrity and creative value. Corporate pressures and degrading consumer culture are feeding an increasingly homogenized popular sound, with short, formulaic songs dominating the airwaves.¹ The constant battle between artists and industry professionals over creative control and copyright ownership subtracts from the ingenious and democratic nature of music creation. Many musicians are unable to earn livable wages from their music, to participate in marketing and promotion, or to express themselves in an authentic and individual manner.² As corporations vie for influence and market share, artists, consumers, and the industry alike suffer culturally and financially. One manifestation of this faulty bargain, present across several sectors of the music industry, is anticompetitive behavior.

Over the course of the 20th and early 21st centuries in the United States, a small handful of companies established a dominant concentration of power in the music industry.

By 2020, three record labels captured roughly a 65% share of the recorded music market.³ One event promoter captured a 70% share of the U.S. market for live concert ticketing.⁴ Four digital service providers captured an approximately 80% share of the market for music streaming.⁵ Two performance rights organizations captured a 90% share of the public performance rights market.⁶ In these four major sectors of the music industry, major companies harness their oligopolistic power to maximize profitability, often at the expense of both artist well-being and consumer welfare.

Holistically, this business structure within the music industry fails to balance the interests of artists and consumers. In order to ensure equity among artists and uphold a high-quality standard for musical creativity, the music industry must take efforts towards demonopolization and convert to a more competitive market structure. Record labels, live event promoters, digital service providers, and performance rights organizations all exhibit anticompetitive conduct in different ways, and consequently require different solutions aimed at restoring healthy competition to the music industry. This type of competition, in comparison to current anticompetitive market structures which allow powerful firms to set prices and disadvantage artists and consumers, would vest control with creators, foster collaboration, improve integrity in each transaction, increase the potential for monetization, and preserve creative diversity within the music industry.

Economic Theory

In microeconomic theory, monopoly and oligopoly are two of four basic market structures. In monopolistic and oligopolistic markets, firms can set market prices and exclude competitors. In a monopoly, one firm provides a singular good or service to a geographic area; in an oligopoly, a few firms sell slightly differentiated products while still maintaining a collective dominance over the market. These price-making market structures are contrasted with more competitive, price-taking market structures, in which equilibrium conditions over time direct the flow of a market. In a perfectly competitive market, a structure rarely seen in the real world, many firms sell completely identical products subject to natural market forces for pricing (corn, for example). In the more practical monopolistic competition, firms sell similar but differentiated products, while still subject to prices dictated by natural market forces (for example, soft drinks). General economic wisdom professes these competitive market structures to be more beneficial to society than the restrictive monopolistic and oligopolistic markets.⁷

In the abstract, a monopoly market exists when one firm controls a 100% share of the given market. Practically, however, the United States Federal Trade Commission defines a monopolist as a firm with at least a 50% share of the given market, and “significant and durable market power,” meaning the firm has the long-term ability to unilaterally control prices and prevent competitors from entering the market through “exclusionary or predatory acts.” Firms exhibiting monopolistic behavior are regulated through a series of antitrust laws designed to expand the competitive market. Notably, exceptions to this regulation include a “legitimate business justification” for excluding firms, including providing greater benefit or efficiency to consumers.⁸ Oligopolists are subject to similar regulation. When a concentrated number of powerful firms in an industry coordinate economic activity, as the US Department of Justice notes, “they can increase their collective profits and reduce consumer welfare by raising price(s) and reducing output.”⁹ To thrive, oligopolists must adapt to the actions of their rivals to maintain relevance and market share.

The Federal Trade Commission prevents oligopolies and monopolies from conducting anticompetitive practices, such as collusive price fixing or competitive exclusion, through antitrust regulation, based on the principle that greater competition creates greater societal benefit.¹⁰ While there are exceptions to this rule, the music industry should not be one of them. Healthy competitive markets incentivize innovation, encourage the supply of high-quality goods, increase market resiliency, and stave off major economic calamity. Anticompetitive markets lack ingenuity and are highly susceptible to external shocks. Live Nation-Ticketmaster’s \$300 million loss in the first quarter of 2021 and subsequent scramble to invest in livestreaming options during the Covid-19 pandemic, for example, demonstrates this weakness in the music industry.¹¹

Not only is market power in the music industry concentrated among a handful of record labels and live entertainment promoters, but the economic inequality created by these anticompetitive markets feeds a superstar culture pedestalizing a small group of major artists. A 2020 study by analytics firm Alpha Data showed that 1% of artists account for 90% of all music plays on streaming services, leaving the remaining 99% of artists to reap the economic scraps of the streaming system, earning a fraction of a cent per play.¹² This has long been the subject of artist and consumer outcry, especially as the Covid-19 pandemic restricted musicians’ income sources, pushing many musicians to exit or consider exiting the music industry.¹³ In May 2020, organizations in the UK, US, and elsewhere founded and supported initiatives calling for critical changes to the economic structure of the music industry to alleviate these pressures.¹⁴ Though this economic imbalance is a culmination of many factors, including the advent of digital music distribution and the widespread

devaluation of musical works, this issue ultimately stems from corporate concentration of market influence.

Recordings - The Big 3 Record Labels

Potentially the most influential oligopolists in the music industry are the world's major record labels; Universal Music Group (UMG), Warner Music Group, and Sony Music Entertainment, dubbed the "Big 3." Through a series of acquisitions and mergers in the 1990s and early 2000s, the Big 3 consolidated their industry power and reduced competition, collectively accounting today for approximately 65% of the U.S. record label market share.¹⁵

Record labels over time have also cemented their market share through vertical integration, a controversial practice of absorbing multiple stages of production. These major record labels not only own several smaller subsidiary labels, but also own publishing companies as well as manufacturing and distribution operations. This current industry landscape gives very few economic options to artists, primarily because of the dominance of the oligopolistic Big 3. These record label machines exist, in essence, to monetize the copyrights of musical artists; this consolidation and oligopolization allows record labels to use corporate power to manipulate creativity and leverage artists. Generally, a record deal accomplishes its exploitative ends in three major ways. First, the "Grant of Rights" section of a typical recording contract irrevocably strips artists of any claims to the copyrights of music recorded during the term of the record contract.¹⁶ Second, payments of artist royalties have historically been reduced through manufactured provisions, including packaging deductions, container charges, and royalty reductions for physical CDs (which persist even though the primary distribution methods of music are now digital) and the Controlled Composition Clause, through which the company limits the amount of mechanical royalties to be paid on songs for which the artist is both the performer and primary songwriter.¹⁷ And third, artists are effectively indentured to the company for as long as they are deemed commercially viable through unilaterally exercisable optional albums. These allow the label to control the duration of their relationship with the artist leaving member provisions, which outline the rights of individual artists if they leave a group and allow the record label the exclusive right to sign them as a solo artist, and rerecording restrictions, which prevent artists, from rerecording material subject in the event that a contract expires or is otherwise no longer in effect.

When broken down into its component parts, it is difficult to deny the predatory nature of a standard recording contract. This typical construction of a record deal in the music industry is generally consistent, and the few provisions that are generally negotiable (for example, base royalty rates or advance floors and ceilings) typically fluctuate within relatively restrictive ranges. These tactics are not restricted to any level of artist success. Though major label deals are typically kept private, Kanye West reignited a conversation among artists regarding label behavior by leaking his deal with Universal Music Group in the fall of 2020. Although West's deal could be considered relatively favorable for an artist of his level, many of the aforementioned provisions are still present.¹⁸ The language in these deals severely restricts the flexibility of the artist and exists primarily to benefit the record company. This is a direct result of the imbalance of power between artists and labels stemming from anticompetitive behavior.

These deals are not inherently anticompetitive, however. Theoretically, an independent record label could compete for market share by offering better deals to artists, like a differentiated version of the record contract product that allows artists to maintain their copyrights, that compensates them equitably, and that permits them the flexibility to move around within the market. Unfortunately, because so much of the recorded music market is concentrated among the Big 3, independent record labels are restricted in their growth potential. For example, many independent labels require the distribution services of the Big 3 or are eventually absorbed by them outright.¹⁹ Further, the economic structure of a record deal inherently prioritizes financial success over the creativity of the music and the creative rights of the artist, as evidenced by the typical language of a record contract. This profit-focused corporate mentality restricts the success of independent labels with more artist-focused business models and consequently limits this form of competition within the music industry.

The U.S. government has occasionally found reason to intervene in record label behavior. In 2000, the FTC reached settlement agreements with the Big 5 labels (at the time, BMG had not yet merged with Sony, and UMG had not purchased EMI) following investigations of anticompetitive behavior in the CD market. These labels were accused of illegally colluding over advertising strategy to convince retailers to markup CD prices to consumers, violating antitrust laws by "facilitat[ing] horizontal collusion among the distributors" and "constitut[ing] an unreasonable vertical restraint of trade under the rule of reason."²⁰ While the resulting consent agreements deterred this behavior in physical distribution for the subsequent thirteen years, labels again were accused of anticompetitive behavior following the rise of digital music streaming. In 2015, the Big 3 were accused by the

States of New York and Connecticut of violating antitrust law by conspiring with Apple Music to withdraw support from ad-based “freemium” subscriptions of Spotify and other digital service providers (DSPs) in favor of Apple’s required subscription.²¹ Finally, in 2018, when Spotify launched its Initial Public Offering (IPO), the Big 3 came under scrutiny for earning significant profit on their collective 13.5% stake in the company, valued at a total \$3.5 billion at the close of the April 2018 IPO.²² As of July 2021, Spotify’s stock price has risen approximately 60%.²³ While this investment is perfectly legal, little of the earnings from this vertical integration are seen by artists. Streaming services pay rightsholders who then pay artists a fraction of a cent per play,²⁴ and this record label investment in Spotify incestuously enables a system that devalues musical creation and belittles artists.

Flagged instances of collusion or price fixing among the Big 3 are infrequent due to these record labels’ historic practice of pushing the legal limit of anticompetitive behavior. When CD technology was introduced to consumers of recorded music in 1983, the major record labels standardized the price \$16.95 for a CD, periodically raising or lowering prices to account for demand until their effective replacement by iTunes. These prices appeared to include significant markups, as certain retailers observed consumer demand trends and sold CDs for closer to \$10, capturing share of the CD market from record labels.²⁵ Essentially, the major labels set CD prices within consumer’s willingness-to-pay but significantly above the equilibrium price.

Record labels continued anticompetitive activity as the music industry switched to digital consumption. In the age of downloadable music, iTunes set its standard album download price at \$9.99, though artist royalties barely increased. In fact, based on the figures cited by Marc Hogan of Pitchfork in his article, “How Much Is Music Really Worth?” net dollar amounts of revenue for artists decreased between the height of CD prices in 2002 and the advent of iTunes in 2007.²⁷ Record labels justified their high CD prices by citing expenses related to manufacturing, packaging, and distribution. If this justification is to be believed, labels could have dropped the price of the digital albums sold on iTunes without compromising the artists’ share of revenue, all while maintaining their bottom line. Yet, the dollar value artist royalty fell. This action demonstrates price-fixing behavior, for no other intuitive reason than a profit increase for the record label, at the expense of the income of the artist.

These are instances of collusion and antitrust violations in the form of extreme exertion of corporate leverage over artists in record contracts, restrictions on entry for independent labels through distribution leverage or acquisition, and various activities of profiteering through collusion. All are symptoms of an impressive imbalance of power

between major labels and every other player in the music industry. This is characteristic of an anticompetitive environment and perpetuates an industry infrastructure that routinely suppresses artists.

Addressing the iron fist record labels exert over the recorded music industry requires artists to break independently from the machine of the major labels. Even though artists have treated them as necessary until relatively recently, massive record companies are no longer required for artists to succeed in the music industry. The historic benefits of signing to a label primarily include distribution, marketing, and advances. Now, as home studios are becoming more widely used, artists can self-fund the creation of commercially viable music from their own bedrooms. Through social media and online tools, artists can then unilaterally distribute and market their music. The advent of the independent musician's toolkit has reduced the attractiveness and necessity of the traditional record label. Additionally, effective operation within the music business no longer requires the standard infrastructure of a record label; any individual intent on entering that business can establish a separate legal entity (such as an LLC) and independently work with an amalgamation of music industry professionals to accomplish the objectives record labels claim to have monopolized. Across sectors and genres, artists have proven this point, diversifying their musical careers into live streaming, product development, sponsorships and advertisements, teaching, and other endeavors that allow them to support their musical creation.²⁸

Widespread effort among the artist community to reject the undesirable offerings of record labels in favor of independent entrepreneurship has the potential to correct the financial imbalance in the recorded music industry. To accelerate the transformation, the top one percent of artists, which account for overwhelming majorities of streaming revenue, need to spearhead this change. No significant impact on the economic structure of the recorded music industry will occur until established superstar artists rebuke the restrictive contracts and avaricious deals record labels peddle.

Concerts - Live Nation/Ticketmaster

One common retort to the lack of artist profitability is the apparent opportunity of live performance, purported to be a vibrant source of economic success. Under more thorough analysis, this does not seem to be the case. While touring is the main source of income for many artists, a majority of those performers are lucky to earn a profit on a given tour.

Much like streaming income and record label contracts, superstar artists maintain a

significant financial lead over the overwhelming majority. In 2017, the top 1% of performers earned almost 60% of all concert ticket revenue, and a further 4% of artists accounted for another 25% of all concert ticket revenue. In total, these 5% of artists account for 85% of touring income; in 1990, this total 5% of artists accounted for 62% of this income.²⁹ Now, close to three-quarters of artist income is earned from live performance, “compared with around 30% in the 1980s and 1990s.”³⁰ If 75% of all artist income is earned in live performance, and 5% of artists account for 85% of that revenue, 95% of artists, then, share the remaining 15% of live touring income, or 11.25% of all the artist income in the music industry. The purported ability of artists to thrive from live performance income is a myth. As in recorded music, a grave economic imbalance exists, stemming from a highly concentrated market controlled by corporate interests.

Unlike the record label industry, however, Live Nation, the primary live music entertainment company in the United States, most apparently functions as a monopoly. With its 70% market share in ticketing services and flagrant vertical integration, Live Nation continually reports strong earnings.³¹ And, despite the COVID-19 pandemic temporarily erasing the live entertainment scene, the company shows no signs of slowing.³² Live Nation officially cemented itself as a global titan of live events and blatant monopolist in its first notable instance of vertical integration, a 2009 merger with Ticketmaster, the ticket vendor with the highest marketshare.³³ This merger was subject to significant scrutiny. The U.S. Department of Justice (DOJ) concluded in 2010 that the unification of these two companies posed significant antitrust concerns, and imposed a 10-year consent decree, restricting Live Nation/Ticketmaster, according to Assistant Attorney General (AAG) Christine Varney, “from retaliating against any venue that considers or works with another primary ticketing service” and requiring that “Ticketmaster must either refrain from using its ticketing data in its promotion and management business, or it must give that information to other managers and promoters.”³⁴ The goal of these actions, according to AAG Varney, was to encourage innovation in the live industry and prevent anticompetitive behavior. Unfortunately, the DOJ's oversight attempts were largely unsuccessful. After noting six overt violations of the consent decree (alleged instances by Live Nation executives threatening venues), the consent decree was extended through 2025.³⁵

As unprofessional as it seems, Live Nation's venue conduct would likely not shock any touring musician or professional who has dealt with the company. A 2018 New York Times piece detailed the threat of Live Nation executives to boycott an Atlanta venue that switched its primary ticket venue to one owned by AEG, Live Nation's primary competitor.³⁶ This threat is a clear violation of its consent decree. In part due to increased regulation from the

DOJ following Live Nation's aggressive anticompetitive practices towards this venue and others, Live Nation pivoted its strategy from threats to purchases. According to Live Nation's 2020 10-K filing, the company "owns, operates, has exclusive booking rights for or has an equity interest in 289 venues."³⁷ These purchases serve to solidify Live Nation's dominance in the U.S. concert industry and demonstrate another avenue of vertical integration. Arguably, the absorption of small venues into Live Nation's corporate umbrella benefits the venues themselves, padding their risk from potential closure. When compared to the United Kingdom – where 54 small music venues (approximately 20% of these establishments) have closed since 2014, with the rate reaching roughly one venue per month in late 2019³⁸ – Live Nation's actions in the United States seem to have an insulating effect.

Live Nation's consolidation of independent venues, however, restricts the logistical flexibility of touring performers and the diversity of experience for consumers, largely due to the absorption of Ticketmaster. Live Nation/Ticketmaster is currently the subject of an April 2020 class action lawsuit in which concertgoers allege the entertainment titan unlawfully engages in "predatory and exclusionary conduct" in the primary and secondary ticketing markets.³⁹ Again, many customers of Ticketmaster would not be surprised by these allegations. In economic terms, concertgoers are relatively price insensitive. Depending on the fervor a fan demonstrates for a given performer, their demand for a concert ticket will likely not change significantly, even with exorbitant price hikes. Performers, especially superstars, exploit this trend by engaging in second-degree price discrimination (an economic phenomenon in which price-making entities, like monopolies and oligopolies, charge different prices to different consumers or groups), versioning their tickets with various VIP perks, better seats, or meet-and-greet privileges.

Ticketmaster, however, is much less subtle in their extortion of concertgoers. Any regular concert attendee will notice a \$20 face value ticket can almost double in price due to a variety of fees charged by Ticketmaster. These fees include local, regional, or national taxes and a venue-by-venue facility charge simply collected by Ticketmaster. These fees, however, also include a convenience charge or order processing fee, in which consumers pay a significant markup to cover the cost of an employee or computer basically pressing a button; and a delivery fee, meant to offset the price of shipping and handling, though it usually exceeds the per unit pricing of Ticketmaster's mass deal with UPS, or fraudulently misrepresents the zero-cost delivery of online tickets. In fact, according to Ticketmaster, both delivery fees and convenience charges "may include a profit to Ticketmaster."⁴⁰ This ability to charge fees is a hallmark of monopolistic behavior, exerting market power to maximize profits from consumers. Though corporations like Ticketmaster are entitled to

profit – thus is the nature of capitalism – this should not be achieved at the cost of consumer respect, artist flexibility, and the integrity of the live music industry.

In this case, even if customers purchase digital tickets that require no convenience charge or physical delivery, Ticketmaster can charge extra simply because they own enough market share and control enough individual shows (content and venues) that there are no other comparable vendor options available for the consumer. If concerts were subject to substantial market competition from multiple ticket vendors, companies like Ticketmaster would be unable to charge unreasonable fees, as they would be undercut by companies who execute efficiently without charging these fees in favor of attracting more customers. Theoretically, ticket vendors would compete, profit margins would fall, and the market price for a given concert would eventually reach a steady equilibrium.

The same thing would occur if Ticketmaster provided greater transparency surrounding the actual purpose of these fees or actual costs of ticketing. The ticketing giant would need to reduce these arbitrary and unethical costs as consumers gained this extra information. Unfortunately, Ticketmaster has no business incentive to do this, and due to its relationship with Live Nation and lack of significant competition, it is not required to.⁴¹

One problem here is that concert tickets are not perfect substitutes for one another. As mentioned before, within a particular live event, tickets come in different versions, corresponding to different locations in the venue or imbued with certain perks. Since tickets of each type are finite, competition will still be uneven unless venues distribute these different tickets evenly among distributors.

Another problem arises if venues try to sell directly to consumers. In a scenario with no intermediate distributors, venues become one-night monopolies for any given show. The price-making venues can then charge enough for tickets that will maximize profit without significantly deterring consumers; essentially, the maximum willingness-to-pay of the fanbase for that particular performer in that particular location. If that price does not outweigh the consumer's opportunity cost – basically, the implied monetary value of the consumer's next best option – the consumer will pay for the ticket and the venue will profit. Essentially, due to the unique nature of music concert ticketing, reforming the live entertainment industry to more accurately resemble a competitive market seems incredibly challenging and unlikely.

Live Nation's anticompetitive behavior can still be ameliorated. For any substantive rebalancing of the live music industry, Live Nation/Ticketmaster needs effective oversight. Their existing consent decree is not nearly stringent enough to prevent anticompetitive behavior which damages both artists and consumers. The Amended Final Judgment of *U.S.*

and Plaintiff States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment, Inc., finalized in January 2020, expanded enforcement measures from the defendant-friendly self-reporting outlined in the original 2010 Final Judgment to include specific requirements for reporting possible violations, fines payable to the United States of America for confirmed violations, and the appointment of an internal Antitrust Compliance Officer within Live Nation and an Independent Monitoring Trustee by the Court.⁴²

Still, though, Live Nation is the subject of complaints alleging anticompetitive behavior: the *Iderstine and Oberstein* complaint was filed in April 2020, just three months after the Amended Final Judgment was approved by the U.S. Government.⁴³ Given the sluggishness with which these antitrust investigations and judicial proceedings occur, the infrequency of filed complaints, and Live Nation's current worth of almost \$11 billion, the \$1 million penalty per future violation of the Anti-Retaliation Provision of the consent decree is not a deterrent to the entertainment giant.⁴⁴ Even if the consent decree was amended to increase penalties, or extended past the current expiration date in 2025, history indicates that Live Nation/Ticketmaster will continue to find ways to exploit their market share and disadvantage consumers.

To rebalance the financial structure of the live music industry, the FTC and the Antitrust Division of the DOJ can break up the vertically-integrated Live Nation/Ticketmaster. This corporation creates a disadvantageous environment for artists, venues, and consumers alike through many demonstrated methods: vertical integration of event promotion, ticket sales, and venue ownership; intimidation of venue owners and event planners to use the services of both companies, or risk incurring long term disfavor; and opaque and exorbitant fees, manufactured with monopolistic price-making power to increase profit margins and essentially rob concertgoers. The dissolution of Live Nation/Ticketmaster will allocate the services provided by each company, allowing other firms in the live music industry to compete and balancing the economic equilibrium of the sector.

Streaming - Digital Service Providers (DSPs)

In recent years, streaming services like Spotify, Apple Music, Amazon Music, Deezer, and Tidal have supplanted historical methods of listening to music, including physical copies and digital downloads, by providing ubiquitous access to an extensive catalog of recorded music for relatively cheap monthly subscription rates. These DSPs are yet another representation of oligopoly, dominating music revenues. DSPs are frequently criticized for

anticompetitive behavior, which includes accusations of exerting price-making power over unfairly allocated artist compensation and feeding a culture of devaluation that threatens the longevity of the music industry as a whole.

The most common criticism of DSPs is their payment scheme. In February 2021, Business Insider found that Spotify paid an estimated \$.0033 per stream, or one-third of a cent. This average rate has steadily decreased from \$.00521 in 2014.⁴⁵ Other streaming services claim to pay more. Apple Music, for example, in April 2021, disclosed that they pay artists approximately one penny (sometimes lower) per stream.⁴⁶ These rates show no indication of substantial future increase, as doing so would force DSPs to raise subscription prices, allowing competitors to undercut them. Here, the oligopolistic nature of the streaming sector of the music industry is directly disadvantageous to artists by keeping their potential earnings low.

DSPs do not pay musicians directly. Revenues earned from streaming are transferred to rightsholders (typically, record labels or publishers), which pay artists based on the terms of their contract with the rightsholder. In a standard record contract, an artist may receive around 15% of all streaming royalties. After typical label fees, the artist is then earning approximately \$.000495, or about one-twentieth of a penny. At Spotify's rates, to earn one dollar, an artist must accrue 2000 streams. For one adult artist with no children to earn California living wage, approximately \$40,250 per year, purely from streaming income on Spotify, they would need to earn 80,500,000 streams in that year (assuming a relatively standard record label contract royalty rate).⁴⁷ When compared to digital downloads, streaming's direct precursor, it is obvious that streaming has slashed artist income; for each \$.99 track download on iTunes, Google Play, or Amazon, an artist would earn an average of \$.23 after distributor and label fees. For the same single artist to earn California living wage from digital download revenues, they would only need to garner 175,000 individual track downloads.⁴⁸ Purely based on payouts and royalty rates, it's apparent that digital streaming has greatly reduced the ability of musical artists to earn a livable income from their recorded music.

The problems with the DSP payment scheme do not end at the low rates of per-stream payouts. Royalty payments are distributed according to the antiquated pro rata model, which compensates artists based on their representative proportion of the collective listening habits of all subscribers, drawing from a pool of payable royalty monies collected from subscription fees (and in some cases, particularly with Spotify, advertising revenue) less operating costs.⁴⁹ The pro rata model is unsuited for the current volume of streamed music, as approximately 70% of streaming revenue comes from a particularly intensive 30%

of music listeners.⁵⁰ These listeners pay identical prices to other subscribed consumers, yet use the services DSPs provide at a greater rate. Artist royalties are then not representative of their true fanbase, but instead dependent on the actions of both high-level consumers and other artists. An upending of this system through replacement with an artist-centric model would require more diligent accounting, and perhaps a raise in subscription prices to accurately account for the listening habits of intensive users. Again, due to the DSPs' oligopolistic deadlock, no service can do this without risking a significant loss of market share.

Artist royalties from streaming are also incredibly difficult to accurately track and distribute. The Music Modernization Act of 2018 (MMA) provided for the forming of Mechanical Licensing Collective (MLC), an entity that administers a blanket compulsory license to digital service providers for the use of any musical works registered by artists or participating distributors with the MLC. The Collective also collects and distributes streaming royalties covered by this blanket license in a transparent and efficient manner.⁵¹ In 2019, the DSPs, pursuant to the MMA, paid the fledgling MLC almost \$425 million in unmatched royalties, almost three-quarters of which came from Apple Music and Spotify.⁵² Early criticism of the MMA attributed this abundance of unmatched money to the purported unwillingness of Spotify to seek the appropriate licenses through existing U.S. government databases and make necessary payments under those licenses, alleging Spotify committed "willful infringement." Critics argue the MLC exists to protect Spotify from infringement liability, creating an inefficient and unnecessary intermediary in royalty payments.⁵³ Only officially operational from January 2021, the MLC is still too young to measure its objective effect on the accuracy and accountability of royalty payments to artists, especially in the context of the Covid-19 pandemic. Theoretically, the MLC should serve to alleviate some of the fiscal opacity exhibited by DSPs in the past.

The history of unmatched monies in the music industry speaks to a bigger issue in the structure of DSPs. Arguably, DSPs could not afford to transfer the entirety of their unmatched royalties to the MLC, because DSPs, as they currently exist, are inherently unprofitable in the long-term. Spotify has only reported an operating profit in just three fiscal quarters of its decade and a half existence, in Q4 2018, Q3 2019, and Q1 2021.⁵⁴ This could be attributed to several factors. Spotify has reported a greater proportion of premium subscribers in recent years.⁵⁵ Whatever it may be, Spotify's fleeting profitability is just that. The growth in premium subscribers seems to be slowing.⁵⁶ Royalty rates can only be slashed until they reach some abstract price floor, below which exists only greater disadvantage to artists and untenability than current numbers have already exemplified.

The Digital Service Provider in its current form is not a financially sustainable business model. These companies provide a platform for musicians to distribute their work and for consumers to efficiently indulge. This system is supported by algorithms, which suggests music to users to provide artists with better visibility and allow consumers to expand their tastes. Additionally, algorithmic bias tends to favor some artists, further influencing payout distribution. But the DSP does not actually own any of the music, the tangible, copyrightable assets. In fact, they must pay a compulsory license fee for every musical work hosted, now in the form of the MLC's blanket license. They also have to pay developers, curators, marketers, accountants, executives, and countless other individuals to maintain the platform and algorithm, while paying artists and tending to other stakeholders in an accurate and efficient manner. And they still don't own any of the product which contributes to their revenue. The lack of content ownership means any given DSP has to enhance its in-house content, user interface, marketing techniques, or some other non-musical element to differentiate itself from competitors which may host an identical catalog of songs. The energy of a DSP, then, is allocated to capturing market share and outcompeting peers. Even if motivated to contribute to any substantive change in the financial structure of the streaming model, the highly tense and competitive atmosphere in which DSPs are perpetually embroiled makes any raising of prices corporate suicide. DSPs have trapped themselves in an unsustainable and unintentional collusion, a limbo in which the business model is prophesied to collapse and drag artist royalties down with it.

The DSP exists simultaneously in at least two markets. The first is for mechanical royalty prices from streaming, the estimated one-third of a penny Spotify pays per stream. Simply, there is no competitive equilibrium in streaming royalties. The DSP business model's treatment of this payment is like an expense. Artists, acting as the buyers in this particular market, have no influence on the actual value of payment. Their demand for the services that DSPs provide, which would traditionally be able to sway producer (DSP) prices, is irrelevant, since streaming has established itself as a necessity for artists to promote and distribute their music. Artists have no reasonable substitute for distribution and commercialization of their work product. Hence, DSPs can set these rates at low levels in a futile attempt to increase profit margins while remaining competitive within the music industry oligopoly.

The second market in which DSPs operate is for premium subscription prices. Spotify and Apple Music hold a veritable duopoly, and, therefore, price-making power. Other DSPs do exist, many capturing market share in particular regions or countries, though these two services have significant competitive advantage due to their established reach.

Spotify and Apple Music coexist in a duopolistic gambit pulled straight out of a high school economics textbook, treading the line between healthy competition and anticompetitive price fixing. Each company undercuts the other and capture market share with favorable rates, attractive and differentiable services,⁵⁷ and low prices,⁵⁸ while still maintaining cost-effective expense levels to promote longevity and long-term profitability. This trend mirrors the collusion exhibited by major record labels in the CD market, standardizing prices to attract consumers and collect market share. The low prices DSPs set again disadvantage artists, as growth slows, profitability decreases, costs must be cut, and inevitably, the price paid per stream falls.

A third market, which DSPs do not exert control over, but do operate under, is that for royalty rates, the actual percentage of a mechanical royalty an artist may earn. The royalty rate is often packaged with other provisions of a record contract for which a record company may be financially responsible. Since these rates are not an independent good with observable market-based interactions, they also have no competitive equilibrium, though industry standard for these royalty rates is generally accepted to be around 6-7%. The disadvantage here to artists is apparent. As DSPs compete with each other, lowering subscription prices to capture market share, per stream royalty payments suffer as companies try to increase profit margins. Royalty rates are set by record labels per contract, competing with each other in a landscape governed by historical trends that accounted for much higher prices of music consumption. Artists are then left with a fraction of a penny per stream -- a significant markdown from a half-dollar per download -- and an unlivable wage.

The disadvantage DSPs place on consumers is less obvious. In this case, the market for DSP subscription prices is of particular concern. A premium subscription to a DSP, generally costing \$10 per month, provides unrestricted and uninterrupted access to millions of songs. Comparatively, CD prices and iTunes download prices were generally set around \$10 per album. The streaming model has imposed an extreme devaluation of musical product.

Free and heavily discounted subscription options exacerbate this trend, inherently communicating to consumers that music can acceptably be completely free. Through the adoption of streaming as the dominant form of music consumption, the so-called “freemium” model undoubtedly influences consumer attitudes. Free subscription options create an atmosphere of entitlement, the idea that we, as individuals, deserve this unfettered access to musical works for the sole cost of inconvenient advertisement interruptions. The advertisements support the DSP platform and maintenance, while music is still being

provided for free. Low subscription prices then are small costs consumers can make to enhance their listening experience. Still, consumers are not paying for the music, but rather a platform on which to access that music. Accustomed to low subscription prices in exchange for unrestricted musical enjoyment, consumers are then generally unwilling to pay higher prices for the content which leaves artists stuck in the low-paying DSP structure.

Data indicates that some consumers may still be willing to pay more in support of artists. In fact, the Record Industry Association of America (RIAA) reported that vinyl record sales increased 19% in 2019⁵⁹ and 30% in 2020.⁶⁰ This may indicate that consumers -- at least, collectors of limited editions and special artwork -- do have a willingness-to-pay above the standardized \$10 per month streaming price. (Vinyl records cost, on average, over \$28 in 2017).⁶¹ Unfortunately, this product is likely an outlier, as physical sales and digital downloads continue to decrease, while streaming continues to grow and dominate.

Even if consumers were willing to pay higher prices for premium subscriptions, DSPs would need to raise their prices in unison, or risk losing market share to competitors who refrained from doing so. Ironically, this movement in an oligopoly is definitively considered collusion. Given existing low levels of profitability and unsustainable business outlooks, DSPs can't afford that risk. Beyond their poor financial performance, DSPs have contributed to a cultural downshift that prioritizes access to and abundance of content over fair compensation and equitable support for the creators. This trend is so antithetical to the longevity of the music industry that it goes beyond anticompetitiveness and veers towards corporate suicide.

Being a small collection of firms which dominate the overwhelming majority of recorded music revenue while disadvantaging artists and consumers in various ways, the streaming sector is inherently oligopolistic. But DSPs are here to stay. Addressing their anticompetitive behavior is not as simple as imposing consent decrees or deconstructing firms. The streaming sector requires significant reforms designed to rebalance financial power in favor of artists and restore cultural valuation of music.

The most obvious reform DSPs could institute is a universal increase in subscription prices. This will not happen, however, without collective efforts between competing streaming services, which, without governmental direction and oversight, is both unlikely and illegal. If Spotify suddenly changed their business model by abolishing free and discounted services, raising the price of a typical subscription, restructuring their accounting system, and increasing royalty payments, they would likely lose market share to Apple, Amazon, Tidal, Tencent, or another of the handful of streaming services that could then boast cheaper prices and price-discriminated deals. Given this current state of the DSP

oligopoly, absent of any benevolent collusion, any price increases will need external incentives.

Government legislation could mandate a minimum price for subscription services. This is a reasonable enough solution, as the formation of the MLC under the MMA establishes a precedent for the U.S. government intervening in the allocation of streaming monies. Importantly, though, raising subscription prices does not necessarily mean DSPs will raise their artist payouts; government-mandated increases in subscription fees could allow DSPs to increase profitability without affecting artist income. Establishing a minimum pre-stream payout could help. Minimum compensation must consider average artist popularity, catalog size, and demographic, to allow a greater number of professional music creators to earn the United States living wage from their art. Legislation would increase artist income, while incentivizing DSPs to make changes to their subscription-based model that inherently counteract the current devaluation of music.

Legally mandated increases in artist compensation would likely not alleviate cultural devaluation entirely. Another approach that could contribute to the reversal of this devaluation is an adoption of economic traits that resemble the CD market. A possible manifestation of this is the introduction of tiered subscription fees based on amount of listening, either in volume of music or hours consumed. Users who listen to more music would then pay more, as they historically would have when buying more physical albums. Coupled with an abolition of free ad-supported services, and price-discriminated student packages and family plans, this change could drastically increase overall revenue in the streaming market. Consumers, in purchasing their streaming subscriptions, would naturally internalize their own valuation of music based on personal consumption, likely raising the collective cultural valuation. Additionally, with proper enforcement, this revenue increase would support a government-established minimum artist payout.

The current method of payment allocation also needs reformation. The pro rata system should be replaced with an artist-centric payment model. In this model, artists receive revenues from the subscription fees of consumers who listened to their music, rather than as a proportion of total music streams. In conjunction with tiered subscription prices and higher per stream payouts, both artists and DSPs would experience greater revenues.

A consumer-centric approach could offer consumers the option to direct a portion of their subscription payments to specific artists. This model follows the economic principle of tax choice, which argues that individuals respond positively when allowed to influence the use of their local and national taxes.⁶² Approaching subscription fees in this manner would allow consumers to participate directly in the financial rebalancing of the music industry,

increasing awareness for the injustices in the current economic model and providing the potential for future change.

Current digital music streaming is essentially a runaway experiment headed for failure. This method of music consumption shows no signs of displacement from the market. Consequently, DSPs must do everything in their power to promote profitability and longevity, while supporting artist sustainability and increased cultural valuation. In its mission statement, Spotify claims to give artists “the opportunity to live off their art.”⁶⁸ This statement is deceptive. DSPs do provide opportunities for artists to share their music to a global network of fans. If they achieve enough success, an artist could, potentially, live off their recorded music. What Spotify fails to acknowledge is that its own structure favors an upper echelon of popular artists, widening the income gap between superstars and every other musician within the pro rata system, and suppresses artist voices with its undemocratic and algorithmically-biased platform. To fulfill their mission, and promote their own sustainability, DSPs must implement structural reforms.

Royalty Collections – Performance Rights Organizations (PROs)

Centralization in other sectors of the music industry may not be as deserving of deconstruction as that of recorded music and live music. Chief among these sectors is performance rights licensing, a major income source for artists regulated by two major organizations in the United States, ASCAP, and BMI. These companies are Performance Rights Organizations (PROs), tasked with issuing blanket licenses to allow the public performance of all copyrighted music within the PRO’s catalog and collecting performance royalties to be paid to songwriters and publishers. ASCAP and BMI entered into consent decrees with the U.S. government in 1941 (which have been periodically amended since, given the ever-changing conditions of the music industry), which, among other things, restrict ASCAP and BMI from withholding licenses to the entirety of their catalog from any requestor for any reason.⁶⁴ Neither ASCAP or BMI are for-profit entities, theoretically reinforcing their objectives as a servant and ally of performing artists. Together, ASCAP and BMI comprise a 90% share of the U.S. market for public performance rights and licensing.⁶⁵

The reason for acceptance of the PRO duopoly is simple: it’s convenient. Former U.S. presidential candidate Andrew Yang writes that “breaking up Google into 5 mini-Google’s wouldn’t change much as people don’t want to use the fourth best search engine.”⁶⁶ The

same can be said for PROs. A songwriter wouldn't want to register to the third-best paying or fifth-fastest PRO if they could register with the best paying and most efficient. In the current landscape, ASCAP and BMI collect and payout royalties in very similar manners, and actively work together to improve songwriter representation. In 2017, the companies announced a joint venture to create a "single, comprehensive database of musical works from their combined repertoires that will deliver an authoritative view of ownership shares in the vast majority of music licensed in the United States."⁶⁷ In this case, concentration generally does not harm either artists or consumers; at least, not obviously.

Because the consent decrees between the United States and BMI and ASCAP are 80 years old, and have not been updated since 2001, music industry professionals and analysts cannot accurately evaluate the effect of PRO competition on the modern music marketplace, since these organizations have not been unregulated in the modern era. If freed from the restrictions of their obsolescent consent decrees, PROs could potentially adapt their business models to increase activity and efficiency in the modern industry. For example, a report from the DOJ's Antitrust Division reviewing the ASCAP and BMI consent decrees notes an expressed interest from both companies in expanding their licensing activities into mechanical royalties, those collected from sound recordings, and synchronization royalties, those collected from other media in which copyrighted music is used.⁶⁸ From one perspective, the ability of PROs to collect royalties for these types of licenses would provide publishing companies with more competition, as these massive companies with clearly established market power would now be encroaching on an element of the market cornered by publishers. From another, this desire of PROs represents a clear overreach, vertically integrating beyond their traditional function within the music industry. The debate surrounding this wish (and others) of the PROs underscores the complexity involved in altering or lifting the consent decree regulations on ASCAP and BMI.

In this particular element of the industry, the solution to centralization already appears to be under discussion. ASCAP and BMI, under their current consent decrees, provide easy and efficient access to musical works for licensees, while providing protections from copyright infringement and financial disadvantage to artists and maintaining the flexibility of members to choose their representation. Still though, the language in the decrees does not account for modern methods of consuming music, and the parties involved seem to be aware of that fact. If ASCAP and BMI are to continue to be governed under their consent decrees, these documents must be amended to increase the organizations' effectiveness in collecting license monies from modern sources, while still

maintaining a competitive atmosphere in which other PROs can freely enter the market and artists' rights are maintained and protected.

Conclusion

The record labels, event promoters, streaming services, and licensing organizations have used their market power to leverage artists, disadvantage consumers, and suppress competitors, eroding the integrity of music industry transactions. Due to their oligarchical status, these companies have no market pressure to disincentivize them from engaging in predatory and anti-competitive behavior, upsetting what should be an equitable balance between art and commerce. The concentration of recorded and live music in the control of only a few enterprises perpetuates superstar culture, creating massive economic disparities and discouraging musical innovation. Increased homogeneity in popular music and decreased earning potential for artists outside the top 1% are direct results of the market concentration within the music industry. Any substantive change in the music industry must start with a foundational alteration of this economic structure.

Economists consider monopolies and oligopolies, like those in the music industry, to be market failures. In many ways, the music industry is failing. Music is not a competitive industry, and the major controlling interests exhibit no remorse for the system they perpetuate. Former Spotify executive Jim Anderson, credited as the “the man who built out the system architecture of Spotify,” demonstrated this by basically admitting Spotify’s disregard for artist compensation during a keynote interview at SyncSummit New York in June 2019. Anderson stated that the problem Spotify was designed to solve was “to get artists’ music out there...not to pay people money.” Later, he called young artists “entitled” when artist activist Ashley Jana asked Spotify to increase payout rates to match Apple Music’s one penny per stream.⁶⁹

Perspectives like those expressed by Jim Anderson stem from disrespect for the delicate balance between artists, consumers, and businesspeople in the music industry. As Assistant Attorney General Makan Delrahim writes in the DOJ Antitrust Division’s review of the ASCAP and BMI consent decrees, “the ultimate goal [of amending PRO consent decrees] should be a market-based solution that ensures songwriters, publishers, and other artists are compensated fully for their creative efforts at market rates.”⁷⁰ This creed should be expanded to the music industry as a whole: creators deserve to be properly compensated for the product they create, which fuels the business models of music industry oligopolists and monopolists.

The compensation artists deserve transcends the monetary. Anticompetitive companies exhibit a clear lack of respect for artists' autonomy, and promote a dilution of the integrity of musical products. The restoration of respect within the music industry includes reorienting business practices to reverse the modern atmosphere of musical devaluation.

If the industry's most basic goals are to encourage musical creation, support artists, and provide access to music broadly across society, then the current economic model is failing.

Artists are not entirely blameless in the perpetuation of this anticompetitive atmosphere.

For artists, creating music is often a necessary expression, a deeply personal outlet that serves as a method of understanding and coping with life. This necessity, though, feeds into improper conduct in the music industry, supplying record labels, event promoters, streaming services, and licensing organizations with boundless musical content on which they can build their anticompetitive businesses. In this sense, the onus falls to musical artists to rebuke the services and structures of these companies and find alternative methods of monetizing musical creations. Though some independent artists are doing this, substantive change in the music industry will not occur without similar shifts spearheaded by superstar artists, those who account for significant enough shares of music revenues that corporations will take notice.

In his statement reviewing PRO consent decrees, AAG Delrahim, "a properly functioning market is the best method for determining the rates that properly reflect supply, demand, and each party's relative contribution to the music ecosphere."⁷¹ The music industry, specifically in the sectors analyzed, is not a properly functioning market. The music industry is dominated by oligopolies and monopolies consisting of massive corporations that fail to promote competition and maintain symbiosis between professional artist, and consumer.

These failures do not represent a total collapse of musical creativity and innovation. Rebalancing is possible, but it requires swift and robust reform. Further, each sector requires a different solution, spurred by different actors. Only when these major actors truly recognize and respect the role of artists in creating musical product, and shift their business practices to promote financial and cultural equity, will the music industry truly be on a sustainable path of enduring success.

Bibliography

1. Bennett, Joe. "Wanna Write a Pop Song? Here's a Fool-Proof Equation." *Washington Post*, 27 June 2014, www.washingtonpost.com/posteverything/wp/2014/06/27/wanna-write-a-pop-song-heres-a-fool-proof-equation/.
2. Ahmed, Aneesa. "Only 0.4% of Musicians Could Potentially Make a Living from Streaming, Study Reveals." *Mixmag*, 29 Sept. 2021, www.mixmag.net/read/artists-streaming-income-livelihood-news/.
3. "IBISWorld - Industry Market Research, Reports, and Statistics." IBISWorld, www.ibisworld.com/united-states/market-research-reports/major-label-music-production-industry/.
4. Jurzenski, Christine, and Avenir Capital. "Live Nation Stock Can More Than Double in 3 Years, Analyst Says." *Barrons*, 8 Apr. 2020, www.barrons.com/articles/live-nation-stock-can-more-than-double-in-three-yearsanalyst-51586380765.
5. Kumar, Abhilash. "Global Online Music Growth Slowed Down in Q2 2020." Counterpoint, 6 Oct. 2020, www.counterpointresearch.com/global-online-music-streaming-growth-slowed-down-in-q2-2020/.
6. Delrahim, Makan. "Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees." *United States Department of Justice*, 15 Jan. 2021, www.justice.gov/atr/page/file/1355391/download.
7. Goolsbee, Austan, et al. *Microeconomics*. Worth Publishers, 2020.
8. "Monopolization Defined." *Federal Trade Commission*, 15 Dec. 2017, www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined.
9. *MINI-ROUNDTABLE ON OLIGOPOLY*. US Department of Justice and Federal Trade Commission, 1999.
10. "Anticompetitive Practices." *Federal Trade Commission*, 19 Nov. 2013, www.ftc.gov/enforcement/anticompetitive-practices.
11. "Live Nation Entertainment, Inc. Form 10-Q for Quarter Ending March 31, 2021." *EDGAR*. Securities and Exchange Commission, 2021, www.sec.gov/ix?doc=/Archives/edgar/data/1335258/000133525821000058/lyv-20210331.htm.
12. Smith, Dylan. "New Analysis Finds That 1% of Artists Generate 90% of All Music Streams." *Digital Music News*, 10 Sept. 2020, www.digitalmusicnews.com/2020/09/10/music-streams-data/.

-
13. Beaumont-Thomas, Ben. "Third of British Musicians May Quit Industry amid Pandemic." *The Guardian*, 22 Sept. 2020, www.theguardian.com/music/2020/sep/22/one-third-british-musicians-may-quit-industry-covidpandemic-dcms-treasury.
 14. Harris, John. "Musicians Call for Industry Shake-up to Protect Artists during Lockdown." *The Guardian*, 11 May 2020, www.theguardian.com/music/2020/may/11/musicians-music-industry-lockdown-streaming-spotify-coronavirus.
 15. "IBISWorld - Industry Market Research, Reports, and Statistics." *IBISWorld*, www.ibisworld.com/united-states/market-research-reports/major-label-music-production-industry/.
 16. Awbi, Anita. "Publishing Contracts: Busting the Legal Jargon." *PRS for Music*, 22 Apr. 2014, www.prsformusic.com/m-magazine/business-and-money/publishing-contracts-busting-legal-jargon/.
 17. "What is a 'Controlled Composition Clause' in a Recording Contract?" *Songtrust*, help.songtrust.com/knowledge/what-is-a-controlled-composition-clause-in-a-recording-contract.
 18. Millman, Ethan. "Kanye West's Record Deal Is Standard. That Doesn't Mean the Record Industry Is Fair." *Rolling Stone*, 23 Sept. 2020, www.rollingstone.com/pro/features/kanye-west-record-deal-music-industry-1061774/.
 19. Resnikoff, Paul. "Report: Indie Labels Are Now Heavily Dependent on Major Label Distribution." *Digital Music News*, 15 June 2012, www.digitalmusicnews.com/2012/06/15/indies-3/.
 20. "Record Companies Settle FTC Charges of Restraining Competition in CD Music Market." *Federal Trade Commission*, 10 May 2000, www.ftc.gov/news-events/press-releases/2000/05/record-companies-settle-ftc-chargesrestraining-competition-cd.
 21. Chen, Brian X., and Ben Sisario. "Apple Music and Labels Investigated in 2 States (Published 2015)." *The New York Times*, 9 June 2015, www.nytimes.com/2015/06/10/technology/2-states-look-for-collusion-between-apple-music-and-major-labels.html.
 22. Variety Staff. "Spotify: At Day's Close, What Are the Major Labels' Shares Worth? A Lot" *Variety*, 3 Apr. 2018, www.variety.com/2018/biz/news/spotify-at-days-close-what-are-sony-warner-and-universals-shares-worth-a-lot1202743146/.
 23. "SPOT." *Yahoo Finance*. finance.yahoo.com/quote/SPOT/history?p=SPOT.
 24. Jacob, Ennica. "How Much Does Spotify Pay Per Stream?" *Business Insider*, 24 Feb. 2021. www.businessinsider.com/how-much-does-spotify-pay-per-stream.
-

-
25. Cohen, Warren. "CD Prices on the Rise Again." *Rolling Stone*, 18 May 2004, www.rollingstone.com/music/music-news/cd-prices-on-the-rise-again-232601/.
 26. Hogan, Marc. "How Much is Music Really Worth?" *Pitchfork*, 16 Apr. 2015, www.pitchfork.com/features/article/9628-how-much-is-music-really-worth/.
 27. See reference 26.
 28. Sisario, Ben. "Can Streaming Pay? Musicians Are Pinning Fresh Hopes on Twitch." *The New York Times*, 16 June 2021, www.nytimes.com/2021/06/16/arts/music/twitch-streaming-music.html.
 29. Krueger, Alan B. *Rockonomics*. John Murray, 2020.
 30. Shah, Neil. "Music Superstars Are the New One Percenters." *The Wall Street Journal*, 4 May 2019, www.wsj.com/articles/music-superstars-are-the-new-one-percenters-11556962200.
 31. "Bear of the Day: Live Nation Entertainment, Inc. (LYV)." *Yahoo Finance*, finance.yahoo.com/news/bear-day-live-nation-entertainment-090009087.html.
 32. Trefis Team. "Will Live Nation Survive Covid-19?" *Forbes*, 13 Oct. 2020, www.forbes.com/sites/greatspeculations/2020/10/13/will-live-nation-survive-covid-19/?sh=4e8f362e1efc.
 33. Tryhorn, Chris. "Live Nation and Ticketmaster to Merge." *The Guardian*, 10 Feb. 2009, www.theguardian.com/business/2009/feb/11/live-nation-ticketmaster-merger.
 34. Varney, Christina A. "The Ticketmaster/Live Nation Merger Review and Consent Decree In Perspective." *Department of Justice*, 18 Mar. 2010, www.justice.gov/atr/speech/ticketmasterlive-nation-merger-review-and-consent-decree-perspective.
 35. Clark, Dave. "Despite Multiple Consent Decree Violations, Live Nation Gets Slap on Wrist from DOJ." *TicketNews*, 14 Jan. 2020, www.ticketnews.com/2020/01/live-nation-consent-decree-doj-slap-on-wrist/.
 36. Sisario, Ben, and Graham Bowley. "Live Nation Rules Music Ticketing, Some Say With Threats." *The New York Times*, 1 Apr. 2018, www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html.
 37. "Live Nation Entertainment, Inc. Form 10-K for Fiscal Year Ending December 31, 2020." EDGAR. *Securities and Exchange Commission*, 2021, www.sec.gov/ix?doc=/Archives/edgar/data/1335258/000133525821000009/lyv-20201231.htm.
 38. Hope, Fiona. "One Small UK Music Venue Closes Every Month According to New Research - PSNEurope." *PSNEurope*, 22 Oct. 2019, www.psneurope.com/live/small-uk-music-venues-new-research.
-

-
39. *Iderstine and Oberstein v. Live Nation Entertainment, Inc.* United States District Court, Central District of California, Western Division, 28 Apr. 2020, h4h4w7i7.stackpathcdn.com/wp-content/uploads/Live-Nation-Accused-Of-Monopolizing-Ticket-Sales.pdf.
 40. "Ticketmaster Help Center." *Ticketmaster*, help.ticketmaster.com/s/article/How-are-ticket-prices-and-fees-determined?language=en_US.
 41. "That's the Ticket." *Federal Trade Commission*, 11 June 2019, www.ftc.gov/system/files/documents/public_events/1413898/slides-online-events-tickets-6-11-19.pdf.
 42. "Amended Final Judgment: *U.S. and Plaintiff States v Ticketmaster Entertainment, Inc. and Live Nation Entertainment, Inc.*" United States District Court for the District of Columbia, 28 Jan. 2020, www.justice.gov/atr/casedocument/file/1241016/download.
 43. "Complaint: *Olivia Van Iderstine and Mitch Oberstein v. Live Nation Entertainment, Inc. and Ticketmaster LLC.*" United States District Court Central District of California, Western Division, 28 Apr. 2020, www.ticketnews.com/wp-content/uploads/Live-Nation-Accused-Of-Monopolizing-Ticket-Sales.pdf.
 44. "Live Nation Entertainment, Inc. Form 10-K for Fiscal Year Ending December 31, 2019." EDGAR. *Securities and Exchange Commission*, 2020, www.sec.gov/ix?doc=/Archives/edgar/data/0001335258/000133525820000028/lyv-20191231.htm.
 45. See reference 24.
 46. Steele, Anne. "Apple Music Reveals How Much It Pays When You Stream a Song." *The Wall Street Journal*, 16 Apr. 2021, www.wsj.com/articles/apple-music-reveals-how-much-it-pays-when-you-stream-a-song-11618579800.
 47. "Living Wage Calculation for Los Angeles County, California." *Living Wage Calculator*, 2021, livingwage.mit.edu/counties/06037.
 48. Dredge, Stuart. "How much do musicians really make from Spotify, iTunes, and Youtube?" *The Guardian*, 3 Apr. 2015, www.theguardian.com/technology/2015/apr/03/how-much-musicians-make-spotify-itunes-youtube.
 49. Music Business Worldwide. "Music Streaming Must Switch to a Fair and Logical Payout Model." *Music Business Worldwide*, 9 Feb. 2021, www.musicbusinessworldwide.com/the-streaming-music-industry-must-switch-to-a-fair-and-logical-payout-model-there-is-no-time-to-lose/.
-

-
50. "The CNM Assesses the Impact of a Possible Change in the Mode of Remuneration by Streaming Platforms." *Centre Nacional de la Musique*, 27 Jan. 2021, www.cnm.fr/le-cnm-evalue-limpact-dun-changement-eventuel-de-mode-de-remuneration-par-les-plateformes-de-streaming/.
 51. "The MLC Process." *The MLC*, 2021, www.themlc.com/how-it-works.
 52. Olson, Cathy Applefeld. "Apple, Spotify And Other DSPs Pay \$424 Million In Unmatched Royalties For Publishers, Songwriters." *Forbes*, 16 Feb. 2021, www.forbes.com/sites/cathyolson/2021/02/16/apple-spotify-and-other-dsps-pay-424m-in-historical-unmatched-royalties-for-publishers-songwriters/?sh=3ec1d985d4fb.
 53. Busch, Richard. "I'm One of the Attorneys Suing Spotify." *Digital Music News*, 19 Jan. 2018, www.digitalmusicnews.com/2018/01/19/spotify-music-modernization-act/.
 54. Ingham, Tim. "Spotify is Profitable." *Rolling Stone*, 12 Nov. 2019, www.rollingstone.com/music/music-features/spotify-profitable-how-happen-910456/.
 55. See reference 54.
 56. Trainer, David and Great Speculations. "It Sounds Like Spotify is in Trouble." *Forbes*, 13 Oct. 2020, www.forbes.com/sites/greatspeculations/2020/10/13/it-sounds-like-spotify-is-in-trouble/?sh=76b5786a813b.
 57. Gedeon, Kimberly. "Apple Music Has a New \$5 Plan That May Make You Cancel Spotify." *LaptopMag*, 18 Oct. 2021, www.laptopmag.com/uk/news/apple-music-has-a-new-dollar5-plan-that-may-make-you-cancel-spotify.
 58. Lovejoy, Ben. "Apple's latest price cut sees Apple Music undercut Spotify and YouTube Premium in India." *9to5Mac*, 5 Apr. 2019, www.9to5mac.com/2019/04/05/apple-music-in-india/.
 59. Friedlander, Joshua P. "Year-End 2019 RIAA Music Revenues Report." *Recording Industry Association of America*, 2019, www.riaa.com/wp-content/uploads/2020/02/RIAA-2019-Year-End-Music-Industry-Revenue-Report.pdf.
 60. Friedlander, Joshua P. "Year-End 2020 RIAA Music Revenues Report." *Recording Industry Association of America*, 2020, www.riaa.com/wp-content/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf.
 61. Bukszpan, Daniel. "Vinyl Records Are on Track To Outsell Compact Discs for the First Time in 33 Years and Price Have Risen 490%." *CNBC*, 14 Sep. 2019, www.cnbc.com/2019/09/14/vinyl-records-on-track-to-outsells-cds-and-prices-have-risen-490percent.html.
-

62. Lamberton, Cait. "Your Money, Your Choice." *Democracy*, 2011, www.democracyjournal.org/magazine/20/your-money-your-choice/.
63. "Company Info." *Spotify*, 2021, newsroom.spotify.com/company-info/.
64. "Antitrust Consent Decree Review - ASCAP and BMI 2014." *Department of Justice*, 23 July 2015, www.justice.gov/atr/ascap-bmi-decree-review.
65. See reference 6.
66. Yang, Andrew. "Regulating Technology Firms in the 21st Century - Yang2020 - Andrew Yang for President." *Yang2020 - Andrew Yang for President*, 14 Nov. 2019, www.yang2020.com/blog/regulating-technology-firms-in-the-21st-century/.
67. "ASCAP & BMI Announce Creation Of A New Comprehensive Musical Works Database To Increase Ownership Transparency In Performing Rights Licensing." *ASCAP*, 26 July 2017, www.ascap.com/press/2017/07-26-ascap-bmi-database.
68. See reference 6.
69. Resnikoff, Paul. "Spotify Executive Calls Artist 'Entitled' for Requesting Payment of One Penny Per Stream." *Digital Music News*, 29 June 2021. www.digitalmusicnews.com/2021/06/29/spotify-executive-entitled-pay-penny-per-stream/.
70. See reference 6.
71. See reference 6.

NOTES

Don't Give a Damn 'Bout My Bad Reputation An Analysis of Warped Tour's Demise and Punk's Evolution *by Ashley Chainani*

This piece examines the current zeitgeist of American youth culture under the lens of punk rock music. Specifically, how the end of Warped Tour, a long-standing symbol for punk rock culture, signifies a change in the behavior and mindset of young people.

DON'T GIVE A DAMN 'BOUT MY BAD REPUTATION

AN ANALYSIS OF WARPED TOUR'S DEMISE AND PUNK'S
EVOLUTION
BY ASHLEY CHAINANI

Note: This work was originally written in Nov. 2018, and specifically adapted for publication in Issue I of the USC JMI.

I was in fifth grade when my parents finally let me attend my first rock concert with my older brother. We watched our favorite local band, The Finalist, perform at Fitzgerald's, an iconic Houston venue for underground bands. A decade ago, Fitz's neighborhood was abandoned and completely absent of street lights. Now, Fitz's is an anomaly of the past in an area now populated by hipsters. Wanting to look edgy, I accessorized with long, black skull earrings and red clip-in extensions from Claire's. I also wore a matching blouse and skirt combination from J. Crew because ten-year-old me thought the best way to fit in with older kids was to dress like them. The Finalist's lead singer usually wore dark eyeliner and earrings, but when we met him before the show, he was wearing khakis and topsiders. That night seemed to foreshadow punk's decline. Determined to make this concert memorable, my brother pushed us to the front row. My tiny body was squished between my six-foot-six brother and an equally large stage speaker. As soon as the lead guitarist strummed his first distortion-filled note, the crowd lost control. The band jumped across the stage and into the crowd multiple times. My ears rang for days and I was temporarily scarred after getting sucked into my first mosh pit, but it was an experience that changed my life for the better. I was hooked on the freedom and shared angst of the punk rock scene.

The Vans Warped Tour, a summer rock music festival, promoted generations of punk feelings and experiences, including mine, for over two decades. Founded in 1995, Warped Tour was the longest running traveling festival in North America and a major punk symbol.¹ Many famous bands, including Blink-182, My Chemical Romance, and the Red Hot Chili Peppers, gained popularity by playing the festival.² Older artists who defined the punk scene like Joan Jett, the "godmother of punk," played Warped Tour to reignite their careers.³ Founder Kevin Lyman announced the 2018 Warped Tour would be the festival's final year.⁴ For many, Warped Tour represented rebellious youths' fiery passion against mainstream society. Although the festival is over and punk music has since declined in popularity,⁵ a peek at any news channel reveals teenagers protesting gun violence or protecting free speech. If young people still feel the need to rebel, then what explains the disconnect between punk rock music and American youths today?

In the early sixties, psychedelic rock artists like Jimi Hendrix influenced punk with his rebellious spirit and distortion pedals.⁶ The earliest punk rock acts like The Stooges formed in the 1960's⁷ but in the seventies, bands like The Clash and The Ramones made punk more mainstream.⁸ Nirvana and Rage Against the Machine, the latter popularizing anarchy, brought a grungier sound to punk in the nineties.⁹ The 2000's punk wave, which included bands from Yellowcard to All Time Low, kept its love for distortion but dropped the grunge. Instead, they place a greater emphasis on vocals and pop-like harmonies.

Despite the evolution of punk music over sixty years, the rebellious spirit behind it persisted. Editors at Pitchfork claim punk's identity is not a sound but "a philosophy, an attitude, and crucially, a look" rooted in protesting against authority and societal standards.¹⁰ Tellingly, All Time Low preceded their final Warped Tour with the release of their album titled *Last Young Renegade*.¹¹

When I was 14, I highlighted my hair purple to commemorate my own version of the punk philosophy, attitude, and look. With straight A's and a spotless disciplinary record, I always represented the perfect student and child. Punk music was my only outlet for rebelling and feeling different. At school, I listened to my teachers and at home, I listened to my parents. Rock allowed me to control at least one aspect of my life. I connected with punk music the same way past generations did. For decades young people have been attracted to punk music because they felt their voices were not heard by society; they felt powerless. Teenagers had two options: defer to authority or remove themselves from society altogether. Since changing society seemed like a losing battle, the punks decided to reject authority and society instead. A close read of nearly any punk song will echo these sentiments. Sum 41's "Fat Lip," a 2000's punk ballad,¹² blatantly addresses the futility in attempting to change society with lyrics like "I don't want to waste my time / Become another casualty of society." The song also promotes resisting conformity with "I'll never fall in line / Become another victim of your conformity." The most popular punk bands since 1993, including Sum 41, have been signed by Hopeless Records, whose name reiterates this punk mindset.¹³

At the final Warped Tour show, Lyman denounced President Trump on stage and instructed Pennywise, the first band to perform at the inaugural Warped Tour, to close the festival with their song "Fuck Authority."¹⁴ In traditional punk fashion, Lyman and the festival crowd turned their backs on the world and pretended not to care. This moment highlights the key difference between the past and present youth mentality. Punk has always allowed young people to disengage from and denounce society. For many generations, this rebellious act was enough. However, for increasingly younger generations such as Generation Y, destroying society is no longer the goal. Instead, they seek to rebuild it.

In 2019, I sat down with Lyman, now a University of Southern California professor, to discuss the implications of ending Warped Tour. Lyman notes 25% of previous Warped Tour attendees were between the ages of 13 and 17.¹⁵ However, at the final Warped Tour, attendees in this age bracket dropped to six percent. The 2018 Warped Tour had more throwback artists like New Found Glory and Simple Plan to celebrate its final year.¹⁶ These older artists could explain the show's demographic shift but Lyman insists he saw a decline

in teenage attendance for several years. Lyman believes the attendance dipped because of younger generations' increased addiction to technology and social media. As a result, they often no longer feel the need to leave their homes and physically connect with a community. Instead, teens prefer to communicate with their friends over the internet. Lyman claims online communication is dangerous because the internet provides teens with a false sense of security and community which contrasts punk's history of in-person community at festivals like Warped Tour. Atlantic writer Jene Twenge shares Lyman's beliefs. Twenge's research links increased technology use and limited physical interaction to spikes in teenage depression.¹⁷ Although Lyman's thoughts are supported by scholars like Twenge, technology is not discouraging rebellion through punk culture as much as it is providing an alternative way for young people to express their dissatisfaction.

Through social media, young people are learning that their voices can be heard and be impactful. In fact, social media sites like Twitter allow anyone with internet access to have a platform to communicate – a groundbreaking accessibility when compared to punk's formative years. However, complications arise when considering the ineffectiveness of online activism, which Malcom Gladwell did in a 2010 article for *The New Yorker*.¹⁸ In "Small Change," Gladwell associates true activism with physical movements and organized leaders, like sit-ins and Martin Luther King Jr. He asserts "the revolution will not be tweeted" because online movements lack accountability and "high-stakes" results. For example, #BlackLivesMatter has been publicly tweeted nearly forty-eight million times¹⁹ but according to CNN, the movement has struggled to make legislative changes due to its decentralized leadership strategy.²⁰ Similarly, Lyman argues young people are simply joining cyber communities that share their same thoughts rather than making meaningful change with their online activism.²¹ The lineup structure at Warped Tour made it so that fans who wanted to see a main act would also need to see lesser known supporting bands they may have otherwise ignored. Thus, fans could not self-select or pre-judge the messages they heard from various bands and were exposed to a variety of new ideas and outlets for their rebellious energy. However, the internet promotes group polarization by allowing users to cherry-pick what they are exposed to. Instead of encouraging social change, technology might be hindering it by limiting the types of ideas which younger generations are ingesting and ultimately integrating into society.

Nonetheless, the United States Census Bureau revealed the number of young people who voted in the 2016 election increased by 17% compared to the 2012 election.²² The 2020 election saw the youth voter turnout increase by eleven more percentage points from the previous election, with more than 50% of eligible young people participating.²³ Teens are

increasingly tuning in to enact change rather than tuning out to ignore issues. Perhaps the internet provides a false sense of community and security to young people, but it also allows them to change society rather than opting for the traditional punk stance of checking out. Following the Parkland shooting, the school's own students became the face of the "high-stakes" pro-gun regulations movement.²⁴ Their twitter rants might not be traditional catalysts for protests and lasting change but at one point neither were sit-ins. The Parkland movement's most notable young figures have received immense backlash online²⁵ yet no matter how much they are heckled, they have refused to stand down. They seem to be exuding the same toughness punk culture would support and using it to change their surrounding communities for the better.

Warped Tour is over and punk music in America is nearly extinct, however that may not mean that the rebellion of previous generations has failed. In a 2018 Alternative Press interview, The Maine's John O'Callaghan talks about Warped Tour's demise.²⁶ Alternative Press asks him about the state of punk and he mentions seeing a girl in the festival crowd wearing a "Retired Emo Kid" shirt. O'Callaghan shakes his head in disapproval and claims "that still resides inside of you...you never shake emo, you just might not be full emo anymore." Perhaps O'Callaghan is right. Maybe young people are not full punk anymore but the punk spirit will always be embedded in youth culture. Questioning authority still seems to be an innate part of the youth lifestyle but rejecting society altogether has become outdated. Despite the negative effects of technology on our youth, it has also appeared to provide a new, and even constructive outlet to both express disdain and implement positive change. Although this means that Warped Tour and punk's inherent rejection of society may be things of the past, it does offer up exciting potential for new generations to channel this same energy once attributed to punks in ways which can change the world around them for the better. While I struggle to admit Warped Tour signifies the end of an era as well as my own youth, I am also forced to tell myself I am "living in the past / it's a new generation."²⁷

Bibliography

1. "Music Festival History: The Vans Warped Tour." *Journeys*, www.journeys.com/articles/music-festival-history-the-vans-warped-tour.
2. Damon, Sharon. "Joan Jett & The Blackhearts: Female Pioneer in the World of Rock." *AXS*, 28 July 2014, www.axs.com/joan-jett-the-blackhearts-female-pioneer-in-the-world-of-rock-15410.
3. "10 Most Memorable Warped Tour Lineups." *Alternative Press Magazine*, 17 June 2020, www.altpress.com/features/warped-tour-lineup-best-years/.
4. Schmidt, Rodney. "The Fall of American Punk-Rock Music." *Culture Trip*, The Culture Trip, 18 Apr. 2017, www.theculturetrip.com/north-america/usa/articles/the-fall-of-american-punk-rock-music/.
5. Staff. "Van's Warped Tour Ending in 2018." *Detroit Free Press*, 16 Nov. 2017, www.freep.com/story/entertainment/music/2017/11/15/vans-warped-tour-ending-2018/868380001/.
6. "The History of Psychedelia." *BBC Radio 6 Music*, BBC, 2018, www.bbc.co.uk/programmes/articles/4nWcSYlCbK9BDJryvdbZMNg/a-brief-history-of-psychedelia-in-eight-colours.
7. Berman, Judy. "How Iggy and the Stooges Invented Punk." *How Iggy and the Stooges Invented Punk | Pitchfork*, Pitchfork, 4 Oct. 2016, www.pitchfork.com/thepitch/1312-how-iggy-and-the-stooges-invented-punk/.
8. Partridge, Kenneth. "The Clash's Debut Album Turns 40: However You Define Punk, This Album Was a Rough Draft for What Came Next." *Billboard*, Billboard, 8 Apr. 2017, www.billboard.com/articles/columns/rock/7752522/the-clash-debut-album-anniversary.
9. Guan, Frank. "Rage Against The Machine Were 24 Years Too Early." *Vulture*, 23 Nov. 2016, www.vulture.com/2016/11/rage-against-the-machine-were-24-years-early.html.
10. Pitchfork. "Rip It to Shreds: A History of Punk and Style." *Rip It to Shreds: A History of Punk and Style*, Pitchfork, 25 Oct. 2016, www.pitchfork.com/features/from-our-partners/9943-rip-it-to-shreds-a-history-of-punk-and-style/.
11. "Last Young Renegade by All Time Low." *Genius*, 2 June 2017, www.genius.com/albums/All-time-low/Last-young-renegade.
12. "Sum 41 – Fat Lip." *Genius*, 22 Apr. 2001, www.genius.com/Sum-41-fat-lip-lyrics.

-
13. Posen, Louis. "Hopeless Records." *Hopeless Records*, 11 Oct. 2018, www.hopelessrecords.com/.
 14. Vans Warped Tour. *Pennywise: The Final Vans Warped Tour*. *YouTube*, Vans Warped Tour, 5 Aug. 2018, www.youtube.com/watch?v=QCWeNEkgKt8.
 15. Lyman, Kevin. University of Southern California. California. 1 Oct. 2018. Interview.
 16. Lauren, Erica. "Vans Warped Tour Announces Final 2018 Lineup." *Setlist.fm*, 2 Mar. 2018, www.setlist.fm/news/03-18/vans-warped-tour-announces-final-2018-lineup-5bd6bf34.
 17. Twenge, Jean M. "Have Smartphones Destroyed a Generation?" *The Atlantic*, Atlantic Media Company, 19 Mar. 2018, www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/.
 18. Gladwell, Malcolm. "Small Change." *Small Change*, 4 Oct. 2010. The New Yorker.
 19. Anderson, Monica, et al. "#BlackLivesMatter Surges on Twitter after George Floyd's Death." *Pew Research Center*, Pew Research Center, 28 Aug. 2020, www.pewresearch.org/fact-tank/2020/06/10/blacklivesmatter-surges-on-twitter-after-george-floyds-death/.
 20. Blake, John. "Is Black Lives Matter Blowing It?" *CNN*, Cable News Network, 2 Aug. 2016, www.cnn.com/2016/07/29/us/black-lives-matter-blowing-it/index.html.
 21. See reference 15.
 22. File, Thom. "Voting in America: A Look at the 2016 Presidential Election." *The United States Census Bureau*, 10 May 2017, www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html.
 23. See reference 18.
 24. Alter, Charlotte. "Why 2020 Was a Generational-Change Election After All." *Time*, Time USA, LLC, 18 May 2021, time.com/6049270/2020-election-young-voters/; Beadle, Kelly. "Election Week 2020: Young People Increase Turnout, Lead Biden to Victory." *Circle*, Tufts University, 25 Nov. 2020, circle.tufts.edu/latest-research/election-week-2020#youth-voter-turnout-increased-in-2020.
 25. Kaleem, Jaweed, and Nina Agrawal. "These Are the Florida Students Behind the Movement to End Gun Violence." *Los Angeles Times*, Los Angeles Times, 23 Feb. 2018, www.latimes.com/nation/la-na-parkland-student-activists-20180223-htmlstory.html.
 26. Alternative Press. Performance by John O'Callaghan, *YouTube*, Alternative Press, 17 July 2018, www.youtube.com/watch?v=mijdi6rdOxY.
 27. Jett, Joan. "Bad Reputation." *Urgh! A Music War*.
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